Testimony of Benjamin N. Pyne
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Thank you, Chairman Boucher, Ranking Member Stearns and Members of the Subcommittee, my name is Ben Pyne and I am President, Global Distribution, Disney Media Networks. I appreciate the invitation to talk with you today about video competition.

Video Competition is Thriving.

There has never been a more competitive video marketplace. Never. Thanks to Congress and the FCC, consumers today have more choices and more video content available to them than at any time in history. Most consumers now have the choice of three, four, or more competitive options to receive multi-channel video. While cable once was feared to be a monopoly, today 36 million customers subscribe to non-cable MVPDs. The available multichannel video offerings provide tremendous variety for consumers including in most cases HD content, video-on-demand (VOD), DVRs, telephony, broadband and, of course, diverse and high-quality programming like that produced by Disney, ESPN and ABC.

Looking into the future, as video consumption continues to migrate from traditional cable and satellite distribution to broadband, we need to make sure that consumers and programmers will continue to have access to multiple distributors that are competitive and equivalent.

On the programming side, competition for eyeballs has never been more fierce. Over the last thirty years, the number of programming services literally has exploded. According to the FCC's 2009 Annual Assessment of the Status of Competition in the

Market for the Delivery of Video Programming, there are now approximately 565 national satellite delivered cable programming networks. And, cable's and satellite's most popular services now reach nearly 100 million households. At the same time, vertical integration among programmers has *decreased*. The DVR now reaches over 40 million households, bringing with it new options for consumers and new challenges for all programmers. Of course, the exponential expansion of content on the Internet, whether video streams or social networking, has created additional competition for eyeballs.

As an overall matter, the trend in the media marketplace over the last few years has been one of *deconsolidation*, not consolidation. Just a few examples of this deconsolidation include Time Warner's split of its cable and content assets, News Corp's divestiture of DirecTV, and the major broadcast network station groups selling some of their television stations.

Today's subscribers to multichannel video get a great value for their money, especially compared to other entertainment options like live sporting events, theatrical productions, or video games. For about $50 per month, subscribers get thousands of hours of entertainment, news, sports, documentaries, lifestyle, childrens and family-friendly programming. For that same amount of money, families can barely buy a single ticket for many other entertainment options. In comparison, with their monthly subscription fee, families have an entire month's worth of first-row seats for the best sports and entertainment available anywhere. In fact, with all the great content on multi-channel television, consumers spend more per hour on movies, home video, mobile phones, newspapers/magazines and video games than for cable television.

Disney realizes that as a result of all the competition that Congress has helped unleash, some of our distributors – namely some small cable operators – are facing competitive pressure from satellite, telco and other new video entrants. Because of this competitive pressure, Disney works very closely with each of our distributors to strike individualized and appropriate business deals. Most recently, in an effort to provide some relief to the smallest cable operators most impacted by this increase in competition, Disney went so far as to actually grant many small cable operators *free* retransmission consent for the current three-year retransmission consent cycle for the 10 ABC Stations owned by Disney. Specifically, Disney granted free retransmission consent to more than 90 small cable operators (out of a total of 113 operators located in our 10 markets). These cable operators account for approximately 80 percent of the operators with which Disney negotiates for retransmission consent. With respect to our non-broadcast channels, Disney and ESPN have deals with the NCTC (the cable purchasing co-operative) for all of our cable channels. This provides NCTC members with buying power equal to the nation's 5th largest cable company. Given these and similar efforts, the Subcommittee should not get involved in the private negotiations between programmers and distributors, which are benefiting not only distributors and programmers of every type and size, but most importantly, consumers throughout the country, of every demographic group, no matter what kind of TV content they enjoy. Indeed, we submit that this Subcommittee is wise to continue its policy – and the long-standing foundation of our laws -- of promoting competition, *not* competitors.

We at Disney take great pride that our content is wildly popular with viewers. It goes without saying that ESPN is hugely popular with sports fans and, on average, 85%

of US cable households watch ESPN each quarter of the year. Likewise, Disney Channel's popularity has reached new levels as we continue to invest in fresh new family-friendly content. Over the last few years, Disney Channel has aired upwards of 20 original movies and has introduced any number of award-winning series and movies for tweens, kids and preschoolers, including Wizards of Waverly Place, High School Musical, Hannah Montana, and Handy Manny. ESPN has continued its tradition of investing in more sports programming to better serve sports fans, including carriage of the NFL, the NBA, Major League Baseball, NASCAR and hundreds of college football and basketball telecasts. In fact, two of the most-watched cable telecasts for 2009 were on ESPN and Disney Channel: ESPN's Monday Night Football telecast on October 5th (cable's highest rated program of all time) and Disney's telecast of Wizards Of Waverly Place The Movie on August 28th. On the broadcast side of our business, ABC invests almost $3 billion a year on programming, including our prime-time entertainment like Lost, Grey's Anatomy and Dancing With The Stars, as well as our ABC News programming and coverage.

Notwithstanding our popularity, you may hear claims that Disney "forces" distributors to carry our programming services. These claims simply are not true. I myself have executed three affidavits clearly setting forth the facts and I will enter those affidavits into the record of this hearing. We are not involved in any way in controlling the retail price of cable or satellite television and our wholesale license fees reflect the value of our services as evidenced by thirty years of arm's length negotiations and a demonstrated record of producing quality content that viewers want to see again and again. We submit that the Subcommittee should reject any isolated calls to regulate the programming marketplace recognizing they are simply requests to have the government advantage one competitor over another in a business negotiation.

One area of the video marketplace that does cry out for reform is compulsory copyright licensing. Today, the government takes the private property that is all of the programming on broadcast television and compels the owners of those programs to license them to cable and satellite operators at below market prices. In the summer of 2008, in response to a request from Congress, the U.S. Copyright Office issued a Report concluding that cable and satellite were no longer nascent industries in need of a subsidy from program creators. The Copyright Office called on Congress to phase out the compulsory licenses. We urge the Congress to move forward on that recommendation.

