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# AT A TIPPING POINT: CONSUMER CHOICE, CONSOLIDATION AND THE FUTURE VIDEO MARKETPLACE

## HEARING

BEFORE THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JULY 16, 2014

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ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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# AT A TIPPING POINT: CONSUMER CHOICE, CONSOLIDATION AND THE FUTURE VIDEO MARKETPLACE

**WEDNESDAY, JULY 16, 2014**

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, DC.*

The Committee met, pursuant to notice, at 2:40 p.m. in room SR–253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

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

The CHAIRMAN. Welcome all. The attendance does not represent on our part so far the interest in this subject. We just were finishing up a vote. Sometimes people tarry just a bit when that happens.

But this is a very serious hearing and a very important hearing. So, I am going to make my opening statement and then turn it over to Senator John Thune.

Today we are here to discuss the future of the video marketplace. We are continuing a conversation which the Committee began several years ago, 2 years ago, I think, on an examination of the emergence of online video.

I produced a bill, which caused some angst on K Street, but obviously opened up a conversation, which we are going to be continuing today. This bill asks whether it has the ability to bring more quality content and more choice to consumers.

The past 2 years have confirmed from my perspective the ability of online video to resonate with consumers and to generate critical acclaim.

In fact, just last week an online video provider—to be precise, Netflix—whose CEO declined to be here today, which I cannot figure out because I am trying to help him, I think, but he did not want to be here—anyway, the provider got 30 Emmy nominations and produced two online-only TV shows that are generally recognized by some to be the best TV shows airing today. Whether that is true or not, I just do not know.

It remains an open question whether online video can become the driving force of a consumer-centric revolution in the video marketplace, a matter which interests me greatly.

While it is true that at least one online video provider, that being Netflix, has more subscribers today than any one cable or satellite provider, combine those two categories together, and they have more.

No online video platform has emerged that can compete on equal footing with traditional cable or satellite service. It is important to remember that these online providers are reliant on broadband providers to reach consumers, and hence, the complexity of our discussion.

Last November, as I guess I already said, I introduced the "Consumer Choice in Online Video Act." That legislation is designed to start a real conversation about how to foster the growth of online video services. My bill provides them the breathing room necessary to compete on a level playing field with tradition pay TV services.

I continue to believe that one of the core policy questions that the Congress must grapple with as it looks to reform video policy is how to nurture new competitive technologies and services, and make sure that incumbents cannot simply perpetuate the status quo of ever increasing pay TV bills rising at a rate faster than inflation and limited programming choice.

This is particularly true when we have real world examples of at least one former cable CEO announcing to the world that his company actively tried to prevent the growth of new competitive online video services.

I know everybody says that and you are probably tired of hearing it, but it does kind of make a point because he was head of a cable service. Make no mistake, the video marketplace is at a tipping point. That is why there are so many of you here and that is why this is such a crucial point.

The video marketplace—the two proposed mergers could fundamentally reshape the marketplace. As press reports as recently as today indicate, there could be significant media mergers on the horizon.

More importantly, these mergers create even larger companies that combine high speed broadband and extensive media holdings. These proposed combinations of video, broadband and content have real implications for the future viability of competitive online video services.

As the current—this is sort of obnoxious as I say it, so please forgive me. As the current longest serving member of this committee, I hope that is true, I have had before me many CEOs. I am very serious about this, many CEOs and other company representatives touting the consumer benefits of ever larger companies in various industries.

In other words, you let us merge, prices are going to go down and trucks are going to arrive on time. They will tell you exactly what the guy is going to look like, you know, all this stuff.

Yet these mergers, essentially media mergers and telecommunications, railroads and airlines, just to name a few—a lot of folks around here do not like the word "regulation," but I suspect some folks who come from rural states recognize that the deregulation of the airline industry was a massive assault on rural America and small town America. Yet in most cases these benefits never come to pass. All the promises made are not the promises kept.

Of course, each of these mergers deserves to be judged on the merits. There is no theology here. This is a merit based discussion.

But doing so cannot and should not ignore what they could mean for the future of video.

Regulators must be vigorous in their review on the impacts of these transactions on competition and on consumers, what they have to pay, and what they have to see. Do people really want to see 500 channels when all they ever look at is eight, like me, or is it something different.

Our video marketplace stands at a crossroads today. I think I just said that. I just used different words. One path could lead to a perpetuation of the status quo into the online world, which I think is upon us, big time, and consumers left worse off than they were before.

The other path, the brighter path, is one where broadband facilitates a new evolution in video services as it has done in other markets. This evolution brings with it more consumer choice, more competitive alternatives, more high quality content, and for heaven's sake, lower rates.

Consumers clearly prefer the second path. They have an appetite for the types of service and choices that online video can bring. Policymakers in my judgment must respond to that desire. If that is what consumers want, then we need to respond to that, responsibly, and make sure that online video has the room needed to flourish and push towards a consumer-centric video marketplace.

That is the shortest opening statement I have ever given, I think, Senator Thune, but I want to thank our witnesses for being willing to come, and to the head of Netflix, we will see him, too, but it will be later, I guess.

So, I look forward to the discussions and I look forward to anything that my Co-Chair has to say.

**STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman, for holding today's hearing, and thank you to all our panelists as well for being here.

Mr. Chairman, the title of this hearing suggests that we have reached a tipping point in the video marketplace and that we may have arrived at a foreboding precipice for the future of video.

While the mergers proposed between Comcast and Time Warner Cable and between AT&T and DIRECTV involve some of the largest American telecommunications firms and tens of millions of American households, I am not convinced it will necessarily change the market in a permanent or a negative way.

That said, there is no doubt that these transactions are quite significant, and we are rightly here to discuss them and their potential impact on the marketplace, and most importantly, on our constituents.

The marketplace for video services is dynamic and appears increasingly robust. It was not that long ago when meaningful competition to cable companies simply did not exist. Today, nearly all homes have three pay TV providers competing for their business, and that number is unlikely to be reduced by the pending mergers.

In addition to the current facilities-based competition, there is a growing class of video services we call "over-the-top." While this market is still nascent, it is also ascendant. Many of the companies driving it are household names that dwarf many traditional pay TV providers. Google, Amazon, Microsoft, Apple, Yahoo, and Netflix are all investing tremendous resources in unique and previously impossible ways to capture a greater share of the video marketplace.

Consumer choice for video delivery and video content is greater today than ever before. The continued promise of increasing choice and consumer empowerment, however, will need an ever more capable broadband infrastructure, both wired and wireless.

So, Mr. Chairman, I am eager to hear how these mergers may improve the broadband network infrastructure on which our digital economy and video services increasingly rely. I am particularly interested in what benefits these mergers would provide to people in rural areas, like in my home state of South Dakota, and yours of West Virginia.

It is also important for the Committee to understand how competitors and other market participants may respond to these mergers if they are approved. Smaller video providers and content creators fear that they will get further squeezed as the big companies get bigger. Are these fears legitimate, and if so, can they be assuaged?

Another aspect that should be discussed is the role of content creators and video programmers in shaping the future of the video marketplace. As large as some pay TV companies may grow, none will succeed in the marketplace without securing the rights to carry high quality content created and owned by others. Bill Gates once said, and I quote, "Content is king," unquote. That is certainly true for video.

It is even more true for online video. So, while a broadband connection is essential, ultimately it is the content delivered by that connection that drives demand and competition in the online video marketplace.

In future hearings and outreach to stakeholders, we should solicit the input of online video providers and major unaffiliated video programmers to provide perspectives and insights into the dynamic interplay between content, platform, and infrastructure.

I know the promise of online video is a subject you deeply care about, Mr. Chairman, and I look forward to continuing to build the Committee's record and exploring ways to work together to ensure that consumers ultimately realize that promise.

Thank you again for holding today's hearing, Mr. Chairman. I look forward to hearing from our witnesses. Thank you.

The CHAIRMAN. Thank you, sir. Let's go right to our opening statements, and there are seven of you.

Senator THUNE. Six.

The CHAIRMAN. Six; yes. So, please do not talk more than half an hour.

[Laughter.]

The CHAIRMAN. If you want the hearing to be interesting, make it about five, and I know you can do that, David, you can do that.

So, David Cohen is recognized. He is Executive Vice President for the Comcast Corporation. I look forward to what you have to say.

## STATEMENT OF DAVID L. COHEN, EXECUTIVE VICE PRESIDENT, COMCAST CORPORATION

Mr. COHEN. Thank you very much, Mr. Chairman, Ranking Member Thune, and members of the Committee. I appreciate the opportunity to testify today about the robust state of competition in the video marketplace.

As I entered this hearing room, I was reminded of the determined efforts of this committee over the past two decades, including you, Mr. Chairman, and a bipartisan group of past chairs of this committee, to support video competition and greater programming choices for the benefit of consumers.

I would be remiss if I also did not recognize Senator Markey's work in the House on that same subject, and I think we are all benefiting from that two decades of work that all of you have been engaged in.

America has indeed reached a tipping point in those efforts, and it is tipping decidedly in the favor of consumers, who are now enjoying what many rightly call "a new golden age of video services," more choices, new technologies, and incredible content, and this is the direct result of thoughtful government policies that remove barriers to competitive entry, reduce regulation, and allow the marketplace to grow and flourish.

More companies than ever before, both large and small, old style and new style, are producing high quality and diverse programming, competing to deliver that programming using an unprecedented array of innovative technologies and business models, and experimenting and competing in both the production and delivery of content.

During a typical week, nearly a quarter of adults watch downloaded or streaming video through their smartphones, and nearly half of game console users stream and watch video over those devices. 7.6 million U.S. homes are now considered cord cutters or cord nevers, meaning they have high speed Internet but no cable or satellite television service.

Nielsen reports that YouTube reaches more U.S. adults ages 18 to 34 than any cable network, and Netflix, as the Chairman observed, has over 35 million domestic subscribers, and if I can slightly adjust the comparison, that is more than Comcast and Time Warner Cable combined.

Amazon, Hulu, Netflix, Yahoo! and other websites are developing their own original series, including such successful shows as *House of Cards, Orange is the New Black,* and *Alpha House.*

And notwithstanding this explosion of alternative video consumption models, traditional television viewing has remained essentially constant, with the average adult consuming more than 5 hours a day of television.

This new golden age is made possible in large part by the $1.2 trillion that cable companies, phone companies, and wireless companies have invested to bring broadband Internet to every corner of America since the passage of the 1996 Telecommunications Act.

Comcast alone offers high speed data services to tens of millions of households. We have increased speeds 13 times in the last 12 years. We invest billions to double the capacity of our network every 18 months, and we have driven the price per megabit of data consumption down 92 percent since 2002, and it is thanks to this investment in broadband networks that online video distribution has flourished. The number of online video subscribers more than tripled, from 18.2 million in only 2010, to 54 million in 2013.

The video viewing options are going to continue to grow as even more companies, including such power houses as AT&T, Verizon, DIRECTV, DISH, Amazon, Apple, Sony, Google, Netflix, and Facebook, to name a few, compete for their attention and loyalty.

The increasing rivalry and experimentation among these national and global companies is a primary business driver for the Comcast/Time Warner Cable transaction. It will give Comcast the increased geographic reach and economies of scale necessary to compete in this capital intensive, rapidly evolving industry, where continued research and development and innovation are essential, allowing us to invest the billions of dollars required for next generation technologies and services, and when we invest and innovate, so do our competitors.

The mere announcement of our transaction has already caused other companies across the country to accelerate and expand their investment plans. All of this is great for consumers and our economy, and it will ensure that this new golden age of television extends well into the future.

As I noted in my opening, the massive investment and robust competition that has brought us to this tipping point is in large part a result of the pro-investment/deregulatory policies that this committee and others set in motion, especially through the 1996 Act.

So, at this time of extraordinary disruption in innovation, it would not benefit consumers or businesses to add significant legislative uncertainty into the mix. Congress should instead continue to allow this dynamic and evolving video marketplace to continue to grow.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF DAVID L. COHEN, EXECUTIVE VICE PRESIDENT, COMCAST CORPORATION

Mr. Chairman, Ranking Member Thune, and members of the Committee, I appreciate this opportunity to testify today about the state of competition in the video marketplace.

**I. The Video Marketplace Is Robustly Competitive**

The title of this hearing is apt—we are at a notable tipping point in the development of the video marketplace, and it is tipping decidedly in favor of American consumers.

They are enjoying what many are rightly calling a "golden age" of video services thanks to an exceptionally dynamic and competitive marketplace. As David Carr of *The New York Times* has observed, "[t]he vast wasteland of television has been replaced by an excess of excellence." [1]

A growing number of companies are producing significantly more high-quality and diverse programming than ever before. And more companies are competing to deliver that programming using a greater array of technologies and business models than ever before. And even more companies are experimenting and competing in *both* the production and delivery of content than at any time in our history.

[1] David Carr, *Barely Keeping Up in TV's New Golden Age,* N.Y. Times, Mar. 9, 2014, *http://www.nytimes.com/2014/03/10/business/media/fenced-in-by-televisions-excess-of-excellence.html.*

All of this competition is great for American consumers, giving them access to more of the content they want, whenever and wherever they want it. This competition has flourished largely because Congress, led by the bipartisan efforts of this Committee in the 1980s and 1990s, dramatically reduced the role of regulation in the video marketplace, facilitated intermodal competition, threw open the opportunity for investment in broadband Internet, and let the marketplace thrive.

In fact, it is fair to say that the Telecommunications Act of 1996 ("1996 Act")[2] worked better than could have been imagined to create competition, choice, and innovation—in some expected ways and in some unexpected ways.

Consider all of the diverse methods that consumers are now accessing video content in its many forms. In addition to traditional broadcasting and multichannel video programming distributor ("MVPD") services, which now include cable, satellite, telephone companies, and others, there is an astonishing proliferation of new sources of video content—most of them using the broadband Internet that cable companies helped lead the way in providing to American consumers. As reported by the White House last year, "[s]ince 2009, the percentage of American homes reached by high-speed broadband networks have more than quadrupled (from less than 20 percent to more than 80 percent) and average broadband speeds have doubled."[3]

The power of technology and free markets continues to radically transform how consumers access video. Now, virtually any device with a screen and an Internet connection delivers video. Indeed, in 2013, 66 percent of all Internet traffic was video. This number is projected to increase to *79 percent* in the next five years.[4]

Americans are increasingly turning to devices other than their televisions for consuming video content, such as iPads, smartphones, and laptops. And when they use their TVs, they are increasingly connecting them to new intermediate devices like Apple TV, Roku, TiVo, and Google Chromecast to stream or download video; or watching content on entertainment apps on Smart TVs. A recent study found that, during a typical week, nearly a quarter of all adults watch downloaded or streaming video through their smartphone, making it the top device for consuming that type of content. And in the same study, nearly half of game console users reported that they primarily use those devices to stream and watch video.[5]

YouTube alone registers more than *1 billion* unique user visits each month; over *6 billion* hours of content are watched each month; and more than 100 hours of content is uploaded to YouTube *every minute.* According to Nielsen, YouTube reaches more U.S. adults ages 18 to 34 than any cable network.[6]

Streaming services have similarly surpassed traditional MVPDs in customers. Netflix has approximately 44 million subscribers worldwide—35.7 million domestic subscribers (greater than the number of subscribers of any MVPD, including Comcast and Time Warner Cable combined)—and announces services to new countries every month.[7] Amazon Prime, which launched its Prime Instant Video service just two-and-one-half years ago, already has approximately 20 million subscribers worldwide.[8]

With this rapid transformation in the way video content is distributed has come even more investment and innovation in content production.

Online video distributors ("OVDs") are producing their own content and curating other programming. Netflix, for example, has developed highly successful original series, such as *House of Cards* and *Orange is the New Black,* and now has a $3 billion annual programming budget that exceeds the programming budgets of many

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[2] Telecommunications Act of 1996, Pub. L. No. 104–104 (1996).

[3] *See* Press Release, White House, Fact Sheet: Administration Provides Another Boost to Wireless Broadband and Technological Innovation (June 14, 2013), *http://www.whitehouse.gov/the-press-office/2013/06/14/fact-sheet-administration-provides-another-boost-wireless-broadband-and-.*

[4] Cisco, Visual Networking Index: Forecast and Methodology, 2013–2018 (June 10, 2014), *http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/VNI_Hyperconnectivity_WP.html.*

[5] Experian Marketing Services, *Cross-Device Video Analysis* (2013), *http://www.experian.com/marketing-services/cross-device-video-analysis.html.*

[6] *Follow the audience . . .,* YouTube Official Blog (May 1, 2013), *http://youtube-global.blogspot.com/2013/05/yt-brandcast-2013.html.*

[7] *See* Netflix Inc., Quarterly Report (Form 10–Q), at 16 (Apr. 23, 2014), *http://files.shareholder.com/downloads/NFLX/3300463643x0xS1065280%2D14%2D12/1065280/filing.pdf;* Netflix Inc., Annual Report (Form 10–K), at 1 (Feb. 3, 2014), *http://ir.netflix.com/common/download/sec.cfm?companyid=NFLX&fid=1065280-14-6&cik=1065280.*

[8] *See* Jay Yarow, *Amazon Says It Has At Least 20 Million Prime Members,* Business Insider, Jan. 6, 2013, *http://www.businessinsider.com/amazon-prime-members-2014-1.*

cable networks.[9] In addition, Netflix has established an exclusive "next season" window for valuable television content, including *Mad Men, Breaking Bad, Revolution,* and *Pretty Little Liars,* and has announced exclusive deals for content from Disney, DreamWorks, and The Weinstein Company.[10] Similarly, Amazon Studios created a half-hour political comedy, *Alpha House,* and has ordered full seasons of six more original series.[11] Amazon also recently announced an exclusive streaming arrangement for HBO's library of productions, including *The Sopranos* and *The Wire.*[12]

Last year, Hulu launched five original series, *Moone Boy, East Los High, Quick Draw, Behind the Mask,* and *The Awesomes,* and announced plans to expand its slate of originals this summer. Hulu also has exclusive subscription video-on-demand ("VOD") rights to over 5,300 episodes from the CBS library, including current hits *Blue Bloods* and *Elementary,* as well as popular series such as *Everybody Loves Raymond* and *Survivor.*[13] Yahoo! has announced plans to produce two original TV-length comedy series and to live-stream via Live Nation one concert per day for a year on Yahoo!'s websites and apps, plunging Yahoo! "directly into the increasingly competitive world of high-quality digital video."[14] And just last month, Yahoo! struck a deal with Sony Pictures Television to stream a 13-episode season of the sitcom *Community.*[15]

And what I have just described only scratches the surface of the content explosion being driven by new technology. There are literally millions of viewing options, offerings thousands upon thousands of hours of long-and short-form content, being offered by dozens of other websites such as Vimeo, DailyMotion, Vube, Twitch, LiveLeak, UStream, Break, MetaCafe, Viewster, and Crackle, attracting millions and millions of viewers.[16]

In the face of all of this new competition, MVPDs are working harder than ever for consumer attention and loyalty with one another *and* with these new online competitors.

Cable operators currently compete against DirecTV and Dish in every market in which cable provides service. In many of those markets, cable companies also face competition from telephone companies like AT&T and Verizon, as well as overbuilders like RCN, WOW!, and Google Fiber. In fact, in 2011, *98.6 percent of homes in America had access to at least three MVPDs* and *35.3 percent had access to at least four.* Cable operators' collective share of MVPD subscribers has plummeted from 87 percent in 1999 to 55.7 percent in 2012.[17] And that percentage has further declined as telephone competitors continue to invest in upgrading their networks to deliver video:

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[9] *See* Lacey Rose, *Netflix's Original Content VP on Development Plans, Pilots, Late-Night and Rival HBO (Q&A),* The Hollywood Reporter, June 18, 2014, available at *http://www.hollywoodreporter.com/news/netflixs-original-content-vp-development-712293.*

[10] *See* Netflix Q3 2013 Investor Letter (Oct. 21, 2013); Netflix Q2 2013 Investor Letter (July 22, 2013); Netflix Q4 2012 Investor Letter (Jan. 23, 2013).

[11] *See* Joan Solsman, *Amazon Renews "Alpha House," Picks Up 6 Series,* CNET, Mar. 31, 2014, *http://www.cnet.com/news/amazon-renews-alpha-house-picks-up-6-new-series/.*

[12] Liana Baker & Lisa Richwine, *Amazon Grabs Tights to Stream Older HBO Shows,* Reuters, Apr. 23, 2014, *http://www.reuters.com/article/2014/04/23/us-hbo-amazon-idUSBREA3M14J20140423.*

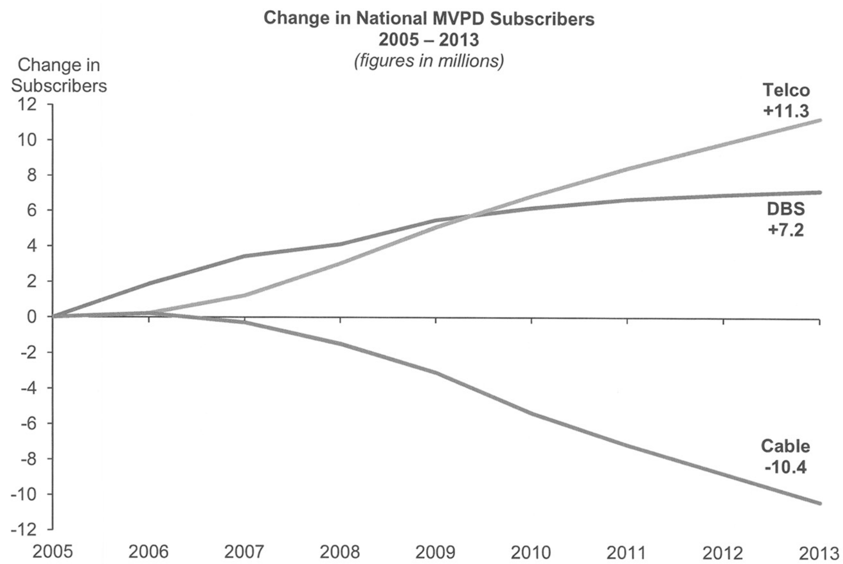
[13] *See* Meredith Blake, *Hulu Expands Original Content, Boasts 6 Million Hulu Plus Subscribers,* L.A. Times, Apr. 30, 2014, available at *http://www.latimes.com/entertainment/tv/showtracker/la-et-st-hulu-upfront-originals-6-million-hulu-plus-subscribers-20140430-story.html.*

[14] *See* Vindu Goel & Bill Carter, *Yahoo to Offer TV-Style Comedy Series on the Web,* N.Y. Times, Apr. 28, 2014, available at *http://www.nytimes.com/2014/04/29/technology/yahoo-to-offer-two-tv-length-comedy-series-on-web.html?hpw&rref=television&_r=0.*

[15] *See* Josef Adalian, *Community Moving to Yahoo for Sixth Season,* Vulture, June 30, 2014, *http://www.vulture.com/2014/06/community-moving-to-yahoo-for-sixth-season.html.*

[16] *See, e.g.,* Top 15 Most Popular Video Websites/July 2014, eBiz/MBA, *www.ebizmba.com/articles/video-websites* (last visited July 12, 2014).

[17] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Fifteenth Report, 28 FCC Rcd. 10496, ¶ 3 (2013).



Source: SNL Kagan; SEC filings; FCC Video Competition Reports

MVPDs are also responding to new competing video devices and interfaces by accelerating their own pace of pro-consumer innovations. Comcast, in particular, has made major investments to develop and deploy X1, its nationally acclaimed entertainment operating system with cloud technology, to provide its customers with greater access to more content on a variety of devices inside and outside the home. The X1 platform provides an unmatched interactive TV experience featuring a state-of-the-art user interface and other product features that transform our customers' viewing experiences.[18] Comcast has also launched its new X1 cloud DVR, which enables customers to watch their DVR recordings on computers and mobile devices in the home, and to download recorded content to take on-the-go. In addition, Comcast has launched a live in-home streaming feature in certain markets that allows customers on the X1 platform to stream practically their entire TV channel lineup to computers and mobile devices in the home at no extra cost.

Comcast has likewise led the cable industry in going all-digital, dramatically improving the video experience while simultaneously freeing up valuable bandwidth for enhanced data, video, and voice services. Comcast customers now have more cable channel viewing and Xfinity On Demand choices, offering over 55,000 programming options, including the most current TV shows and movies; 80 percent of this content is free of charge. Xfinity On Demand also has the best new release movies from all the major studios, and one of the broadest selections of independent films. Through XfinityTV.com and Xfinity TV mobile apps, for example, Comcast cable customers can access more than four dozen live TV channels, and over 25,000 movies and TV shows that can be watched anytime, anywhere, including by downloading programming to watch offline later.

*All of this competition, investment, and innovation is great for consumers.* And it is the direct result of government policies that removed barriers to competitive entry, reduced regulation, and allowed the marketplace to flourish.

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[18] Praise for the value and innovation of the X1 platform has been widespread. *See, e.g.,* Todd Bishop, *Xfinity X1: How Comcast Roped Me Back into Cable,* GeekWire, Aug. 22, 2013, *http://www.geekwire.com/2013/xfinity-x1/* ("I have been testing this sleek black cable box for the past three weeks, but to call it a cable box really doesn't do it justice. It is a nice blend of Internet content, live television, apps, a multi-tuner DVR and on-demand programming, in one of the cleanest user interfaces that you'll find from a cable company."); Tim Carmody, *Comcast's New X1 UI Integrates Real-time and Streaming TV with News and Social Apps,* The Verge, May 21, 2012, *http://www.theverge.com/2012/5/21/3033972/comcast-ui-platforms-video-news-social-apps* ("[X1] feels like a genuinely 21st-century way to use a widescreen television set—like a smart TV inside your cable box.").

**II. The Broadband Marketplace Is Also Robustly Competitive—And It's Driving Even More Video Competition**

The innovations in the video marketplace are made possible in large part by the $1.2 trillion that cable companies, phone companies, and wireless companies have invested to bring open and competitive broadband Internet to every corner of America.[19] The dramatic growth of Internet video has driven the rapid growth in demand for broadband Internet services, and the companies that build broadband networks have been highly responsive to that growing demand.

Comcast and other cable operators, along with other wireline and wireless broadband providers, have played a leading role in making this transformation of the video world possible, empowering greater innovation. Comcast alone has made broadband Internet available to tens of millions of households, increasing speeds 13 times in 12 years, driving prices per Mbps down 92 percent over that same period, and leading the way for Internet adoption in low-income households with our acclaimed *Internet Essentials* program.[20]

Comcast's investments have spurred intense competition from other companies. Today, telcos, cable, overbuilders, satellite providers, and wireless broadband providers compete with traditional cable providers to serve the needs of broadband Internet consumers across America. For example, nearly half of the homes in Comcast's current footprint have access to AT&T's U-verse and/or Verizon's FiOS.[21]

DSL is increasingly competitive with cable, as a result of ongoing investments in next-generation DSL technology—including fiber-to-the-node ("FTTN"), IP–DSLAM, VDSL2, and pair bonding. In fact, AT&T's U-verse currently delivers speeds up to 45 Mbps and will deliver speeds up to 100 Mbps to FTTN-based locations; CenturyLink offers speeds up to 40 Mbps; Frontier offers speeds up to 25 Mbps; and Verizon DSL offers speeds up to 15 Mbps.[22] These speeds are *no less than five times greater* than the speeds that Netflix tells users they need to stream videos in full DVD quality.[23] The FCC's latest "Measuring Broadband America" report shows that these newer DSL technologies are very competitive for broadband consumers.[24] Moreover, contrary to the false picture some have painted of DSL as a moribund service, between December 2008 and December 2012, DSL-based broadband connec-

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[19] *Broadband Investment,* United States Telecom Association, *http://www.ustelecom.org/broadband-industry/broadband-industry-stats/investment* (last visited July 9, 2014).

[20] Since Comcast launched *Internet Essentials* during the 2011 back-to-school season, more than 1.2 million Americans, from 300,000 families, have been connected to the power of the Internet at home. We have also sold more than 23,000 low-cost, subsidized computers to program families.

[21] As of June 2013, about 99 percent of households are located in census tracts where three or more fixed or mobile broadband providers reported offering at least 3 Mbps downstream and 768 kbps upstream; and over 92 percent of households are located in census tracts where two or more providers reported offering at least 10 Mbps downstream and at least 1.5 Mbps upstream. FCC, *Internet Access Services: Status as of June 30, 2013,* at 9–10 (June 2014), *http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0625/DOC–327829A1.pdf.*

[22] As the head of MLB Advanced Media recently stated, in response to the claim that "[t]he cable guys pretty much control broadband":

> How? We have telcos now. You've got wireless. The only pay TV business that's growing now is U-[v]erse and FiOS. They're owned by AT&T and Verizon. I don't think you should discount what AT&T and Verizon can do without a landline—what they can do through the air. Who knows what this is going to look like? * * * A lot of our people watch our live games in 4G. . . . If you watch [a] live baseball game in 4G it looks pretty good and 5G is just round the corner.

David Lieberman, *Q&A: MLB Advanced Media CEO Bob Bowman on WWE Network, Sony's Virtual Pay TV Plans, and What's Next for Streaming Video,* Deadline, Jan. 21, 2014, *http://www.deadline.com/2014/01/qa-mlb-advanced-media-ceo-bob-bowman-on-wwe-network-sonys-virtual-pay-tv-plans-and-whats-next-for-streaming-video/* (quoting Bob Bowman).

[23] *See Internet Connect Speed Recommendations,* Netflix, *https://help.netflix.com/en/node/306* (last visited July 10, 2014) (stating that users can stream Netflix videos at speeds as low as 0.5 Mbps, and can stream them in full-DVD quality with speeds of 3 Mbps).

[24] FCC, *2014 Measuring Broadband America—Fixed Broadband Report,* Charts 9.4 & 9.5 (June 2014), *http://data.fcc.gov/download/measuring-broadband-america/2014/2014-Fixed-Measuring-Broadband-America-Report.pdf.* Despite recent media stories suggesting otherwise, the FCC's report shows that when the data for *traditional* DSL (or "ADSL")—*i.e.,* downstream speeds generally of 1 to 6 Mbps—are separated out from the data for *next generation* DSL (known as "VDSL")—*i.e.,* downstream speeds generally from 6 to 40 Mbps—there is no doubt that newer DSL technologies are very competitive. It is only traditional ADSL that is "lagging" behind cable broadband. For example, in the 18 to 25 Mbps tier, the tests were all of VDSL, cable, and fiber. The FCC's data show that, at these speeds, VDSL performs at the same levels as cable (*i.e.,* at or above 100 percent).

tions grew at an average annual rate of 25 percent, exceeding cable broadband's 18 percent annual pace of growth.[25]

Importantly, these current measures of broadband competition *are already becoming stale.* Almost daily, companies are announcing new plans and breaking ground to deliver faster speeds and expanded services across the country.

For example, just last week, Alcatel-Lucent reported that it has achieved data transmission speeds of 10 Gbps over a 30-meters length of bonded copper using a next-generation DSL technology it is calling XG–FAST. The technology is an extension of G.fast "that promises theoretical speeds of up to 1 Gbps over the copper connection to a broadband user's premises." [26]

AT&T is expanding U-verse, a service based primarily on FTTN technology, as part of its "Project VIP" investment plan. This will enable AT&T to offer FTTN-based U-Verse services to 33 million customer locations, and "U-Verse IP–DSLAM" services to an additional 23 million customer locations, by the end of 2015. AT&T also announced plans for potential expansion of its 1 Gbps fiber-optic service to up to 21 new metropolitan areas. On top of these expansion plans, and as part of its proposed acquisition of DirecTV, AT&T has announced that it will use the merger synergies to build and enhance high-speed broadband service to 15 million customer locations utilizing a combination of technologies, including fiber-to-the-premises and fixed wireless local loop capabilities.

