AMERICAN CABLE ASSOCIATION

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The Hon. Marsha Blackburn
Chairman
Committee on Energy and Commerce
Subcommittee on Communications
and Technology
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515-6115

The Hon. Michael Doyle
Ranking Member
Committee on Energy and Commerce
Subcommittee on Communications
and Technology
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515-6115

Re: Hearing on the State of the Media Marketplace

Dear Chairman Blackburn and Ranking Member Doyle:

In advance of your upcoming hearing on the state of the media marketplace, we wanted to provide you with the perspective of ACA's more than 700 small-to-medium sized cable and broadband providers. Nearly all ACA members provide service to America's small towns and rural areas—locations in which connectivity is vital but that are more difficult to serve. Others compete against some of the largest players in suburban and urban markets. As smaller operators, they face challenges unique in the industry. It may be, however, that some of the challenges ACA members face today are those that our larger competitors will face tomorrow. In any event, we think we have a valuable perspective to offer the Committee—both with respect to the improvements ACA members have made to their service and with respect to the challenges they face.

I. Innovation and Improved Service.

Let me start with the good news. All ACA members compete against larger, better-funded satellite carriers: AT&T's DirecTV and DISH. Some also compete against larger cable and telephone providers. ACA members also increasingly compete against a host of online video distributors, such as Netflix, Amazon Prime Video, Hulu, CBS All Access, and others. In order to survive, they must offer better customer service, and better and more innovative products, at competitive prices, than ever before. And in many ways, they are succeeding—and subscribers benefit. The following are a few examples.

In the last year, ACA members have begun offering an advanced, Internet-protocol version of their services that customers can access on a variety of devices, such as Roku devices, tablets, and smart phones. This new service, using technology developed by MobiTV, permits consumers to receive programming *without* leasing set-top boxes from their cable operator. More ACA members are expected to launch this service next year. This, of course, addresses one of the most contentious policy debates of the last decade involving video providers—the extent to which subscribers must lease set-top boxes from their cable operator. Even here, however, we would sound a note of caution. At least one of the largest program suppliers has to date declined to authorize some members to use this technology.

ACA members have sought to meet their subscribers' evolving needs in other ways as well. For example, a large and increasing number have entered into arrangements with online service providers—including PlayStation Vue, fubo TV, Philo, CuriosityStream, Cheddar, HBOGo, and Hulu—to make these services easy for their customers to access on their televisions. These arrangements allow cable subscribers to obtain whatever combination of traditional and online video service that serves their needs. It also allows them to more easily cut the cord entirely if they so desire.

II. Existing Challenges.

The innovations described above are real. They are, moreover, all the more remarkable in light of the unprecedented challenges ACA members face. Such challenges include:

- ***Expensive programming.*** It is no surprise to anybody that cable bills have gone up. Not all consumers understand, however, that the prices ACA members charge directly reflect the prices they themselves pay for programming. And those prices rise on an annual basis. The buying group used by many ACA members indicates that programming expenses generally rose nearly 10 percent *annually* over the last five years. It suggests that year-over-year increases at this level will continue through at least 2021 based on escalators in existing contracts.

  No prices, however, have increased more quickly than the "retransmission consent" fees charged by allegedly "free, over-the-air" television broadcasters. Retransmission consent fees have risen by double digits each year for the last decade.[1] In a survey conducted last year, ACA members reported that they will be forced to pay an average of 88 percent more by 2020 than they paid in 2017. Based on ACA's calculations, members were paying $11.00 on average per subscriber per month in 2017 in retransmission consent fees which would increase to an average of $19.00 per subscriber per month by 2020. Nearly a quarter of those surveyed would see a jump of

[1] *See, e.g.*, Tom Wheeler, *Protecting Television Consumers By Protecting Competition*, Federal Communications Commission (Mar. 6, 2014), https://www.fcc.gov/news-events/blog/2014/03/06/protecting-television-consumers-protecting-competition (noting that the cost of retransmission consent agreements has "skyrocketed from $28 million in 2005 to $2.4 billion in 2012, a nearly 8,600 percent increase in seven years"); S&P Global Market Intelligence, *Kagan Releases Updated Retransmission Projects*, PR Newswire (June 19, 2017), https://www.prnewswire.com/news-releases/kagan-releases-updated-retransmission-projections-300475948.html (citing double-digit increases in recent years).

at least 100 percent in fee increases in the next three years, and in one case that jump is expected to be 302 percent.[2]

We are unaware of any other sector in the economy that has undergone such sustained price increases. Nor, for that matter, are we aware of any business that can absorb input price increases of this sort without it significantly affecting their customers. These price increases, moreover, cannot be ascribed to any increase in broadcast quality—broadcast ratings have *declined* in recent year.

