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Hearing on
"The Reauthorization of STELAR"

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Consumer Reports[1] (CR) thanks Chairman Wicker, Ranking Member Cantwell, and the Members of the Senate Commerce Committee for inviting me to testify on whether or not to reauthorize the STELAR Act, and to suggest other targeted video marketplace reforms Congress should consider as part of this work. A golden opportunity exists for lawmakers to enact straightforward policy changes that would directly and immediately help consumers in a STELAR reauthorization bill passed before the end of this year, a reauthorization that CR strongly supports.

At a time when consumers enjoy more and more choices in the video marketplace thanks to the increasing number of online video distributors, consumers also, almost paradoxically, find themselves with less power as huge tech companies control more and more of the choices that impact their everyday lives. As our nation grows increasingly concerned over the out-sized influence of companies like Google, Amazon, Facebook and others, we must not lose sight of the challenges consumers continue to face in the more traditional video marketplace, where nearly 94 million Americans subscribe to pay-TV service from an MVPD (multichannel video programming distributor) be it a cable, satellite, or telephone operator that includes telecom giants like AT&T (which owns DIRECTV), Comcast, Verizon, Charter, and others.[2]

Indeed, STELAR in its earliest forms, from the Satellite Home Viewer Act (SHVA) to the Satellite Home Viewer Improvements Act (SHVIA) and subsequent versions, was a pro-consumer and pro-competition law.[3] By permitting direct broadcast satellite (DBS) companies to offer consumers broadcast programming, especially local broadcast networks, satellite operators like DIRECTV and Dish Network were better able to compete with the incumbent cable companies that otherwise faced little, if any, direct competition. Consumers wanted access to their local broadcast channels, and with the passage of SHVIA, DBS companies were finally able to legally provide them in a cost-effective manner.

Though the name changed every five years, from SHVIA to SHVERA to STELA, and finally to STELAR in 2014, the reauthorization of key provisions scheduled to sunset has permitted Congress to improve the law in ways that benefit competition and consumers alike.[4]

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[1] Consumer Reports (CR) was founded as the Consumers Union of America in 1936 and became known by millions of Americans for our award-winning magazine *Consumer Reports*. In recent years, our overall organization transitioned to the name Consumer Reports. Consumer Reports is a non-profit organization with more than six million members that works for a fair, safe, and transparent marketplace, fueled by our trusted research, journalism, advocacy, and insights.

[2] Federal Communications Commission, *Consolidated Communications Marketplace Report*, Report, GN Docket No. 18-231, FCC 18-181 (Dec. 26, 2017) *Available at* https://docs.fcc.gov/public/ attachments/FCC-18-181A1.pdf.

[3] Satellite Home Viewer Act of 1988, Pub. L. No. 100-667; Satellite Home Viewer Act of 1994, Pub. L. No. 103-369; and Satellite Home Viewer Improvement Act of 1999, Pub L. No. 106-113, App. I.

[4] *Id. See also* Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447; Satellite Television Extension and Localism Act of 2010, Pub L. No. 111-175; and STELA Reauthorization Act of 2014, Pub. L. No. 113-200.

Rather than revisiting this debate again in the future, expiring provisions in STELAR should be made permanent, namely the Section 119 "distant signal" license[5]—a compulsory copyright license that permits satellite companies to import an out-of-market broadcast channel into a market where the local channel is unavailable—and the "good faith" requirements[6] attached to retransmission consent negotiations which permit the Federal Communications Commission to adjudicate programming carriage disputes between broadcasters and MVPDs. The reauthorization legislation we are discussing today also provides Congress a legislative vehicle to address an increasingly expensive harm experienced by consumers in the video marketplace: the proliferation of company-imposed fees in pay-TV bills.

***STELAR Protects Nearly a Million Unserved American*s**

We must first consider the current debate surrounding STELAR's reauthorization in 2019. Even though this would lead to a sudden disruption of television service to hundreds of thousands of consumers, the National Association of Broadcasters (NAB) has urged Congress to let STELAR expire at the end of this year.[7] And despite broadcast channels being offered to consumers who are otherwise unable to receive them, NAB asserts that the distant signal license has provided satellite operators like DIRECTV a disincentive to provide local broadcast networks into all 210 local markets. To be sure, satellite companies were permitted by the 1999 version of STELAR (SHVIA) to provide local broadcast channels into their local markets (also known as "local-into-local" service) under the Section 122 compulsory copyright license.[8] But presumably in a few cases, it is less expensive to import one or two distant broadcast networks into some areas versus offering the full complement of local broadcast channels given the "carry one, carry all (local channels)" mandate placed upon DBS operators who offer local networks.

