Statement by

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The Reauthorization of STELAR

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Chairman Wicker, Ranking Member Cantwell, and members of the Committee, thank you for the opportunity to testify regarding reauthorization of the STELA Reauthorization (STELAR) Act of 2014. I am Denny Law, Chief Executive Officer of Golden West Telecommunications Cooperative, Inc., in Wall, South Dakota.

BACKGROUND ON GOLDEN WEST

For more than a century, Golden West Telecommunications and its subsidiaries have provided communications services to rural South Dakota, starting initially with stringing telephone lines along fence posts. Today, we have over 30,000 accounts, including more than 25,000 broadband subscribers and nearly 10,000 cable television customers.

Golden West began in the video distribution industry nearly 40 years ago. We built our first cable television systems in 1981 starting with a few small western South Dakota communities. Golden West has since built or purchased dozens of cable television operations, and we now operate 40 video distribution systems in rural South Dakota communities. Our video subscribers are spread across two Designated Market Areas (DMAs). The two furthest systems are over 360 miles apart – and our <u>largest</u> community has only 3,500 residents.

Golden West's initial objective in providing video service was to ensure that customers in rural and remote communities had access to news and entertainment options similar to customers in urban areas, even though in many cases our customers were located too far from the urban centers to receive over-the-air broadcast signals. Our systems helped the television broadcasters connect with viewers where their signals did not reach, and this continues to be the case. Today, 65% of Golden West's cable television subscribers are unable to receive at least one of the four major broadcast networks via an over-the-air signal, and one-third of our video customers are unable to receive *any* of the four major broadcast networks due to the broadcasters' failure to provide signals throughout their licensed areas.

ASTOUNDING CHANGES IN THE VIDEO MARKETPLACE – EXCEPT FOR THE DECADES-OLD RETRANSMISSION CONSENT REGIME

To provide context for what should come next as Congress considers reauthorizing the STELAR Act, it is important to understand where we are, how we got here, and how current law fails to reflect the current lay of the land in the video marketplace.

To say that it has been a "wild ride" in the video business over the past 40 years seems like an understatement. We have witnessed countless technology changes and upgrades. In 1981, our initial lineup had 14 channels, but today we offer over two hundred channels – nearly all of them in high definition (HD) format. Competition in the video distribution business began in the mid-1990's with the introduction of satellite-delivered consumer video service from DirecTV and soon after Dish Network.

From my perspective, however, the changes in the video distribution business from 1981 through 2010 pale in comparison to the changes we have seen over the last nine years and what we will likely witness in the next few years.

Certainly, the significant adoption of broadband connections by consumers and the availability of mobile data services have provided new options and driven changes in viewer consumption habits and consumer video preferences. As a result, the distribution of video services has changed dramatically as well. The days of consumers choosing solely between either cable or satellite Multichannel Video Programming Distributors (MVPD) for viewing of video content are over. The advent of broadband deployment now allows consumers to purchase similar video services from virtual Multichannel Video Programming Distributors (vMVPD) or Subscription Video on Demand (SVOD) service such as YouTube TV, Hulu, fuboTV, Sony PlayStation Vue, Philo, Sling TV and AT&T TV Now.

In addition to the vMVPD services that include live video content, consumers can also choose from a significant number of streaming services that provide large libraries of video content including Netflix and Amazon Prime Video, CBS All Access and HBO Now. According to public announcements, there will soon be more entrants including Disney+, Apple TV and Peacock.[1] Indeed, the availability and awareness of online pay-TV services is growing, and it is estimated that 70% of US Broadband households subscribe to at least one SVOD service.[2] More than half of all US households subscribe to two or more SVOD services.[3]

In short, consumers now have more video distribution choices than ever before, much of which is tailored to their viewing preferences through the development of "skinny bundles" or subsets of programming genres. These are all good things, to be sure – but there is one area where current law is holding back even greater innovation and consumer choice in the video marketplace because it is premised upon a decades-ago snapshot of what this marketplace once was.

Specifically, the current "retransmission consent" system regarding local broadcast stations is hindering the ability of MVPDs to compete in this otherwise dynamic marketplace and thereby harming consumers who would benefit from even greater choice but for this law from a bygone era. The notion of retransmission consent arises out of the Cable Television Consumer Protection and Competition Act of 1992 (the 1992 Act). Retransmission consent was adopted in response to the "must carry" rules that required cable operators to carry all significantly viewed local stations. Stations could either keep their must carry status, as many smaller independent stations did at first, or negotiate with cable operators. When this law was enacted and retransmission consent

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[1] "New Streaming Video Services are Ready to Launch", Consumer Reports, September 19, 2019. (available at: https://www.consumerreports.org/streaming-media-devices/new-streaming-video-services-to-check-out/#targetText=The%20new%20options%20will%20join,you%20cut%20the%20cable%20cord.)

[2] "Market Snapshot: The Changing World of Pay TV," Parks Associates, August 2019. (available at: http://newsroom.parksassociates.com/whitepapers/snapshot-paytv)

[3] Leichtman Research Group, August 27, 2019. (available at: https://www.leichtmanresearch.com/wp-content/uploads/2019/08/LRG-Press-Release-08-27-19.pdf)

was first created, there were few options for video distribution and thus, there was relatively equal bargaining power between broadcasters and cable operators. Moreover, local broadcast channels were generally available over the air for free so that consumers could affordably access local news, weather, and sports. In that context, the law aimed to promote agreements on mutually beneficial terms between parties negotiating from relatively equal positions of strength.

