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1 {York Stenographic Services, Inc.}

2 HIF295.160

3 HEARING ON ``VIDEO COMPETITION IN A DIGITAL AGE''

4 THURSDAY, OCTOBER 22 2009

5 House of Representatives,

6 Subcommittee on Communications, Technology, and the Internet

7 Committee on Energy and Commerce

8 Washington, D.C.

9       The Subcommittee met, pursuant to call, at 10:06 a.m.,  
10 in Room 2123 of the Rayburn House Office Building, Hon.  
11 Rick Boucher [Chairman of the Subcommittee] presiding.

12       Members present: Representatives Boucher, Markey,  
13 Stupak, Doyle, Inslee, Weiner, Castor, Murphy, Space,  
14 McNerney, Welch, Dingell, Waxman (ex officio), Stearns,  
15 Upton, Deal, Bono Mack, Terry, Blackburn, and Barton (ex  
16 officio).

17       Staff present: Roger Sherman, Chief Counsel,  
18 Communications, Technology, and the Internet; Tim Powderly,

19 Counsel; Amy Levine, Counsel; Shawn Chang, Counsel; Sarah  
20 Fisher, Special Assistant; Greg Guice, FCC Detailee; Amy  
21 Bender, Minority FCC Detailee; Will Carty, Minority  
22 Professional Staff; and Garrett Golding, Minority Legislative  
23 Analyst.

|  
24           Mr. {Boucher.} The Subcommittee will come to order and  
25 good morning to everyone.

26           Today we will examine the state of competition for video  
27 programming. In 1992, Congress recognized that the cable  
28 industry which then dominated the market for the delivery of  
29 multi-channel video programming could use its control over  
30 that programming in order to stifle competition. In order to  
31 enable competition in multi-channel video delivery, Congress  
32 enacted program access requirements in 1992 to prevent cable  
33 operators with ownership interest in video programming from  
34 refusing to sell their programs to the emerging satellite  
35 providers. That requirement is broadly acknowledged as being  
36 essential to the birth of the DVS industry and to the  
37 competition to cable that direct broadcast satellite has  
38 brought.

39           Congress also in 1992, enacted program carriage  
40 requirements that prevent cable operators from discriminating  
41 against unaffiliated programming in favor of their affiliated  
42 networks. The rules have been broadly successful. Without  
43 them, neither satellite television nor multi-channel video  
44 delivered by telephone companies such as Verizon's FiO  
45 service or AT&T's U-verse service could have entered the  
46 market. The rules have also been instrumental to the success

47 of independent cable networks like the Food Network and  
48 Bravo.

49 But at the time the program access provision was  
50 approved by Congress in 1992, it applied only to programs  
51 that were delivered by satellite to multi-channel video  
52 distributors. Today, what is commonly known as the  
53 terrestrial loophole has arisen as vertically integrated  
54 cable operators use fiber optics more and more frequently in  
55 order to deliver some of their programming to cable headends.  
56 Fiber-based terrestrial networks have become economical  
57 alternatives to satellite delivery particularly for regional  
58 sports and for new programming controlled by regionally  
59 clustered cable operators. Cable operators which deliver  
60 programming terrestrially can block competing multi-channel  
61 providers access to their highly popular program offerings.  
62 These arrangements are understandably troubling for some  
63 sports fans who may have to choose between subscribing to the  
64 video programming provider of their choice or accessing the  
65 games of their favorite regional sports teams.

66 In 2007, the Federal Communications Commission found  
67 that subscribership to direct broadcast satellite was 40  
68 percent below what otherwise would be expected in  
69 Philadelphia where a cable operator's regional sports network  
70 has a lock on the Phillies, the Flyers and 76ers' games. In

71 San Diego, the commission determined that lack of access to  
72 the regional sports network provided by the programming by  
73 the Padres' games resulted in a 33 percent reduction in the  
74 households subscribing to direct broadcast satellite in the  
75 San Diego area.

76         The problem of the unavailability of terrestrially-  
77 delivered programming on DVS systems is even worse for some  
78 rural residents for whom switching to cable service may not  
79 even be an option because a cable operator may not serve the  
80 area in which the rural resident lives. If direct broadcast  
81 satellite companies and phone companies are precluded from  
82 carrying regional sports programming that effectively bars  
83 many rural fans from viewing their favorite teams.

84         We are interested in hearing from today's witnesses  
85 about the terrestrial loophole as it currently exists and the  
86 consequences of it. What benefits does continued use of the  
87 terrestrial loophole offer to the providers of multi-channel  
88 video and to consumers and what are its harms, and we have  
89 knowledgeable witnesses who will speak to us on that subject  
90 from a range of different perspectives this morning.

91         We are also interested in other matters. The FCC has  
92 recently considered a number of program carriage complaints  
93 by independent programmers that a multi-channel video  
94 programming distributor favored its own programming over the

95 unaffiliated programming with respect to the terms and  
96 conditions of carriage. Does the FCC's program carriage  
97 complaint process work as Congress intended or should we  
98 consider modifications?

99       Finally, an increasing amount of video content is now  
100 available by means of the Internet. Some programming web use  
101 generated such as YouTube is user generated and available  
102 without regard to the identity of the originating entity and  
103 its vertically-integrated nature. Other Internet-based  
104 services like Hulu and the websites of the major television  
105 networks offer full episodes of programming that aired on  
106 television as recently as the previous day. The more such  
107 programming migrates to the Internet, the less consumers may  
108 need to subscribe to a multi-channel video programming  
109 distributor at all. At the same time some websites that  
110 offer video content such as ESPN 360 are only available to  
111 subscribers of particular multi-channel video programming  
112 distributors. What are the implications of these emerging  
113 business models for consumers and for competition in video  
114 distribution?

115       I expect that our knowledgeable witnesses today will  
116 offer a thoughtful analysis of these and other matters  
117 regarding video distribution in this digital era and we thank  
118 them for their presence here and look forward very much to

119 their testimony.

120 [The prepared statement of Mr. Boucher follows:]

121 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
122 Mr. {Boucher.} That concludes my remarks and I am  
123 pleased to recognize the gentleman from Florida, the ranking  
124 Republican member of the subcommittee, Mr. Stearns.

125 Mr. {Stearns.} Good morning and thank you, Mr.  
126 Chairman. Thank you for holding this very interesting  
127 hearing. The issues surrounding video competition obviously  
128 are very important. I look forward to hearing from our  
129 witnesses and thank them for taking their time to be here.

130 Competition in the video marketplace has been robust.  
131 Twenty years ago cable commanded almost 100 percent of the  
132 multi-channel television market. Today because of fierce  
133 competition, cable's market share has dropped to about 63  
134 percent of multi-channel video households. As we know,  
135 consumers can choose from a variety of multi-channel video  
136 providers including direct broadcast satellite. In fact, as  
137 of June 2009, DirecTV with 18.3 million subscribers was  
138 larger than all the cable companies in the United States  
139 except Comcast. EchoStar with almost 14 million subscribers  
140 was the third largest multi-channel video provider in the  
141 United States. Competition from the phone companies such as  
142 Verizon and AT&T and websites offering everything from home  
143 videos to full-length movies have brought even more choice to  
144 the consumers. As a result of this competition, 37.8 million

145 consumers, over one of every three video subscribers can now  
146 obtain multi-channel video programming from some company  
147 other than local cable operator. It is a truly amazing thing  
148 how far have we come in such a short amount of time.

149       Even the FCC has acknowledged the competition in the  
150 video market. The FCC's 2009 annual report on video  
151 competition reinforced the trend line of previous reports  
152 confirming growth and entrenchment of competition in the  
153 video marketplace, the decline of vertical integration  
154 between cable operators and program networks, and the  
155 emergence of a new video competition from programming that is  
156 distributed on the Internet.

157       Innovations and new products are still being created all  
158 the time. The next frontier is Internet-based video which  
159 now competes with cable, satellite and telephone providers  
160 giving consumers even more choice. Applications such as  
161 Hulu, which the Chairman mentioned, which provides longer  
162 network television programs continue to experience explosive  
163 growth. With 373 million video streams per month, overall  
164 online video usage has grown almost 25 percent to an average  
165 of 9.5 billion streams a month.

166       Yet despite all this competition, we still operate under  
167 regulatory regimes stemming from the radio broadcast  
168 provisions of the 1934 Communications Act and the multi-

169 channel video programming distributor provisions of the 1992  
170 Cable and 1996 Telecommunications Act. And as much as we are  
171 finding in the broadband context, regulatory policies can  
172 hinder rather than help investment in the rollout of video  
173 services to consumers when competing platforms are present in  
174 the market. The growth in digital video programming is  
175 requiring significant investment in the Internet and beyond.  
176 Cable and satellite providers and now telephone companies are  
177 making large investments in equipment and capacity to  
178 accommodate next generation video content. Broadcaster and  
179 other programmers are incurring large cost to create and  
180 transmit digital programming. In a competitive environment,  
181 network neutrality mandates and regulations in general deter  
182 investments, at least put a chill on them. Any  
183 discrimination in openness mandates limit companies' ability  
184 to differentiate themselves from the competitors and provide  
185 their customers with the unique products and high level of  
186 service they demand.

187       As the video industry competes in a digital world where  
188 the winning business models are not clear yet, it becomes  
189 even more important to rely on market forces and not on  
190 regulation. In such a competitive environment and absent any  
191 evidence that consumers are being harmed, it makes little  
192 sense to create a new regulatory environment that would only

193 freeze investment and stunt innovation.

194           When Congress adopted the program access rules in the  
195 1992 Cable Act, Congress wanted to ensure that the infant  
196 satellite television industry and other independent pay  
197 television providers simply had access to content. Thus,  
198 section 628 prohibits a cable operator from unfairly  
199 hindering the ability of other pay television providers to  
200 gain access to programming in which the cable operator has an  
201 ownership interest. Congress did however include an  
202 exception for terrestrial-delivered programming as opposed to  
203 programming delivered to providers using a satellite network.  
204 Congress wanted to give providers and incentive to invest in  
205 local programming. That incentive would be diminished if  
206 providers were forced to share the content they develop with  
207 their competitors, especially since they would need to spread  
208 their cost over less than a national audience. Moreover,  
209 when providers launch unique offerings to differentiate  
210 themselves from their competitors, consumers benefit from a  
211 greater selection and a quality of programming.

212           As I have said, the video market is very competitive and  
213 at this point, consumers have many choices.

214           So I look forward to this hearing, Mr. Chairman, and I  
215 appreciate again the witnesses coming here to testify.

216           [The prepared statement of Mr. Stearns follows:]

217 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
218 Mr. {Boucher.} Thank you very much, Mr. Stearns.

219 The Chairman of the Energy and Commerce Committee, the  
220 gentleman from California, Mr. Waxman, is recognized for 5  
221 minutes.

222 The {Chairman.} Thank you very much, Mr. Chairman. I  
223 want to thank you for holding this hearing and I want to  
224 thank all of our witnesses for appearing today.

225 We are in the midst of one of the most profound  
226 technological revolutions since the invention of the  
227 wireless. It heralds great abundance in the generation and  
228 delivery of content which is all to the good. We need to  
229 ensure, however, that we have an architecture of policy and  
230 technology that ensures diversity, competition, choice and  
231 access. As always the interests to be served first are those  
232 of viewers and users, the interest of competition and not any  
233 specific competitor. This hearing will help frame these  
234 issues.

235 I especially want to recognize and welcome Ronald Moore,  
236 who is testifying on behalf of the Writers' Guild of America  
237 West. Mr. Moore is an Emmy Award-winning writer and producer  
238 of some of the most popular science fiction programs in  
239 history and I welcome your participation today, and I look  
240 forward to hearing your insights on the consolidation on

241 program ownership. It is very important that those who  
242 create video programming are not left out of this debate.

243 The market for distribution of video programming is  
244 changing. Many consumers have the option to subscribe to at  
245 least two paid television services delivered by a cable,  
246 satellite or fiber optic line. In addition, the transition  
247 to digital over-the-air broadcast has given tradition  
248 broadcasters the opportunity to deploy more channels with new  
249 and innovative programming. Meanwhile, more and more  
250 consumers are relying on their broadband connections to  
251 access web-based video services, and these new web-based  
252 distribution models offer great hope for many in the creative  
253 community.

254 As I have indicated, all of these changes are creating  
255 both opportunities and challenges. For example, program  
256 carriage and program access issues remain particularly when a  
257 distributor owns programming that is comparable to or  
258 competes with independently-owned programming. In this case,  
259 it may be difficult for competitors to field the types of  
260 products and services that consumers want. As with other  
261 areas of telecommunications policy, the advantages of  
262 historic incumbency can be difficult for new entrants to  
263 overcome absent government intervention, and I am pleased  
264 that even the Nation's largest telecommunications companies

265 recognize this fact.

266 I look forward to reviewing all of our witnesses'  
267 testimony. I thank you, Mr. Chairman, for holding this  
268 hearing and I yield back the balance of my time.

269 [The prepared statement of Mr. Waxman follows:]

270 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
271 Mr. {Boucher.} Thank you very much, Chairman Waxman.

272 The gentleman from Michigan, Mr. Upton, is recognized  
273 for 2 minutes.

274 Mr. {Upton.} Well, thank you, Mr. Chairman.

275 And with all due respect I don't think that this is  
276 necessarily the appropriate hearing that we ought to be  
277 having today. We should be putting closer scrutiny on the  
278 proposals pending before the FCC and why these proposed  
279 regulations carve out certain companies and how regulation  
280 may stifle much needed private investment.

281 We are entering a new digital age and a new age of  
282 entertainment and more than ever the consumer is king.  
283 Consumers don't want their entertainment options dictated to  
284 them. They want greater control over not only what they  
285 watch but also where and when they watch it, and these new  
286 consumer expectations will continue to fuel investment,  
287 innovation and competition. But let us not forget, without  
288 investment in the physical network, there won't be much room  
289 for innovation or competition.

290 It is my view that public policy must focus on enabling  
291 network operators to secure and utilize the investment  
292 capital to meet that demand, and to build out the vast  
293 network necessary to allow for the deployment of new services

294 while still ensuring that services remain affordable for all  
295 consumers. And I have stated in the past, proposed network  
296 neutrality rules seek to alleviate a problem that doesn't  
297 exist and threatens to deter the investment necessary to  
298 enable consumers to enjoy additional exciting new features  
299 that the Internet could offer.

300       Unnecessary new regs, such as those proposed by the FCC  
301 Chair will stifle future broadband investment and have broad  
302 economic implications. How does the FCC think that the U.S.  
303 will achieve ubiquitous broadband deployment after the agency  
304 imposes onerous regulations that will drive investment out of  
305 the broadband sector? The U.S. desperately needs broadband  
306 investment to help lift the Nation out of economic malaise  
307 and the FCC must not undermine that investment.

308       Both the Post and the Wall Street Journal editorial  
309 pages agree that the Chairman's proposal would harm broadband  
310 investment. The Post concluded that the FCC's proposal would  
311 ``stifle further investments by ISPs with attempts to  
312 micromanage what has been a vibrant and well-functioning  
313 marketplace.'' And the Journal concluded that threatening to  
314 limit what telco companies could charge and to whom net  
315 neutrality rules would discourage broadband investments.

316       Yesterday's Reuter's report, and I quote, here says,  
317 ``Verizon Communications, Inc., Chief Ivan Seidenberg said

318 that the debate around the proposal is extremely troubling  
319 and could halt progress in U.S. broadband investment. From  
320 '01 to '08, communication systems invested tens of billions  
321 of dollars.'' The bottom line is this, in the conclusion,  
322 that without a regulatory touch, video has flourished in  
323 content and volume for all consumers. The same can happen  
324 with Internet access.

325 [The prepared statement of Mr. Upton follows:]

326 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
327 Mr. {Boucher.} The gentleman's time has expired.

328 The gentleman from Michigan, Mr. Dingell, Chairman  
329 Emeritus, of the full committee is recognized for 5 minutes.

330 Mr. {Dingell.} Mr. Chairman, thank you. I commend you  
331 for your initiative in overseeing the state of competition in  
332 video programming.