- ***Forced bundling.*** Not only must ACA members pay high prices for programming, but large programmers invariably require them to carry (and pay for) multiple channels—channels that their subscribers do not want and which often feature shows they already carry on other channels. For example, as we explained to the FCC last year, a small cable operator that wants to get the most popular programming from nine of the largest media groups—Disney/ESPN, Fox, Comcast/NBCU, Turner, Viacom, AETN, AMC, Discovery, and Scripps—is forced to carry 65 channels at a minimum.[3]

  This eats up limited budgets, preventing ACA members from carrying independent programming that their subscribers would prefer. It also eats up limited capacity, preventing ACA members from optimizing the *broadband* services that have become the most important subscriber offering.

- ***Mandatory Tiering.*** Not only must ACA members *carry* unwanted programming, but programmers force them to do so on "basic" or "expanded basic" service tiers. Moreover, some construe a law from the 1990s to prohibit ACA members from offering cable programming to subscribers that do not first purchase broadcast programming.

  This explains why such tiers are often more bloated and expensive than subscribers would like. It also explains why ACA members sometimes can't provide the "skinny bundles" that subscribers would like to combine with online services.

III. New Challenges from Media Consolidation.

Exacerbating these problems is a new round of consolidation among large media corporations. When large programmers (like AT&T) merge with large distributors (like Turner), known as "vertical integration," selling their programming to other distributors (like ACA members) becomes less important to their business. This enables them to raise prices. Likewise, when large broadcasters merge with other large broadcasters, such as with the now-abandoned Sinclair/Tribune merger or the pending Gray/Raycom merger—especially when they combine forces *within* markets—they too can raise prices.

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2 Press Release, *ACA Survey Reinforces Real-life Fallout of Contentious Retrans Negotiations*, American Cable Association (Feb. 16, 2017), http://www.americancable.org/corporate-broadcasters-force-exorbitant-rate-increases-on-cable-customers/.

3 Joint Comments of the American Cable Association, MAVTV Motorsports Network, One America News Network and AWE, and Ride TV at 3, MB Docket No. 16-41 (filed Jan. 26, 2017) (discussing carriage through the National Cable Television Cooperative buying group).

Unfortunately, both kinds of mergers have become all too common lately. And conditions on the largest prior vertical merger—that between Comcast and NBC—have just expired. While those conditions were not perfect, they at least provided some minimal constraint on Comcast-NBCU's behavior, a constraint that no longer exists.

IV. Impact on Video Service and Rural Broadband Deployment.

The unfortunate fact is that, because of these challenges, ACA members find it increasingly difficult to maintain a viable video service. Over the past five years, ACA members collectively have lost roughly 14 percent of their video subscribers. During that time, moreover, some small cable system operators have shut down, and others have sold to larger companies. This means their customers either lose a competitive option in the marketplace or a provider that has close ties to the community.

Challenges in the *video* marketplace also threaten *broadband* deployment. Our members' networks provide multiple services: video, phone, and broadband. Our members can thus recoup network investments with margins from all three services. Because of the challenges described above, however, video service has become barely profitable—or even unprofitable—for many ACA members. This decreases the returns on any new network investments for those members, which in turn makes new broadband deployment less economically feasible.[4] For a Committee focused on promoting the universal availability of high-speed broadband service, this outcome should be totally unacceptable.

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Is all lost for hometown cable operators? Of course not. ACA members continue to compete, providing high-qualityvideo and broadband services and enabling families and businesses to thrive in our communities. We welcome the challenges that building and running such a business presents. But we are under no illusions about the gravity of the challenges that face us. As you consider broader questions about the video marketplace, we hope you will understand the concerns we face as well.

Sincerely,

Matthew M. Polka
President and CEO
American Cable Association

Cc: Members, Subcommittee on Communications and Technology

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4 *See, e.g.*, Reply Comments of the American Cable Association, GN Docket No. 14-126 (filed Apr. 6, 2015); American Cable Association, "High and Increasing Video Programming Fees Threaten Broadband Deployment" (Apr. 2015) (supported by analysis from Cartesian).