



WRITTEN TESTIMONY OF
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BEFORE THE
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

AT A HEARING ENTITLED
“REAUTHORIZATION OF THE SATELLITE TELEVISION EXTENSION AND
LOCALISM ACT”

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Good morning, Chairman Leahy, Senator Grassley and members of the Committee. My name is Ellen Stutzman, I am the Director of Research and Public Policy for the Writers Guild of America, West, Inc. (WGAW). I would like to thank you for the opportunity to testify on behalf of the Guild.

WGAW is a labor organization that represents more than 8,000 professional writers of film, television and online video programming. Our members write feature films, dramas and comedies for broadcast, cable and pay TV networks, local news, documentary programs and the original series that are now available online through services like Netflix, Amazon, Hulu and Crackle. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, "WGA").

Our belief is that a media industry with many buyers of content leads to the best outcome for both the writers who create content and the viewers who consume it. Satellite services have provided some measure of competition with cable operators, and we support a clean reauthorization of STELA. It is in the best interest of entertainment industry workers and the general public for broadcast content to be available to as many households as possible. Despite the digital transition and technological updates, there are still homes that cannot receive broadcast television using only an antenna. In addition, there remain areas of the country not served by local broadcast stations. We want to make sure that the 1.5 million subscribers who currently receive broadcast programming using the distant signal provisions of STELA can continue to do so. A clean reauthorization of STELA will preserve such access while protecting localism, which remains an important public interest goal.

We do *not* believe that reauthorization should be used to change the rules that govern negotiations between broadcast stations and multichannel video programming distributors, or MVPDs, in an effort to tip the balance of power in favor of these distributors.

The Guild supports existing retransmission rules because we want broadcast television to remain healthy. We believe this should be a shared goal. Broadcast stations continue to serve as a vital source of news and local programming. According to Pew Research, 71% of adults watch local television news, more than any other television news source.¹ Another survey by Pew found that local television news ties with newspapers as the top source for local political news.² While cable and the Internet have given rise to additional news outlets, both offer little of the local reporting that remains important to the democratic discourse.

Broadcast television also offers the most original programming to consumers. In recent years, cable networks have entered the original content business but none has matched the scale of the broadcast networks. In the past few years, the total number of original comedy and drama series available on basic cable networks has approached the number offered by the broadcast networks. But this content is spread across two dozen cable networks. Broadcast television continues to offer the best employment standards for our members and others in the entertainment industry. Broadcast series typically produce more episodes, providing close to year-round employment for the hundreds of workers who make each show possible. In contrast, basic cable series have shorter episode orders, smaller writing and production staffs, and a less predictable employment schedule. Despite the growth of cable, the majority of television jobs

¹ Amy Mitchell, Mark Jurkowitz, Jodi Enda and Kenny Olmstead, "How Americans Get TV News at Home," Pew Research Center, October 11, 2013, <http://www.journalism.org/2013/10/11/how-americans-get-tv-news-at-home/>, p. 1.

² Pew Research, "How People Learn About Their Local Community," September 2011, <http://www.pewinternet.org/files/old-media/Files/Reports/2011/Pew%20Knight%20Local%20News%20Report%20FINAL.pdf>, p. 3.

held by our members are on broadcast shows. These series provide the highest levels of both initial and residual compensation for writers and other entertainment industry workers.

Broadcast networks continue to produce original content in a time of increased viewing and advertising alternatives brought about by cable networks and now, online video. Retransmission negotiations allow broadcasters to diversify revenue sources, and in doing so, adapt to a media landscape where four networks no longer account for all television viewing. Cable networks have long operated on a dual revenue stream business model, with both advertising and affiliate fees providing funds for investment in programming. Retransmission consent allows broadcasters to adapt.

The current retransmission rules remain fair because of the value of the content that broadcasters provide to MVPDs. The broadcast networks remain the most watched programming services. In an average week, the top four broadcast networks all reach more than two-thirds of television households.³ The primetime television series airing on the broadcast networks-- including such shows as *Modern Family*, *The Good Wife*, *Parenthood* and *Glee*-- continue to receive the highest ratings, with only a few basic cable series coming close. The broadcast networks also offer the sports programming and award shows that attract the largest live audiences in each year. In the 2012-2013 television season, broadcast accounted for 96 of the top 100 programs among adult viewers aged 25-54.⁴ Simply put, the broadcast networks are responsible for a great deal of the must-have programming that makes an MVPD service attractive. It is, therefore, fair for MVPDs to pay broadcast stations for the ability to offer this value to their subscribers.

³ TVB, "Television Basics," Updated June 2012, http://www.tvb.org/media/file/TV_Basics.pdf , p. 7.

⁴ TVB, "The 2012/2013 Television Season: The More Things Change...," http://www.tvb.org/research/2053636/2012-13_Season_Recap.

In addition to protecting the value of content offered by broadcast stations, the current retransmission rules are necessary because television networks sell to a concentrated MVPD market, controlled by a few large and powerful buyers. While households can access local stations using a digital antenna, the FCC reports that 90% of television households use an MVPD service to watch the broadcast networks.⁵ This means that broadcast stations *must* go through MVPDs to reach the public. According to the recent subscriber figures, the top four MVPDs control 67% of the market.⁶ The satellite providers at issue today, DirecTV and Dish, are the second and third largest providers and combined account for one-third of all MVPD subscribers. At the same time, the proposed Comcast-Time Warner Cable merger, which the Guild opposes, seeks to combine the first and fourth largest MVPDs. The lack of competition on a national scale is compounded by concentration on a local level, where the National Association of Broadcasters notes that 67 “designated market areas” have a single MVPD with over 50% of subscribers.⁷ As a result, MVPDs, particularly the largest ones, wield significant buyer power. Retransmission rules help balance the power between broadcasters and MVPDs.

