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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
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June 22, 2023

The Honorable Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 L St. NE
Washington, DC 20554

Dear Chairwoman Rosenworcel:

I write to urge the FCC to update its record in *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261, which sought comment on whether the definition of “multichannel video programming distributor” (MVPD) should be updated to reflect the growing amount of video services that are provided over the Internet.¹

In the nearly ten years since the FCC launched the proceeding, the video service landscape has changed dramatically. However, today when viewers have more options for what content to watch (and which platform to watch it from), local broadcasts remain the recognized expert and dominant source for local news for many Americans. Moreover, local broadcast news has increased its content output in recent years. There is 90 percent more local news being broadcast than 20 years ago,² producing an average of more than six hours of programming per weekday.³ Local stations provide news that is essential to our nation’s security. They keep the public informed and strengthen our democracy with on-the-ground reporting that counters misinformation and holds the powerful accountable.

Conversely, during this same time period, more and more households have made the decision to “cut the cord,” as the penetration rate for traditional MVPDs in the United States has dropped from 88.3 percent in 2013 to 51.6 percent in 2022.⁴ In their place, linear television streaming services, also known as virtual MVPDs (vMVPDs), are quickly growing subscribers. For example, when this proceeding was first noticed in 2014, none of the top five linear television streaming services (e.g., YouTube TV, Hulu Live, Sling TV, DIRECTV Stream, Fubo TV) even

¹ *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, 29 FCC Rcd 15995 ¶1 (2014) (“2014 NPRM”).

² Knight Foundation, *Local TV News and the New Media Landscape: Part 1 The State of the Industry* 7 (Apr. 5, 2018), <https://knightfoundation.org/reports/local-tv-news-and-the-new-media-landscape/> (“Knight Foundation Report”).

³ *Local TV News Fact Sheet*, Pew Research Center (July 13, 2021), <https://www.pewresearch.org/journalism/fact-sheet/local-tv-news/>.

⁴ Colin Dixon, *Traditional pay TV US home penetration to fall below 50% in 2023*, nScreenMedia (Mar. 6, 2023), <https://nscreenmedia.com/traditional-pay-tv-us-home-penetration-2023/>.

existed.⁵ However, by 2020, live television viewing via streaming services accounted for 16 percent of live television viewers.⁶ Today, there are nearly 14 million linear television streaming service subscribers, which equals those of Charter Communications, the second largest cable operator and traditional MVPD in the United States.⁷

Tens of millions of Americans continue to rely on local broadcasters for news about their communities.⁸ While local news is essential to our communities, stations are not compensated for the full value of their content when transmitted via television streaming services. The current regime weakens local broadcasters' bargaining power and ability to negotiate directly with these services, which is contrary to good faith negotiation requirements of Section 325 of the Communications Act, and denies them fair compensation for their content. As result, local broadcasters estimate that they receive 10-20% less for their content when it is distributed by linear television streaming services. Local broadcasters deserve a level playing field and fair compensation for their work. In 2019, Congress again affirmed the importance of making sure people have access to local news when it allowed the Satellite Television Extension and Localism Act Reauthorization (STELAR) to expire, making good faith negotiations a permanent requirement for satellite operators.

Failure to be fully compensated for their content compounds the steady decline in revenue local broadcasters have experienced as advertisers have also migrated online. For example, between 2000 and 2018, local television stations' advertising revenue fell by 40 percent.⁹ We must ensure that new technological trends do not further endanger our local broadcasters, and so it is critical that the FCC consider whether the current retransmission consent model is sustainable and continues to benefit our local communities.

I understand the FCC has been monitoring these developments and meeting with stakeholders.¹⁰ Refreshing the record would complement this work by allowing all stakeholders to weigh in through an open, transparent process. The updated record also would provide important insight to Congress, the FCC, and other federal agencies regarding the current video marketplace and policy landscape, so that we can better understand the issues and determine whether legislative or regulatory action is necessary.