333 I would note with no mean degree of dissatisfaction that  
334 the committee's understanding of this important issue would  
335 have been much better informed and much more solidly based  
336 had the Federal Communications Commission under the  
337 chairmanship of former Chairman Kevin Martin not advocated  
338 its duty to complete annual studies on video programming  
339 competition. I want to commend Chairman Genachowski for  
340 acting to correct this disregard to responsibility and in  
341 particular extend my thanks and appreciation to Commissioner  
342 Copps who is acting chairman of the Commission first set out  
343 to deal with this matter.

344 Since passage of the Cable Act in 1992, the market for  
345 video programming has changed significantly. While 20 years  
346 ago a majority of the subscribers received video content from  
347 cable providers, they now enjoy a greater choice as evidenced  
348 by the robust participation of fiber optic and satellite  
349 providers in the marketplace. As the committee once again

350 takes up this matter, it is my hope that our witnesses will  
351 provide us with a sense of how competition in the video  
352 programming market has evolved and what issues remain to be  
353 addressed including their candid suggestions for how to do  
354 so.

355         In closing, it remains my desire to ensure that all  
356 people regardless of income are able to view free, over-the-  
357 air television with local programming. This belief will  
358 inform my participation in the debate we once again begin  
359 today.

360         Mr. Chairman, I thank you for your courtesy and for your  
361 foresight, and I yield back the balance of my time.

362         [The prepared statement of Mr. Dingell follows:]

363 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
364 Mr. {Boucher.} Thank you very much, Chairman Dingell.

365 The gentlelady from Tennessee, Ms. Blackburn, is  
366 recognized for 2 minutes.

367 Mrs. {Blackburn.} Thank you, Mr. Chairman.

368 I will submit my full statement. I know we are anxious  
369 to get to the hearing and I do have questions for some of  
370 you, believe it or not.

371 As you all can imagine video competition is something  
372 important to me and my constituents in Tennessee. We have a  
373 lot of content producers there and they are certainly  
374 watching what is happening. So welcome to all of you who are  
375 our witnesses today.

376 Mr. Chairman, I will tell you that it is always of  
377 concern to me when I see government insert itself into a  
378 private sector issue where there is no compelling reason to  
379 do so, and I think that is what we find ourselves facing  
380 right now. We know that increased regulation is going to  
381 give you less of what you want, and what people want to see  
382 is good, solid, aggressive competition in this marketplace.  
383 They want to see it spur innovation. They want to see it  
384 spur investment. They want to see it spur job creation and I  
385 think Congress mandating how these companies are going to  
386 market their products and services will end up being

387 counterproductive.

388           Now, there are some things I do hope we talk a little  
389 bit more about. Mr. Moore, I am going to want to talk with  
390 you a little bit about the '92 Cable Act. I know that you  
391 reference in your testimony what has happened to production  
392 over the past 10 years, and sometimes that strong hand of  
393 Congress or government inserting itself can be  
394 counterproductive so I look forward to visiting with you.  
395 Mr. Knorr, I am going to want to talk with you about what we  
396 see happening to small businesses and those that are  
397 entrepreneurial and innovative as we look at the expansion of  
398 broadband and the opportunity to expand access to the content  
399 that our creative community does put out there for everyone.  
400 I know that, Mr. Pine, you are going to have a little bit to  
401 say about having consumers access that. So welcome to you  
402 all. We look forward to the hearing.

403           I yield back.

404           [The prepared statement of Mrs. Blackburn follows:]

405 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
406 Mr. {Boucher.} Thank you, Ms. Blackburn.

407 The gentleman from Michigan, Mr. Stupak, is recognized  
408 for 2 minutes.

409 Mr. {Stupak.} Thank you, Chairman Boucher, for holding  
410 today's hearing on the status of Video Competition in a  
411 Digital Age.

412 Last year we held a similar hearing on competition in  
413 the sports and programming market. At that time, I voiced my  
414 concerns that the NFL Network was removed from the basic tier  
415 by Comcast and moved to a more expensive sports tier. Hoping  
416 to resolve the issue after it appeared to have hit a  
417 stalemate and all options were explored, I wrote to the FCC  
418 and requested that an arbitrator be appointed to serve as an  
419 independent third-party. However, the FCC did not have to  
420 weigh-in to end the dispute and the parties negotiate  
421 neutrally beneficial private agreement. I want to express my  
422 appreciation to Comcast for working with the NFL Network to  
423 ensure that sports fans were not denied access to content  
424 they demand. In the end, the dispute serves as an example of  
425 how these issues can be resolved for the benefit of consumers  
426 without direct government intervention.

427 Today we will hear from our witnesses on challenges they  
428 have encountered in providing content to their consumers as

429 well as their suggestive solutions to the problem. We should  
430 tread carefully when discussing legislative fixes when  
431 private solutions have not been exhausted. That is not to  
432 say that we should not act to ensure fair competition in the  
433 video marketplace. It is only to say that we should act as a  
434 last resort. Ultimately, we have the responsibility to  
435 ensure that consumers have access to the content they pay for  
436 and that the market power is not abused to their detriment.

437         Thank you, Mr. Chairman, for holding today's hearing and  
438 I look forward to discussing with our witnesses how we can  
439 ensure that we have fair competition in the video  
440 marketplace.

441         [The prepared statement of Mr. Stupak follows:]

442 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
443 Mr. {Boucher.} Thank you very much, Mr. Stupak.

444 The gentleman from Nebraska, Mr. Terry, is recognized  
445 for 2 minutes.

446 Mr. {Terry.} Thank you, Mr. Chairman.

447 My opening statement would be simply repetitive of Mr.  
448 Upton's opening statement so I will say that I will associate  
449 myself with his remarks and thank you all for being here and  
450 yield back.

451 [The prepared statement of Mr. Terry follows:]

452 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
453 Mr. {Boucher.} Thank you very much.

454 The gentleman from Pennsylvania, Mr. Doyle, is  
455 recognized for 2 minutes.

456 Mr. {Doyle.} Thank you, Mr. Chairman.

457 I just want to welcome the witnesses and I will waive  
458 opening statement for time on questions.

459 [The prepared statement of Mr. Doyle follows:]

460 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
461           Mr. {Boucher.} Thank you very much, Mr. Doyle.

462           The gentleman from Connecticut, Mr. Murphy, is  
463 recognized for 2 minutes.

464           Mr. {Murphy.} Thank you, Mr. Chairman, for today's  
465 hearing.

466           Having looked at the testimony to be presented today, I  
467 know that our hearing is going to be especially relevant to  
468 parts of my district in southwestern Connecticut. And much  
469 of our witness testimony deals with the issue of competition  
470 in the New York metropolitan market between competitors that  
471 are also present there and are undergoing the same  
472 competition in my district and the district of my colleague,  
473 Mr. Himes, so I am interested to hear specifically about some  
474 of the issues relevant to that market. I also look forward  
475 to hearing from our witnesses today to get a better  
476 understanding of how current market dynamics and what if  
477 anything this Congress needs to do to ensure that our  
478 constituents have opportunities to receive the programming  
479 they desire at a fair price, while ensuring that we don't  
480 stifle the development of innovative and new programming.

481           I am especially interested to the extent that this  
482 hearing treads into the emerging new technologies which allow  
483 our constituents to receive programming online. Part of this

484 hearing may focus on some of the emerging technologies like  
485 Hulu and Zillion TV which I think have some very interesting  
486 and potentially transformative impacts on our constituents.  
487 But this Congress needs to be mindful while we want to set a  
488 foundation that allows for that innovation, to be very  
489 careful about not allowing for the type of Internet piracy of  
490 and copyright violation that has hampered many of our efforts  
491 to try to promote the expansion of new and unique programming  
492 into the online space.

493           So, Mr. Chairman, I thank you for the hearing and I look  
494 forward to the testimony of our witnesses.

495           [The prepared statement of Mr. Murphy follows:]

496 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
497 Mr. {Boucher.} Thank you very much, Mr. Murphy.

498 The gentleman from Georgia, Mr. Deal, is recognized for  
499 2 minutes.

500 Mr. {Deal.} Thank you, Mr. Chairman.

501 I think we all understand that we are in an evolutionary  
502 change in media and that evolutionary change has of course  
503 informed us better and we are better connected but the growth  
504 has come in the emergence of trying to protect the rights of  
505 copyright owners, compensating those who own the signals and  
506 on which the copyrighted program will travel in meeting the  
507 demand of consumers who want unfettered access to  
508 programming. Certainly, the marketplace is more competitive  
509 than ever. I think the question we have to answer is how can  
510 we make this marketplace completely free so that everyone  
511 from the programming owner to the programming provider to the  
512 programming consumer will be benefited.

513 Last week this committee dealt with the Satellite Home  
514 Viewers Reauthorization Act. At that time, the committee  
515 adopted an amendment that was passed requiring the Dish  
516 Network to carry the Public Broadcasting Service in high  
517 definition sooner than the parties involved were able to  
518 reach an agreement. Under the intention of providing public  
519 airwaves to all consumers, the government forced a satellite

520 carrier to carry a station without permitting Dish to choose  
521 whether or not they wanted to carry it. This illustrates the  
522 problem with retransmission consent is broadcasters are able  
523 to use their government-given marketplace leverage to force  
524 carriers of their programming on the distributor in  
525 unbalanced negotiations. The practice of retransmission  
526 consent is nothing but a government-regulated monopoly as  
527 Congress has given authority to broadcasters to negotiate on  
528 their terms.

529       It is my hope that this witness panel will be able to  
530 discuss a solution to the problems of retransmission consent  
531 in an honest and fair manner. In the end, it is the consumer  
532 that drives competition. Competition fosters innovation and  
533 innovation is what we try for for the future. Today I hope  
534 we will be able to work towards solutions that help promote a  
535 free and fair market, one in which broadcasters, distributors  
536 and consumers are afforded flexibility, transparency and more  
537 importantly, choice.

538       I yield back my time.

539       [The prepared statement of Mr. Deal follows:]

540 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
541           Mr. {Boucher.} The gentleman from Ohio, Mr. Space, is  
542 recognized for 2 minutes.

543           Mr. {Space.} Thank you, Mr. Chairman.

544           Today we examine video competition in the digital age, a  
545 topic with relevance to all Americans who watch TV and that  
546 is a lot of Americans. The status of competition in the  
547 video market affects all of those viewers whether they are  
548 actively aware of it or not.

549           Mr. Chairman, in my district, my caseworkers and by the  
550 way, I have a very rural district pretty much like your own.  
551 We receive a steady stream of phone calls from my  
552 constituents complaining that they cannot get the video  
553 services they desire. The cable company doesn't come out far  
554 enough to reach their homes which are some distance back from  
555 the main thoroughfares. Two of the five DMAs covering Ohio's  
556 18 Congressional districts have only one of the two major  
557 satellite providers offering service, not to mention that one  
558 of the markets lacks local-into-local programming. And I  
559 have spoken repeatedly about the lack of broadband access in  
560 the Appalachian terrain of southeastern Ohio. A sad state of  
561 affairs that continues to limit that continues to limit  
562 content availability on countless fronts. So I think my  
563 constituents might disagree with some of the testimony that

564 is going to be offered today that competition is alive and  
565 well. While that certainly may be the case in more urban and  
566 suburban areas of our country, my constituents generally have  
567 just one choice for paid television services from a multi-  
568 channel video programming distributor and one choice isn't  
569 really any choice at all. I worry that once again that rural  
570 America is being left behind.

571 I thank you, Mr. Chairman, for calling this hearing and  
572 certainly for your tireless devotion to meeting the needs of  
573 rural America. And I look forward to the testimony of our  
574 witnesses and thank them for their appearance.

575 [The prepared statement of Mr. Space follows:]

576 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
577 Mr. {Boucher.} Thank you very much, Mr. Space.

578 The gentleman from California, Mr. McNerney, is  
579 recognized for 2 minutes.

580 Mr. {McNerney.} Thank you, Mr. Chairman.

581 The only thing I really want to say is that I understand  
582 clearly how important legislation and regulation is going to  
583 be in terms of enhancing the competitiveness of video  
584 broadcasting. The wrong ideas are going to make the market a  
585 lot less competitive and select winners rather than let the  
586 market select the winners. So I am looking forward to what  
587 your testimony is and to learn as much as we can before we  
588 actually start marking up ideas onto paper.

589 So thank you very much, Mr. Chairman, and I yield back.

590 [The prepared statement of Mr. Space follows:]

591 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
592 Mr. {Boucher.} Thank you very much, Mr. Space.

593 The gentlelady from Florida, Ms. Castor, is recognized  
594 for 2 minutes.

595 Ms. {Castor.} Thank you, Chairman Boucher, very much  
596 for calling this hearing.

597 It is an exciting new world and I am very interested in  
598 your opinions, your expert advice on where we should be going  
599 forward. Thank you all for being here today.

600 And I yield back.

601 [The prepared statement of Ms. Castor follows:]

602 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
603           Mr. {Boucher.} Thank you, Ms. Castor.

604           The gentleman from Vermont, Mr. Welch, just joined us  
605 and is going to waive his statement and both Ms. Castor and  
606 Mr. Welch as well as Mr. McNerney will have 2 minutes added  
607 to their question time for witnesses as will Mr. Doyle. Are  
608 other members seeking recognition? That concludes opening  
609 statements and we welcome now our panel of witnesses and  
610 express thanks to each of you for taking part in our hearing  
611 this morning. I will say a brief word of introduction about  
612 each of our witnesses.

613           Mr. Thomas Rutledge is the Chief Operating Officer of  
614 Cablevision Systems Corporation, one of the Nation's major  
615 cable companies. Mr. Benjamin Pyne is President of Global  
616 Distributions for Disney Media Networks. Mr. Patrick Knorr  
617 is the Chief Operating Officer of Sunflower Broadband. Mr.  
618 Ronald Moore is a writer and executive producer testifying on  
619 behalf of the Writers' Guild of America West previously  
620 introduced by Chairman Waxman. Mr. Terrence Denson is Vice  
621 President of Corporate Marketing for Verizon and Mr. Adam  
622 Thierer is President of The Progress & Freedom Foundation.  
623 We welcome each of you and without objection your prepared  
624 witness statement will be made a part of our record. We  
625 would welcome your oral summaries of your testimony and ask

626 that you try to keep those oral summaries to approximately 5  
627 minutes, that way we will have ample time for questions and  
628 we will proceed from the left and proceed to the right. That  
629 is not a philosophical comment but it does coincide with  
630 philosophical positioning at least for the last witness to  
631 some extent.

632         Mr. Rutledge, we will be pleased to begin with you and  
633 if you could pull that microphone a bit closer and make sure  
634 that it is on and we can hear you better.

|  
635 ^STATEMENTS OF THOMAS RUTLEDGE, CHIEF OPERATING OFFICER,  
636 CABLEVISION SYSTEMS CORPORATION; BENJAMIN PYNE, PRESIDENT,  
637 GLOBAL DISTRIBUTION, DISNEY MEDIA NETWORKS; PATRICK KNORR,  
638 CHIEF OPERATING OFFICER, SUNFLOWER BROADBAND; RONALD D.  
639 MOORE, WRITER, EXECUTIVE PRODUCER; TERRENCE K. DENSON, VICE  
640 PRESIDENT, CORPORATE MARKETING, VERIZON; AND ADAM THIERER,  
641 PRESIDENT, THE PROGRESS & FREEDOM FOUNDATION

|  
642 ^STATEMENT OF THOMAS RUTLEDGE

643 } Mr. {Rutledge.} Good morning.

644 Mr. {Boucher.} That's better.

645 Mr. {Rutledge.} Chairman Boucher, Ranking Member

646 Stearns and members of the subcommittee.

647 My name is Tom Rutledge and I am the Chief Operating  
648 Officer of Cablevision Systems Corporation. I also serve as  
649 Chairman of the Board of Directors of the National Cable  
650 Television Association.

651 Mr. Chairman, the state of video competition is very  
652 healthy, especially in Cablevision's area, the most  
653 competitive market in the country. We face competitors many  
654 times our size by any metric and consumers have been the  
655 primary beneficiaries of this competition. After the 1996

656 Act, Cablevision invested more than \$5 billion to build the  
657 most advanced communications network in the country.  
658 Cablevision offers all, not some but every household in our  
659 service area an array of new digital video voice and high-  
660 speed Internet services at significant savings to what our  
661 customers use to pay our competitors.

