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TELEVISION VIEWERS, RETRANSMISSION CONSENT, AND THE PUBLIC INTEREST

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

NOVEMBER 17, 2010

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ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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TELEVISION VIEWERS, RETRANSMISSION CONSENT, AND THE PUBLIC INTEREST

WEDNESDAY, NOVEMBER 17, 2010

U.S. SENATE,
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:07 p.m. in room SR–253, Russell Senate Office Building, Hon. John F. Kerry, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. JOHN F. KERRY, U.S. SENATOR FROM MASSACHUSETTS

Senator KERRY. The hearing will come to order.

Good afternoon, all of you. I apologize for being a little late. We have one too many caucuses in the course of these few days, but we appreciate the opportunity to have this hearing, and I thank you for your patience and also for bearing with us as we moved it back just a little bit to accommodate the Senate schedule.

We're here today with a group of senior industry officials to examine the recent disputes between video distributors and broadcasters. And I thank all for being here. And, given the truncated time, I'm going to try to summarize my statement, and we'll try to move as rapidly as we can to the testimonies.

At issue in these disputes are the fees that broadcasters charge distributors for retransmitting the broadcast signal that's sent over the public airwaves. Now, too often the negotiations over those fees lead to both sides putting up websites and ads calling each other greedy, urging consumers to take a side, and warning those consumers about the loss of service. That's typically followed by tense last-minute negotiations and, in some cases, the pulling of the signal and continued recriminations until one side or the other bends or breaks, as the case may be. At the end of the process, after that period of consumer uncertainty, there is no transparency in the price reached or the nature of the agreement.

The New York Times now characterizes retransmission consent confrontations as a "regular event". And Bloomberg News says, "TV blackouts in the U.S. have reached the highest level in a decade and may climb as pay TV operators fight higher fees sought by content producers."

During the most recent of these disputes, millions of Cablevision subscribers interested in watching Fox had to find a place other than their home to do so. One couple ended up having to watch the

Giants game in a bar instead of in their living room. The wife, Marilyn Odell, told *The New York Times,* "We're too old to be in this place." And, on the other hand, bar owners who subscribed to Cablevision lost business. An AP story quoted one saying, "This is ridiculous. I'm relying on people to come in who are Giants fans, and they're walking out even though I pay for the football package." And he went on to say that, "Regular everyday people get caught in the middle." And that's precisely what brings us here today.

Our goal is to discuss alternative ways to resolve these disagreements and to protect the consumers. That's what brings us to the table. Our predilection is not to get involved, not to sort of try to, you know, somehow manage the marketplace in ways that, you know, are inappropriate. And our first, I think, instinct for everybody here is to want that marketplace to work effectively. But, when the consumers keep getting crunched in the middle and keep coming back to us and saying, "We feel powerless, and we seem to get screwed. We're tired of it." That's when we come to the table.

Our constituents should not be the pawns in these corporate negotiations, and I'm concerned that, without a better, more transparent process for dealing with impasses in negotiations and adequate FCC oversight, more fights and disruptions of service are what people have to look forward to. Prices for consumers will rise, and independent programming will get crowded out.

During the recess, I circulated an alternative process for resolving an impasse. It would still allow a broadcaster to pull the signal, wouldn't take away any market power, but it would limit it to a last resort, after the FCC had executed some oversight over negotiations to ensure that the parties are acting in good faith. Hopefully, we could encourage greater cooperation by staving off the pulling of the signal and imposing transparency on offers in case of a true impasse. Ultimately, if parties are going to ask consumers to take sides and deny them service, then, frankly, consumers deserve to know why. And the Commission needs to know exactly what is happening in the market.

My commitment in this is not to any one alternative. I want to make sure that's clear today. My commitment—and I think my colleagues'—is to protecting consumers and finding the best way to do that. I still believe the FCC can and should use its existing authority to draft new rules. And I remind the agency that its role is to protect those consumers.

So, I look forward to working with my colleagues and the FCC, to hearing from the witnesses today with that purpose in mind. And let me turn to my Ranking Member and then the Chair of the full Committee, who would like to make a comment. And then, if colleagues don't mind, we'll go right on into the testimony.

Thank you.

Senator Ensign.

STATEMENT OF HON. JOHN ENSIGN,
U.S. SENATOR FROM NEVADA

Senator ENSIGN. Thank you, Mr. Chairman.

The video programming marketplace in America today is incredibly robust and diverse. Video content owners negotiate dozens,

maybe hundreds, of deals each year with their distributors. Most get done quietly, with little fanfare, but occasionally, as we've seen lately, negotiations are more difficult and lead to these public disputes. And a handful of high-profile retransmission consent disputes this year have captured the attention of the press and policymakers, alike. And in the case of Cablevision's negotiations with both ABC and Fox, millions of cable subscribers lost network programming while deals were being worked out.

In light of these unfortunate disruptions, it makes sense for the Subcommittee to hold a hearing on retransmission consent and other Federal laws that impact broadcaster/distributor negotiations.

There have been extraordinary changes in the TV marketplace since Congress first created the retrans rules back in 1992. Thanks to last year's successful DTV transition, Americans can watch high-definition digital broadcasts of network television over the air for free. Americans can also choose from hundreds of TV channels carried on pay-TV services offered by cable companies, satellite companies, and now even telephone companies.

Back in 1992, there were far less cable channels available. Satellite was not a robust competitor to cable, and telephone companies weren't even in the pay-TV picture. Consumers today also have access to a remarkable array of online video content that they can watch from their computer, their TV, their cell phone, or even their MP3 player. The video marketplace has never been more competitive, and it may be time to consider revising our retrans regulations.

My colleague Senator Kerry has proposed reforming the current rules by giving the FCC additional authority to intervene during retrans disputes. While I appreciate the thoughtful work Senator Kerry has done on this issue, I do have some concerns on the idea of putting the FCC in the middle of carriage negotiations.

We should take a holistic look at the retransmission and copyright rules to see if we need to move them toward a more free-market system where consumer interests, rather than government regulations, drive competition. Indeed, Congress, this year, directed the GAO and the Copyright Office to study exactly that part of STELA, the Satellite Television Extension and Localism Act. And, during a hearing last year on STELA, I called for revisiting the compulsory copyright license, which is one of several Federal provisions that impact the broadcaster/distributor negotiations. Like I did during that hearing, I urge my colleagues today to really think about whether our cable, satellite, broadcast regulations fit today's marketplace. This hearing is part of the process to review the appropriateness of those regulations.

And I want to thank the Chairman for holding today's hearing.

I would also like to thank the panel of witnesses before us. We know that you all are busy executives, and we appreciate your time that you've taken today.

Thank you, Mr. Chairman.

Senator KERRY. Thank you very much, Senator Ensign.

Senator Rockefeller.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

The CHAIRMAN. Thank you, Mr. Chairman.

I welcome all of you and recognize that you are very busy folks.

Television obviously is a very powerful force, but I believe the system we have for developing television content, packaging that content, and distributing that content is broken. It may serve companies well, but it does not serve us well, as consumers, and, probably more importantly, as citizens. Let me explain why.

When it comes to developing content, our entertainment machine is too often in a race to the bottom; in fact, it is in a race to the bottom, getting close. Even worse, our news media has all but surrendered to the forces of entertainment, and much of our news media is entertainment, as opposed to news. Instead of a watchdog that is a check on the excesses of government and business, we have the endless barking of a 24-hour news cycle. We have journalism that is always ravenous for the next rumor, but insufficiently hungry for the facts that can nourish something called our democracy.

As citizens, we are paying one heck of a price in the dumbing-down of America. You're partly responsible for that. When it comes to packaging content, why do consumers have to order so many channels? Why do they have to pay so much, when households watch so few channels? The old adage of "500 channels and nothing on" has never been as true as it is today.

When it comes to delivering content, why do we pay so much? The Federal Communications Commission tells us, from 1995 to 2008, the average monthly price of popular cable service increased more than three times the rate of inflation. That's agony for a lot of citizens and customers.

No wonder consumers are cutting the pay-television cord in record numbers. No wonder they are turning back to over-the-air television and turning on to programming over the Internet and other sources. They are tired of paying rates that go up so much every single year, every year.

In our hearing today, we do not get at the root of these problems. And I'm only here to make this statement. That is a broader discussion that we will need to have and we will have; indeed, it is a conversation that we owe to the citizens of this country. But, today's hearing is important and timely because we make a good-faith effort to address one of the symptoms of these broader concerns.

Now, we're talking about retransmission consent. This is a policy that allows local broadcasters to negotiate with cable and satellite companies for the carriage of their local stations. When it works, consumers see the local broadcast stations on cable and satellite systems. When it fails, consumers are saddled with the dark screens and denied access to local news and sports programming. That's what happened, obviously, to millions of television viewers in New York who turned on their sets to watch the World Series but didn't quite get to see that.

So, let me caution our witnesses today. If you fail to fix this situation, all three parts of it, we're going to fix it for you. But, when we do that, we will seek to do more than referee your corporate

money disputes, because more than just retransmission consent ails our television markets.

We need new catalysts for quality news and entertainment programming. I hunger for quality news. I'm tired of the "right" and the "left." There's a little bug inside of me which wants to get the FCC to say to Fox and to MSNBC, "Out, off, end, goodbye." It would be a big favor to political discourse, our ability to do our work here in Congress, and to the American people to be able to talk with each other and have some faith in their government and, more importantly, in their future.

We need slimmed-down channel packages that better respect what we really want to watch, and we need to find ways to provide greater value for television viewers at lower cost because people are tired of always-escalating rates.

Again, I thank you for being here today, and I greatly respect Senator Kerry and the interest he's shown in this whole area in which he is most expert.

I thank you.

Senator KERRY. Senator Rockefeller, thank you. Thank you for an important and, I think, a courageous statement. And I appreciate it.

Senator Lautenberg has asked, because of the people who were affected in his region, if he could have an opening statement. Can I ask for that indulgence? Would people agree to that? I'll do it by consensus and——

Yes, Senator Nelson.

STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA

Senator BILL NELSON. Mr. Chairman, I just want to say that I am very proud of our Chairman, with that statement, which articulates what so many of us have been feeling about the slow decline of bringing news to the consumer, and the consumer having available packages that they want to see and that they don't have to buy something that they don't want to see, and that they are not threatened, as you pointed out, by the screen going dark. You pointed out, in the Northeast. It happened, a year ago, in the Sugar Bowl, when the University of Florida was playing, and there was this big dispute between Fox and one of the cable companies. And, of course, that was the threat, up until the 11th hour. The 11th hour and 59 minutes, as a matter of fact. So, let's put the consumer first.

And I'm delighted that Mr. Uva is here, from Univision.

Senator KERRY. Senator Lautenberg?

STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thanks very much, Mr. Chairman.

We're here today to make sure that the American people are no longer forgotten in the fight between the cable companies and the broadcasters. And this isn't about taking the side of the broadcasters or taking the side of the cable company; this is about taking the side of what I'll call "the customers," who need us to look out for them. The big media corporations believe that it's good business

to leave consumers in the dark while they haggle over their latest retransmission gain. That's exactly what happened during a recent battle between Fox and Cablevision, when 3 million subscribers—it was already mentioned—including one million New Jerseyans, were unable to see either their favorite programs or anything that they're interested in including part of this year's baseball playoffs.

But, make no mistake, this is about much more than simply being able to watch sports on TV. Television remains a lifeline for millions of Americans, even in this age of iPads and YouTubes. More than 80 percent of viewers receive television by subscribing to cable or a multichannel video service. The public relies on this resource for local news and cultural programming. Seniors rely on television as a source of critical information, like emergencies in their community that may affect their safety.

And many parents depend on educational programming to help their children get ready for school. And it's wrong to hold viewers like these hostage during the retransmission negotiation. It's wrong to treat them like chess pieces in the high-stakes face-off between giant media corporations. It's wrong to deny viewers the ability to see programming that they want, need and pay for.

We've got to put a stop to these programming blackouts once and for all, and that's why I'm pleased to work with Chairman John Kerry on retransmission consent legislation that'll put the focus back where it belongs: on the consumers.

Our proposal would require a cooling-off period so programming must be kept on the air during an impasse in negotiations. And, Mr. Chairman, my willingness to work with you is unbounded. We're going to get this done.

I look forward to hearing from our witnesses, seeking ways to work together to make sure Americans and television viewers are never again left in the dark.

Senator KERRY. Thanks very much, Senator Lautenberg.

Thank you, folks, for your patience.

We're delighted to welcome Mr. Glenn Britt, the Chairman, President, and CEO of Time Warner Cable; Mr. Joe Uva, President and CEO of Univision Communications—I understand you're not feeling that well and may have to leave a little early, so we, again, appreciate your hanging in here; Mr. Tom Rutledge, Chief Operating Officer, Cablevision Systems; Mr. Chase Carey, the Deputy Chairman, President, and Chief Operating Officer of News Corporation; and Mr. Charles Segars, Chief Executive Officer of Ovation.

Thank you all very much for being here.

Mr. Britt, would you lead off? And we'll run down that line.

STATEMENT OF GLENN A. BRITT, CHAIRMAN, PRESIDENT, AND CEO, TIME WARNER CABLE

Mr. BRITT. Good afternoon, Mr. Chairman, Ranking Member Ensign, and members of the Subcommittee. I want to thank you for inviting me here today. And I also want to express my appreciation to Chairman Kerry and other Members of Congress who have recognized that the current retransmission consent regime is fundamentally broken and in need of reform.

In my testimony, I will focus on three points to demonstrate why reform is needed.

First, Congress created retransmission consent 18 years ago as a new property right to subsidize free over-the-air broadcasting, but much has changed since that time. When retransmission consent was first created, broadcasters and cable operators each enjoyed local monopolies. As a result, the parties negotiated from relatively equal positions of strength and with a shared interest in reaching an agreement on mutually beneficial terms. This produced a process that was essentially invisible to the public.

But, retransmission consent negotiations now occur in a vastly different environment. Today, the pay-TV industry is robustly competitive, while local broadcasters retain the government-granted monopolies and other benefits that now distort carriage negotiations. This has allowed broadcasters to play competing distributors off of each other and has encouraged broadcasters to take more extreme disruptive positions instead of seeking compromise. Consumers, caught in the middle, are the ones getting hurt.

Unfortunately, this imbalance in negotiating power is exacerbated by the FCC's rules, which take a hands-off approach based on the outdated assumption that broadcasters have neither the incentive nor the ability to disrupt viewers' access to their signals. The FCC has broad statutory authority over broadcasters and their retransmission consent rights. Time Warner Cable and an unprecedented coalition of diverse interests have asked the FCC to exercise its authority by adopting new rules to protect consumers—such as interim carriage and dispute resolution measures. Despite wide support for these and other reform proposals and the growing number of disruptive retransmission consent disputes, the FCC has failed to act. Instead, the FCC insists its hands are tied when it comes to protecting the public from the consequences of retransmission consent fights.

My second point focuses on the impact on consumers who are bearing the brunt of the FCC's inaction. Broadcasters have both the incentive and the ability to put consumers in harm's way during negotiations. As we have now seen on several occasions, broadcasters clearly are willing to hold consumers hostage by pulling their signals as a negotiating tactic. Even when a service interruption is avoided, consumers are still needlessly subjected to weeks, and even months, of misleading advertising designed not to inform them but to exert pressure on pay-TV providers to give in to demands for higher fees that ultimately will be paid by consumers.

