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Outside of the Box: Rethinking The FCC's Video Regulations In The Age Of Streaming



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SPEAKERS

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AUDIO

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Tim Lordan 00:00

Great. Welcome, everybody. Welcome. My name is Tim Lordan. I'm the Executive Director of the Congressional Internet Caucus Academy, and today's briefing is called outside the box, rethinking the FCC video regulations in the age of streaming. I have three experts on video regulation through the years, and we'll go through this issue as we go along. But first some housekeeping. This event is hosted by the Congressional Internet Caucus Academy in conjunction with the Congressional Internet Caucus itself. The co chairs of the Congressional Internet Caucus are Congressman Michael McCaul and Congresswoman Haley Stevens, here on the House side, and Senator John Thune on the Senate side. And we thank them for working with us to host these educational briefings that have different perspectives in a bipartisan way. And we're very grateful for the co chairs of the caucus to do that. We have another event coming next month. We try to do these things once a month on different topics. So

next month, we'll have a briefing on July 30 on "The Future of AI, Securing Energy for Innovation." So that's gonna be an energy and environment and artificial intelligence conversation, and hopefully that's the last time we talked about artificial intelligence today, because you we, we almost never get a reprieve from artificial intelligence these days, but this event probably will be one of them. The experts that we have today are to my right. Michael P O'Reilly. He's a strategic advisor and an advocate for MP O'Reilly, and he is a former FCC commissioner. And you may recognize him because he was up on the Hill for a very long time in the Senate, working on on many of these issues that we're talking about today. Cheryl Leanza is of counsel for Best, Best in Krieger. Cheryl has a long history of working with like states and counties and municipalities on these kind of telecommunications issues. And then far last, but certainly not least, Kristian Stout, who's the director of innovation policy at the International Center for Law and Economics, and Mike and Kristian has been writing a lot on these issues lately. So as I said, the issue today is FCC video regulations, and we're gonna have to kind of go through a little bit of history, because, you know, I'm much older. I actually grew up watching broadcast television, and later, I was thrilled to get MTV and cable, and then later I just really enjoyed the internet and streaming, and that's why I work in this space. But I recognize that a lot of congressional staffers probably, you know, broadcast television bunny ears. They probably never even saw one, and then they maybe have a vague memory of watching SpongeBob on a cable network. So you know, some of these regulations we're gonna be talking about go way back past the point of which some of these the average legislative assistant was born. So so bear with us. I think the what we're talking about today is there are all these different we're talking about how video is distributed in America. And back when I was a young kid, that in the 1980s that was on broadcast television at the time, there were three broadcast networks. You essentially could only have three channels, give or take, ABC, CBS, NBC, and then you had PBS. And then, you know, fast forward to the mid 1990s you know, video was distributed through like a growing set of cable providers, and they would grab broadcast signals and run through a cable to your house, and then they would put in other programming, like Spongebob and MTV and things like that. So the mid 90s, you know, you probably had 50 channels that you could access, instead of, like four or five. And then, you know, maybe 1994 DirecTV satellite TV came into play and started distributing. And fast forward to, like 2005 most people in America, like 85% had either direct TV, satellite, dish, network or cable so. And then the rest had just still had bunny ears. And then, you know, fast forward to what we are now. You know, you can think about all the different ways. On a given day you're you're accessing video through your phone, through your laptop, through your Smart TV, or through your Roku device, whatever it may be. And we'll get to that in a second, but that's bait. So how all the rules by which video distribution works in America, whether it be the rules about captioning broadcast video or cable video, the closed captioning or program access for different channels, or sports carriage and all those different blackout rules. All those rules were kind of created by Congress and or the FCC over the span of years that I just talked about, you know, from the 70s all the way through to the mid 2000s and I we want to talk about why, though, how those rules kind of either flow to streaming services or or are they relics of a old history and should be eliminated? And one of the triggers for this is the Federal Communications Commission is going has a procedure. Your procedure right now called Delete, Delete, Delete. That's literally what it's called. It's a docket number 25-133, and it is called Delete, Delete, Delete. And basically the idea is like taking some of these old regulations that may not make sense anymore because of radically changing environment for different services like video and deleting old regulations. So we're up here. As that proceeding is going on, people are making comments about different things, what should be deleted, what should be kept, and then at the same time, Congress obviously has a role

