Insight

STELA Reauthorization Highlights Need for Video Reform

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The rules regulating our TV programming are likely one of the last thoughts on a consumer's mind. Video regulation explicitly sought to spur competition, localism and diversity of voices. The cumulative effect is that the relative bargaining positions between content owners and content distributors has been distorted. When the cable and satellite industries were in their infancy, regulations of all stripes were established, but with maturation of these distribution systems, an explosion of high quality content, and increased competition from new entrants, it is clear the entire regime needs a serious reconsideration.

The fight over reauthorization of Satellite Television Extension and Localism Act (STELA) exemplifies this. STELA has its genesis in the Satellite Home Viewer Act of 1988 (SHVA), the Satellite Home Viewer Improvement Act (SHVIA) and the Satellite Home Viewer Extension and Reauthorization Act (SHVERA) which create the legal framework for satellite companies to serve broadcast content to subscribers. STELA allows satellite companies to retransmit broadcast station signals if subscribers are outside the station's local market and also reside in an unserved household. Just 1.3 percent of television households are affected by provisions in the law, but its reauthorization is indicative of how video regulation has been cobbled together.

Other oddities exist in video regulations. For example, video distributors are also required under "must carry" rules to carry broadcast signals if the station chooses to transmit them, but another set of rules apply to satellites. And regardless of whether they want it or not, cable subscribers are generally required to buy local broadcast channels as part of any cable package. While local broadcast news and programming has been a mainstay for Americans, the future doesn't bode well. According to Pew, the number of adults under 30 who are regular local news viewers has dropped quite dramatically from 42 percent in 2006 to just 28 percent in 2012.

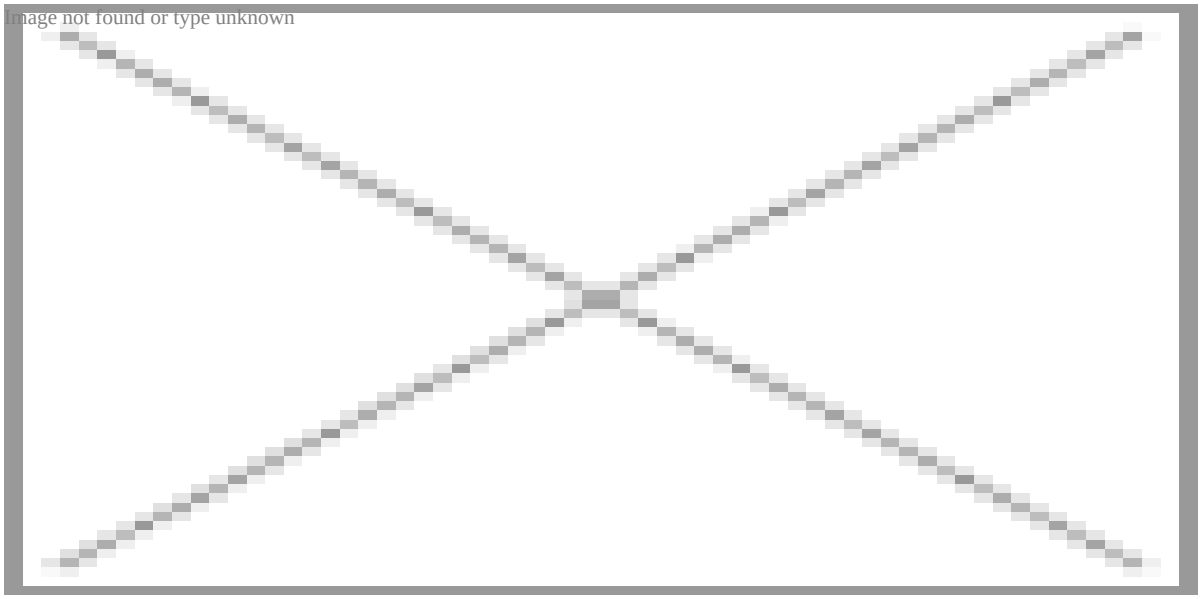
The Federal Communications Commission's (FCC) efforts to spark localism and diversity of voices in broadcasting stands in stark contrast to relative lack of regulation governing non-broadcast content providers like Netflix and HBO, which have revolutionized delivery and upped the demand for quality content. These amorphous social goals also have limited broadcasters. Without any consideration for the competitive balance in a local market, broadcasters are barred in what they can own, are saddled with various programming restrictions, and are subject to countless limitations in the use of their spectrum. Moreover, the FCC has sought to outlaw deals between broadcasters who negotiate jointly for services and ads.

Maturation within the video programming and distribution markets, as well as technological changes and increased competition, have fundamentally undermined the original policy rationales of not only STELA, but also portions of the 1976 Copyright Act and the 1992 Cable Act, which have all combined to create the framework for video. Figures from various market analysts and the FCC's 15th Competition Report detail the dynamism in these markets:

- Dish provides local broadcast channels to every media market, a primary goal that STELA had hoped to achieve.

- DirecTV provides local broadcast channels to around 99 percent of households.
- Subscription to a multichannel television service from cable, satellite, or traditional telecom companies peaked at 88 percent of households in 2010. Now around 86 percent of TV households subscribe to one of the services, up from 82 percent in 2005.
- Since this peak in 2010, cable television lost a sizeable portion in the video subscriber market, declining from 59.3 percent to 55.7 percent at the end of June 2012.
- Satellite and telephone companies picked up most of cable's subscriber loses, gaining video subscribers and market share. Satellite providers had 33.4 million video subscribers in 2010, accounting for 33.1 percent of all television subscribers. At the end of June 2012, this number ticked up to 34 million, representing an estimated 33.6 percent of the market.

Today only 7 percent of households get their television primarily from over the air broadcasters. Cable has long since replaced over-the-air broadcasters as the preferred source of television and even now it is being undercut by satellite and telco based TV. Developments since 1997 show how competitive this space has become.



Source: FCC

It is no longer the case that cable and satellite don't have sufficient market power to properly negotiate, but laws built around this premise have not been sufficiently considered for reform.

Moreover, technology's wave has yet to crest.

Web based subscriptions services, namely Netflix and Hulu, are leading a change in the way that people consume video content. Though in its early stage, a massive change in the industry can be seen. Verizon is in talks to bring TV to the internet, which could be a truly revolutionary product. Time Warner Cable and Disney just inked a deal that will give the cable company the ability to stream ABC content demand through its video-on-demand platform. In some key ways, this TWC and ABC deal has many of the same contours as Apple's recent deal with ABC.

Both the quality of programming and the means of accessing it have undergone dramatic changes in the past two decades but the regulations have not. Consumer preferences and choices are shifting, which needs to be met

by alterations in the regulatory regime. STELA is one part of the puzzle, but like so many other areas of telecommunication law, a comprehensive look at the body of laws ruling video is needed. It is increasingly clear that the laws governing programming must be updated to meet the 21st century marketplace.