CenturyLink is on a similar path, with announced network investments that include gigabit fiber, VDSL2, and pair bonding deployments to efficiently enable higher speeds.

Google Fiber is planning to launch its competitive broadband services in nine new metro areas, which will include expansive Wi-Fi service.[27]

Mobile wireless is also a bona fide competitor in delivering all broadband services, including high-quality video. Mobile wireless data speeds and capacity continue to increase rapidly with next-generation services like LTE/LTE-Advanced and radio technology (*i.e.,* beaming data via satellite over 40 MHz blocks of spectrum). Between June 2012 and June 2013, mobile connections offering 3 Mbps downstream or faster more than doubled, increasing from 43 million to 93.2 million.[28] Recently, Masayoshi Son of SoftBank (which owns Sprint) noted that he intends to outstrip typical cable broadband speeds by building a wireless broadband network offering up to 200 Mbps.[29]

Looking ahead to 2018, SNL Kagan predicts that there will be 224 million 4G subscriptions active in the United States, up from 22.6 million at year-end 2013.[30] This alone will easily surpass the rate of growth of cable broadband service during the past five years and over the next five. The FCC will contribute significantly to that growth story as it moves forward with its upcoming spectrum auctions.

As a result of all of this investment, innovation, and competition in broadband networks, OVDs have *flourished* in the last several years.

According to a recent SNL Kagan report, the number of online video subscribers has increased from 18.2 million in 2010 to approximately 53.9 million at the end of 2013. Revenue for subscription services alone reached nearly $3.67 billion at year-end 2013, up over 35 percent from $2.7 billion in 2012. Total online video revenue grew 32 percent in 2013, topping nearly $5.45 billion and up from $4.12 billion in 2012. SNL Kagan predicts that figure will more than double in the next decade. Between 2012 and 2013, the number of online movie and television show purchases

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[25] *See* Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 14–57, Applications and Public Interest Statement, at 48 (filed Apr. 8, 2014).

[26] *See* Ray Le Maistre, *Bell Labs Claims Copper Speed Record,* Light Reading, July 9, 2014, *http://www.lightreading.com/broadband/dsl-vectoring-gfast/bell-labs-claims-copper-speed-record/d/d-id/709846.*

[27] *See* James O'Toole, *People in Overland Park, Kansas, May Soon Have 100 Times Faster Internet Than You,* CNNMoney, July 8, 2014, *http://money.cnn.com/2014/07/08/technology/innovation/google-fiber-overland-park/index.html.*

[28] *See* FCC, *Internet Access Services: Status as of June 30, 2013,* at 2 (June 2014), *http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0625/DOC-327829A1.pdf.*

[29] *See* Presentation by Masayoshi Son, The Promise of Mobile Internet in Driving American Innovation, the Economy and Education, Tr. at 12 (Mar. 11, 2014), available at *http://cdn.softbank.jp/en/corp/set/data/irinfo/presentations/vod/2013/pdf/press_20140311_02.pdf.*

[30] *See* SNL Kagan, *Covered Pops & Subscribers by Technology in U.S. Wireless* (July 2013). Similarly, Cisco predicts the number of 4G connections in North America in 2018 to be 372 million. *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2013–2018,* at 36 (Feb. 5, 2014), *http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white_paper_c11-520862.html.*

also nearly doubled, while the number of online movie and television show rentals more than doubled.[31]

Furthermore, according to recent estimates, nearly 6.5 percent of U.S. households—or 7.6 million homes—are now considered "cord-cutters" or "cord-nevers," meaning they have high speed Internet but no cable or satellite television service—a dramatic 44 percent increase since 2010.[32] (The percentage of 18 to 34 year olds—a key demographic for advertising purposes—in this category is 12.4 percent, nearly double the 6.5 percent nationwide rate. And if the household has either a Netflix or Hulu subscription, the percentage nearly *triples,* from 6.5 percent to over 18 percent.)

### III. The Proposed Comcast-Time Warner Cable Transaction Will Spur Even Greater Innovation And Competition In The Industry, Bringing More Consumer Benefits

Americans will continue to benefit from the dynamic growth in video and broadband services as more and more companies, including such powerhouses as AT&T, Verizon, DirecTV, Dish, Amazon, Apple, Sony, Google, Netflix, and Facebook, compete for their attention and loyalty. The increasing rivalry and experimentation among these national and global companies is a primary business driver for the Comcast/Time Warner Cable ("TWC") merger.

The proposed transaction will give Comcast the increased geographic reach and economies of scale necessary to compete in this capital intensive, rapidly evolving industry, where continued research and development and innovation are essential. By combining with TWC, Comcast can also achieve the increased geographic reach and economies of scale necessary to invest the billions of dollars required for next-generation technologies, greater service reliability, secure networks, and faster Internet speeds. This will let us drive more innovative products and services into the marketplace, allowing us to meet the needs of American consumers, businesses, and institutions in ways better than the two companies could do separately.

For example, TWC customers will immediately benefit from Comcast's commitment to invest continuously in high-speed data services, as well as Comcast's next-generation products like the X1 operating platform, greater cable channel and VOD choices, best in-home Wi-Fi, and superior TV Everywhere services. The transaction will also enable Comcast to accelerate and expand the availability of Wi-Fi "hotspots" across the combined footprint, which will provide greater mobile access to Internet content. In less than three years, Comcast has deployed over one million Xfinity WiFi access points in its current footprint—and seen a significant spike in usage. And, on April 30, 2014, Comcast unveiled plans to reach *eight million* Xfinity WiFi hotspots in major cities coast to coast by the end of this year.[33]

With larger scale and network coverage, Comcast will also have the capability to deploy other new products and technologies more quickly and efficiently than either company could do on its own, such as IP cable and related technologies. Accelerating the IP cable transition will yield a number of consumer and public interest benefits. Among other things, IP cable will:

- Enable consumers to access their cable and advanced video services in their homes on an even greater variety of IP-enabled retail devices—such as video game consoles, tablets, and other connected devices;
- Shift more of the network intelligence to the cloud, allowing Comcast to rapidly roll out new functionalities to consumers;
- Simplify its existing distribution networks by relying on IP technology to transport all of its services and relying on innovative off-the-shelf IP-based retail devices, thereby reducing home equipment and inventory costs; and
- Reduce energy consumption for consumer set-top boxes.

The transaction will further enable Comcast to provide more accessible services and features for disabled Americans. For example, Comcast is leveraging the X1 cloud-based platform to deliver the first "talking guide" in the MVPD industry. The remote control for the X1 platform—known as the XR2—also includes "soft keys" that a customer with a disability will be able to configure to enable quick access

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[31] SNL Kagan, Internet VOD Revenues, 2010–2023 (June 30, 2014), *http://www.snl.com/interactivex/doc.aspx?ID=28510695&KeyFile=24251620.*

[32] Experian Marketing Services, *Cross-Device Video Analysis* (2013), *http://www.experian.com/marketing-services/cross-device-video-analysis.html.*

[33] *See* Press Release, Comcast Corp., Comcast to Reach Eight Million Xfinity WiFi Hotspots in 2014 (Apr. 30, 2014), *http://corporate.comcast.com/news-information/news-feed/comcast-to-reach-8-million-xfinity-wifi-hotspots-in-2014.*

to the talking guide and other accessibility features, such as closed captioning and video description.

Furthermore, because Comcast and TWC serve separate and distinct geographic areas and do not compete for video, broadband, or other services, the proposed combination of the two companies will not reduce consumer choice *in any market.* This transaction is not a horizontal merger and there will be no loss of competition anywhere.

Nor will the transaction harm competition in other markets where the combined company is involved. The transaction will leave Comcast, after planned divestures, with about 29 million subscribers in systems it manages. Comcast's share of the MVPD market will be below 30 percent—around the same share that Comcast had after the AT&T Broadband (2002) and Adelphia (2006) transactions. This will also be below the 30 percent "ownership cap" that the FCC had adopted based on a stated intention to prevent a cable operator from exercising bottleneck or monopsony control over programmers. The D.C. Circuit twice rejected the ownership cap, finding, among other things, that "the record is *replete* with evidence of ever increasing competition among video providers. . . . *Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992.*"[34] Of course, the MVPD marketplace is even more competitive now than it was five or more years ago.

Far from harming competition, the greater investment and innovation resulting from the transaction will spur other companies to respond to consumer demands with their own investments and innovations. The mere announcement of our transaction has already created a "heightened sense of urgency" at AT&T to accelerate investments in its broadband networks.[35] Other companies are also speeding up and expanding their plans for further investments in broadband infrastructure.[36] Verizon's CFO, for example, expressed the same eagerness to compete, stating: "I compete against Time Warner Cable today. I compete against Comcast today. I'll just compete against Comcast tomorrow [by offering] a superior product to any of them. . . ."[37]

This heightened competition, which AT&T's CEO Randall Stephenson has aptly described as "a *dogfight,*" will result in even greater video and broadband choices and services for American consumers, extending the new "golden age" of television well into the future.[38]

## IV. Further Regulation Is Unnecessary And Could Risk Disrupting Today's Dynamic Video Marketplace

As I stated earlier, the massive investment and robust competition in the video marketplace can be largely attributed to the deregulatory policies that this Committee and others set in motion, most notably through the 1996 Act. Although the passage of time alone may justify a review of the law, Congress should continue to let the video marketplace grow and evolve without further regulation. If anything, Congress should re-examine and eliminate regulatory burdens that only apply to some of the companies competing in today's marketplace, so that all providers have a level playing field to invest, innovate, and serve consumers.

I will briefly touch upon some of the proposals that have been made to "rewrite" the current regulatory landscape, and why these are unnecessary and could have unintended, adverse consequences for consumers.

### *A. OVDs Do Not Face Barriers To Accessing Video Programming.*

The nearly ubiquitous availability of online content for American consumers proves that OVDs face no meaningful barriers to accessing video programming. The

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[34] *See Comcast Corp.* v. *FCC,* 579 F.3d 1, 8 (D.C. Cir. 2009) (emphasis added).

[35] *See* Randall Stephenson, Chairman & CEO, AT&T, Inc., Morgan Stanley Technology, Media & Telecom Conference, Tr. at 3 (Mar. 6, 2014).

[36] Since this transaction was announced, numerous companies have reported plans for major investments in infrastructure, as well as the deployment of new technologies and services for video content and delivery. *See* Exhibit 1 (Timeline of Technology and Communications Investment and Innovation Since Comcast-TWC Merger Announcement).

[37] *See* Fran Shammo, EVP & CFO, Verizon, Deutsche Bank Media, Internet and Telecom Conference, Tr. at 13 (Mar. 10, 2014); *see also* Gautham Nagesh, *Comcast Sees Time Warner Cable Deal Boosting Broadband Competition,* Wall St. J., Feb. 21, 2014, *http://online.wsj.com/news/articles/SB10001424052702304275304579397541413329198* ("Verizon has a history of introducing the next big thing for our video and Internet customers. This [transaction] just changes the name of the competitor in some of our markets.") (quoting Verizon spokesman Ed McFadden).

[38] *See* Shalini Ramachandran & Thomas Gryta, *Cutting the Cable and Getting "Phone TV",* Wall St. J., Nov. 1, 2013, *http://online.wsj.com/news/articles/SB10001424052702303843104579169971029572160.*

online video marketplace has grown exponentially in the past several years. OVDs are licensing from the widest imaginable range of programming sources as well as producing more of their own content. While some insist that the programming marketplace needs to be heavily regulated to the benefit of OVDs, the facts show that is not necessary.

Video content producers have no economic incentive to block access to their programming. That is because it is in the content provider's economic interest to license programming broadly to gain as much revenue as possible from expensive-to-produce content.[39]

In the case of NBCUniversal, for example, agreements with OVDs are now a regular part of our licensing business. Since the Comcast-NBCUniversal transaction alone, NBCUniversal has worked aggressively to free up content rights for online distribution and entered into or renewed agreements with dozens of OVDs, including Amazon, Netflix, and YouTube,[40] as well as with several MVPDs that include online access to linear channels across multiple platforms and devices through our industry-leading TV Everywhere service. Similarly, early this year, not only did CBS extend its streaming deal with Amazon so that CBS's current catalogue of shows remains available to Amazon Prime subscribers, but it also added more series to Amazon's library including *Medium* and *Criminal Minds: Suspect Behavior.* CBS also announced that episodes of its new summer series *Extant* will be exclusively available on Amazon four days after they premiere on CBS.[41]

In 2013, Netflix received nine Emmy nominations for its *House of Cards* original drama series, winning three of them, and three nominations for *Arrested Development.* Netflix "will once again have a big presence at the Emmys" in 2014, having recently received nominations for "a wide array of awards . . . including outstanding drama series for *House of Cards* and outstanding comedy series for *Orange is the New Black."*[42]

Given consumers' seemingly insatiable demand for online access to video, content providers will continue to have strong incentives to make their programming available to OVDs. There is no need for government intervention into this increasingly dynamic and competitive marketplace. It is thriving without intrusive regulation and should be permitted to evolve.

*B. The FCC Is Taking Appropriate Action To Ensure An Open Internet For The Benefit Of American Consumers*

Consumers should have the right and ability to access whatever legal content they desire using the broadband services they purchase, without any improper blocking or discrimination and with appropriate transparency, over the "last-mile" connections between their ISP network and their homes.

Comcast has always been for a free and open Internet. We support the FCC putting in place reasonable and legally enforceable industry-wide rules to ensure a free and open Internet for all Americans, including transparency, no blocking, and anti-discrimination protections.

Comcast was a strong proponent of the FCC's 2010 Open Internet Order because it struck a proper balance between consumer protection and reasonable network management rights for ISPs. The 2010 Order also maintained the right incentives

[39] Programming costs are the single biggest driver of cable prices. From 2004 through 2013, Comcast's programming costs per video subscriber have cumulatively increased *by over 120 percent,* an astonishing amount. Our prices to customers have risen at about half that rate. (The average Comcast customer bill increased by only 2 percent this year, with no price changes for Limited Basic, Digital Preferred, or DVR services.)

[40] For example, in 2011, NBCUniversal renewed a multiyear deal with Netflix to stream TV shows ranging from *Leave it to Beaver* to *30 Rock* and *Keeping Up with the Kardashians. See* Paul Bond, *Netflix Renews Deal With NBCUniversal for Streaming TV Shows, Movies,* The Hollywood Reporter, July 13, 2011, *http://www.hollywoodreporter.com/news/netflix-renews-deal-nbcuniversal-streaming-210792.* In 2013, NBCUniversal struck a deal with Amazon to stream the first seasons of *Grimm* and *Suits,* and children's programs such as *Curious George* and *Land Before Time. See* Jeff Chabot, *NBC Shows Added to Amazon Prime Instant Video,* HD Report, May 16, 2013, *http://hd-report.com/2013/05/16/nbc-shows-added-to-amazon-prime-instant-video/*. Hulu has exclusive rights to prior seasons of popular shows from NBC's vault, including *Brooklyn Nine-Nine* and *The Mindy Project* (both of which air on Fox), and reality shows from Bravo and E!, such as *Top Chef. See* Ryan Waniata, *Hulu Secures a New Licensing Deal With NBC In Pursuit of 'Bingers',* Digital Trends, Apr. 2, 2014, *http://www.digitaltrends.com/home-theater/hulu-secures-new-licensing-deal-nbc-pursuit-bingers/#!bbJB18.*

[41] *See* Michael O'Connell, *CBS Extends Streaming Deal with Amazon Prime,* The Hollywood Reporter, Jan. 29, 2014, available at *http://www.hollywoodreporter.com/news/cbs-extends-streaming-deal-amazon-675295.*

[42] *See* Jacob Kastrenakes, *Netflix Scores Top Emmy Nominations for 'House of Cards' and 'Orange is the New Black,* The Verge, July 10, 2014, *http://www.theverge.com/2014/7/10/5886937/netflix-emmy-nominations-2014-house-of-cards-orange-new-black.*

for Comcast and other ISPs to invest and thereby empower more and more innovation on the Internet.[43]

Comcast was sufficiently comfortable with the 2010 Open Internet Order that, as part of the NBCUniversal transaction, we agreed to be bound by it even if the courts later struck it down. As a result, today Comcast is the only ISP in the country that is legally bound by the FCC's original Open Internet rules.[44]

Comcast continues to advocate for reasonable and legally binding rules that protect all Internet users, not just our customers. We believe the D.C. Circuit has, for the first time, laid out express authority and a clear path under Section706 of the 1996 Act for the FCC to adopt those rules. But we do *not* support reclassification of broadband as a telecommunications service under Title II, and believe that any attempt to do so would cast a huge cloud of uncertainty over the marketplace and create significant and immediate disincentives to further investment and innovation in this vital segment of our economy.

The FCC has issued a Notice of Proposed Rulemaking and is currently collecting comments to develop new open Internet rules based on its Section 706 authority. And FCC Chairman Tom Wheeler has expressed his commitment to complete the task by the end of this year. Comcast supports the FCC's ongoing process and continues to advocate for the prompt adoption of appropriate, legally enforceable open Internet rules.

In short, we believe that the FCC is taking the appropriate steps to ensure that *all* American consumers enjoy an open Internet. While Congress should certainly continue to oversee the agency's activities, there is no compelling justification for legislative intervention into this area at this time.

### *C. Comcast Supports Reauthorization Of The Satellite Television Extension And Localism Act ("STELA"), But Does Not Support Changes To The Current Retransmission Consent Regime*

Comcast generally supports a "clean" reauthorization of STELA and believes a five-year extension is an appropriate length of time.[45] A shorter extension of only two or three years could cause unnecessary disruption to the industry.

The vibrancy of today's video marketplace, as highlighted above, refutes any notion that there is a general "market failure" warranting government intervention in the wholesale programming business or further regulation of contractual arrangements between MVPDs and programmers. Similarly, the online video segment of the marketplace is flourishing without regulation and should be allowed to continue to grow and evolve.

Comcast also does not support addressing issues or concerns associated with the current retransmission consent regime as part of STELA reauthorization or through other legislative action. We enjoy positive relationships on all sides in retransmission consent negotiations. We have not lost the signal of any major local broadcaster in a dispute over retransmission consent fees.[46]

Consumers today have access to an unprecedented number of video programming choices, and broadcast television continues to be a significant source of programming for tens of millions of households. Broadcasters and MVPDs have, in the vast majority of cases, succeeded in negotiating retransmission consent agreements that allow for the carriage of broadcast programming to MVPD households across the country. We believe that most parties involved in such negotiations will continue to act responsibly and bargain in good faith and in a manner that reflects consumers' best interests. And when parties fail to do so, consumers can switch—and have switched—to other providers. The marketplace thus remains the best forum where any disputes can and should be resolved, without further regulatory intervention.

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[43] Comcast has built its business on delivering the highest quality Internet access, and we have every incentive to keep doing so. We have no interest in degrading our broadband services to disadvantage OVDs or providers of other content and services; doing so would only harm our fastest-growing business, which makes no sense. If we were to try to limit our subscribers' ability to access content from legitimate sources, they would use the power of the Internet to excoriate us for placing limits on their enjoyment of content and even leave us for a competitor's service.

[44] Approval of the Comcast-TWC transaction will extend these open Internet protections to millions of current TWC customers.

[45] To the extent that the Committee considers any changes to STELA, the National Cable Television Association has suggested revisions in three areas: elimination of the integration ban; prohibition of JSA stations in retransmission consent negotiations; and elimination of the must-carry buy through requirement.

[46] Further, as part of the NBCUniversal transaction, Comcast agreed it would not seek repeal of the retransmission consent regimen in existence as of June 2010.

*D. Congress Can Best Serve Consumers By Paring Back On Stale, Monopoly-Era Regulations That Distort Fair Competition*

Rather than imposing new regulations, Congress can best serve consumers by paring back and eliminating monopoly-era regulations that only impede healthy experimentation and innovation. Comcast and other MVPDs operate under burdensome outdated regulations that do not apply to our DBS competitors, while DBS providers in turn operate under rules that do not apply to our mutual OVD competitors.

For example, the time for regulation of cable rates has long since come and gone. Today's cable rate regulation regime was established in 1992, before the emergence of the Internet and prior to the entry into the video marketplace of DBS, telephone companies, over-the-top video, and other non-cable video providers. The two DBS providers are now the second and third largest MVPDs in the nation; tens of millions can obtain video from Verizon or AT&T; and, as my statement demonstrates, consumers across the Nation enjoy a wealth of additional choices from online and mobile platforms. Rate regulation inhibits investment, stifles innovation, and imposes regulatory compliance costs and burdens that are unnecessary and unfair in a competitive marketplace. It is time to let this unbelievably robust video marketplace work.

Similarly, the integration ban should be repealed. The principal effects of the integration ban have been to increase costs for set-top devices leased to cable consumers, while needlessly intruding upon the design and functionality of converter boxes offered by cable operators. There is a large and growing number of video reception devices in the retail marketplace that do not depend on using a cable-provided device. These devices have been developed entirely outside the context of the integration ban, and this marketplace growth shows how unnecessary it is to continue to regulate cable set-top boxes.

In summary, to the extent that Congress takes any legislative action involving the video industry, Congress should level the playing field across *all* content providers and allow the dynamics of the marketplace to evolve.

**V. Conclusion**

The state of the video marketplace is extraordinary—some have rightly dubbed today the "true golden age of television." [47]

Investment is flowing into the video marketplace, and consumers are reaping an amazing harvest of entertainment and information. Consumers are benefitting from more and faster broadband from more competitors, wireline and wireless, providing the platform for massive consumption of video. The FCC is on track to ensure that all Americans continue to enjoy an open Internet as they do today. Video competitors successfully conclude business agreements every day and are able to work out any differences without regulatory intervention. New video competitors are growing at extraordinary rates, readily obtaining immense amounts of content from third parties (and producing more and more of their own), and benefitting from existing regulatory backstops to guard against any market malfunction. And Americans are enjoying an excess of high quality video programming, as Comcast and other video providers compete intensely to offer the best value proposition to consumers, with greater choices that encourage more—not less—video consumption.

In this increasingly competitive marketplace, at this extraordinarily disruptive time, it would not benefit consumers or businesses to add significant legislative uncertainty into the mix. We urge Congress to tread extremely carefully, and not to inadvertently place the dynamism and innovation in today's video marketplace at risk.

Thank you.

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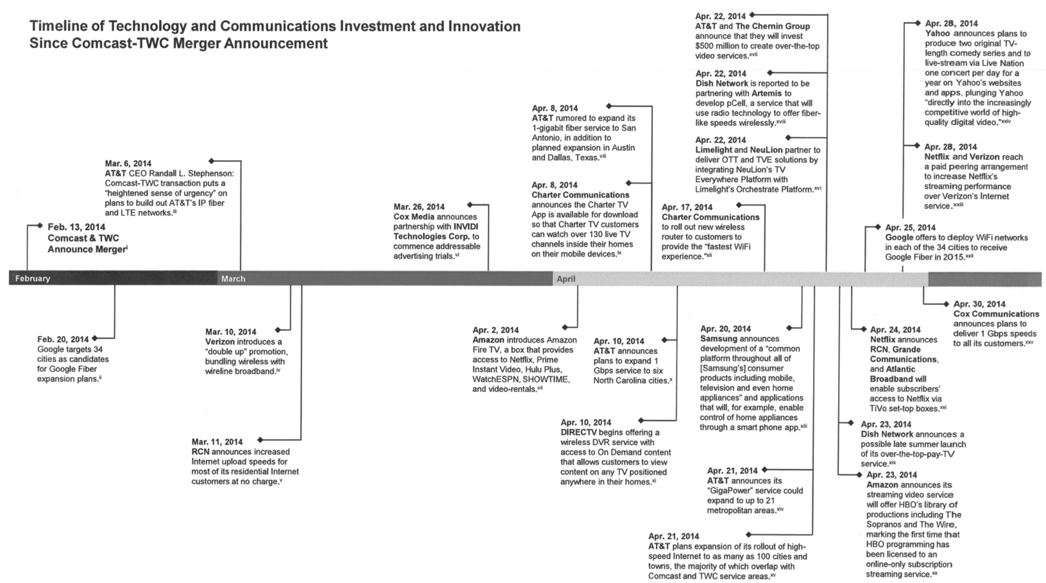
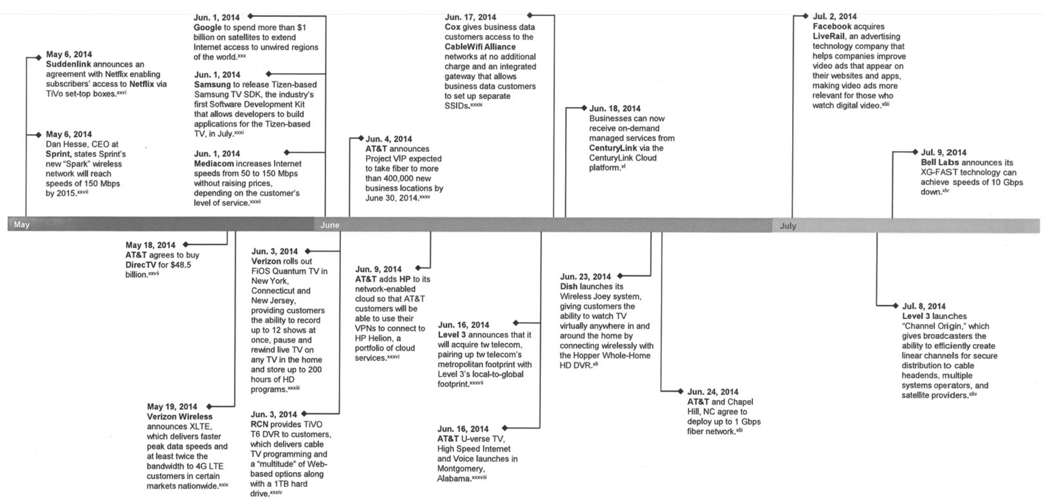
[47] *See* Marcus Wohlsen, *When TV Is Obsolete, TV Shows Will Enter Their Real Golden Era,* Wired.com, May 15, 2014, *http://www.wired.com/2014/05/real-golden-age-television/* ("Streaming video as offered by Netflix and Amazon Instant Video are not constrained by any of the commercial or technical boundaries of traditional broadcast television or cable. There aren't schedules. There aren't channels. The only limitations are how much bandwidth their data centers and the Internet itself can support. . . . Welcome to the real new golden age of television—television without limits."); Todd Leopold, *The new, new TV golden age,* CNN, May 6, 2013, *http://www.cnn.com/2013/05/06/showbiz/golden-age-of-tv/* ("We are living in good TV times. . . . With more channels and more choices, there are also more creative voices being heard."); Brett Martin *et al., Stop Flipping! The New Rules of TV,* GQ.com, June 2012, *http://www.gq.com/entertainment/movies-and-tv/201206/new-rules-of-tv#slide=1* ("Nearly everything about how we watch television has changed. For starters, we can do it anytime we want. . . . And yes: The shows are a whole lot sexier, more terrifying, complex, and hilarious than the ones we grew up with. It is, as people like to say, a new golden age of television.").

EXHIBIT 1


Timeline of Technology and Communications Investment and Innovation Since Comcast-TWC Merger Announcement
February
March
April
Feb. 13, 2014
Comcast & TWC Announce Merger[i]
Feb. 20, 2014
Google targets 34 cities as candidates for Google Fiber expansion plans.[ii]
Mar. 6, 2014
AT&T CEO Randall L. Stephenson: Comcast-TWC transaction puts a "heightened sense of urgency" on plans to build out AT&T's IP fiber and LTE networks.[iii]
Mar. 10, 2014
Verizon introduces a "double up" promotion, bundling wireless with wireline broadband.[iv]
Mar. 11, 2014
RCN announces increased Internet upload speeds for most of its residential Internet customers at no charge.[v]
Mar. 26, 2014
Cox Media announces partnership with INVIDI Technologies Corp. to commence addressable advertising trials.[vi]
Apr. 2, 2014
Amazon introduces Amazon Fire TV, a box that provides access to Netflix, Prime Instant Video, Hulu Plus, WatchESPN, SHOWTIME, and video-rentals.[vii]
Apr. 8, 2014
AT&T rumored to expand its 1-gigabit fiber service to San Antonio, in addition to planned expansion in Austin and Dallas, Texas.[viii]
Apr. 8, 2014
Charter Communications announces the Charter TV App is available for download so that Charter TV customers can watch over 130 live TV channels inside their homes on their mobile devices.[ix]
Apr. 10, 2014
AT&T announces plans to expand 1 Gbps service to six North Carolina cities.[x]
Apr. 10, 2014
DIRECTV begins offering a wireless DVR service with access to On Demand content that allows customers to view content on any TV positioned anywhere in their homes.[xi]
Apr. 17, 2014
Charter Communications to roll out new wireless router to customers to provide the "fastest WiFi experience."[xii]
Apr. 20, 2014
Samsung announces development of a "common platform throughout all of [Samsung's] consumer products including mobile, television and even home appliances" and applications that will, for example, enable control of home appliances through a smart phone app.[xiii]
Apr. 21, 2014
AT&T announces its "GigaPower" service could expand to up to 21 metropolitan areas.[xiv]
Apr. 21, 2014
AT&T plans expansion of its rollout of high-speed Internet to as many as 100 cities and towns, the majority of which overlap with Comcast and TWC service areas.[xv]
Apr. 22, 2014
AT&T and The Chernin Group announce that they will invest $500 million to create over-the-top video services.[xvii]
Apr. 22, 2014
Dish Network is reported to be partnering with Artemis to develop pCell, a service that will use radio technology to offer fiber-like speeds wirelessly.[xviii]
Apr. 22, 2014
Limelight and NeuLion partner to deliver OTT and TVE solutions by integrating NeuLion's TV Everywhere Platform with Limelight's Orchestrate Platform.[xvi]
Apr. 23, 2014
Dish Network announces a possible late summer launch of its over-the-top-pay-TV service.[xix]
Apr. 23, 2014
Amazon announces its streaming video service will offer HBO's library of productions including The Sopranos and The Wire, marking the first time that HBO programming has been licensed to an online-only subscription streaming service.[xx]
Apr. 24, 2014
Netflix announces RCN, Grande Communications, and Atlantic Broadband will enable subscribers' access to Netflix via TiVo set-top boxes.[xxi]
Apr. 25, 2014
Google offers to deploy WiFi networks in each of the 34 cities to receive Google Fiber in 2015.[xxii]
Apr. 28, 2014
Yahoo announces plans to produce two original TV-length comedy series and to live-stream via Live Nation one concert per day for a year on Yahoo's websites and apps, plunging Yahoo "directly into the increasingly competitive world of high-quality digital video."[xxiv]
Apr. 28, 2014
Netflix and Verizon reach a paid peering arrangement to increase Netflix's streaming performance over Verizon's Internet service.[xxiii]
Apr. 30, 2014
Cox Communications announces plans to deliver 1 Gbps speeds to all its customers.[xxv]

## Timeline of Technology and Communications Investment and Innovation Since Comcast-TWC Merger Announcement



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The CHAIRMAN. Thank you, Mr. Cohen, very much. And now I am happy to bring forward Justin Hurwitz, Assistant Professor of Law, University of Nebraska College of Law. That would make sense. We look forward to hearing from you, sir.

**STATEMENT OF JUSTIN (GUS) HURWITZ, ASSISTANT PROFESSOR OF LAW, UNIVERSITY OF NEBRASKA COLLEGE OF LAW**

Mr. HURWITZ. Chairman Rockefeller, Ranking Member Thune, and members of the Committee, it is a privilege to be before you today.

