ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

September 13, 2023

Representative Bob Latta
Chairman
Subcommittee on Communications and Technology
2467 Rayburn House Office Building
Washington, DC 20515

Representative Doris Matsui
Ranking Member
Subcommittee on Communications and Technology
2311 Rayburn House Office Building
Washington, DC 20515

Chairman Latta, Ranking Member Matsui, and Members of the Subcommittee,

The Information Technology and Innovation Foundation (ITIF) appreciates the Subcommittee's attention to the important issue of the dynamic American media landscape.[1] Particularly timely is the Subcommittee's attention to the virtual multichannel video programming distributor (vMVPD) market. The rise of the Internet protocol (IP)-based video has been a boon to both consumers and the media marketplace, enabling a greater diversity of content to reach individuals in flexible and affordable ways. This vibrant sector has grown rapidly, in part because it has not been subject to the morass of regulations that saddled the traditional cable industry during its infancy. The success of vMVPDs is evidence that those regulations are not necessary to facilitate the business arrangements that produce and distribute content that consumers value. At the same time, traditional cable business models are shifting, transitioning to greater broadband and IP-based video as opposed to old-fashioned MVPD models.

This shift has triggered some to call for the application of the old cable rules to vMVPDs. Congress should reject such calls. Consumers have the choice between traditional linear cable and streaming-based video, and they are choosing streaming. This year, pay-TV subscriptions hit their lowest levels since 1992.[2] As "cord cutting" accelerates, it would be a mistake to impose old regulations on the new – and evidently preferable to many consumers – world of streaming. In short, the proliferation of streaming video services is an example of the market working well, not a market failure that would justify regulation. If anything, this success indicates that cable regulations should be reduced to better mirror the regulatory framework for vMVPDs, not the other way around.

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[1] Founded in 2006, ITIF is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute—a think tank. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. ITIF's goal is to provide policymakers around the world with high-quality information, analysis, and recommendations they can trust. To that end, ITIF adheres to a high standard of research integrity with an internal code of ethics grounded in analytical rigor, policy pragmatism, and independence from external direction or bias. See About ITIF: A Champion for Innovation, https://itif.org/about.

[2] Todd Spangler "Cord-Cutting Hits All-Time High in Q1, as U.S. Pay-TV Subscriptions Fall to Lowest Levels Since 1992," *Variety* (May 12, 2023) https://variety.com/2023/tv/news/cord-cutting-all-time-high-q1-2023-pay-tv-losses-1235610939/.

Moreover, nothing about the current regulatory framework prevents any party from negotiating their preferred business arrangements. The fact that some firms may not like the outcome of a negotiation is not sufficient justification for Congress to change the policy until that firm is satisfied, especially when that policy change would come at the expense of consumers' preferred type of service.

Furthermore, the rise of streaming does not come at the cost of localism. Indeed, the Internet –including vMVPDs – has enabled journalism to become even more localized and focused on individual community interests. Streaming services themselves carry local content just as MVPDs do.[3] True, not every existing instance of local programming will last forever, nor should it. Localism is not served by ossifying the existing media landscape in perpetuity. As technology and local interests change, so should the media landscape. Indeed, it would be myopic to consider only traditional journalism in today's ecosystem of social media and blogging platforms that often serve otherwise marginalized local interests. Congress should promote the ends of localism from the perspective of consumers, not just protect the status quo by erecting barriers against any shift from existing local programming.

Even if the Subcommittee disagrees with this policy recommendation, it should agree that the proper vehicle for altering online media regulation starts with Congress, not with the Federal Communications Commission (FCC). It would, therefore, be futile to refresh an old FCC record in pursuit of a policy the FCC itself has no authority to enact.[4]

Thank you for the opportunity to include ITIF's views in the record. Please feel free to reach out to me with any questions.

Sincerely,

Joe Kane
Director of Broadband and Spectrum Policy
Information Technology and Innovation Foundation

[3] YouTube TV, for example, automatically includes local channels based on a subscriber's ZIP code. https://tv.youtube.com/welcome/.
[4] *See* Letter from Chairwoman Jessica Rosenworcel to Senator Charles Grassley, March 24, 2023 https://docs.fcc.gov/public/attachments/DOC-392183A2.pdf.