Finally, I'd like to put to rest one of the arguments often made by those opposing reasonable reforms; namely, that the government should not interfere with free market negotiations. Time Warner Cable agrees that free markets are preferable to regulated markets.

Retransmission consent, however, is not a free market. Rather, it is one of a number of special privileges given to broadcasters by the government as part of a thicket of outdated regulations. These special privileges, which also include must-carry rights, territorial exclusivity protection, a guaranteed right to basic tier carriage, and, of course, the broadcasters' free use of the public airwaves, are

supposed to safeguard, not threaten, the public's access to broadcast programming.

Time Warner Cable does not object to paying broadcasters to retransmit their signals. Our objection is to a government-sanctioned process that allows broadcasters to put consumers at risk. In order to protect consumers, Congress should encourage the FCC to exercise its existing authority and to initiate a rulemaking to explore proposed changes in its rules. In addition, Congress should continue to explore legislative changes.

If broadcasters truly want to operate in a free market, then they should not be allowed to keep their special privileges; but, if broadcasters want to retain their special privileges, then Congress and the FCC should update the rules to prevent broadcasters from using consumers to gain leverage in negotiations.

We'll look forward to continuing to work with Senator Kerry and the other members of the Committee on this important issue, and I'd be happy to answer any questions you might have.

Thank you.

[The prepared statement of Mr. Britt follows:]

PREPARED STATEMENT OF GLENN A. BRITT, CHAIRMAN, PRESIDENT, AND CEO, TIME WARNER CABLE

Good afternoon Mr. Chairman, Ranking Member Ensign, and members of the Subcommittee. I am Glenn Britt, Chairman, President and CEO of Time Warner Cable.

I want to thank you for inviting me to be here today and to express my appreciation to Senator Kerry and other Members of Congress who have recognized that the current retransmission consent regime is fundamentally broken and in need of common sense reforms. Congress created retransmission consent 18 years ago as a new property right to subsidize free, over-the-air broadcasting. Much has changed since that time.

In my testimony, I will focus on three points to demonstrate why reform is needed:

First—and somewhat ironic—is the fact that greater competition in the pay TV industry from satellite and telco providers has had the unintended effect of dramatically increasing the power of broadcasters in retransmission consent negotiations. When retransmission consent was first created, broadcasters and cable operators each had monopolies in the local market. As a result, for a number of years the parties negotiated from relatively equal positions of strength and with a shared interest in reaching an agreement on mutually beneficial terms. This produced a retransmission consent process that was essentially invisible to the public.

But retransmission consent negotiations occur in a vastly different environment today. The pay TV industry has become robustly competitive, while local broadcasters have retained their government-granted monopolies and other benefits that now distort carriage negotiations. Under these rules, pay TV providers are limited to dealing with only one broadcast supplier in a local market. This has allowed broadcasters to play multiple distributors off of each other and has encouraged broadcasters to take more extreme, disruptive positions rather than to seek compromise. Consumers, caught in the middle, are the ones getting hurt.

Unfortunately, this imbalance in negotiating power is exacerbated by the FCC's current rules which take a hands-off approach based on the outdated assumption that broadcasters have neither the incentive nor the ability to disrupt viewers' access to their signals. In 1992, Congress gave the FCC broad authority to govern the exercise of retransmission consent. Time Warner Cable has joined with an unprecedented coalition of diverse interests in asking the FCC to exercise that authority by initiating a proceeding to update its rules with new measures that would protect consumers, such as interim carriage and dispute resolution procedures. Despite an outpouring of support for this request and the continued occurrence of disruptive retransmission consent disputes, the FCC has failed to act. Instead, the FCC has repeatedly signaled—incorrectly, we believe—that its hands are tied when it comes to protecting the public from the consequences of retransmission consent fights.

My second point focuses on the impact on consumers, who are bearing the brunt of the FCC's inaction. Broadcasters have both the incentive and ability to put consumers in harm's way during negotiations. As we have now seen on several occasions, broadcasters clearly are willing to hold consumers hostage by pulling their signals as a negotiating tactic when discussions are ongoing. Even when a service interruption is avoided, consumers still needlessly suffer from weeks and even months of misleading advertising designed not to inform them, but to exert pressure on pay TV providers to give in to demands for higher fees that ultimately will be paid by consumers.

Finally, I would like to put to rest one of the arguments often made by those opposing reasonable reforms—namely that the government should not "interfere" with "free market" negotiations. Time Warner Cable agrees with the principle that free markets are preferable to regulated markets. Retransmission consent, however, is not a free market. Retransmission consent negotiations are conducted under a thicket of outdated regulations that have not kept pace with the dramatic changes in this dynamic industry. Retransmission consent is only one of a number of special privileges that the government has given to broadcasters. These special privileges, which include must carry rights, territorial exclusivity protection, a guaranteed right to basic tier carriage and, of course, the broadcasters' free use of the public airwaves, were meant to safeguard, not threaten the public's access to broadcast programming.

If the broadcasters truly want to operate in a "free market," then they should give up these special privileges. But if broadcasters want to retain their special privileges, then the retransmission consent rules need to be updated to prevent broadcasters from using consumers to gain leverage in negotiations. Time Warner Cable does not object to paying broadcasters to retransmit their signals; we pay them today. Our objection is to a government sanctioned process that favors broadcasters by allowing them to put consumers at risk.

We look forward to working with Senator Kerry and other members of this Committee on legislation to fix the problems with retransmission consent. Moreover, the time has come for the FCC to fulfill its duty to protect the public interest.

I would be happy to answer any questions you might have.

Senator KERRY. Thank you very much, Mr. Britt.

Mr. Uva.

STATEMENT OF JOSEPH UVA, CHIEF EXECUTIVE OFFICER AND PRESIDENT, UNIVISION COMMUNICATIONS INC.

Mr. UVA. Good afternoon. Thank you, Chairman Kerry, Chairman Rockefeller, Ranking Member Ensign, and members of the Subcommittee.

My name is Joe Uva, and I am the President and CEO of Univision Communications. Univision is the leading Spanish-language media company in the United States. In addition to our broadcast and cable networks, our program production business, our radio stations, and our online services, we own and operate 62 television stations across the United States and in Puerto Rico, making us one of the top five TV station groups.

Today, I'd like to share Univision's experience in negotiating retransmission consent agreements for our television stations with distribution partners across the country. I think our experience powerfully demonstrates the importance of the RTC system to the future of Univision's local broadcast platform and the communities we serve.

Traditionally, Univision's stations relied upon the must-carry rules in order to obtain cable carriage, and received no compensation from multichannel video distributors for carriage of our programming. At the same time, our programming, like that of other broadcasters, was helping propel the growth of those distributors.

In 2008, Univision took the historic step of announcing that we would embark on RTC negotiations, with our distribution partners,

seeking, for the first time, fair compensation for the valuable programming our stations offer. Over the next 18 months, Univision successfully negotiated over 150 carriage agreements with cable, satellite, and telephone companies, including distributors who are represented on this panel. These deals were reached without disruption in signal carriage to Univision stations and their viewers during the negotiations.

We decided to elect retransmission consent for several reasons:

First, Univision recognized that, in order to meet the changing needs of the rapidly growing U.S. Hispanic community, we needed the additional resources that come from a dual revenue stream.

Second, Univision believed it would be fair and appropriate to participate with our distribution partners in the value of our high-quality programming. Indeed, the audience for Univision's broadcast programming is larger than that of many cable programming services for which multichannel distributors have been paying carriage fees for years.

Finally, Univision elected retransmission consent because we saw an opportunity to establish long-term value-creating partnerships with our multichannel distributors, such as the leading Spanish-language video-on-demand service.

Revenue from retransmission consent has enabled Univision to expand its mission of informing, entertaining, and empowering Hispanics in the United States. For example, we recently launched campaigns to promote the value of education in the Hispanic community, encouraged Hispanics to participate in the U.S. Census, and promote financial awareness and planning in our community. We created Univision Studios, which is producing high-quality Spanish-language programming for distribution on our stations. We launched a nationwide voter education drive to help boost Hispanic voter turnout to unprecedented levels for a midterm election, invested in the most robust and comprehensive election coverage that we have ever offered, and hosted historic candidate debates.

Listening to all the recent rhetoric about retransmission consent, one might have thought that Univision would never have been able to reach RTC agreements without conflict and carriage disruption. As a direct participant in the negotiation of Univision's deals, I can personally attest that we were able to do so because, in every retransmission consent negotiation, there are natural incentives for the parties to reach an agreement. From Univision's perspective, the desire to reach a deal and avoid a service disruption is a powerful motivator. Signal disruption could undermine the trust of the U.S. Hispanic community, perhaps our most valuable asset, and damage our relationship with advertisers.

We believe that our distribution partners face similarly compelling motivations to reach a deal. They understood that a signal disruption created the risk of subscriber attrition as well as severe customer dissatisfaction.

I certainly understand the concerns by elected officials that their constituents not have to face even the temporary loss of a favorite station's signal on cable or satellite, but we are very concerned that government mandates, such as requiring Univision to keep providing our programming to a distributor, even where we've failed

to reach a deal, would distort the market by removing our distributors' primary incentive to reach agreement.

We are also concerned that even the threat of government intervention will have a negative impact on our business. Investors know that mandated interim carriage standstills and the like only benefit cable operators. This is precisely the wrong time to do anything that will further depress investor confidence in broadcasting and local program services.

Thank you, Mr. Chairman, for allowing Univision to join this conversation today. I look forward to any questions you may have.

[The prepared statement of Mr. Uva follows:]

PREPARED STATEMENT OF JOSEPH UVA, CHIEF EXECUTIVE OFFICER AND PRESIDENT, UNIVISION COMMUNICATIONS INC.

Good afternoon. Thank you Chairman Kerry, Ranking Member Ensign and members of the Subcommittee. My name is Joe Uva and I am the President and CEO of Univision Communications. Univision is the leading Spanish language media company in the United States. Our operations include the Univision and TeleFutura Television Networks; the Galavision Cable Network; our newly-created production arm, Univision Studios; Univision Radio; Univision Interactive Media; and the Univision Television Group. We own and operate 62 television stations across the United States and in Puerto Rico, making us one of the top five TV station groups.

Today I'd like to share Univision's experience in negotiating retransmission consent ("RTC") agreements for our television stations with distribution partners across the country. I think our experience powerfully demonstrates the importance of the RTC system to the future of Univision's local broadcast platform and the communities we serve.

Traditionally, Univision stations relied upon the "must carry" rules in order to obtain cable carriage.[1] As a result, most of our stations received no compensation from multichannel video distributors for carriage of our programming, and had to rely upon only advertising revenue to reinvest in our service to the public. At the same time, our programming, like that of other broadcasters, was helping propel the growth of those distributors.

In 2008, Univision took the historic step of announcing that we would embark on RTC negotiations with our distribution partners, seeking, for the first time, fair compensation for the valuable programming our stations offer. Over the next eighteen months, Univision successfully negotiated over 150 carriage agreements with cable, satellite and telephone companies, including distributors who are represented on this panel. These deals were reached without disruption in signal carriage to Univision's stations and their viewers during the negotiations.

We decided to elect RTC for several reasons. First, Univision recognized that in order to meet the changing needs of the U.S. Hispanic community, we needed the additional resources that come from a dual revenue stream. The community we serve is the fastest growing segment of the U.S. population.

Second, Univision believed it would be fair and appropriate to participate with our distribution partners in the value of our high quality programming. Indeed, the audience for Univision's broadcast programming is larger than that of many cable programming services for which multichannel distributors have been paying carriage fees for years. The Univision Network is one of the top five broadcast networks in this country—regardless of language. Our station KMEX in Los Angeles is ranked as the number one station in the entire United States, regardless of language, among Adults 18–34. In a number of markets, Univision's stations have the top-rated early and late newscasts among Adults 18–49—in any language.[2]

Finally, Univision elected RTC because we saw an opportunity to establish long-term, value-creating partnerships with our multichannel distributors. Together with our distribution partners, Univision has been able to launch major new initiatives,

[1] Before the current election cycle, Univision had elected retransmission consent only once, in the prior cycle, with respect to its Puerto Rico television stations.

[2] The Nielsen Company, NSI Ratings (09/30/10–10/27/2010). Number one station in the U.S. ranking based on Total Day viewership impressions, Mon-Sun 6A–2A for all stations. Early Evening Local News is defined as newscasts with 6 p.m. ET/PT start time; 5 p.m. CT. Late Local News is defined as newscasts with 10/11 p.m. ET/PT start time; 9/10 p.m. CT (includes regular newscasts only). Live+7 day viewing.

such as a video-on-demand ("VOD") service consisting of 50 hours of content that is refreshed every month—more content than any other Spanish-language broadcast or cable network currently offers on VOD.

Revenue from RTC has enabled Univision to further expand its program service to the Hispanic community and invest in important initiatives, helping us to meet our mission of informing, entertaining and empowering Hispanics in the U.S. For example, we recently launched campaigns to promote the value of education in the Hispanic community, encourage Hispanics to participate in the U.S. Census, and promote financial awareness and planning in our community. We created Univision Studios, which is producing high quality Spanish language programming for distribution on our stations. We launched a nationwide voter education drive to help boost Hispanic voter turnout to unprecedented levels for a mid-term election, invested in the most robust and comprehensive election coverage that we have ever offered, and hosted historic candidate debates.

Listening to all the recent rhetoric about RTC, one might have thought that Univision would never have been able to reach RTC agreements without conflict and carriage disruption. Indeed, Univision had never before elected RTC for most of its stations—yet we successfully negotiated carriage agreements with distributors across the country, almost simultaneously. As a direct participant in the negotiation of Univision's deals, I can personally attest that we were able to do so because in every RTC negotiation there are natural incentives for the parties to reach an agreement. These natural incentives ensure a more efficient and ultimately pro-competitive outcome than any government intervention could possibly achieve.

To be sure, many of our negotiations were hard-nosed bargaining sessions. Naturally, our distribution partners sought to minimize their RTC fees and to extract the greatest value from our partnership. Univision, of course, wanted to ensure that our fees were reflective of the value we believe we bring to our distribution partners. Finding a reasonable middle ground was not always an easy task.

From Univision's perspective, the desire to reach a deal and avoid a service disruption is a powerful motivator. If carriage of Univision's broadcast signal were ever disrupted, our company could lose the trust of the U.S. Hispanic community, perhaps our most valuable asset, and damage our relationship with advertisers.

We believe that our distribution partners faced similarly compelling motivations to reach a deal. Univision's viewers are intensely loyal. As a result, our distributors understood that a signal disruption created the risk of subscriber attrition, as well as severe customer dissatisfaction.

I certainly understand concerns by elected officials that their constituents not have to face the loss of a favorite station's signal on cable or satellite, even if temporarily. But we are very concerned that government mandates—such as requiring Univision to keep providing our programming to a distributor even where we failed to reach a deal—would distort the market by removing our distributors' primary incentive to reach agreement: the fear of lost subscribers or customer dissatisfaction.

We also are concerned that even the threat that the playing field will be tilted in favor of distributors will have a negative impact on our business. Investors already know that government-mandated "interim carriage," standstills and the like only benefit cable operators. So if the government imposes those kinds of requirements, investors are going to react accordingly. This is precisely the wrong time to do anything that will further depress investor confidence in broadcasting and local program services.

Thank you, Mr. Chairman, for allowing Univision to join this conversation today. I look forward to any questions you may have.

Senator KERRY. Thank you very much, Mr. Uva.