My comments today will focus on the future of the video market, tying its current state to other ongoing issues that face this committee and the market generally.

The future of the video market is easy to predict and concise to state: the Internet. The question is how we get there; when, that is, not whether, the majority of video consumed in the United States will be consumed online.

For this committee, however, the question may be what is holding us back. There is no lack of interest in developing innovative new online video platforms. "Tech titans," we have heard much of this language before already today, like Google, Apple, Netflix, Amazon, have shown great interest in online video.

Entrants like Aereo, FilmOn, and similar startups have attempted to bring a cable-like television experience to the Internet. Major news and sporting events are now routinely streamed online and most traditional video outlets have Internet-based streaming video offerings.

Yet today's video marketplace does still look like the marketplace of a decade ago more than one of the future. I would suggest two factors that contribute to this. First, the continuing dominance of the linear channel, where programming is delivered as a continuous 24 hour feed, 24 hours a day, for consumers to tune in to watch.

This model continues to dominate in part because better models have yet to be developed, and in part because existing regulations have ossified it. And second, the existing regulatory regime more generally ossifies traditional business models and stifles entry by new firms.

The problems with the existing regulatory regime cannot be understated. It involves multiple statutes implemented by multiple agencies to govern technologies developed in the 1960s, 1970s, and 1980s, according to policy goals from the 1950s, 1960s, and 1970s.

We are no longer living in a world where the Rube Goldberg of compulsory licenses, must carry and retransmission consent, financial interest, and syndication exclusivity rules, and the panoply of Federal, state, and local regulations make sense, yet these are the rules that govern today's video industry.

The discussion we are having today should involve many current issues—the pending mergers; the Supreme Court's recent *Aereo* decision; spectrum policy; interconnection disputes between ISPs and edge providers; retransmission consent disputes, and the FCC's ongoing network neutrality and video regulation efforts. Time prevents me from discussing any of these in detail, so I will leave you with a few specific thoughts.

First, consolidation is not necessarily bad. To be sure, consolidation can raise very serious antitrust concerns, but theory and empirics tells us that consolidation can in many cases benefit consumers, and I commend you, Chairman Rockefeller, for focusing us on consumer welfare as a primary standard by which we should judge success.

In any event, consolidation must be measured in terms of a properly defined relevant market. This is especially true in today's video marketplace where traditional MVPDs increasingly compete with firms like Netflix, Apple and Google. This new competition must be considered as part of the relevant market.

Indeed, traditional MVPDs may need to consolidate if they are to compete with these new firms. I want to emphasize this point. The greatest challenge to the development of a modern video marketplace is not the development of new technologies. That is the easy part. The challenge is how new and existing firms, business models, and consumers transition to use these new technologies.

Staying on the topic of consolidation, vertical integration, in particular, is more often good for consumers than bad. This is one of the enduring lessons from the break-up of the vertically integrated film industry of the 1940s, and one that has been consistently demonstrated in the economics' literature.

What happened after the Supreme Court approved the break-up of the film industry? Ticket prices for consumers went up, quality and variety of films went down, and the industry as a whole went into a multi-decade slump. Decades of subsequent research suggest that vertical integration helps firms to develop and implement new technologies.

At the same time, progress toward an Internet-based video marketplace has been slower than many would like. Chief among the reasons for this is regulatory uncertainty. It is entirely unclear today how online video fits into the current regulatory regime.

This uncertainty makes entry by new firms difficult and decreases existing firms' ability to innovate. Updating the "Copyright and Communications Act" is one of the best things that Congress could do to promote video in the marketplace.

Finally, any discussion of the video marketplace needs to consider spectrum policy. Much of today's video marketplace is shaped by pre-cable broadcast policy. We will likely never move away from broadcast television entirely. Many Americans rely on it. It is essential in emergency situations, and it is an important competitive constraint on other television services.

But existing rules treat broadcast television as the basic unit by which content is delivered to consumers. This does not make sense in the Internet era. Rather than struggle with how to fit online video into the traditional television model, we should be thinking about how to allow traditional television to operate more like online video.

I believe that is the perfect point on which to end my comments. I look forward to answering your and the Committee's questions.

[The prepared statement of Mr. Hurwitz follows:]

PREPARED STATEMENT OF JUSTIN (GUS) HURWITZ, ASSISTANT PROFESSOR OF LAW, UNIVERSITY OF NEBRASKA COLLEGE OF LAW AND VISITING FELLOW, AMERICAN ENTERPRISE INSTITUTE, CENTER FOR INTERNET, COMMUNICATIONS, AND TECHNOLOGY POLICY

*The views expressed in this testimony are those of the author alone and do not necessarily represent those of the University of Nebraska College of Law or the American Enterprise Institute.*

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The problems with the existing regulatory regime cannot be understated. It involves multiple statutes implemented by multiple agencies to govern technologies developed in the 60s, 70s, and 80s, according to policy goals from the 50s, 60s, and 70s. We are no longer living in a world where the Rube Goldberg of compulsory licenses, must carry and retransmission consent, financial interest and syndication exclusivity rules, and the panoply of Federal, state, and local regulations makes sense—yet these are the rules that govern the video industry.

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Indeed, traditional MVPDs may *need* to consolidate if they are to compete with these new firms. I want to emphasize this point: the greatest challenge to the development of a modern video marketplace isn't the development of new technologies—that's the easy part—the challenge is how new and existing firms, business models, and consumers transition to use these new technologies.

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I believe that that is the perfect thought on which to end my comments. I look forward to answering your questions.

The CHAIRMAN. Thank you very much, Mr. Hurwitz. It was very interesting and precisely timed.

We now go to John Stankey. John Stankey, I want to tell you that on my sheet here, it says "John Stankey," and then it says "(pronounced Stankey)."

[Laughter.]

Mr. STANKEY. You have good help, sir.

The CHAIRMAN. Yes, that is potentially true there. In any rate, you are the Executive Vice President and Chief Strategy Officer at AT&T, a large company and a good company, and we welcome your statement, sir.

**STATEMENT OF JOHN T. STANKEY, GROUP PRESIDENT AND CHIEF STRATEGY OFFICER, AT&T INC.**

Mr. STANKEY. Thank you, Chairman Rockefeller, Ranking Member Thune, and members of the Committee. I am John Stankey with AT&T. I appreciate the opportunity to visit with you today.

The name of today's hearing suggests we are at a tipping point in the future of video. I really could not agree more. It is a tipping point. It is a tipping point for more consumer choice, more programming innovation, and more options for video delivery.

Video competition today is strong, it is dynamic, and it is increasing. Incumbent and new providers are satisfying consumer demands in ways we could barely imagine just five years ago. This increased video competition is being driven by advances in broadband, both mobile and fixed, and by flexible and innovative software architectures.

Consumers increasingly want their traditional TV service integrated with broadband. As a result, it has never been easier for consumers to access the video they want, when and how they want it.

We are in the early innings of this evolution of video consumption and competitive alternatives. Not so long ago consumers watched video almost exclusively on a TV using over-the-air broadcast, cable or satellite service. Today, consumers are increasingly accessing video via broadband, on multiple screens, Smartphones, Tablets, PCs, and TVs.

New programming choices, new devices, and higher speed broadband are improving the customer experience exponentially. Unlike traditional pay TV delivery systems, broadband allows anyone to reach anyone else. That means any programmer with great content can find an audience across TV, mobile, and broadband platforms.

Consumer choice is vast and of high quality services like YouTube, Netflix, Amazon, Hulu, and many more. Original programming from Netflix, as the Chairman mentioned, last week received 31 Emmy nominations.

The rise of over-the-top video made possible by broadband has special importance for competition. Video represents an increasing percentage of traffic on broadband networks. This makes the competitive implications of over-the-top considerably different than is often portrayed.

Although over-the-top programming often competes with traditional cable TV as a substitute, it is also a complement to traditional pay TV for the majority of people. For broadband providers, giving consumers access to over-the-top content is a critical component of why they offer broadband.

This is especially true for AT&T because our core business is broadband. The central role of broadband in the new video environment underpins our acquisition of DIRECTV. Unlike many mergers, our transaction does not combine two companies that do the same thing. Rather, it combines companies with complementary capabilities—DIRECTV's pay TV service with AT&T's broadband service.

As a result, there is no significant competitive overlap between us in the product that consumers overwhelmingly demand—a broadband and video bundle. Combining with DIRECTV will enable us to be a much more effective nationwide competitor with cable companies.

It gives us strong relationships with programmers producing significant cost and quality improvements in our video service. It gives us the scale to work with programmers to develop new business models that give consumers what they want where they want it.

Most importantly, being able to offer DIRECTV nationwide is a game changer in the economics of deploying broadband. It will allow us to expand and enhance broadband to at least 15 million locations across 48 states, mostly in underserved rural areas. This is in addition to the broadband expansion plans that we have already announced, and it directly results from the synergies created by this transaction. This new broadband commitment includes 13 million high speed fixed wireless local loop locations, 85 percent of which are outside our wireline footprint.

This is big news for rural America. We estimate that nearly 20 percent of these consumers today have no access to wire line broadband, and another 27 percent are served by just one broadband provider.

The transaction also allows us to expand our one gigabit service to two million additional locations. Combining with DIRECTV allows us to offer content owners even more value and distribution points across the nationwide pay TV network, nationwide mobile network, and a broadband network covering 70 million locations. It strengthens our video engineering and software expertise, enabling us to accelerate the development of new over-the-top video delivered to any screen.

As video competition continues to accelerate, we look forward to meeting consumers' demands for integrated broadband and video services, all while complying with the FCC's 2010 net neutrality standards.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Stankey follows:]

PREPARED STATEMENT OF JOHN T. STANKEY, GROUP PRESIDENT AND CHIEF STRATEGY OFFICER, AT&T INC.

Thank you, Chairman Rockefeller, Ranking Member Thune, and Members of the Committee.

I am John Stankey, Group President and Chief Strategy Officer of AT&T, and I appreciate this opportunity to address the state of video competition and the benefits that competition is bringing to consumers.

Video competition today is strong and dynamic. Competition is increasing sharply as both incumbent and new providers find new ways to satisfy video demand and to deliver a multitude of new services that benefit consumers in ways we could barely imagine five or ten years ago.

This increased competition is being driven by broadband advances and investments. National wireless broadband networks can now deliver video quickly and efficiently. Advanced wireline connections to the home have more capacity and are becoming more widely available. As a result, it has never been easier for consumers to find the video programming they want to watch, when and how they want to watch it. Traditional video services are increasingly integrated with broadband offerings that give consumers access to the full range of these interactive and next generation services.

AT&T is proud to be at the center of these competitive developments. We remain a company focused on wireless and wireline broadband services, and on ensuring that consumers can use those networks to reach each other and access the full scope of video and information sources that are becoming available to them. We are confident that we are seeing only the beginning of the consumer benefits emerging from this new and increasingly competitive environment, and we look forward to driving it forward through new and expanded networks and services.

**Technology and Consumer Demand Is Evolving**

Not so long ago, consumers watched video almost exclusively on a television set, using over-the-air broadcast, traditional point-to-multipoint delivery systems like cable or satellite, and packaged products like DVDs. Now, consumers are increasingly using advanced wireless and wireline broadband networks to reach video providers. Consumers are watching video on their smartphones, tablets, and computers as well as televisions. They watch a broader variety of programming, including the many short, long, and interactive forms of programming the Internet enables. New, high-definition programming and devices, supported by even higher-capacity broadband networks, will create a new level of customer experience.

With this change in technology, consumer demand is changing. Consumers increasingly expect to be able to watch video when they want, where they want, and on whatever device they want. They want access to interactive, crowd-sourced, short-form, and traditional long-form services. And consumers are increasingly making clear that if service providers cannot provide their video of choice, they will find other providers that can.

**Advanced, Interconnected Broadband Networks Are Driving New Video Competition**

Recent improvements in the capacity and capabilities of broadband networks are driving this increased competition in video. For example, the newest, most advanced generation of wireless networks now supports the delivery of high-quality video. Those networks, in turn, have enabled a new generation of mobile devices designed to provide both interactive and traditional video viewing experiences. IP-based wireline broadband services have also reached important capacity thresholds that enable high-quality video streaming and delivery services, and broadband providers have been expanding those networks to an increasing number of the Nation's households. Those providers are not just the traditional telephone companies. They include Google and a host of other companies taking advantage of the latest technologies.

Unlike traditional broadcast video delivery systems, today's broadband systems allow anyone to reach anyone else. That means any programmer that has great video content can find its audience. Programmers can use those broadband networks to make their video available directly to consumers, and consumers can choose from among a vast range of services to find those video offerings. YouTube, Netflix, Amazon video, and Hulu are only the beginning of this evolution.

In this new broadband world, consumers increasingly want their traditional video services integrated with broadband services to enable a richer experience. And the consumer benefits of broadband and video integration and bundling extend well beyond passive video viewing to a broad and increasing range of interactive communications, home security, and home automation, monitoring and control systems.

**Consumers Today Have More Choice**

These developments are shifting the relationship between consumers and aggregators of video programming. Traditionally, Americans could choose only among the "linear" programming provided by broadcast television networks or later cable television networks. Consumers might choose between the ABC or NBC program on a given evening or, later, among the television and cable network programs available on their cable television system.

Increasingly, however, consumers can choose among many more sources of programming, and their choices drive what survives in the marketplace. Many still choose from the television and cable networks, and traditional providers now offer both on-demand and online viewing. But broadband networks have expanded the choices. Streaming services have libraries of available programming and increasingly commission new programming. Social media and other emerging sites generate short-form and independent programming, and the line between traditional and emerging video programmers is blurring and will continue to do so.

As a result, consumers are able to find great programming in many more ways. To retain customers, video content aggregators will have to find superior programming and improve the seamlessness and efficiency of how they deliver it. As competition increases among content aggregators, and programmers are able to reach consumers more directly on different networks, programming improves, consumer choice proliferates, and consumers benefit.

**Consumers Today Have Alternative Sources of Programming**

The rise of these non-traditional, "over-the-top" programming sources has special importance for competition. As I have explained, these services have been able to flourish because of improvements in broadband networks, and consumers have benefited tremendously as a result. As demand for streaming and other innovative services grows, video traffic represents an increasing percentage of the overall Internet and data traffic on today's broadband networks.

This makes the competitive implications of over-the-top programming considerably different than is often portrayed. Although online programming often competes with traditional cable television as a substitute, such programming is also a *complement* and an important component of the services offered by broadband network operators. Broadband competitors must work hard to ensure that they can provide their customers with as rich and as integrated a video environment as possible, drawn from all the programming sources consumers may want.

For these reasons, companies that provide bundles of broadband and video will foster, rather than impede, the emergence of over-the-top programmers. This is especially true for providers like AT&T whose core business is mobile and wireline broadband services. If those companies do not provide that rich and varied video environment, they risk losing their broadband customers and their wireless customers as well. Only by embracing the reality that over-the-top services are complements of their own services, just as traditional video can be a complement, will broadband providers retain and grow their relationship with their customers.

**Expanding Broadband Networks and Their Capabilities**

The central role of broadband in the new video environment, described above, also underpins AT&T's acquisition of DIRECTV and explains why the combination is good for consumers.

DIRECTV is the premier video provider in the United States. AT&T has robust, market-leading wireline and wireless networks throughout the country. By adding DIRECTV's video capabilities to our strength in fixed and mobile broadband delivery, we will create a new, unique competitor with unprecedented capabilities in mobility, video, and broadband services.

Today, consumers value a seamlessly integrated broadband access and video offering. Because of this, combining with DIRECTV will enable us to be a much more effective, nationwide competitor with traditional cable television companies. We can integrate the DIRECTV video offering with our national wireless broadband network services, as well as home services and customer support offered on a national basis. And, because we can offer broadband services far more widely than our U-Verse video service area, we will be able to offer the integrated offering of video and broadband access service to many more customers—AT&T customers, DIRECTV customers, and new customers—than is possible today.

The transaction also enables us to grow and add to the capabilities of our core broadband business. With relationships to many more current and potential video customers, we will have stronger relationships with programmers, producing significant cost and quality improvements in our video offering. Those and other cost synergies and quality improvements from this transaction fundamentally change the business case for expanding our broadband infrastructure. Along with the strength of the new integrated video/broadband bundles the transaction enables, these synergies will make it economic to deploy infrastructure to millions of additional customer locations and will justify billions of dollars of additional broadband investment.

As a result, AT&T is committing to building and enhancing high-speed broadband service to at least 15 million customer locations, most of them rural, within four years of the transaction closing. This expansion is in addition to the broadband expansion plans that AT&T has already announced, and it directly results from the synergies created by the transaction.

First, AT&T will use its wireless spectrum to bring a fast, innovative broadband Internet access service to 13 million customer locations in rural areas in 48 states. This new service is not simply mobile LTE service on our wireless network. This is a new "fixed wireless" service that uses advanced technology, dedicated spectrum, and professional home installations to provide a consistent and reliable high-speed broadband experience. Second, AT&T will be able to build out its newest "GigaPower" broadband infrastructure to more customer locations. GigaPower relies on fiber all the way to the home and offers speeds of up to 1 gigabit per second. The transaction will allow AT&T to upgrade at least 2 million additional customer locations. Most of those locations are likely today to be in areas that have no AT&T broadband infrastructure or only slower forms of DSL infrastructure that do not support video service.

In these ways, DIRECTV enables AT&T to meet consumer's ever-increasing demands for integrated broadband access and video services—all while meeting or exceeding the FCC's 2010 net neutrality standards. And, as more consumers want access to the most advanced, highest capacity broadband networks, the transaction will enable AT&T to build out its broadband infrastructure to homes and businesses that we could not reach otherwise. As competition in the video industry continues to accelerate, AT&T looks forward to bringing the benefits of innovation to consumers.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Stankey. Now, Jeff Blum of Dish Network. We welcome you.

## STATEMENT OF JEFFREY H. BLUM, SENIOR VICE PRESIDENT AND DEPUTY GENERAL COUNSEL, DISH NETWORK L.L.C.

Mr. BLUM. Thank you. Chairman Rockefeller, Ranking Member Thune, and members of the Committee, my name is Jeff Blum. I am the Deputy General Counsel of DISH, the second largest satellite TV provider in the country, with over 14 million subscribers. I am pleased to have the opportunity to testify today.

DISH agrees with the title of this hearing. We are at a tipping point. The decisions that the FCC, DOJ, and Congress make over the next 12 to 24 months will determine whether a few large companies control what Americans watch and how they do so. The future of video is broadband, and the unprecedented consolidation looming in the high speed broadband access market will shape video consumption for years to come.

Now more than ever a competitive video market needs high speed, high capacity broadband services. Allowing the broadband access market to consolidate down to a few powerful gatekeepers, each of which also has video services to sell, will hurt competition and consumers.

Online video can take many forms, be it a library of on-demand movies and shows that you can order through a broadband connected DISH set-top box, or a streaming video subscription service like Netflix, and more competitive innovations are coming, but without a high speed broadband pipe, consumers cannot fully take advantage of these services.

A combined Comcast and Time Warner would not only control nearly half of the broadband pipe in the U.S., it would have a greater incentive to harm competing online services in order to protect its own turf, its own linear TV packages, its own online video services, and its own linear and online in-house programming.

For our part, DISH increasingly offers broadband-enabled services to compete in the video market. We are investing to provide more video on demand and Internet stream programming.

Today, for example, we offer an Internet only foreign language channel package called "DISH World." We recently announced a first of its kind deal to distribute live and on-demand Disney programming over a new DISH over-the-top or OTT service, where no satellite dish is required.

A broadband connection makes these innovations possible, but because innovative online video services, like ours, are powered by other companies' broadband connections, we are very concerned about the threat to competition posed by the Comcast/Time Warner merger.

We believe that the FCC and the DOJ should reject it outright. There are no conditions or divestitures that would offset the harms, and you do not need to be an economist or antitrust expert to understand why. Given its control over the broadband pipe and its own suite of linear and online video products, a combined Comcast/ Time Warner would have a dramatically increased incentive to protect its business model by thwarting the broadband-enabled video services of other companies, like DISH or Netflix.

This presents a serious threat to competition, because Comcast and Time Warner together would control close to 50 percent of all residential high speed broadband connections, and would pass more than 60 percent of the homes in America.

Comcast will also be able to wield its greater market power in another way, by restricting third-party programmers' digital rights, licenses to compete in pay TV, and over-the-top providers. They will tell programmers if you want carriage on our giant network, you cannot grant DISH online rights to your content.

Too much power in the hands of too few. That is really what the Comcast/Time Warner merger would produce.

When we filed a letter last week announcing our opposition to the merger, Comcast said we were just trying to win an edge against a competitor. That is simply not true. We welcome healthy competition. Being a disruptive competitor is in our DNA. We are not here to complain about Comcast competing with us on service quality, value, or technology, but we will raise a red flag when a market participant seeks to abuse its market power.

I also want to express DISH's concerns about the proposed AT&T/DIRECTV merger. Among other things, AT&T and DIRECTV will be able to combine their power to raise the cost of programming content for smaller TV providers to the potential detriment of consumers.

Finally, Congress has an opportunity to improve video competition right now. This committee soon will consider reauthorizing STELA. DISH, along with many other pay TV providers, consumer groups, and independent programmers urge you to seize this opportunity to enact real reforms to the broken retransmission system.

We understand that Chairman Rockefeller and Ranking Member Thune and their respective staffs have been working on a bipartisan STELA bill. We applaud that effort.

Thank you.

[The prepared statement of Mr. Blum follows:]

PREPARED STATEMENT OF JEFFREY H. BLUM, SENIOR VICE PRESIDENT AND DEPUTY GENERAL COUNSEL, DISH NETWORK L.L.C.

Chairman Rockefeller, Ranking Member Thune, Members of the Committee:

My name is Jeff Blum. I am the Senior Vice President and Deputy General Counsel of DISH Network L.L.C. ("DISH"), the second largest satellite TV provider in the U.S. with over 14 million subscribers located across every state.

DISH agrees with the title of this hearing: we are at a tipping point. The decisions that the Federal Communications Commission ("FCC"), Department of Justice ("DOJ"), and Congress make over the next 12 to 24 months will impact the future of the video market in determining whether a few large companies will have ultimate control over what Americans watch and how they do so. The future of video is broadband; and the unprecedented consolidation looming in the high-speed broadband access market will shape video consumption for years to come.

We at DISH know a thing or two about healthy competition. We launched our satellite TV service when cable enjoyed near monopoly status in the pay-TV market. When our original big-dish business started to decline, we invested in a new, small-dish service. And now that satellite and pay-TV generally have matured, we are again investing in the next transformation of the market, namely broadband and online video.

Now more than ever, a vibrant, competitive video market relies upon high-speed, high-capacity broadband services. This is because consumers increasingly want on-demand and Internet-delivered content. Allowing the broadband access market to consolidate down to a few powerful gatekeepers, each of which also has video services to sell, will hurt competition and consumers.

For our part, DISH increasingly relies on broadband to compete in the video market. We do so in two ways.

First, satellite TV can only be a competitive alternative to cable if our subscribers can utilize a broadband connection. DISH's newest set-top boxes connect to a consumer's broadband service, often provided by cable ISPs like Comcast and Time Warner Cable. The broadband connection makes possible the innovations that we need in order to stay competitive, such as video-on-demand, DISH Anywhere, Sling, various apps, and Internet-streamed programming.

Let's take the example of video-on-demand. Cable offers thousands of titles on demand, delivered through the two-way cable connection into the home. Our satellites and set-top boxes cannot serve the same volume of content on demand. In order to offer a comparable experience, we store titles on servers throughout the country and deliver them over a consumer's home broadband connection. When a DISH subscriber selects a movie on demand, she may be accessing the video file from one of our servers, transmitted to her set-top box over a broadband connection, and viewed on the TV.

Without such broadband-enabled features, DISH would fall behind our pay-TV competitors like Comcast, Time Warner Cable, AT&T, Charter, and others. Without broadband connections often provided by our pay-TV competitors, we cannot stay competitive in the traditional pay-TV market.

The second way DISH relies on broadband is when we provide a so-called "Over the Top" or "OTT" service. These services will play a large role in the future of video. Just like Netflix and Amazon, among others, DISH offers an Internet-only video product. For these services, all you need is a broadband connection; no satellite or set-top box is required.

For example, we offer DISH World, a foreign language OTT video service available over the Internet, using a broadband connection. This OTT service provides programming in Hindi, Mandarin, and dozens of other foreign languages. And, it is growing at a faster rate than our foreign language services on satellite.

We also recently announced a first-of-its kind deal to distribute live and on-demand Disney programming (such as ESPN and the Disney Channel) over a new forthcoming DISH OTT service. For the first time, consumers with a broadband connection will be able to subscribe to a smaller package of channels at a lower price than what is available today over traditional pay-TV. We are now talking to other major content companies about joining Disney on our forthcoming OTT service. We hope to launch the service later this year. These types of OTT services, however, require high-speed and high-capacity broadband connections.

Given our reliance on broadband to compete in the video market, we are very concerned that the proposed merger between Comcast and Time Warner Cable threatens competition as we know it in the video space, especially in the traditional pay-TV market, where satellite relies so heavily on a broadband connection, and in the emerging OTT video space.

The FCC and DOJ should reject this merger. There are no conditions or divestures that would offset the harms. You don't need to be an economist or antitrust expert to understand why. A competitor offering pay-TV at a lower price, or with more on-demand titles, or OTT services that cost less, is a company that can provide a different—or better—alternative to Comcast and Time Warner Cable. A combined Comcast/Time Warner Cable would have plenty of incentive to protect its business model by thwarting the broadband-enabled services of competitors like DISH.

The combined companies would control more than 47 percent of all the residential high-speed broadband connections in America, and would pass more than 60 percent of homes in America. These broadband connections are necessary to power the type of video services I just mentioned.

Comcast would like you to believe that the market for broadband is full of choices. But the truth is that DSL in most cases does not offer enough speed and capacity to support a typical household's streaming video usage. Just look at AT&T and Verizon. When they provide video for U-Verse or FiOS subscribers, they do not use their DSL networks. Instead, they use newer, high-speed fiber networks.

With such vast broadband market share under its control, the new Comcast will have at least three "choke points" in the broadband pipe where it will have the ability to harm competing video services like those provided by DISH:

1. First, the broadband connection to the consumer. This is often called the "public Internet." Comcast can prioritize its own services before those of DISH and other competitors, rendering services like ours less competitive;
2. Second, the interconnection point, where competitors' video services enter the Comcast broadband network. Comcast controls this critical point of interconnection, as it can close ports or refuse to open enough ports to allow competing content onto the "public Internet." If we pose too much of a competitive threat, we could suddenly find it more expensive, or even impossible, to reach our customers who use Comcast broadband; and
3. Third, any managed or specialized service channels, which can act as high speed lanes and squeeze the capacity of the public Internet portion of the pipe. Comcast's own services may enjoy the fast lane, while DISH's and all other competitors' data may get squeezed onto the ever more crowded public Internet lane.

Each of the above three "choke points" provide the ability for a combined Comcast/Time Warner Cable to downgrade the online video offerings of its competitors, all to the detriment of consumers.

The combination of Comcast and Time Warner Cable also would present a larger competitive threat than the companies standing alone, without a merger.

Take, for example, DISH World and the new DISH OTT service discussed above. DISH World offers programming in Hindi. Hindi speakers in the United States are concentrated in markets served by Comcast and Time Warner Cable broadband, such as New York City, Chicago, and Los Angeles.

Put all of those broadband markets under one roof and it becomes clear how Comcast would be the primary gatekeeper for DISH World reaching the Hindi-speaking community. It is also clear how Comcast easily could degrade DISH World in favor of its own foreign language service, perhaps to the point of eliminating the competition altogether.

Regarding our forthcoming OTT service with Disney and other programmers, a combined Comcast/Time Warner Cable will similarly be able to slow down or degrade the quality of service over its broadband pipe. But it will also be able to wield its greater leverage in another way—to restrict third-party programmers' digital rights licensed to competing pay-TV and OTT video providers. If you want carriage on our giant network, they'll say to a programmer, you cannot grant DISH or Netflix, for example, OTT rights to your content.

Too much power in the hands of too few—that's really what the Comcast/Time Warner Cable merger would produce.

I should note that Comcast reacted to DISH's recent opposition to its merger by characterizing us as a company just out to win an edge against a competitor. To the contrary, DISH is all in favor of healthy competition. You do not hear us complaining about Comcast competing on service quality, value, or technology features. But, we will take issue when a market participant seeks to abuse its market power to the detriment of healthy competition. We want to win when the game is played on an even playing field.

I also want to express DISH's competitive concerns about the AT&T/DIRECTV merger. Among other things, AT&T and DIRECTV will also be able to combine their market power to leverage programming content, to the potential detriment of consumers.

Finally, while merger reviews are mostly under the jurisdiction of agencies like the DOJ and FCC, Congress has an opportunity to improve video competition right now. This Committee soon will consider reauthorizing the Satellite Television Extension and Localism Act of 2010 ("STELA"). DISH and our fellow members of the American Television Alliance urge you to seize this opportunity to enact real reforms to the current laws governing how pay-TV and broadcast companies negotiate deals. We understand that Chairman Rockefeller, Ranking Member Thune, and their respective staffs have been working on a bi-partisan STELA bill. We applaud that effort. As Chairman Rockefeller said at the last video hearing, consumers cannot wait for the "mythical" re-write of the communications law.

Specifically, it is time do something to fix the broken retransmission consent system as part of STELA. Escalating programming costs are the number one source of rising pay-TV rates and one of the reasons we are seeing industry consolidation. The number of harmful programming blackouts has skyrocketed as broadcasters seek to drive up the amount of money they collect. Consumers are being negatively impacted from coast to coast, but with a few simple changes to the law, Congress can help to mitigate this harmful trend. DISH has submitted many concrete legislative proposals in writing to this Committee, and I am happy to answer any questions you might have about those ideas.

Thank you, and I look forward to the discussion today about the industry consolidation we're seeing and other trends and problems currently impacting the video industry.

The CHAIRMAN. Thank you, sir, very much. You are right about the good Senator on my left and I. We try to cooperate as much as possible.

Mr. BLUM. Wonderful.

The CHAIRMAN. There are limits, he says.

[Laughter.]

The CHAIRMAN. So far, it is a wonderful relationship, which is very key to undoing gridlock.

Let me see. I will turn to Mr. Ryan, the artist, the writer, the creator, the innovator of *The Shield.* You present the perspective of content creators and owners, and I am very happy you are at the table and look forward to your testimony.

**STATEMENT OF SHAWN RYAN, MEMBER, ON BEHALF OF WRITERS GUILD OF AMERICA, WEST, INC.**

Mr. RYAN. Chairman Rockefeller, Ranking Member Thune, members of the Committee, thank you for the opportunity to appear before you today. My name is Shawn Ryan. I am a member of the Writers Guild of America, West.

My Guild represents more than 8,000 writers of television series and feature films. We are the creators of television comedies and dramas, and as the custodians of this uniquely America art form, I want to outline for you and Americans watching today online what is at stake for the future of the video marketplace.

Although an abundance of outlets and new technologies has made original video content both more robust and accessible, the reality of American media is it is controlled by a handful of companies formed through two decades of consolidation. These companies own the television networks, the production studios, and almost all the scripted content that is available on television and in movie theaters.

The cable companies that distribute this content are even more concentrated. In this market, independent programming has been all but eliminated. Only 10 percent of the broadcast networks' fall schedule in 2013 was independently produced. Writers effectively have six companies they can sell to. Because we have so few alternatives, the media companies take the content we create, require us to relinquish ownership rights, and then reap the monopoly profits.