As described earlier, however, the video marketplace of 1992 no longer exists. Retransmission consent negotiations transpire in a very different environment today. Changes in broadcast distribution shrunk the contours in which broadcast channels could be received over the air for free. And today, the pay-television distribution industry is competitive, including cable operators, satellite distributors, telephone companies and the long list of vMVPD and SVOD providers I listed earlier—with more undoubtedly to come.

Broadcasters will claim that the current marketplace is exactly what the 1992 Act envisioned, so the law is serving its purpose and should not be disturbed as Congress looks now at video marketplace issues in the context of STELAR Act reauthorization. But this is a false correlation. The dynamic changes in the video marketplace noted above have nothing to do with retransmission consent – they are driven by technology, not by a compensation structure dictated by a 1992 law. To the contrary, the one clear effect of the 1992 law today is to undermine consumer choice by making consumers who want to or must access local programming *in a certain way* – through an MVPD – pay increasingly more for that specific option. If you want to "let the marketplace work" when it comes to video options, a key step is to revisit a decades-old law that has no tether to what the marketplace actually is today.

In fact, the imbalance that has arisen in the video marketplace between broadcasters and MVPDs since 1992 could not be clearer. Even as MVPDs compete with all of various distribution options discussed earlier, broadcasters still retain government-granted local monopolies as well as other carriage benefits that impact negotiations, allowing broadcasters to pit competing distributors against each other and to use "retransmission consent" to foist increasing costs on certain distributors under the cover of a nearly 30-year-old law. When consumers are asked for the main reason they are cutting the proverbial cord from traditional MVPDs, rising rates are cited as the primary reason.[4] For Golden West video customers, the cost of retransmission consent is the primary and overwhelming driver of any such rate increases. Ultimately, consumers are the ones paying the price – both in terms of spiraling fee increases and disrupted local programming.

Before returning in more detail to those increases in consumer fees and related issues, it is important to discuss first the state of broadcast television today and why the broadcasters hold the market power they do.

As an initial matter, consolidation in the broadcast industry has been significant. Just last month, the Federal Communications Commission (FCC) approved the merger of Nexstar and Tribune, a combination that apparently "owns, operates, programs or provides sales and other services to 197 television stations (including partner stations) in 115 markets **or approximately 63% of all U.S. television households**."[5] Other groups, like Sinclair and Gray, similarly have significant national presences. In addition, even beyond corporate consolidation, control of stations is increasingly concentrated. The American Television Alliance, for example, has highlighted that there are more than 100 identified instances of groups using multicast and low-power "loopholes" to control multiple network stations in the same local market.[6]

[4] "Cord Cutting Continues, Fueled by High Cable Pricing, Consumer Reports' Survey Finds," September 17, 2019. (available at: https://www.consumerreports.org/telecom-services/cord-cutting-continues-high-cable-pricing/)

[5] *See* https://www.nexstar.tv/stations/ (emphasis added). It is unclear if this reflects the final count following the transaction and anticipated divestitures.

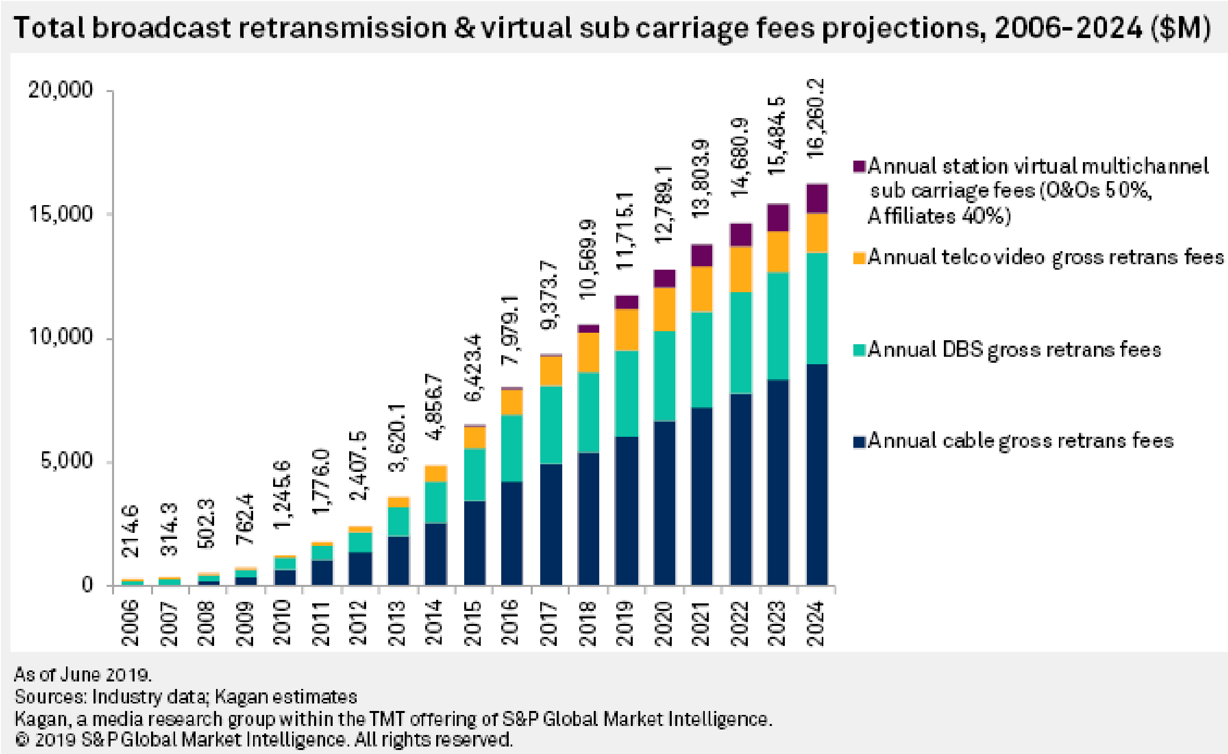
[6] *See* https://www.americantelevisionalliance.org/wp-content/uploads/2019/04/2019-04-29-ATVA-Quadrennial-Comments-FINAL.pdf