662         As the Congress recognizes competition breeds innovation  
663 and investment. In competitive markets like New York, the  
664 rules designed to jumpstart competition where there was less  
665 multi-channel video competition 17 years ago, the program  
666 access rules are no longer appropriate. Attempts to use the  
667 regulatory framework for competitive advantage such as by  
668 expanding the satellite delivered program access rules should  
669 be dismissed out of hand. Companies should continue to have  
670 incentives to compete in the marketplace not in the  
671 regulatory arena.

672         For years, Cablevision has faced vigorous competition  
673 from Dish and DirecTV, currently the second and third largest  
674 video distributors, and Verizon and AT&T, the Nation's  
675 largest telecommunications companies, and currently the  
676 eighth and tenth largest video distributors. These phone  
677 companies are significantly larger than Cablevision, more  
678 than 10 times our size. Cablevision has always competed by  
679 investing and innovating to create products that meaningful

680 differentiate our service. Cablevision was the first cable  
681 company to launch digital video service throughout its  
682 footprint including high-definition offerings free of charge  
683 with our customers' packages. We launched the Nation's  
684 fastest Internet service Optimum Online Ultra and are now  
685 building the country's largest WiFi network to provide our  
686 customers free access to the Internet service and public  
687 spaces in our marketplace.

688         Similar groundbreaking investments have been made with  
689 regard to content to ensure that Cablevision continues to  
690 provide unique value for customers, examples include News 12.  
691 In 1986, Cablevision launched News 12, the Nation's first 24-  
692 hour hyper-local news channel and now offers seven individual  
693 local news channels and five traffic and weather channels.

694         Madison Square Garden high definition, in 1998,  
695 Cablevision became the Nation's first regular provider of  
696 sports coverage in high definition. Cablevision's investment  
697 was a gamble. It required a sizeable investment at a time  
698 when very few people had high definition televisions.  
699 Recently, Cablevision launched Madison Square Garden Varsity,  
700 a new multi-platform suite of television and interactive  
701 services dedicated to local high school sports, academics and  
702 activities of interest to our local communities.

703         Our investments in local and regional programming have

704 been both risky and substantial. The program access rule  
705 adopted in 1992 to ensure that new competitors like DirecTV  
706 and Dish could launch with key programming is now at odds  
707 with this kind of innovation. In fact, Congress recognizes  
708 potential negative impact and allowed for a periodic review  
709 and sunset of the program access rules. The implications of  
710 keeping these rules in effect is clear, if you take the risk  
711 to develop creative and often costly new programming and you  
712 fail, you alone bear that cost but if you succeed, you must  
713 share the fruits of your risk and innovation with your  
714 competitors.

715 To jumpstart competition on the multi-channel video  
716 distribution market in 1992, Congress required that all  
717 satellite-delivered cable programming be given to new  
718 satellite competitors. However, Congress also wisely  
719 established new opportunity for an innovation in programming  
720 where a cable operator could create new programming, deliver  
721 it terrestrially and not be forced to share it with its  
722 competitors. To reverse this policy, it would undermine  
723 competition by discouraging that investment for new content  
724 and services. If a company is facing vigorous competition,  
725 why would that company invest in untested and expensive  
726 services if it had to share those services with its  
727 competitors? In the interest of investment, innovation and

728 competition, we strongly urge that efforts to expand the  
729 program access regulations be rejected.

730 Thank you very much.

731 [The prepared statement of Mr. Rutledge follows:]

732 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|

733 Mr. {Boucher.} Thank you, Mr. Rutledge.

734 Mr. Pyne.

|  
735 ^STATEMENT OF BENJAMIN PYNE

736 } Mr. {Pyne.} Thank you, Chairman Boucher, Ranking Member  
737 Stearns and members of the subcommittee.

738 My name is Ben Pyne and I am President, Global  
739 Distribution, Disney Media Networks. I truly appreciate the  
740 invitation to talk with you today about video competition.

741 There has never been a more competitive video  
742 marketplace, never. Thanks to Congress and the FCC,  
743 consumers today have more choices and more video content  
744 available to them than at any time in history. Most  
745 consumers now have the choice of three, four or more  
746 competitive options to receive multi-channel video. While  
747 cable once was feared to be a monopoly, today 36 million  
748 customers subscribe to non-cable MPVDs. On the programming  
749 side, competition for eyeballs has never been more fierce.  
750 Over the last 30 years, the number of programming services  
751 literally has exploded. According to the FCC, there are now  
752 approximately 565 national satellite-delivered cable  
753 programming networks and cable and satellite's most popular  
754 services now reach nearly 100 million households.

755 At the same time, vertical integration among programmers  
756 has decreased. Of course, the exponential expansion of

757 content on the Internet whether video streams or social  
758 networking has created even more competition.

759 Today's subscribers to multi-channel video get great  
760 value for their money. For about \$50 per month, subscribers  
761 get thousands of hours of entertainment, news, sports,  
762 documentaries, lifestyle, children's and family-friendly  
763 programming. In fact, with all the great content on multi-  
764 channel television, consumers spend much more per hour on  
765 movies, home video, mobile phones, print media and video  
766 games than for cable television.

767 Disney realizes that as a result of all the competition  
768 that Congress has helped unleash, some cable operators are  
769 facing competitive pressure from satellite, telco and other  
770 new video entrants. In an effort to provide some relief to  
771 the smallest cable operator that is most impacted by this  
772 increase in competition, Disney and ABC have granted many  
773 small cable operators free retransmission consent for the  
774 current 3-year cycle for the 10 ABC stations owned by Disney.  
775 Specifically, Disney granted free retransmission consent to  
776 90 small cable operators out of a total of 113 operators with  
777 whom we deal in our markets. With respect to our non-  
778 broadcast channels, Disney and ESPN have deals with the NCTC,  
779 the small cable operator cooperative for all of our cable  
780 channels. This provides NCTC members with buying power equal

781 to the Nation's fifth multi-channel video provider. Given  
782 these and similar efforts, the subcommittee should not get  
783 involved in the private negotiations between programmers and  
784 distributors.

785 Technology has empowered the consumer more than ever  
786 before and at our company we create and use technology to  
787 deliver content to reach our fans and viewers. In doing so  
788 Disney has been a pioneer through video downloads and I-  
789 tunes, video streaming on ABC.com, video on Hulu, video over  
790 broadband on ESPN360.com, video on demand, video on mobile  
791 devices and a production of high definition video content  
792 across broadcast, cable, satellite and of course, DVD. These  
793 are just some examples of ways we have developed to serve  
794 consumers in this new age of media technology and we always  
795 will continue to find new ways to get our content to our  
796 consumers.

797 Turning to broadband, Disney and ESPN distribute content  
798 on the Internet through various models. ESPN360.com is our  
799 sports event broadband product and it features an online  
800 video player and access to a broad array of game telecasts  
801 and long form sports content. ESPN360.com is available to  
802 any and all ISPs for a fee. It is currently available to  
803 over 50 million households representing approximately two-  
804 thirds of broadband subscribers in the United States. It

805 provides fans with access to more than 3,500 live, full-game  
806 telecasts every year, many of which would not otherwise be  
807 available on any other domestic outlet. Nobody in the  
808 marketplace is currently delivering this volume of multi-  
809 sport coverage online.

810 I want to be clear on one point though. Contrary to  
811 what you may hear ESPN360.com has nothing to do with net  
812 neutrality. The entire debate over net neutrality involves  
813 network management issues and the relationship of an ISP to  
814 its subscribers. In contrast, the business model of ESPN360  
815 has nothing to do with the actions taken by any ISP such as  
816 network management or retail pricing.

817 Now and in the future getting the balance right between  
818 convenience and pricing is a challenge facing all of us who  
819 create and distribute digital content. Adding to that  
820 challenge is the problem of piracy. We believe the best  
821 place to start to fight piracy is to bring content to market  
822 on a well-timed and well-priced basis. Disney is working to  
823 do just that, however piracy is a growing threat to our  
824 ability to deliver great content. We are looking to increase  
825 broadband deployment and adoption and we at Disney believe  
826 that it will be high quality sports and entertainment video  
827 that will help drive that adoption, but unless that content  
828 is protected as it flows over broadband it will be pirated

829 and ultimately our ability to produce that very content will  
830 be undermined. We believe that ISPs should be encouraged to  
831 use the most effective and commercially reasonable  
832 technologies and processes to help curb the tidal wave of  
833 stolen content present on our networks today.

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

838 Thank you very much.

839 [The prepared statement of Mr. Pyne follows:]

840 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
841           Mr. {Boucher.} Mr. Knorr.

|  
842 ^STATEMENT OF PATRICK KNORR

843 } Mr. {Knorr.} Thank you, Mr. Chairman and members of the  
844 committee.

845 The American Cable Association represents nearly 1,000  
846 independent cable operators that primarily invest in small  
847 and rural communities where the big guys find it unattractive  
848 to provide service. Our members don't own or control  
849 national or major regional programming. Access to video  
850 content is tightly controlled by large media companies that  
851 have built their business models on top of decades-old  
852 regulation. As a result, our costs for this content have  
853 grown exponentially over the past few years and this is why  
854 your cable bill goes up every year.

855 As an entrepreneur from Kansas, there is one message I  
856 hope you take away from my testimony. Do not believe those  
857 that say the sky will fall if you seek to improve the market  
858 for consumers by changing the status quo. I would like to  
859 remind you that Congress changed the cable laws in 1992  
860 because it thought the marketplace could be better for  
861 consumers. In 1996 you updated communications law because  
862 you thought consumers could get better, more innovative  
863 service. And you did it with the Satellite Home Viewer Act

864 and most recently with the DTV transition. Embracing change  
865 needs to be your philosophy once again.

866 For instance, Congress needs to confront Federal rules  
867 that grant broadcasters exclusivity and insulate them from  
868 competition. A recent study shows that retransmission  
869 consent fees will increase from \$500 million in 2008 to \$1.2  
870 billion by 2011, and a disproportionate amount of this  
871 revenue will come from consumers served by small and rural  
872 cable operators. To be clear, what happens today is not a  
873 negotiation. For most ACA members, a retransmission consent  
874 negotiation is a take it or leave it deal between an operator  
875 and a government-sanctioned monopoly. Networks use  
876 affiliation agreements to extend and ensure this monopoly  
877 status across every corner of a DMA. This artificially  
878 raises the price and keeps consumers from receiving relevant  
879 programming like sports and weather from neighboring markets.

880 Video providers should have the option to offer  
881 consumers the most relevant and affordable broadcast content  
882 available. This is best accomplished by giving video  
883 providers the option of bringing in broadcast signals from  
884 adjacent markets. Today robust competition exists. In some  
885 rural markets, satellite has become the dominant provider.  
886 In the area of retransmission consent, DBS providers have the  
887 option to place broadcasters on a separate tier as an

888 optional purchase. This gives DBS both a negotiating and  
889 pricing advantage over small cable operators who could not  
890 offer this option to their price conscious consumers.  
891 Therefore, small cable operators must have parity with  
892 satellite to remain competitive. They must have the same  
893 option to tier broadcasters. Moreover, smaller operators and  
894 their consumers face significantly higher programming rates,  
895 not only for retransmission consent broadcast channels but  
896 also cable and sports programming just because they are small  
897 businesses with minimal market power to negotiate fair terms  
898 from dominant media providers.

899       There is an additional extremely important issue for you  
900 to consider regarding how programming is being delivered via  
901 the Internet. ESPN is pioneering a closed Internet business  
902 model with its ESPN360 offering where broadband service  
903 providers are required to pay a per-subscriber fee for every  
904 consumer they serve. If a provider does not pay this fee  
905 ESPN blocks access to ESPN360 and does not provide any  
906 options to consumers to access that content at any price.

907       There are multiple problems with this situation. First,  
908 a person that is out of work and needs the Internet only to  
909 apply for a job must now subsidize those who want to access  
910 ESPN360 on a regular basis. Second, it would establish a  
911 precedent that content companies can restrict consumer

912 choices in the exact way that net neutrality was designed to  
913 prevent ISPs from doing. Wall Street loves this kind of  
914 business model and is encouraging others to follow ESPN's  
915 lead so this will not be a unique situation. Because ESPN  
916 embraces this model, you can expect Hulu, YouTube and others  
917 to follow suit. How much will they charge? If this model  
918 proliferates with millions of Internet content sites,  
919 consumers will ultimately pay exponentially higher rates for  
920 broadband service at a time when Congress is working to make  
921 broadband more affordable.

922 ACA believes that consumers should be given a choice and  
923 a chance to access any legal content on the Internet  
924 regardless of their ISP. Therefore, we would request that if  
925 you are to proceed in addressing net neutrality legislation  
926 that you do not solely focus just on network service  
927 providers but address content providers that intend to limit  
928 consumer choice.

929 So what can be done to create a better video market?  
930 There are many suggestions detailed in my testimony but I  
931 will focus on four here. First, prohibit any party including  
932 a network from providing a broadcast station outside of the  
933 local market area from granting retransmission consent to a  
934 smaller cable company outside of the broadcasters protected  
935 zone. Second, provide parody with DBS that would permit

936 small cable operators from offering local broadcast  
937 programming on its own tier as an optional purchase. Third,  
938 direct the FCC to review all programming contracts to  
939 empirically determine the level of programming price  
940 discrimination and take necessary corrective action.  
941 Finally, providers of content services and applications  
942 should not be allowed to block consumers' access to their  
943 products regardless of their ISP.

944 Thank you for this opportunity to testify today and I  
945 look forward to your questions.

946 [The prepared statement of Mr. Knorr follows:]

947 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|

948 Mr. {Boucher.} Thank you very much, Mr. Knorr.

949 Mr. Moore.

|  
950 ^STATEMENT OF RONALD D. MOORE

951 } Mr. {Moore.} Thank you, Chairman Boucher, Chairman  
952 Waxman, Ranking Member Stearns and the other esteemed members  
953 of the committee.

954 It is an honor to testify before you today. My name is  
955 Ron Moore and I am the executive producer and creator of  
956 Battlestar Galatica. I was also a writer/producer on the TV  
957 series Star Trek: The Next Generation, Deep Space Nine,  
958 Roswell and Carnivale, and I am currently working on my next  
959 project, Caprica, a TV series for the Syfy Network.

960 I have been a working writer in the entertainment  
961 business for over two decades and in that time the television  
962 marketplace has fundamentally changed and in my opinion, not  
963 for the better. There are actually fewer places to sell  
964 ideas both in terms of the numbers of studios available to  
965 buy programming and the numbers of independent networks  
966 available to deliver it. While this might seem  
967 counterintuitive in an environment where the number of cable  
968 and satellite channels routinely runs into the hundreds, a  
969 closer look reveals that the media consolidation has resulted  
970 in a vast majority of television shows being produced by a  
971 handful of conglomerates and a vast majority of cable

972 channels are also owned by only a small number of companies.

973         This environment is a direct result of the repeal of  
974 financial interests and syndication rules in the mid-1990s.  
975 The challenge now is to make sure that the same thing doesn't  
976 happen again, that the future of programming on the Internet  
977 does not fall victim to the same mistakes that led to the  
978 current domination of media conglomerates and traditional  
979 television.

980         Let us take a moment to look at some of the raw numbers.  
981 In 1989, there were 18 production companies who were  
982 significant suppliers to the broadcast networks. In 2009,  
983 there are eight. After the repeal of the finsin rules, we  
984 went from a system where studios competed with each other for  
985 ideas and networks competed with each other for programming  
986 to a system where studios and networks are now combined into  
987 enormous entities who favor doing business with themselves.

988         Let us take a look at the next chart, 66 percent of the  
989 series airing on broadcast television this fall are produced  
990 by the networks' own in-house studios. These studios no  
991 longer look for the best idea. They look for the idea that  
992 best helps their corporate sibling. But further  
993 consolidation of the industry like the proposed merger of NBC  
994 with Comcast certainly demands scrutiny and investigation  
995 into its impact on competition and diversity of programming.

996 But what is the impact on the television audience and the  
997 American public? How does squeezing how the independent  
998 studio and eliminating autonomy for the writer/producer  
999 effect content?