Today, retransmission negotiations are about more than providing the local signal to MVPDs. These negotiations now encompass topics such as rights to on-demand programming on set-top boxes and online through “TV Everywhere” initiatives, as well as offerings like the linear network feed made available to Internet-connected devices in the home. MVPDs want to make broadcast content available in and out of the home and across multiple platforms and devices. These rights provide tremendous value to MVPDs seeking to remain attractive to consumers who now have over-the-top video alternatives. This increases the complexity of retransmission

⁵ FCC, *In the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket 12-203, Table 17, (2013).

⁶ Company data and SNL Kagan.

⁷ Comments of the National Association of Broadcasters *In The Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, September 10, 2012.

negotiations, which may lead to more contentious talks. But simply because the stakes are higher does not mean retransmission is broken or that broadcasters should be limited in what they can do to secure fair compensation for the value they create.

The Guild is concerned with the rising cost of cable service, but we cannot deny that television today offers so much more to consumers than even a few short years ago. We have transitioned from a world where television networks were in control of the viewing schedule to one in which consumers decide when and how to enjoy their television shows. Viewers today can watch primetime broadcast programming at just about any hour of the day. Retransmission fees currently constitute a small portion of a cable bill and we do not think weakening the rules is the answer to rising prices. Rather, it is our belief that increasing competition among distributors, perhaps through virtual MVPDs and a la carte subscription offerings, would do more to address pricing.

It is for these reasons that we ask that reauthorization not be used as a vehicle to weaken the negotiating rights of broadcast stations. Many of the proposals that have been mentioned in the context of STELA reauthorization would simply give more power to MVPDs. For instance, the requirement of mandatory interim carriage in the event of a dispute would undermine the ability of broadcast stations to negotiate for adequate compensation. By removing the threat of signal loss, mandatory interim carriage would reduce the incentives for MVPDs to engage in good faith negotiations. In the event of a signal disruption, most consumers can use a digital antenna to access broadcast programming. We believe that promoting this availability would limit harm to consumers without making changes that give more power to MVPDs.

The Guild also opposes changes that would eliminate network non-duplication and syndicated programming exclusivity rules, or allow for distant signal importation in the event of

a signal interruption. These changes would sacrifice localism in favor of enhancing MVPD power. The ability of an MVPD to bring in an out-of-market station to replace affected programming would significantly undermine the ability of a broadcast station to negotiate for fair compensation. Removing much of the downside of retransmission disputes for MVPDs also eliminates their incentive to engage in good-faith negotiations.

While it is unfortunate when viewers lose access to the programming our members create during blackouts, we recognize that such actions are sometimes necessary to protect the value of content. We believe that the loss of viewers and advertising revenue presented by a signal interruption is sufficient incentive for a broadcaster to make a fair deal. Experience has shown that blackouts typically last a period of days or a few weeks.

While we are advocating for preservation of the existing retransmission consent rules, we believe there are common sense reforms that could be enacted to promote a more competitive marketplace. The Guild has long held the position that a competitive media marketplace produces the most vibrant and diverse content and viewpoints. From this perspective, we are troubled by the rise of sharing agreements and coordinated negotiations among local station competitors. As such, we support FCC Chairman Wheeler's plans to recognize that these agreements may create common ownership and believe it is reasonable that local market competitors be prevented from engaging in joint retransmission negotiations.

STELA is a bill governing satellite television, and the Guild is opposed to the reauthorization process being used to undermine competition in the set-top box market. Consumers currently have too little choice when it comes to their MVPD set-top box and weakening Section 629 of the Communications Act by repealing the "integration ban" is a move

in the wrong direction.⁸ The Internet has given rise to new video choices for consumers. Making this content available on the same device with MVPD programming will increase access to diverse and independent programming, but only if a competitive set-top box market emerges. Absent such competition, we fear that MVPDs will remain content gatekeepers, and unaffiliated content will not be available on MVPD set-top boxes. To that end, the Guild joined with public interest groups and technology companies to ask the House Subcommittee on Communications and Technology not to move forward with the repeal of the integration ban.⁹

In closing, we support a clean reauthorization of this bill. Reauthorization is not the appropriate vehicle with which to begin making selective changes to industry regulations to increase the power of MVPDs. The Guild would, however, welcome a broader review of the video marketplace because we think there are legislative and regulatory updates that could be made to increase competition in programming, exhibition and distribution. For example, we would welcome rules that require networks to air independently-produced content, which has all but disappeared from television since the repeal of the Financial Interest and Syndication rules. Changes to content bundling rules could also be used to increase independent programming and competition by allowing consumers to decide which channels they want. We also support expanding the definition of an MVPD to include virtual operators that use third-party facilities to provide video programming services. Changes such as these would do more to increase competition and address rising costs to consumers than unfairly, and asymmetrically, gutting the negotiating rights of broadcasters.

Thank you for your attention and I look forward to your questions.

⁸ 47 U.S.C. §549.

⁹ See Letter from Public Knowledge, National Consumers League, Free Press Action Fund, Consumer Action, Writers Guild of America, West, and AllVid Tech Company Alliance, to Hon. Greg Walden, Chairman, and Hon. Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology, March 7, 2014.