There are a dozen local markets where DIRECTV does not provide local programming via satellite.[9] And in those particular markets, where consumers cannot receive their local broadcast channels over the air, they are considered "unserved" under the law. When a household is considered unserved in this instance, a DBS operator is permitted to provide those consumers that broadcast programming from a market other than their local one—a distant signal—if no other

[5] 17 U.S.C. Sec. 119.
[6] 47 C.F.R. § 76.65.
[7] *See* Statement of Gordon Smith, National Assn. of Broadcasters, *STELAR Review: Protecting Consumers in an Evolving Media Marketplace,* U.S. House of Representatives Energy and Commerce Committee Hearing, (June 4, 2019), https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony_Smith.pdf.
[8] 17 U.S.C. Sec. 122.
[9] John Eggerton, *Senators Press AT&T/DirecTV for Small-Market, Remote Area TV Signals,* Broadcasting and Cable (Mar. 14, 2019), https://www.broadcastingcable.com/news/senators-press-at-t-directv-for-small-market-remote-area-tv-signals.

local channels are being provided by that satellite company. The distant signal license is set to expire at the end of this year is what makes this service possible—not only for unserved consumers in rural areas, but also for recreational vehicle and commercial truck operators, who Congress decided years ago could be provided distant signals by their satellite company.

Recent estimates of the number of consumers who receive distant signals in this manner number 870,000.[10] Should Congress heed NAB's advice to simply let STELAR and the distant signal license expire, the only guaranteed outcome is that almost a million consumers will wake up on New Year's Day without the broadcast programming they received the day before, and have likely relied on for years. It is important to note that if DIRECTV wanted to provide local-into-local service into those markets, it could do so right now under current law, just as its DBS competitor, Dish Network, does. Nonetheless, what lawmakers and the broadcasters *cannot guarantee*, absent a change in current law, is that DIRECTV will fill that gap and choose to provide local networks to unserved consumers. Consumers would likely blame Congress—and not the NAB or their service providers—for taking away their broadcast channels. Consumers should not suffer restricted access to service without a guaranteed alternative.

Good Faith Requirements Should Be Stronger and Made Permanent

Other key provisions in STELAR that are set to expire this year concern good faith requirements upon broadcasters and MVPDs that apply to retransmission consent negotiations. Consumer Reports supports the strengthening of these requirements, starting with clearer guidance on what constitutes violative behavior. For example, broadcasters could be required to offer a local broadcast channel as a standalone offer, and not bundled with other channels, especially other broadcast network channels. Furthermore, the rising number of station blackouts—the consequence of an expired retransmission consent deal—could be mitigated if they were not allowed to occur right before must-see programming like the Super Bowl, or prohibited altogether when parties who cannot agree to new terms were instead subjected to binding arbitration.

The good faith rules can be improved along these lines and they should also be made permanent so long as the retransmission consent regime remains in place. This process, created by the 1992 Cable Act and subsequently applied to DBS operators, governs one method of how pay-TV operators obtain programming from broadcasters.[11] This system has resulted in the

[10] John Eggerton, *SCBA Pushes Permanent STELAR Renewal,* Broadcasting and Cable (Oct. 17, 2018), https://www.broadcastingcable.com/news/sbca-pushes-permanent-stelar-renewal.
[11] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, (1992)

skyrocketing of retransmission consent fees paid to broadcasters, the amount of which has been well-documented by the American Television Alliance (ATVA).[12]

However, what is lost in this furious debate and finger-pointing between broadcasters and MVPDs is that consumers end up bearing the overwhelming cost of the current system, where rising retransmission consent fees have directly led to the birth of company-imposed fees like the Broadcast TV Fee and others. These fees are the sole creation of the pay-TV industry, and cable operators plainly state that these fees are meant to help them recoup their rising programming costs. Although that explanation is straightforward enough, *the application of these fees is not*, and confused consumers are being made to pay increasingly expensive, non-optional fees because of a retransmission consent system that is broken.