1000         The answer is that fewer voices and fewer players  
1001 reduces access and creates more homogenized product for the  
1002 audience. Before the repeal of finsin, an independent studio  
1003 like Carsey-Werner could produce a show like Roseanne which  
1004 featured a working class family dealing with the struggles  
1005 and conflicts common to working families all over America.  
1006 Roseanne was about a contractor and his sometimes working and  
1007 sometimes unemployed wife and their efforts to keep a roof  
1008 over their heads. This followed in a tradition of  
1009 independent programming that spoke to the same sensibility of  
1010 All in the Family where Archie Bunker worked on the loading  
1011 dock or the Honeymooners where Ralph Kramden drove a bus and  
1012 his best friend worked in a sewer. That sensibility, the  
1013 voice of the broad American working class has vanished from  
1014 television. These voices, these independent voices are  
1015 missing and they are missing because a mono-culture has been  
1016 allowed to be nurtured in TV where new ideas and new players  
1017 face virtually impossible odds of getting their shows on the  
1018 air.

1019         So what can be done? If this committee supports

1020 competition in video programming, there are many things you  
1021 can do. First, across town today the Federal Communications  
1022 Commission is taking the first steps to codify Internet  
1023 freedom. An open Internet promises to be an extremely  
1024 competitive marketplace where small entrepreneurs can be  
1025 matched up against the media giants of today and thrive.  
1026 Supporting a free, open and nondiscriminatory Internet will  
1027 allow the next generation of creators and innovators to  
1028 distribute their own content and compete for the hearts, and  
1029 minds and eyeballs of the audience.

1030         Second, we must remember that traditional media still  
1031 has by far the broadest reach into America's homes. While  
1032 broadcast networks complain of declining ratings, overall  
1033 television viewership is actually increasing. Cable  
1034 viewership is growing steadily and so the relationship  
1035 between major cable distributors and programmers needs closer  
1036 scrutiny. The practice of tying and bundling channels is one  
1037 practice worthy of examination. When you learn that some of  
1038 these bundled channels offer nothing more than a static  
1039 weather map with national viewing levels in the tens of  
1040 thousands, you realize that this is actually filler content  
1041 whose only purpose is to block other programmers from gaining  
1042 access to the cable satellite channels. Whether a la carte  
1043 cable channel selection will eliminate those barriers is an

1044 open question but it is certainly worthy of further analysis  
1045 by the FCC and this committee.

1046 In conclusion, I would like to point out that I have  
1047 worked for major studios and networks my entire career. From  
1048 Paramount to HBO to NBC Universal where Caprica is being shot  
1049 this very day, I have found success in the corporate  
1050 structure. These companies are not evil. They are not  
1051 populated by modern-day robber barons intent on stealing the  
1052 bread from my children's mouths. These companies are only  
1053 doing what makes sense to them financially. However, what  
1054 makes financial sense to a handful of corporations may not be  
1055 in the best interests of the audience, the television  
1056 industry itself or the American people. These companies are  
1057 run by and large by good and decent people who are simply  
1058 working within the regulatory environment that they have been  
1059 given and therein lies the rub. By setting up a regulatory  
1060 environment in which there are no barriers to continual  
1061 corporate consolidation and huge incentives to both  
1062 centralize power and squeeze out smaller players, even good  
1063 and decent people will participate in and promote a system  
1064 that ends of weakening competition, monopolizing power and  
1065 corrupting the free flow of ideas and opportunities for all.  
1066 The danger we face is not that we work for bad men and women,  
1067 it is that good men and women can produce bad results in the

1068 absence of a law.

1069 I thank you for the opportunity to appear before you

1070 today.

1071 [The prepared statement of Mr. Moore follows:]

1072 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|  
1073           Mr. {Boucher.}   Thank you, Mr. Moore.  
1074           Mr. Denson.

|  
1075 ^STATEMENT OF TERRENCE K. DENSON

1076 } Mr. {Denson.} Good morning, Chairman Boucher, Ranking  
1077 Member Stearns and other members of the subcommittee.

1078 My name is Terry Denson and I am Vice-President of  
1079 Content and Programming for Verizon.

1080 Mr. {Boucher.} Mr. Denson, could you pull that  
1081 microphone just a bit closer, please?

1082 Mr. {Denson.} Closer.

1083 Mr. {Boucher.} That is--thank you. Even a little  
1084 closer than that would be good. Thank you.

1085 Mr. {Denson.} I am responsible for obtaining access to  
1086 video programming to support Verizon's consumer services  
1087 including FiOS TV. Verizon and its 200,000 plus employees  
1088 are leading the way with investments in both wire line and  
1089 wireless broadband networks. Verizon has invested over \$80  
1090 billion in capital expenditures over the last 5 years, more  
1091 than any other American company during that time period.  
1092 Verizon is investing \$23 billion to take fiber all the way to  
1093 customer's homes with out FiOS network. This enables both  
1094 video competition and next-generation broadband networks and  
1095 services to 18 million homes and businesses. Verizon's FiOS  
1096 Internet access service currently provides consumers with

1097 maximum speeds of up to 50 megabits per second downstream and  
1098 we are already testing 100 megabits per second services.

1099         Our FiOS TV video service is an integral part of the  
1100 business case for our FiOS investment. Set services provide  
1101 additional choices and competition for consumers. FiOS TV  
1102 brings head-to-head wire line video competition to the cable  
1103 incumbents for the first time in several markets. FiOS TV  
1104 has more capacity than traditional cable providers and is  
1105 able to provide consumers with a wide range of video content  
1106 including a robust lineup of HD programming, independent  
1107 programming and international and multi-cultural content.  
1108 FiOS TV is also designed to enable innovative and interactive  
1109 services. For example, the IP functionality of Verizon's  
1110 network permits the company to offer unique service called  
1111 FiOS TV widgets that allow consumers to access content in an  
1112 interactive manner on their television, including some  
1113 content and services from the Internet such as Facebook and  
1114 Twitter, and other compelling interactive services that serve  
1115 their community, weather widgets, traffic widgets and widgets  
1116 that provide vital information to consumers when they want it  
1117 and where they want it.

1118         While millions of customers are already enjoying our  
1119 FiOS services, new entrants like Verizon face a number of  
1120 challenges. For the most part, Verizon is able to deal with

1121 these challenges such as rising programming through creative  
1122 negotiation. One significant challenge has proven difficult  
1123 to solve with this market-based approach, access to regional  
1124 sports programming controlled by cable incumbents. Regional  
1125 sports is among the most popular programming to consumers,  
1126 many of whom insist on the ability to see the games of their  
1127 local teams. Given its very nature, this programming is  
1128 unique and cannot be duplicated by new entrants who are  
1129 denied access.

1130         Some incumbent providers have exerted their control over  
1131 this must have programming to handicap new entrants. In many  
1132 cases, cable incumbents have sought to exploit the so-called  
1133 terrestrial loophole in an effort to deny competitive  
1134 providers access to this must-have programming. Cable  
1135 incumbents know full well that a new entrant lacking regional  
1136 sports or lacking the HD format of that programming will not  
1137 provide a meaningful choice for consumers. There is a long  
1138 record documenting that cable incumbents have used this  
1139 loophole to handicap competitive providers including in San  
1140 Diego, Philadelphia and New York.

1141         Verizon has experienced this problem firsthand when  
1142 Cablevision refused to provide access to its regional sports  
1143 networks, MSG and MSG plus in the New York City and Buffalo  
1144 areas. While we obtained access to the standard definition

1145 version of these channels only after filing suit at the FCC,  
1146 Cablevision has steadfastly refused to even discuss providing  
1147 Verizon access to MSG and MSG plus in HD on any terms  
1148 whatsoever. By its refusal, Cablevision is seizing on the  
1149 growing import of HD technology to consumers, particularly in  
1150 the context of sports programming. A recent consumer survey  
1151 conducted for Verizon found that nearly 60 percent of New  
1152 York City subscribers say they are not likely at all to  
1153 consider switching to a provider that does not provide their  
1154 regional sports in HD.

1155         We have urged the FCC to take action because denial of  
1156 access to this programming denies any meaningful choice to  
1157 the many consumers for whom local sports are critical. In  
1158 order to eliminate any disputes however, Congress should  
1159 adopt a targeted, legislative fix to ensure access to the  
1160 unique regional sports programming that consumers demand.

1161         Thank you.

1162         [The prepared statement of Mr. Denson follows:]

1163 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
1164           Mr. {Boucher.} Thank you, Mr. Denson.  
1165           Mr. Thierer.

|  
1166 ^STATEMENT OF ADAM THIERER

1167 } Mr. {Thierer.} Thank you, Mr. Chairman and members of  
1168 the committee, and I appreciate you inviting me here today to  
1169 speak about this important issue.

1170 My name is Adam Thierer and I am the President of the  
1171 Progress & Freedom Foundation, a digital economy think tank  
1172 here in Washington, D.C. I have written extensively on this  
1173 important subject, including two books on the topic and in my  
1174 work I have argued that regardless of underlying business  
1175 structures or ownership patterns, the critical question that  
1176 must govern this debate about the state of the media  
1177 marketplace is do citizens have more news, information and  
1178 entertainment choices at their disposal today than in the  
1179 past? And I am pleased to report that all of the evidence  
1180 suggests that the answer to that question is unambiguously  
1181 yes.

1182 Indeed, we now live in a world of unprecedented media  
1183 abundance where consumers can increasingly obtain whatever  
1184 they want wherever they want however they want to. Citizens  
1185 of all backgrounds and belief are benefiting from this modern  
1186 media cornucopia and nowhere has this abundance been more  
1187 evident than in the field of video programming. Although the

1188 provision of video services entail significant upfront  
1189 investment at every step of the value chain, we have more  
1190 video options and diversity at our disposal today than ever  
1191 before and at generally falling prices. In sum, there is  
1192 more competition for our eyes than ever before.

1193         Consider traditional broadcasting which was once  
1194 synonymous with television itself. Most of us can remember  
1195 when just three or four VHF channels and a few fuzzy UHF  
1196 channels were all we had at our disposal. Today we have  
1197 seven nationwide broadcast networks and the number of local  
1198 broadcast stations has doubled since 1970. Competition  
1199 against and among traditional broadcasters is intense and the  
1200 viewing audience has become remarkably fragmented. The  
1201 collective audience share for broadcast networks has fallen  
1202 every year for the past decade.

1203         Competition is also intensifying among cable, telecom  
1204 and satellite-based platforms. Better yet, the number of  
1205 channels available on these platforms has skyrocketed from  
1206 just 70 in 1990 to 565 in 2006, the last year for which we  
1207 have FCC data. Resulting diversity on the dial has been  
1208 truly breathtaking and almost every human interest is now  
1209 covered by some sort of video network and some of the most  
1210 impressive gains have been made by minority oriented, foreign  
1211 language, religion and children's based programming.

1212 Importantly, the largest share of the growth in the multi-  
1213 channel video marketplace has actually come from independent  
1214 programmers and owners. The percentage of pay-TV channels  
1215 owned by cable distributors has plummeted from 50 percent in  
1216 1990, to under 15 percent today, and that percentage is now  
1217 significantly lower following the split between Time Warner  
1218 Cable and Time Warner Entertainment. In fact, that  
1219 percentage of vertical integration is probably in the single  
1220 digits now.

1221 Thus, while the Cable Act of 1992 was motivated by fears  
1222 of excessive vertical integration and gatekeeper power in the  
1223 delivery of video programming, today's marketplace is  
1224 actually intensely competitive and rich in its diversity.  
1225 Meanwhile, new video empowerment technology such as DVRs,  
1226 VOD, Blu-Ray and so on, have revolutionized the way that the  
1227 public consumes visual media and given viewers unprecedented  
1228 control over their preferences and timetables.

1229 While traditional platforms like cable and satellite  
1230 offer a sea of diverse programming, the Internet's digital  
1231 distribution platforms offer oceans of new content. Even  
1232 defining a media outlet today has become very difficult as  
1233 new technologies and power average citizens to become  
1234 producers of news and entertainment themselves. Thanks to  
1235 personal computers, websites, blogs, camcorders, digital

1236 cameras, cell phones and so on, anybody can be a one-person  
1237 newspaper or broadcaster. Some might call it amateur media  
1238 creation but it is media creation and it certainly is  
1239 competing for eyeballs.

1240         The Internet has also empowers a growing number of  
1241 consumers to cut the video cord all together by canceling  
1242 their monthly video multi-channel video subscriptions and  
1243 getting their video from a combination of other sources. If  
1244 the committee wants a glimpse into the future, I suggest a  
1245 few teenagers or 20-somethings to testify about how they  
1246 consumer video today. They probably couldn't name most  
1247 broadcast networks or multi-channel video providers but they  
1248 would regale you with stories about how they have seen or  
1249 shared video on platforms ranging from YouTube to I-Tunes,  
1250 Video Views, Fusebox, Evio, Hulu, Netflix, Amazon On Demand,  
1251 Sony's Playstation Store, Microsoft Xbox 360 Marketplace and  
1252 so on.

1253         While some here in town often wring our hands about the  
1254 supposed gatekeeper power of old media providers and  
1255 platforms, are kids are increasingly ignoring those platforms  
1256 and moving on. This begs the question, instead of fretting  
1257 that some traditional media providers have too much power  
1258 perhaps it is time to ask if some of them actually have too  
1259 little, a concern we have today in the newspaper business,

1260 for example. Indeed, the very viability of traditional media  
1261 operators is increasingly in doubt as they lack the pricing  
1262 power and the ability to control when, where and how their  
1263 content is delivered and consumed.

1264         Meanwhile advertising, the traditional lifeblood of the  
1265 media sector is increasingly spread across multiple platforms  
1266 and being subjected to new scrutiny and potential regulation  
1267 here in town. And copyright infringement has also made  
1268 modernization far more challenging and places serious strains  
1269 on many content operators.

1270         In sum, traditional media operators could be in serious  
1271 trouble and now certainly isn't the time to be considering  
1272 new rules and red tape that could hamstring their ability to  
1273 respond in new competitive pressures. Regardless, America's  
1274 video marketplace should be viewed as a pro-consumer success  
1275 story with an abundance of choices, competition and diversity  
1276 in options. The only real scarcity that is remaining today  
1277 is our personal time and attention spans, not video  
1278 marketplace options. That is something we are celebrating.

1279         Thank you again for inviting me today.

1280         [The prepared statement of Mr. Thierer follows:]

1281 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
1282           Mr. {Boucher.} Thank you very much, Mr. Thierer, and  
1283 thanks to each of our witnesses for joining us this morning  
1284 for some very informed commentary on the subject matter  
1285 before us.

1286           I recognize myself for the first round of questions. I  
1287 am not entering this conversation with any preconceived ideas  
1288 about whether or not we should legislate anything and I would  
1289 like to make that clear at the outset. I did support in 1992  
1290 the program access provisions as a part of the legislation  
1291 that we passed in that year. I did so because cable at that  
1292 time was a monopoly and we wanted to encourage competition.  
1293 The direct broadcast satellite industry had not really  
1294 launched and those companies were not established. They were  
1295 clearly not in a position to generate their own content with  
1296 their own expenditure at that early state, and the only way  
1297 they could be successful in providing competition was to have  
1298 access to the programs generated by cable so we provided that  
1299 access. And I think that law has been successful for the  
1300 reasons I mentioned in my opening statement. Now that  
1301 marketplace is competitive. The two satellite providers have  
1302 subscribers typically equal to the very large cable systems.  
1303 And now we welcome into the market the very large telephone  
1304 companies, in fact telcos across the country that are

1305 beginning to offer multi-channel video further expanding the  
1306 competitive choice.

1307           And, Mr. Denson, I want to ask you some questions about  
1308 your arrival in the market, what that means for competition  
1309 and whether we ought to consider making any changes in the  
1310 law in order to sustain it or perhaps further encourage it.  
1311 Some would say that a company that is well-financed like  
1312 Verizon either individually or in partnership with other  
1313 large telecommunications companies could finance the creation  
1314 of your own content and that is a situation very unlike the  
1315 situation the direct broadcast satellite industry was in in  
1316 1992. And so how do you respond to the idea that you could  
1317 generate your own content given the fact that you are a very  
1318 large, well-established company and could even partner with  
1319 others in joint ventures in order to do that? I know you are  
1320 particularly concerned about regional sports and I am going  
1321 to come to that in a moment but as a general matter, let me  
1322 just ask you about whether or not you are in a position to  
1323 generate much of your own content?