On the other hand, local MVPDs have not seen the same kind of consolidation and concentration. Moreover, as discussed above, we do not hold a monopoly in our markets any longer, as vMVPDs and SVODs provide consumers with multiple means of accessing much of the same content that we provide over our cable systems. In the end, this means that, in my case and many others, you have a local small business that serves very rural communities negotiating with nationwide groups that hold a monopoly on certain content *and* may even control multiple stations within the same market. In short, this is not the cable TV market of 1992.

A CLOSER LOOK AT WHERE WE ARE NOW – THE IMPLICATIONS OF A 1992 LAW IN A 2019 "MARKETPLACE"

The staggering escalation in retransmission consent fees in recent years highlights how drastically this "marketplace" has changed in recent years – to the detriment of consumers that ultimately pay the price. These fees are estimated to be nearly $12 billion in 2019 and are projected to grow to over $16 billion in 2024.[7]

[7] "Retrans Projections Update: Sub Rates Continue to Rise," S&P Global Market Intelligence, July 25, 2019. (available at: https://www.spglobal.com/marketintelligence/en/news-insights/research/retrans-projections-update-sub-rates-continue-to-rise)



And, to underscore the level of consolidation and concentration driving this dynamic, of the estimated $10.5 billion of retransmission consent revenues in 2018, only ten television station owner groups accounted for nearly 70 percent of that amount.[8]

While the retransmission amounts collected by broadcasters at a national level are staggering, the local impact on individual consumers is even more concerning. The broadcasters in the two DMAs in which Golden West operates first began requesting retransmission consent payments in 2009, and our monthly local broadcast TV rates just ten years ago were well below a dollar per subscriber per month in both the Rapid City and Sioux Falls DMAs.

Fast forward to present day, and Golden West customers now pay nearly $16 per month per subscriber in the Rapid City DMA and almost $17 in the Sioux Falls DMA for local broadcast TV. In both cases, this represents an increase of more than 2,000% in

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[8] "Nexstar Is The Star of TV Station Groups," TVNewsCheck, May 29, 2019. (available at: https://tvnewscheck.com/article/235386/nexstar-is-the-star-of-tv-station-groups/)

ten years, or more than 30% compound annual growth rates. To put these increases in perspective, the same growth rate would result in a 2009 cup of coffee now costing $44.40, a 2009 gallon of milk would cost $62.20, and a 2009 gallon of gas would be $47.00. Even if using a slightly shorter period, from just 2014 when Congress last renewed STELAR, the combined local broadcast TV rates for Golden West customers have increased by more than 450% in the Rapid City DMA and over 350% in the Sioux Falls DMA.

I do not believe these high fees or the growth in them to be an anomaly. My understanding is that other rural operators' local broadcast TV rates as reflected in customers' bills are in a similar range, if not higher – as one example, a 2018 industry survey reported that small *and* medium-sized cable operators were paying $11 on average per subscriber per month in 2017 for retransmission consent, with those rates projected to increase to $19 on average by next year.[9] Meanwhile published reports indicate that the local broadcast TV rates for two of the largest MVPDs in the country are considerably lower – but still relatively expensive – at $11.99 and $9.99 per month, respectively.[10]

Such figures are a far cry indeed from the rosy picture that the broadcasters painted when retransmission consent was first being considered. Back then, the president of the National Association of Broadcasters (NAB) claimed, "There is no reason to believe that cable consumers would see any increase in their monthly cable bills because of retransmission consent."[11] There may be no better depiction of how far we are from the marketplace surrounding the 1992 law than to consider this perspective in light of what we see today.

[9] *See* https://acaconnects.org/corporate-broadcasters-force-exorbitant-rate-increases-on-cable-customers/

[10] "Cable Firms Shrug Off Video Losses by Playing the Broadband Card," Investor's Business Daily, August 22, 2019. (available at: https://www.investors.com/news/technology/comcast-stock-shrugs-off-video-losses-as-cable-firms-play-broadband-card/)

[11] *See* https://prodnet.www.neca.org/publicationsdocs/wwpdf/53111mediacom.pdf at p. 43.