Consumers fare no better in this equation as monopoly power restricts viewpoint diversity, limits content choices, and drives up cable bills.

Programming decisions in this environment are not the result of a competitive market where the American public decides what it wants to watch. Rather, they are made to advance the economic interest of a handful of large companies.

I served as Executive Producer on a television series called *The Unit,* a drama about American Special Forces soldiers and the families back home who supported them. This program was produced by Fox Television Studios and aired on CBS from 2006 to 2009. In 2009, the network canceled *The Unit* and picked up *Medium,* a series produced by a CBS affiliated studio that aired on NBC for five seasons.

The reasoning behind this decision, I believe, was that CBS did not own *The Unit,* and would not benefit from secondary market revenue earned by making additional episodes. Because the network had an ownership stake in *Medium,* it chose to air another season of it because of a syndication deal that would generate additional revenue, despite the fact that *The Unit* was routinely drawing over two million more viewers an episode that season than *Medium* was.

Now Internet video distribution has the potential to restore some measure of competition, the Internet's low entry barriers have given us new content choices from outside the tightly controlled cable bundle. We now have original online series competing with television programming, what began with *House of Cards,* a Netflix series that last week garnered 13 TV Emmy nominations, is spreading to other online services.

This year Amazon and Netflix combined may spend close to $1 billion on original programming, and 20 original television like series will be released online. These developments represent meaningful change for providers and consumers alike.

The promise of vibrant video competition is once again threatened by those who control distribution. The same companies that control cable television also control Internet distribution. They would like nothing more than to take their content distribution monopoly and apply it now to the Internet.

The proposed Comcast/Time Warner Cable and AT&T/DIRECTV mergers are designed to do just that. The open Internet has the potential to create a video marketplace that is more competitive, diverse, and independent, but it is clear that action is needed to fulfill this promise.

The Internet is an information highway, and just as Congress does not allow a handful of private companies to erect toll booths on our Nation's actual highways, it cannot allow a few ISPs to set arbitrary rates and decide which businesses, video providers, or political organizations can have prioritized delivery, and which are relegated to a slow lane.

Internet providers would be allowed to strangle innovation in the cradle. Can we really expect the next Netflix, Amazon, or Crackle to emerge under these circumstances?

Strong net neutrality rules that ban paid prioritization and other discriminatory practices must be enacted. We also need effective antitrust enforcement. The fundamental question raised by mergers—concentration and the resulting monopoly power—is are they good for society or not? The answer in economic theory is a resounding "no."

Further market concentration simply means that writers will be paid less to innovate and create and consumers will have to pay more for our content.

Our country from the time of the founding fathers has been defined by a struggle to eliminate concentrations of power that harm both democracy and basic economic fairness.

As the creator of *The Shield* and its lead character, Vic Mackey, I understand something about abuse of power and what happens when proper oversight goes lacking. It may make for great entertainment, but it makes for bad public policy.

We once again have an opportunity to serve the interest of many rather than the few by stopping these mergers and by keeping the Internet free and open.

Thank you for the opportunity to testify. I look forward to your questions.

[The prepared statement of Mr. Ryan follows:]

PREPARED STATEMENT OF SHAWN RYAN, MEMBER, ON BEHALF OF WRITERS GUILD OF AMERICA, WEST, INC.

**Introduction**

Chairman Rockefeller, Ranking Member Thune and members of the Committee, thank you for the opportunity to appear before you today. My name is Shawn Ryan; I am a member of the Writers Guild of America, West, Inc. (WGAW) and a working television writer for the past 25 years.

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

Turn on a television today and the amount of original content offered has never been more plentiful. Broadcast networks, basic cable networks and pay television channels all offer original programming, year round. Dramas and comedies, the primary work of Guild members, can be found on almost three dozen of these networks. Viewers have never had more control over what they watch. Using digital video recorders (DVRs), video on demand (VOD) and online streaming, consumers can watch almost any program at almost any time. Television is not even confined to the TV set anymore. Tablets and smartphones have become portable televisions and online video has expanded the definition of television programming. Consumers can stream thousands of television episodes on Hulu, Netflix and Amazon Prime and now these sites have begun to program their own original comedy and dramas series, adding much needed new competition.

But at odds with this proliferation of outlets is a disturbing truth about American media. It is controlled by only a handful of companies, formed through two decades of vertical and horizontal integration. These companies—CBS, Comcast-NBCU, Disney, Fox, Time Warner and Viacom—own the television networks, the studios and almost all of the scripted content that is available on television and in movie theaters. While the number of outlets has exploded, the number of people deciding what Americans can watch has contracted. The market of multichannel video programming distributors (MVPDs) is even more concentrated, with four companies controlling two-thirds of the market.[1] Through monopoly power, these large corporations profit by underpaying those who are actually responsible for content creation and by overcharging consumers who have few alternative video choices.

TV comedies and dramas, the programs that Guild members create, are an integral part of American culture. Writers are the custodians of this uniquely American art form, and in that capacity I am here today to talk about the choice we face as a society. The addition of Internet distribution has made possible once again a media landscape that more closely reflects our Nation's ideals: one of a free market in which the American public, not a few powerful gatekeepers, decides what content it wants to watch. If the open Internet is preserved, if competition is enhanced, and if the media companies are restrained in their efforts to monopolize, then diverse and independent content will flourish. But to fulfill this promise requires action: we must have strong Net Neutrality rules, effective antitrust enforcement, and legislation that both expands competition and reins in discriminatory Internet Service Provider (ISP) practices, such as paid prioritization and data caps that apply only to unaffiliated video content.

**Television**

When I began in the television business, there were only four broadcast networks airing original scripted programming. Ironically, in that world of few outlets, the media business was far more competitive than it is today. Because of the Federal Communication Commission's Financial Interest and Syndication Rules (Fin-Syn), the networks were not allowed to own the content they aired in primetime. The rules were designed to serve the public interest by increasing viewpoint diversity and competition in program supply. The result was a thriving independent production sector. In 1989, 76 percent of the Fall primetime schedule on the broadcast networks was independently produced. This was a heyday for television writers as studios competed for their services. And, because the networks were prohibited from owning this content, writers and independent producers had more control over content.

When Diane English, the creator of *Murphy Brown,* first pitched the show to CBS, the network did not want a main character who was a recovering alcoholic returning from rehab. The network, instead, wanted to soften the storyline by having Brown return from a spa. Because CBS couldn't own the show, English and her producing partners could have taken the project elsewhere rather than compromise its integrity. The result of that power—the product of a competitive market for content—was that CBS acquiesced and English got to make the show she wanted and the one the public loved. The Fin-Syn rules attenuated the power over media granted to the broadcast networks by virtue of their control of the airwaves. Television programming that resulted from the separation between networks and studios promoted a diversity of voices and viewpoints.

But with the advent of cable, the broadcast networks successfully argued for the repeal of the Fin-Syn Rules, claiming the regulations were no longer necessary to ensure competition. The decades that followed saw consolidation on an unprecedented scale. It began with Viacom's 1994 purchase of Paramount and the subsequent merger in 1999 with CBS, and continued with Disney's acquisition of Capital Cities/ABC in 1995, Time Warner's purchase of Turner Broadcasting in 1996, and

[1] SNL Kagan, "U.S. Multichannel Industry Benchmarks," 2013 and "U.S. Cable Subscriber Highlights," 12/13Q, *http://www.snl.com.*

NBC's combination with Universal in 2003 and acquisition by Comcast in 2010.[2] At the same time, the broadcast networks used retransmission consent to gain control of the basic cable market, requiring carriage of basic cable networks they owned as a condition for local station retransmission. The product of this consolidation is a basic cable market where five companies account for 74 percent of basic cable viewers.[3]

In today's consolidated market, independent programming has been all but eliminated. According to a WGAW analysis of the broadcast network schedules, only 10 percent of the 2013 Fall primetime schedule was independently produced, almost all of which was reality television.[4] Basic cable networks air a similarly anemic proportion of independent programming. Only 15 percent of basic cable comedies and dramas in the 2012–2013 season were independently produced. The decline in independent programming has reduced the number of employers for writers. In 1989, 89 percent of TV writing jobs came from independent producers. By 2013, the figure had dropped to only 25 percent.[5]

This excessive concentration has benefitted the bottom lines of these Fortune 500 companies at the expense of actual content creators. With tight control over both production and distribution, the vertically integrated media companies possess all the power as employers of talent. To be hired on a television writing staff often requires writers to give the employer an exclusive first look on any idea they may have. Writers, who are the R&D of this industry, bear all the risk of developing new creative works while the media companies, through their control of distribution, reap the rewards. If a television series creator and a network experience creative differences, it is the writer who is replaced, not the network. Consumers fare no better in this equation as monopoly power restricts creative expression, limits content choices and drives up prices.

In my career I have had the opportunity to work on a series made by a studio not vertically integrated with the network which it aired on. I served as executive producer on a television series called *The Unit,* a drama about American special forces soldiers and the families back home who supported them. This program was produced by Fox Television Studios and aired on CBS from 2006 to 2009. In 2009, the network cancelled *The Unit* and replaced it with *Medium,* a series produced by a CBS-affiliated studio that had aired on NBC for five seasons. The reasoning behind this decision I believe, was that CBS did not own *The Unit* and would not benefit from secondary market revenue earned by making additional episodes. Because the network had an ownership stake in *Medium,* it chose to air another season of that series because of a syndication deal that would generate additional revenue. This experience highlights the truth about the programming on our airwaves: decisions about what to air are made to advance the economic interests of a few large companies. The programming watched by millions of Americans every day, therefore, is not the product of a competitive market where the best ideas win out.

**Online Video**

It is into this world that Internet video distribution has now emerged, with the potential to restore some measure of competition in the marketplace for content. Until recently, much online video content was short-form or reuse of film and television content. While this gave consumers new ways to view content and expanded who could create, it did little to challenge media company hegemony. The game changer was *House of Cards,* a television series from an independent producer that debuted online. This series represented what was previously unimaginable: online content that rivals television in terms of popularity, acclaim and production value. It was followed in short order by the release of three more original Netflix series and two from Amazon. The growth of this market is sudden. Our research indicates that, this year, 20 original television-like dramatic series will be released online.[6]

Consumers have demonstrated a pent up demand for new content offered in new ways. The number of online videos viewed each month by Americans has increased

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[2] CBS and Viacom split in 2005 with Paramount film production and distribution remaining with Viacom and Paramount television production with CBS; both remain controlled by Sumner Redstone through National Amusements.

[3] WGAW Analysis of Nielsen data. Average P2+ viewers in primetime, 2013.

[4] WGAW defines independent producers as studios or production companies that are not owned or affiliated with a major broadcast or cable network or an MVPD provider. Such a definition is essential because it exposes the true amount of programming that reaches the air without the market power or guaranteed distribution provided by vertical integration.

[5] These figures include all broadcast, cable and pay TV programming written by WGAW members, not just prime time.

[6] *See* Comments of WGAW *In the Matter of Protecting and Promoting the Open Internet,* GN Docket No. 14–28, July 15, 2014.

from 7.2 billion in January of 2007 to 52.4 billion in December of 2013.[7,8] The segment of Americans who watch or download videos has grown from 69 percent of adult Internet users in 2009 to 78 percent in 2013.[9] YouTube and Netflix now make up half of all downstream Internet traffic in North America.[10] The number of people signing up for online video subscriptions is yet another indicator of consumer demand for new, innovative video offerings. Hulu Plus counts more than 6 million paying subscribers and Netflix has nearly 36 million customers in the U.S.[11,12] The Interactive Advertising Bureau and Price Waterhouse Cooper report that advertisers spent almost $3 billion on online video advertising.[13] And consumers spent another $3 billion on subscriptions to Netflix and Hulu Plus.[14]

In response to this growth in demand, online platforms are making significant investments in original programming. Netflix spent $100 million on the first two seasons of *House of Cards.*[15] It is estimated that Netflix will spend $400 million on original series in 2014. Amazon reportedly will spend as much as $500 million.[16] Hulu has committed to increasing the number of original shows on its service with six new series scheduled to debut in 2014. More online platforms are entering the original video market with Yahoo, Xbox and Playstation set to become the next providers to offer TV-length series from professional writers.[17]

Much of the original content produced for these new outlets comes from independent producers, including Media Rights Capital, Lionsgate, Sony and Gaumont International Television. Online platforms have created much needed new space for independent producers, which have demonstrated a willingness to explore innovative formats and subjects.

As a result of new online video services, more than two hundred professional writers have worked on original online video programs, generating almost $10 million in income. Writers have also benefited from services that offer consumers online availability of television series and feature films. Millions of consumers visit Hulu each month to catch up on recent television episodes. Subscription services such as Netflix and Amazon Prime offer hundreds of complete television series and movies for an affordable monthly price. Amazon and iTunes also offer consumers the ability

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[7] comScore, "Primetime' U.S. Video Streaming Activity Occurs on Weekdays Between 5–8 P.M." March 21, 2007, *http://www.comscore.com/Insights/Press-Releases/2007/03/Primetime-US-Online-Video.*

[8] comScore, "comScore Releases December 2013 U.S. Online Video Rankings," January 10, 2014, *http://www.comscore.com/Insights/Press-Releases/2014/1/comScore-Releases-December-2013–US-Online-Video-Rankings.*

[9] Kristen Purcell, "Online Video 2013," Pew Research Center, October 10, 2013, *http://www.pewinternet.org/2013/10/10/online-video-2013/.*

[10] Sandvine, *Global Internet Phenomena Report: 2H 2013, https://www.sandvine.com/downloads/general/global-internet-phenomena/2013/2h-2013-global-internet-phenomena-report.pdf.* Downstream traffic refers to data received by Internet users.

[11] Mike Hopkins, "Welcome Jenny Wall, SVP Marketing, Hulu Blog, May 13, 2014, *http://blog.hulu.com/2014/05/13/welcome-jenny-wall-svp-marketing/.*

[12] Rob Golum, "Netflix Rises to Record as Analyst Predicts Viewer Gains," *Bloomberg,* July 1, 2014, *http://www.bloomberg.com/news/2014-07-01/netflix-rises-to-record-as-analyst-predicts-viewer-gains.html.*

[13] Price Waterhouse Cooper, "IAB Internet Advertising Revenue Report: 2013 Full Year Results," April 2014, *http://www.iab.net/media/file/IAB__Internet__Advertising__Revenue__Report__FY__2013.pdf* and Marina Lopes, "Videos may make up 84 percent of Internet traffic by 2018: Cisco," *Reuters,* June 10, 2014, *http://www.reuters.com/article/2014/06/10/us-internet-consumers-cisco-systems-idUSKBN0EL15E20140610*

[14] Netflix, Inc. Form 10–K (2013) and WGAW estimates of Hulu Plus subscription revenue.

[15] Brad Reed, "Netflix has already recouped its $100 million *House of Cards* investment," BGR.com, April 23, 2013, *http://bgr.com/2013/04/23/netflix-subscriber-growth-analysis-459720/.*

[16] Bookman, Samantha. "A closer look at the billions of dollars Netflix, Amazon and Hulu are spending on original content." FierceOnlineVideo, June 4, 2014. Available at *http://www.fierceonlinevideo.com/special-reports/closer-look-billions-dollars-netflix-amazon-and-hulu-are-spending-original.*

[17] Nellie Andreeva, "XBox Develops Pro Skater Comedy Series," *Deadline Hollywood,* December 6, 2013, *http://www.deadline.com/2013/12/xbox-develops-pro-skaters-comedy-series/,* and Marc Graser, "Microsoft to Launch First Original Shows on Xbox in Early 2014," *Variety,* December 13, 2013 *http://variety.com/2013/digital/news/microsoft-to-launch-first-original-shows-on-xbox-in-early-2014–1200953110/#,* and Nellie Andreeva, "Xbox Developing 1990s Music Series Based on Rapper Nas' Life," *Deadline Hollywood,* February 11, 2014, *http://www.deadline.com/2014/02/xbox-developing-1990s-comedy-series-based-on-rapper-nas-life/,* and Bryan Bishop, "Sony's first original TV series for Playstation will be 'Powers,'" *The Verge,* March 19, 2014, *http://www.theverge.com/2014/3/19/5527878/sonys-first-original-tv-series-for-the-playstation-will-be-powers,* and Douglas MacMillan, "Yahoo Bets on Two New Web Comedy Series," *Wall Street Journal,* April 28, 2014, *http://blogs.wsj.com/digits/2014/04/28/yahoo-bets-on-two-new-web-comedy-series/.*

to rent or purchase individual titles. Writers have earned almost $70 million in residual income from online services licensing or selling the content they wrote.

But the promise of vibrant video competition is threatened by incumbent control of distribution. Our nation's largest ISPs are also MVPDs, offering cable television service. These companies, which include Comcast, Time Warner Cable and AT&T, have both the means and incentive to stifle emerging online video alternatives. Online video services such as Netflix and Amazon do not own distribution facilities and, as such, must rely on ISPs to reach consumers. What's more, competition is extremely limited in the Internet service market: two-thirds of U.S. households have access to only one or two ISPs with service fast enough to stream video.[18] ISPs, as a result, have tremendous power as content gatekeepers. With this power ISPs intend to erect tollbooths and arbitrarily decide what to charge for access. Comcast, for example, has already demonstrated how it will use such power—by instituting data caps that exempt its own content and allowing interconnection ports to become congested in order to demand compensation from online video competitors, as the company recently did with Netflix.[19] AT&T has come out in favor of paid prioritization. If Comcast is allowed to acquire Time Warner Cable and AT&T is allowed to acquire DIRECTV, two companies will control more than half of the MVPD market and half of the wired Internet access market.[20] They will undoubtedly use their control to foreclose online competition, harming content creators and viewers alike.

**The Future of Video**

Without the necessary interventions to ensure that the free market works as intended, the future of video is all too predictable. In this industry, every time a new platform has emerged that promises to enhance competition and choice, the response of incumbents has been to engulf and devour. Comcast, which was allowed to buy NBC Universal, now wants to add Time Warner Cable to its media stable. AT&T has its sights set on DIRECTV, and at the same time, they jointly advocate for the weakest possible Net Neutrality rules.

But what is good for these companies is not necessarily good for society. We need a video marketplace that more closely embodies the American values of free speech, fair competition and the rewarding of creativity and innovation. To protect nascent online video competition and enhance consumer choice, we must enact strong Net Neutrality rules. The Internet is an information highway, and just as Congress does not allow a handful of companies to erect tollbooths on our Nation's actual highways, it cannot allow a few ISPs to set arbitrary rates and decide which businesses, video providers or political organizations can have prioritized delivery and which are relegated to a slow lane. Such power would allow ISPs to strangle innovation in the cradle. Can we really expect the next Netflix, Amazon or Crackle to emerge under these circumstances? Net Neutrality rules, therefore, must ban paid prioritization and other discriminatory practices that favor content affiliated with an ISP, as Chairman Rockefeller's Consumer Choice in Online Video Act would do. We should also, as Chairman Rockefeller's bill proposes, expand the definition of an MVPD to include providers that do not own distribution facilities, enabling new online video offerings.

The FCC and the Justice Department should block both the Comcast–Time Warner Cable and the AT&T–DIRECTV mergers. There is a fundamental political and economic question raised by mergers, concentration and the resulting monopoly power. Are they good for society or not? The answer in economic theory is a resounding no. Every economic textbook makes clear that the result is a misallocation of resources and an unfair distribution of income. So why do we, as a society, allow corporations to make arguments about merger effects that contradict economic theory?

What will the result be of further mergers and market concentration? Writers will be paid less to create and innovate, even though our national political rhetoric exalts the importance of creators and innovators. And, consumers will pay more, just as economic theory and history have made clear that they will.

This is the quintessential political and economic question for America in the 21st Century: Will we continue to allow unchecked concentrations of power that result in a widening gulf of income and wealth? Or, will we seize the opportunity to say

[18] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Internet Access Services: Status as of December 31, 2012,* December 2013, p 9.

[19] Christopher Libertelli, Vice President, Global Public Policy, Netflix, Inc., "Letter to Senator Al Franken," April 23, 2014.

[20] Leichtman Research Group, "2.6 Million Added Broadband from Top Cable and Telephone Companies in 2013," March 17, 2014, *http://www.leichtmanresearch.com/press/031714release.html.* Subscriber information from company filings and SNL Kagan.

no? I hope we will serve the interests of the many rather than the few, as classic economic theory suggests we should, by stopping these mergers and by keeping the Internet free and open.

The CHAIRMAN. Thank you, sir, very much. And finally, Gene Kimmelman, President and CEO of Public Knowledge.

**STATEMENT OF GENE KIMMELMAN, PRESIDENT AND CEO, PUBLIC KNOWLEDGE**

Mr. KIMMELMAN. Thank you, Mr. Chairman, Senator Thune, members of the Committee. On behalf of Public Knowledge, a non-profit that promotes freedom of expression and an open non-discriminatory Internet, I appreciate the opportunity to testify today.

I want to start off by thanking all of you for unanimously voting to protect consumers last night by passing the cell phone unlocking bill, which will enable consumers to unlock their cell phones and take them to whichever service provider they want. I am hoping the House will take up your legislation and we will have this protection for consumers in the near future. Wonderful to see the Senate move forward unanimously.

Mr. Chairman, on a personal note, as you indicated your long service on the Committee, I am kind of hoping this is the last time you will haul me up here before you leave. I do not know for sure but I want to take a moment just to reflect back. Because even before you started, over here in the Russell Building, at a table like this, I sat before Senator Packwood as he tried to work with the Democrats to figure out how to deal with the break-up of AT&T, the old AT&T, in a bipartisan fashion.

Recalling your tenure when you started and going forward, I remember working closely with Senator Danforth and then Senator Hollings as they grappled with what to do with the skyrocketing cable rates of an unregulated industry, and worked amazingly in a bipartisan fashion to actually re-regulate the industry and create the opening for Mr. Blum's company to actually exist, for the satellite industry to develop and to begin to compete.

Then Senator Pressler grappled with the 1996 Act, and during all this time, Senator Markey was doing the same things in the House. Senator McCain, Senator Inouye were all wonderful, fabulous leaders. But I have to say, Senator Rockefeller, nobody was a bigger consumer champion than you have been during your time in this committee and leading this committee. You will be sorely missed when you retire, so we thank you for everything you have done.

You picked the title of the "tipping point," and I note that everyone has dutifully agreed in some fashion with what that is all about, and I am particularly happy that Mr. Cohen agrees because I think it is the tipping point to Comcast.

That is where we are today, with a proposed merger that would put almost half of all consumer high speed broadband connections in the hands of one company. I think it is worthy of this committee's time to know what that means for all the wonderful things we have out there, all the wonderful companies that have been mentioned this afternoon, from Amazon, to Google, to Microsoft, to Netflix. They all have to connect through that broadband wire or some broadband connection.

I give AT&T credit for trying to play catch up here. Are we tipping toward AT&T as well? Well, they are trying to combine a technology satellite they could never offer effectively, the broadband connection, with their own. They are going to need new equipment; more power to them.

We go from four competitors to three in some markets, and the question is whether they can make up for it and whether they can actually take that on at a cost disadvantage to Comcast and other cable companies. Maybe. We will see, but they have not made that case yet.

Are we tipping toward the next wireless merger that is right around the corner? Are we tipping toward a major content merger that there were rumors of already this morning?

One thing we know is we are tipping toward a lot of power in the hands of one major cable company, and why would that matter? For a fundamental reason. As AT&T tries to play catch up, the problem is the best competitor today to the cable wire is the cable wire. It is called "broadband." It is the other part of the same wire.

With almost half of the customers in the country, why would that matter? Because every Amazon, every Google, every Netflix, everyone who wants to make that online service work will need interconnection with Comcast/Time Warner. Can that be manipulated? That would be an issue.

Connection to their customers, the last mile, part of the net neutrality debate that has unfolded. Could that be manipulated to favor the company that owns the wire? Massive control in the hands of a company, the great NBC.

These are all wonderful NBC products. It is not a problem for consumers to want NBC, want all the sports, all the regional sports. The issue is whether it costs $50, $100, $150.

The issue is whether that choke point control inflates the price, blocks the innovation, prevents new players from reaching the customer first at all, or at a price competitive level, or with the incentive to continue to innovate.

With that many customers, every programmer needs to be on those Comcast systems. Under whose terms and conditions? Comcast terms and conditions. Would Comcast want that broadband service to compete against its own service? Any logical business would not want that, would not want to be undermining its own core business.

These are the dangers. These are the concerns. There may be more to come because Comcast started the ball rolling, and it appears from today's news story we do not even know where this will end.

So, Mr. Chairman, I want to commend you, not just for your long service, but for also the shot across the bow—your legislation to identify for everyone on this committee and in the body the importance of online video competition and the dangers of discrimination.

I want to conclude by reminding everyone that during your tenure when others were chairing, the most pro-business Senator that I dealt with in my tenure, Senator Danforth, led the charge to reregulate, not because he wanted to, but because he felt there was no other choice given what cable was doing in 1992.

Today is a time in which I hope that strong law enforcement which you can help promote and support, will prevent us from having to go back to that kind of a solution again. But I appreciate your effort to identify what the issues are and where the Congress may need to go if that strong law enforcement does not actually take hold.

Thank you so much.

[The prepared statement of Mr. Kimmelman follows:]

PREPARED STATEMENT OF GENE KIMMELMAN, PRESIDENT AND CEO, PUBLIC KNOWLEDGE [1]

After years of suffering from enormous rate increases and poor service from incumbent cable providers,[2] a vibrant broadband economy is just beginning to show that there can be alternatives to subscription television.[3] Everything from new devices—like Roku, Xbox, Amazon's Fire, and AppleTV—to new video services—like Amazon Prime, YouTube, Netflix, and Aereo—are demonstrating that online video can compete with some elements of traditional cable TV.

These new competitors may begin to help consumers avoid overpriced large "tiers" or bundles of channels, many of which force customers to purchase access to channels they do not want simply to access the channels they do want.

But while online video and connected devices are a success story, their competitive effect is still somewhat limited. At the moment, they are not driving down cable prices because anti-competitive practices and outdated policies have relegated them to being a supplement to cable and satellite, not a replacement. Incumbent providers control both the content and the infrastructure that new competitors need to provide service to viewers. Incumbents either control video content outright or are able to use most-favored nation (MFN) contracts to limit the independent content that can appear on online services. Online video is often tied to a cable subscription—for instance, it's impossible to pay HBO directly for an HBO Go subscription; viewers must first pay for an entire pay TV package before adding HBO. Incumbents can use data caps and, possibly, interconnection deals to disadvantage online video as a whole. Incumbents even control the devices people can use with their TVs—for example, by only supporting their proprietary set-top boxes, or by failing to "authenticate" certain applications on third-party devices.[4]

New video services and their investors are also carefully watching the national policy debate over maintaining strong rules to protect an open Internet, which they need to thrive. A new wave of broadband and media company mergers threatens to further limit the few choices consumers have to access the Internet, while giving just a handful of companies gatekeeper power over content, infrastructure, and devices. In a world of limited access choices, strong open Internet rules become dra-

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[1] Public Knowledge is a public interest nonprofit dedicated to the openness of the Internet and open access for consumers to lawful content and innovative technology. Public Knowledge has a long history of opposing mergers and other transactions that reduce choice and competition in the telecommunications sphere, including those between Comcast and NBCU-Universal, AT&T and T-Mobile, and Verizon and SpectrumCo.

[2] *See* Free Press, *Comcast Gets Bigger, You Get Poorer, http://www.freepress.net/sites/default/files/resources/Free_%20Press_Comcast-TWC%20Infographic_Video_Price_Hikes_0.pdf; see also* Bureau of Labor Statistics, Consumer Price Index.

[3] While some consumers have the option to choose between cable and satellite providers, very few have viable options if they wish to bundle both television and broadband services. At one time, wireline telecommunications companies appeared to be a potential competitor in the combined subscription TV and broadband space, but both Verizon's FiOS and AT&T's U-Verse are currently offered in a relatively small geographic area. Even if AT&T and DirecTV merged, the combined entity would gain only a marginally improved ability to compete with Comcast due to substantial labor and equipment costs related to installing new customer equipment of combined services. Satellite continues to lack a meaningful broadband option to make it a competitor to cable broadband. Google has only committed to a limited number of small experiments. Finally, mobile broadband is a complement, not a substitute.

[4] Certain online video (*e.g.,* "TV Everywhere") is only available to customers of traditional pay TV providers. This alone makes it a supplement to, rather than competitor to, pay TV. Compounding this, it is only available through apps that the customer's pay TV provider has specifically white-listed, or "authenticated." This means, for example, a customer of one pay TV provider might be able to watch online video on an Apple TV and a web browser but not a Roku or a game console. It might be the opposite for customers of another pay TV provider. This is not a technological limitation; it is solely in a pay TV provider's discretion to allow or not allow its customers to use particular devices for particular content. This has competitive implications.

matically more important to protect the ongoing virtuous cycle of investment and growth of Internet Protocol based networks.

The current structure and dynamics of the video marketplace didn't happen on their own. They are the result of decades of legislative and regulatory policy choices. In order for the marketplace to realize the potential for competition from online video both the Congress and regulatory agencies must act. Public Knowledge has supported (in whole or part) various proposals for video reform including aspects of former Senator DeMint's Next Generation Television Marketplace Act in 2011 and Senator Rockefeller's Consumer Choice in Online Video Act at the end of last year. We are also encouraged by the bipartisan approach that Senators Rockefeller and Thune have taken to approaching video reform issues by jointly asking for public comment from stakeholders. It is through the hard work of policy making that we can provide online video creators, investors, and consumers with the certainty needed to build greater competition.

**The Dangerous Wave of Consolidation**

The current proposed Comcast-Time Warner Cable merger and the AT&T-DirecTV merger have placed the issue of the future of the video marketplace squarely in front of the Federal Communications Commission (FCC) and the Department of Justice (DOJ). American consumers are watching as these merger proposals foreshadow even greater mergers and consolidation to come, in order for the few existing broadband and video distributors to match the market power these mergers represent.

Public Knowledge believes the proposed acquisition of Time Warner Cable, the Nation's second largest cable company, by Comcast, the Nation's largest cable company and owner of all NBCU content, will threaten the viability of nascent competitors and endanger the emergence of innovative new video and other types of services delivered over the Internet. The proposed transaction is inconsistent with antitrust policy, the goals of the Communications Act, and the broader public interest. Therefore, it should not be approved.[5]

As a result of the merger, Comcast will control nearly 50 percent of high speed Internet access in this country, over 30 percent of Multi-Channel Video Programming Distributor (MVPD) subscribers and almost 60 percent of cable subscribers.[6] Comcast will also have a significant presence in 16 out of 20 of the largest DMAs in the country.[7] This unprecedented accumulation of market power, combined with Comcast's vertical integration into content, creates the incentive and enormous leverage for Comcast to:

(1) stifle slowly emerging competition from rivals such as Netflix and Amazon that require high speed Internet access to deliver quality service to their customers, thwarting not only competition from existing rivals but discouraging investment in new innovative services delivered over the Internet;

(2) slow the pace and dictate the direction of equipment, device, and service innovation to lock in maximum revenue for Comcast's own infrastructure and business model;

(3) pay content suppliers less than the market value of their products and services, driving up the cost of programming to other distributors and increasing prices to consumers;

(4) artificially raise the prices of Comcast-owned programming to Comcast rivals hampering their ability to compete and raising prices to consumers; and

(5) position itself as the dominant gatekeeper for all new services (both video and non-video) that rely on fast, reliable broadband connections to reach customers.