Mr. Rutledge.

STATEMENT OF THOMAS RUTLEDGE, CHIEF OPERATING OFFICER, CABLEVISION SYSTEMS CORPORATION

Mr. RUTLEDGE. Thank you, Senators.

I'm Tom Rutledge, Chief Operating Officer of Cablevision Systems Corporation. Let me begin, Mr. Chairman, by commending you for the leadership you've shown in this area.

As you have rightly noted, broadcast retransmission disputes are wreaking havoc on consumers, and we ought to find a way to resolve them without holding customers hostage. Your draft legislation is a good framework for advancing this goal, and we look for-

ward to working with you and others to take consumers out of the middle.

I would like to make two central points today:

First, retransmission consent negotiations take place within a highly regulated environment that heavily favors broadcasters over distributors and hurts consumers. It is not a free market. Plain and simple, the rules create the potential for network television blackouts and raise prices for consumers.

Second, because the government laws created the problem, only the government, the FCC or Congress, can fix it. We've proposed a few modest changes to stop blackouts and protect consumers.

Here is why retransmission consent is broken. FCC rules give local broadcasters a government-sanctioned monopoly on national network programming in local markets. If a cable or satellite provider wants to carry that network programming, but thinks the local broadcaster's monopoly price is too high, too bad. FCC rules prevent that provider from negotiating with any of the hundreds of other stations across the country that have the same network content.

Government rules also require that our subscribers buy the broadcast channels before they're allowed to buy any other cable service, regardless of whether the consumer wants that station and regardless of the prices charged by the broadcaster.

The government gives the broadcasters free distribution, in the form of free spectrum, and gives them an extraordinary guarantee of carriage through must-carry.

Finally, cable operators are prohibited by law from dropping a broadcaster during sweeps week, which is what determines the advertising rates for broadcasters, yet nothing prevents the broadcaster from pulling the signal from the cable operator before big televised events, such as Academy Awards or a Super Bowl.

Last month, Fox pulled its network programming from 3 million New York-area households for 15 days, blacking out Major League Baseball playoffs, NFL football, and the World Series. The rules that allowed this blackout were created by the Congress and administered by the FCC, but the FCC claimed it had no power to restore the programming.

Any claim that broadcasters have not been paid for their broadcast channels is false. Broadcasters have used existing rules to force other cable networks, that they now own, onto cable and satellite systems, charging billions of dollars for these cable networks in return for permission to carry their broadcast stations. Through these government-blessed tying arrangements, broadcaster-owned and -affiliated cable channels have grown from just eight in 1993 to over 90 channels today. In fact, the driving force behind the rate increases in cable is the ability of broadcasters to demand we take and pay for these 90 channels by tying them to retransmission consent for their broadcast stations.

Government laws created the problem; and so, only government, the FCC or Congress, can fix it. We have proposed to the FCC a few modest changes that it can begin implementing now to take consumers out of the middle:

First, forbid tying. Limit retransmission consent agreements to the carriage of broadcast channels so that the actual cost to broadcast stations are clear.

Second, require transparency. There's no reason why the cost of carrying broadcast networks needs to be secret. Retransmission fees should be public.

And third, forbid discrimination. Broadcasters may set the price of carriage, but they should not discriminate among cable and satellite providers.

If we make these simple changes and disputes still threaten to disrupt consumers, the FCC already has authority to impose standstill requirements and mandatory arbitration. The FCC should use this authority to protect consumers when necessary and Chairman Kerry's proposed legislation would make this authority explicit.

In conclusion, if this committee wants retransmission consent negotiations to occur in a truly free market, we would welcome that. This would mean having the government eliminate all the unfair advantages broadcasters enjoy under the current law. Until that day, the FCC should exercise its authority to ensure that millions of consumers never find themselves with the World Series blacked out.

Thank you.

[The prepared statement of Mr. Rutledge follows:]

PREPARED STATEMENT OF THOMAS RUTLEDGE, CHIEF OPERATING OFFICER, CABLEVISION SYSTEMS CORPORATION

I am Tom Rutledge, Chief Operating Officer of Cablevision Systems Corporation. We are a cable and media company that serves 3 million residential households in New York, New Jersey and Connecticut. I appreciate the opportunity to present our perspective on retransmission consent.

Let me begin by thanking Chairman Kerry for the leadership he has shown in this area. These disputes are wreaking havoc on consumers and we should find a way to resolve them without holding consumers hostage. Senator Kerry's draft legislation is a good framework for advancing this goal.

In my testimony, I would like to make two overarching points today.

First, retransmission consent negotiations do not take place in a free market but rather under an umbrella of statutory provisions and FCC rules that heavily favor the broadcaster over the cable operator or multi-channel video programming distributor (MVPD). It is a scheme based on a perception of the video marketplace that is 20 years out of date. As a result, consumers are increasingly faced with broadcast blackouts, threats of blackouts, and spiraling fee increases. This is because of outdated laws and regulations that literally put the government at the negotiating table. These laws reward brinksmanship and blackout threats with higher fees, undermining the very public interest that the law is intended to support.

Second, because government laws and regulations created the problem, only the government—the FCC or Congress—can fix it. We have proposed a few changes that, though modest, will restore balance to this regime. The FCC already has the authority to adopt these rules and, at the very least, should issue a notice of proposed rulemaking to engage the parties and begin the process of fixing a broken government mandate system. Alternatively, Congress could adopt legislation that repeals the outdated laws that distort the relationship among broadcasters, MVPDs, and consumers in favor of a free market, a longer term solution.

What is clear is that the status quo is hurting consumers and must be changed now.

Government-Granted Advantages For Broadcasters Means That Retransmission Consent Is Not A Marketplace Negotiation

The relationship between broadcasters and MVPDs has largely been established by government action. It does not resemble a free market in any meaningful sense. In a true market, sellers do not have monopolies and buyers have a choice of suppliers. Whatever value they had in 1992, the laws that govern the relationship be-

tween broadcasters and MVPDs today encourage broadcasters to threaten to withhold broadcast programming and block availability of marquee events to force increases in the cost of their broadcasts against the interests of our customers.

First, FCC rules give every broadcaster in the country an exclusive franchise for its network—in other words, a *government-sanctioned, local monopoly* in its local market. If an MVPD thinks the local broadcaster's (monopoly) price is too high but still wants to carry the must-have programming from other affiliates—too bad—FCC rules prevent the MVPD from negotiating with any other broadcast station that has that content, leaving them at the mercy of the local broadcast monopoly.

Second, government rules require that every one of our subscribers buy and pay for the broadcast channels as part of any cable service-even if the subscriber doesn't want them and no matter how much money the broadcaster charges us to carry their signal. This shields broadcasters from the consequences of their pricing decisions, since everyone is required to buy the product no matter the price.

Third, when a broadcaster and MVPD cannot reach a retransmission agreement, government rules *prohibit* the MVPD from dropping the broadcast channel during "sweeps"—periods of time when TV ratings are set—because it would be costly to the broadcaster. Yet nothing prevents the broadcaster from pulling the signal from the MVPD before marquee events—such as the Super Bowl or the World Series—even though doing so would be costly to the MVPD *and* harm consumers.

Over the years, broadcasters have used these rules to expand their presence on cable, primarily by requiring operators to carry and pay for other cable networks as a condition of carrying the broadcasts. Every three years, broadcast contracts are renewed on condition that cable operators agree to carry other cable networks owned by the broadcaster—often for terms of 10 years or more. Cycle after cycle, broadcasters have sought carriage of their affiliated programming networks, increasing the cost of expanded basic service, displacing independent programmers and exacting enormous compensation from cable operators. As a result, broadcaster-affiliated cable networks have grown exponentially—from 8 in 1993, to 19 in 1996, to more than 90 today. And broadcasters have enjoyed billions in compensation *through* these affiliation deals, negotiated on the strength of their powerful broadcast rights.

Further, as competition among distributors has increased exponentially in recent years, broadcasters' leverage has *increased even more*, because in a fiercely competitive distribution market even a temporary loss of broadcast programming, especially during a marquee event like the World Series, can do damage to a cable or satellite business and its customers. The rules encourage a vicious spiral of inconvenience and price increases: Broadcasters rotate through their contract cycle—from one distributor to the next -threatening blackouts and demanding higher fees in addition to what they already receive for their cable channels. Broadcast retransmission contracts are timed to expire during popular events to increase consumer anxiety and inflict maximum cost on distributors, yielding more price concessions. Every three years it is repeated.

Since 2000, there have been more than 30 threatened blackouts by broadcasters, all possible because of the distortions caused by government regulation of the broadcast and cable television business.

Recent events suggest that this is getting worse. Broadcasters are demanding carriage fees that are multiples of their fair value, and insisting on contracts that fix increases of more than 30 percent a year, putting enormous pressure on cable prices and consumers. And with government rules that protect broadcasters from the consequences of their pricing decisions, this may be a rational negotiating strategy, but over time it leads to substantially increased programming costs to the detriment of customers and other programmers without the legal leverage granted to broadcasters.

Calls to fix or scrap the regime have grown insistent, and FCC action is imperative.

The Retransmission Consent Regime Can Be Improved

Given that wholesale elimination of the retransmission consent regime is a longer-term goal, we have proposed, and believe that the Commission can readily adopt, a few changes to the retransmission consent rules that will reduce the likelihood of blackouts and threats of blackouts by addressing the kind of tactics that hurt consumers most, and that will restore a rational process to broadcast carriage negotiations.

The FCC can begin the process of reform by issuing a notice of proposed rulemaking, and considering the following reforms:

Forbid tying. Require that all retransmission consent contracts be limited to carriage of the broadcast channel, and not conditioned on the carriage and payment

for unrelated but affiliated programming networks. This will eliminate historic abuse and create opportunities for cable networks to compete on merit and value, rather than based on ownership.

Require transparency. Carriage terms between broadcasters and cable, satellite and other distributors in a given market should be disclosed so that the demands of the parties are fully understood.

Forbid discrimination. Broadcasters should be free to set the price for carriage of their broadcast signals, but should not be able to discriminate among MVPDs. This will eliminate the brinksmanship and drama that too often characterizes these negotiations.

Where these simple requirements fail to stem disputes that threaten to disrupt customers, the FCC has *authority to impose standstill requirements and mandatory arbitration* when negotiations have reached an impasse. The FCC has adopted these measures in the program access context. And Senator Kerry's proposed legislation would make this authority explicit.

We believe that the Commission can pass these rules and enforce them today under its existing authority. A coalition of 35 parties—consumer groups, cable operators, phone companies, and others—have urged the FCC to publish these proposals and seek comment about adopting them. The Commission has not done so, but should do so immediately.

Ensure A Truly Free Market For Retransmission Consent

Broadcasters sometimes say that they want to get fees "just like cable programmers," and that their tactics—blackouts, threats, and ad campaigns—are nothing more than attempts to get a foothold in a free market.

As should be apparent, broadcasters do not, and have never, operated in a free market. They enjoy unparalleled government-granted protections over the programming networks that they compete with. They enjoy carriage mandates, local monopolies, and free use of public assets that give them substantial advantages, and they have used those advantages to create vast media conglomerates that increasingly dominate the cable television lineup.

We welcome calls to allow a free market, free of this heavy government intervention, to flourish in the broadcast, cable and satellite space. This would mean eliminating free spectrum and special privileges for broadcast, rolling back retransmission consent and must carry, permitting broadcasters to compete, free of rules on "syndicated exclusivity," "network non-duplication," and "must buy." Eliminating these laws would allow a free market to exist, where programming content, distributors and consumers can choose among options without the weight of government intervention.

But until that market is restored, the Government—the FCC in particular, which is charged with implementing the 1992 Cable Act and the retransmission consent regime to protect consumers—must recognize its role and take action to address the imbalances and consumer harm that has resulted from its neglect.

Senator KERRY. Thank you, Mr. Rutledge.

Mr. Carey.

STATEMENT OF CHASE CAREY, DEPUTY CHAIRMAN, PRESIDENT, AND CHIEF OPERATING OFFICER, THE NEWS CORPORATION

Mr. CAREY. Good afternoon, Chairman Kerry, Ranking Member Ensign, and members of the Subcommittee, and thank you for the invitation to testify.

I'd like to address two issues in my comments today. First, our proposed rates in recent retransmission consent negotiations have been more than fair. We have the most valuable programming on television, with more viewers in prime time than the top three cable channels combined. Yet, what we were asking for is a small fraction of the rate paid for the most expensive basic cable channels on television.

Without reasonable revenues, broadcasters will simply not be able to compete with cable channels. We have already seen an increase in sports migrating to cable, such as college football's bowl

championship series and other major events in Major League Baseball, the NFL, the NBA, and college basketball. Local news, which is very expensive to produce, could be eliminated entirely or become less local in nature.

Ultimately, this result would be devastating for the more than 30 million Americans who rely exclusively on over-the-air television because they don't have cable, satellite, or telco video service. Moreover, in a digital world of increasing fragmentation, where advertisers have ever-expanding choices, it is simply unrealistic to believe broadcasters can compete with cable channels without a dual revenue stream. To argue that broadcast rules put in place to support localism somehow replace access to dual revenues defies economic reality.

Second, some claim that the retransmission consent process is broken. The definition of broken is not when one party doesn't want to pay a fair price. At issue is a rate negotiation for carriage of a channel. Channel owners and distributors have negotiated thousands of agreements over the years. If we were asking for an unprecedented rate, then maybe one could say this process is broken. But, we are asking for one that puts us well below ESPN, MSG, TNT, and others—all channels with a fraction of our audience.

Distributors point to large percentage increases, but Fox received no cash compensation before, so any increase over zero is going to appear large.

The statement—this statement that the process is broken is also puzzling, given that we have successfully concluded agreements with three of the largest distributors in the last year, without interruption. Unfortunately, our deal with Cablevision did result in a disruption to viewers, despite the fact that we began our negotiations with them more than a year before our contract expired. Yet, we still found ourselves, in October, facing a company that had consciously decided it did not want to reach a deal. This, despite the fact that Cablevision was offered the exact same rate for the broadcast stations we had already negotiated, with much larger distributors. Cablevision even agreed that the rate we were asking for was fair; they simply did not want to pay it. They made it clear to us that their goal, instead, was to politicize the issue and interject the government into our private negotiations. No one should miss the fact that four of the disruptions that occurred in the programming marketplace this year involved one company: Cablevision.

Everyone in this room cares about viewers. However, it is critically important that the government not let a sector of private industry manipulate an honest process to gain advantage. Instead, we believe there are steps that can and should be taken to protect consumers.

First, we can educate consumers on their options for getting broadcast signals elsewhere by simply hooking up to an over-the-air antenna or by switching to another distributor.

Second, we can require that consumers get a rebate, credit, or decrease in their bills if channels are removed from their lineup.

In conclusion, the retransmission consent law is experiencing growing pains because broadcasters like Fox are, for the first time, seeking cash compensation. The good news is that the actual inter-

ruptions in service are few and far between, and this period of adjustment will be short-lived once distributors accept that they have to pay a fair price for the right to resell broadcast content, just like the other content they distribute.

Keeping the focus on consumer education and protection is the most effective and efficient way to help consumers weather this temporary and short-lived unrest.

Thank you.

[The prepared statement of Mr. Carey follows:]

PREPARED STATEMENT OF CHASE CAREY, DEPUTY CHAIRMAN, PRESIDENT AND CHIEF OPERATING OFFICER, THE NEWS CORPORATION

Good morning Chairman Kerry, Chairman Rockefeller, Ranking Members Hutchison and Ensign, and members of the Subcommittee, and thank you for the invitation to testify.