And, these developments are all the more galling when one considers that, for many rural consumers, *the broadcasters' signal would not reach the consumers without the help of MVPDs like Golden West*. As noted earlier, roughly two-thirds of Golden West's cable television subscribers cannot receive at least one of the four major broadcast networks via an over-the-air signal, and one-third of our video customers are unable to receive *any* of the four major broadcast networks. In other words, in addition to all of the network investments we need to make to carry those signals, Golden West and its customers are paying more and more simply for the "privilege" of delivering the broadcasters' content to consumers it would otherwise not reach – giving broadcasters more viewers in turn to sell to advertisers.

In response to such concerns, broadcasters tend to justify the current state of the marketplace and the fees they charge for retransmission consent by citing their role as the "most-watched" source of programming.[12] But this is a red herring, as the phrase "most-watched" does not mean what it once did. Viewership of broadcast television in primetime has fallen dramatically.[13] In fact, in comments filed with the U.S. Department of Justice to advocate for loosening current restrictions on the number of television stations broadcasters can own in a single market, the broadcasters' own words demonstrate that "most-watched" is not what it once was:

> "Broadcast television's share of prime time viewing (counting cable, broadcast and DBS) among the audience most coveted by advertisers fell from 46 percent in 2003 to just 31 percent in 2018. These figures overstate TV stations' share of all video viewing, because they do not take account of streaming or subscription

[12] Testimony of Gordon H. Smith, June 5, 2019. (available at: https://www.commerce.senate.gov/services/files/21F22C87-FF31-4CB1-AE67-BAC7A2FA337E)

[13] "Ratings Bombshell: In Two Years, Network TV Demos plummeted 27 percent," Ad Age, January 28, 2019. (available at: https://adage.com/article/media/c3/316390)

video on demand (SVOD); if SVOD and streaming were included in total viewing, then broadcast's share would be smaller still."[14]

"The ratings of the most popular broadcast TV programs declined by over 67 percent from the 1985-1986 TV season to the 2017-2018 season."[15]

"The average 24-hour commercial rating + 3-day DVR viewing or 'C3' rating of broadcast TV programs for audiences aged 18-49 has declined 24 percent in the past two years. Only three general-entertainment programs on broadcast networks are averaging a C3 rating of 2.0 or better, and one of them aired its final episode in May 2019. Four years ago, 32 entertainment programs were averaging a C3 rating of 2.0 or better."[16]

"That is, among the average 30.5 million people ages 18-49 using TV during any given minute of prime time in 2018, an estimated 9.56 million were viewing broadcast stations – and these 9.56 million people represent just 7.4 percent of the estimated total 128.9 million people ages 18-49 in U.S. TV households. Similarly, the average 31.79 million people ages two and older who viewed broadcast TV during any given minute of prime time in 2018 represent only 10.4 percent of the estimated total 304.5 million people ages two and older in U.S. TV households."[17]

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[14] Letter from Rick Kaplan, General Counsel and Executive Vice President, NAB, June 17, 2019, at p. 3. (available at: https://www.nab.org/documents/filings/CommentsOnPublicWorkshopOnCompetitionInTelevisionandDigitalAdvertising(6-17-19).pdf)

[15] Id., at p. 4

[16] Id., at p. 4

[17] Id., at p. 64.

The decline in broadcast television viewership is not limited only to primetime shows; viewership for local broadcast network affiliate news has declined as well across all time periods from 10 to 20 percent in just the last three years.[18]

Even the marquee events traditionally broadcast on local stations have seen viewing decreases. The Super Bowl has seen declining viewership in each of the last five years,[19] along with similar decreases in viewing the Academy Awards[20] and the Emmy Awards[21] as examples. All of these data points together therefore undercut the assertion that retransmission consent increases are justified based upon demands for the programming.

If the increases in retransmission consent cannot be justified based upon viewing numbers, another defense of retransmission consent has been and still is that these fees promote localism – that these fees sustain local stations and promote local content. Again, back in 1991, NAB asserted this framework was all about localism: "Retransmission is a right granted to local stations in their local areas. Networks are not involved in any negotiations."[22]

Of course, NAB's early 1990's claims that networks would not be involved with retransmission consent has proven false – again, the marketplace has moved. Instead, through what is known as "reverse comp," local broadcasters now split the retransmission consent fees they collect from distributors and video subscribers with their network partners. Reports indicated that the networks received over $3.8 billion in

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[18] Local TV News Fact Sheet, Pew Research Center, June 25, 2019. (available at: https://www.journalism.org/fact-sheet/local-tv-news/)

[19] *See* https://www.tvb.org/Portals/0/media/file/tracts/Super_Bowl.pdf

[20] *See* https://www.tvb.org/Portals/0/media/file/tracts/Academy_Awards.pdf

[21] *See* https://www.tvb.org/Portals/0/media/file/tracts/Emmy_Awards.pdf

[22] *See* https://prodnet.www.neca.org/publicationsdocs/wwpdf/53111mediacom.pdf at p. 44.

reverse comp in 2018 from their local broadcast affiliates,[23] and Wall Street analysts estimate that local affiliates split between 50% and 75% of their retransmission consent revenues with their network partners.[24]

And the networks are not done extracting fees from local affiliates, which will in turn increase the rates video consumers pay. In 2018, CBS received an estimated $1.7 billion in retransmission consent payments and reverse comp,[25] and in a recent earnings call with investors, CBS forecasted that amount to rise to $2.5 billion in 2020[26] – a nearly 50% increase in just two years.