The Department of Justice (DOJ) recognized the competitive dangers inherent in Comcast's vertical integration into content with its merger with NBC-Universal:

> Comcast has an incentive to encumber, through its control of the [Joint Venture], the development of nascent distribution technologies and the business

[5] Public Knowledge testified in fuller detail on the specific statistics and market concerns around the Comcast-Time Warner Cable merger in a hearing specifically on that merger before the Senate Judiciary Committee, April 9, 2014.

[6] Mark Cooper, *Buyer and Bottleneck Market Power Make the Comcast-Time Warner Merger "Unapprovable"*, Consumer Federation of America, at 6 (Apr. 2014), available at *http://www.consumerfed.org/pdfs/CFA-Comcast-TW-Merger-Analysis.pdf.*

[7] Filing by Comcast Corporation, SEC File No. 001–32871, at 5 (Feb. 13, 2014), available at *http://www.sec.gov/Archives/edgar/data/1166691/000095010314001082/dp44005_425-it.htm* ("Comcast SEC Filing").

> models that underlie them by denying OVDs access to NBCU content or substantially increasing the cost of obtaining such content. As a result, Comcast will face less competitive pressure to innovate, and the future evolution of OVDs will likely be muted. Comcast's incentives and ability to raise the cost of or deny NBCU programming to its distribution rivals, especially OVDs, will lessen competition in video programming distribution.[8]

That transaction proceeded after Comcast committed not to unfairly discriminate against either traditional video distributors or emerging online competitors. The proposed merger of Comcast and Time Warner Cable, however, presents competitive dangers that far exceed traditional regulatory policing practices. As new threats arise to Comcast's business interests, it has at its disposal myriad ways of slowing down its competitors, degrading their services, and increasing their costs in ways that cannot be effectively monitored and prevented.

By expanding its customer base to control almost one-third of all subscription TV households in the country and almost one-half of all the high speed broadband customers in the U.S., Comcast would position itself to dictate how much consumers must pay, determine what packages of services customers must buy, and influence what devices people can use to receive the type of video content they want. Through vertical control of NBCU's "must have programming" and its enormous customer base, a combined Comcast-Time Warner Cable could become the dominant Internet gatekeeper and choke point for innovative video services and products, inflating prices and preventing millions of consumers from receiving these services and products at competitive market prices.[9]

While the Comcast-Time Warner Cable merger is the more dangerous of the two mergers, AT&T-DirecTV raises concerns as well. AT&T and DirecTV claim their proposed merger may in a limited fashion enhance the combined company's ability to compete with Comcast and Time Warner (or Comcast/Time Warner) in the market for video, broadband, and voice bundles. Yet thus far, AT&T and DirecTV have failed to make a compelling case that their proposal will not harm competition or that it will result in significant public interest benefits.[10] Public Knowledge therefore, based on the current record, recommends that the DOJ and FCC reject this proposed transaction.

**Congress Has The Power To Promote Competition**

Congress and the American public faced a marketplace challenge over two decades ago when satellite television became a viable competitor. The technology was there, but the existing regulations did not allow for new entrants to compete with local cable monopolies. The 1992 Cable Act opened up the market for satellite to compete by ensuring access to "must see" programming at a reasonable rate. The benefits are evident today with Dish and DirecTV attracting about 34 million subscribers.

This moment in time is similar to what we faced in 1992, but with greater potential for true competition. Congress and the FCC can help online video develop into a full competitor in three ways. First, Congress can clear away some of the outdated rules that slow down the evolution of the video marketplace. Examples of outdated rules include the dysfunctional retransmission consent system, as well as protectionist policies like the prohibition on distant signal importation.

Congress should be cautious not to eliminate parts of statute that promote competition and choice. For example, section 629 of the Communications Act allows for the FCC to enforce rules that create innovation in set-top boxes and competition against high priced cable boxes. Congress and the FCC should continue to enforce the current CableCARD implementation of that statute while moving to a more modern implementation that fixes some of CableCARD's shortcomings.

Second, Congress can extend the successful policies that protect providers from anticompetitive conduct to certain online providers. For example, if a large cable system would be prohibited by law from acting anti-competitively towards a satellite provider, there is no reason why it should be able to take the same actions against an online video provider. We are pleased to see a section of Senator Rockefeller's Consumer Choice in Online Video Act devoted to updating the program access rules in order to include protections for online video as a competitor to traditional Multi-

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[8] *United States v. Comcast,* Case No. 11–cv–00106, Compl. at ¶54 (D.D.C. Jan 18, 2011), available at *http://www.justice.gov/atr/cases/f266100/266164.htm.*

[9] *See* Cooper, *supra* note 4, at 6 (HHI analysis showing Comcast-Time Warner Cable firm share of True Broadband at 49 percent, Wireline Cable of 54 percent, and MVPD of 35 percent).

[10] Testimony of John Bergmayer, Public Knowledge, U.S. House of Representatives Committee on the Judiciary, June 24, 2014.

channel Video Programming Distributors (MVPD). This includes the requirement that television broadcasters negotiate with online video distributors.

Measures such as program access and program carriage rules are designed to mitigate this form of market power by certain large video providers. These rules should be extended to online video and should not be repealed until effective competition develops. In light of the Supreme Court's *Aereo* decision, which found that an online video system such as *Aereo* bears an "overwhelming likeness" to traditional cable systems, it has become increasingly untenable to afford online systems that offer linear channels an entirely different regulatory treatment from traditional pay TV providers. However, Senator Rockefeller's bill provides an alternative and simpler approach to new technologies such like *Aereo*. This approach recognizes the obvious differences between cable systems and antenna rental services, legally clearing the way for the new distribution model to flourish.

Third, Congress and the FCC can protect Internet openness and prevent discriminatory billing practices that hold back online video. In addition to supporting the FCC in preserving Open Internet rules, Congress should encourage the FCC to examine whether discriminatory data caps hold back online video competition. This will increase competition, meaning lower prices, better services, and more flexibility and control for consumers.

**Conclusion**

The technology exists that could eliminate the physical, bottleneck control of video distribution that has existed in various forms for decades. If policymakers have the courage to reject anti-competitive merges, and take some simple steps to facilitate the development of competitive online video now, Congress may eventually be able to disengage from regulations that were designed to counter the effects of this bottleneck control. However, if we fail to do this, it is likely that incumbents will be able to continue to shape the development of the video market and extend their current dominance indefinitely. While the Internet provides grounds for hope that the future of video will be better for consumers, policymakers have to make the policy choices to create this reality.

The CHAIRMAN. Thank you, sir, very much. That was a heck of a year, was it not, 1992? That was a brawl.

I thank you for your comments and your wisdom, and I am going to proceed to the first question. We have very, very good people here. We will try to make it 5 minutes or 6 minutes.

Let me start with you, sir. This is about the value of online video. I know DISH is in the process of developing an online cable service that would compete directly with traditional pay TV offerings.

Your company has acquired some programming from ABC-Disney, and I understand you are negotiating similar carriage arrangements with other cable networks.

Now, that is easily said. However, it is an extraordinary difficult process, where leverage becomes everything.

So, my question to you is why has DISH chosen to develop an online video platform? What are the biggest challenges to the development of that platform, and are there elements of my online video legislation that if enacted would help alleviate these challenges for a DISH network? In other words, an entirely self serving question.

[Laughter.]

Mr. BLUM. Chairman Rockefeller, DISH recognizes that the younger generation does not want to have to spend $120 for 500 channels, as you note. They want a smaller package. They want a less expensive package.

DISH and our founder, Charlie Ergen, spent 6 months negotiating with Disney for this ground-breaking deal.

We are the first to get the rights to stream ESPN live, and you are correct, we have to get other rights from other programmers in order to be able to offer that package, and we hope to launch the service later this year, and in many ways, it will compete against traditional MVPD providers because it is going to be an Internet only, leaner, cheaper package. We think that is a good thing for consumers.

The threat and the challenge is when we launch that product it will compete with Comcast's XFINITY product and their online offerings. Comcast does not necessarily want us to succeed because we are competitors.

The problem is they control post-merger almost 50 percent of the broadband pipe. Our great over-the-top service when we launch it will pass over their pipe, and we are very concerned that a combined Comcast/Time Warner will have an incentive and ability to stifle our service, to slow it down, to block it, to make it jittery, so our customers do not like it. That is bad for consumers and that is bad for competition.

In terms of your bill, Senator Rockefeller, there is a lot in it that we like. The recognition of the growing importance of over-the-top, that is something that two years ago people were not talking about. You have been a leader on that issue, and your engagement on these issues and hopefully work with Senator Thune is enormously important.

Congress has an opportunity to encourage innovation, to promote competition, and to protect consumers, and we hope they do so.

The CHAIRMAN. I thank you, sir. This next question is for you also, and for Mr. Kimmelman, and it is about access to content.

When it comes to traditional television, the FCC has long had rules to prevent certain anticompetitive activity between cable and satellite companies, and why is it the 1992 Cable Act comes to mind.

[Laughter.]

The CHAIRMAN. With respect to online video, in its approval of the Comcast/NBC Universal merger several years ago, the FCC required Comcast to offer its video programming to certain online video distributors on the same terms and the same conditions that would be available to traditional pay TV providers.

So, my question to you, and first to Mr. Kimmelman, is is there evidence that companies are in fact locking up content, or demanding exclusive deals as a condition of carriage on line, *i.e.,* leverage? Have the Comcast/NBC Universal merger conditions been effective, and how do you react to reports even today suggesting a merger st between two large cable programmers, to wit, 21 Century Fox and Time Warner, would have enormous consequences?

So, I would ask each of you.

Mr. BLUM. So, Senator Rockefeller, I am not aware of Comcast granting over-the-top rights to anyone yet. I can say we are in current negotiations with NBC and we hope that we can get those rights.

As you noted in your opening remarks, often times promises of a merger do not come to fruition, and often times conditions that were put in place to remedy the harms of the proposed merger do not work.

I can point to one condition as part of the Comcast/CNBC deal where Bloomberg, a competitor to Comcast/CNBC got a condition where Comcast agreed to put the Bloomberg channel next to CNBC. It took 2 years of litigation for that to happen, and when we are talking about over-the-top rights and the choke point that Comcast will have over the pipe, the Bloomberg dispute is so simple, broadband and all the ways they could engage in anticompetitive behavior are complex. It is a cold comfort, you have the best conditions in the world. I do not think that is going to be able to ameliorate the harm of their anticompetitive behavior post-merger.

Mr. KIMMELMAN. Mr. Chairman, the announcement this morning that there could be discussions of another transaction, I think, really indicates the nature of the problem in this marketplace, and it is not a problem that antitrust enforcers can address directly. They have to accept the business model as is, you know, short of finding anticompetitive behavior within it.

We are in an arms' race. It is transmission companies bulk up, and then no surprise, content companies would want to bulk up.

The problem is the consumer is squeezed. The consumer is between a rock and a hard place because that is just price increases. If the company is allowed to own the content and then charge others the same price, they can charge themselves a high price, they can charge their customers a high price, but if they charge DISH or DIRECTV the high price, too, everybody is paying the high price. It is passed on to the consumer.

So, there is no competition there for lowering the price to consumers unless you can use something like broadband with an opportunity to unbundle and pick what you want, just what you want, to at least be able to have more choices.

So, I think the problem is now a new problem. At the time of the 1992 Act, satellite could not get the programming at all, and Congress stepped in and said you have to make it available, and we saw investment flow and an enormous explosion, and it was the explosion of that satellite product that led to digital, which led to cable moving to digital, and all the benefits of competition.

But now we are kind of stuck again because the cost of the content keeps going up, and if you just pass it along to everybody, you are not solving the problem for the consumer.

So, it is a question of whether you can do something to break that cycle. I think your legislation identifies the need to prevent discrimination. The question is whether enforcement of the law, avoiding anticompetitive transactions that consolidate beyond a reasonable level, can further that goal.

But we are in a bad place and it is important for the Congress to consider this, that it is not just what you charge someone else now, if you are charging yourself, if that is just a higher price, everybody is paying a higher price. It does not solve the problem.

That is why I said it is not that Comcast will not offer wonderful things. XFINITY has wonderful services. I commend Mr. Cohen and his company. The prices are high. Anyone trying to buy his product is going to pay high prices, too.

That is why the issue is whether you can actually use broadband to break that choke hold and give people at least more choices to pick what they want.

The CHAIRMAN. I thank you, sir. My time is up, and I recognize my distinguished Ranking Member, Senator Thune.

Senator THUNE. Thank you, Mr. Chairman. Mr. Stankey, my understanding is that South Dakota will benefit from AT&T's commitment to deploy fixed wireless local loop service to 13 million customer locations across the country.

Can you please tell me a little bit more about the specific plans for this new service, and perhaps, for instance, how soon those services could be deployed after the merger closes, and what kinds of speeds customers might expect?

Mr. STANKEY. Certainly. South Dakota, specifically, probably in the neighborhood of 135,000 new customers would get access to fixed wireless local loop.

The technology will deliver a service of 15 to 20 megabits per second, and in these rural and underserved areas, that is a meaningful step forward, and as I mentioned earlier, 20 percent of these customers only have satellite based broadband service today, and 27 percent only have a single broadband provider, so this will be a nice step forward for them.

This is a different technology than our mobile technology. It is specific spectrum that we dedicate to a fixed solution. It requires us to do unique things on the cell tower to put in special antennas that transmit in the manner that achieves those higher speeds, and it requires us to do unique work at the customer's premise or location to put a fixed antenna in to achieve those speeds and those capabilities.

It is a professional installation, and one of the benefits of doing this in the combination of this merger is that as you know, rural customers often times have an affinity for satellite television, and when we are out installing a satellite dish, we can now do the work to enable the broadband connection at the same time, on one dispatch, consolidated on one bill.

We think that is a good customer experience, and obviously it is attractive because it puts more broadband in the market and opens up opportunities for over-the-top distribution into these customers that really do not have that kind of a robust solution today.

Senator THUNE. How soon might that come along?

Mr. STANKEY. We will start activity on actually constructing it the year the transaction closes. We are expecting that will be some time next year. It will take us a full 2 years to complete the buildout after that point. So, it will take some time to get it done, and we will introduce it in a rolling fashion. It will not be all one state at one time, but it will roll through the state.

Senator THUNE. Professor Hurwitz, the closing thought from your testimony is, and I quote, "We should be thinking about how to allow traditional television to operate more like online video," unquote.

So, when Chairman Rockefeller retires and he is sitting back and watching a few of his cable favorites, like Fox News.

[Laughter.]

Senator THUNE. And MTV.

[Laughter.]

Senator THUNE. I assume the goal is to get more options, more opportunities available. Could you explain that statement and offer thoughts about what role this committee and Congress might play in that pursuit?

Mr. HURWITZ. Absolutely. This ties into the beginning of my testimony where I note the continuing dominance of the linear channel model, and this is an area—I note Mr. Kimmelman just complimented Comcast's XFINITY and X1 platform. I am going to do the same.

This is an area where Comcast has made some really interesting innovations, I think, to try and move the consumer's viewing experience on the MVPD platform away from channel 11, channel 12, channel 13, what are the neighborhoods, does it matter if CNBC and Bloomberg are right next to each other? No. It matters that you can go to your remote control, you can go to your computer, your device, and you can see the content of whatever you want to see.

There is a lot of implicit market power, a lot of implicit regulatory ossification and structure built into the traditional linear channel model. That is something that we are seeing consumers able to escape from in the online world.

It is something that creates a lot of opportunity for programmers, for writers and creators, and is something that I think this committee and Congress should do everything it can to enable and promote.

Senator THUNE. Mr. Kimmelman, do you believe Americans have meaningful choice today for video services, and if the answer to that question is no, what is your definition of what "meaningful choice" is?

Mr. KIMMELMAN. I think they have more choices than they have had before at higher price points. I think we have not been able to succeed at getting the kind of full package choices or the opposite, the kind of unbundled choices.

You cannot just buy Netflix without buying the broadband connection first, and you cannot get a lot of individual channels you may want, even if you just want five plus Netflix, without paying a large price.

So, the issue is not choice in the sense of is it available in any form at all, for most people it is, although I commend the effort to do more in rural America because that is clearly where the choices are more limited for broadband, not as much for video.

What we do not have is the broader individualized selection driven by the consumer. It is driven by a packager right now, and that is our big problem.

Senator THUNE. OK. Mr. Chairman, we have lots of people who want to ask questions, so I will yield back my time. Thank you.

The CHAIRMAN. Thank you, Senator Thune. Senator Booker?

**STATEMENT OF HON. CORY BOOKER, U.S. SENATOR FROM NEW JERSEY**

Senator BOOKER. Thank you very much, Mr. Chairman and Ranking Member. I just want to jump right in in the limited time that I have.

Comcast has stated and advertised that there should not be any broadband concerns when it comes to the merger because Comcast is willing to agree and abide by the FCC's former net neutrality rules.

Mr. Kimmelman, can I just ask you real quick, what is your response to this? I have some concerns about issues related to Internet peering and interconnection. In many ways, this is a way to create fast lanes de facto, what I consider de facto ways that people can pay for better service or better connectivity.

I would love to hear sort of your thoughts on that, and I would like Mr. Blum and DISH also to weigh in on that as you look at over-the-top cable service.

We will start with Mr. Kimmelman.

Mr. KIMMELMAN. Thank you, Senator Booker. I commend Comcast's commitment, as well as AT&Ts. I think it is a step in the right direction. The problem is I am not sure it is anywhere near enough because Mr. Cohen has already indicated even with those commitments, there could be certain prioritized services, there could be certain preferential treatments that he thinks are legal under the law—I am not sure exactly what he is referring to.

But if we do what my organization thinks is necessary, to go back to a traditional non-discrimination rule under Title II of the Communications Act structure, we should not have to deal with those kinds of fast lanes and that kind of preferential treatment.

It can happen on the interconnection side. If you are a video provider and a broadband provider, it is not particularly helpful to your business to have Netflix pulling a lot of eyeballs, or Amazon or Google's YouTube, or anyone else.

So, there is a natural incentive, and unfortunately an opportunity to take advantage of that positioning of controlling both broadband and the video platform, and that is the concern here, and it is what should be looked at in terms of FCC and DOJ enforcement, and in terms of the broader rules of the road for the industry.

Senator BOOKER. Thank you. Mr. Blum?

Mr. BLUM. Comcast's net neutrality commitment is not nearly enough to protect consumers. They have at least three choke points, the public Internet, interconnection, as Mr. Kimmelman mentioned, and managed services.

Those last two choke points are complex, not easy to understand, but they are just as threatening to competition as the open Internet portion of it.

On interconnection, Senator Booker, Comcast has said there is so much competition amongst these content delivery networks, you know, competition is good and nothing bad will happen from that, but the reality is all those content delivery networks, they are delivering Netflix content, DISH content, to the point of interconnection——

Senator BOOKER. So, Mr. Blum, let me cut you off because I want to try to get another question in, but I would be remiss, David, if you want to just say something really quick.

Mr. COHEN. I will try to do it really quick. Let me just say I think all this reasoning that you have heard on this just really misses the point about the way in which the Internet works.

So, let me talk about interconnection really briefly first. Totally different market than broadband market share. There are dozens of content delivery networks and transit providers who interconnect Internet edge provider content to Comcast and many other companies.

So, if you want to interconnect to our backbone, you have dozens of choices in a highly competitive market, where pricing has dropped 99 percent in the last 15 years, and there simply is no example anywhere of anyone not being able to——

Senator BOOKER. I get that, just for my own sake, I have a minute left, just quickly, that is the Internet peering then?

Mr. COHEN. That is peering and interconnection. On the DISH point—and there are so many misrepresentations in the DISH testimony, which I would love to have a chance to address if someone wants to let me do that.

Senator BOOKER. Well, do not take——

Mr. COHEN. On the one point, I will not do it here, the only point I will say is that under the 2010 Open Internet Order, under any Open Internet Order that is going to be put in place, it is absolutely crystal clear that we would be prohibited from blocking or degrading a DISH over-the-top service to our customers.

I do not think we have the incentive to do that anyway, but even if you do not believe that, it is clearly legally prohibited and would——

Senator BOOKER. I hear you. I wish I could get back to Internet peering and just one differentiating question, but just while I have the moment, I am very concerned about sort of independent channels that offer sort of niche services being squeezed out of the market as a whole.

These are channels that serve, you know, rural audiences, Latino audiences, black African-American audiences, Asian-Americans. They are a very important part.

So, just real quick, Mr. Cohen and Mr. Stankey, how can we assure this situation will not get worse when consolidation happens and that we are not squeezing out certain niche markets that are a very important part of the American cultural fabric, and what are you going to do to make sure that these viable independents have a long-term role in the video marketplace?

Mr. COHEN. There is nothing more important for maintaining the future vitality of cable and diversity of voice than protecting these independent voices. Comcast is already the largest multi-channel video distributor in the country, and we are the most independent channel friendly.

We carry 160 different independent channels, six out of every seven channels we carry is unaffiliated with Comcast. In the last 3 years, we have expanded carriage for 120 independent channels.

We have launched five brand new independent channels since the NBC Universal transaction, four of which are minority owned and controlled, and I do not think there has been a period of 3 years in the history of cable where four brand new minority owned and controlled cable channels have been launched in this country.

So, we are going to stand by that commitment. We think this transaction is great for independent channels and independent programmers because of the track record that we have in protecting those voices and in carrying those channels.

Senator BOOKER. Mr. Stankey, briefly.

Mr. STANKEY. Senator, I would echo the same. The reality is that the marketplace responds to what competitors do, and you heard Comcast describe their push in this area.

All operators need to put relevant content out that people want to watch, and we have a great track record, and I know DIRECTV has a great track record of putting that content in place. I expect nothing to change post-transaction.

If the content is something people want to watch, it will be out there, and further, the push on the broadband side allows for a lot more new programming models to emerge, and especially when it is content that starts to address unique and niche models. Some of these independents will have new models that will be more effective in this marketplace, and an OTT model, and we expect that is going to emerge going forward as well.

Senator BOOKER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Booker. Senator Nelson, to be followed by Senator Markey, to be followed by Senator Heller. Senator Nelson?

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

Senator NELSON. In an abundance of fairness, I want to get some counterpoint between Mr. Kimmelman and Mr. Cohen.

Mr. Kimmelman, you believe it is important to view this potential merger in the context of a broadband merger instead of just a TV/video merger. Tell us why, and then I want Mr. Cohen to give his point of view.

Mr. KIMMELMAN. Well, to be clear, Senator Nelson, I believe that there are two separate markets and then there is a combined service market, and they are all relevant here.

There is the video market, traditional video and MVPD service that Comcast is in the business of, and then there is the broadband product, which increasingly is the best alternative way to get something as a competitive alternative to the cable product because it has developed with high speed capacity and great ability to offer the video service.

So, these are both important markets to look at.

Mr. Cohen has indicated they have been willing to divest some properties to get down to a level of about 30 percent of the MVPD market, he can correct me if I am wrong, consistent with what were the original proposals from the FCC of a horizontal limit in that market.

The problem is, and maybe it is a good problem for them, they have been extremely successful with their broadband product, it is very, very popular, and in many markets there is no good alternative to it, or the one that is there is much slower and cannot offer as good a video product, and therefore, they have more than 40 to 50 percent when you combine the two properties together of that market.

That is a huge market share. It will be the way in which many content companies will want to compete against Comcast's product.

Senator NELSON. OK. Let me get Mr. Cohen's response.

Mr. COHEN. Mr. Kimmelman and I testify a lot together and as usual, I actually agree with some of the things he says, particularly on the video market, in that—I am not even going to address that.

We will be below 30 percent. The D.C. Court of Appeals has ruled twice that having a less than 30 percent share for an MVPD does not present significant risk of disruption of the programming market. I will just leave that where it is.

In the high speed data market, I am always reminded of one of my favorite expressions. I have a number of them, but one of them is that "You are entitled to your own opinions but you are not entitled to your own facts."

So, let's get the facts on the table. Under current Federal definitions of broadband, according to data released by the FCC in the last month, as of June 2013, the combined Comcast/Time Warner Cable will control 35 percent of the fixed wire line broadband market, and if you factor in wireless, we will control 15 percent of the combined market.

I am not going to advocate for 15 percent because I do not think wireless is a perfect substitute for wireline yet, but as you heard from Mr. Stankey, as AT&T rolls out new advanced wireless services in rural America and elsewhere, and he did not address the U-verse product which is also rolling out around the country, wireless is beginning to be a real competitor for many uses of broadband.

So, the scare tactic of half of broadband connections is just not true. It may sound good but it is not true period.

Second, in the broadband space, I am not sure what the relevance is of a national market share, because the fact of the matter is, and no one has bothered to mention this, the fact of the matter is Comcast and Time Warner Cable do not compete in a single market in America.

This is not a washing machine manufacturer combination where you put two manufacturers together, they are selling in the national market. You used to have two competitors. Now you have one.

If you want to buy broadband in New York, in Philadelphia, in Los Angeles and San Francisco, you do not have a choice today between Comcast and Time Warner Cable. You only have one choice, whichever one of those companies—you only have one choice in cable, which is whichever one of those companies is in your market, you can buy from them, and after this transaction, there is not going to be any reduction in choice in the broadband market in any market in America.

And by the way, it is not that depressing a market because again under the current FCC definition, 99 percent of the households in America are located in census tracts where there are three or more fixed or mobile broadband providers.

So, this is just not the woe is me market concentration terrible loss of choice and competition that some of the opponents to this transaction would like to put forth.

Senator NELSON. Mr. Stankey, if your merger goes through, is the U-verse build-out going to continue in Florida and other states if your merger goes through?

Mr. STANKEY. We have made public commitments around how we are building U-verse, as I indicated. Comments I made about additional broadband are in addition to that. We have no intentions of backing off any of our other public commitments of what we are building, and our plans in Florida remain unchanged.

Senator NELSON. And other states?

Mr. STANKEY. That is correct.

Senator NELSON. Thank you.

The CHAIRMAN. In my many years of service here, I have never found a questioner on the Committee who more skillfully works in the interest of the state than the inimitable Senator Nelson, who I dearly love.

[Laughter.]

The CHAIRMAN. Senator Markey?

**STATEMENT OF HON. EDWARD MARKEY, U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. That is why he keeps getting re-elected by overwhelming margins.

Professor Hurwitz said earlier that you have to understand this involves multiple statutes implemented by multiple agencies to govern technologies developed in the 1960s, 1970s, and 1980s, according to policy goals from the 1950s, 1960s, and 1970s.

Just the opposite. We still have a stagnated marketplace. So, we created new policies in the 1990s, the 1992 Cable Act. We went over 200 megahertz in 1993 to create the third, fourth, fifth and sixth cell phone license, so that people were not carrying around a brick size cell phone that cost 50 cents a minute, and then the 1996 Telecom Act.

And then we saw an unleashing of these technologies in the 21st Century. There was no Hulu. There was no YouTube. There were no Netflix. It is the 21st century unleashing of technology based on 1990s policies. That is what we are debating here today.

So, a kid today who is 14 thinks they have a constitutional right to a 50 inch screen, broadband, and a smartphone that they are watching at the same time. That was not possible before we created the new policies in the 1990s.

So, this is a relatively recent phenomenon and it has all been caused by decisions that we made in the very recent past, and has unleashed a massive amount of competition, Darwinian in some ways, but deficient in others. We still do not have real competition on price, so consumers keep paying more and more.

So, there is a deficiency actually in public policy because consumers feel they are being tipped upside down and having dollars shaken out of their pockets at the end of each and every month. So, we have to discuss that as well.

Now we have merger mania. We have company after company seeking to merge with other companies all based upon what has been happening in the 21st century, not in the 1960s, 1970s, 1980s, because the technologies were not there.

So, this is a big moment for us because we now have to determine the extent to which we are going to allow the consolidation that was undone actually by the policies of the 1990s. We had pretty much one telephone company, not that much cable competition, no satellite dishes at all, and a couple of phone companies, cell phone companies, that really were not providing high quality service at all.

So, let me do the same thing you did, Senator Nelson. Let me say to you, Mr. Blum, I want to give you an expanded shot at explaining why you think this Comcast/Time Warner merger is bad for the marketplace, bad for consumers, bad for innovation, and then give Mr. Cohen a chance to come back and explain why he thinks it is good.

Mr. BLUM. Senator, it is really about broadband. All these great innovations that are happening, our attempts to enter the over-the-top business and Netflix's, those are wonderful things that are good for consumers. Those services compete with Comcast/Time Warner.

The problem is they control the road which all those cars go on. They control the point of entry, called "the interconnection." They control the open Internet, the right side of the road, and they have the ability to create super fast lanes for their own content, so you could have an eight lane highway, seven are super HOV lanes, and then all this great content that all of us are praising squeezed down to the right lane.

That is not good for consumers and that is why we are so concerned that a combined Comcast/Time Warner will leverage its control over the pipe to the detriment of consumers.

The notion that the FCC's broadband speeds of four megs down, one meg up, is sufficient to watch *House of Cards* in 4K, it is not. In order to take advantage of all these great services, you need a really high speed connection and you need a really high capacity connection.

When Mr. Kimmelman and I talk about 50 percent under the control of Comcast/Time Warner, it is 50 percent control of high speed/high capacity.

Senator MARKEY. You are saying you would have no protection against anticompetitive activity.

Mr. BLUM. We would not.

Senator MARKEY. You would not. Let's go back to you then, Mr. Cohen. Can you respond to that?

Mr. COHEN. Well, I am going to respond on a couple of levels. First of all, according to Netflix, which I believe is the producer of *House of Cards,* a four meg connection is sufficient to watch full DVD quality of an episode of *House of Cards.* In any event, it is the current FCC definition of what "broadband" is.

Even if you move that definition to ten meg down, then 91 percent of the people living in America live in census tracts where there are at least two choices of a broadband provider, and again, the market share at 10 meg down, after transaction, would be 40 percent of wireline and 20 percent of wireless. You have heard Mr. Stankey say the types of speeds that AT&T is talking about delivering wirelessly.

There is just more competition than Mr. Blum and Mr. Kimmelman are willing to acknowledge, number one. Number two, I do not agree that we have the incentive to block any lawful use of our broadband pipe. It is our most important business. If we start blocking or degrading content, even if it is content of competitors, then we are going to lose customers and we are going to stop the growth of that business.

So, it is just not in our business interest to do so, but even if you do not accept that, I do not care what the open Internet rules are going to look like, whether it is the 2010 rules or whether it is new rules under Section 706 and Title I, or whether it is Title II, which I do not agree with and I hope that is not where we end up, the one thing I am confident is going to be included in any rules that are put in place, and for which Comcast has no issue and no problem, is that we are not going to be able to block or degrade anyone's content on our network, whether it is competitive with us or not.

Senator MARKEY. OK, well——

Mr. COHEN. I think the law is going to protect DISH. One other thing that I want to say, which is Mr. Blum keeps talking about how this new DISH product is going to compete with Comcast. It is going to compete with DISH, too. It is competing with their traditional service as well.

Senator MARKEY. OK. I understand. So, the whole history of this is the incumbents trying to block competitors from getting access to the same consumers and degrading the quality of the service that the competitor can provide to the very same consumer by default, meaning they will stick with the incumbent.

So, that is the whole history of this, since the 38 years that I started on the Telecommunications Committee, and I just want to finish up with one quick question if I can, and that is on municipal broadband. That would be to you, Mr. Cohen, and you, Mr. Stankey.

Do either of your companies oppose municipalities being able to deploy their broadband in their own municipality as a third wire? Do you oppose that corporately, Mr. Stankey, Mr. Cohen?