The retransmission consent law was established almost twenty years ago to provide a mechanism for carriage negotiations between broadcasters and video programming distributors. Yet distributors for the first time are claiming that the law is broken. No one—not even distributors—object to the notion that broadcasters *should* be paid for the very popular and expensive content we air. And any reasonable examination of how *much* broadcasters are asking for—compared to the rates distributors pay for other channels—can conclude only that the broadcast rates are more than fair. In light of this fact, we find it hard to believe that the negotiations for broadcast channels should be different, in structure or form, from the negotiations for the 100s of other channels carried by multichannel distributors. Let me elaborate.

In the nearly two decades since the retransmission consent law was enacted, there have been thousands of deals negotiated. Less than one percent—a small handful—of these thousands of deals has resulted in service disruptions. The few disruptions that did occur typically lasted for a very short amount of time: most only minutes, hours, or days. Some of those disruptions have been high profile, leading some to overlook the fact that 99.9 percent of retransmission consent deals get done without incident. But let me emphasize again: in the overall scheme of retransmission consent, actual disruptions are few. In fact, an American household is about 10 times more likely to experience a complete cable system outage than to be deprived of a television channel because of a retransmission consent dispute.

Those disruptions that did occur were because a few distributors have been unwilling initially to pay fair cash value for broadcast channels. Why? Two reasons: first, until recently, cable operators have not paid a single penny in cash compensation to Fox for our incredibly valuable broadcast programming. Second, some cable operators have made it clear that their goal is to politicize this process by dragging the government into negotiations that should be settled at the bargaining table, presumably in the hope that they can get our broadcast stations for a lower rate. Thus, dramatic claims by some cable operators that broadcasters are seeking a 100 percent increase in rates are in fact true. Any increase over zero is a 100 percent increase.

The amount of compensation that Fox is seeking for its broadcast stations is well *below* what they are worth when compared to cable channels that command as much as $4 and $5 per subscriber per month. This includes any comparison based on the quality and quantity of unique programming offered, the amount invested in programming, or the ratings of that programming. Fox has, on average, 8 million viewers in prime time, more than the top three cable channels combined. Our programming lineup includes the top sporting events on television such as the World Series and the Super Bowl, and the top prime time entertainment shows such as *American Idol, Glee, House,* and *The Simpsons*. And, of course, we offer the local programming that makes broadcasting unique: the local news, sports, weather, and traffic that viewers rely on every day.

We find it hard to understand why some distributors are so opposed to paying a fair rate for broadcast programming when it is the most valuable and most viewed programming in the bundle of services they sell their customers. These protestations are particularly ironic coming from companies that until recently were a monopoly in their markets, and even today in many markets serve well over 50 percent of households. At its core, retransmission consent is about negotiations over rates, and

the fact that we are asking several times LESS than cable channels that boast a fraction of broadcast station ratings is proof that we are seeking a fair rate.

Take Cablevision for example. More than a year ago, Fox began negotiations with Cablevision over the carriage of its local television stations in the New York and Philadelphia markets. Despite a significant investment of time and resources, and a one-year agreement that delayed the onset of cash payments by Cablevision, we still found ourselves in October of this year facing the imminent expiration of our carriage agreement. This was a surprise to us given that we were seeking from Cablevision the *exact same rate* we had just negotiated with other large video distributors. Cablevision even acknowledged that the rate we asked for Fox was fair. Most frustrating was Cablevision's admission that its "negotiating" objective was to get the government to step in and change the law, thereby giving cable operators an advantage going forward.

Our stations came off of Cablevision for more than two weeks, causing pain primarily to viewers, but also to both companies. In the end, a deal with Cablevision was reached after it became clear that the government was not going to step in to "rescue" Cablevision from a free market negotiation with Fox. Once Cablevision came back to the bargaining table, we were able to negotiate a deal quickly.

Had the government modified the retransmission consent law, Cablevision would not have come back to the bargaining table, and we likely would still not have a contract in place. So-called "reforms," if adopted, would clearly tip the balance of negotiations toward distributors. If broadcasters aren't able to negotiate on a level playing field for a fair carriage rate then we would be relegated to second class status, and our future viability would be threatened.

In other words, if we can't sell our content for a price that allows us a fair return on our investment, we will no longer be able to invest in the high quality content that viewers enjoy. The most expensive—and highest quality—sports and entertainment content would migrate to a cable channel where it would have a better chance of securing a fair market rate. In fact, this migration has already begun. When Fox attempted to renew our contract for college football's Bowl Championship Series, we were outbid by a cable channel offering 100 million dollars more than we offered. Fox could not justify the price for the BCS because we did not have a second revenue stream. This is just one example among many, as we have been watching the migration of major events in the MLB, NFL, NBA and college football and college basketball to subscription channels because broadcasters have been unable to compete for the rights.

Additionally, local news, which is very expensive to produce, could be eliminated entirely or become less local in nature, as advertising alone can no longer cover the hefty production costs. Broadcast channels would become much less desirable, and broadcasters and the people they employ and the viewers they serve, would be irreparably harmed. Ultimately, this result would be devastating for the more than 30 million Americans who rely exclusively on over-the-air television because they do not have cable, satellite, or telco video service.

We understand how difficult it is to ignore these disputes and stay out of them when you hear from frustrated viewers who have lost their service. We all care about viewers. After all, without viewers, we have no business. However, it is critically important that the government not let a sector of the industry manipulate an honest process to gain advantage. Instead, we believe there are steps that can be taken to protect consumers that keep the government out of private business negotiations.

First, we can educate them on their options for getting broadcast signals elsewhere. This is something Fox started doing nearly 30 days before our contract with Cablevision expired. We informed viewers that they can get their broadcast signals by simply hooking up an over-the-air antenna. Or, they can switch to another content distributor.

Second, we can protect viewers by requiring that consumers get a rebate, credit, or decrease in their bill if channels are removed from their line-up. Distributors are quick to raise rates when they add channels; likewise, they should be quick to lower rates when they delete channels.

In conclusion, the retransmission consent law is experiencing growing pains because broadcasters like Fox are, for the first time, seeking cash compensation for their content. But the good news is, the actual interruptions in service are few and far between, and this period of adjustment will be short-lived once distributors accept that they have to pay a fair price for the right to re-sell broadcast content just like they have to pay for all the other content they provide to their customers. Keeping the focus on consumer education and protection is the most effective and efficient way to help consumers weather this temporary and short-lived unrest.

Senator KERRY. Thank you, Mr. Carey.

Mr. Segars.

STATEMENT OF CHARLES SEGARS, CEO, OVATION

Mr. SEGARS. Mr. Chairman, Committee members, on behalf of Ovation, the only national network dedicated to arts and culture, thank you for inviting us to testify today.

My name is Charles Segars. I am the CEO of Ovation, a viable, independently owned television network that has earned carriage in 43 million homes, is paid a fair rate, market-based rate, from distributors who are committed to providing a unique programming service to their customers. They include Time Warner—Mr. Britt was the first to see the power of the arts; DIRECTV—Chase, when you were running DIRECT, you launched our service; Verizon; FiOS; DISH; Charter Communications; and even, today, Comcast Cable, who is rolling us out.

Mr. Chairman, the detrimental effect of retransmission consent threatens the very existence of independent networks like Ovation. I am here supporting reform of these regulations to ensure consumers have access to a diversity of voices in television.

Senator Kerry, in a recent editorial, you quite aptly pointed out that the old rules are outdated, and to continue with the status quo is bad for consumers, competition, and democratic participation. As an independent programmer trying to remain competitive, your words definitely ring true. This regulatory structure restricts our ability to grow our distribution, maintain fair subscriber fees comparable to those other networks, and reinvest those fees into local and national arts programming for an underserved consumer. Retransmission has enabled primarily the largest broadcast companies to bundle an excess of channels, eating up valuable bandwidth, and taking more than their fair share of fees that would otherwise be available in a free-market system.

Now, standing, moments ago, with these media executives, I fully grasp the meaning of being between a rock and a hard place. It's illustrative of the predicament that Ovation and all independent programmers find themselves in today:

On one side was an extraordinary well-operated vertically integrated media company who, since 1992, traded retransmission consent to gain carriage and fees to launch all new networks. Now they are seeking, effectively, to get paid twice; once through a direct payment of retransmission fees for their broadcast programming, and again through fee increases on the very cable channels their retransmission consent enabled them to launch.

On the other side are a couple of major distributors who believe they have already been forced to carry and pay for networks they did not want. And now they must pay for a retransmission of free over-the-air broadcast signals, at a cost that adversely affects their ability to affordably provide TV to their subscribers.

And in between these fiercely competitive companies are the last remaining independent television networks. With retransmission fees likely to top $1.3 billion in 2012, distributors will have to look to their customers to make up the difference, and they will have to aggressively cut programming costs. Independent networks with no service-bundling advantage through retransmission and little le-

verage, despite delivering underserved categories like the arts, will be targeted. As a result, diversity in programming, one of the very reasons retransmission consent and must-carry was created in the first place, will vanish.

This is a call for a level playing field. If large broadcasters are allowed to use their airwaves, owned by all Americans, to extract payment for historically free TV services, then let's not allow them to bundle all their services with it. If an alternative dispute resolution process for distributors and programmers is to be considered, please do not limit it only to those programmers who are trading on retransmission consent, but open that dispute process to all programmers, including the few remaining independent ones.

The greatest measurement of our democracy, sir, is the freedom it gives to people to express their views and ideas and information. You can mandate an examination of retransmission consent and recommend an adjustment of these regulations to better safeguard our freedom by ensuring the survival of diversity of independent networks in the media.

On behalf of Ovation, the only arts network in America, thank you for your time today.

[The prepared statement of Mr. Segars follows:]

PREPARED STATEMENT OF CHARLES SEGARS, CEO, OVATION

Mr. Chairman and Committee members, on behalf of Ovation, the only national television network dedicated to Arts and Culture in America, thank you for inviting us to testify today. My name is Charles Segars. I am the CEO of Ovation, a viable, independently-owned television network that has earned carriage to 43 million homes, and is paid a fair, market-based rate from distributors who are committed to providing a unique programming service to their customers. They include: Time Warner Cable, DIRECTV, Verizon FiOS, Dish, Charter Communications and Comcast Cable, who, as I speak with you today, continues our roll out.

Mr. Chairman, the detrimental effect of retransmission consent threatens the very existence of independent networks like Ovation. I am here supporting reform of these regulations to ensure consumers have access to a diversity of voices on television.

Senator Kerry, in a recent editorial you quite aptly pointed out that the old rules are outdated and to continue with the status quo is bad for consumers, competition and democratic participation. As an independent programmer, trying to remain competitive, your words ring true. This regulatory structure restricts our ability to grow our distribution, maintain fair subscriber fees comparable to those of other networks, and reinvest those fees into local and national arts programming for an under-served consumer. Retransmission has enabled primarily the largest broadcast companies to bundle an excess of channels, eating up valuable bandwidth and taking more than their fair share of fees that would otherwise be available in a free market system.

Seated here amongst these media executives, I fully grasp the meaning of the phrase "between a rock and a hard place." It is illustrative of the predicament that Ovation and all independent programmers find themselves in today. On one side is an extraordinarily well-operated, vertically integrated media company, who, like most since 1992, astutely traded retransmission consent to gain carriage and fees to launch new networks. Now, they are seeking to effectively get paid twice. Once through a direct payment of retransmission fees for their broadcast programming and again through fee increases on the very cable channels their retransmission consent enabled them to launch.

On the other side are a couple of major distributors, who believe they have already been forced to carry and pay for networks they didn't want. And, now they must pay for the transmission of free over-the-air broadcast signals at a cost that adversely affects their ability to affordably provide TV to their subscribers.

And, in between these fiercely competitive companies are the last remaining independent networks.

With retransmission fees likely to top 1.3 billion dollars by 2012, distributors will have to look to their customers to make up some of the difference. And they will have to aggressively cut programming costs too. Independent networks, with no service bundling advantage through retransmission, and little leverage, despite delivering under-served categories like the Arts, will be targeted.

As a result, diversity in programming, one of the very reasons retransmission consent and must carry was created in the first place, will vanish.

This is a call for a level playing field. If large broadcasters are allowed to use the airwaves owned by all Americans to extract payment for historically free TV service, then let's not allow them to bundle all their other services with it. If an alternative dispute resolution process for distributors and programmers is to be considered, do not limit it only to those programmers who are trading on retransmission consent, but open that dispute process to *all* programmers, including the few remaining independent ones.

The greatest measurement of our democracy is the freedom it gives its people to express their views and have access to a myriad of ideas and information. You can mandate an examination of the retransmission consent regime and recommend adjustment of these regulations to better safeguard our freedom by ensuring the survival of a diversity of independent voices in media. On behalf of Ovation, the only arts network in America, we greatly look forward to the day when we can compete in a free market with a level playing field for all participants. Thank you.

Senator KERRY. Well, thank you for your time.

Thank you, all of you, for taking time to come in.

Let me, first of all, begin, just as a matter of a framework within which I like to have this kind of hearing. I know sometimes Congress summons the executives and we have these kinds of show-and-tell deals. That's not my way of approaching this. I'd like to have a thoughtful dialogue with you folks to really try to understand this tension in the marketplace; that obviously has an impact. And I think, you know, our predilection, as I said earlier, is for the market to be the market and to let pricing be determined by the legitimate forces of the marketplace. The problem is that what we have here, I think, is a situation where a lot of the participants in that market are expressing the view that, as Mr. Segars just said, the playing field is inherently unfair, that there is an inability for them to have a normal kind of market relationship.

Now, to try to understand that we need to sort of bear down on a number of things. I mean, first of all, I think we ought to dispel ourselves of the myth that this is just a free market and we ought to bug out and we don't have an interest, because it seems to me that the case is fairly strong that, when you have the several elements that were laid out earlier by Mr. Britt, you've got the retransmission consent, you've got spectrum itself, you've got the sweeps week, safe harbor. Those are all government-granted privileges. Your access to the American consumer is fundamentally a government-granted privilege, based on a certain set of standards, which we don't always measure very effectively. I can remember when we wrote the 1996 Telecom bill, you know, we tried hard to sort of do that. And, frankly, we were totally behind the curve because, within 6 months of the ink signed on the bill, it was completely outdated by virtue of data information, which hadn't been sufficiently taken into account; it was sort of a telephony debate in a new age of information, and everybody got left behind. And that's kind of the world we're operating in now, in many ways, with huge transformational impacts.

So, let me begin by sort of, you know, trying to figure out a few things, if we can.

First of all, I accept that there are thousands of these agreements in which you all reach agreement. Is there something particular that distinguishes those cases where you can reach agreement from these sort of celebrated cases that wind up with a pulled signal?

Anybody want to tackle that? Is there a way to frame why you can reach the agreement easily in some of those other cases, and the fees seem to be fair?

Mr. RUTLEDGE. Sure.

Senator KERRY. Mr. Rutledge.

Mr. RUTLEDGE. Senator, I think that the easiest answer is that if the fee—if the rate of fee increase to the distributor is proportional to the kinds of general cost increases that are occurring in an economy, it—it's a reasonable expectation that a deal gets done. When someone comes in and asks for a very disruptive price, and, in our case, says, "Somebody else paid the price; therefore, you must pay the price, regardless of what your particular conditions are or what your market is," then you have a very big rate-increase potential, or a big cost-increase potential, to your business.