This is not an isolated instance involving one network. In an investor presentation in June, FOX network's Chief Financial Officer stated plans to increase the national network's draw of retransmission consent fees by 60% in the next three years:

> "We've made it clear that sort of on a run rate rolling 12-month basis we're at about $1.650 billion in retrans revenue going into September just gone. We expect that to grow by another $1 billion by calendar year 2022."[27]

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[23] "Retrans Projections Update: Sub Rates Continue to Rise," S&P Global Market Intelligence, July 25, 2019. (available at; https://www.spglobal.com/marketintelligence/en/news-insights/research/retrans-projections-update-sub-rates-continue-to-rise)

[24] "Panel, Retrans Pie Will Grow," Multichannel News, September 27, 2018 (available at: https://www.multichannel.com/news/panel-retrans-pie-will-grow)

[25] "ViacomCBS Remarriage Fails to Impress Investors," Multichannel News, August 19, 2019. (available at: https://www.multichannel.com/news/viacomcbs-remarriage-fails-to-impress-investors)

[26] Statement of Chris Spade, CBS Chief Financial Officer, August 8, 2019. (available at: https://seekingalpha.com/article/4283652-cbs-corporation-cbs-ceo-joe-ianniello-q2-2019-results-earnings-call-transcript?part=single)

[27] Statement of Steve Tomsic, Credit Suisse 21st Annual Communications Conference, June 4, 2019, at p, 2. (available at: https://investor.foxcorporation.com/static-files/a9861572-4693-44d0-a1d5-9bd9728cf806)

In a recent call with Wall Street analysts, the CEO of the nation's largest broadcast group confirmed that networks are demanding more from local affiliates and that in turn, local affiliates are going to increase the costs to MVPDs and their consumers.

> "I mean long-term listen the networks negotiating and asking for more from us and we in turn are asking for more from the MVPDs and the revenue line is greater than the expense line. So if they move in tandem we actually increase our margins."[28]

In fact, broadcasters have taken to using retransmission consent revenues in ways that would be difficult to imagine for the authors of the 1992 Act. In one of the largest broadcast television acquisitions, Nexstar's recent acquisition of Tribune Media Company, Nexstar highlighted three "Year 1 Synergies" that benefited shareholders in this transaction. In addition to reductions in corporate overhead and other expenses as part of the transaction, the single largest "synergy" identified by Nexstar was an $85 million increase in the retransmission consent rates of the acquired Tribune Media Company viewers. In other words, MVPDs' and consumers' bills increased $85 million in year one and every year thereafter simply because Nexstar was apparently able to increase Tribune Media retransmission consent rates to the higher Nexstar rates.[29]

The practice of increasing retransmission consent rates as part of an acquisition is hardly new. In Gray Television's 2018 acquisition of Raycom, Gray identified four "synergies" as part of the Raycom transaction. The first item on the "synergy" list was a

[28] Statement of Perry Sook, CEO, Nexstar Media Group, August 7, 2019. (available at: https://seekingalpha.com/article/4282813-nexstar-media-group-inc-nxst-ceo-perry-sook-q2-2019-results-earnings-call-transcript?part=single)

[29] Completed Acquisition of Tribune Media Company, Nexstar Investor Presentation, September 20, 2019, at p 9. (available at: https://www.nexstar.tv/wp-content/uploads/2019/09/Nexstar-Tribune-Investor-Closing-Deck-FINAL-9-20-19.pdf)

$15 million increase in net retransmission consent revenue comprised of a contracted step-up of Raycom subscribers to Gray's higher retransmission consent rates.[30]

It is clear that retransmission consent has gone far afield of its initial intent and purpose. In extolling the benefits of retransmission consent to their shareholders, broadcasters are quick to point out the positive impact that "profitable, predictable subscription revenues" have to their bottom line, and that broadcasters' retransmission consent revenues are "immune from secular or economic trends."[31] So confident are the broadcasters in their ability to control retransmission consent revenues, the nation's second largest local broadcast group, Tegna, literally likens retransmission consent to an annuity:

> "As we've discussed before, these sticky and high-margin subs produced annuity-like cash flows, which allows us strong forecasting ability."[32]

The broadcasters who assert localism as a defense of and justification for retransmission consent cannot hide that these revenues are flowing away from local markets – and that retransmission consent fees will increase to keep feeding the revenues upward.

Despite adding billions of dollars a year to their own (and the networks') coffers via retransmission consent, there is no evidence that broadcasters have invested these gains in enhancing or adding to their local news operations. From 2010 to 2018, total employment in local broadcast television newrooms was static, from 28,640 in 2010 to

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[30] Gray to Combine with Raycom to Become the Third Largest TV Broadcast Group, Gray Television, Inc. Investor Presentation, June 25, 2018, at p. 7. (available at: https://gray.tv/uploads/documents/presentations/GrayTelevisionInvestorPresentationJune.pdf)

[31] TEGNA Investor Presentation, September 2019, at p. 8. (available at: http://investors.tegna.com/static-files/2a4d41af-d245-4758-bea0-df54a27513cd)

[32] Q4 2018 TEGNA Inc Earnings Call, March 1, 2019, Statement of Victoria Dux Harker, Executive VP and CFO, at p 5. (available at: http://investors.tegna.com/static-files/f3183827-4740-4eba-a521-7d1178b27458)

28,670 in 2018 – a change of less than 1/10th of 1% over eight years[33] despite collecting over $48 billion in retransmission consent fees during the same period.[34] Moreover, even while collecting ever more retransmission consent fees, the number of local television stations originating local television news since 2013 has actually declined.[35] So even if localism may have been the intended purpose in 1992, the reality in 2019 is that those funds are not going back into local news operations.