⁵ November 2022 DIRECTV Video Flow Share Report, November 2022 Leichtman Research Group estimates.

⁶ Ben Munson, *U.S. vMVPD subscribers will total 23M by 2024: report*, FierceVideo (Jul. 8. 2021), <https://www.fiercevideo.com/video/u-s-vmvdp-subscribers-will-total-23m-by-2024-report#>.

⁷ See *Charter Announces Fourth Quarter and Full Year 2022 Results*, Charter Communications (Jan. 27, 2023), <https://ir.charter.com/static-files/3b8c592e-e16f-4ad4-a4b3-0e566143c698> (reporting 14,497 video subscribers as of Dec. 31, 2022). See also Ben Munson, *Total U.S. vMVPD subscribers pass 14M in Q3*, Fierce Video (Jan. 4. 2023), <https://www.fiercevideo.com/video/total-us-vmvdp-subscribers-pass-14m-q3> (estimating 14 million vMVPD subscribers in Q3 2021).

⁸ Knight Foundation Report.

⁹ "Public Workshop on Competition in Television and Digital Advertising," National Association of Broadcasters to Assistant Attorney General Makan Delrahim (June 17, 2019), available at [https://www.nab.org/documents/filings/CommentsOnPublicWorkshopOnCompetitionInTelevisionandDigitalAdvertising\(6-17-19\).pdf](https://www.nab.org/documents/filings/CommentsOnPublicWorkshopOnCompetitionInTelevisionandDigitalAdvertising(6-17-19).pdf).

¹⁰ Letter from Jessica Rosenworcel, Chairwoman, FCC, to the Honorable Charles Grassley, U.S. Senate, at 2 (Mar. 24, 2023), <https://docs.fcc.gov/public/attachments/DOC-392183A2.pdf>.

Indeed, several questions remain open from the 2014 proceeding including whether the FCC had the legal authority to interpret the definition of MVPD to include linear television streaming services. On this issue, some stakeholders asserted that the FCC should interpret the definition of an MVPD in Section 602 of the Communications Act to be flexible, technology neutral, and not tied to a specific methodology for delivering programming.¹¹ If the FCC adopted this interpretation of the statute, the FCC could reclassify linear television streaming services under existing law as MVPDs. In fact, in its 2014 *Notice of Proposed Rulemaking (NPRM)*, the FCC tentatively reached the latter conclusion, citing existing law and FCC precedent.¹² Accordingly, we request that you refresh the record on this point, and issue a final order to explain whether Section 602 of the Communications Act allows the definition of MVPDs to include linear television streaming services, also known as vMVPDs.

Finally, we agree that Congress should create a new statutory copyright regime for linear television streaming services so that broadcasters are more easily compensated for their content. However, it is not necessary for the FCC to wait to take action before the new copyright laws are enacted. In the absence of a statutory copyright license for online video programming, linear television streaming services would be required to negotiate directly with local broadcasters under current good faith negotiation requirements of the Communications Act, which would lead to agreements that better reflect the value of broadcasters' content.

Given the significant, ongoing changes to the video marketplace, and the unsettled questions from the 2014 proceeding, I urge the FCC to refresh the record in MB Docket No. 14-261 and issue a final order reflecting its interpretation of Section 602 of the Communications Act. An updated record will help ensure that the Commission's rules for video service remain relevant to the state of the industry today and are consistent with promoting the public interest in this vital sector, as well as provide an opportunity for fresh voices to weigh in and allow for a thorough analysis to help inform the FCC's and Congress's next steps.

Sincerely,



Maria Cantwell
United States Senator

¹¹ See, e.g., Comments of Verizon, MB Docket No. 14-261, at 3-4 (filed Mar. 3, 2015); Comments of Public Knowledge, MB Docket No. 14-261, at 3-18 (filed Mar. 3, 2015).

¹² 2014 NPRM ¶¶ 17-22.