Mr. COHEN. Do you want to go first, John? You want me to go first? So, generally speaking as a company, we have serious questions about whether municipalities should get into the broadband business. Speaking personally——

Senator MARKEY. But do you oppose them getting in?

Mr. COHEN. Let me—I was in city government for six and a half years. I know what city government can do. I think it is a mistake to do it, so we will advocate at the municipal government level that we think this is a mistake.

We are not—the answer is we do not oppose it. We do not have the right to oppose it. We have the right to advocate against it.

Senator MARKEY. I will just say this. More competition is the answer for all these problems, so that Mr. Blum or Mr. Ryan or anyone else has more roots into the home. If we are talking about two, we could talk about three, if municipalities deployed broadband— to not do that in my opinion kind of makes it harder for the government then not to get in and regulate in order to protect.

See, my basic philosophy, just very simply, is that Darwinian eye watering bone chilling competition is the answer to all regulation. You do not need it, but the smaller the number of competitors is the more regulation you need.

Mr. COHEN. All I am going to say is that taxpayer subsidy of poorly run and ultimately bankrupt municipal broadband networks do not benefit anyone.

Senator MARKEY. But if a community wants to do it, should they be allowed to do it?

Mr. COHEN. They should be allowed to do it.

Senator MARKEY. And do you agree with that, Mr. Stankey? If a community wants to deploy their own broadband system, in competition with AT&T, in competition with Comcast, should they be allowed to do that?

Mr. STANKEY. If it is an underserved community where there has been no private solution——

Senator MARKEY. No, no, no.

Mr. STANKEY. That is what I am saying.

Senator MARKEY. A community that already has two companies——

Mr. STANKEY. We do not believe that private companies should actually compete against public subsidized taxpayer cost of capital in that market.

Senator MARKEY. Well, then we would never have more than two, and again, that brings back the question of more regulation. See, that is the conundrum that you get into.

Mr. STANKEY. We are providing Internet services in Austin today where we are building—we are investing today to build gigabit networks, in which we compete against an incumbent cable company, Google, that is overbuilding at this point——

Senator MARKEY. I appreciate——

Mr. STANKEY.—and a second overbuilder called "Grande Communications," and there are four in that market. So, there are more than two that play in these markets.

Senator MARKEY. Yes, and I just think it is an area of competition where if a local municipality is unhappy, they want to have their own broadband system to make prices go down, and prices go down dramatically, and all of a sudden, the two private sector incumbents find a way to lower prices, which is really what those people desperately want at home.

Mr. Chairman, I thank you so much for your indulgence.

The CHAIRMAN. Thank you, and indulgent, I was.

[Laughter.]

The CHAIRMAN. What I feel badly about is that Senator Heller, Senator Ayotte, Senator—anyway, Senator Heller, to be followed by Senator Ayotte.

## STATEMENT OF HON. DEAN HELLER, U.S. SENATOR FROM NEVADA

Senator HELLER. Mr. Chairman, thank you, and thank you to the Ranking Member for having this hearing today. You can tell by the witnesses here we are having a heck of a discussion, and there is no doubt by those that are in this room today that this video hearing is a wide ranging discussion.

I would like to before I ask questions further add to this discussion or perhaps give my view of the world. I think it is no secret that the telecommunications laws currently in effect today do not line up with the marketplace.

We have rules for voice and video that are provided for the consumer by copper wire and by multi-video programming distributors, but if the same voice and video services are distributed over broadband Internet, then no rules apply.

Whether we look at this today or we look at this tomorrow, the facts are the same. It is unfair for voice and video providers who are regulated to compete against providers offering the same services over the Internet.

I do not think we can afford to wait much longer. According to some estimates, global IP traffic will increase by almost three times from 2013 to 2018, and 84 percent of that traffic will be video. We will have to address this through a form of our telecommunications laws, and it should be led right here in this committee.

I know some here in this room have called for regulating the Internet like a phone utility. Why would we ever consider treating the Internet, the most disruptive technology in our lifetime, as a public utility? To me, it makes no sense. Power and water utilities have not changed or innovated in decades. Why would we want the Internet to become stagnant instead of vibrant?

These calls for regulation fail to recognize that the world has changed for the better, not because of regulation, but in spite of it.

The video market is proof that less regulation and more choice offer the most benefit to consumers. It also moves us away from punishing some distributors of phone and video simply because they came about in a different era.

In the meantime, the marketplace is still moving. AT&T and Comcast are examples of that movement. The growth of these companies is now about providing broadband and not about providing just wireless telephone or cable television. They are moving to provide the consumers what they want, voice and video over the Internet, and that is why, as I understand these mergers, I think, come with benefits.

But we can do more here to help the consumers as well. We should focus efforts on understanding the marketplace, divided by urban, rural, residential and business sections, we can understand where competition is excelling and where it is not, and enact policies for growth where appropriate, and leave the marketplace alone where appropriate, based on actual market failures and not perceived ones.

We should also focus on spectrum. We must bring as much spectrum to the marketplace as possible in a responsible manner. Bringing parity and service capabilities between wireline and wireless should be a goal, even if today that is a lofty goal.

We should not let opportunities for reforming the video marketplace pass us by. For example, we will be looking at STELA. I would encourage all actors in this sphere to come forward with their proposals.

If a consensus can be reached and any part of our video law can be reformed, we should try to do it. Our job as legislators is to reform laws that are outdated, and if we can, find some solutions. We should not kick this can down the road.

So, Mr. Chairman, I just want to sum it up. Consumers in Nevada want more choices. We need to meet those expectations by working toward a new telecommunications bill that rewards innovation and drives more investments in content and infrastructure.

And with that, I do have a couple of questions. Mr. Stankey, I would like to start with you. We heard about what you are doing for South Dakota. Would you please let us know, being accused, of course, of the merger being harmful to competition, what Nevada will benefit in this particular merger?

Mr. STANKEY. Sure. The number, if you are interested, is probably about 31,000 additional homes in Nevada for rural broadband, if that is the question you are seeking.

Senator HELLER. It is. It is.

Mr. STANKEY. And I would also like to clarify, when Ranking Member Thune asked me about timing and I indicated two years, a vast majority of that will get done during that first 2 year period of time. There are some locations that will take up to 4 years to fully get to as we refine the implementation plan.

Senator HELLER. Mr. Cohen, do you anticipate other mergers occurring in this current marketplace?

Mr. COHEN. So, if you had asked me that question two days ago, I would have said none that I can think of, and then I woke up this morning like everyone else to hear about 21st Century Fox and Time Warner.

It is a very, very dynamic marketplace. Again, I think Mr. Kimmelman and I agree that out of this dynamism and disruption, it does create the need for additional conversations about how content and distribution companies can continue to have the scale to be able to invest and to be able to innovate, to be able to provide the best experience possible to customers.

So, I think it is impossible for me to say that I would rule out any additional merger or acquisition activity within the overall media, entertainment, and distribution space, but I do think each transaction needs to be viewed on its own individual merits, and I am very comfortable, notwithstanding what transactions may follow, about the compelling consumer advantages that arise from our particular transaction.

Senator HELLER. Thank you. Mr. Chairman, thank you.

The CHAIRMAN. Thank you, Senator Heller. Senator Ayotte?

## STATEMENT OF HON. KELLY AYOTTE, U.S. SENATOR FROM NEW HAMPSHIRE

Senator AYOTTE. Thank you, Mr. Chairman. I agree with the comments of my colleague, Senator Heller, and also appreciated what former FCC Commissioner Robert McDowell wrote yesterday in the *Washington Post,* where he referred to the Internet as "The greatest deregulatory success story of all time."

I agree with that assessment, and that is why I do not want to treat the Internet like a public utility either.

Can you help me, Mr. Stankey or Mr. Cohen? What would happen if we reclassify the Internet as a common carrier? How would that affect what you do and how would that affect consumers?

Mr. STANKEY. Well, you are taking something that is not broken and applying new rules to it. It creates unknown problems and one of those problems is that heavy regulation that goes with Title II would clearly slow down innovation and investment.

You would begin to subject the Internet to a lot of different regulatory constructs that will be procedural in nature, and as a result of that uncertainty, investment tends to dry up.

I think that is the greatest risk that we have, and when you see record broadband investment going on in the United States today, when you see companies build additional broadband, when you have examples like what I cited with municipalities that now have three and four competitors coming in, I am not sure what it is exactly we are going to try to fix with that.

And so, our view is let's keep a light touch. Let's make sure that we have the typical constructs we have in the United States to ensure that anticompetitive and antitrust behavior are enforced, and there are folks that violate the principles that many of us agreed to in this room, for example, what has been outlined in the Net Neutrality rules from 2010, then let's find those exceptions and deal with them.

Our view is it is not that we disagree that it should be open and free and the Internet should work, it is just how we go about administering it, and that is what we think we risk in putting Title II into place.

Mr. COHEN. Senator, it is rare that in a single question—it is rare that you can come up with a question that a single answer can potentially slightly irritate every member of the panel, which is what this question does.

So, I really think Mr. Stankey said it right. I am going to crystallize it a little bit more, at least from my perspective, which is I actually think there is pretty wide agreement among everyone at this table and probably among everyone on the panel that we are all for a free and open Internet. No one wants to have any restrictions in the Internet at all.

When you talk about the Comcast position, which I think is the AT&T position also, but I will allow myself to be corrected, you know, we have reached the conclusion that being for a free and open Internet on a voluntary basis is just not enough in America today.

So, we are also for—"we" Comcast—are also for legally enforceable FCC rules that provide basic consumer protection for a free and open Internet, and what I mean by that is transparency, no blocking rules, non-discrimination rules, essentially what the 2010 Open Internet Order was able to do.

In terms of paid prioritization and so-called "fast lanes" and "slow lanes," Comcast's position is we are not even sure we know what they are. We do not have any. We have no plans to develop any.

So, we are not defending in any way the right of Comcast or anyone else to have a fast lane, and I think the one area of disagreement or the major area of disagreement is what is the authority that the FCC has to put in place those rules, do you have to reclassify broadband under Title II as a telecom service to do that.

We think the answer to that is no, and we think the risks are as Mr. Stankey outlined, which is removing incentives to invest, creating a disincentive to invest.

Under the 1996 Act as applied by bipartisan FCCs over the last almost 20 years, this industry has invested $1.2 trillion in building out the Internet, and we think it is a huge risk to create the uncertainty that would be created from a reclassification under Title II, which does not take away in any way whatsoever our commitment to everything else that is being talked about in the open Internet space.

Senator AYOTTE. Thank you. Mr. Stankey, I would like also to have the question answered that you have been asked by Senator Heller and Senator Thune about the impact of the merger on New Hampshire.

As you know, AT&T does not offer its U-verse video service in New Hampshire, but DIRECTV has a footprint in our state. So, will your merger with DIRECTV result in extending broadband coverage to unserved areas and underserved areas in New Hampshire?

Also, I have been a strong advocate for USF reform, and I think that is something we need to do if we really want to get more access for people in rural areas, especially in states like mine.

My time is coming up but I would like to know what the impact would be on New Hampshire if this merger is approved.

Mr. STANKEY. Yes, Senator. There is a positive impact on New Hampshire as well, about 166,000 additional rural customers will be served by a broadband solution.

Senator AYOTTE. Thank you.

The CHAIRMAN. Thank you, Senator. Senator Blumenthal was here, went out and came back, so the order will be Senator Blunt, Senator Blumenthal, and Senator Klobuchar.

## STATEMENT OF HON. ROY BLUNT, U.S. SENATOR FROM MISSOURI

Senator BLUNT. Well, thank you. It sounds like the rules maybe worked for me here, so whatever the rules are, I am pleased to benefit from them.

[Laughter.]

Senator BLUNT. Thank you all for being here. Mr. Kimmelman, I am going to see Senator Danforth this weekend, and I will tell him you mentioned him and also mentioned that he worked hard to try to find the balance between good business practices and good regulatory practices, and I think that is what we all want to do and are trying to do here.

We have seen this industry change so dynamically and so rapidly that it is hard to estimate any answers to speculative questions, about speculating what will happen in the next 5 years. I am almost sure we will all find we are wrong, because so much has happened and so much has happened so quickly.

Mr. Stankey, recently Google made a major investment in Kansas City. I had a chance with Mayor James to go through that not too long ago, talk about what they were doing, some of the impact it was having.

From your point of view, has their entry provided competition that is an alternative to U-verse, to cable, to satellite?

Mr. STANKEY. It has provided significant competition. They have been very successful in Kansas City. You probably had an opportunity to hear from them what their market share success has been there. So, they are a meaningful competitor when they enter into a market.

Senator BLUNT. Are they entering into other markets?

Mr. STANKEY. To my knowledge, they are working to take over a failed municipal broadband project in Provo, Utah and begin to offer services over it, and they are now building and constructing services in Austin, Texas, and then they have made an announcement to negotiate with about 30 other municipal markets. It is uncertain at this point how many of those 30 they intend to enter into and what timeframe. That is my understanding of their plans.

Senator BLUNT. Thinking about your potential merger with DIRECTV, is there anywhere where you and DIRECTV both offer services now that do not also have a cable competitor, to your knowledge?

Mr. STANKEY. No.

Senator BLUNT. So, anywhere you are and DIRECTV is, there is also another alternative right now, a cable competitor?

Mr. STANKEY. There are locations where DIRECTV will offer service in rural areas where there may not be a competitor, a cable competitor. There will be another satellite competitor in those instances, and of course, after the transaction, both of us will remain selling services in those areas.

Senator BLUNT. Mr. Cohen, you mentioned there were any number of content delivery networks and interconnections. Is there anything else we should know about that which has not been covered yet at this hearing?

Mr. COHEN. So, I think there is plenty that we could know. We could spend a whole hearing on peering and interconnection. I think the only other point I would add is that—it may be more responsive to Senator Booker's original question—peering and interconnection is really not net neutrality.

I think Chairman Wheeler sort of nailed that right when he just explicitly said "Peering and interconnection is not net neutrality, it might be a cousin or a sibling, but it is not net neutrality."

We applaud the FCC's opening of an inquiry—it is not a rulemaking or an investigation—into peering and interconnection, because I think it is very misunderstood, and I think having the FCC take a look at practices in that market and draw some conclusions would be very, very helpful to the overall understanding of what is going on in the peering and interconnection market, and whether it is a choke point, whether there is a need for FCC action or other action.

We are very confident that the answer to that question will be no, but we are also very comfortable with the FCC looking into it and gathering the data and drawing an expert conclusion.

Senator BLUNT. Well, I think that would be something we would be interested in and benefit from.

Mr. Hurwitz, thinking about—you know, Netflix has come up a couple of times here, and I think I was a Netflix subscriber early on. Their early delivery system was DVDs through the Postal Service, and then when Internet speed developed, clearly, that is a totally different product than it was just a handful of years ago.

My question to you is what would you think the impact would be of Title II regulation as it relates to things like the kind of content Netflix provides and the cable companies currently provide?

Mr. HURWITZ. The impact of Title II regulation on Netflix largely is not about the technology. The open Internet rules, to the extent the FCC has authority to enact them, could be enacted under Section 706 of Title II, largely with the same result.

The greatest concern, returning to Chairman Rockefeller's initial focus on the consumer, is if the FCC does take a Title II approach, it creates a great deal of uncertainty about what rules will apply. It is going to lead to unquestionably years, at least months, possibly years of discussion within the FCC, possibly followed by litigation over what the rules should be.

Senator BLUNT. My final question would be, since you are there, all that time spent in litigation and trying to define what this really means, what impact do you think that has on the continued development of this communications system that has grown so rapidly?

Mr. HURWITZ. Most importantly, it harms consumers. It will slow down the development of new technologies. It will slow down the deployment of existing technologies.

Senator BLUNT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Blunt. Senator Blumenthal?

## STATEMENT OF HON. RICHARD BLUMENTHAL, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you, Mr. Chairman. Thank you all for being here today on this very important hearing, and thanks to the Chairman for having this hearing to discuss really the future of video, and in many ways, it is a bright future with Amazon and Netflix beginning to deliver on much needed competition in this marketplace, and finally threatening to provide some of the competitive discipline that we need.

But online video is still a very young service and still very vulnerable to threats from large entrenched companies, as they use mergers and market power to thwart competition.

When consumers look at the market today, and like my colleagues, I talk to a lot of consumers, what they see is more mergers, more consolidations, less choice. They also see the only competition right now is the race to increase prices.

That is the way they see it, and fueling this fire are larger and larger bundles of channels that consumers have to purchase in order to get service, and the increasing cost of programming.

We have talked about these issues before in this very room. That phenomenon especially affects sports programming, and that is why I have joined with Senator McCain in championing the Television Consumer Freedom Act, often referred to as the "Cable A La Carte Act," as well as the "Fans Act," which would end blackouts of the sports programming consumers pay so much to receive. Both of our bills essentially give consumers a choice.

To continue taking advantage of Federal policies that protect their business models, companies have to provide consumers with more choices and make programming more available.

Our legislation would give consumers more choice, on the theory—it sounds like a novel theory, I know, in this day and age—when consumers have more power and when there is true competition, they actually affect market outcomes.

Mr. Cohen, when we were last in this room not long ago, we spoke a little bit about the regional sports network. I want to follow up and pursue that line of questioning.

Comcast's proposed merger would unite Comcast's 11 RSNs in the country's largest media markets and Time Warner Cable's five RSNs, and those RSNs along with another 16 local sports channels would belong to one company that would have significant nationwide market power.

That power would affect sports programming, I think we can all agree. Combined, the merged entity would own the rights to a formidable amount of local sports programming in the largest media markets in the country.

You said at that hearing, and I am quoting, "There is nothing in this transaction that changes the competitive dynamic in any market in the country," with regard to regional sports networks.

We have now one of your competitors here, Mr. Blum, and I want to give him an opportunity to address that statement, and ask you specifically, Mr. Blum, if the merger is approved, would Comcast have additional market power to withhold or overcharge DISH for access to local sports programming in the markets now controlled by Time Warner, for example, and should consumers bear the additional cost of those licensing fees?

Mr. BLUM. Unquestionably, yes. The ownership of these RSNs by a cable provider poses competitive harms, it is not like an owner of RSN that wants to get distribution.

Comcast combining with Time Warner owning all these RSNs could use those RSNs for anticompetitive purposes, by withholding the ability for us to offer that product to our customers, which unfortunately Comcast did to DISH and DIRECTV for over a decade, and it was only when the merger with NBC went through that we were finally afforded the right.

Unfortunately, they engaged in not disclosure activity but pricing it so astronomically that we could not pass on that cost to our customers, because one of the things that you recognize and that your bill attempts to address in terms of a la carte is these RSNs, they are not a la carte. We have to pass these costs on to our customers, even if they are not watching sports programming.

So, we believe that there will be less competition in the RSN market because Comcast will take Time Warner's RSNs, and there is the potential to foreclose access to that content or to act in an anticompetitive way that ends up hurting consumers and raising prices for them, Senator.

Senator BLUMENTHAL. Thank you. Unfortunately, my time has expired, but I think the question then is for Mr. Cohen, and he may wish to address it at another time later in the hearing. I hope that he will, if not here, then perhaps in writing.

Why not commit to offering all of your RSN programming on an à la carte basis, give consumers a choice, and let competitive market discipline determine the price of sports content?

Mr. Chairman, I recognize my time has expired and others have waited a long time, but perhaps I can ask Mr. Cohen to answer that question for the record or now, whichever you would prefer.

The CHAIRMAN. Why do you not try now?

Mr. COHEN. I will do it short now and I will do it in writing later as well.

So, first of all, I think it is important to listen to Mr. Blum's answer to your question because I think it shows just how non-transaction specific the issue is.

The underlying analysis that led to the answer that I gave you is that regional sports net programming is by definition local and negotiated market by market. So, whatever the problems are, and there may be problems, they exist regardless of whether you own one regional sports net or 30 regional sports nets.

So, the issues with the pricing of a regional sports net, let's just take Time Warner Cable's pricing of the L.A. Dodgers' sports net in Los Angeles, which right now, no other multi-channel video distributor is carrying, is created by the result—theoretically could be created by the result of Time Warner Cable as the video operator controlling that regional sports net.

When the transaction goes through, we will control that regional sports net. We are not going to have any more power than Time Warner Cable does to be able to extract a deal in Los Angeles by virtue of the fact that we own other regional sports nets, which are simply not a part of that negotiation.

I will also note that at least in the short run, there will be an advantage for the consumer and for the dishes, because our ownership of regional sports net will put that under the arbitration provisions of the FCC Order in the NBC/Universal transaction, and if DISH or anyone else thinks that the price being offered for that regional sports net is not fair, they can take it to arbitration.

By the way, DISH has done that to us once before. They do not talk about it because they lost the arbitration. The arbitrator found that the price that we were seeking for the regional sports net represented market value and was the right price.

DISH responded, by the way, citing they were not going to bother with the arbitrator's decision, and they dropped the regional sports net. They picked it up again. We negotiated a deal, and they are carrying it.

So, à la carte is a more complicated question. I briefly responded to you in the last hearing as well. I will give you the headline, which is that we believe that a mandatory a la carte regime will result in less choice, and Senator Booker asked me earlier about independent programming and diversity of choice, if you are for less choice, less diverse programming, you are for a la carte, because you will have fewer choices and it will be more expensive for the consumer.

There is independent study after independent study that has reached that conclusion, and we understand the frustration that consumers have and that you and Senator McCain have, and a la carte just is not the solution to the frustration. I am not sure I know what the solution is, but I do know that a la carte will not work to be able to accomplish the objectives that you have.

Senator BLUMENTHAL. Well, just two points, if that is not the solution, I would like to know what is. Number two, your response to my question, I think, depends on the assumption that your market power is virtually not increased in any way by the number of RSNs you own.

Mr. COHEN. I think that is basically right, and I would note, by the way——

Senator BLUMENHAL. Very short.

Mr. COHEN. I would note that DIRECTV—I am sorry, that Fox still will own twice as many regional sports nets as we will after this transaction.

Senator BLUMENTHAL. Mr. Chairman, I hope I have not exhausted your patience.

The CHAIRMAN. You came close.

[Laughter.]

Senator BLUMENTHAL. Thank you very much.

The CHAIRMAN. Senator Klobuchar?

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

Senator KLOBUCHAR. Well, thank you very much, Mr. Chairman. As many of our witnesses know, I chair the Antitrust Subcommittee of Judiciary, so we have held hearings for both the—lengthy hearings—Comcast/Time Warner's merger as well as the AT&T/DIRECTV merger. I feel like I am a bit in a "Groundhog Day" movie, a movie I do like and I hope will continue to play on your stations and channels, no matter what happens here.

[Laughter.]

Senator KLOBUCHAR. Senator Lee and I sent a letter sharing our concerns together on the Comcast/Time Warner deal, and are working on the AT&T/DIRECTV, so I am not going to go over the many questions that we asked at those hearings.

I did have one new question that came up, Mr. Cohen, since that hearing. I understand that Comcast would be divesting its Minnesota customers as a result of the deal, mainly in the Twin Cities' area and Mankato. This would mean that my service as well as my in-laws', which is more significant in Mankato, would be rolled into the new company called "SpinCo."

What will this mean for Minnesota customers and how would you mitigate any harm that the potential transaction would have on their service? Where would their bills come from? Who will they call for customer service?

My in-laws took a while getting used to the cell phone, so I am concerned about the effect this is going to have if this deal goes through. So, can you answer those questions? Thank you.

Mr. COHEN. Yes, Senator. So, at the time of your hearing, we did make the representation that we were prepared to divest about three million of our customers in order to bring us under the 30 percent ownership of MVPD households.

We ended up entering into an arrangement with Charter that would actually result in a divestiture of 3.9 million customers, and unfortunately, because Minnesota is actually a very strong and good market for us, our Minnesota subscribers are included in that divestiture plan.

Of the 3.9 million customers that we are divesting, 2.5 million will be spun off to a new independent publicly traded cable company, which has the legal name "SpinCo." I will represent to you and I will absolutely promise you that no one will ever get a bill with a label that says "SpinCo" on the top of it. It will have a real name by the time we launch the service.

The way this will happen is after the transaction closes, we will purchase all the Time Warner Cable subscribers, and then we will spin off 2.5 million of those subscribers to this new company. It probably will take two or 3 weeks after the close of the transaction to be able to do that.

They will then be owned by this company. The CEO of the company, by the way, is Michael Willner, who I am sure many of you know. He was the former CEO of Insight Communications, one of the most respected cable operators and cable CEOs in the business.

There will be two sets of important agreements. There will be a transition services agreement with Comcast, so we are not just going to spin the customers off and say goodbye and Michael, they are all yours, you are a brand new company, pick them up.

There will be some transitional period of time where those customers will be operating on the Comcast plan, with Comcast engineering and Comcast technology, Comcast customer service, billing, et cetera, while we transition to the new company.

There will also be a services agreement between Charter Communications and SpinCo, because SpinCo will be one-third owned by Charter.

So, when we are ready, and I do not know yet exactly how long that will take, but it will be months, not days or weeks—when we are ready to cut over from the Comcast system basically to a Charter supported technology and engineering infrastructure for SpinCo, there will be a cut over to the new system.

Comcast has vast experience in transactions—AT&T broadband, Adelphia, multiple smaller transactions. We are very good at ensuring that the transitions are seamless and customer friendly, and that customers know who they are supposed to call, know what is happening, and that ultimately the cut over is opaque to the customer.

That is the customer does not realize it has happened. They will simply have the new service on the new Charter, basically we assume Charter supplied engineering and technology platform.

Senator KLOBUCHAR. All right. Thank you. Appreciate that. Mr. Blum, you were not at our last hearing.

Mr. BLUM. I was there in the audience.

Senator KLOBUCHAR. You were there but not with your new position. In your testimony, you mentioned that Comcast had several choke points over its broadband pipe that Comcast or other ISPs could use to harm competitors' online video offerings.

Can you explain that in more detail?

Mr. BLUM. Sure. So, there are at least three choke points, and Mr. Cohen is absolutely right. The net neutrality rules that they are agreeing to commit to have nothing to do with interconnection, but it so happens interconnection is one of the choke points.

So, the example I gave is a highway. Interconnection is the entry ramp on to that highway, and all these content delivery networks are bringing all the content to that choke point, to that entryway. Comcast controls what gets in and what gets in slowly by opening and closing the ports.

That is a very significant way for them to engage in anticompetitive conduct that net neutrality rules and Comcast commitment do not address at all. So, that is one choke point.

Then there is the open Internet choke point. The fact that you had Netflix at the last hearing and there was a lot of discussion, you asked questions about this, the fact that there is a dispute where Netflix is claiming Comcast misused the ports and closed the ports and intentionally slowed down the content, and Comcast is saying no, no, it was Netflix's fault, the fact that there is a dispute, imagine if this merger goes through and DISH's content is suddenly slowed, and we believe it is Comcast, and Comcast says no, no, it is not us.

We have to bring a complaint before the FCC that takes two years to resolve. Meanwhile, our content is slowed down and we are being hurt, and customers are leaving us to go to Comcast. So, that is another choke point that we are concerned about.

The third choke point is managed services, these super fast lanes. There is no doubt that Comcast can create fast lanes on its broadband pipe. Those fast lanes can squeeze the open Internet portion of the pipe. So, even if Comcast is not blocking, not discriminating on that right lane, that right lane is unpalatable to consumers because it is so slow and jittery, meanwhile, Comcast content is fast and wonderful, and that is not good for consumers. That is not good for competition.

Senator KLOBUCHAR. OK. Thanks. I just have one last question of you, Mr. Kimmelman. You look kind of lonely down there.

You know, consolidation does not necessarily mean that it is bad, but I think a lot of the concern is what is the tipping point and at what point do all these consolidations spell trouble for consumers.

Regardless of how these mergers look for the shareholders or the companies themselves, our job is to look at them in terms of consumers.

Could you just briefly, briefly talk about what kind of terms you think the Department of Justice should look at, why it is important for the purposes of these mergers and the larger future of competition in video, in terms of policies and trends, what do you think they should be looking at when they look at these mergers?

Mr. KIMMELMAN. Certainly, Senator Klobuchar. I think it is important to look at what the Department of Justice already does, and whether you agree with my numbers about broadband concentration or even Mr. Cohen's numbers, the Department of Justice has already found the market to be highly concentrated for the MVPD services and the broadband services.

I am going to suggest it is very likely they are going to find this for the consumer interface, whether it is a set-top box or another device, but they have already found it for those other services.

They have already found that Comcast in its past transaction had the opportunity and the incentive to discriminate against other programmers, online video distribution, and in transmission.

And therefore, Comcast made a number of concessions, to the great credit of Mr. Cohen and his company, which the Department of Justice found to be adequate at that point in time to remedy the concerns they had, enough to not proceed to challenge the transaction.

I think the question now would be with the addition of ten plus million new subscribers through Time Warner, are those remedies adequate? Have they worked?

I would hope the Department and the FCC would look back and see if they have worked, and also look at whether the additional size, the additional scope, adds concern. It is not just about foreclosure of competition, as Mr. Cohen has identified, but it is also a question of raising rivals' costs, a critical antitrust concern.

So, whether Comcast's regional sports channels are in Los Angeles or in New York, if Comcast's competitor is nationwide and Comcast is driving up the cost to his competitor, Comcast is causing a potential competitive harm to the broader marketplace.

So, these are the kinds of issues that I certainly hope the enforcement agencies will look at and see whether in addition to what they have experienced under the existing transaction, the new transaction adds additional problems.

Senator KLOBUCHAR. Thank you very much.

The CHAIRMAN. Thank you, Senator Klobuchar. I think there are a couple of people that want to ask several questions, so I think we should have a second round, and I apologize to everybody on their schedules. I have kept my sister's best friend waiting 50 minutes, but life is such.

Let me just start by this. Let me ask both Mr. Cohen and Mr. Stankey, does your company, AT&T and Comcast, enter into any anticompetitive contracts to prevent content companies from selling their TV shows and movies to online video competitors? Do they or will they?

Mr. STANKEY. No.

Mr. COHEN. I will go with a no also, and I may get myself in trouble, but remember our company is a little more complicated, I think for good reasons, even though Mr. Kimmelman may disagree.

We have not just the cable side, but we have the content side, which is actually selling content to online video distributors, and in the last 3 years since we have owned that company, we have made literally dozens of deals selling vast amounts of highly popular content to online video distributors like Netflix, Amazon and VUDU, Apple, a whole host of——

The CHAIRMAN. Mr. Cohen, the question I asked was for the record, and you gave me your answer.

Mr. STANKEY. Senator, to be clear, we do not own content, so we are basically licensing——

The CHAIRMAN. Understood; understood. Second and lastly, an observation from my point of view, an observation, that this subject like others—E-Rate is one that comes to mind, where the FCC—it does not get legislated. The President does not sign anything. He does not do an Executive Order.

It just comes into being by virtue of the silent process, which brings up one of the reasons why this is so complicated and misunderstood, and therefore, subject to a lot of suspicion in the process, because it is not by definition open.

Our oversight function on the Commerce Committee helps, but let me just give you one example. You have caps and price caps, and price caps sounds very good, but price caps can also be manipulated so that there is enough bandwidth given so that a particular company can provide two-thirds of a movie, but if you want to provide the last third, the price goes up.

Now, who in the world knows that? Nobody knows that, but it is a fact of the business that we are in here and what we are talking about. I think it talks to the necessity of oversight and the importance of oversight and the importance of transparency.

The other thing I want to say is I feel extremely badly and personally responsible for the fact that Mr. Ryan has not gotten any questions. I cannot help that because nobody asked you questions. I need to have you say whatever you want to say at this point.

[Laughter.]

