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July 25, 2024

The Honorable Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 L Street N.E.
Washington, DC 20554

Dear Chairwoman Rosenworcel:

I write today regarding the Federal Communications Commission's Notice of Proposed Rulemaking on Fostering Independent and Diverse Sources of Video Programming (MB Docket No. 24-115, FCC 24-44).

I welcome the Commission taking a fresh look at the marketplace for video programming as it continues to evolve. I support the FCC's commitment to updating regulations so that new technologies flourish alongside the diversity and localism that ensures an appropriate competitive framework. Similarly, I welcome the NPRM for the *2024 Communications Marketplace Report* (MB Docket No. 24-119, FCC 24-374) which will better inform media competition.

While these are important steps, I strongly encourage the Commission to complete the rulemaking in a timely manner now that the comment period has closed. Independent media is at the cornerstone of uplifting marginalized voices, increasing access to information and localism, and vital support for our creative economy. Safeguarding a marketplace environment where competition, diversity, and innovation can thrive benefits consumers' choice, creativity, and local communities as well as being necessary for our democracy and wellbeing.

I join with other commenters to urge the Commission to prohibit Most Favored Nation (MFN) provisions. It is critical that regulations ensure media rules do not allow for provisions that stifle the ability of small, diverse, and independent programming from reaching viewers. MFN provisions entitle multichannel video programming distributors (MVPDs) to favorable contractual terms that the programmer has granted to other video distributors. Unconditional MFN provisions, furthermore, do not require the MVPD to accept any related terms that the programmer may have negotiated in exchange. Alternative Distribution Method (ADM) provisions similarly restrict programmers from distributing programming through alternative channels such as online streaming platforms. It is especially important to ensure that as the video marketplace evolves, independent and diverse programmers have a fair chance to survive and adapt to changes.

According to the FCC’s 2020 Communications Marketplace Report, MVPDs saw a 6.7 million video decrease in subscribers between 2020 and 2021 and similarly Online Video Distributors (OVDs) have elected to increase their original content. I am concerned that opportunities for independent programmers and media continue to diminish.

Finally, I urge the Commission to issue a 2024 Communications Marketplace Report that provides in-depth analysis of competition in the communications marketplace. Such analysis should make use of the agency’s expertise about how changes in competitive landscapes affect localism, ownership diversity, and viewpoint diversity. Previous Communications Marketplace Reports did not address core questions, such as whether ownership concentration is increasing or decreasing, or the underlying causes of market concentration.

In the upcoming report, the Commission has an opportunity to tell a more illuminating story and help Congress better understand market dynamics. As you explained in your concurrence in the 2018 Communications Marketplace Report, “[T]his report doubles down on data that we know is flawed, and in some cases just plain wrong. That’s because we continue to rely on third parties to provide us with a lot of the information you’ll find in this report. I think that—as the expert agency—we should be gathering this data ourselves or at the very least validating or qualifying it before we pass it along to Congress to inform their decision-making.” I agree with your assessments about previous reports, and I hope that the 2024 Communications Marketplace Report will make the most of the Commission’s opportunity to inform Congress about changes in the competitive landscapes in communications industries as they affect both consumers and providers.

Thank you for your consideration, and I look forward to working with you in support of a diverse, robust, and competitive communications marketplace.

Sincerely,



Ben Ray Luján
United States Senator