1324           Mr. {Denson.} Certainly, you know, we actually have  
1325 financed the creation of our own programming. We created  
1326 local, three local hyper-local news channels, FiOS1, Long  
1327 Island FiOS1, New Jersey and FiOS1 here in the D.C.  
1328 metropolitan area. What we found is that local hyper-local

1329 content was crucial in order to win over customers.  
1330 Customers, it wasn't enough just to have content that  
1331 addressed their entire region. Customers really wanted to  
1332 know what they smelled when they looked out the door. If  
1333 they were smelling smoke they wanted a channel that actually  
1334 would tell them where that fire was in their neighborhood and  
1335 we do that. We also offer compelling stories within the  
1336 community so that everyone sees themselves in the community  
1337 in a positive way. So we invested heavily in that and to be  
1338 honest with you, given our number of customers the true  
1339 benefit for the customers is the customer itself. We are not  
1340 seeing that financial return but we are doing it to benefit  
1341 the customer.

1342 Mr. {Boucher.} How important is the 1992 program access  
1343 provision to you as a general matter?

1344 Mr. {Denson.} Well, I think in terms of how important  
1345 that was for us in the creation of that content I think.

1346 Mr. {Boucher.} Well, not in the creation of the content  
1347 but getting access to other peoples' content, cable-  
1348 affiliated content.

1349 Mr. {Denson.} Oh, absolutely vital.

1350 Mr. {Boucher.} That was vital to you?

1351 Mr. {Denson.} Absolutely vital at the time.

1352 Mr. {Boucher.} You could not have launched FiOS without

1353 that?

1354 Mr. {Denson.} We would not have launched FiOS without  
1355 having the assurances that were provided in the Act.

1356 Mr. {Boucher.} All right, let me come to the regional  
1357 sport question because that is something you focused on in  
1358 your commentary. As I understand the situation as it  
1359 pertains in Philadelphia and to some extent in San Diego and  
1360 maybe other markets around the country, one cable provider  
1361 has under contract the major sports leagues. I think that is  
1362 true almost entirely in Philadelphia and the FCC found in a  
1363 study that as a consequence of that the number of DBS  
1364 subscribers is about 40 percent less in Philadelphia than one  
1365 would expect under different circumstances. And in San Diego  
1366 the Padres are under contract with one cable company, and as  
1367 a result of that the FCC found the DBS subscribership was  
1368 about 30 percent, 33 percent less than otherwise it would  
1369 have been. Some would say that this is merely the  
1370 functioning of the private market, that these contracts  
1371 expire periodically and I assume they do. Maybe you know how  
1372 often they expire and can tell us but upon that expiration  
1373 why could other competitors within the multi-channel  
1374 distribution space not go into the market, bid for those  
1375 contracts and if they offer more money prevail and become the  
1376 offerers of those programs? Now, assuming all of that is

1377 true why should we be concerned about this? Why not just let  
1378 the market operate?

1379 Mr. {Denson.} Well, for certain regions.

1380 Mr. {Boucher.} First of all, can you tell us when those  
1381 contracts expire?

1382 Mr. {Denson.} The every market is different. Every  
1383 team is different. They typically expire on a 5-year basis  
1384 however there are some contracts specifically between the Yes  
1385 Network and the New York Yankees which I know run  
1386 significantly longer than that. In terms of the competition,  
1387 for sure regional sports networks are unique and we cannot  
1388 duplicate that, and the cost of sports rights are enormous  
1389 and there is no way in which we could monetize it so to that  
1390 end we would not be able to actually make a meaningful bid  
1391 for those regional sports networks. I think what we have  
1392 here.

1393 Mr. {Boucher.} So is it the concern that contracts are  
1394 exclusive that troubles you the most or is it the length of  
1395 the contract that troubles you the most?

1396 Mr. {Denson.} It is, well, it is two things really. It  
1397 is one, it is the partnership with the joint ownership of a  
1398 cable operator and a team and the actual regional sports  
1399 network there that is definitely vital. But for certain  
1400 areas.

1401 Mr. {Boucher.} Well, I am taking more time than I  
1402 should here but we really need to understand how this works.  
1403 I don't understand why it is a problem. If the contract  
1404 expires within a sufficiently short period of time and that  
1405 contract is then available for you and direct broadcast  
1406 satellite and other cable companies to go in and bid on, why  
1407 is that a problem?

1408 Mr. {Denson.} Well, let me take just the issue head on.  
1409 It is a problem because I don't see how we could reasonably  
1410 expect a company like Cablevision who owns the New York  
1411 Rangers, it won't even offer us, it won't even negotiate with  
1412 us with respect to the delivery of high definition content to  
1413 entertain a bid where we would actually secure the rights for  
1414 the telecast distribution of the New York Rangers and their  
1415 market.

1416 Mr. {Boucher.} So you're saying Cablevision has some  
1417 kind of permanent right associated with the sports leagues  
1418 under the terms of which it can deny high definition carriage  
1419 or in fact any carriage at all to a competitor?

1420 Mr. {Denson.} Absolutely, they own the New York  
1421 Rangers.

1422 Mr. {Boucher.} So there is a permanent right so the  
1423 actual contract doesn't expire. They actually own the  
1424 league, is that what you are saying?

1425 Mr. {Denson.} They own the team. They own the New York  
1426 Rangers. They own the New York Knicks and they are free to  
1427 contract with whomever they like and they contract with  
1428 themselves and then they deny the HD content to us. Now, on  
1429 the other hand, a tale of two cities, we look at Philadelphia  
1430 and Comcast. Through creative negotiations we have actually  
1431 been able to secure the rights even though that content is  
1432 protected by the terrestrial loophole, we have been able to  
1433 secure those rights with Cablevision, the largest provider  
1434 right in and where it is a similar situation. We are  
1435 competing head-to-head in Philadelphia and they could deny it  
1436 but cable Comcast took a different route and we are willing  
1437 to negotiate and bargain in good faith with Cablevision at  
1438 any time they denied us the access so that is specifically  
1439 what we are looking for in this instance.

1440 Mr. {Boucher.} All right, let me just ask if there is  
1441 anybody else on the panel that wants to comment and the Chair  
1442 will tell other members I will be generous with their time  
1443 for questions in view of the fact that I have consumed so  
1444 much. Does anyone else want to comment on this?

1445 Mr. Rutledge.

1446 Mr. {Rutledge.} I just want to make a brief comment.

1447 Mr. {Boucher.} Yeah.

1448 Mr. {Rutledge.} Mr. Chairman, I just want to be clear

1449 that Cablevision provides every game on our regional sports  
1450 networks to Verizon. What hasn't been provided to Verizon is  
1451 a high definition feed but all of their customers have access  
1452 to every game on the regional sports channels we own, and in  
1453 New York there are four regional sports channels. The  
1454 Yankees have their own, the Mets have their own and  
1455 Cablevision owns two channels, one service. And it is  
1456 interesting Dish TV which we do sell our service to has the  
1457 right to carry the high definition feed and does not for  
1458 their own competitive and business reasons. They don't carry  
1459 the Yankees so they carry the Mets and they carry our  
1460 services but don't carry the Yankee network for whatever  
1461 competitive reason they have decided. And Cablevision has  
1462 been without the Yankees for up to a year at a time in  
1463 various contractual arrangement problems and succeeded in the  
1464 marketplace so there are a variety of approaches that  
1465 different distributors make to the marketplace and it is  
1466 quite robust and there are quite a few regional sports up  
1467 there as well.

1468       Mr. {Boucher.} All right, okay, that is fine. Thank  
1469 you very much.

1470       The gentleman from Florida, Mr. Stearns.

1471       Mr. {Stearns.} Thank you, Mr. Chairman.

1472       Recently I attended an open mobile TV forum and spoke to

1473 all the operators and it was sponsored I think by LG and Ion  
1474 and they had all these mobile devices where I could get  
1475 television on here. So it appears that to me the next  
1476 challenge is going to be when the TVs are sold to the  
1477 consumers and they have an Internet chip in it so I can  
1478 decide do I want to get cable or do I want to get DirectTV or  
1479 do I want to go the Internet and get live streaming of  
1480 digital or high definition programming, and that seems to me  
1481 as a consumer that that is where I would go. I would have  
1482 the digital and high definition streaming on my mobile and I  
1483 would have it at home on my television and there might be a  
1484 point where I might not say I even need a cable or DirectTV,  
1485 satellite TV because I am just going to get it through the  
1486 Internet. I think that after I went to this forum it seemed  
1487 to me the next really growing demand is going to be that  
1488 everything is going to come through the broadband Internet  
1489 and it will be high definition and it will be high speed.

1490 So, Mr. Rutledge, if I am wrong you can tell me but it  
1491 seems to me that is where you folks should be making your  
1492 investment for programming over the Internet in the future.  
1493 And I guess my question is, is that true and if it is true  
1494 what kind of deregulation or regulation should be involved?  
1495 And certainly you might want to comment on network neutrality  
1496 or network regulation, as I call it which would be even as we

1497 speak today I think the FCC is going to have a vote on it so  
1498 I would be curious about your opinion and then Mr. Denson and  
1499 Mr. Moore.

1500 Mr. {Rutledge.} Ranking Member Stearns, thank you.

1501 Mr. {Stearns.} Does the future as I explained does that  
1502 seem a likelihood?

1503 Mr. {Rutledge.} Yes, I think it is a very complicated  
1504 future and what is happening is that devices.

1505 Mr. {Stearns.} I need you to make your answer pretty  
1506 short so I can move around here.

1507 Mr. {Rutledge.} Yeah, devices, there is a device of  
1508 convergence so that would look like a phone is a television  
1509 and what looks like a television is a phone.

1510 Mr. {Stearns.} Okay.

1511 Mr. {Rutledge.} And we have products that work really  
1512 well and one of the things Cablevision has done is launch the  
1513 first 100 megabit data service across its entire footprint.  
1514 We are the fastest data service in the country and the only  
1515 company offering speeds at that level to all of its  
1516 customers.

1517 Mr. {Stearns.} So you have already made an investment  
1518 in this?

1519 Mr. {Rutledge.} Yeah, we have been putting investments  
1520 in what is called DOCSIS 3.0.

1521 Mr. {Stearns.} Okay.

1522 Mr. {Rutledge.} Which is the most advanced platform out  
1523 there in terms of high speed capacity. We believe that if  
1524 our customers can use that network and be happy with the way  
1525 that network operates that we will be able to sell our  
1526 network services and as part of that we encourage developers  
1527 of programming to make applications that work on a big fat  
1528 network like we sell. And so our goal is to have content  
1529 providers flourish and have people subscribe to us because we  
1530 have the best network.

1531 Mr. {Stearns.} Okay and Mr. Denson.

1532 Mr. {Denson.} Yeah, and I think we are in a similar  
1533 position and I think you are exactly right as how you see the  
1534 future and what you have really described is the TV  
1535 everywhere initiative which is a collaborative initiative  
1536 amongst all distributors in the multi-channel video  
1537 marketplace. So in that situation I think what you are  
1538 looking at is programmers content providers are looking to  
1539 drive their revenue from subscription-based services as are  
1540 we as distributors. So the--but your unique insight was well  
1541 if I have a phone, I would like to see it on the phone. If I  
1542 have it on the PC I would like to see it on a PC and TV. You  
1543 subscribe one place and then you get access to the content  
1544 across every device and what that does is that spurs the

1545 innovation on our side. As a distributor we need to make  
1546 sure that we have the fastest networks and we do. We need to  
1547 make sure that we have the best picture quality, not just  
1548 across one platform FiOS but broadband and also our V-cast  
1549 video, the Verizon wireless video service as well. So we are  
1550 enabling those services and we are doing it across carrier so  
1551 we are not looking to make it unique for Verizon itself. We  
1552 want to work with the Time Warners, the Comcasts, the  
1553 Cablevisions of the world so it doesn't matter where a  
1554 customer is, that customer can actually access their content  
1555 by paying just one time to one distributor.

1556 Mr. {Stearns.} Okay, Mr. Moore, based upon sort of what  
1557 I sort of prophesize what I think is going to happen here,  
1558 why couldn't I get a website and I go to you and say, Mr.  
1559 Moore, you know, I am very impressed with what you did with  
1560 Star Trek and the Next Generation. I want you to do the next  
1561 Next Generation and I will pay you. You come onto my website  
1562 and we will be through the Internet everywhere and that gives  
1563 you access. That seems simple to me but based upon what I  
1564 say is going to happen in the future, do you see problems of  
1565 you and others with your talent and your skill getting this  
1566 programming to the consumer market?

1567 Mr. {Moore.} Well, I think you are correct and that is  
1568 theoretically possible. I think that, however, the

1569 convergence that I think we all agree is coming is going to  
1570 take awhile and that history shows is that these sorts of  
1571 technologies don't completely wipe out prior technologies.  
1572 When television came along everyone said that the movies are  
1573 going to die.

1574 Mr. {Stearns.} Right.

1575 Mr. {Moore.} And when the VCR came along they all said  
1576 the movies and television were going to die and none of those  
1577 things have proven true, and I think the point is that  
1578 traditional media and the way that we have known television  
1579 for a very long time is probably going to continue in some  
1580 form for quite--for the foreseeable future. An Internet--a  
1581 web startup site like the one that you are postulating will  
1582 have its biggest problem to get people to come see it so it  
1583 is all about getting the consumer access to it.

1584 Mr. {Stearns.} No, I like the advertising. I would say  
1585 Mr. Moore who did this in Star Trek has got something, you  
1586 know, and I would create a sensation like they are trying to  
1587 do with Dan Brown's new book, The Symbol. They are creating  
1588 all this sensation to try and sell it and I would have to do  
1589 all of that as part of the contract with you to get you.

1590 Mr. {Moore.} It is a viable form that your are  
1591 postulating. Again, it takes a tremendous amount of money to  
1592 create television programs like the ones that I have done.

1593 It then takes a tremendous amount of money to make them  
1594 accessible to the audience.

1595 Mr. {Stearns.} So only the big players can do it then?

1596 Mr. {Moore.} Only the big players basically can do it  
1597 and if the big players have basically own the means of their  
1598 own production, they tend to go to those.

1599 Mr. {Stearns.} Okay. Yes, sir, Mr. Knorr.

1600 Mr. {Knorr.} Thank you, Congressman Stearns.

1601 I think this is an excellent question that you are  
1602 posing and really our concern about the ESPN360 business  
1603 model goes directly to this. In your hypothetical, if Mr.  
1604 Moore was able to put together a website and put on his  
1605 content, under the business model that we are concerned about  
1606 where all of our broadband subscribers are paying, in this  
1607 case ESPN but it could be any of the existing major brands  
1608 could leverage this type of arrangement, that anyone of my  
1609 customers that access Mr. Moore's content not only would be  
1610 paying Mr. Moore but would be paying all these other existing  
1611 content providers. In which case a competing entity never  
1612 would be able to get ahead because every time someone went to  
1613 this new entrant, the existing companies would make money,  
1614 and there would be no way that someone could get a pure  
1615 connection to the Internet and choose to take a different  
1616 path. It would carry over the existing cable business model

1617 and in many cases the existing cable participants onto the  
1618 Internet and replicate.

1619 Mr. {Stearns.} My time has expired unless there is  
1620 someone else who wanted to answer the question.

1621 Mr. Pyne.

1622 Mr. {Pyne.} I just would like to briefly comment on the  
1623 ESPN360. The ESPN.com is a free Internet site that everybody  
1624 who has an Internet connection can access. It is a very,  
1625 very competitive business whether in every months we look at  
1626 Yahoo Sports, ESPN.com, FOX Sports, CBS Sportsline, but that  
1627 is there is more video on ESPN.com itself than any of the  
1628 other dotcom sites. ESPN360 is the unique per-sub business  
1629 model that in fact we created to help broadband adoption and  
1630 today there is--we have no evidence of someone raising their  
1631 ISP fee to a consumer because they have launched ESPN360 and  
1632 it is we don't force people. We are only--we are in 50  
1633 million homes. It has doubled over the last year because of  
1634 the popularity of the service but the whole purpose of 360  
1635 was to help broadband get further adoption in our country  
1636 because it is programming that drives--that will help drive  
1637 adoption.