Mr. RYAN. Well, thank you for that. It is interesting, this conversation. You know, somebody said at the beginning of this that content is king, and as someone who is sitting here representing those people who create the content, it is interesting that so much of this conversation has happened without me.

I would reiterate so much of what my two colleagues right here have said about things. You know, Comcast and Time Warner in various studies are very low in customer satisfaction. I think in a recent study they finished worse and second to worse.

So, one thing I would say is that if this merger were to go through, the only thing we know for sure is it would open up a new spot at number two for who might be the worse in customer satisfaction.

So, I would just counsel the reason why that exists is because customers feel that certain promises they think they have gotten from them have not been lived up to.

So, I would just counsel you to take their promises with a grain of salt, and if you determine that this is going to go through, hold their feet to the fire on this, and then I would counsel to not let it go through because I think there is just too much to worry about.

We do not need a new toll booth on the information super highway, and that is what I think this sets up. I am surprised by Mr. Cohen's uncertainty about what a fast lane would look like at his company. I think all you have to do is go look at a graph that was made public recently during their negotiations with Netflix.

The speed at which Netflix was running through their pipes was very slow while they were in negotiations, and the moment that Netflix agreed to pay them some money, all of a sudden, miraculously, the speed went up.

In the screenwriting business, that would be the equivalent of saying yes, that is some awfully nice Internet we are providing you, it would be a shame if something happened to it.

That is a situation that we do not want to get in with these companies, where they get to decide you get the fast treatment and you get the slow treatment. It does not just apply to businesses. It could apply to political organizations. It could put a cap on the kinds of material that we are able to write and consumers are able to see.

So, I would just say be very careful about what they are promising and whether they can and will live up to it.

The CHAIRMAN. I promise you I will be, because as I have said this in a number of hearings—Senator Thune, please do not hit me over the head with whatever this is.

[Laughter.]

The CHAIRMAN. When we passed E-Rate in 1996, I wrote, Mr. Ryan, every single telecommunications company a letter, in which I asked them to write me back saying they would not litigate the E-Rate decision. Every company wrote me back promising they would not do so, and every company litigated the E-Rate decision, and they all lost. So, I think your counsel is wise.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman. I have a couple of quick questions here. I wanted to follow up with Mr. Stankey. Most wireless broadband services have data usage caps that are much, much lower than you are going to find on a fixed wireline broadband service, and my understanding is your wireline U-verse product is capped at 250 gigabytes per month whereas a comparably priced mobile data plan is more like two gigabytes.

So, the question has to do with, and we talked about earlier, this expansion and making this more available. What kind of data cap can we expect these new fixed wireless customers to see?

Mr. STANKEY. As I indicated earlier, we are intending to engineer this product like a wire line fixed broadband product, not a mobile broadband product. We have not put the exact caps in place. We have done engineering studies to understand what we think is reasonable.

I cannot promise you they will be the identical number that is on the U-verse construct that you just put forward, but we do know for a fact that their input will be very de minimis. They will hit the very top 2 percent kind of thing, and it will be designed to find that abuse that is going on, not necessarily to prevent customers from doing the things they need to do in their homes to use a broadband service, and it will be substantially different than what you see in a mobile broadband service.

Senator THUNE. OK. Professor Hurwitz, back to you for a minute here. We have had some discussion today about the impact of these mergers and what they are going to do both to consumers and creators alike.

As a professor of law and economics, my question is do you agree with the views that have been articulated by Mr. Ryan regarding the economic literature on communications and media mergers?

Mr. HURWITZ. The economics literature sides more along the analysis that Mr. Cohen gave in terms of unbundling. Generally, what we find is when we have large bundles of content, when we have large vertically integrated firms who are able to take greater risk, they are able to invest more in questionable and uncertain projects, and that is very frequently where the really great projects come from.

Senator THUNE. OK. Mr. Kimmelman, as large as some of these MVPDs have become, they all apparently feel competitive pressure to acquire and deliver the so-called "must have programming."

So, the question is no matter how many competitive distributors there are, do we not essentially have an auction where all the bidders win but only after paying the highest price to content providers, and why would prices decrease when all distributors need to have essentially the same programming?

Mr. KIMMELMAN. That is a very good question, Senator Thune. I think it is a problem. I think that is why we are in a bit of an arms' race here, and I think it is worth looking at this as a broader policy issue. Some of the traditional superficial analysis of what another competitor would offer may not be helpful from the consumer vantage point.

However, I think what is changing is that on the broadband service distribution level, the ongoing culture has been much more of an unbundled, pick what you want. My kids do not even know what a channel is. They know a show. They know a video clip. They know something is video streamed.

I think the next generation is really moving toward a different experience and different expectation for what they want from video, so while some of the traditional marquee programming in this high price range will continue, I think there will be new product, especially if Mr. Ryan and some of the people like him can produce for online distribution and challenge some of those traditional companies, and then I think you will see the market shake up a bit.

I think it is the business model of bundling that is really part of the problem here, and the ability to connect that then with a transmission system that is dominant.

We probably from what we know economically are never going to get ten, we maybe never are going to get to five, we may not get to two in many places. I think what AT&T is trying to do is an interesting experiment using fixed wireless, but it has not been great in rural America for the whole bundled service.

So, we have a huge problem here of a highly concentrated market in transmission, and then these very popular sets of programming. I think we need to have more choices so that those who are creating have more new ways to present it to the public, and we are seeing a new generation that wants it presented in a different way.

I think it is great if Comcast does that as well and AT&T. I think we need to make sure that there are some new players who have a chance to break up that traditional high price structure.

Mr. HURWITZ. Mr. Thune, if I may add on to that, and I would like to agree with Mr. Kimmelman and also Mr. Ryan in some respects.

It is in many ways a real shame that we do not have any programmers here today because the programmers are a very important part of this discussion, and their voice is absolutely lacking on the current panel.

The advent of the new forms of Internet-based technology really is an aspect of the tipping point that we have not spoken about. When you look at the demographics, people under 25 today are consuming most of their video content online. The most recent numbers I have seen, under 25, it is about twice as much online video content as cable content, about twice as much cable content as traditional broadcast content.

If you go into older demographics, it is still almost entirely traditional broadcast and MVPD content. So, for the younger generations in many ways, the tipping point has already occurred.

On the question of wireless, this is a final point, we have spoken about wireless in several manners here, there is a lot of technology that we do not understand, a lot of really, really great cutting edge stuff that is on the verge of becoming mainstream, on the verge perhaps of 3 to 5 years, perhaps 5 to 10 years, particularly on the wireless front, on the network neutrality front.

The FCC struggles with the level of technical sophistication needed to really address and understand these issues.

I do not hold it against anyone in this room. We are not engineers. We are not trained Ph.D. engineers focusing on these issues. It is really difficult to have an informed discussion about the future of competition, the future of network neutrality, without understanding complex issues like statistical multiplexing, how routers actually work, how prioritization would be implemented.

So, it is really hard for us to have a discussion about that. In terms of wireless, I would like to just make one really amazing point. I am following a lot of the technical literature about developments in the so-called "millimeter wave bands."

What could be possible using MIMO and millimeter wave technology for mid to short haul fixed line wireless in the next 3 to 10 years is incredible. I would say cable should be scared to death of what fixed line wireless can do, because it has the potential to have ten times the capacity that coaxial cable running to your house has, and that will revolutionize telecommunications.

Senator THUNE. OK. Mr. Chairman, thank you, and thank you, panel.

The CHAIRMAN. Thank you, Senator Thune. Senator Booker, if you do not have a question, I am going to be shocked.

Senator BOOKER. So, I want to save you that kind of shock, although it would be exciting to see what would happen if——

The CHAIRMAN. I like your questions.

Senator BOOKER. I appreciate that. I will just add a last point. When I sat with a lot of the heads of a lot of tech companies, they said the same thing about the technology changing so rapidly.

But my concern is about the here and now, really focused on one clarification and one question about municipal broadband, which is something I care a lot about, having served as a mayor.

Before I ask that question, I just want to give a lot of talk now between sort of whether we should use Title II or not, and I heard very strong comments about why Title II is not the way to go. I would love to give Mr. Kimmelman and Mr. Ryan a chance to quickly, very quickly, respond to some of the ideas about whether we should be using Title II or not.

Mr. KIMMELMAN. Thank you, Senator Booker. We favor Title II because it is not some traditional way only of looking at utilities, it is a fundamental non-discrimination principle that enables a rule to be developed that prohibits undue discrimination, unfair discrimination.

Section 706 is a new approach that is being put forward. It involves filing complaints after the fact when you think there has been some discrimination, with some limitation of how far the FCC can go based on the court decision. We will see how the FCC can interpret that to create something that would be meaningful.

From what we know right now, the most fail/safe mechanism is an old traditional non-discrimination rule. It does not mean you need to do 15 other things that one could conceivably think of under Title II that have not been done in 15 or 20 years. I know there is a desire to scare people about what could be hidden in that.

It is a tried and true non-discrimination tool that has been used very effectively. It is what enabled all the innovation Senator Heller was referring to on the Internet that he does not want to regulate to blossom, to grow. It was either the exact Title II regulations or it was the fear that someone might impose them and you need to be careful that has allowed all this innovation to grow.

I am reminded that AT&T under its old rules was a great transmission company, as a telephone company. They had the fax machine before the turn of the century. I do not mean this century, the 20th century, but could not figure out what to do with it, could not figure out what to do with a whole lot of things in wireless until we opened up the market to more players.

It is not because they are a bad company. They are a great company. They did wonderful things. They were never the innovators. They were not the Bill McGowan/MCI innovators that brought long distance competition and brought us new interfaces and equipment, and similarly on cable, they did not invent the over-the-top product. It was others who challenged them.

So, good transmission companies can do a lot of wonderful things, but they are not necessarily or often have not been the innovators. It is those edge company investors who can get capital in the market because they know when they succeed, someone cannot discriminate against them, and they get the fruits of their innovation. That is what Title II has offered us.

Senator BOOKER. Mr. Ryan, very quickly, because I do have a question.

Mr. RYAN. Yes. I am a writer and a content provider, not a lobbyist, so it is hard for me to go into the detail that they do, but I will say that the Writers Guild of America, West, believes that the FCC should reclassify Internet access as a telecommunications service under Title II. This gives the Commission the clearest path to enacting strong and open Internet rules.

Senator BOOKER. OK. Let me just jump into municipal broadband, and I say this with some trepidation, and I want to say for the record, David and I have been friends for a long time.

I have known him since he was a municipal official. I say this for the record, that he was truly one of the greatest municipal officials I ever encountered in our country, and I made it a purpose to study good cities and the way they were managed, and he was most certainly one of the best.

Mr. Stankey and Mr. Cohen, I do worry about what is happening, and especially my concern is I am in a state that has a lot of urban municipalities, a lot of very poor people, and their access to broadband.

So, this push back, and literally from what I can see, people going in and trying to pass laws against municipal broadband, I worry about that. Mr. Markey and I were talking over here about when municipalities do go in and do these broadbands, it actually lowers the price for consumers about 20 percent because big companies come in and then lower their prices as well.

Mr. Cohen rightfully said something. He and I both dealt with cities. Cities do not run things really all that well, even if they have some of the best master minds like you and Governor Rendell, who I think were sort of Batman and Robin—maybe Starsky and Hutch—not Lenny and Squiggy, I promise you.

[Laughter.]

Senator BOOKER. Two of the best municipal—my philosophy is that if the private world can do something better, cheaper, better for taxpayers, it is something we should consider.

That said, the reality is that broadband is not just sitting back watching cable any more. It is not just I want to get my *Jersey Shore,* which is something, Mr. Chairman, you probably watch.

[Laughter.]

Senator BOOKER. It is about having access to information, having access to innovation, having access to markets. It has become an essential part of life.

So, for me, when I see communities in very poor census tracts in urban areas having very high costs, relatively high costs, for families of what their access is, it is very worrisome to me.

So, a lot of the conversations in this hearing about costs are really important. When I see a municipality that is desperate to try to do right by poor people want to do this, it is kind of almost offensive to me that local lobbyists are going in and trying to pass laws that ban people from doing things that those local actors believe will lower costs for the poor people in that community.

So, I would love to hear from Mr. Stankey first. I have great access. I have Mr. Cohen's cell phone number. Let's call him second just in case the Chairman does cut me off.

Mr. STANKEY. First of all, as I stressed, if it is an underserved area, there probably is a role for subsidy. If it is an area that is served competitively, I would suggest first of all you have to look at life cycle costs.

Unfortunately, a long history of municipalities that start these projects and ultimately are not successful in completing them over the long haul, and then taxpayers are on the hook to bail them out, or similar to what you are seeing in Provo——

Senator BOOKER. That is them going bad, but them going right, sir, and correct me if I am wrong, is the revenue they receive, it is not actually a taxpayer subsidy if they are done right, the revenue that they receive at the lower cost covers the cost of the efforts. It may not be as good as what you all provide, but it provides a low cost option, if it is done right.

Mr. STANKEY. So, if you were subsidizing something with public capital that does not have a rate in the market, then over time, it will chase away the private investment and you will be left with nothing but an urban or municipal supported broadband infrastructure.

If you want to trust that is the right investment cycle over time——

Senator BOOKER. So, you are telling me that the—let me hear you correctly, the municipally run system will chase away the big companies. They will say oh, we are leaving this municipality. You will not go in there and compete. You will compete with Comcast but you will not compete with a municipally run——

Mr. STANKEY. Whoever the other providers are in that market have to make a return on their invested capital. If they are competing against an entity that does not require a return and wants to run a break even, they will always be in a situation where they could potentially charge a price that is less, and then ultimately, you are in a situation where that has to be a sustaining equation.

Senator BOOKER. Is there anywhere in the United States of America where there is a municipal one where that theory is seen being played out?

Mr. STANKEY. We are very early in the innings on it right now. These are investments that are long lived investments that take time. We invest in equipment cycles that last for 10 years.

So, you have to go through these cycles, and that is typically when you see these projects get in trouble, when they get to that seven/eight year point and they have to start the new reinvestment cycle, and all of a sudden, somebody did not care for in the budget the fact that they have to go and invest another $800 per home to serve with the latest technology to get it to the next speeds, and the equation starts to fall apart.

Senator BOOKER. Of all the places I thought you would take that argument, that is not where I thought you would take it. As Mr. Kimmelman seems to be laughing at the same thing, I cannot imagine in a city as diverse as Chicago, where you have poor neighborhoods, that the more middle class or wealthy people would not choose the far better option that you are providing, that offers that kind of return on investment.

Mr. Cohen?

Mr. COHEN. Senator, what I would think would be the right way and what we are seeing in models starting to emerge around the country is when municipalities work cooperatively with providers to lower the barriers and construction costs and permitting to be able to get infrastructure investment at a lower cost and faster speed.

That is one of the best incentives to get the right kind of service done.

Senator BOOKER. Right, and what I will tell you right now is that what is happening right now is inadequate for poor families in this country. The system as it stands right now is inadequate to provide open equal access for Americans who are struggling to make it.

Cable bills, broadband access, in America right now, is too expensive. It is shutting out poor people from what is becoming now essential for getting access to everything from education to job opportunities.

David, I know you have a better answer.

Mr. COHEN. We fully agree with that, sir, and that is why our sponsorship of $100 million back to ConnectED, what we have done through Aspire, those are all additional ways to try to help.

Senator BOOKER. Sir, I respect it but what I am saying is your efforts, as noble as they are, right now, are inadequate because—I know you know this. There are families right now that are making tough decisions by cutting their cords because they are having difficulty choosing to make rent and to buy for essentials.

I know it might be difficult for you to understand, but I know you can take a leap of empathy to see how difficult it is for many families in America to afford broadband access as it stands right now.

Mr. Cohen?

Mr. COHEN. So, I am going to just spend a tiny time on the process. We basically agree with AT&T on the bottom line. We do have a difference between the two companies on the way in which we pursue this.

Our style, and it is my style, so I will take responsibility for it, and it does come from the prism of my life, like most of us do, is to go and talk to local governments and say are you sure this is a good idea.

Look at Provo, Utah, which spent this money, and for the next 20 years, the taxpayers in Provo are going to be paying off the cost of this broadband network that they built and never got launched and then sold to Google for a dollar.

So, Google bought it for a dollar and the taxpayers of Provo are going to be paying it off for the next 20 years.

As a matter of style, I hated it when the state would attempt to preempt anything that Philadelphia wanted to do, whether it was gun control or voter registration laws, I do not believe in state preemption of municipal prerogatives.

So, it is not part of our style to get state legislatures to pass laws prohibiting municipalities from doing municipal overbuilds, but consistent with that, I am also not for the Federal Government preempting states and what they might want to do.

So, I think I have a pretty consistent position across the line there. The most important thing I want to say is I think the most important point you make, and it is a personal passion of mine, and you know you have heard me talk about it before, is if there is a single focus, Mr. Chairman, in your remaining time as the Chair of this committee, it is to shine a spotlight on the issue of accessibility of low income Americans to broadband, and I have said it is one of the cruelest ironies in America, that in the Internet, we have the most transformative and disruptive technology that I believe we have ever developed as a country.

It is a technology that has the capacity to level the playing field in terms of access to education, to health care, to vocational opportunity, to news, to information, and entertainment, and instead of leveling the playing field, we are exacerbating difference as the have's, people who have broadband adoption rates of 85, 90, and 95 percent, primarily in high income communities, are accelerating and have greater access—let's just talk about education, the innovations in education, then people in low income communities, primarily people in poor urban communities, primarily people of color, who have broadband adoption rates of 15, 20 and 25 percent.

That is the digital divide and it is creating one of the great civil rights' disparities that this country has ever seen.

So, Senator, you know how passionately I agree with that point. I do not believe that municipal broadband is the cleanest path to that. I continue to believe, and you know the work that we have done in this space, that the number one barrier to broadband adoption in low income communities is not the cost of the service, it is digital literacy and a whole bucket of digital literacy and relevance buckets that too many people in these communities do not understand the value of the Internet, the relevance of the Internet. They are scared of the Internet. They do not know what it means for them and their lives.

Breaking that cycle of digital illiteracy is the most important step to breaking down the digital divide, and we are enormously proud of our Internet Essentials program, and I noticed you used the word "essentials" three times in talking about this issue, it is where the name of the program came from, which is the Nation's largest and most comprehensive broadband adoption program for low income Americans.

In two and a half years, we will have some new numbers at the end of this month, but in two and a half years, we have been able to sign up over 300,000 families, 1.2 million low income Americans to the Internet, most of them for the first time in their lives.

By the way, 50 percent of those—80 percent of those who have signed up are people of color, which is typical of the demographic you are referring to as being left behind.

Senator BOOKER. So, first of all, again, you and I have had this conversation in private. I really appreciate the fact that you eloquently put the truth of the matter is in our country, in a lot of our communities, the broadband penetration is abhorrent, at a time when one of the most important democratizing forces, both in the United States and globally, is broadband access.

I mean we are intermediating banks with platforms like Kiva, we are intermediating universities, as we see books and other things being put on line.

As you said, in the medical profession, it is such a powerful force.

The only thing I would say—the only point I would take issue with you on is that some of it is, as you called it, illiteracy around these issues, but just the mere fact that you have so many poor minorities grasping for the programs that you are offering shows, and I can take you to any community in Philly or Newark, Trenton, Camden, Passaic, and there is a hunger out there for low cost options.

So, when you provide it, people come. To me, and I am sure this has happened before I came to the United States Senate, but we are not doing enough to bridge this divide.

We, as a country, will pay the price for it because when people do get that access, their economic productivity flourish. Their children's access to—our ability to access their children's genus flourishing.

That is just my concern in this. Maybe I am wrong on municipal broadband. I am willing to have this dialogue back and forth. My goal is to figure out a way to make sure every American has a free, robust, net neutral Internet as well as a broadband access that is affordable because it is becoming as essential as heat and water, when it comes to the success of an individual.

Mr. COHEN. I totally agree. All I want to add is that we—when I say that Internet——

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Sorry.

The CHAIRMAN. I chair this committee, and I am going to exercise——

[Laughter.]

The CHAIRMAN.—a necessary right. Let me say two things. One is that in response to any question about my commitment, I went to West Virginia in 1964 as a VISTA volunteer. Virtually everything I ever did as Governor, virtually everything I have ever fought for in 30 years in the Senate, has been for working class people, for poor people, and I have never deviated from that, and it all flowed very easily simply because of the moral compass that was working within me after I had finished my 2 years with VISTA.

It was just like drinking a glass of water. It was easy for me, where my priorities should lie, and I followed that.

The second and final thing I want to say is that this has been a very long hearing but I think an extraordinarily interesting one, because the questions did not all fit exactly, you know, they were not a perfect puzzle, but we covered a lot of ground on what has to be one of the most important subjects that is available, and you have made that point several times, Mr. Kimmelman, as have you, Mr. Cohen, as have you, Senator Booker, that this is important beyond belief.

Where Americans get their information, if they can get their information, how do they absorb it, how do they use it, if they cannot get their information, what do we do to correct that.

As the providers of the potential of getting that information from whatever point of view they come, we have serious responsibilities because the divide in our country is bad and it is getting worse. It is not a good time.

I thank you and I treasure each and every one of you at the witness table for staying, all of you in the audience for staying for this long hearing, because I think it was worth it. It was a good hearing, and each of you made a major contribution.

Mr. Ryan, your star just shot up as soon as I said nobody had asked you a question, you know. It was terrific.

[Laughter.]

The CHAIRMAN. The hearing is adjourned. Thank you.

[Whereupon, at 5:20 p.m., the hearing was adjourned.]

# A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO DAVID L. COHEN

*Question 1.* Mr. Cohen, online video platforms are exploring a mix of revenue models to support their development, many of which include digital advertising. Questions have been raised, though, about whether Comcast, through the pending merger with Time Warner Cable and its purchase of FreeWheel, could have significant control over the burgeoning digital advertising market and the more traditional cable ad sales market.

With respect to digital advertising, your company has indicated that it will operate FreeWheel as an independent entity, safeguard data collected by the company regarding other media companies' digital operations, and not give preferential treatment to its own content. Will you reaffirm those commitments to the Committee?

Answer. As background, Comcast's acquisition of FreeWheel received antitrust approval in March 2014. This result was not surprising, since the transaction did not reduce competition in any way. Prior to the transaction, Comcast did not have a digital advertising platform competitive with FreeWheel. The transaction is procompetitive because it will provide FreeWheel with the resources and scale required to continue to develop into a robust competitor in the digital advertising space.

Comcast and FreeWheel management are committed to safeguarding the data of FreeWheel's clients. This is essential to continued growth and success of FreeWheel. As explained by Rob Holmes, Vice President of Advanced Advertising at Comcast, "our goal is to maximize the value of FreeWheel to the overall ecosystem, and not respecting our clients' data in some way would run counter to those purposes."

*Question 1a.* With respect to the traditional advertising market, how do you respond to claims from some groups that the merger will give Comcast excessive control over the local ad time sold by cable systems around the country and would have significant influence in the cooperative interconnects that facilitate cable ad sales on a local and regional basis?

Answer. The proposed Comcast-Time Warner Cable ("TWC") transaction presents no plausible competitive concerns regarding local advertising for a number of independently sufficient reasons.

It is important to emphasize that cable companies like Comcast and TWC control a very small percentage of television advertising. As a general matter, national cable network and local broadcast stations sell the vast majority of national and local television advertising. Cable companies like Comcast and TWC are generally allotted only two minutes per hour of advertising on national cable networks and no time at all on local broadcast networks. Such cable spot advertising accounts for only about seven percent of all spending on local advertising and only approximately eight to 11 percent of saleable impressions in local markets—far less than broadcast television, radio, Internet, or newspapers.

Furthermore, Comcast and TWC generally operate in *different* local geographic markets. There should be no competitive concern due to the same company selling locally targeted advertisements in different geographic markets, as local advertisers do not view such products as competitive with each other. Consider an example: If an advertiser (such as a local car dealership) wants to purchase advertising time in Washington, D.C., to reach potential consumers in Washington, D.C., this advertiser would not view advertising in Los Angeles as a competitive substitute. Thus, combining advertising inventory in Washington, D.C. and Los Angeles (through a merger or otherwise) can have no competitive effect on the D.C. car dealership, because that car dealership never was interested in purchasing advertising in Los Angeles in the first place.

For this same reason, the transaction changes nothing at the local level with respect to local interconnects. Interconnects are formed when different MVPDs situated within the same television market (also known as "designated market areas" or DMAs) contract together to pool their advertising inventory to cover a broader geographic area. This permits MVPDs to compete more effectively with other outlets for local advertising, like broadcast television, which sell advertising inventory on a DMA-level with far greater coverage than any individual MVPD can generally achieve. This structure benefits advertisers, who can go to one outlet (the interconnect) to purchase DMA-level advertising if they choose without having to go MVPD-by-MVPD to cobble together a purchase of similar scope. As an established practice, the largest participating MVPD in a given area typically manages the local interconnect, which means overseeing negotiations with advertisers that want access to the pooled inventory of available advertising time on the participating MVPDs' systems, along with technically managing the insertion of advertisements. These roles require substantial investment in time, employees, and technology.

As a result of the transaction, in areas where TWC currently manages an interconnect, Comcast will merely step into its shoes and manage that interconnect. As these local interconnects pursue *local* advertising in *different* markets, Comcast's managing of additional interconnects will not alter the local advertising market dynamic within any locality.

The lack of impact on the local advertising market is not altered by the fact that Comcast owns NBC broadcast stations in four markets (New York, Los Angeles, Dallas, and San Diego) where TWC operates cable systems. The FCC and the DOJ have each concluded that locally-zoned cable spot advertising, which is targeted at a sub-DMA level, is not generally a close substitute for local broadcast advertising, which is targeted at the DMA level. In addition to NBC broadcast stations and the cable interconnects in these markets, advertisers who wish to advertise at the DMA level have a broad array of options, including other broadcast television networks, Internet, radio, newspaper, billboards, and direct mail. Due to this variety of available options, local broadcast and local cable advertising *combined* account for a minority of local advertising spending in these markets, according to BIA/Kelsey data. Even if one were to view local cable and local broadcast advertising as being close substitutes, and exclude all non-television local advertising options, NBC and the combined Comcast/TWC local cable advertising share is still a minority of such a hypothetical market.

In sum, due to their small share of local advertising and the distinct geographical markets in which they operate, the Comcast-TWC merger would not have an appreciable impact on local advertising.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO DAVID L. COHEN

*Question 1.* According to the California Emerging Technology Fund, Comcast's Internet Essentials program has signed up 11 percent of the eligible households in California.

Answer. Comcast is fully committed to helping close the "digital divide," and we believe the record will show that we have done more to encourage broadband adoption by low-income families than any other entity in the nation, private or governmental. Our *Internet Essentials* program was designed to meet the needs of a specific population—low-income families with school-age children who are not currently connected to broadband Internet at home. This is the population with the greatest need for Internet connectivity for educational purposes.

At the hearing, I reported that, since launching *Internet Essentials* during the 2011 back-to-school season, Comcast had signed up more than 300,000 households to receive the Internet at home, serving over 1.2 million Americans. We also had provided more than 30,000 low-cost, subsidized computers to program families.[1]

As promised, I am pleased to provide updated numbers for participation in Internet Essentials, which now show that over 350,000 families representing over 1.4 million Americans have been connected to the power of the Internet—an increase of over 50,000 families and 200,000 Americans. Moreover, as of June 21, 2014, the number of California participants had surpassed 46,000 families—or almost 15 percent of the eligible population.

Experts agree that the success of *Internet Essentials* has exceeded all reasonable expectations.[2] The unconnected population is difficult to reach, and because issues

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[1] *See* Draft Hearing Tr. At 125:12–125:16 (July 16, 2014); Press Release, Comcast Corp., Comcast Offers Up to Six Months of Complimentary Internet Service and an Amnesty Program for Low-Income Families (Aug. 4, 2014), *http://coporate.com/news-information/news-feed/comcast-offers-up-to-six-months-of-complimentary-internet-service-and-an-amnesty-program-for-low-income-families.*

[2] *See,* e.g., Marguerite Reardon, *Comcast Extends 'Internet Essentials' Program Indefinitely,* CNET, Mar. 4, 2014, *http://www.cnet.com/news/comcast-extends-internet-essentials-program-*

of igital literacy (lack of understanding of the value or relevance of the Internet, fear of the Internet, lack of knowledge as to how to use computers, etc.) are the primary barriers to adoption, research confirms that closing the digital divide will be a very long-term project.

Even so, when you consider that after nearly two decades of aggressive marketing—spending hundreds of millions of dollars—Comcast has connected to the Internet less than 40 percent of all the households we pass, the fact that we have connected almost 15 percent of the eligible low-income families in California to the Internet in less than three years is a remarkable accomplishment.[3]

When this transaction is approved, Internet Essentials will become available in all the communities in the retained TWC markets—including major new metropolitan areas such as Los Angeles, New York, and Dallas/Fort Worth. This will significantly extend the program's reach to millions of additional low-income children and families.[4]

*Question 1a and 1b.* How can Internet Essentials do better? What specific changes or modifications to the program could Comcast make to improve sign-up rates?

Answer. Although *Internet Essentials* is unquestionably the most successful broadband adoption program in the county, it remains an evolutionary one that Comcast continuously enhances and supplements to help improve participation rates by low-income families.

As we recently reported to the FCC,[5] program enhancement to date include:

- Extending the program indefinitely—beyond Comcast's initial three-year commitment.
- Expanding the eligibility requirement for *Internet Essentials* twice, first by extending eligibility to families with children eligible to receive reduced-price school lunches, and then by including parochial, private, cyberschool, and homeschooled students.
- Increasing the broadband speeds for *Internet Essentials* customers twice in less than two years; *Internet Essentials* now offers up to 5 Mbps downstream, which is triple the speed offered at the beginning of the program, and faster than Comcast's entry-level service (3 Mbps) in most of its markets.
- Expanding an instant approval process for families whose students attend schools with 70 percent or more NSLP participation (previously, the threshold was 75 percent), which enhanced participation rates.
- Creating an online application tool on the *Internet Essentials* website to make it easier and faster for a family to apply for *Internet Essentials.* The online application form is now available in English and Spanish, and is optimized for use on mobile devices.
- Enabling Comcast's community partners to help connect low-income families to the Internet by purchasing Opportunity Cards that can be used toward the cost of paying for *Internet Essentials* service.
- Launching an enhanced version of its online Learning Center to provide families with enhanced and dynamic content, including interactive content in Spanish.
- Creating the Gold Medal Recognition Program to award grants to communities that have done the most to help close the digital divide and create *Internet Essentials* Learning Zones. As part of this program, Comcast recently made grants totaling more than $1 million to 15 communities, including in Elk Grove and Fresno, California.[6]

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*indefinitely/* ("Comcast is not the only company that is working toward more Internet adoption. . . . But so far, Comcast's program is the largest such effort. According to new research, it's also been among the most successful."), *citing* Dr. John B. Horrigan, *The Essentials of Connectivity* (Mar. 2014), available at *http://corporate.comcast.com/images/Final__IE__Research__Full__Paper.pdf*

[3] In March 2014, Comcast received the T. Howard Foundation's Innovative Program Award honoring the success of *Internet Essentials* in helping close the digital divide for low-income families with children.

[4] Because Comcast will not control the cable systems in the markets being divested, we will no longer be able to support *Internet Essentials* in those communities, although *SpinCo* could choose to continue an equivalent program.

[5] *See* Third Annual Compliance Report on *Internet Essentials,* The Comcast Broadband Opportunity Report, MB Docket No. 10–56, at 22–23 (July 31, 2014).

