

Statement before the U.S. Senate Committee on
Commerce, Science, & Transportation

Hearing on
“At a Tipping Point: Consumer Choice, Consolidation and the Future Video
Marketplace”

Regulation, Competition, and Online Video

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Chairman Rockefeller, Ranking Member Thune and members of the Committee, it is a privilege to be before you today. My comments today will focus on the future of the video market, tying its current state to other ongoing issues that face this Committee and the market generally.

The future of the video market is easy to predict and concise to state: the Internet. The question is how we get there; when, that is, not whether, the majority of video consumed in the United States will be consumed online.

For this Committee, however, the question may be “what is holding us back?” There is no lack of interest in developing innovative new online video platforms. Tech titans like Google, Apple, Netflix, and Amazon have shown great interest in online video. Entrants like Aereo, FilmOn, and similar startups have attempted to bring a cable-like television experiences to the Internet. Major news and sporting events are now routinely streamed online. And most traditional video outlets have Internet-based streaming video offerings.

Yet today’s video marketplace looks more like the marketplace of a decade ago than one of the future. I would suggest two factors that contribute to this. First, the continuing dominance of the linear channel – where programming is delivered as a continuous feed, 24 hours a day, for consumers to “tune in” to watch. This model continues to dominate in part because a better model has yet to be developed, and in part because existing regulations have ossified it. And, second, the existing regulatory regime more generally ossifies traditional business models, and stifles entry by new firms.

The problems with the existing regulatory regime cannot be understated. It involves multiple statutes implemented by multiple agencies to govern technologies developed in the 60s, 70s, and 80s, according to policy goals from the 50s, 60s, and 70s. We are no longer living in a world where the Rube Goldberg of compulsory licenses, must carry and retransmission consent, financial interest and syndication exclusivity rules, and the panoply of Federal, state, and local regulations makes sense – yet these are the rules that govern the video industry.

The discussion we are having today should involve many current issues – the pending mergers; the Supreme Court’s recent *Aereo* decision; spectrum policy; interconnection disputes between ISPs and edge providers; retransmission consent disputes; and the FCC’s ongoing network neutrality and video regulation efforts. Time prevents me from discussing any of these in detail, so I will leave you with a few specific thoughts.

First, consolidation is not necessarily bad. To be sure, consolidation can raise serious antitrust concerns. But theory and empirics tell us that consolidation can in many cases benefit consumers, and in any event must be measured in a properly defined relevant market. This is especially true in the video marketplace, where traditional MVPDs increasingly compete with firms like Netflix, Apple, and Google. This new competition must be considered as part of the relevant market.

Indeed, traditional MVPDs may *need* to consolidate if they are to compete with these new firms. I want to emphasize this point: the greatest challenge to the development of a modern video marketplace isn’t the development of new technologies – that’s the easy part – the challenge is how new and existing firms, business models, and consumers transition to use these new technologies.

Staying on the topic of consolidation, vertical integration, in particular, is more often good for consumers than bad. This is one of the enduring lessons from the breakup of the vertically-integrated film industry of the 1940s, and one that has been consistently supported in the literature. What happened after the Supreme Court approved this break-up? Ticket prices for consumers went up, quality and variety of films went down, and the industry as a whole went into a multi-decade slump. Decades of subsequent research suggest that vertical integration helps firms to develop & implement new technologies.

At the same time, progress toward an Internet-based video market has been slower than many would like. Chief among the reasons for this is regulatory uncertainty. It is entirely unclear how online video fits into today's regulatory regime. This uncertainty makes entry by new firms difficult, and decreases existing firms' ability to innovate. Updating the Copyright and Communications Acts is one of the best things this Congress could do to promote the video marketplace.

Finally, any discussion of the video marketplace needs to consider spectrum policy. Much of today's marketplace is shaped by pre-cable broadcast policy. We will likely never move away from broadcast television entirely – many Americans rely on it; it is essential in emergency situations; and it is an important competitive constraint on other television services. But existing rules treat broadcast television as the basic unit by which content is delivered to consumers; this doesn't make sense in the Internet era. Rather than struggle with how to fit online video into the traditional television model, we should be thinking about how to allow traditional television to operate more like online video.

I believe that that is the perfect thought on which to end my comments. I look forward to answering your questions.