1638 Mr. {Stearns.} Thank you, Mr. Chairman.

1639 Mr. {Boucher.} Thank you very much, Mr. Stearns.

1640 The gentleman from Michigan, Mr. Stupak, is recognized

1641 for 5 minutes.

1642 Mr. {Stupak.} Thank you, Mr. Chairman.

1643 Mr. Knorr, in your testimony you state that the ACA  
1644 members pay 10 times as much as your competitors for the same  
1645 content. How have you been able to make this determination  
1646 and by competitors do you mean like satellite providers like  
1647 Dish and DirecTV?

1648 Mr. {Knorr.} Competitors in some cases DirecTV and the  
1649 satellite. In other cases, larger cable operators and a lot  
1650 of it is anecdotal based on smaller cable operators that  
1651 acquire cable systems from larger providers see the  
1652 discrepancy in their cost of programming and that is, you  
1653 know, that is anecdotal. That is one of the things that we  
1654 are putting out there is we would like the FCC to empirically  
1655 examine and review programming to determine what level of  
1656 price discrimination occurs. I mean based on acquisitions  
1657 and other things, we know it is occurring. Documenting that  
1658 is what we want to do so that we can address the problem.

1659 Mr. {Stupak.} Well, like in my district there I get  
1660 very rural districts, Sunrise Communications pay in about \$40  
1661 for 35 channels and that is a cable but then yet the same  
1662 area, Dish is offering for \$30 over 100 channels. Is that  
1663 where you are doing your because that is about a 300 percent  
1664 increase if you look at the number of channels.

1665 Mr. {Knorr.} I think there are a lot of things that  
1666 figure into that. One is the disparity in cost of  
1667 programming. Another one is again, the unique burdens of  
1668 being a small operator. I mean regulatory costs,  
1669 retransmission costs, disparities in all those costs make it  
1670 more difficult for a small operator to make investments.

1671 Mr. {Stupak.} You are taking all of those into  
1672 consideration when you say 10 times more than?

1673 Mr. {Knorr.} No, in programming alone it can be up to  
1674 that much just in programming.

1675 Mr. {Stupak.} Okay.

1676 Mr. {Knorr.} And then those other things would explain  
1677 the disparity you are talking about of having 35 channels for  
1678 a higher price than 100 channels.

1679 Mr. {Stupak.} All right, well, you also said that you  
1680 are given a take it or leave it offer when attempting, take  
1681 it or leave it when you are attempting to negotiate a program  
1682 carriage.

1683 Mr. {Knorr.} Especially in regards to retransmission  
1684 consent.

1685 Mr. {Stupak.} Okay, how does that negotiation go? It  
1686 is just take it or leave it, or do you have any input? Do  
1687 you have any room to negotiate or is it just here is what we  
1688 are offering, that is it.

1689 Mr. {Knorr.} It varies. In many cases it is getting a  
1690 contract and saying here is the deal if you want to carry the  
1691 network, and well that deal doesn't work for us. Okay, here  
1692 is the deal, you sign it, you don't sign it. It is up to  
1693 you.

1694 Mr. {Stupak.} Sure.

1695 Mr. {Knorr.} As opposed to--oh, go ahead.

1696 Mr. {Stupak.} Okay, I was--Mr. Pyne was shaking his  
1697 head there. Do you want to add something on that one?

1698 Mr. {Pyne.} Well, I shouldn't have shaken my head.

1699 Mr. {Stupak.} I was going to ask anyways even if you  
1700 didn't shake your head.

1701 Mr. {Pyne.} Okay.

1702 Mr. {Stupak.} Because you are one of the bigger ones so  
1703 I was going to ask.

1704 Mr. {Pyne.} Well, as it I mean, we work very hard to  
1705 work and help our smaller cable affiliates as I mentioned in  
1706 my testimony. I mean two specific things as it relates to  
1707 retransmission consents for our own stations, in this last  
1708 round we in fact in an effort to help, I mean it was a take  
1709 it or leave it offer but it was free retransmission consent.  
1710 In other words, the 1992 Cable Act allows us to make a cash  
1711 offer available.

1712 Mr. {Stupak.} Right.

1713 Mr. {Pyne.} Or negotiate some other consideration. We  
1714 have practiced that successfully for since 1993 actually but  
1715 in this last round in an effort to help our smaller operators  
1716 we said okay for these 90 in these smaller territories we  
1717 will not extract any cash or ask for any other consideration.  
1718 You can have it for the next 3 year cycle.

1719 Mr. {Knorr.} And I think honestly Mr. Pyne makes an  
1720 excellent point. ESPN generously offered free carriage to  
1721 about 90 of our 1,000 cable systems but he also said exactly  
1722 what the fact is it was a take it or leave it offer. ESPN  
1723 generously made a zero cost take it or leave it offer to  
1724 those smaller cable operators. Many, many, many of the  
1725 broadcasters in this country are not so generous and that is  
1726 the problem.

1727 Mr. {Stupak.} Well, Mr. Pyne, let me ask you this. Are  
1728 you planning to see access to that ESPN360 directly to  
1729 consumers over their Internet if their service provider does  
1730 not pay for access?

1731 Mr. {Pyne.} That is not in our business model today,  
1732 no.

1733 Mr. {Stupak.} Thank you.

1734 Mr. {Pyne.} We have other products at ESPN.com and  
1735 actually throughout the entire portfolio such as ESPN Insider  
1736 which is something that if you are subscribing, I mean if you

1737 get ESPN.com you can subscribe that goes into deeper that we  
1738 offer directly consumers but ESPN360, no.

1739 Mr. {Stupak.} Okay, well, if the content is so  
1740 compelling, I would think you would want to get it out there  
1741 without having to go through the ISP, just sell it directly  
1742 to consumers.

1743 Mr. {Pyne.} Again, in this fascinating space of the  
1744 Internet we are looking for multiple different models to get  
1745 our content to consumers and we have ESPN.com which is for  
1746 free. We have an ESPN mobile product. We have ESPN Insider.

1747 Mr. {Stupak.} Right.

1748 Mr. {Pyne.} We have ESPN VOD but in this particular  
1749 case, we believe this business model actually helps the  
1750 adoption and we don't force it on anybody but which is our  
1751 decision but we think it will actually help the adoption and  
1752 in fact Beta does research which is a sort of cable industry  
1753 entity that sort of values the different programming and  
1754 ESPN360 has been named the number one broadband service to  
1755 help adoption of broadband and that is our goal. That is why  
1756 we would do it.

1757 Mr. {Stupak.} Okay, but the service provider is still  
1758 paying something, right? Someone is paying somewhere along  
1759 the line here because if we go on the Internet we think we  
1760 can have access and have it pretty much free.

1761 Mr. {Pyne.} Right.

1762 Mr. {Stupak.} But in a way you are no longer, you are  
1763 putting an extra hurdle up there for someone to.

1764 Mr. {Pyne.} Well, I think as the way we look at it is  
1765 it is the service provider's option.

1766 Mr. {Stupak.} Right.

1767 Mr. {Pyne.} To work to negotiate a deal or not from,  
1768 you know, and we again, there are many providers who don't.  
1769 In fact, Cablevision doesn't carry 360 nor does Time Warner  
1770 at the moment. Comcast and Cox Communication has just signed  
1771 up and Verizon has it so it is a competitive product in the  
1772 marketplace, and I will just say that the reason we developed  
1773 the product was that as we saw Internet or broadband  
1774 penetration grow, we saw that there would be a plateau at  
1775 some point and that it would need extra content. And  
1776 ultimately we are here trying to provide that content and the  
1777 margins in the ISP world for providers are, you know,  
1778 depending on who you look at, anywhere from 40 percent to 70  
1779 percent so we are ultimately helping to support that model.

1780 Mr. {Boucher.} Thank you very much, Mr. Stupak.

1781 The gentleman from Texas, Mr. Barton, is recognized for  
1782 5 minutes.

1783 Mr. {Barton.} Thank you, Mr. Chairman.

1784 I think we have a vote on the floor so I know that we

1785 need to be.

1786 Mr. {Boucher.} We do but we have got 8 minutes left  
1787 here so I think we can probably fit you in.

1788 Mr. {Barton.} Eight minutes, I can probably give some  
1789 of that back.

1790 I didn't hear the opening statements of the panel and I  
1791 didn't hear all the statements of our witnesses but I am  
1792 trying to figure out why we are having this hearing. It  
1793 looks like we have got a food fight going on between some of  
1794 the folks that at some point in the past decided to buy a  
1795 sports team and a venue and a medium to distribute that  
1796 programming, and the people that didn't do that don't like  
1797 it. Am I wrong?

1798 Mr. {Denson.} I will take that. I think are you wrong,  
1799 I wouldn't go so far to say that you are wrong but what I  
1800 would say is that there is certain baseline content that is  
1801 unique in a community that without it we cannot compete and  
1802 we would like very much better to compete on the services  
1803 that we do have and the innovation that we have created. We  
1804 offer over 400 digital channels, over 17,000 video-on-demand  
1805 channels, the highest broadband speeds with the best picture  
1806 quality and we want to make that choice to the customers. We  
1807 offer more foreign languages than any other distributor yet  
1808 if we do not have the regional sports networks that are

1809 germane to that particular community then it is not  
1810 meaningful choice.

1811 Mr. {Barton.} Now, is there any prohibition with you  
1812 buying your own team?

1813 Mr. {Denson.} There is no prohibition.

1814 Mr. {Barton.} I think a lot of people would want you to  
1815 buy the Redskins right now. I mean, you know, is anybody on  
1816 the panel say that there is less competition today than there  
1817 was in 1992? Are there less programs available? Are there  
1818 less mediums available? Is there less content available?

1819 Mr. {Moore.} Well, I would say in response to that to  
1820 when you look at the dial there is a tremendous amount of  
1821 competition. There is a tremendous amount of choices but the  
1822 point that I would like to make is that the people that  
1823 provide that content are becoming a smaller and smaller  
1824 number.

1825 Mr. {Barton.} And I did get to hear you and but even  
1826 there is, if I heard you correctly, there is still eight,  
1827 didn't you say eight companies that are in the provider  
1828 business?

1829 Mr. {Moore.} Yes, there are eight and of those eight,  
1830 two of them are reality-based or do reality shows and are  
1831 based in the UK and only one is an actual independent, and  
1832 these others are the multi-national media block.

1833 Mr. {Barton.} But even there is there some bar that  
1834 would prohibit entry into that arena if one was predisposed  
1835 and felt they had the creative ability to do so?

1836 Mr. {Moore.} Well, the marketplace is developed in such  
1837 a way that if a network owns its own in-house production  
1838 studio, there is a tremendous incentive to buy from that  
1839 studio and not from independent producer.

1840 Mr. {Barton.} Right.

1841 Mr. {Moore.} So and because these shows cost so much to  
1842 produce and get on the air, if you are going to set yourself  
1843 up as an independent studio and risk all this capital, you  
1844 should be able to compete fairly. But unfortunately what  
1845 happens is that networks turn to their corporate sibling for  
1846 programming more and more and more, and that is essentially  
1847 why you have seen a decrease from 18 production studios who  
1848 provided content in 1989 to only eight today, and as I said  
1849 only one of those is a true independent and the other two are  
1850 reality providers from the UK.

1851 Mr. {Barton.} Okay, well, Mr. Chairman, I know we are  
1852 short of time. I am going to yield back the last minute and  
1853 a half but my advice to our witnesses is go have lunch  
1854 together and work it out and, you know, if this is really--if  
1855 the Yankees not being available on Verizon is a huge problem  
1856 then Verizon ought to be able to come up with an incentive

1857 package to encourage some of the Yankee games being on  
1858 Verizon or the 76ers being on whatever in Philadelphia or  
1859 whatever it is. I just don't think, Mr. Chairman, I mean  
1860 this is an entertaining hearing but I don't think this is  
1861 worthy of Congressional oversight unless the goal is just to  
1862 get these guys to work it out amongst themselves at which you  
1863 and Mr. Markey are past masters at that.

1864 Mr. {Boucher.} Well, thank you very much.

1865 Mr. {Barton.} So I will join you in that effort if that  
1866 is what the goal of this is.

1867 Mr. {Boucher.} Thank you very much, Mr. Barton. There  
1868 are a number of people who are quite interested in this  
1869 subject matter, and I choose to think it is an appropriate  
1870 hearing but it is going to have to be recessed because we  
1871 have three votes pending on the floor of the House and we  
1872 need to respond to those. We will be gone for probably 40  
1873 minutes, 45 minutes and so stay tuned and stay close and we  
1874 will be in recess until the conclusion of the third vote.

1875 [Recess.]

1876 Mr. {Boucher.} I thank everyone for your patience while  
1877 we attended to business on the floor.

1878 The gentlelady from Tennessee, Ms. Blackburn, is  
1879 recognized for 5 minutes.

1880 Mrs. {Blackburn.} Thank you, Mr. Chairman, and I will

1881 probably not use my full 5 minutes. I know that you all have  
1882 been very patient with us and you are probably ready to move  
1883 on with your day and I know some of you have flights that you  
1884 want to catch so you can get back to business.

1885 A couple of quick questions, Mr. Pyne, I will start with  
1886 you. I have got to say if I understood you right you said  
1887 the whole purpose of ESPN360 was to spur the adoption of  
1888 broadband. That was quite a generous offer and I thank you  
1889 all for doing that to spur broadband. I hope that we  
1890 continue to make certain that we look at how that is  
1891 available to people that do have broadband but thank you all  
1892 for making that the whole purpose of ESPN360. I know that 50  
1893 million users are pleased with that decision that you all  
1894 carried out.

1895 A couple of quick questions and this is a yes or a no,  
1896 and I want to just go down the list. Mr. Rutledge, I am  
1897 going to start with you. Currently, do you think that the  
1898 current marketplace needs government intervention at this  
1899 time, yes or no?

1900 Mr. {Rutledge.} No.

1901 Mrs. {Blackburn.} No. Okay, Mr. Pyne?

1902 Mr. {Pyne.} No.

1903 Mrs. {Blackburn.} No. Okay, Ms. Knorr?

1904 Mr. {Knorr.} Yes, in some areas.

1905 Mrs. {Blackburn.} Yes, in some areas. Okay, Mr. Moore?  
1906 Mr. {Moore.} Yes.  
1907 Mrs. {Blackburn.} Yes. Okay, unequivocal yes?  
1908 Mr. {Moore.} In some areas I would say.  
1909 Mrs. {Blackburn.} In some areas, okay, so a qualified  
1910 yes. Mr. Denson?  
1911 Mr. {Denson.} Qualified yes, narrow legislative act,  
1912 yes.  
1913 Mrs. {Blackburn.} Okay. Mr. Thierer?  
1914 Mr. {Thierer.} No, ma'am.  
1915 Mrs. {Blackburn.} No. All right, okay, are you in  
1916 favor of net neutrality? We have the principles that were  
1917 released this morning. I call it fairness doctrine for the  
1918 Internet. Some of you call it net neutrality, some of you  
1919 not so neutral. So, Mr. Rutledge, aye or no?  
1920 Mr. {Rutledge.} No.  
1921 Mrs. {Blackburn.} No. Okay, Mr. Pyne?  
1922 Mr. {Pyne.} Yes, to the extent it allows network  
1923 management to help with piracy.  
1924 Mrs. {Blackburn.} Okay, so you are a qualified and so  
1925 qualified on piracy, is that what you said?  
1926 Mr. {Pyne.} Right, traditionally we have not been  
1927 proponents of net neutrality but as it relates to helping  
1928 with piracy.

1929 Mrs. {Blackburn.} To piracy. Okay, Mr. Knorr?

1930 Mr. {Knorr.} Having not seen exactly what came out  
1931 today but my understanding it would apply narrowly just to  
1932 distributors in which case that would be a concern.