Finally, demonstrating how anachronistic retransmission consent fees are in 2019, one must consider the inequitable and technologically discriminatory way in which they apply. Although "traditional" MVPDs must pay these amounts – even where the broadcast signal would actually not reach the consumer *without* the MVPD – new entrants into the video distribution business that offer live television content such as YouTube TV, Hulu, Sling TV and AT&T TV Now are not bound by the same legacy 1992 Act obligations. Thus, the 1992 Act is actually "putting a thumb on the scale" and interfering in what is an otherwise dynamic marketplace, punishing only some distributors with inflated costs due to a decades-old law that has no tether to where things stand today.

WHAT CAN BE DONE NOW IN THE CONTEXT OF STELAR REAUTHORIZATION?

To address all of these concerns, I would advocate first and foremost for a fundamental overhaul of the retransmission consent regime contemplated by the 1992 Act. The Modern Television Act of 2019 (H.R. 3994) introduced by Representatives Eshoo and Scalise could provide a helpful starting point for such discussions. This being said, to the extent that STELAR reauthorization might not offer a platform itself for such

[33] Local TV News Fact Sheet, Pew Research Center, June 25, 2019. (available at: https://www.journalism.org/fact-sheet/local-tv-news/)

[34] "Retrans Projections Update: Sub Rates Continue to Rise," S&P Global Market Intelligence, July 25, 2019. (available at: https://www.spglobal.com/marketintelligence/en/news-insights/research/retrans-projections-update-sub-rates-continue-to-rise)

[35] 2018 Local News Research, Radio Television Digital News Association. (available at: https://www.rtdna.org/uploads/files/2018%20Local%20News%20Research.pdf)

comprehensive change, there are narrower, targeted changes that should be considered and made as part of STELAR renewal for the benefit of consumers. Specifically:

1.) Prohibit price discrimination within each DMA. Broadcasters are provided with government-sanctioned monopolies in 210 Designated Market Areas. While there now are multiple MVPDs and vMVPDs serving all or most DMAs, the local broadcast affiliate is the only source of network programming for each DMA. Broadcasters should not be able to discriminate in price among video distributors. This is particularly important for video distributors that are smaller or serve rural communities. Indeed, a report released late last year by the FCC indicates that small system operators, such as Golden West, pay 30% more in retransmission consent fees than larger systems.[36] There is no basis whatsoever for such pricing discrimination within a DMA since the broadcaster's content is the same throughout the DMA and as provided to each distributor.

2.) Prohibit broadcaster-imposed mandatory bundling or tying of additional non-network channels. The origins of retransmission consent were limited to the carriage of the major network (i.e. ABC, CBS, FOX, NBC) channels. Yet, in connection with retransmission consent for the major network channels, broadcasters now require MVPDs to carry (and thus force subscribers to pay for) a whole litany of multicast or separate channels entirely unrelated to the major network. These additional channels are not requested by MVPD subscribers and needlessly force consumer rates higher. Examples of these channels include MeTV, Grit, Escape, Laff, Bounce, ThisTV, Charge!, Stadium, Comet, GetTV, Justice Network, MyTV, AntennaTV, Cozi, Movies!, Heros & Icons, BuzzR, Quest, TBDTV, StartTV, Decades, Retro and Circle. This list of typical "bundled" or "tied" channels is not all inclusive and it seems to grow nearly daily. Broadcasters should also be prohibited from including negotiations or contractual ties

[36] FCC Communications Marketplace Report, December 26, 2018, Appendix B, at p. 20 (available at: https://www.fcc.gov/document/fcc-adopts-first-consolidated-communications-marketplace-report-0)