And so, I think it's really a question of degree, and how exploitative the request is.

Senator KERRY. Basically what you're saying is that, in the most recent case, with respect to the World Series, et cetera, those fees were excessive. Is that correct?

Mr. RUTLEDGE. That's—well, yes, from our point of view, we had done deals, over the last 18 months, with CBS, with NBC, with Univision and ABC, and all of those deals, combined, were less money than what we were being asked for, for the particular service in question, that had the World Series. So, that was—we thought that was a lot, and we thought it was irrational, and we thought that we should say no to that. You know, ultimately——

Senator KERRY. But, to what degree might there be a legitimacy to someone's belief that you're somehow saying, "OK, let's go get Washington to get involved in this and, you know, we'll make this a case so that we don't get beat up in the future in the market, just in terms of those normal market forces"?

Mr. RUTLEDGE. Right. Well, what we really wanted was—we would rather have a price similar to what the other stations that we were—had already done deals with had agreed to. Absent that—and we had, basically, a take-it-or-leave-it offer. We thought that binding arbitration would make sense. We thought that, in a binding arbitration, that if anybody looked at the marketplace for New York and what TV stations cost, look at what we were paying, that that would work to our benefit.

Senator KERRY. What about what I've suggested, which is even short of a binding arbitration, where we're not getting into sort of forcing people away from the market decision, but we're at least creating a judgment about the negotiation process itself being in good faith and also making a judgment about the transparency——

Mr. RUTLEDGE. Right.

Senator KERRY.—so that people know what's going on? If that sunshine existed in that way, would that not create a greater fairness in the bargaining process?

Mr. RUTLEDGE. I believe it would. And, in fact, that's what we had proposed, that—to the FCC, previously, we had requested that they do three things: that they prohibit tying, that they be transparent—and the reason you prohibit tying is, there are 13 agreements between Fox and Cablevision, for numerous channels—13 channels, I believe. And so, how you allocate the costs of all of those services is questionable. We think that you—in order to look at that and to really have transparency, you need to segregate what people are charging for broadcasting; it has to be public; it shouldn't be connected to other services, so the actual cost is legitimate; and, finally, that you not discriminate.

You know, the broadcaster has power over a small cable operator versus a large cable operator. They can extract a different rate in the same marketplace for the same product.

Senator KERRY. Do they?

Mr. RUTLEDGE. They do, yes. And our competitors pay different rates than we do. DISH TV or DIRECTV or FiOS TV may pay more in some cases, may pay less in some cases, but because of your position and lack of transparency, you have the same customers living next door to each other paying a different rate for the same product.

Senator KERRY. What do you say to that, Mr. Carey?

Mr. CAREY. I guess I'd like to answer—I'm going to address a number of the points that were brought up.

You know, first, you know, was the issue, in terms of the increase asked on retransmission. And I guess I said in—as my—as I said in my opening comments, we were getting zero before. So, yes, it was an increase, but any increase from zero is going to be significant. And I do think you have to look at, sort of, what we were asking for in the context of the quality of what we're providing, and look at it competitively against what other channels, you know, are asking for.

And when you look at other top-rated—you know, top-rated cable channels, we were asking for a small fraction of it. So, while we were asking for an increase—and in some ways, you could say the broadcast business was probably negligent in past years; it may have been the economic euphoria of leading up—before 2007, before the market crashed in 2008 and really brought home the issues of being a one-revenue business. But, what became clear is, as a one-revenue business, broadcasters were going to have deep problems. And, our network today, for each of the last few years, has lost hundreds of millions of dollars, you know, while the cable channels we compete with make hundreds of millions, if not, in some cases, billions, of dollars, you know. We have seen product that is moving. We, up until a year ago, the college football championships existed on Fox. They're now going to move to cable because cable had a set of economics that enabled them to compete.

So, we need to have a viable dual-revenue business to be able to compete, you know——

Senator KERRY. I don't——

Mr. CAREY.—in this marketplace.

Senator KERRY.—disagree. I can remember, frankly, the broadcasters' arrogance, in the early years, as cable first came out, and they wouldn't deign to talk to them. And——

Mr. CAREY. They, excuse me?

Senator KERRY. In the very beginning, when cable started to come online in the early years of Warner, I can remember when they first came to Boston, and there were all those negotiations going on, and, in the subsequent years, they had a helluva time getting broadcasters to even talk to them and to work out a deal and get carried and so forth. That's how must-carry came about.

So, the tables have turned, and now, indeed, there is a very significant revenue issue. I don't disagree with that at all.

Mr. CAREY. OK.

Senator KERRY. But that doesn't necessarily license a discriminatory relationship or a completely unbalanced relationship in the marketplace so that the consumer winds up not knowing what's going on, not knowing what the price is related to, and, in fact, paying, conceivably, much more than their neighbor may be paying, because of those different relationships and absence of that transparency.

I know there's a revenue issue, but shouldn't there be a fair balance in how you negotiate that revenue stream?

Mr. CAREY. We actually negotiate—I mean, I would actually say, we take great pride in how we negotiate our agreements. And we negotiate our agreements, you know, with consistency in the marketplace, you know, I think, as we've said. We——

Senator KERRY. Is it not——

Mr. CAREY.—actually, for——

Senator KERRY. Is it not possible to negotiate those agreements without taking signals off the air?

Mr. CAREY. Yup, that's our goal. We got three large agreements done in the last year, without signals going off the air.

Senator KERRY. And what's the distinction between those negotiations?

Mr. CAREY. The one that did go off the air?

Senator KERRY. Yes.

Mr. CAREY. I don't—I think we had an entity that believed they wanted to politicize the issue and have the government come in and mandate a solution, and they didn't want to pay the rate increase, even though the rate increase we were asking for—you know, we think we went beyond any judgment of reason to be reasonable about it. When you look at the quality of what we're putting forth and the rate we were asking, it's a fraction of what that channel would be worth on any competitive basis.

Senator KERRY. I'll come back, perhaps, and examine the transparency issue.

Let me recognize Senator Lautenberg.

Senator LAUTENBERG. Thanks, Mr. Chairman.

And thank all of you for your testimony.

We're stuck in not just the middle of a muddle. But, the fact is that it's very hard to understand how Mr. Casey, you described your rate increase as "fair." How do you define "fair"? Do you have costs escalating for the transmission that you make to the cable company?

Mr. CAREY. Well, I guess, when you look at "fair," we first look at the market and what our channels—I mean, we're competing today with hundreds of channels. I mean, we are in a marketplace

that, you know, is, from our perspective, for channels as robustly competitive as any we've been in. We compete with them for audiences; we compete with them for content. So, certainly one measure of "fair," you know, is, what is—what are we being—receiving for compensation compared to other channels we're competing with receiving? And, we are, in fact—our request in this case, you know, has us receiving a small fraction of what others receive who have a rating that is a small fraction of ours.

Senator LAUTENBERG. And, Mr. Rutledge, during the past year, Cablevision's been involved in the two retransmission consent disputes resulting in blackouts, where many others were able to negotiate agreements without any blackouts. Why are Cablevision's competitors able to negotiate agreements without a blackout when Cablevision can't?

Mr. RUTLEDGE. Well, Cablevision is trying to hold its rates as low as it can and offer as valuable a product as it can to its customers. Our objective in all of these discussions is to come out with the lowest rate as possible so that we have the lowest price for our cable service as possible, because we're competing against other providers. And so, we have tried to hold the line, and we've looked at our marketplace. And we've actually been successful at holding the line. And we've had very low rates of increase, on a relative basis.

But, we're fighting for our customers, we're fighting for our product and trying to keep our product as competitive as possible in a very competitive environment. We have the largest telephone overbuild in the country against Cablevision with—in the form of FiOS, in terms of percentage of our business that's overbuilt by a phone company. We have robust competition with satellite—two satellite providers. AT&T has overbuilt our Connecticut facilities.

So, we have a very competitive distribution market. And price matters. Cablevision's actually very successful in the marketplace as a cable operator. We have the highest penetration of video of any company in the industry. We have the highest data penetration and the highest voice. So, we have served our customers well, and we want to continue to do that. So, that's our objective, and that fixates us on cost.

Senator LAUTENBERG. Mr. Carey, do you want to respond?

Mr. CAREY. Yes. I guess what—I mean, I do think it's important—and Chairman Rockefeller addressed the cost of content. The cost of content—and I agree with what he—it is a holistic issue. There are hundreds of channels, and that's—the cost of content is the compilation of hundreds of channels. And I don't think one can look to is say somehow broadcast networks are going to be relegated to second-class-citizen status and not be fairly compensated in order to deal with the cost of content. If you're going to deal with—look at the cost of content, then I agree with what was said up front, you've got to look at it holistically, not somehow expect broadcasters to carry a unique burden in that regard and not have the opportunity to be fairly compensated.

Senator LAUTENBERG. What happens during a blackout? Your advertisers aren't getting what they're paying for?

Mr. CAREY. No.

Senator LAUTENBERG. Do you lose revenues when you're out for a few days?

Mr. CAREY. Yes.

Senator LAUTENBERG. Yes.

Mr. CAREY. Yes. There's—there are clearly financial consequences——

Senator LAUTENBERG. Is it charged by the day or——

Mr. CAREY. We usually—they pay—essentially pay on ratings, so if we're not delivering an audience because we're not—because the signal's not—channel's not being received——

Senator LAUTENBERG. So, are the rates calculated daily or——

Mr. CAREY. You know, essentially, pretty much every—you know, every ad is based on the ratings for that—that we receive——

Senator LAUTENBERG. Right.

Mr. CAREY.—for the show in which that ad——

Senator LAUTENBERG. So, the advertiser——

Mr. CAREY.—exists.

Senator LAUTENBERG.—does not get the exposure. But, is the calculation for those few days reduced to the advertisers?

Mr. CAREY. Yes. I mean, if it's a broadcast station, where we're not receiving—and, historically, we haven't received cash-free transmission—then the lost revenue would be advertising dollars while we're not delivering the audience, because we're not reaching the customer.

Senator LAUTENBERG. What has been the rate of increase that you've received over the last several years? In the case of Cablevision, in particular. Do you have an idea?

Mr. CAREY. Well, in retransmission we've received nothing, so we've had—until, you know, this last year, we've received zero. And——

Senator LAUTENBERG. So——

Mr. CAREY.—that is——

Senator LAUTENBERG.—that's——

Mr. CAREY.—that is essentially——

Senator LAUTENBERG.—a recent phenomenon.

Mr. CAREY. And—yes. And, as they said, I mean, really, in some ways, you could just say broadcasters should have realized this one-revenue business model was not going to survive and be competitive in the world of dual-revenue cable networks. I think the economic, you know, sort of, strength of the market through 2007 masked it a bit and didn't—you know, and probably made broadcasters, if anything——

Senator LAUTENBERG. Yes.

Mr. CAREY.—delinquent in recognizing the problem. I think it hit home. And I think it became quite apparent that a single-revenue, you know, advertising-based business was not going to be viable, long term. And hence, in the last 12 months, we've moved to——

Senator LAUTENBERG. Well——

Mr. CAREY.—to become a dual-revenue business.

Senator LAUTENBERG. Mr. Chairman, I think the hostage here is, of course, the consumer. And they're paying a price, and they're not being charged less for the month or the week or whatever it is that they're out. And the consumer is left outside, in my view, like a

spectator. They're not part of the negotiation. They're a victim of an agreement between the parties.

And there is a really special place that all of you occupy, because TV-watching is now an integral part of life, almost like gas and electric or things of that nature. You know, I come from the business community. And so, I know you're in business to earn a profit, to get a return on your investments, and so forth. But, I wonder what kind of a special obligation you feel to deliver this "precious commodity" that is now part of daily life for the American people.

Mr. CAREY. We consider it a tremendously important obligation and a privilege, in reality, to deliver, you know, that content. But, we need to have, you know, a business model that enables us to continue to invest and create great content. I mean, the last few years we've lost $2 to $300 million a year on a broadcast network. That's not a sustainable model. You know, we need to move to a place, you know, where we have a business model that enables us to invest in keeping product like, you know, the NFL on Fox—to continue to produce the local news we do. And I do think, in fact, it is why you've seen a continued migration of product away from broadcasting, and broadcasting which has this encumbered, you know, business model, to cable channels, that have a much healthier business model. And for us to continue to invest and deliver great content—I mean, that is our goal, is to create great shows, like American Idol and Glee, and deliver them, you know, to the American public. But, we need to have business model that enables us, you know, to do so.

Senator LAUTENBERG. Thank you.

Thanks, Mr. Chairman.

Senator KERRY. Let me just point out, though, when you say, "We were paying nothing," we paid nothing, at that point, but we got nothing because you bundled your cable and broadcast, and that was sort of a quid pro quo for your access, correct?

Mr. CAREY. Yes, we do—I mean, we negotiate——

Senator KERRY. You were getting a huge value.

Mr. CAREY. We were getting value——

Senator KERRY. It wasn't like you weren't——

Mr. CAREY. I mean, I actually believe——

Senator KERRY. It wasn't like——

Mr. CAREY.—the bundling——

Senator KERRY.—you weren't collecting anything. I mean, it's not——

Mr. CAREY. No, we were building cable channels. And, I actually believe that's a win/win proposition. It enabled us to build cable channels. We built channels recently, like National Geographic Wild. We've built, like, Fox Sports——

Senator KERRY. But, it was in-kind——

Mr. CAREY.—Deportes.

Senator KERRY.—it was an "in-kind" proposition, not a "nothing" proposition.

Mr. CAREY. Yes, but it's not different than—I mean, there are—the same thing happens with companies that don't have broadcast stations. I mean——

Senator KERRY. I'm not arguing. I'm just——

Mr. CAREY.—the Time Warner group—you know, group is a bundle, the Viacom group is a bundle, the Discovery group is a bundle.

Senator KERRY. I'm not arguing about that. I just want to——

Mr. CAREY. That's the nature of the business.

Senator KERRY.—I just wanted the record to reflect the value transferred and the reality of this new negotiation. And it's not exactly going from zero up to here, it's——

Mr. CAREY. I guess I—I mean, I would not—yes, it has been negotiated as a bundle. I'm not sure I'd agree with the characterization that it has a value transfer, because we've built channels that have value to customers. The amount we get for those channels, you know, is competitive, if not against—you know, when you compare rates to National Geographic Channel, which we own, you know, we get less than Discovery we compete with. We have a channel——

Senator KERRY. Well, let me——

Mr. CAREY.—FX——

Senator KERRY. Let me come back to the comparatives in a minute. I want to recognize Senator LeMieux and Senator Pryor and then we'll come back.

STATEMENT OF HON. GEORGE S. LEMIEUX, U.S. SENATOR FROM FLORIDA

Senator LEMIEUX. Thank you, Mr. Chairman. Thank you for having this hearing, and thank you for the way you're approaching it, where we can have a discussion about these issues.

Sitting here listening to this, it occurs to me that there's a lot of regulation of this industry, and perhaps it's the regulation that's causing the problem. While I agree that television's important, and certainly I want to be able to watch football and baseball, I've heard words like "devastating" and "crisis" applied to these things, and, in light of the other things that we're addressing here in Congress, I'm not sure that they are.