to play in that, but we thought it'd be a good time to talk about those kind of legacy video rules, and do they make sense going forward? And if so, why I think what we wanted to do was kind of talk about the reality for broadcast and cable, sometimes called linear TV, cable companies and satellite video companies and where we are right now. I think if I could ask Kristian just for one quick second to kind of talk about the environment for video services right now and what it looks like and what's happened to video like linear, linear video you may have seen the other day. Warner Brothers just announced that they were going to spin off. It's like cable TV properties a few weeks ago. It might have been longer than Comcast announced the same thing, maybe a few months ago. These things are the speed at which these things are happening and how linear TV is devolving, not devolving, but changing radically. Is happening at an exponential pace. And so things are going to happen very quickly from the marketplace. And I think what's going to happen is members of Congress up here are going to start rushing to either save the regulations that they had before or figure out how it all works. And so I don't know a single person in the space that's distributing video that isn't absolutely horrified by the pace at which this is happening, like a big player, small player, everybody is generally just horrified at how fast everything's happening, but with new technologies, that's what's happened. But Kristen, where are we? We got the good, sure, the state of things. So

Kristian Stout 07:15

Thank you for the history lesson. Tim, I think, I think it actually is important to set the table with a history lesson in this context, because law and regulation, it's important to remember that you want to achieve good things, but the technical means in which you achieve good things are always rooted in the time and place in which you write the laws and regulations. So broadcast, a lot of the broadcast regulations, they emerge out of the early, mid 20th century, where the FCC and Congress were looking at how you control public access to spectrum and how that's deployed for the public good cable TV when you started getting involved in how you retransmit other people's broadcast signals, but through a small pipeline going to particular communities that created a different set of time and space constraints on how those laws were written. And the same thing with satellite, the way spectrum is accessed by satellite providers and is provided to homes. So the laws were written with those modalities in mind. But then when we go to today and we take a look at how all these different competitors are dealing with each other in the marketplace, you increasingly see what you can think of from a consumer's perspective as a convergence of these modalities so that when you want to watch a particular sports game or a particular movie, you're not thinking, do I need to subscribe to Comcast? Do I need to subscribe to direct TV? Should I be on a streaming package like I just want to watch the thing I want to watch? Right? That's how consumers are driving these changes. Whereas 50, 100 years ago, it was very much the constraints of where you happen to live at that particular time, in that place, whether you could have access to that content. So that changes the way we think about these things. It changes the way consumers behave. And then that leads to a lot of these video providers changing their own behavior, trying to figure out how to meet that consumer demand. So increasingly, you see a lot of these streaming providers measuring an important metric of consumer churn, because consumers have the choice of whether they want to subscribe or unsubscribe to the streaming platforms. I think since we started streaming in around 2007 is when it became commercially more available, we've had something like 200 different streaming services that have risen and fallen as these, these companies try to experiment with how to provide this, provide the service at the same time, since 2000 you see cable subscribers, cable television subscribers. I think it's about half of what it was in 2000 and all of the

industry analysts predict that that is going to be a continued decline in cable revenues from cable TV. So the current state of the market is what you would really describe as one that's incredibly in flux. So we tend to think of these as very large companies. They've been around for a long time. In many cases, they have and they have a lot of funding behind them. But the models, the business models they're experimenting with, are increasingly diverging from the regulator. Presumptions that we had when we started regulating these companies and free and if you look at their earning statements, a lot of them are trying to figure out how to make money in this new environment. Despite being large companies, they do report losses. They do report increasing consumer return. So there's a lot of uncertainty in the video industry about how they're going to continue to operate going forward. So