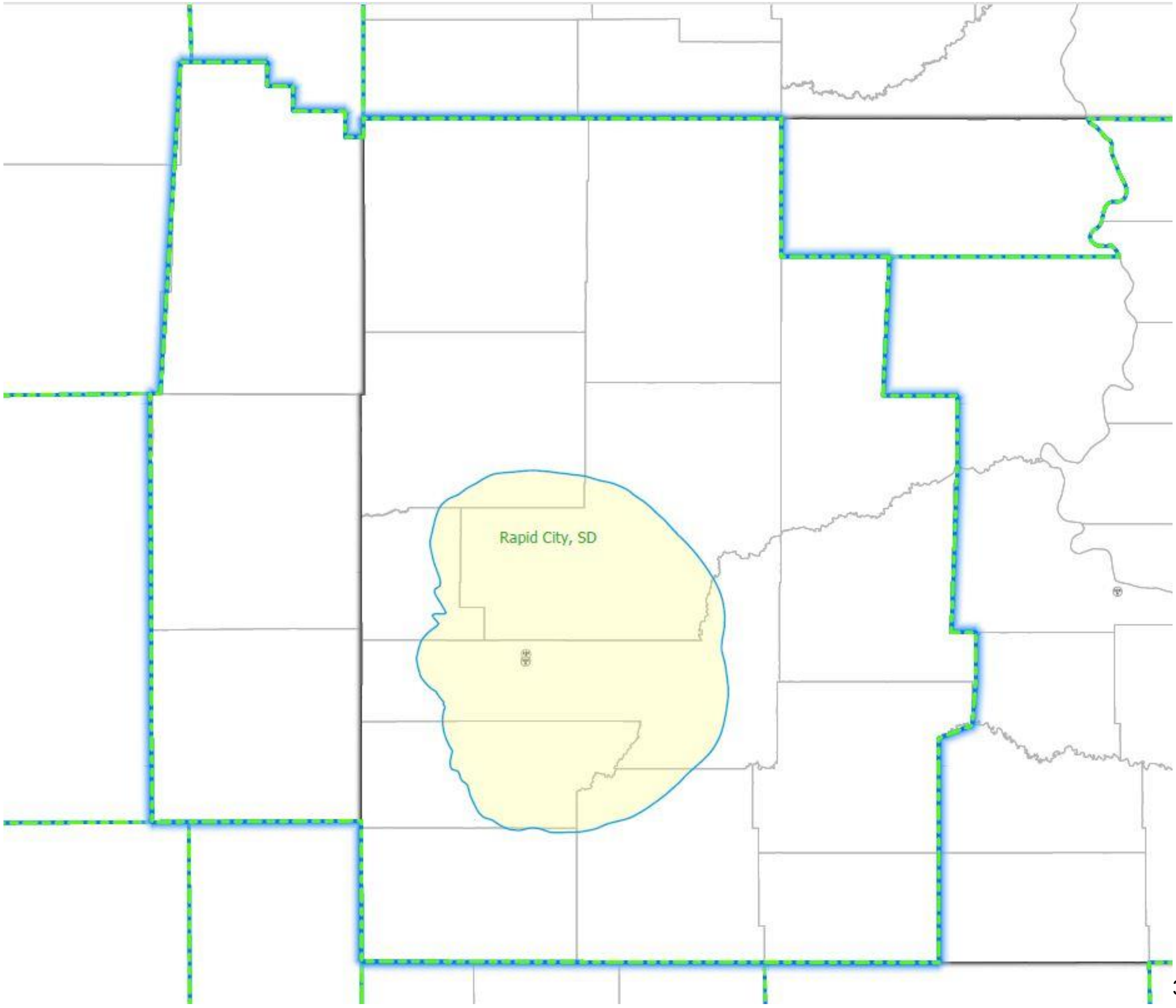
for Regional Sports Networks or any other non-broadcast content as part of the retransmission consent process.

3.) Eliminate the 1992 Act requirements that compel: (a) cable operators/MVPDs to carry broadcast signals on their lowest service levels/basic tiers; and (b) cable customers to purchase these lowest service levels/basic tiers before they can purchase any other level of service.[37] These requirements unnecessarily compel all subscribers to purchase broadcast channels, regardless of what any given consumer actually wants. New entrants in the video marketplace, such as vMVPDs, are not bound by such an anti-consumer, anti-choice provision.

4.) Prohibit charging for broadcast channels that are unable to be received over the air. Many rural areas, and likely some urban areas as well, are unable to receive over-the-air broadcasts of one or more broadcast channels. Rural viewers should not have to pay for a broadcaster's failure to provide a signal throughout its licensed area, and MVPDs should not have to pay for the "right" to carry a broadcast signal that would not otherwise reach viewers.

Below is a graphic showing the coverage area of one of the "Big Four" broadcasters in the Rapid City DMA. The coverage by the broadcaster below represents only 14% of the geographic area within the DMA. Yet every video consumer outside of that small coverage is forced to pay for receipt of the broadcaster's signal over a MVPD system, despite having no option to receive that signal otherwise for "free" over the air.