But, let me say that with all of these regulations, perhaps the view should not be that we should create more regulation, but maybe we should unpack some of the regulations we already have. The world is changing. Television is important, but there are so many alternate ways to receive content. We're watching television and movies and other forms of communication through various different sources; not just the TV, but on the computer. And, how this will be transformed in the next few years is hard to even anticipate. It's going to be a very different world in which we receive content.

I understand the importance of protecting content. You have to value it. We have copyright laws in this country. We have to value those copyright laws. But, it occurs to me that if we're going to get more involved in this discussion about retransmission consent, and bring Congress and the Federal Government more into that process, we're going to create more unintended problems. I think if you look back 20 years ago, when this legislation was put in place, it has probably caused many of the problems that we have here today.

Now, perhaps I'm naive. And I'm still new here, although I'm about to leave——

[Laughter.]

Senator LEMIEUX.—but it looks like the regulation has caused a lot of these problems. So, I want to ask the folks here at the table, instead of adding more regulation, is there a way that we can unpack some of the regulation we can have so that this marketplace can work?

Mr. Britt?

Mr. BRITT. Yes, I think that clearly is a different way to go. If you think about what Chase was saying, he was saying that he thinks broadcast networks are not viable as this—as a different thing, and they really need to look and act like cable networks, and have two revenue streams.

The heart of the issue about retransmission consent is that there are a whole set of rules and regulations and laws that treat broadcasting different than the rest of this television industry. So, I would say in response that, if we got rid of all those special privileges and what have you for broadcasting, and if Chase wanted Fox to look like a cable network, that would be perfectly fine with us, and I think you would see——

Senator KERRY. So, you're suggesting——

Mr. BRITT.—a different setup.

Senator KERRY.—we'd only have pay-TV.

Mr. BRITT. That's an alternative.

Senator KERRY. That's the only one we'd have.

Mr. BRITT. That is an alternative.

Senator KERRY. You think that would please the American people?

Mr. BRITT. I think the 80-some-odd percent who are subsidizing the rest probably would be happy.

Alternatively, the question is, How do you figure out the amount of the subsidy? So, rather than—and I've said before—I said in my testimony—we're not protesting the idea of paying. We're just saying the mechanism for figuring out the amount is broken. And actually having a debate about whose channel is worth more, or whatever, is kind of irrelevant. So, if we're going to treat broadcasting as a special thing, and think it valuable that some of our citizens get it for free, which is certainly what was intended originally, and if we're going to have other people subsidize that, then we need to figure out what the mechanism is for deciding that amount. And that's what's broken. It's that process of figuring out the amounts.

Senator LEMIEUX. Mr. Uva?

Mr. UVA. Thank you, Senator.

Senator LEMIEUX. Thank you for being here today.

Mr. UVA. Thank you.

I believe that what is special and unique about broadcasters is the way we serve the local community, in a variety of ways. And localism is fundamentally important to—in making sure that the citizens of this country are informed each and every day, not just by a CNN or a Fox News on global and international news issues, or by a network newscast, although we do network newscasts, just as Fox does. We are very committed, and we believe very strongly in the ability to stay relevant to the local communities. And that is an incentive for us to make sure that we deliver those newscasts

and information, that we participate in the community in ways that are empowering members of the community through public and community service, and that costs money. And that is where a great deal of the funding that goes to the local broadcasters, particularly at Univision, is reinvested into the community. And that's why I think broadcasting is special. And it cannot be treated and looked at on a neutral basis, compared to what cable networks are.

Senator LEMIEUX. Mr. Carey?

Mr. CAREY. Yes. I—I mean, and I guess I want to first say that retransmission, you know, clearly has a unique level of importance. And we need a dual-revenue stream. So—and we've had these other, you know, provisions, and we end up with a business that, again, is not competitive. So, that's not a—it's not a trade.

In reality, most of the provisions that exist, you know, are ones we could achieve contractually. And we're not—you know, I think the spectrum is different. I think the spectrum's important for us to provide our service for free to 30-plus million Americans, and actually have the ability of every American to get it for free. So, I think, you know, the spectrum I'd put in a different place. It has a different role, and I think it provides a unique value that we—you know, we think it's important to provide the opportunity for every American to get a level of broadcasting.

The other provisions, I think they have importance to the broadcast industry, as a whole. I think they're at the heart, as Mr. Uva said, in terms of the localism that exists. But, realistically for us, you know, retransmission is at a whole different level of importance, because it provides an economic foundation for us to have a competitive business, going forward.

The others are largely things, you know, we could competitively compete for in the marketplace. But, I do, in respect the broadcast industry, recognize, you know, they are important in the foundations of the localism, you know, that has been so important for local broadcasters in their local communities.

Senator LEMIEUX. Mr. Chairman, Mr. Rutledge wants to finish up.

Mr. RUTLEDGE. Yes, thank you, Senator.

I just wanted to say that, you know, I think it's a policy question: Does the United States want to have a broadcasting business? And, if it does, what are the objectives of that?

And, you know, historically, you've got a broadcast license, you got some spectrum, you had to operate in the public interest, and you had an obligation to your community to serve your community, and you had—you came up for renewals, and you were subject to question as to whether or not you actually met those obligations. So, the power that has been entrusted to these organizations is enormous.

That—the reason the World Series exists on a broadcast network is because of the public trust that was granted to those entities to serve their communities and they amassed the audiences that they did, and had the power to buy the World Series and create the kind of conflicts that exist today.

So, it really is a policy question: What do you want from broadcasters? And how do they fulfill their obligations to the community? And if you're going to give them valuable spectrum—because I

could turn that spectrum into a broadband wireless network very effectively, I think, and serve a different part of the community—we're—you know, it's a valuable resource to the country, and it's being used in a way that's actually abusing the consumers of the country.

Mr. CAREY. Can I just add? I mean, every household in America did have the opportunity, including everyone living in Cablevision, to get the World Series over the air for free.

Mr. RUTLEDGE. Which makes the notion of charging for it ridiculous.

[Laughter.]

Mr. CAREY. It does not make—we treasure the opportunity——

Mr. RUTLEDGE. I was trying to get the——

Mr. CAREY. We treasure the opportunity to provide a signal for free, but when others are retransmitting our signal and building a business based on it, we feel we have a right to be fairly compensated, if somebody else is building a business based on the retransmission of our signal and our content that we pay a lot of money for and invest a lot of money in.

Senator KERRY. Senator Pryor.

STATEMENT OF HON. MARK PRYOR,
U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman. When I think of all the changes in the industry and technology and society since 1992, I do feel like it is time for us to try to draft some legislation that embraces all those changes in the past but also paves the way for more innovation and to be smart about how we do things in the future. So, I appreciate your drafting this piece of legislation, Mr. Chairman.

And one thing I like about it, as I understand it, is there is a revision where the signal stays on the air when there is a breakdown in negotiations. Now, that makes sense to me, but what I would like to ask all the panelists is: Is that good public policy? Or, what's wrong with that policy of allowing the signal to stay on the system when there's a breakdown in negotiation?

Mr. Britt, you want to take that?

Mr. BRITT. I think it's one of the very good ideas that are around. Again, I think it relates to everything that's been said, because broadcasting occupies a unique and privileged place in our society. And depriving consumers of that is a problem.

Again, some people will say, "Oh, that will tilt the scale in the favor of the distributors," some other people will say other things. But, it is the consumer that's being held hostage. And that isn't a good thing. So, we are, again, advocating some sort of better process for settling this. Again, we're not denying the value of the networks or whether there should be payment. There should, and there is value. But, how do we decide the amount without disrupting the public?

Senator PRYOR. Mr. Uva, did you want to——

Mr. UVA. Yes, I—Senator, thank you—I believe that the government needs to tread very carefully in this area. And I do believe that you remove one of the primary incentives for both parties to get a deal done if during negotiations you force a signal to remain

up through the negotiations. There doesn't seem to be any motivation on behalf of the distributor to, in a timely fashion, come to an agreement.

Furthermore, I think that the rules, as currently exist under the communications acts and certainly the FCC rules, the FCC is empowered to oversee this. And if one party has a dispute or believes the other is not negotiating in good faith—and, in fact, in bad faith—the FCC should rule on that. But, during that time, there should not necessarily be a requirement for those signals to——

Senator PRYOR. That's a good point. On that issue, though, has the FCC ever found bad faith? Or have they ever found that a party's not proceeding in good faith?

Mr. UVA. I'm unaware.

Senator PRYOR. Yes. I don't think they have, as far as I know. Mr. Rutledge?

Mr. RUTLEDGE. No, I think that broadcasting has a special place and a social obligation to its community. And I think that the FCC, or through other policy means, should intervene when—rather than let signals go off. It does have some disruption. You know, nobody wants to pay higher rates. And so, I agree it would make negotiations more complex for broadcasters, but I still it's better than allowing people to be held hostage. And so, I think it's inappropriate for broadcasters to be allowed to drop their signals, which are free over-the-air signals in unlicensed spectrum being used for the public good.

Senator PRYOR. Mr. Uva?

Mr. UVA. Yes, Senator. Thank you.

I also believe that there is a very important role for both sides to play in educating the consumer about choice, because, at the end of the day, the consumer does have choice to opt for—to receive that signal free or over the air, to buy it from a multiple-system cable operator, to buy it from a satellite provider or from a telephone company. And we believe very strongly that educating consumers about the choices they have and the remedies available to them is also an equally important and vitally important part of this——

Senator PRYOR. Mr. Carey, did you want to add anything?

Mr. CAREY. Yes, I guess—I mean, I'd add a couple of things, because I agree with Mr. Uva's points.

I mean, first, in terms of time, you know, we provided a lot of time for the actual negotiations we had. Our process with Cablevision was 13 to 14 months. I think we were engaged with Time Warner, you know, for the better part of 6 months. So, it's not like these have come up and somehow there isn't time to address them. There's a lot of time. We've—you know, we've provided a lot of time to get there. And, realistically, most agreements get done with a deadline. I mean, that seems to be the way the world works. When you—you know, when you have a deadline, they'll get done and at the point of the deadline; if you don't, they'll go along. And I'm not sure what—if the—I mean, we've acknowledged we were getting zero; you know, we were trying to get a fair rate. If one is just going along open-endedly, I'm not sure why the incentive isn't for the cable operator to just keep it going open-endedly and us to keep getting zero. You know, that, you know, seems to benefit them.

Or, as has happened in some cases, push it to a point in time when—which happened in some other cases, this summer, where the broadcaster has a particularly—you know, disadvantageous time of year, like the summer, when you're in reruns, and then all of the sudden decide that's a good time to bring it to a head, you know, and—you know, and drop it, because your viewership is at the lowest point in time.

So, I think a deadline's important to get a deal done. We've provided a lot time in it. And I do think that's generally—you know, it works. You know, it's just that we have a lot of channel negotiations. We do this in a lot of cases. You know, I still struggle why this negotiation is so unique. We're not asking for a rate that is, you know, precedential.

Senator PRYOR. Yes. You know, I've never done one of these negotiations. I have no idea how complex they are. But you said that time usually is not a major factor, but a deadline is helpful. And I understand that. But aren't you mostly just negotiating about the number of channels and the price per viewer? I don't know exactly how you evaluate it, but it seems like——

Mr. CAREY. Yes. I mean——

Senator PRYOR.—a fairly straightforward set of negotiations——

Mr. CAREY. Yes. That's why I don't know what—if you just extended what's going to—what's going to—what that extension is going to achieve, other than just——

Senator PRYOR. I see.

Mr. CAREY.—drift. I mean, it's—you know, I agree with you. You know, I mean, that's why I said what—when you've been talking for 13 months, you probably have every fact on the table——

Senator PRYOR. Yes.

Mr. CAREY.—and it just becomes a point in time, you know, to——

Senator PRYOR. It's just about money.

Mr. CAREY.—to make a decision, and then—you know, and we've had thousands of times when we have channels and distributors, and you get to a point of decision, and you reach an agreement.

Senator PRYOR. Yes.

Mr. CAREY. The process has worked. You know, this just happens to be a case, you know, where the distribution industry wants to politicize this, and try and change the rules and how these are done. Yet, this isn't that different a process, and what we've been asking for, as I've said before, you know, really is on any comparative basis, more than fair.

Senator PRYOR. Mr. Segars, would you like to——

Mr. SEGARS. No, I—I just want to make sure that any reexamination or reform look at retransmission includes the independent programmer. We need to participate in that dispute process, if one is put into place.

I will say that I don't want any of Senator Kerry's comments to get lost, when he mentioned—Chase certainly is sitting here saying that the broadcast network has not gotten paid, but in reality he's also launched a number of different cable channels based on that retransmission, and has built extraordinary value for his company, and, many of those channels, extraordinary value for the consumer.

So, there are billions of dollars that are being generated by that real estate that retransmission allows.

Cable also has good to do. And they're launching an arts network. They wake up every day and—saying they have a responsibility; it's not just broadcasters. And they reach down to a small independent arts network, that's privately funded, no government handout, and they are putting an arts network on, on cable television, but it gets very complicated when retransmission takes up, not only valuable bandwidth, but these very public arguments ensue.

Senator PRYOR. OK.

Chairman Kerry, I do have a closing comment. It has always bothered me, in these negotiations, the total lack of transparency, where John Q. Viewer doesn't have any idea what Comcast has paid. When I travel and I stay with my in-laws, and they're on Time Warner or whatever it is, I have no idea what they paid for that. I cannot imagine any good public policy reason for that total lack of transparency. Is there a good public policy reason that I'm missing here?

Senator KERRY. Anybody want to comment on that?

Mr. CAREY. Yes, I guess I'd say—I mean, I—realistically, to—I can't think of any real business where you negotiate in a public forum—negotiate business agreements in a public forum. I think the competitive complications will be really damaging as you try to continue to do deals to the degree you were putting, you know, in a public forum——

Senator KERRY. Well, let me——

Mr. CAREY.—you know, the

Senator KERRY.—let me——

Mr. CAREY.—the provisions of private negotiations.

And I can't really think of—as I said, I'm trying to think of an industry that——

Senator PRYOR. I'm sure that happens all the time. I mean, it happens all the time, where one party knows what the market value is for something, and they go out and negotiate it and——

Mr. CAREY. We have a pretty good——

Senator PRYOR.—maybe pay a little more——

Mr. CAREY. To be realistic, we have a pretty good understanding. And there's industry research out there that, in a range, will tell you pretty much what most of these channels get. I mean, they may not be accurate to—with precision, but there's—there are certainly industry experts and—you know, and the industry has covered in many ways—that that information, you know, is there. And it's——

Senator KERRY. But, here's what——

Mr. CAREY.—it's publicly available.

Senator KERRY.—here's what I think Senator Pryor's getting at. And I mentioned the transparency earlier. I think transparency may be one of the most effective ways to try to deal with this without you guys witnessing that so-called "heavy hand" of government coming in and suggesting what happens.

But there really are more than two parties at the table, with all due respect. You know, you could say, conceivably, there are four parties at the table. You have the consumer, who is sort of battered

in the middle of this thing on occasion. Maybe they're paying a lot, but they're not sure what the differentials are. And then you've got us, because the truth is that public broadcasting is receiving billions of dollars of subsidy through the thing called "spectrum." It's worth billions. That's a huge subsidy. I mean, let's be honest about it.

There were standards applied to who gets it and how, which I don't think have been rigorously enough thought through. But, the fact is that there's a public interest there. There is a public interest at the table.

And so, in many cases, there are people in this country for whom emergency lifeline or communication or other kinds of information are vital. To the degree that a couple of colleagues have called it a "commodity," I think, in modern context, a lot of people would sort of commoditize it. And so, we have to think about what the implications of that are, which is why the FCC has certain authorities.