Hidden Fees Should Be Eliminated

Consumer Reports recently examined this issue in depth, and the results of our work were published earlier this month in a report entitled, *How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service.*[13] Aside from assessing the cost of company-imposed fees in the video marketplace, the report also provides policy recommendations for Congress to consider for how best to mitigate the harm caused by these fees.

In the past decade, cable companies have begun to impose new fees for services previously included in the base rates that are typically quoted in advertisements. Consumer Reports' analysis of hundreds of pay-TV bills submitted to CR by consumers reveals that company-imposed charges—which, to be clear, are separate and apart from charges related to any government-imposed fees and taxes—now add almost 25 percent of the base price to the typical monthly cable bill. An analogy from the report helps illustrate the problem. Imagine your surprise if you were to learn in the supermarket check-out line that the box of cereal you wanted to buy was going to incur a Cardboard Box Surcharge and a Grain Refinery Fee, adding nearly 25 percent to the purchase price. It sounds absurd—but actually is not very different from what many consumers experience month-in, month-out, when they pay their cable bills.

Unsurprisingly, consumers get frustrated and angry when they discover these company-imposed fees on their bills. A recent CR nationally representative survey of 2,057 U.S. adults

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[12] *Broadcasters Use Old Myths in Attempt to Keep Video Marketplace Laws Old and Unfair,* American Television Alliance, January 2019, https://www.americantelevisionalliance.org/broadcasters-use-old-myths-in-attempt-to-keep-video-marketplace-laws-old-and-unfair/.
[13] A full copy of the report can be found at https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR-Cable-Bill-Report-2019.pdf. (CR Cable Bill Report)

asked about add-on fees across many industries, and found that nearly seven in 10 (69 percent) Americans who have used a cable, internet, or phone service provider in the past two years reported encountering unexpected or hidden fees.[14] And nearly all—96 percent—of those who reported having encountered hidden or unexpected fees in an industry that we asked about said they find them annoying. Two-thirds—64 percent—called them "extremely" or "very" annoying.

The depth of that frustration reflects the insidious market effect of company-imposed fees: they enable cable companies to camouflage price increases, confounding consumer efforts to comparison shop and to maintain household budgets. This happens in at least two ways. First, the fees are often imposed or increased with little notice and are often listed among a dizzying array of other charges, including government-imposed fees and taxes. Second, by passing along additional costs as "fees" and not building them into the core package price, cable companies are able to continue advertising relatively lower base rates. Thus, they can generate more revenue each month with little pushback from their customers—including even those who are locked into fixed-price promotional offers.

The combined effect is stretching consumer pocketbooks to the breaking point. CR's survey found that the telecom industry was the worst budget-buster of the ones we asked about. Nearly six in 10 (59 percent) Americans who encountered unexpected or hidden fees while using telecom services in the past two years say the fees caused them to exceed their budgets.

Make no mistake, the cost of company-imposed fees is not insignificant. The report's analysis of nearly 800 cable bills collected from consumers across the country shows that:

- Company-imposed fees, from Broadcast TV and Regional Sports Fees to Set-Top Box Rental Fees, add what amounts to a 24 percent surcharge on top of the advertised price.
- On average, the cable industry generates close to $450 per year per customer from company-imposed fees.
- Based on the total number of U.S. cable subscribers and our findings, cable companies might be making an estimated $28 billion a year from charging company-imposed fees.[15]

The problem is growing worse and more expensive because the cost of company-imposed fees continues to escalate. For example, in 2015, the nation's largest cable company, Comcast Corporation, charged consumers a $1-a-month Regional Sports Fee and $1.50-a-month

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[14] *WTFee?! Survey, 2018 Nationally Representative Multi-Mode Survey,* Prepared by the Consumer Reports Survey Research Department (January 3, 2019) (*hereafter* CR WTF?! Survey) available at: https://advocacy.consumerreports.org/research/wtfeesurvey/.
[15] *See* CR Cable Bill Report at p. 7 and FN 20.