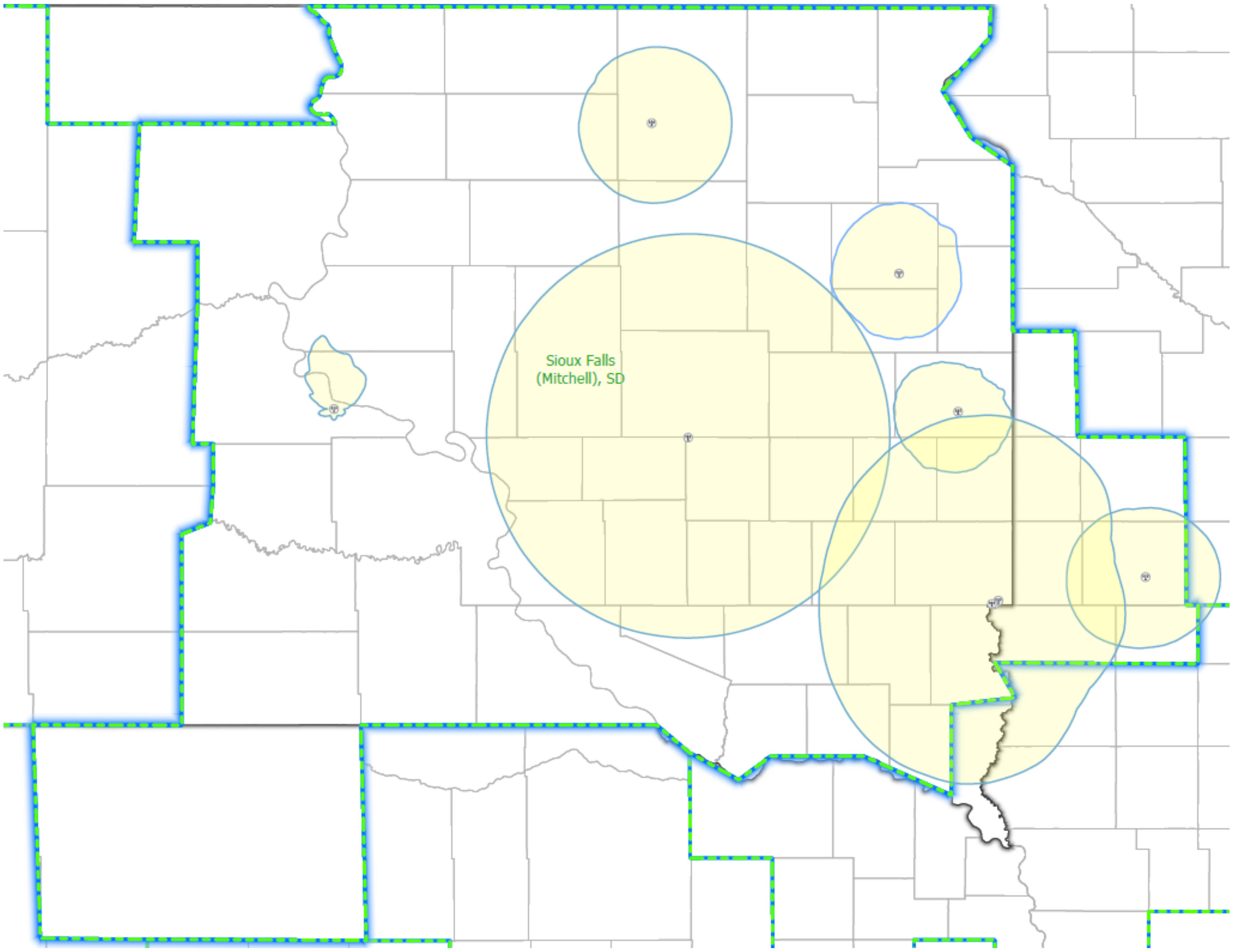
[37] 47 U.S.C. § 543(b)(7)



[38]

A similar situation arises in the Sioux Falls DMA, with the graphic below showing the coverage area of a different "Big Four" broadcaster. Even with the addition of several low power signals, this broadcaster only covers an estimated 38% of the DMA's geographic area.

[38] *See* https://www.fcc.gov/media/television/tv-query, Nexstar Broadcasting, Inc. KCLO-TV



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5.) Make the "Good Faith" requirement in current law more meaningful. Section 325 of the Communications Act grants broad authority to the FCC to implement a framework for promoting "good faith" dealing in retransmission consent negotiations. The FCC has implemented the "good faith" provision by adopting a two-part framework that includes a list of negotiating tactics that are considered *per se* violations of the obligation, as well as a "totality of the circumstances" standard that can be used to prove the absence of a sincere desire to reach a mutually acceptable agreement.[40]

[39] *See* https://www.fcc.gov/media/television/tv-query Independent Communications, Inc., KTTW/KTTM

[40] *See, e.g.*, *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiations and Exclusivity*, First Report and Order, 15 FCC Rcd 5457, ¶44 (2000); *Amendment of the Commission's Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 10-71, ¶¶ 9 and 31 (2014).

Nothing in the STELAR Act limited this authority, and the only STELAR-related congressional committee report that addressed Section 325 called for the agency to address "whether certain substantive terms offered by a party may increase the likelihood of the negotiations breaking down" and to provide "additional specific guidance as to actions that, taken as a whole, evidence bad faith based on the totality of the circumstances."[41] Moreover, when passing STELAR, Congress was well aware of the FCC's efforts to implement Section 325, and legislatively affirmed a revised *per se* standard.[42] In considering reauthorization of STELAR now, I would encourage Congress to expand on the types of conduct and negotiation practices that constitute *per se* bad faith practices – such as several of those outlined above – rather than forcing smaller MVPDs in particular to pursue case-by-case adjudication that consumes substantial resources and leaves most MVPDs with no practical remedy to ensure continued carriage of content.

CONCLUSION

Congress should move promptly to reauthorize STELAR, but in doing so, should tackle the retransmission consent regime that stands out uniquely as an anti-competitive, anti-consumer anachronism in an otherwise dynamic marketplace. To the extent that STELAR may not provide an opportunity for comprehensive reform, I have identified several targeted changes that would help at least to improve conditions for consumers in rural areas served by smaller distributors. Golden West is committed to delivering the best possible services for its consumers in some of the most rural terrain to be found in the United States, and we look forward to working with members of this committee and others in Congress to ensure that this vision can be realized through laws that reflect and allow today's marketplace to operate effectively.

[41] *See* S. Rep. No 113-322 at 13 (2014).

[42] *See* STELAR Act § 103(a).