

**SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR SENATE JUDICIARY
COMMITTEE HEARING "REAUTHORIZATION OF THE SATELLITE TELEVISION
EXTENSION AND LOCALISM ACT," MARCH 26, 2014**

Questions for John Bergmayer (Public Knowledge)

Do you see any of the Title 17 statutory licenses as necessary to foster competition in the video market? Why or why not?

Compulsory licenses are needed in some markets to ensure that a wide variety of competitors have access to content, and to ensure that all creators are paid at least a fair, baseline rate for their work. However, the video compulsory licenses may have outlived their usefulness. The existence of cable channels demonstrates that copyright and contract are enough to ensure that programmers can package and MVPDs can deliver a variety of video programming.

However, in the short term, the video compulsory licenses continue to be necessary because of the business practices that have been built up around them. Their reform should take place gradually. Finally, while they still exist they should be technology-neutral: cable, satellite, and online video should not operate under different copyright regimes.

What are your views on how the video marketplace has changed since Congress last authorized STELA? What has happened in terms of technology, competition and pricing for consumers?

There are indications that increased competition from online video is possible. One interesting trend is that growing numbers of younger viewers are "cord-nevers" who never get cable subscriptions to begin with. This is potentially a more significant trend than cord cutters.

Beyond this, though, the overall competitive picture is not very different. Cable continues to dominate video delivery and DBS continues to attract a large number of subscribers on a nationwide basis (though is often behind cable in markets where they directly compete). All of the reasons Congress reauthorized STELA before apply today.

What is the proper role for Congress in responding to marketplace disputes in the communications industry?

Congress sets the rules of the road and should revisit them as necessary. It is proper for Congress to gather information as to the functioning of the marketplace so that it can see if its rules are working. Congress should also ensure that the FCC is doing its job of protecting consumers and competition and is using its statutory powers effectively.

Individual members of Congress can and should weigh in on particular disputes to ensure that the needs of the constituents are not being trampled by disputes between companies, as well as encouraging the FCC to use its authority to intervene when appropriate.

It's been reported that incidents of television programming blackouts have been steadily increasing, from 12 blackouts in 2010 to over 100 blackouts in 2013. What do you believe is

causing this trend? Is this evidence of a system that is broken, or just a function of the free market?

In the past, MVPDs could easily pass along rate increases to their subscribers. But while cable bills continue to rise there is an increasing recognition that many consumers are near the breaking point. Negotiations are much tougher now because they are getting closer to becoming a zero-sum game.

Additionally, content negotiations in the past often involved carriage of extra cable channels: that is, to get rights for a particular broadcast network or popular cable channel, an MVPD would agree to also carry one of the programmers newer, untested channels. But it has become more difficult to launch a new cable channel in this environment, since there already are so many of them.

If local programming is truly valuable to consumers, some argue that the free market alone is sufficient to ensure that this content will be negotiated for and distributed to consumers who are willing to pay for it. Do you agree or disagree with this statement? Why or why not?

As a general matter this is true, though the free market alone might not be enough to ensure that the needs of minority communities, low-income viewers, or rural residents will be met. Nor is it clear that the free market alone will produce adequate public affairs or educational programming. That said, the free market by itself should be enough to ensure most quality programming is created and distributed.

But the current market is not a “free” market: it operates under an accretion of rules that Congress and the FCC have created over the decades. These rules prevent the market from evolving and from better adapting to viewer demand. Congress should first reform these rules in a pro-competitive manner (by increasing competition from new platforms) to ensure that the beneficiaries of the current regulatory system are not able to simply lock in their current advantages permanently.

Do you believe that any laws currently affecting the video marketplace are unnecessarily creating higher costs for consumers?

Yes. First, the different treatment of MVPDs vs. online providers limits choice and keeps video subscription bills high. Second, protectionist rules—such as those that guarantee local broadcasters territorial exclusivity for certain content—enshrine into law business arrangements that may no longer serve a purpose.