[6] The additional Gold Medal-recognized communities include Adams County, Aurora, and Denver, Colorado; Atlanta, Georgia; Chicago and Cicero-Berwyn, Illinois; Collier, Miami, and Palm Beach, Florida; Pasadena, Texas; Seattle and Tacoma, Washington; and St. Paul, Minnesota.

Comcast is extremely proud of the success of *Internet Essentials.* Going forward, we remain committed to making the program and our other community service efforts even more effective, including in the communities with TWC systems that we will acquire in this transaction.

*Question 1c.* Does Comcast support continuing the Internet Essentials program until California and the Nation achieve an 80 percent home broadband adoption rate?

Answer. Comcast announced in March 2014 that it has extended Internet Essentials indefinitely.[7] However, the suggestion that any one company could accomplish an 80 percent broadband adoption rate in the low-income population is unrealistic. As noted above, after two decades of intense marketing, Comcast has yet to achieve an overall 40 percent adoption rate across all of the homes we currently pass.

*Question 2.* I represent California, which is home to the creative and content community. My concern with the Comcast-Time Warner merger is that because Comcast now controls cable systems in Los Angeles and New York, it has the ability to decide which content, which cable channels, will succeed and which will be crippled.

My constituents from the content community tell me that they cannot get the support of advertisers and investors to launch a new channel without exposure in Los Angeles, New York, Chicago or Philadelphia.

Answer. Today, the MVPD marketplace is fiercely competitive and provides programmers with more outlets than ever before for their content. Nothing about this transaction will harm programmers.

Comcast, like other MVPDs, has—and will continue to have—every business incentive to carry programming that its customers value and demand. As others have said, "Content is king." Comcast faces intense competition for customers in these markets from the two DBS providers, telcos, cable over-builders, and, increasingly, OVDs—including Netflix, Amazon, Hulu, and others that are producing their own content and curating other programming. In fact, Netflix alone has more customers than the combined company will have and provides broader exposure than any MVPD, giving content providers a whole new platform to establish themselves and advertisers a new way to reach millions of viewers. As a result, Comcast would quickly lose subscribers to other MVPDs if it failed to carry channels its customers want to watch, or failed to offer attractive packages of desired programming to consumers.

The D.C. Circuit concluded more than a decade ago that the evidence before the FCC and the court could not have justified a horizontal ownership limit lower than 60 percent on the basis of buyer power concerns.[8] And in 2009, the same court concluded that "[i]n light of the changed marketplace, *the Government's justification for the 30 percent cap is even weaker now than in 2001. . . .*"[9] As the court explained:

> [T]he record is replete with evidence of ever increasing competition among video providers: Satellite and fiber optic video providers have entered the market and grown in market share since the Congress passed the 1992 Act, and particularly in recent years. Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992.[10]

Today's MVPD marketplace is even more competitive than it was in 2009—let alone in 2001—with cable providers' share of U.S. MVPD subscribers having declined significantly in recent years in light of robust competition from DBS and telco providers and online video distributors. Given these clear judicial precedents and the enhanced competition that has developed in the video marketplace since the decisions were issued, there is no credible basis for concluding that a cable operator serving less than 30 percent of all MVPD subscribers could be a bottleneck or raise competitive issues.[11] A 70 percent "open playing field" is more than sufficient to allow new cable channels to be launched.

Indeed, looking solely at carriage by MVPDs, Epix, Longhorn Network, NFL Sunday Ticket, Fusion, Fox Soccer Plus, Universal Sports, and MTV U are among many networks that are (or were originally) carried by other MVPDs besides Comcast. Similarly, the Big 10 Network, ESPNU, Smithsonian Channel, Fox Movie Channel,

[7] *See* Press Release, Comcast Corp., Comcast Extends National Broadband Adoption Program for Low-Income Families (Mar. 4, 2014), *http://corporate.comcast.com/news-information/news-feed/internet-essentials-2014.*

[8] *See Time Warner Entm't Co., L.P.* v. *FCC,* 240 F.3d 1126, 1136 (D.C. Cir. 2001).

[9] *Comcast Corp.* v. *FCC,* 579 F.3d 1, 9 (D.C. Cir. 2009) (emphasis added).

[10] *Id.* at 8.

[11] See Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 14–57, Applications and Public Interest Statement, at 143–51 (filed Apr. 8, 2014); Rosston-Topper Declaration ¶¶ 185–188.

MASN, CBS Sports Net, and several other networks were launched by other MVPDs before Comcast started carrying them.

Conversely, carriage by Comcast does not guarantee a network's success. AZN, Bridges Network, ESPN3D, and Mountain West Conference Channel are among various networks that Comcast carried that were ultimately not successful. As these facts further demonstrate, therefore, carriage by Comcast is not essential to the ability of an independent network to launch or to succeed.

In short, previous concerns about video competition are truly antiquated in light of today's marketplace realities. This is particularly so where, as here, Comcast and TWC do not compete for customers in any market and there will be no reduction in consumer choice among competing MVPDs. Comcast will continue to face the same competitive pressures post-transaction as it does today.

*Question 2a.* How will the merger with Time Warner impact diversity of content for Comcast customers?

Answer. Comcast serves the diverse needs and interests of our customers by offering a wide variety of compelling content, regardless of any affiliation with Comcast. We currently carry over 160 independent networks, including many small, diverse, and international ones.[12] Moreover, Comcast does not have an ownership interest in the overwhelming majority of content that it distributes. In fact, six of every seven networks carried by Comcast are unaffiliated with the company.

We carry—and will continue to carry—the programming that our subscribers want and value. And our proven commitment to a wide diversity of content will enhance consumer access to diverse programming after the TWC transaction is completed.

More specifically, Comcast is proud of the amount of diverse programming we make available to our customers. All of our cable systems are now digital and we carry scores of diverse networks on our Digital Basic tiers at affordable prices. In total, Comcast currently carries more than 100 cable networks geared toward African American, Hispanic/Latino, and Asian American audiences. These include:

- 11 cable networks geared toward the African American community.
- Dozens of cable networks geared toward the Hispanic/Latino community. Comcast fulfilled its commitment to launch a package of 40 to 60 Spanish-language channels in all major Latino markets, including South Florida. The XFINITY TV Latino packages now include approximately 60 Latino networks in English and Spanish, depending on a customer's region, including 50+ independent channels in our Spanish-only "H" tier. Comcast also launched the Xfinity Latino website (Xfinity.com/Latino), which features almost 9,000 choices and 2,500 hours of movies and shows online free to XFINITY Latino customers.
- 25 cable networks geared toward the Asian community. Highlights include Mnet, the only 24/7 English-language nationwide television network in the U.S. targeting Asian Americans, and MYX TV, a channel carried in Seattle and western Washington State made for and by Asian Americans.

Since 2011, and as part of our commitments in the NBCUniversal Order, Comcast has also launched five independent networks, four of which have Hispanic American or African American ownership or management. These include BabyFirst Americas, El Rey, ASPiRE, and REVOLT. All of these networks are carried on our Digital Basic tier. The launch of these networks has created even more outlets and opportunities for content creators serving the interests and needs of diverse audiences.[13]

In addition, since 2011, Comcast has expanded its distribution of over 120 independent networks, including expanded distribution of a host of minority channels to tens of millions of additional customers. This increased distribution is consistent with commitments that Comcast made as part of memoranda of understanding ("MOU") with various diverse organizations, in conjunction with the NBCUniversal transaction.

For example, consistent with the MOU, Comcast has made the Africa Channel available to over two million additional customers, and TV One available to over 600,000 additional customers. Comcast likewise extended distribution of seven Hispanic programming services—Azteca America, Galavisión, HITN, LATV, nuvoTV (f/k/a SíTV), UniMás (f/k/a Telefutura), and Univision—by more than 14 million sub-

[12] Comcast is using the FCC's definition of "independent networks" in the NBCUniversal Order, which includes networks that are not owned by Comcast and not affiliated with either Comcast or a top 15 programming network owner, as measured by annual revenues.

[13] Comcast has committed to launch four additional minority-owned networks and one additional independent network in the next few years.

scribers.[14] Mnet, a leading Asian American entertainment network, was also expanded to millions of additional subscribers in major DMAs. And we have increased the number of video-on-demand ("VOD") hours for diverse programming by more than 270 percent, while increasing the number of online hours for diverse programming (via *Xfinity.com*) by nearly 170 percent.

Besides expanding distribution of these channels and other diverse content, Comcast also has also helped promote and drive viewer interest in its diverse programming in innovative ways that many smaller networks could not do on their own. Specifically, between 2011 and 2013, we created Xfinity "microsites" tailored for African American, Asian-Pacific, Hispanic, and LGBT audiences.[15] Each microsite brings together culturally relevant entertainment from a variety of sources in a central, easy-to-navigate location. As an example, *xfinity.com/CelebrateBlackTV* featured special programming celebrating Black History Month. And to commemorate the 50th anniversary of the March on Washington, Comcast launched *HisDreamOurStories.com,* an award-winning website dedicated to the legacy of Dr. Martin Luther King, Jr. For these and other efforts, Comcast/NBCUniversal was recently honored with the 2014 Multicultural TV Front Runner Award, which recognizes the company's commitment and leadership in supporting multicultural communities.

Comcast has also invested heavily to develop and deploy the first-of-its-kind Xfinity Latino Entertainment Channel, a linear, interactive "barker" channel available to over 20 million subscribers that promotes curated, Latino-relevant content. During June 2014, this channel was transformed into a one-stop shop for all things World Cup, including direct links to Xfinity On Demand for immediate VOD availability of every World Cup match, the latest news, scores and standings, content recaps, and information on upcoming matches.[16]

These are only a few of the additional ways that Comcast is providing and supporting diverse programming. Nothing about the transaction will change our commitment to offering and promoting programming, regardless of source, that appeals to a broad range of consumers; instead, we will bring this same approach to a larger universe of customers.

*Question 2b.* What does Comcast plan to do to ensure that consumers are not harmed by Comcast having too much control over content?

Answer. The transaction will not give Comcast the incentive or ability to restrict competing content providers from distributing their content to consumers, or to withhold NBCUniversal programming from competing TV and Internet providers.

The combined company will account for less than 30 million managed MVPD subscribers, or less than 30 percent of MVPD subscribers nationally. This will not adversely affect the ability of content providers to distribute their content broadly to a national audience, whether or not they enter into an agreement with our company, for the same reasons I previously explained.

Indeed, today, most consumers can choose among at least three facilities-based MVPD providers; many can choose among four or more. And this does not even account for the increasing number of online video distributors offering content to consumers. According to SNL Kagan, 53.9 million U.S. households subscribed to online video services at the end of 2013, nearly triple the 18.2 million that did so in 2010. If Comcast refuses to carry the content that consumers want, they can and will switch to our competitors, and their numbers are growing everyday.

The transaction will not affect NBCUniversal's licensing of content to MVPDs, either.[17] Comcast is acquiring minimal new programming interests from TWC: one major league professional sports English language RSN, some local sports and news channels, and interests in two national cable networks in which Comcast already has a partial ownership interest (MLB Network and iN Demand). As a result, there will only be a *de minimis* change in the new company's programming assets. NBCUniversal will not have the power or incentive to withhold its programming

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[14] This exceeded, by more than 40 percent, Comcast's commitment in the NBCUniversal transaction to expand carriage of three Hispanic networks by 10 million subscribers.

[15] *See http://xfinity.com/celebrateblacktv; http://xfinity.com/asia; http://xfinity.com/latino; http://xfinity.com/lgbt.*

[16] See Press Release, Comcast Corp., Every Moment, Every Match On Demand, Instantly (June 11, 2014), *http://corporate.comcast.com/news-information/news-feed/comcast-delivers-the-world-cup-on-demand-instantly.*

[17] Since the Comcast-NBCUniversal transaction, there have been no disputes with any MVPDs over licensing of NBCUniversal programming on fair and reasonable terms—and none in which the parties have resorted to arbitration. NBCUniversal has successfully reached affiliation agreements covering the full suite of NBCUniversal programming with, among others, Verizon, Cablevision, Charter, Dish Network, Suddenlink, Mediacom, and NCTC without resort to the arbitration remedies in the NBCUniversal Order.

from MVPDs in any markets. And, in all events, these relatively modest new holdings will be subject to safeguards such as the FCC's program access rules.

For the same reasons, the transaction will not affect NBCUniversal's licensing of content to OVDs. Since the NBCUniversal transaction was approved, NBCUniversal has licensed or renewed programming content to numerous OVDs, including Apple, Amazon, Netflix, and YouTube. The NBCUniversal Order's licensing and arbitration rights for OVDs will also continue to apply after this transaction as a backstop.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO DAVID L. COHEN

*Question 1.* I have long been concerned about "orphan counties" and the ability of consumers living in those areas to have access to home state broadcast TV programming. I would expect that as online video choices continue to grow consumers in these counties would have more access to programming that is specific to their state. Could you please state your thoughts on how increased online video competition could help address the orphan county issue?

Answer. Comcast recognizes the frustration that results from consumers' lack of access to in-state broadcast signals and programming, which arises from Nielsen's construct of DMAs. We agree that the explosive growth of online video has the potential to fill some of those gaps for consumers seeking local content such as news, weather, and sports.

In a number of circumstances, Comcast carries additional broadcast stations in order to provide in-state coverage to our customers. For example, our cable systems in West Memphis currently include locally-based stations broadcasting out of Memphis, Little Rock, and Jonesboro.

In addition, the increasing competition to provide online video will help provide greater access to local programming for consumers living in an orphan county in at least two ways. First, this increased competition will continue to drive Internet Service Providers to invest in infrastructure that gives more consumers access to online sites and platforms, extending the availability of broadband services into rural areas that typically comprise orphan counties. And second, in response to this increased competition, broadcast stations and other programmers, as well MVPDs and OVDs, will continue to invest in providing online content that appeals to consumer interests, including local news, weather, and sports programming.

Broadcasters, in particular, are offering websites where local information can be accessed freely by any consumer. For instance, among other websites, an Arkansan living in the Memphis DMA can find in-state news, sports, and weather (including watches and warnings) originating from Jonesboro at *www.kait8.com;* or from Little Rock at *www.arkansasmatters.com* or *www.Fox16.com.* These kind of online offerings of local content will continue to expand as programmers and distributors compete for viewer attention and loyalty in this increasingly dynamic video marketplace.[1]

*Question 2.* As we look to the future of video, no Americans should be left behind. I authored the Twenty-First Century Communications and Video Accessibility Act in 2010 as a way to make sure communications and video services remain available to all consumers. In addition to the FCC's laudable recent actions to expand its closed captioning rules to Internet video clips, are there additional steps that Congress or the FCC need to take to make sure all video services are accessible to everyone?

Answer. Comcast shares Senator Pryor's commitment to improving the accessibility of video services. We supported the Twenty-First Century Communications and Video Accessibility Act of 2010 (the "CVAA"). We have also participated in a constructive and collaborative way in many CVAA rulemaking proceedings at the FCC; and we are now working diligently to implement the law's requirements, including those relating to Internet video clips. Comcast believes the goals of the CVAA are being achieved, but also recognizes that there is always more to do in this area. We look forward to working together with the FCC and other stakeholders on these and other accessibility issues.

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[1] Indeed, the website of WATN, Memphis (ABC), covered almost 60 stories about Arkansas in the last month. *See http://www.localmemphis.com/sitesearch?q=arkansas&mod=m.* The website of WHBQ, Memphis (Fox), covered close to 50 stories about Arkansas in the last three weeks or so. *See http://www.myfoxmemphis.com/search?RecordNum=1&vendor=ez&qu=arkansas.* The website of WMC-TV, Memphis (NBC), covered about 100 news stories in the last 30 days that mentioned Arkansas. *See http://search.wmctv.com/default.aspx?ct=r&q=arkansas&type=20198,155010154&r.STRDAT=8%2f03%2f2014%2c.*

Comcast appreciates that both Congress in drafting the CVAA, and the FCC in implementing its related rules, have given industry flexibility to build next-generation accessibility solutions by not limiting technology choices. This policy has enabled Comcast to develop innovative solutions for viewers with disabilities. We have made accessibility an integral part of our service and product planning, design, and implementation. We work closely with individuals with disabilities and advocacy groups to drive a customer-informed accessibility strategy, and have hosted numerous roundtables with interested parties to identify ways to make our services and products more accessible.

These collaborative efforts have led to a range of innovative, industry-leading solutions, including:

- A first-of-its-kind "talking guide" solution for our acclaimed X1 platform, which assists blind and visually-impaired customers in navigating the X1 TV user interface and selecting particular services for use.
- Simplified processes for activating accessibility features, such as programmable "soft keys" on the remote control for the X1 platform that can be configured for one-touch activation of closed captioning or video description.
- Screen-reader technology on the Xfinity Connect Mobile App, so blind and low-vision users can access e-mail, text, and other online services on tablets and smartphones.
- A new automated monitoring tool, which enables Comcast to detect closed captioning problems and quickly investigate and troubleshoot captioning issues.
- A Comcast Accessibility Center of Excellence focused on providing specialized customer care for persons with disabilities.

We also recognize the importance of making a wider range of content accessible to viewers with disabilities. In fact, NBCUniversal began captioning online video well before the FCC required it, including, for example, news clips on the *NBC News* and *Today Show* websites. NBCUniversal has also captioned content that is not subject to the FCC's rules, such as Internet-only video feeds for the 2014 Sochi Olympics. And we played a leading role in the development of industry best practices (later codified in the FCC's rules) to improve the quality of closed captions.

Comcast appreciates Senator Pryor's leadership on accessibility issues, and is strongly committed to continuing to work with him and other stakeholders to make further improvements in this area.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO JUSTIN (GUS) HURWITZ

*Question 1.* As we look to the future of video, no Americans should be left behind. I authored the Twenty-First Century Communications and Video Accessibility Act in 2010 as a way to make sure communications and video services remain available to all consumers. In addition to the FCC's laudable recent actions to expand its closed captioning rules to Internet video clips, are there additional steps that Congress or the FCC need to take to make sure all video services are accessible to everyone?

Answer. The direction of the video market is largely being driven by competition for high-value consumers that are interested in, or that the market believes are interested in, high-definition, Internet-delivered, general interest entertainment programming. I worry that this competition will tend to leave three groups behind: local programmers (including news, information, and local entertainment), consumers without access to the highest-speed Internet services, and traditional MVPD (cable and satellite services). Each of these are problematic in their own right, and also raise concerns that the evolving media marketplace is "evolving" in part by leaving consumers that are not of "high-value" to the market behind. Whether, or what, can be done in response to these concerns is a difficult question, but I offer some preliminary thoughts below.

First, local programming—which is often more important to and representative of those with accessibility needs—is largely unavailable online. Some broadcasters may stream their content on their own—but it is not part of the typical online video ecosystem. Other local broadcasters do not make their video content available online—in any format, let alone real-time streaming of broadcaster-originated content. As consumers continue to migrate to online video sources, they also move away from these local programming sources. This is exacerbated by typical consumer demand, which is driven by consumption of non-local programming (and primarily entertainment programming). This loss of local content is potentially devastating to participatory government in a modern liberal democracy. While there are no clear answers to address this concern today, Congress and the FCC should be actively investigating the role of local programming in the media (especially video, and online video) marketplace, and considering approaches to bringing local content to online video platforms in a meaningful way, and the role of local media in the lives of the disabled.

Second, the online video marketplace is driven by a hydraulic pressure to cater to the demands of the highest value consumers—those who typically make the greatest investments in video consumption, including by having high-quality video systems (*e.g.,* HD TVs) and high-speed Internet. It is an unfortunate truth that consumers with disabilities are often not represented among these "high-value" consumers—ongoing technological development often does not cater to them, and, indeed, often leaves them behind. This is particularly, troubling where earlier iterations of a given technology may be more accommodating (or more readily accommodated) to their needs.

The technological state of the art will always be beyond what the median consumer demands, and entirely out of reach of many consumers. Undoubtedly this pressure to develop new and better technologies yields immeasurable benefits (viz., the new technologies that result). But if we define what "the typical" or "every" consumer should have access to as what is necessary to make use of what the market is offering, we will be in a perpetual state of "falling behind"—and to the extent that we do catch up, it will often be by expending substantial resources to provide consumers with resources they do not necessarily want or need. The Universal Service program is one mechanism that helps reduce this concern, by ensuring that consumers have access to high-speed Internet—but it does nothing to address the hydraulic pressure that will ensure many consumers do not have access to much video content, and in fact may exacerbate that pressure. Rather, Congress and the FCC, at least to the same extent they are pushing for the most advanced technologies to be widely available to consumers, should also be working to ensure that consumers have access to less technologically demanding equivalents of video (and other online service) offerings. Thanks to technological advances, typical quality video offerings from 3–4 years ago can today be accommodated by Internet connections commonly available 5–8 years ago. But the market is focused on developing video offerings that require consumers to have substantial multiples of resources beyond that (*e.g.,* HD-quality video requires 3–6 times the bandwidth of DVD quality video; 4K-quality video requires 25 times the bandwidth)—and that do nothing to improve the accessibility of this content. These higher-quality video offerings offer little necessary benefit to many forms of programming—especial for the most vital programming, such as local news and information—yet there is little focus on preserving access to non-HD quality content for consumers who may not have or want access to HD-quality content.

Similar concerns can be expressed about online accessibility outside of the video marketplace context. The Internet is increasingly a rich multimedia environment, the evolution of which has been driven by low-cost access to high-speed broadband service. But this audio-and video-rich environment frequently leaves disabled persons behind.

Third, traditional MVPD platforms are subject to myriad regulations to which emerging video marketplace participants are not. These restrictions regulate, for instance, how much and what types of certain content these firms can (or must) carry, as well as how, when, or even whether these firms can negotiate over the price or terms for carrying that content. The subject many of these firms to local or other licensing regulations, and impose other limits on how they develop and operate their infrastructures. And increasingly it is unclear whether these regulations do or should apply to non-traditional entrants into the video marketplace.

The existing regulatory framework therefore presents two types of problem relevant to accessibility concerns. First, it ossifies traditional MVPDs, limiting their ability to provide access to or compete with other providers in the emerging video marketplace. This is particularly problematic because many with accessibility concerns may be averse to experimenting with new technology platforms, preferring instead to stick with a known platform that offers at least minimal accessibility support. Moreover, allowing traditional MVPDs to evolve their own technological and business models to look more like the evolving online video marketplace may in many cases require those MVPDs to expand their accessibility features to cover new content forms and sources. And second, related to this point, many firms in the evolving marketplace—those that are not (or may not be) subject to existing regulations—operate without any concern for or awareness of accessibility issues. This furthers the tendency of the market to speed ahead, catering to "high-value" consumers while leaving those with other needs or demands behind. This is particularly tragic because many of the firms developing these new technologies have incredible innovative capabilities that could likely yield substantial benefits to those who need more accessible content—were these firms brought under the umbrella of responsibility for ensuring the accessibility of their wares, the dividends could be substantial.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO JOHN T. STANKEY

*Question 1.* As we look to the future of video, no Americans should be left behind. I authored the Twenty-First Century Communications and Video Accessibility Act in 2010 as a way to make sure communications and video services remain available to all consumers. In addition to the FCC's laudable recent actions to expand its closed captioning rules to Internet video clips, are there additional steps that Congress or the FCC need to take to make sure all video services are accessible to everyone?

Answer. The passage of the Twenty-First Century Communications and Video Accessibility Act ("CVAA") represented a landmark event for persons with disabilities, significantly increasing access to modern communications and video products and services. For its part, the Federal Communications Commission ("FCC") has worked diligently to adopt rules under the CVAA that can be implemented by the communications and video industries. The CVAA and implementing FCC regulations not only mandate more accessible and usable video products and services, but inspire manufacturers, service providers, and video providers to rethink how they make communications and video products and services available to the public. Yet, the CVAA wisely avoids prescriptive regulations that would be all too quickly out of date and potentially limit innovation and the benefits to persons with disabilities. The communications and video industries have used the impetus of the CVAA and the existing momentum from advancements in technology to significantly increase access to video for persons with disabilities, such as the development of increasingly accessible mobile operating systems and mobile applications. Today, persons who are blind can use camera and video applications to communicate, identify colors, have video clips described, and travel in unfamiliar areas independently, and persons with speech disabilities can use applications to augment their speech. This cycle of innovation will continue without additional Congressional or FCC action, resulting in a greater number of options for persons with disabilities to access and enjoy video communications.

Given that the CVAA is still in its relatively early stages of implementation, companies like AT&T are primarily focused on finalizing implementation and ensuring compliance. For example, AT&T has created the Corporate Accessibility Technology Office, which has evaluated over 17,000 products and services for accessibility. We also have invested in improving access to U-verse video programming for persons with disabilities. U-verse customers who are deaf or have hearing loss rely on closed captioning to experience video programming and customers who are blind or have low vision rely on video description to access video programming. Currently, video description is required for 50 hours of programming per calendar quarter for nine channels—the four television broadcast networks in the largest 25 markets and the top five non-broadcast networks.

Congress has provided the FCC with authority under the CVAA to examine whether and when it is appropriate to increase the number of hours of described programming and to expand the market areas where such programming must be provided. In addition, Congress could examine the costs versus benefits of opening more markets to described programming on less than the ten year timeline it provided in the CVAA and to encourage and recognize voluntary efforts by content developers, researchers and organizations of persons with disabilities that result in an increase in the amount of described programming.

The FCC can also enhance access to video services by increasing the number of persons with disabilities who are eligible for assistance under the National Deaf-Blind Equipment Distribution Program ("NDBEDP"). For persons who are both deaf and blind, the potential for full inclusion is often blocked by the significant cost of specialized equipment and related activities, which will likely remain high due to specialization and limited market size. To help this community acquire assistive equipment, the FCC adopted rules under Section 105 of the CVAA to establish a trial of the NDBEDP, setting an income eligibility threshold to participate in the trial at 400 percent of the Federal Poverty Guidelines ($43,320 based on 2010 poverty levels). According to the National Coalition of Deafblindness, this eligibility threshold will exclude some persons who are deaf-blind because of their family situation and the high costs of their transportation, medical, home support and other needs, even before considering the costs of assistive technology.[1] Those persons would also have fewer employment options, as some small businesses may be unable to bear the cost of assistive technologies. In light of these issues, the final FCC NDBEDP rules should significantly lower the income eligibility threshold and Congress should evaluate the costs and benefits of continuing to restrict participation in the NDBEDP to low income individuals.

Congress could also increase access to video communications by promoting continued research and technological advancement. While device manufacturers and video distributors work actively with disability organizations, such as the National Association of the Deaf, the American Foundation for the Blind, and Telecommunications for the Deaf and Hard of Hearing, Inc., to understand the needs of persons with disabilities, research is ultimately conducted by accessibility experts. The Rehabilitation Engineering Research Centers (*e.g.,* the Telecommunications Access Program at Gallaudet University), with industry support and participation, offer a good model for technology transfer in the accessibility and usability of communications and video. It is critical that these research efforts continue and increase in scope, to not only provide access to advanced communications and video, but also to foster advancements in the areas of education, employment and civic participation for persons with disabilities through these technologies. Efforts to increase access to video programming tend to focus on persons with hearing and vision disabilities (*i.e.,* Sections 204 and 205 of the CVAA). With additional funding, these Research Centers (and similar organizations) could expand their focus on improving the video experience for persons with cognitive and physical disabilities. The results of this research could form the basis for manufacturers and video providers to develop more universally accessible remote controls, interfaces, and other assistive technology. Given the prevalence of physical and cognitive disabilities, the increasing interactivity of video, and the wider use of video programming in the workplace, education settings, social networks, and elsewhere, Congress should also direct Federal agencies to fund user research intended to identify accessibility barriers to video programming for people with physical and cognitive disabilities and potential solutions to circumvent those barriers, and to work with industry on the transfer of technology to develop those solutions.

Lastly, without research and training at the university level, it will be difficult for companies to find the experts necessary to harness the potential of advanced communications and video programming for persons with disabilities. The International Association of Accessibility Professionals ("IAAP") encourages programs that increase the number of professionals with expertise in accessibility in engineering, human factors, and computer science. Congress can promote the continued development of the field by recognizing the efforts of organizations like the IAAP and encouraging funding to university and professional development programs with the goal to develop accessibility expertise.

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### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO JEFFREY H. BLUM

*Question 1.* I have long been concerned about "orphan counties" and the ability of consumers living in those areas to have access to home state broadcast TV programming. I would expect that as online video choices continue to grow consumers in these counties would have more access to programming that is specific to their state. Could you please state your thoughts on how increased online video competition could help address the orphan county issue?

Answer. DISH shares your concern regarding the inability of orphan county residents to access in-state broadcasts. While the Internet has generally provided more video options, it is not guaranteed that all orphan county residents are connected to the Internet or have the high-speed, high-capacity connections that online video is increasingly dependent upon. Rather than hoping that all orphan county residents have sufficient broadband connections in order to seek out alternative Internet sources of in-state news and weather, Congress should consider the statutory changes that would be necessary for consumers to receive in-state local broadcast stations from the pay-TV provider of their choice.

*Question 2.* As we look to the future of video, no Americans should be left behind. I authored the Twenty-First Century Communications and Video Accessibility Act

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[1] Comments of National Coalition on Deafblindness, Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10–210, at 5 (filed Feb. 4, 2011).

in 2010 as a way to make sure communications and video services remain available to all consumers. In addition to the FCC's laudable recent actions to expand its closed captioning rules to Internet video clips, are there additional steps that Congress or the FCC need to take to make sure all video services are accessible to everyone?

Answer. DISH shares the goal of making video services more accessible to all consumers. We look forward to continuing to work with Congress and the FCC to ensure Americans have access to video technologies while preserving flexibility for the industry to continue innovating in this rapidly evolving space.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO GENE KIMMELMAN

*Question 1.* I have long been concerned about "orphan counties" and the ability of consumers living in those areas to have access to home state broadcast TV programming. I would expect that as online video choices continue to grow consumers in these counties would have more access to programming that is specific to their state. Could you please state your thoughts on how increased online video competition could help address the orphan county issue?

Answer. The orphan county issue highlights one of the problems with today's video marketplace. It is an artifact of rules that say that viewers can only access programming from "their" DMAs. But DMAs are drawn to suit advertisers' needs, not viewers' needs. Orphan counties are only the clearest example—but why is it difficult for any viewer who so chooses to access "out of market" programming?

Increased competition from online sources could help alleviate some of the problems caused by the DMA system, by giving viewers new ways to access programming that is not available over the air or through an MVPD. But territorial exclusivity can still affect what programming viewers can access online, and the existing structures of the video marketplace can keep programming from being distributed online altogether.

At the very least, FCC rules should not reinforce a system that works against viewer choice. As with the sports blackout issue, private parties should not be able to use government regulations as an excuse to limit what people can see. They might still be able to use private contracts to restrict viewer access to programming, but it should be clear that these restrictions are driven by business considerations and not public policy.

*Question 2.* As we look to the future of video, no Americans should be left behind. I authored the Twenty-First Century Communications and Video Accessibility Act in 2010 as a way to make sure communications and video services remain available to all consumers. In addition to the FCC's laudable recent actions to expand its closed captioning rules to Internet video clips, are there additional steps that Congress or the FCC need to take to make sure all video services are accessible to everyone?

Answer. In general, accessibility rules should not hinge on whether online programming was once aired on broadcast or cable. Regulatory silos are not appropriate when it comes to ensuring that technology and media are accessible to all. Policymakers should ensure that content, devices, and services are all accessible to Americans with disabilities, in a way that is not unduly burdensome to small creators.

Additionally, as more video goes online, access to video increasingly requires access to broadband. Universal service for broadband is thus necessary to ensure that Americans in every part of the country, and at every income level, can access and participate in culture.

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