What would happen to you guys if retransmission consent was taken away? What would happen? Where would your business plan go?

Mr. CAREY. If we were——

Senator KERRY. There's no retransmission consent requirement at all.

Mr. CAREY. And we're—so, we're just an advertising-only supported business.

Senator KERRY. And would you survive?

Mr. CAREY. Long term, I think our survival, you know, would certainly be threatened. I think you'd continue to find——

Senator KERRY. What do you think, Mr. Uva?

Mr. UVA. I think you'd see a dramatic reduction in services——

Senator KERRY. Pretty threatened, correct?

Mr. UVA.—that would——

Senator KERRY. So, the fact that the government is requiring retransmission consent really creates your business plan.

Mr. CAREY. Well, I think it enables us to be competitive. I mean, we're competing with hundreds of channels that all have——

Senator KERRY. Well, that's how you have a business plan. If you're not competitive, it's not a very good plan.

Mr. CAREY. Correct.

[Laughter.]

Senator KERRY. So, you know, we've got to think this through carefully. I mean, I do not think any member here wants to come leaping in an inappropriate way. But, what has been put on the table is a way of engaging us in thinking about transparency. Supposing people had a better sense of what those costs are in certain places.

I mean, for instance, Mr. Britt, what's the difference, the retransmission consent payments that you pay to carry ESPN versus Fox, for instance?

Mr. BRITT. Off the top of my head, I don't know, Senator, but we'd be happy to get that and prepare it for you.

Mr. BRITT. We buy many networks from both of those companies, so how it all gets allocated is complicated.

Senator KERRY. Do you know offhand whether——

Mr. BRITT. I don't. But, we can get it to you.

Senator KERRY.—so, you couldn't tell me whether or not you consider it fair, that sort of differential.

Mr. BRITT. It's the result of a negotiation. I'm not sure what "fair" is, quite honestly, in the sense you're asking.

Senator KERRY. You've never walked out and said, "Boy, we got screwed in that one"?

[Laughter.]

Mr. BRITT. I say that all the time.

[Laughter.]

Mr. CAREY. I—you know, I think there's a fair amount of public information. I mean, actually, I used to sit on the other side of this, you know, at DIRECTV. And so, I can—I'm not going to disclose their numbers, but I think it's widely—you know, widely known that ESPN would have a rate that is—I don't know—five, six times what, you know, we'd be getting in retransmission. Unless——

Mr. BRITT. So, if——

Mr. CAREY.—unless they have a very unique deal that looks like no——

Mr. BRITT. So, if I——

Mr. CAREY.—looks unlike anybody else's, it's certainly a—it's a multiple well into, you know——

Mr. BRITT. If I may respond to——

Senator KERRY. You were the one sitting on the other side of that, weren't you?

Mr. CAREY. Yes.

Senator KERRY. Right? When you sat on the other side, you thought it was good to pay zero.

Mr. CAREY. I'm—sure. I mean, I—and if I can——

[Laughter.]

Mr. CAREY.—you know, that was my job. If I can keep my—you know, if I can fight that, you know, fight, that's——

Senator KERRY. So, you understand what my job is.

[Laughter.]

Mr. CAREY. I do understand. You know, I mean, in reality it wasn't that long ago, and I did see it from both sides. And I think it is why, in many ways, we've tried to approach it—you know, I've said, publicly in some forums, we could've gone in and asked for a much higher number, and justified it, based on ratings and other things. We didn't try and do that. We tried to go in with a request that we thought was manageable—you know, was realistic, but enabled broadcasters to have a model that would be competitive. And I—if I was sitting on their side, I respect—if I was at DIRECTV, still, you know, I would be pushing back at that. You know, that's my job. And, you know, I'd be trying to manage my costs as aggressively as I can.

The fact of the matter is, you know, DIRECTV, the two companies here make a lot of money. This is not—you know, they're not fighting for survival. They have very profitable, high-margin businesses, you know. And, we recognize, nonetheless, they are trying to continue to manage their businesses intelligently. I respect that. But, I do think broadcasting, you know, has a—you know, I do think broadcasting content needs to have an opportunity to continue to compete, you know, in this marketplace. I don't think it

benefits anybody, including the guys here if you find the NFL is going to be on a cable network, you know, when our deal expires in 3 or 4 years. And that—you know, that's where you're—you know, that's where you're headed, because we don't have a business model that lets us compete. It's why we don't have——

Senator KERRY. I——

Mr. CAREY.—the BCS anymore.

Senator KERRY. I totally understand that. And I can remember that we've met over the years, 25 years now, many times with the broadcasters coming in and complaining about their lack of power in the marketplace, which is why I commented earlier on the complete reversal from where we were a number of years ago.

But, let me throw a couple of numbers at you quickly, and then I want to recognize Senator Klobuchar. In the 2009 report on the cable industry prices, it concluded that, from 1995 to 2008, the average monthly price of expanded basic cable service grew from $22.35 to $49.65. It's an increase of 122.1 percent. And, going forward, SNL Kagan, the media research firm, predicts that retransmission consent revenues for broadcasters are going to grow from $762 million in 2009 to $1.36 billion in 2011, and perhaps more than $2.6 billion in 2016.

Now, I assume some of these fees could be passed on to consumers, in terms of their monthly MVPD. I'm not sure. What are we looking at as we go forward here? And what are we going to be able to say to consumers, as we go home, as they complain about the packaging and what they have to purchase and the total amount of money and so forth?

Mr. CAREY. Well, I guess what I'd first say is, you know, those numbers still would be a quite small fraction of the aggregate programming cost that exists, you know, for that universe, you know.

Senator KERRY. That amount of money?

Mr. CAREY. That amount of money, if you look in aggregate, you know, of what the total programming cost is for that—for the content, for that same universe, that's a very small part of it, you know. And——

Senator KERRY. What are we——

Mr. CAREY. And at some degree, singling them out——

Senator KERRY. Share with us what we're talking about. It'd be interesting just to hear. What kind of figure are you talking about, in terms of global production costs?

Mr. CAREY. Global programming costs?

Senator KERRY. The costs you're referring to.

Mr. CAREY. And I probably don't have the number, so I'm going to spitball it, just—you know, my guess is, it's a $30- to $40-billion, you know, number.

Senator KERRY. $30- to $40-billion.

Mr. CAREY. You know, that—but, I'd have to find out. I'm doing that——

Senator KERRY. OK.

Mr. CAREY.—sort of extrapolating off the top of my head, so it may be completely wrong. But——

Voice: No, you're right.

Voice: I think that's about——

Mr. CAREY. So, you put those numbers in that context, you know—and, again, I guess where I get troubled is sort of—somehow broadcasters take some unique blame. I mean, and I'm not going to—I'm not blaming or vilifying other companies, but there are big companies out there that have big, driving networks—the Time Warners, the Viacoms, the Discoverys that all are largely—you know, they have—what—we talk about networks with—you know, that are driving and creating new networks around big, powerful networks. You know, it's not just broadcasters who are bundling product; it's everybody. And it's a—you know, somehow, you know, this issue is putting broadcasters in this unique light, like they're doing something that the broader industry—or asking for something that is outside the norm and practices of the business, you know.

We're simply looking for a fair rate, like the channels, you know, we compete with. You know, we think they're benefits for us—and the consumer and the distributors—for us to continue to develop programming that is of interest to them, you know. And, you know, we're—you know, we do take it—our—take a responsibility for looking to put prices—you know, ask for prices that are fair, you know, that we think are reasonable. And when we look at Fox, we think——

Senator KERRY. How much would you——

Mr. CAREY.—we think it's a fair—you know, we're asking for a more than fair price for Fox.

Senator KERRY. How much did you ask for and receive for Cablevision and for Time Warner?

Mr. CAREY. Again, I think specific—you know, I do think putting, you know——

Senator KERRY. You don't want to lay that out?

Mr. CAREY. No, I think it—I don't think it's constructive. And I think that's—you know, it's—it is a fraction of what channels like ESPN or MSG, which, you know, Cablevision owns—you know, a small fraction of what other channels like that, that are much smaller than us, receive. And we have dealt with the distributors—you know, we've now—you know, before Cablevision and now with Cablevision, you know, we've dealt with four large distributors. We've dealt with them fairly.

We've dealt with them consistently.

Senator KERRY. Well, we're going to have to figure out whether we need to get at those kinds of numbers in order to think through what's the reality of the dislocation in the marketplace here. Maybe it isn't. I mean, conceivably, those numbers would help you, not hurt you, but we don't know the answer to that, as we sit here right now. So, let me mull that one over and see how we proceed.

Senator Klobuchar.

STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM MINNESOTA

Senator KLOBUCHAR. Well, thank you very much, Mr. Chairman. Thank you for holding this hearing and for your thought-provoking questions. And I know a lot of questions have been asked, but I will add a few of my own.

You know, I'm thinking of this, that 86 percent of all Americans pay for their television, and that's why retransmission consent is an issue that affects most Americans, whether they've ever heard of it before or know it or not. And so, my primary focus is to make sure the consumer is protected. And, whether it's because their cable bills go up or they are subject to a blackout, consumers end up being the innocent victim. And that just shouldn't happen.

So, since you were fielding a lot of the questions, Mr. Carey, I'll start with you. I've heard from executives from the broadcast networks that you should be compensated at least on par with cable networks, especially given the fact that the audience share is significantly higher for broadcast than cable. Do you agree with that statement?

Mr. CAREY. Well, yes. I think we should have fair compensation. And I guess I'd say we're actually asking for a small fraction of what that math would—you know, sort of, would calculate—would lead to as a fee or a rate.

Senator KLOBUCHAR. And, Mr. Britt, do you want to comment on if you think the compensation would be fair?

Mr. BRITT. Yes. I think we're talking about apples and oranges and peaches, here. So, broadcast networks were created in a certain environment, which was around free over-the-air broadcasts. They are—for each station—and we haven't really talked about stations; we're talking about networks—they are exclusive. So, there's only one Fox station in each market. Completely different market.

Cable networks were invented in a world where they had to sell to all these distributors. They were given no privileges. They convey copyright with the network. We separately pay for copyright for the broadcast networks. So, it's a very complicated question.

One thing left out of all this is that we're talking as though the broadcast industry is a monolithic thing. Most stations are not part of companies that own networks, and the relationship between the stations and the networks has changed dramatically since 1992. And I'm not in this business, but my understanding is, at that point, the networks used to pay the stations, and now they don't. And, in fact, the networks are now asking the stations to be paid. So, that's—you don't have anybody here who's just a station owner, but I think they ought to be here, too, because that relationship is an important part of this whole thing.

Senator KLOBUCHAR. Anyone want to respond to that?

[No response.]

Senator KLOBUCHAR. Well, I had one question that——

Senator KERRY. Mr. Rutledge wanted to——

Senator KLOBUCHAR. Oh, you do? Very good.

Mr. RUTLEDGE. I just wanted to say, in terms of fairness, I think, you know, we do come out of a long history, in broadcasting. And broadcasters have a public obligation, in my view, and they get public benefits, including very valuable spectrum, to provide that public obligation.

Over the last 18 years, since retransmission consent has been enforced, we've gone from eight channels that are owned by broadcasters, that are cable channels, to 90. So, a substantial part of America's viewing now is controlled by large network broadcast owners and cable owners. They own both. And the value's being ex-

tracted in various places. And so, it's hard to pinpoint what things cost, but the fact is, there is a historic public service obligation that broadcasters have.

And the other thing that I want to say is that in New York area, where we primarily operate our cable systems, there are over 25 TV stations. Only five look for retransmission consent. All the rest of them do what's called "must-carry," which is another opportunity for broadcasters, under the law, to be carried on a cable system and enjoy all the benefits of channel placement and so forth that is included in the law.

So, the majority of broadcasters aren't even in this regime. It's only the powerful network-owned broadcasters or broadcast affiliates that are trying to extract these payments from customers. Most broadcast stations aren't doing this.

Senator KLOBUCHAR. Mr. Carey, I thought you might want to respond.

Mr. CAREY. OK. Yes, I mean——

Senator KLOBUCHAR. You look very powerful.

Mr. CAREY. No.

[Laughter.]

Mr. CAREY. I'm at their mercy. They——

Senator KLOBUCHAR. I'm just kidding you, Mr.——

Mr. CAREY.—you know, they still the big gorillas in their markets.

Senator KLOBUCHAR. All right, all right, all right.

Mr. CAREY. We have a public-service obligation, and we take it seriously, you know, and it's embodied in the local news that is—it's, sort of, in many ways, the foundation of what we do. You know, I don't think that public-service obligation means we're obligated to run loss-making businesses. You know, I don't know if you were here; I said before, the last few years our network has lost somewhere between $2 and $300 million.

So, yes, we do have a public-service obligation. We take it seriously. You know, we treasure the ability to bring television to every household and American. You know, I don't think it means we don't have the right to get compensated when somebody else retransmits it and builds a business, you know, based on our product. But, we think, for us to remain viable and continue to bring programming to America, we need to have an ability to have a viable business model, and the world today is very different, you know, than it was, you know, in the past.

And clearly, you know, in today's world, with hundreds of channels that have dual revenue streams, you just can't expect a broadcaster to compete, you know, as an advertiser-supported-only network, you know. And it will end up, you know, us losing money. It will end up having content migrate to cable channels. And it will end up with us becoming second-class citizens, you know, in the business environment.

And—you know, and—yes, broadcasters pursue different paths. I mean, we pursue a path where we invest in very expensive—the reason, you know, the 25 stations in New York, 20 take must-carry, we pursue retransmission, is because we invest billions of dollars in creating great content in order to make that business make sense. To bring the NFL, to bring the World Series, to bring Glee,

to bring American Idol, you know, to the American public, you know, we need to have a business model that lets us sustain that, you know. The channels pursuing must-carry are pursuing a different, you know, a different role and a different strategy that pursues a different business model. But, the stations, like ours, that are pursuing, you know, the quality, exciting, you know, the type of television, you know, that I think is—the American public cherishes, you know, requires our ability to be competitive in the marketplace.

Senator KLOBUCHAR. OK.

Mr. Segars, how does retransmission consent impact the specialized programming geared to the minority community?

Mr. SEGARS. Well, I can say that—first of all, when broadcast traded on retransmission to launch networks, I will say that some of those networks today brought great value. And no one wants to vilify the broadcast networks, by any stretch of the imagination, but the small broadcaster does have a public—really, a public responsibility. But cable also does—and I've said this again and again—that cable is reaching down and trying to support independent networks. Diversity of voices. The arts being one of them. An independent family channel called Hallmark, an outdoor channel, a gospel music channel. All independent networks, but we are—we're a dying breed and retransmission, because of the eating of the bandwidth of all of these channels that have been leveraged by retransmission and placed onto the cable operator and those associate rates and costs, prevent a small independent from getting to a critical mass. We cannot find the space or the money to move our business forward.

However, if I had retrans, I could certainly tell you that the arts would be in 90 million homes. But, we don't have that regulation, we don't have the ability to trade on retransmission. So, it does affect us. Many distributors have told us that our growth is in jeopardy because of retransmission.

Senator KLOBUCHAR. OK.

Mr. SEGARS. And——

Senator KLOBUCHAR. I just have one last question, and do you want to just respond in 30 seconds, Mr. Carey?