Broadcast TV Fee, for a total of $2.50 per month. Those two fees combined now cost Comcast customers $18.25 a month.[16] That represents a more than 600 percent fee increase in four years. Similarly, Charter Communications raised the price of its Broadcast TV Surcharge three times in just the last year, meaning that particular company-imposed fee now costs consumers $13.50 a month, a 50 percent increase of what that fee cost a year ago—and far more than the $1 it was when first introduced in 2010.[17]

To make matters worse, new mandatory modem and router fees have also begun to saddle consumers with additional company-imposed fees. Many consumers have long been able to avoid monthly equipment rental fees by purchasing and using their own modems and routers. With rental fees costing up to $11 a month, they can often recoup their investment in less than a year.[18] But Frontier Communications recently began charging a leasing fee "for your Frontier router or modem—whether you use it or not," eliminating this money saving strategy.[19]

Finally, our report also uncovered new company-imposed fees being applied separately to internet access service. Bills issued by Frontier during the time period we studied contained a $2 Internet Infrastructure Surcharge, and RCN bills included a $2 Network Access and Maintenance fee. Both are mandatory. Adding new company-imposed fees to the cost of internet service is a disturbing new trend, and predicts a future where even internet-only consumers— including so-called cord-cutters, who generally look to save money by dropping cable TV service and relying only on internet service for their video entertainment—will not be safe from the growing burden of add-on fees.

Paying for TV and internet service in the 21st century should not be this fraught with frustration. But the problem is hardly confined to the cable industry. Airline passengers now routinely pay an extra fee to bring luggage on their trip, or to secure an assigned seat; hotel

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[16] Jon Brodkin, *Comcast Raises Cable TV Bills Again - Even if You're Under Contract*, ArsTechnica (Nov. 26, 2018), https://arstechnica. com/tech-policy/2018/11/comcasts-controversial-tv-and-sports-fees-rise-again-hit-18-25-a-month/.

[17] Luke Bouma, *Spectrum is Raising its TV & Internet Pricing (The Third Price Hike on Broadcast TV in 12 Months)*, Cord Cutter News (Sep. 7, 2019), https://www.cordcuttersnews.com/spectrum-is-raising-its-tv-internet-pricing-including-the-3rd-price-hike-on- broadcast-tv-in-12-months/. *See also* Karl Bode, Charter Starts Charging 'Broadcast TV Surcharge' So They Can Raise Rates, But Leave the Advertised Price the Same, DSLReports (Sep. 13, 2010), http://www.dslreports.com/shownews/Charter-Starts-Charging-Broadcast-TV-Surcharge-110316.

[18] Luke Bouma, *Comcast Is Raising Their Modem Rental Fee (The Good News Is You Don't Have to Pay It),* Cord Cutters News (Nov. 27, 2018), https://www.cordcuttersnews.com/comcast-is-raising-their-modem-rental-fee-the-good-news-is-you-dont-have-to-pay-it/.

[19] Jon Brodkin, *Frontier Customer Bought His Own Router—But Has to Pay $10 Rental Fee Anyway,* ArsTechnica (July 2, 2019), https:// arstechnica.com/information-technology/2019/07/frontier-customer-bought-his-own-router-but-has-to-pay-10-rental-fee-anyway/. *See also* https://frontier.com/helpcenter/categories/internet/installation-setup/compatible-routers-and-modems for Frontier's explanation of its mandatory router fee: "Frontier charges you a monthly lease fee for your Frontier router or modem—whether you use it or not."

"resort fees" are proliferating, even at properties that offer little more than a place to sleep; and buying tickets to a cultural or sporting event is nearly always accompanied by a non-optional service fee. The common thread of these fees is a nominal attachment to services that, not long ago, were commonly included in the base price. And as in the pay-TV industry, this practice obscures the true price of goods and services, rendering comparison shopping and budgeting a challenge, and sometimes impossible.

The good news is that Congress, beginning with the Commerce Committee, can act to solve this problem—in the video marketplace and elsewhere. A bill introduced by Senator Markey earlier this year, the TRUE Fees Act, would, among other things, simply require company-imposed fees to be included in the advertised price.[20] A version of this common sense fix was applied to the airline industry in 2011 in the form of the Full Fare Advertising Rule, and applying it to the telecom industry would inject real transparency to cable billing practices in the same fashion.

Consumer Reports recommends and supports the attachment of the TRUE Fees Act to whatever STELAR reauthorization bill is drafted and considered by this committee. Doing so would immediately bring relief to fee-exhausted consumers in the video marketplace, and would also continue and reinvigorate STELAR's (and its many names) tradition of being a pro-consumer measure.

[20] Truth-in-Billing, Remedies, and User Empowerment over Fees Act of 2019 or the TRUE Fees Act of 2019, S.510, 116th Cong. (2019).