1933 Mrs. {Blackburn.} Okay, so are you a yea or a nay?

1934 Mr. {Knorr.} It would be a nay if it is only applied to  
1935 distributors.

1936 Mrs. {Blackburn.} Okay, all right. Mr. Moore?

1937 Mr. {Moore.} From my understanding, I would support it,  
1938 yes.

1939 Mrs. {Blackburn.} Okay. Mr. Denson?

1940 Mr. {Denson.} Nay.

1941 Mrs. {Blackburn.} Okay, all right. Mr. Moore, I  
1942 appreciated what you had to say about the change in cable  
1943 rules in the '90s and I know you are concerned about you feel  
1944 like that that really impeded some of the independent  
1945 producers and I appreciate the charts and the graphs that you  
1946 brought forward in your testimony today. So let me ask you  
1947 this, it seems like there were fewer cable channels just a  
1948 few years ago and so there were fewer outlets. A lot of our  
1949 cable programming producers in Tennessee said there were  
1950 fewer outlets to sell their content and turn that  
1951 intellectual property and that work product into something  
1952 that could be monetized. And so I would ask you this, I know

1953 you are saying you favor government intervention, don't we  
1954 need to be careful about intervening now given the  
1955 possibility of unintended consequences like reducing the  
1956 incentive for the continued carriage of some of these  
1957 channels and your concerns over consolidation?

1958 Mr. {Moore.} Well, my concern is about, oh, I am sorry.  
1959 My concern is about the ability to provide content to a  
1960 variety of forums and the way that the rules use to be in  
1961 traditional television was that networks could not actually  
1962 own or could not program most of their programming from in-  
1963 house production studios like say Disney owns ABC Studios  
1964 that then provides most of their content for ABC. However,  
1965 on the Internet where we are going now what we are trying to  
1966 do is with Internet neutrality is to maintain an environment  
1967 where we have an ability to sell our wares to multiple places  
1968 and not to have the Internet sort of turn into what has  
1969 happened in the repeal of the financial interests in  
1970 syndication rules.

1971 Mrs. {Blackburn.} Okay, so the piracy issue is a part  
1972 of your concern also?

1973 Mr. {Moore.} Oh, we are very concerned about piracy as  
1974 well. I mean, you know when people pirate.

1975 Mrs. {Blackburn.} Mr. Thierer?

1976 Mr. {Thierer.} Yeah, Congresswoman, with all due

1977 respect to Mr. Moore, I believe that the fact is is that he  
1978 is a pretty good example of why the repeal of the financial  
1979 syndication, informational syndication rules have made sense  
1980 because we have a lot more platforms then ever before for  
1981 things like Battlestar Galatica to go out over. I watched  
1982 all four seasons on a combination of DVD, Blu-Ray and  
1983 downloads from my Xbox 360. I never watched it once on  
1984 television per se. Number two, the cost of programming, the  
1985 cost of producing a show like Battlestar is enormously  
1986 expensive and the Syfy Channel itself is an example of a  
1987 station that did not exist 10-20 years ago. Universal and  
1988 others put a lot of money into that to create a platform for  
1989 folks like Mr. Moore. And then third, you know, this whole  
1990 question about is it evil to have too much ownership and in-  
1991 house production is a classic make versus buy decision.  
1992 Newspapers and magazines produce the vast majority of their  
1993 content in-house. Is that good, bad, evil, in-between? I  
1994 don't think it is any of those things. It is just a business  
1995 choice. Sometimes it makes a great deal of sense because you  
1996 are sharing the risk and the rewards of the enormous expense  
1997 associated with the production of television.

1998 Mrs. {Blackburn.} I appreciate that and I thank you all  
1999 for your answers. And, Mr. Pyne, I picked on you at first so  
2000 I am going to come back to you and let you answer your

2001 question. Go ahead.

2002 Mr. {Pyne.} I just wanted to make one further point in  
2003 terms of broadcast networks and where they get programming  
2004 from. This year, ABC in its own studio developed 26 pilots  
2005 at great expense and of the 11 new shows that are on ABC this  
2006 fall only three of those 26 will actually appear. The other  
2007 eight are from other studios so it is I mean we try all of  
2008 the broadcast networks and all of the cable networks try to  
2009 do the best to get the best programming and content on the  
2010 air.

2011 Mrs. {Blackburn.} Okay, great. I have two questions I  
2012 will submit. Mr. Rutledge, one to you I want to ask you an  
2013 MVPD question that I will submit to you for writing and, Mr.  
2014 Denson, I am going to come back to you because I want to go  
2015 back to this exclusivity issue with you and how you view that  
2016 differently from sports networks to handset exclusivity. So  
2017 with that I thank you all very much and I yield my time.

2018 Mr. {Boucher.} Thank you very much, Ms. Blackburn.

2019 The gentleman from Pennsylvania, Mr. Doyle, is  
2020 recognized for 7 minutes.

2021 Mr. {Doyle.} Thank you, Mr. Chairman.

2022 I live in Pittsburgh where we have division one college  
2023 sports, the defending Super Bowl Champions, the Stanley Cup  
2024 Champions. I am sorry Mr. Stupak isn't here because he is a

2025 Red Wings fan. In Pittsburgh we love our sports but I am  
2026 also sympathetic to my constituents that want to have their  
2027 broadband at an affordable price. Now, as I understand it  
2028 for any of the ISP customers to have access to ESPN360 all of  
2029 them have to pay for it and that strikes me in some of ways  
2030 as fundamentally unfair. I have read that some independent  
2031 ISPs were quote as much as 79 cents per subscriber per month  
2032 for ESPN360. Even if only one subscriber watched it, all of  
2033 them would have to pay for it. Now, Mr. Knorr, you are a  
2034 small cable person. Do you believe that all your broadband  
2035 customers want and will watch ESPN360?

2036 Mr. {Knorr.} No, I mean I think fundamentally and know  
2037 for a fact and where in Lawrence, Kansas is a huge sports  
2038 market with the Jayhawks. We have the Chiefs although that  
2039 is down this year but we know our customers aren't all sports  
2040 fans and we think the ones that are, 360 is a great product.  
2041 But for the ones that aren't as I said in my testimony, if  
2042 you are just the only reason you are getting your Internet  
2043 access is because you lost your job and you have to find a  
2044 new one, having that Internet access be more expensive just  
2045 for those that want that product, again we don't think that  
2046 is right.

2047 Mr. {Doyle.} Yeah, I mean it seems to me if they are  
2048 going to quote 79 cents per month per subscriber that wants

2049 to watch it, that seems like a perfectly reasonable thing to  
2050 do but if you are going to charge the ISP and people start to  
2051 try to out-exclusive one another, you know, if this is this  
2052 business model what happens when we have a dozen more ESPN360  
2053 business models? What happens to broadband prices for the  
2054 average consumer when they are forced to pay, you know,  
2055 whether they are watching this or not and if everybody would  
2056 adopt that kind of a model what would happen to pricing?  
2057 And, Mr. Pyne, I will let you maybe discuss that.

2058 Mr. {Pyne.} Well, as I mentioned earlier but will  
2059 reaffirm now for all the research and work that we have done  
2060 on ESPN360, no one has told us they are raising prices to  
2061 consumer because of launching ESPN360 and in fact when the  
2062 broadband margins that operators or ISPs are making or can be  
2063 up to 70 percent. It varies by market for sure but it is  
2064 certainly well worth their while to get another subscriber  
2065 and if ESPN360 can help with that, that is fantastic. And I  
2066 am able--I don't think.

2067 Mr. {Doyle.} You are saying in Pittsburgh they are not  
2068 passing that cost on? They are absorbing that cost because  
2069 they want the ESPN360?

2070 Mr. {Pyne.} To be clear, we don't tell our distributors  
2071 how they need to manage their retail pricing, just as we  
2072 don't tell people who carry ESPN how to manage their retail

2073 pricing. That is between them and the consumer but if we are  
2074 offering a business proposition to ISPs to make them valuable  
2075 in their marketplace and it is actually up to them what they  
2076 want to do with it. I mean in the New York market.

2077 Mr. {Doyle.} But wouldn't you concede if there were  
2078 half a dozen other business ventures like your own that  
2079 adopted that same model that were attractive content and the  
2080 ISPs had to pay for it for every subscriber they had  
2081 regardless of whether every subscriber watched it or not at  
2082 some point they have to pass that cost on to their especially  
2083 the small. I mean what does it do to a small cable operator,  
2084 Mr. Knorr, that is having to pay 80 cents per person per  
2085 subscriber per month?

2086 Mr. {Knorr.} Well, I mean it has two impacts. I mean  
2087 we can absorb it but that reduces the capital we have  
2088 available to launch things like DOCSIS 3.0 and more advanced  
2089 broadband services or we can pass it along to our customers  
2090 which raises the price of the service and if everybody is  
2091 raising the price of the service, I mean that is fine, it  
2092 doesn't put me at a competitive disadvantage if everybody  
2093 carries ESPN360 but it certainly doesn't do anything to make  
2094 broadband more affordable. One of the key concerns that we  
2095 have is what has been stated several times by Mr. Pyne today  
2096 is that it is a negotiation with the operator. It is up to

2097 the operator to decide whether or not they want to take the  
2098 deal. That is one of our concerns that we are replicating  
2099 one of the chief concerns of the cable business model onto  
2100 the Internet and that distributors will decide what customers  
2101 can access. You know, I can choose to say no, I am not going  
2102 to do a deal and my customers can't get it or I can choose to  
2103 do a deal and all my customers have to pay for it. When in  
2104 the age of the Internet the great promise of the Internet was  
2105 that customers would have control. Customers would be able  
2106 to make choices more like more than ever before and this  
2107 model would take away that great promise of the Internet.

2108 Mr. {Doyle.} Yeah, thank you, Mr. Knorr.

2109 I want to ask Mr. Denson a question too and it is a  
2110 different question. Mr. Denson, we all agree that  
2111 competition is good for consumers. FiOS is rolling out in my  
2112 district and I understand why Verizon wants popular  
2113 programming in HD. I mean that kind of programming certainly  
2114 makes for a compelling package so it seems here that Verizon  
2115 supports government intervention for competitors to have  
2116 access to programming that incumbents own saying that it will  
2117 help competition. But if my memory serves me correct, I have  
2118 sat in this committee and watched Verizon oppose the CLEC  
2119 industry from line-sharing. You have opposed government  
2120 intervention to help small wireless carriers struggling

2121 because big wireless carriers have lengthy handset  
2122 exclusivity contract. And yesterday, your CEO reiterated  
2123 Verizon's opposition to net neutrality rules that would  
2124 ensure that companies offering competing services won't be  
2125 blocked. So those are all exclusivities that Verizon likes.  
2126 What makes this exclusivity that you want different?

2127 Mr. {Denson.} Well, I think the most important part of  
2128 this exclusivity is that it benefits the consumers and it  
2129 provides the consumers with the maximum amount of choice. If  
2130 we don't provide--it is not a choice for consumer. You are  
2131 from Pittsburgh and if you could not watch the Pittsburgh  
2132 Pirates or the Penguins in high definition.

2133 Mr. {Doyle.} I could probably go with not watching the  
2134 Pirates.

2135 Mr. {Denson.} Okay.

2136 Mr. {Doyle.} The Steelers might have been a better  
2137 pick, yeah.

2138 Mr. {Denson.} So let us take those Stanley Cup  
2139 Champions Pittsburgh Penguins, if you could not get the  
2140 Penguins in HD you might not choose Verizon even though we  
2141 will have a wealth of services and content and innovations  
2142 and applications that would make us all told a superior  
2143 service for consumer choice. The promise we like to make is  
2144 that every customer should want to consider or be in a

2145 position to consider FiOS and that is what is being defeated  
2146 if we don't have access to that highly valuable unique  
2147 regional sports network programming.

2148 Mr. {Doyle.} Thank you.

2149 I see my time is up, Mr. Chairman, thank you.

2150 Mr. {Boucher.} Thank you very much, Mr. Doyle.

2151 The gentleman from Georgia, Mr. Deal, is recognized for  
2152 5 minutes.

2153 Mr. {Deal.} Thank you, Mr. Chairman.

2154 Mr. Pyne, I think we have established a couple of things  
2155 and everything seems to revolve around sports it seems. The  
2156 ESPN360 is not available to on a subscriber basis over the  
2157 Internet to individuals. That is what you said, I believe.  
2158 It is only available if a Internet provider chooses to  
2159 participate with you and I assume that when you negotiate  
2160 with that ISP that it is on a per customer basis which your  
2161 fee is based. Would that be a logical assumption?

2162 Mr. {Pyne.} Per ISP customer?

2163 Mr. {Deal.} Yes.

2164 Mr. {Pyne.} That is correct.

2165 Mr. {Deal.} Okay, but that so far you don't think  
2166 anybody is passing that cost on to their customers.

2167 Mr. {Pyne.} Correct.

2168 Mr. {Deal.} They are absorbing it. It is interesting

2169 that it appears that ESPN360 is being sold to potential ISP  
2170 providers on the basis that it gives them a competitive  
2171 advantage over perhaps their competition. But on the  
2172 television side it appears that ESPN doesn't seem to follow  
2173 that same model because it is under current statutes a cable  
2174 operator or a satellite provider cannot simply enhance their  
2175 offerings in a package that would include niche tiers or a  
2176 per channel basis in order to gain competitive advantage over  
2177 their competition. Why is it that it works in one  
2178 environment as a free market opportunity but in the other  
2179 environment it is not considered to be that?

2180 Mr. {Pyne.} I am not sure if I understand. What do you  
2181 mean by in the other environment?

2182 Mr. {Deal.} Well, let us just take the television  
2183 environment in terms of cable operators cannot simply just  
2184 pick and choose their packages they are required to take.

2185 Mr. {Pyne.} Actually I don't think that is true. No,  
2186 if people would like ESPN they don't have to take any other  
2187 ESPN, Disney or even ABC service. We have been--in fact,  
2188 they have affidavits that I have submitted that if you want--  
2189 there are two most popular services, Disney Channel and ESPN.  
2190 There is absolutely nothing else a cable operator, telco or  
2191 satellite provider needs to take. We make it available on  
2192 that basis.

2193 Mr. {Deal.} Mr. Knorr, does that reconcile with what  
2194 you are?

2195 Mr. {Pyne.} And in fact just to add I mean we have  
2196 several hundred situations where people just take ESPN around  
2197 this country.

2198 Mr. {Deal.} Mr. Knorr?

2199 Mr. {Knorr.} To my knowledge, I mean there is  
2200 significant financial incentives to take the bundle of  
2201 services that ESPN offers on the video side and so I believe  
2202 that most operators choose to take that route.  
2203 Fundamentally, whether it is the Internet side and ESPN360 or  
2204 on the programming side and this is true for most of the top  
2205 programmers, there is very little options in how we can  
2206 package that content to our customers.

2207 Mr. {Deal.} Now, with regard to all of this, let me  
2208 preface what I am about to ask by saying I believe that  
2209 negotiations are private in private business. They should  
2210 remain private however we are operating in somewhat of a  
2211 public domain. Mr. Moore alluded to some of the problem  
2212 here. Do you think that the FCC should have some  
2213 availability to know what the negotiations are among  
2214 providers and carriers in terms of determining if in fact the  
2215 rules, general rules of fairness are being followed even  
2216 though the public may not have access to that, even though

2217 individual subscribers may not know what a per channel cost  
2218 is being allocated to them on? Is there reason to say that  
2219 this is a type of transparency at the FCC that we currently  
2220 don't have but we should be encouraging? Mr. Moore, I will  
2221 start with you since that is sort of in an area you have  
2222 alluded to.

2223         Mr. {Moore.} I think generally speaking, you know,  
2224 transparency is a good thing when we are dealing with the  
2225 public airwaves and when we are dealing with content  
2226 providers and so on. I don't know that I can speak to that  
2227 specific example of whether the FCC should have the authority  
2228 to look into all the details of these kind of negotiations.  
2229 I think I would want to probably confer with the Writers'  
2230 Guild and sort of study that before I gave you a definitive  
2231 answer.