Mr. CAREY. Yes. I just would say, I mean—you know, there are clearly the larger programming groups, you know, to distribute a number of channels, but it's not unique to broadcasters, you know. And, I've made the point before, you know, that when Charles talks about, you know, his—if he was owned by Turner, I think the same thing would be true. If he was owned——

Senator KLOBUCHAR. Yes, I think he——

Mr. CAREY.—by Viacom the same thing——

Senator KLOBUCHAR.—said cable.

Mr. CAREY.—would be true.

Senator KLOBUCHAR. He was an equal-opportunity——

Mr. CAREY. If he was owned by—if he was owned by Discovery, the same thing would be true. It's not a unique—you know, I think to put that obligation, sort of, uniquely on broadcasters, I think, is not—you know, is not fair in the context of, you know, large groups, broadcasting or not. In many ways, we're another channel on the dial.

Senator KLOBUCHAR. Right. OK. Thanks.

One last question. In a letter to Senator Kerry, Julius Genachowski, the FCC Chairman, wrote that the FCC, "has very few tools with which to protect consumers' interests when it comes to these issues." What do you think? Do you think this is true? Do you think they should have more tools?

Start with you, Mr. Segars.

Mr. SEGARS. Well, I think if the FCC is there to help protect diversity in media, then they do have a tool, because diversity in media and independents are being squashed in the current system.

Senator KLOBUCHAR. Mr. Carey.

Mr. CAREY. Yes. I mean, I really, honestly believe, you know—and, as I said, this process has worked for decades. I mean, we're negotiating a rate for a channel. And I do think it's the—in some ways, the specter of government involvement that is—you know, that has sort of distorted the process. And I think if people accept they have to go on with business—but, we largely—I guess, you know, we largely actually have pretty constructive relationships here, you know. Yes, broadcasting went from zero. And I understand, we've gone from zero to saying we need to get paid, and that's a change. But, I think the facts of what broadcasting is facing prove it's a reasonable request. But, I think we'll get on to business. I think, if we—you know, as we have gone on to business. And, in many ways, I think, I'd—you know, I think we can get back to focusing on how do we use the Digital Age and other things to bring new, exciting things to the consumer, you know. But, I don't think this is—this is not some unique, you know, complicated process. I mean, you know, I think, you know, there has been an attempt, you know, by a segment of the business to make it sound, you know, much more unique, much more complicated, you know. I think this is a rate negotiation that, you know, like all of them that have happened if one accepts that it has to happen in the private marketplace, it will go forward.

Senator KLOBUCHAR. OK.

Mr. Rutledge.

Mr. RUTLEDGE. Senator. Yes, we think the FCC actually does have authority to help here. And——

Senator KLOBUCHAR. Is your light on there? There you go.

Mr. RUTLEDGE. We do think the FCC has authority. We know what their letter said to the Chairman. But, they've exercised broad authority in other ways. They do have obligations to watch out for consumer prices and for—to protect the consumer, and fairly broad authority, which we pointed out in our written testimony. And so, we believe they do have the authority to help the consumer in these kinds of disputes.

Senator KLOBUCHAR. OK. That's good. Thank you.

Mr. Uva?

Mr. UVA. I agree that the FCC does have the authority, in its rules. And the Communications Act certainly gave them the right to monitor and determine whether negotiations were taking place in good faith or bad faith, and have the ability to enforce it.

Senator KLOBUCHAR. OK.

Mr. Britt.

Mr. BRITT. Yes, we think they both have the authority and the obligation to oversee and be involved, as appropriate, but they have chosen not to exercise that.

Senator KLOBUCHAR. OK. All right.

Well, thank you very much. I appreciate all your time.

Senator KERRY. Thank you, Senator Klobuchar.

Well, let's try to sort of wrap up here a little bit. A few thoughts.

Mr. Britt, let me just ask a couple more questions, if I can, before I sort of wrap it, but——

Broadcasters argue that, given the amount of profit margin that you guys make, you're more than able to pay them the cost of the retransmission consent fee without passing that on to the consumer. And they've argued further that it's a fair sharing, if you will, of the profit that you make off of their content, so you ought to be able to pass that on. What do you say to that?

What's your——

Mr. BRITT. I would say that the companies in front of you are all very profitable, including News Corp and Disney, who's not here. So, the issue we're raising is not about the relative profitability of different companies. We're really raising an issue that, in the context of this narrow thing called "retransmission consent," which was set up by the government, do we have the right process for deciding the amount of that subsidy of the over-the-air viewers? We're not questioning whether there should be a subsidy. We're not questioning whether there should be a payment. But, the mechanism for determining the amount seems broken, and there's a lack of transparency. So, that's our focus.

We have plenty of competition, so what we end up charging consumers is very much determined by a competitive marketplace.

Senator KERRY. I won't disagree that the market hasn't provided increased competition, to a lot of people's surprise, but it is broad. And with digital and video and download, and so forth—capacity, computers, et cetera—it's a big new world out there, there's no question about that.

Well, here's what the Congressional Research Service, which is nonpartisan, as you know, has concluded that the negotiations between programmers and distributors, although private, are strongly affected by statutory and regulatory requirements and cannot be properly characterized as just "free market." So, there's sort of a beginning, threshold principle here in which we need to think about this.

Second, although the NCTA, of which every single one of you, I think, is a member, including News Corp, is divided on the solution. But, the Association's president has said that he wants to debunk the notion that retransmission consent is purely and simply a free-market negotiation between a TV station and cable company. That, he said, is complete nonsense.

Third, the disputes that started putting consumers in the middle, in about 2007 is when it started, and they seem to be escalating since then, and I think we need to take note of that; that we went a long time without it, then it started, and now it's sort of escalating, and the prospect of this being a tool, in the absence of some sort of an other mechanism, seems to loom fairly large. The government staying out of it certainly hasn't resolved the disputes nor re-

lieved consumers of the problem that's come more and more to our attention.

It's interesting, the most recent dispute really kind of hit a significant level of discussion when Fox made the decision to pull the signal off the air. Now, I understand your desire, and Univision also, to hold on to that right. And I think what we've put on the table respects that, but it requires a simple level of both transparency and a judgment. Are they working in good faith? If you have a good-faith argument, based on the marketplace, based on competitors, based on the offerings that are available to people, people will step back and say, "OK. This is not our deal," and you can still pull your signal. So, you're not without a very significant lever; it's just that it tries somehow to create a level of accountability to the public, if you will, in light of all the other benefits that are on the table.

So, I'd just ask you to think about that. And we're going to think about it, in the light of the sort of discussion we've had today. And maybe we continue to have a private dialogue on this and see if we can't find some way to do something that relieves us of the burden. Because, if we just go forward in this atmosphere, I suspect, given the nature of competition and the nature of the marketplace and where it's sort of going in this diversity, that some people may feel even more compelled to press for an advantage and pull a signal. And, no one here, I think, is going to react very positively to that.

So, to the degree that you want this to remain a sort of hands-off, arm's-length transaction where the marketplace has the maximum amount of ability to play itself out—and that would be our preference, too—I think you have to think about what's the compromise mechanism here, what's the way to try to say, "We're doing something. Let's give it a try, see if it creates better balance and a better outcome." And I suspect that, in the end as somebody said a moment ago, you're all very profitable companies. I don't think a lot of people are going to be thrilled with the idea that they're becoming the pawns in whatever that extra percentage of profitability is going to be, measured against the high levels of profitability that you already experience, measured against the government's "gift," if you will, on behalf of the American people of your right to take part in that marketplace.

So, let's all think about it. I think it has been a healthy and good hearing. And, from our point of view, we've aired some of these issues; we got a sense of it.

We'll leave the record open until the end of the week for any submissions by additional colleagues.

And again, we appreciate everybody.

Mr. Uva, thanks, notwithstanding not feeling well, for hanging in here with us. We appreciate it very, very much.

We stand adjourned. Thank you.

[Whereupon, at 5:03 p.m., the hearing was adjourned.]

A P P E N D I X

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION,
Arlington, VA, November 22, 2010

Senator JOHN F. KERRY, Chairman
Senate Commerce, Science, and Transportation,
Subcommittee on Communications, Technology and the Internet,
United States Senate,
Washington, DC.

Dear Senator Kerry,

On behalf of the 560 small business communications providers that constitute the membership of the National Telecommunications Cooperative Association (NTCA), I wish to thank you for your leadership in convening the November 17 hearing titled "Television Viewers, Retransmission Consent and the Public Interest." The testimony and deliberations expressed during this forum should leave no doubt whatsoever regarding the pressing need to reform the outdated retransmission provisions of the Cable Act of 1992.

Clearly there is a need to level the playing field between Multi-Channel Video Programming Distributors (MVPDs) and broadcasters, and consequently benefit all consumers by ensuring greater transparency in that marketplace. A primary outcome of this hearing was the vivid portrayal of the negotiations, or lack thereof, that have transpired in a number of recent retransmission contract renewals between some of the Nation's largest MVPDs and broadcasters. Imagine how such difficulties are multiplied when retransmission negotiations involve the Nation's smallest MVPDs—NTCA's members—and the giant broadcasters.

The assertions of broadcasters, with respect to the bargaining power of large cable companies like Cablevision and Time Warner, do not ring true for the reasons discussed at length during the hearing. Yet even if such allegations were true for larger cable companies, the same certainly cannot be said for small MVPDs such as rural telephone companies and cooperatives. With this in mind, we respectfully request that that your subcommittee hearing record formally reflects the retransmission dilemmas that are faced by rural MVPD under today's outmoded model.

NTCA's membership is comprised of communications providers that operate in some of the most rural and economically-challenging-to-serve areas of America. These providers are small businesses focused on delivering quality telecommunications, information, video and other communications-related services to the rural communities in which they are based. Without the dedication and continuing commitment of our member companies, rural America would not have the same quality and choice in digital communications enjoyed by those operating throughout the Nation's metropolitan areas.

Although it is difficult to discern exact rates and fee structures—a transparency problem that only further accentuates the relative bargaining leverage held by broadcasters—NTCA suspects that the average rural telco member company typically pays a higher per-subscriber rate for both linear cable programming and broadcast retransmission fees than rural and non-rural independent cable companies in the United States. We further believe that the largest Multi-Service Operators in the United States pay just a fraction of the total cost small rural telcos pay for the same channels and networks—although once again, such indications are only anecdotal because of the conditions that broadcasters have imposed on the sharing and publication of such data.

While it may be true that many of the larger MVPDs, whether cable, telephone, or DBS, are often highly profitable and work with a healthy content profit margin, the same cannot be said for small rural communications providers. It is widely reported that the profit margin for video services is almost always "paper" thin if not entirely nonexistent. When you consider the higher fees routinely charged to rural MVPDs—which grow at unpredictable yet dramatic annual rates—coupled with

bundling and tiering requirements from content providers, it's easy to see how small operators are squeezed to the point of providing services at a net overall loss.

As you contemplate the next steps in responding to the market failures that are now clearly documented in the area of retransmission consent fees, we urge you to give particular consideration to the challenges faced by the Nation's small rural communications providers in your examination. Resolving the current retransmission consent-related shortfalls is the only way to ensure rural consumer increased choice and affordable rates for video services.

Sincerely,

SHIRLEY BLOOMFIELD,
Chief Executive Officer.

cc: Sen. John Ensign

PREPARED STATEMENT OF DAVID ZASLAV, PRESIDENT AND CEO, DISCOVERY COMMUNICATIONS, INC.

Chairman Kerry, Ranking Member Ensign, and distinguished members of the Subcommittee on Communications and Technology, I am David Zaslav, President and Chief Executive Officer of Discovery Communications, Inc. I appreciate having the opportunity to provide Discovery's views on America's retransmission consent regime.

Discovery Communications is the world's number one nonfiction media company, with 13 television networks in the U.S. and over 120 networks in more than 180 countries around the world. Our mission, as set forth by our founder John Hendricks over 25 years ago, is to empower people to explore their world and satisfy their curiosity with high-quality nonfiction video content that entertains, engages and enlightens.

We applaud Chairman Kerry's continued leadership in taking on this critically important issue and believe that his draft legislation is a positive step in the right direction.

As an independent programmer with no affiliation to "must have" broadcast content, our view is that the current retransmission consent process is broken and has become susceptible to abuse by broadcasters who, as a result of an outdated regulatory structure that was based on market dynamics which no longer exist, today hold overwhelming leverage in negotiations with multichannel video program distributors (MVPDs) for carriage of local broadcast services.

And, it is that government-sanctioned leverage that is hindering the development and growth of diverse, independent sources of programming.

To fully appreciate how the current system negatively impacts programmers that offer an independent voice, it is critical to first understand the government's role in creating that system. As this subcommittee well knows, in 1992, Congress was concerned that cable operators provided broadcasters with their only means of reaching subscribers who were not watching television over the air. Congress feared that because cable operators had an incentive to refuse to carry broadcasters, their ability to continue to offer over-the-air broadcasting was at risk without cable carriage. With enactment of the Cable Television Consumer Protection and Competition Act of 1992 ("Act"), broadcast stations were granted the very powerful right to bargain for carriage and to withhold services from cable operators when their terms were not met.

Congress expected that despite being given this regulatory advantage, broadcasters' demands under this system would nonetheless be modest, because they would also benefit from cable carriage. The expectation was that the Act would ensure that the mere carriage of local broadcast stations on cable systems would be sufficient to address the public policy goal of providing fair distribution of broadcast services. Congress never contemplated that broadcasters' right to consent to the retransmission of signals over the public airwaves would be utilized to extract exorbitant fees from cable operators—a development that will harm consumers by increasing their costs and reducing the amount of independent programming available to them.

Almost two decades after the Act was passed, market dynamics in the video programming distribution market have rendered retransmission consent, one of the Act's core mandates, null. Broadcasters today have far less dependence on cable carriage because there are many other means of reaching viewers including through the two national direct broadcast satellite ("DBS") providers, DIRECTV and DISH Network, local exchange carriers such as Verizon (FiOS) and AT&T (U-verse), and through the quickly emerging platform of video distribution over the Internet.

As was illustrated by the recent and highly contentious Cablevision/Fox dispute, the harm to consumers in the form of interruptions in service and rising cable bill prices is the direct result of the broadcasters' disproportionate leverage in these negotiations.

Equally concerning is the serious harm to consumers that arises from the impact broadcasters' rising leverage has on independent programmers given that the current economic model makes it more difficult for such programmers to contribute diverse, informative programming to Americans' channel line-ups.

The "must have" nature of broadcast programming has impeded MVPDs' ability to realistically resist broadcaster demands in retransmission consent negotiations, even when those demands are objectively excessive. Perceiving opportunities to exploit, broadcasters have exponentially increased their fee demands and have begun to make unfair carriage demands on MVPDs. It is not at all uncommon for a cable operator to have faced a 200 percent–400 percent increase in its retransmission consent fees since just 2007.

As a result, cable operators and other MVPDs have greatly decreased financial resources and channel capacity to expend on independent programmers. Simply put, without adequate assurance of carriage on reasonable terms and conditions, Discovery Communications and other independent programmers will not be able to continue to create and provide the diverse, award-winning, innovative programming that consumers have come to expect as part of their MVPD package.

We appreciate the longstanding emphasis that Congress and the FCC have placed on protecting and promoting the greatest possible diversity in MVPD services and programming sources. To that end, we fully support Chairman Kerry's efforts on this issue.

Thank you again for the opportunity to submit testimony. We stand ready to help you, Chairman Kerry, and this subcommittee, as Congress tackles this complex issue.

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