New Media, Broadband and Piracy

Technology has empowered the consumer more than ever before, and at our Company we create and use technology to deliver quality content. Consumers today want to access content from Disney, ABC, and ESPN in many different ways, and we have made responding to that demand in new and innovative ways one of the highest priorities in our company. In doing so, Disney has been a pioneer – through video downloads on iTunes, video streaming on ABC.com and our other media players, video on Hulu, video-over-broadband on ESPN360.com, video-on-demand, video-on-mobile devices, and our production of high definition video content on broadcast, cable, satellite and Blu-Ray and DVD.

Piracy.

Now, and in the future, getting the balance right between convenience and pricing is a challenge facing all of us who create and distribute digital content. Adding to that challenge is the problem of piracy. We believe the best place to start to fight piracy is to bring content to market on a well-timed and well-priced basis. Disney is working to do just that. However, piracy is a growing threat to our ability to deliver great content. We all are looking forward to increased broadband deployment and adoption, and we at Disney believe that it will be high quality entertainment video that will drive broadband adoption. But, unless that content is protected as it flows over broadband, it will be pirated, and ultimately our ability to produce that very content will be undermined. We believe that ISP's should be encouraged to use the most effective and commercially reasonable technologies and processes to help curb the tidal wave of stolen content present on their networks today.

Video Downloads and Streaming

Today's consumers want their content to be available anytime and anywhere, on devices ranging from TVs to cell phones. Disney led all video producers in moving this "on demand" digital era from theory to reality with our agreement to make television content available for video downloading from iTunes. Today, the variety of Disney video content available on "newer" media platforms continues to expand: movies, TV shows, sports, and news. Here's an update of our video streaming and downloads:

- Over 60 million episodes from The Walt Disney Company have been downloaded on iTunes, including many of our most popular shows – everything from ABC's Grey's Anatomy and Lost to Disney Channel's Hannah Montana. In addition to Disney and ABC content, ESPN offers full game replays of games, podcasts and other sports content on iTunes.

- In addition to iTunes, Disney is making its content available on a number of new platforms, including Netflix, Hulu, and XBOX LIVE.
- Disney continues to make our most popular content – including much of ABC's prime time schedule and original programming from the Disney Channel and ABC Family – available on our own websites -- in HD streaming format on our Emmy-Award winning media player. Since September 2008, the ABC.com media player alone has served over 215 million episode requests. This summer alone, over 280 million Disney Channel videos were streamed on Disney.com.

Content on ABC.com is free to viewers, but it includes limited commercial breaks. Viewers cannot download and save the episode – but are able to pause, fast-forward or rewind. Notably, we have worked with the local ABC broadcast affiliates to design a version of the media player for ABC content in which both the network and the affiliates are able to participate. Affiliates can brand the player with their station's channel number and call letters, include local advertising, and provide links to local news and public information that broadcasters provide their communities. To date, ABC affiliates covering 93% of the country, including major affiliate groups as well as the ten ABC owned television stations, have launched the player on their own websites and affiliates covering 64% of the country are taking advantage of the opportunity to incorporate local advertising into the programming.

Disney manages decisions about making its content available online very carefully, balancing a number of factors. Overall, our online offerings – although significant – still represent only a portion of the content that our networks put on the air every day. And, non-traditional viewing through the Internet and mobile still is responsible only for approximately 2% of total viewing. At the same time, our research shows that overall television viewing continues to increase. Our research also shows that online viewing is largely supplemental, and serves as a convenient way for viewers to access additional episodes of their favorite shows.

Broadband

Disney and ESPN distribute content on the Internet through various models. ESPN360.com is our sports event broadband product, and it features an online video player and access to a broad array of game telecasts and long-form sports content. ESPN360.com is available to any and all ISP's for a fee. ESPN360.com's popularity has soared over this past year, doubling its distribution, and its usage year-over-year has more than tripled. ESPN360.com is currently available to over 50 million households, representing approximately *two-thirds* of broadband subscribers in the United States. It provides fans with access to more than 3,500 live, full game telecasts every year, many of which would not otherwise be available on any other domestic outlet. Nobody in the marketplace is currently delivering this volume of multi-sport live coverage online. In contrast, ESPN's premier sports site, ESPN.com, is primarily an advertising-supported site, and yet it offers more sports video online (primarily highlights and analysis) than any free site and accounts for nearly 30 percent of all minutes spent with sports video online.

ESPN360.com is helping to drive broadband adoption. ISPs that distribute ESPN360.com work collaboratively with ESPN to help acquire new high-speed data subscribers as well as retain and upgrade existing high-speed data and video customers in a competitive marketplace. So many small cable operators who are NCTC members -- many of which are also ACA members -- carry ESPN360.com that they collectively constitute ESPN's 4th largest distributor of ESPN360.com in aggregate. In the latest Beta research study of cable operators (released in February 2009), ESPN was rated *first* in driving broadband subscriptions.

I want to be clear on one point. ESPN360.com has nothing to do with net neutrality. The entire debate over net neutrality involves actions taken by an ISP vis-à-vis its subscribers. In contrast, the structure of the business model for ESPN360.com has *nothing* to do with actions taken by an ISP vis-à-vis its customers. ESPN is engaged in dealing directly with its distributors but once a deal is reached between ESPN360.com and an ISP, ESPN actually *requires* ISPs to deliver ESPN360.com to all of the ISP's subscribers.

Conclusion

Thanks to Congress' pro-competitive policies, video competition is thriving. In our view, no additional government regulation of this dynamic and competitive marketplace is necessary or appropriate.