2232         Mr. {Deal.} Okay, I will try to--yes, Mr. Thierer?

2233         Mr. {Thierer.} Congressman Deal, I think you really hit  
2234 the nail on the head when you said first and foremost that  
2235 sports is really what is the thorn in our side here on so  
2236 many of these issues right but I hope that the committee  
2237 doesn't lose side of the fact that that is a very, very  
2238 unique problem and that we don't have this problem in most  
2239 other types of content. Second of all, to the extent it is a  
2240 problem I think we need to understand that some of these

2241 fields might be--the role of the FCC could be more of a, to  
2242 rip a page from baseball if you will, could be baseball style  
2243 arbitration. Bring parties together, ask them to sit at a  
2244 table and hammer out a deal and then maybe set a clock and  
2245 set some sort of an independent person or group together  
2246 there as an arbitrator to help them hammer out that deal if  
2247 they don't reach it at the end of a certain timetable. But  
2248 one final point let us not lose sight of the fact that  
2249 exclusivity also has competitive benefits. Many of these  
2250 regional sports networks would have never existed without a  
2251 fair degree of exclusivity and I do wonder would a national  
2252 service like DirecTV have the legs it does today without  
2253 exclusivity for the Sunday ticket. It really does help  
2254 create new forms of entertainment and new platforms that  
2255 weren't there before. These things did not exist 10-15 years  
2256 ago. Are new problems created because of that? Yeah, it is  
2257 true especially about sports but that is again I think a  
2258 unique situation.

2259       Mr. {Deal.} Well, I would suggest it is broader than  
2260 that that the packaging and bundling is a much broader issue  
2261 that goes far beyond just sports programming but my time is  
2262 up.

2263       I will yield back.

2264       Mr. {Boucher.} Thank you, Mr. Deal.

2265           The gentleman from Vermont, Mr. Welch, is recognized for  
2266 a total of 7 minutes.

2267           Mr. {Welch.} Thank you, Mr. Chairman, thank you very  
2268 much.

2269           Mr. Rutledge, your company owns the sports teams and  
2270 does the distribution and broadcast, is that correct?

2271           Mr. {Rutledge.} Cablevision owns the Knicks and  
2272 Rangers.

2273           Mr. {Welch.} Right, so if I am in New York and I want  
2274 to watch the Knicks and Rangers I have to get it through you?  
2275 How does that work?

2276           Mr. {Rutledge.} No, it works this way. There are in  
2277 the service footprint that Cablevision serves, we are a cable  
2278 TV company as well, there are four providers of Knicks and  
2279 Rangers and all of the other sports services that are sold in  
2280 the market. Verizon, for instance, has access to every  
2281 Knicks and Rangers game.

2282           Mr. {Welch.} Right, but if I want to get it in HD, I  
2283 have to get it from you?

2284           Mr. {Rutledge.} Yes and they don't have it in the HD.

2285           Mr. {Welch.} So why won't you allow Verizon or others  
2286 to get it in HD?

2287           Mr. {Rutledge.} I do allow others but I want to have a  
2288 competitive differentiation against Verizon so that I can be

2289 more successful.

2290 Mr. {Welch.} So that is good for you but not  
2291 necessarily for the consumer.

2292 Mr. {Rutledge.} Well, it is for the consumer to have  
2293 companies that create products that are new and innovative.  
2294 We invested and created this high definition regional sports  
2295 programming service more than 10 years ago and we invested  
2296 and created it, distributed it.

2297 Mr. {Welch.} All right, I get it.

2298 Mr. {Rutledge.} And we are trying to get our return to  
2299 it.

2300 Mr. {Welch.} All right, Mr. Pyne, I just want to make  
2301 sure I understood this. You were asked about your position  
2302 on net neutrality. What I thought I heard you say and I just  
2303 want to confirm this is that you want to deal with the piracy  
2304 question because that is your product but if that is dealt  
2305 with Disney favors net neutrality or opposes it? I just want  
2306 some clarification on that.

2307 Mr. {Pyne.} I mean traditionally we have not been  
2308 proponents of net neutrality. We haven't really been as part  
2309 of the discussion but we do support it to allow ISPs to  
2310 manage their networks, particularly around piracy.

2311 Mr. {Welch.} I am not sure I understand you. So you  
2312 have a piracy issue but dealing with that.

2313 Mr. {Pyne.} Well, the piracy is to make sure that.

2314 Mr. {Welch.} I understand what that is. You got to  
2315 protect your product. You invested in it and people are  
2316 stealing it and I have some sympathy for that but dealing  
2317 with that are you saying yes or no that you are for net  
2318 neutrality as you were asked Congresswoman Blackburn?

2319 Mr. {Pyne.} I think we support it to the extent we  
2320 believe ISPs should have the ability to manage their  
2321 networks.

2322 Mr. {Welch.} Okay, I come from Vermont where we have a  
2323 lot of small rural carriers, Waitsfield Champlain Valley  
2324 Telecom probably has, I don't know, fewer than a thousand  
2325 folks and it is very, very tough for them to bring cable  
2326 programming and Internet services to those rural markets that  
2327 aren't served by the larger cable companies, tough markets to  
2328 serve. There is a lot of difficulty in getting affordable  
2329 terms for programming services that make that business even  
2330 more difficult and I heard some conversation back and forth  
2331 really between Mr. Pyne and Mr. Knorr and I want each of you  
2332 to comment on what the obstacles are, and perhaps you too,  
2333 Mr. Moore, as well, but, Mr. Knorr, why don't we start with  
2334 you? What are some of the impediments that have to be  
2335 addressed in order to provide fair access to the consumer?

2336 Mr. {Knorr.} Well, I think especially when it comes to

2337 retransmission consent, I think some type of balancing of the  
2338 equation that is one thing that was brought up in testimony  
2339 by ESPN is we have a buying cooperative but that buying  
2340 cooperative is for national content. It does not and cannot  
2341 scale to market by market broadcasters to negotiate those  
2342 agreements.

2343         Mr. {Welch.} And I think what you had said in your  
2344 testimony if I remember is that you have got to take it or  
2345 leave it type of document that I guess is faxed to you or  
2346 submitted?

2347         Mr. {Knorr.} Correct, yeah, for the smaller operators,  
2348 yeah, often it is a faxed document or just a letter that  
2349 comes in the mail with the election notice that says here is  
2350 the terms and so I think injecting some fairness and some  
2351 transparency giving us the ability that other DBS operators  
2352 have to tier broadcasters would be one negotiating element.  
2353 And then also for many small broadcasters who are outside the  
2354 exclusion zone that broadcasters have and if they had the  
2355 right to pick neighboring channels as well, I think that  
2356 would help competition.

2357         Mr. {Welch.} Okay, let me go to Mr. Pyne, just I want  
2358 to add something too to you. You were talking about the  
2359 ESPN360 and that you don't get involved in how that is priced  
2360 by the people you sell it to but the bottom line is if the

2361 buyers can't absorb the cost indefinitely without passing  
2362 that on obviously so isn't there down the road a problem that  
2363 ultimately will result in higher cost to the consumers in  
2364 order to have access to this with the approach that Disney is  
2365 taking on this?

2366         Mr. {Pyne.} I don't believe so. I am sorry. I don't  
2367 believe so for the following reason is that as broadband has  
2368 still not fully penetrated in the United States and just a  
2369 point is if because an ISP has a very strong programming  
2370 service like ESPN360 and it gets additional subscribers, it  
2371 actually will get more margin or profit margin to help in  
2372 fact reduce its overall.

2373         Mr. {Welch.} So if I understand what you are saying, it  
2374 helps on the build out but, you know, I think Mr. Doyle had a  
2375 fair question. If he wants that service and is going to pay  
2376 79 cents for it or \$7.90 and I don't want it, as a consumer  
2377 my preference is to let Doyle pay and not me help him pay.  
2378 Mr. Knorr.

2379         Mr. {Knorr.} Well, I mean I would like to answer that  
2380 directly. I mean we have in our community with very high  
2381 adoption, I think it might be as high as 80 percent.  
2382 Fundamentally, I don't think there is any operator and we  
2383 have several right here that feel that the only impediment to  
2384 broadband adoption is at this point is price sensitivity. I

2385 don't think any--there is customers out there that are  
2386 requiring incentive to get onto the Internet. I mean  
2387 everybody is getting on the Internet. I mean the Internet  
2388 has been growing exponentially.

2389 Mr. {Welch.} Okay, I only have another minute and I  
2390 want to go to Mr. Moore. I happen to be somebody who thinks  
2391 that the programming that we had before was an awful lot  
2392 better than the programming we are having now and you  
2393 mentioned a number of things in your very good testimony.  
2394 The tying and bundling you mentioned was a bit of a problem  
2395 and I wonder if you can elaborate on that?

2396 Mr. {Moore.} Well, what is happening is that as you are  
2397 aware in bundling, you know, the operators are given here is  
2398 a bundle of programs, channels that you have to take, you  
2399 know, take it or leave it because you can't just a la carte  
2400 differentiation them out.

2401 Mr. {Welch.} Right.

2402 Mr. {Moore.} And what we have discovered is happening  
2403 is that some of those channels are being occupied by  
2404 essentially just filler. They are weather maps with a crawl  
2405 going across the bottom. They are sub-genres of music videos  
2406 in some cases and these channels basically have national  
2407 viewership in the tens of thousands and a viable cable  
2408 operation needs at least, a cable channel needs around

2409 200,000 to just to make it sort of a going concern. So when  
2410 you look at what they are actually providing and the numbers  
2411 of people that are actually watching this and the money that  
2412 they are making, it is clear that they are not actually a  
2413 business opportunity. They are not actually being  
2414 innovative. They are simply squatting on the space and  
2415 keeping other people off the dial.

2416 Mr. {Welch.} Okay, thank you.

2417 I think my time is up, Mr. Chairman.

2418 Mr. {Boucher.} Thank you, Mr. Welch.

2419 The gentleman from Massachusetts, Mr. Markey, is  
2420 recognized for 5 minutes.

2421 Mr. {Markey.} Thank you, Mr. Chairman, very much.

2422 Mr. Denson, the program access rules specifically are  
2423 designed to prohibit discrimination and they provide for a  
2424 case by case enforcement regime to stop any such  
2425 discrimination. Moreover, Verizon supported extending the  
2426 program access rules when they are scheduled to expire  
2427 asserting that nondiscrimination rules were needed. And so  
2428 for me as I listen to this discussion and I can understand  
2429 why Verizon would vigorously oppose any efforts to deny it  
2430 access to programming particularly sports programming,  
2431 although my concern for people's access to Yankee games would  
2432 only be received with crocodile tears but the principle is

2433 the same, okay, for any community in American for their  
2434 sports teams. So I understand that debate but the principle  
2435 of nondiscrimination is extremely important to me and to our  
2436 economy. So what I would ask you to do is square that up  
2437 then with the position that Verizon is taking on the question  
2438 of nondiscrimination in the net neutrality bill and the net  
2439 neutrality rulemaking because I kind of feel that there  
2440 should be a presumption that if you are going to support  
2441 nondiscrimination over here because it is, you know, good for  
2442 the company, that the same kind of principle will then be  
2443 adopted when it comes to other things that are unrelated to  
2444 that issue but the principle is the same. So could you talk  
2445 about how you square that circle internally in terms of your  
2446 views on nondiscrimination?

2447 Mr. {Denson.} Yes, to be sure that area is outside of  
2448 my area of expertise. I am video content across multiple  
2449 platforms. I program all of the platforms at Verizon,  
2450 broadband, wireless and the FiOS Service but I am not  
2451 involved in our net neutrality, however what I would say is  
2452 that for us it is about the competition is for benefit,  
2453 direct benefit to the customer and that our position on the  
2454 regional sports network is that it actually precludes a  
2455 customer from making a choice that they might otherwise want  
2456 to make or just consider another provider that they might

2457 otherwise want to.

2458           Mr. {Markey.} No, and I appreciate that but you can  
2459 understand how someone who sat on this committee for 33 years  
2460 and understands that there are protections on the books for--  
2461 AT&T lobbied me for 10 years to kind of mandate that they be  
2462 allowed reasonable cost to deliver long distance service into  
2463 the network and they begged me, you know, and I worked with  
2464 them to give that to AT&T in their access to the local loop  
2465 so that they could provide as a long distance company more  
2466 competition to Verizon and towards other companies. And so  
2467 when AT&T and Verizon get together and start to because they  
2468 were bitter enemies and we are in a new era, you know. It is  
2469 kind of like, you know, just got to adjust to this changing  
2470 terrain and now they are aligned against allowing for this  
2471 open Internet. What Mr. Moore next to you, he supports net  
2472 neutrality. Mr. Pyne says that he could be open-minded to it  
2473 as long as illegal activity, as long as piracy is not allowed  
2474 and in my bill and I don't think there is any of us who have  
2475 ever advocated that illegal activity should be condoned. In  
2476 fact, it should be punished to the full extent of the law.  
2477 And you are here, Mr. Denson, kind of with a portfolio that  
2478 does not give you authority for fear of jeopardizing your job  
2479 to speak on net neutrality or can you speak on net neutrality  
2480 at all?

2481           Mr. {Denson.} I cannot and I think the best way that I  
2482 can portray it here in terms of what I do and in my testimony  
2483 today is that the Red Sox and the Bruins and the Celtics are  
2484 each owned by different entities and if you had to choose  
2485 between or among cable providers or satellite providers  
2486 because each one had an exclusive right on one of those  
2487 particular teams, that might be an unfair choice. You might  
2488 not want to have to make your determination based upon that  
2489 so that is what I am testifying on today.

2490           Mr. {Markey.} No, and I appreciate that, Mr. Denson,  
2491 and back in 1992 when the Chairman and I were working on the  
2492 programming access rules we were thinking about how do we get  
2493 HBO and ESPN, I think there was only one ESPN then, and other  
2494 cable programs over to the satellite dish industry. Because  
2495 I think more than any reason because the Chairman was getting  
2496 tired of having eight foot size dishes try to get zoning  
2497 variances all over his district. So if we could get that  
2498 programming access maybe we could get an 18 inch dish and we  
2499 have 30 million people with it. And you kind of evolve to  
2500 this question now that you are talking about which is the  
2501 Yankee question or, you know, the Bruins question or whatever  
2502 it is which is just kind of a perfect form of that same  
2503 question that HBO, ESPN question back then. You just have to  
2504 keep--how far do you take nondiscrimination? How far do you,

2505 you know, do you take it but you are advocating for kind of  
2506 an outer limit definition here and all I am saying is that  
2507 the same thing is true in net neutrality. What we are trying  
2508 to do I would say to your company through you though it is  
2509 not your responsibility that what we are trying to do is to  
2510 protect those startups, those Steve Jobs and Serge Gurins and  
2511 Larry Pages of today who are in the garage and they have got  
2512 a gadget or they have got an application that they would want  
2513 to get out there and they got some ideas, you know, and that  
2514 is where the revolutions come from. And we are just trying  
2515 to make sure that the marketplace doesn't stultify, that is  
2516 we shouldn't have a world where you innovate by permission.  
2517 Okay, you should be able to innovate and you shouldn't be  
2518 able to be stultified and that is the point that I would  
2519 make.

2520 I thank you, Mr. Denson, for being here. I thank all  
2521 the rest of you, as well.

2522 I thank you, Mr. Chairman.

2523 Mr. {Boucher.} Thank you very much, Mr. Markey.

2524 The gentleman from Florida, Mr. Stearns, you have asked  
2525 questions I think. I am going to ask unanimous consent that  
2526 we put two documents in the record for today's hearing. One  
2527 is a letter from Wells TV. The other is a response from  
2528 Comcast to the letter from Wells TV and without objection

2529 these items shall be admitted to the record.

2530 [The information follows:]

2531 \*\*\*\*\* INSERT 7, 8 \*\*\*\*\*

2532           Mr. {Boucher.} I want to say thank you to our witnesses  
2533 this morning and I will say again that this hearing from my  
2534 perspective is entirely informational. We wanted to get the  
2535 benefit of your views on the current state of competition in  
2536 the video marketplace. You have provided that well. We are  
2537 well-informed on the subject thanks to you and I think some  
2538 additional questions are going to be submitted to you. Ms.  
2539 Blackburn indicated her intention to submit questions to at  
2540 least two of the witnesses. When they are received, please  
2541 submit them back to us promptly. We will hold this record  
2542 open for about a two-week period in order to receive your  
2543 responses. So with the committee's thanks to our witnesses  
2544 this morning, this hearing stands adjourned.

2545           [Whereupon, at 1:05 p.m., the Subcommittee was  
2546 adjourned.]