Tim Lordan 10:19

It's worth noting, even even in this room, that we are streaming this using our own camera up here on YouTube, right? Not YouTube TV, but just YouTube itself. And then C-Span is here, and they are broadcasting this on which channel, I actually don't know, but let's say on a cable on a cable channel somewhere. And those are very, very different spaces, and different from YouTube TV itself. And so when it comes to video regulation, those kind of historical video rules, we'll just go over like some of them, and we'll ask you for questions to ask us about the different rules, but we're going to touch on a few right. Some are I mentioned earlier, closed captioning, which is the text that appears below that you describes what people are saying. We also have all sorts of different program carriage rules and must carry rules and sports carriage rules and blackout rules and that those, some of those apply to you know, what video, what broadcast video, perhaps a cable provider has to carry from the broadcast network other channels that the broadcast the cable companies have to negotiate with independent programmers to carry on their networks. There's something called peg and educational television that is carried and then sometimes in like franchise agreements, you'll see your local city council meeting, you know, on cable television, things like that. So that's kind of like the in the program, carriage must carry box. And then we have, we have, also, we have privacy rules that are very different as you go from broadcast, which is essentially there isn't any privacy because no one knows what you're watching. And then cable has really strong video privacy rules, and then on the internet, different rules, depending on how you look at it. We'll go through all of those things and so but let me just take I'll give you an example on if I can on closed captioning. For instance, not super controversial closed captioning. Way back, it was part of the 1996 Telecom Act and basically, the Congress basically required that broadcasters and cable companies for certain things, have to provide closed captioning. Back then, it was not trivial to closed caption. Like an hour of programming, you would have somebody that would type it all in, and then they'd have to put it into, like, a different technical standard and get it into the video. It was, it was kind of hard. It was like there were no auto transcription AI things. You had to do it by hand. It was time intensive, very expensive. Now Congress over the over time with new video services, Congress passed a rule several years ago, basically said if, if a like a Forrest Gump was broadcast using closed captions or aired on cable closed captions, and you show it on Hulu or something, you should carry the captions and a lot of that. It's become trivial to caption video now. You don't need actual people who type it in and sonographers and things like that. It's very easy. So I think it's one of those things where not only that, but every millennial and every generation Z person I know watches every TV show, regardless of what it is with captions on, there seems to be, like, a lot of consumer demand for captions. So it doesn't seem like that two, two current, controversial, I'm sure there. I'm not trying to dismiss that. Other groups may want to have more captioning available. But

generally, that's one of those things where it's kind of flown through, flown through, down into online streaming services. But other ones, like program carriage, let's, for instance, like independent video, independent providers, like Hallmark innovation, like they want to have access to different cable networks and video providers that stream online. Cheryl, if I could just go to you real quick, like what? What is the issue with regard to independent video providers, and some of these may be very local, local news, things like that, wanting access to these new, emerging online services as they become available.

Cheryl Leanza 14:18

Thanks, Tim, thanks for having me. And I did also want to say, in addition to working with local governments, I also have a consulting practice where I work with nonprofits, civil rights organizations. So I'll probably bring some of those perspectives, although I'm certainly speaking for myself in all cases. So I think one thing I just wanted to say, to start out right this is can be a very dense topic, but don't be afraid, because you're using these services every day, and you have some certain set of values you want to bring to these services. And one thing I always want to start off with is thinking about, let's make sure that we're not just saying, oh, a rule is old. Let's get rid of it, right? The First Amendment, very old, still pretty good. Constitution, very old still pretty good. And I trust competition. And those laws are relatively old, but they're still pretty good. So we want to think about that in the context of as we, as we talk about these new rule, rules that have been put into place. Often they are trying to implement some of these core values that are enshrined in our democracy, in our our functions. So the question about like, how do you get other providers, other viewpoints into the current marketplace. To go back to the First Amendment, we said the government cannot license newspapers, right? You don't have to ask the government permission to get on, to be out there and speak your mind. Then we got to broadcasting. Was like, Oh, no. Now you do have to ask the government for permission, because you need a license from the government to put on your radio and TV. And we always know that we want our vibrant discourse to be up here in with the most current technology. You don't want your vibrant discourse to be back there in yesterday's technology. You want to be able to see it wherever it is. So when we got to cable, that was a time when so in broadcasting, it was like, Okay, you have to cover all the sides. Just we're going to give you a license, but just cover everybody fairly. That's the best we could do. We got to cable and satellite, and the idea was, Hey, there's this one place where all of the information is going. We want to make sure that there's a little spot here for some other viewpoints that might not be controlled by the company that controls the wire. So some of that, they call it cable access. And as Tim mentioned, this is sometimes you'll have a situation with cable television and a little bit also with satellite, where the local government can say, hey, we want educational there's an educational channel, there's a government channel, and there's a public channel. I don't know if people remember Wayne's World or but that was, there's these old programs, and what that was, is you could go down to the local government area, there would be an independent entity that would manage the channel, and people could go on and make their own programs, and they learned how to run, you know, television, and they learned how to get their information out there. So that's what we have. And then there was a whole separate set of things, which is, Okay, what if you're an independent programmer? What if you don't want to sell your soul to Comcast? What if you want to create your own thing? How do I get to all the all the TVs, all the TVs around the country. There's no other way to get there. Well, they had something called program access, which was a set of rules that basically talked about how, under what circumstances could somebody who controlled programming withhold it from another provider. So if

you're you know, for example, you were Time Warner, you own CNN. And everybody at the time in particular who was paying for a cable system or a service, a paid TV service, they were like, well, first of all, I'm not going to pay for television if I can't see my local NBC News. That's ridiculous. Oh, and I'm certainly not going to pay if I can't see CNN. Well, that means the owner of CNN is like, Whoa, sorry, you can't have my channel. You can't have my programming. Other people can't have my programming, and they're able to sort of tweak the market. So those were what the program access rules were designed to do. In addition the cable access rules, those were what were designed to do. So I think that's kind of what you wanted me to cover, Jim, but if you have a follow up, and

Tim Lordan 18:01

Then the question is, do those program access rules flow into new online services like YouTube, TV, Hulu or anything else like or can that program access be satisfied with just, you know, like we do with we essentially have our own Congressional Internet Caucus streaming channel?

Cheryl Leanza 18:18

Well, I think that really goes down to some of the open access, net neutrality set of issues, right? So first of all, make sure that we're distinguishing between. There's YouTube, where you go and you watch, and anybody get up there and make a sing, you know, make a channel and put up video, and then there's YouTube TV, right? With that is where they you pay, and then you get some over the gear, broadcast network channels, you get other channels. So there's a difference between being on YouTube and being on YouTube TV. We call things like YouTube TV a virtual multi video programming distributor, because lots of different programs are are on that platform, and you pay for it, and you can see live TV, Hulu Plus live TV. That's another one you pay and you see what is programming. Then you actually, if you're local, you could see it by getting an antenna. I know Tim was talking about bunny ears from a buy on a but, yeah, but there are digital television antenna that you can put up and you can get a signal. So the question is, today, if you are a smaller niche creator, can you get your content out to the public? Well, if you're on YouTube or you're on Facebook, you probably know, and maybe you don't, but you can put up your Facebook page. But if you're not paying money to Facebook to boost your content and get it out there, probably nobody is seeing it. And the question is, okay, we can be on just we can put up our website. Okay, no problem. We don't have money to pay pay Facebook for distribution, or we don't have, you know, we can't make a deal with YouTube TV, but let's just put up our website. Well, that's why the importance of the having the network owners who transmit all of the content to both your phone and your television at home, make sure that they're not going to say, Oh, if you don't pay me money, you are not going to get treated the same as content from NBC or somebody else. So that's why. I would say, in terms of access of content, in terms of the Internet age, it really depends what platforms are you talking about, and what's the current market

Tim Lordan 20:07

environment. It's all really dense. And Cheryl mentioned that, you know, cable providers are often called MVPDs, and YouTube TV is a V MVPD, which is a different regulatory structure, streaming online, but has a mix of broadcast content, etc, and Hulu is in the same category by FCC rules. So it's all it's all really complicated, and people have different rules, but going back to cable companies and satellite dish companies and things like that, they're still operating under some of those carriage rules that Cheryl had mentioned. And so I'd ask Mike, you know, as you start thinking about, you know, the FCC,

Delete, Delete, Delete, proceeding, and what you know Congress should do with regard to cable companies that have these program access rules, these different privacy rules, and all these other rules that don't necessarily flow to virtual MVPDs or online services like YouTube, like what, what should be done about that?

Mike O'Rielly 21:10

Okay, thanks for having me. Really appreciate the opportunity to be here. Let me respond to a little bit has been said and provide a little bit of context some of this. I was here in the house representatives for nine years at Energy and Commerce around the corner. Right? Little context, so Congress enacted statutes on cable video service. 1984 1993 1996 those are the big ones, and really hasn't done much since 1996 and they were in response to good or bad the idea that cable video services were a monopoly. You only had one provider in the market, and you had to try, and the government was going to try and extract some benefits from that, and also prevent bad things from happening. Whether they did a good job or bad job, is for Congress to decide. But the market changed many years ago, and and the kind of these two buckets, one is the rate regulation. Are you charging too much? And then you have these extra benefits, extra things. Cheryl mentioned a bunch of them, Peg lease, to access, program access, a bunch of other things. You say, added burdens for cable video providers. But if you can have that whole conversation about what exists, and that's where Tim's question goes, on, delete, delete, delete, what should we keep? But the real question is, what's happening in the marketplace, and if you look and we started this conversation, and how many of you are younger than I am and and many of you are younger than the many of these rules, many cable video providers have already dumped video. They don't offer video today. They tell you to go to YouTube. They tell you go to YouTube TV. They they make it easy for you to go. So when I was at the FCC, the small guys were the first, and they said, it's there's no margin here. We're dumping video. It's just not worth our time. So most of those guys have dumped it. And then the medium guys, the medium sized guys, they mostly dumped it. They may keep it as an add on. It's where they're probably losing money off it. And then you're starting to see big guys, not the biggest, but some of the big guys dump it as well. The video is not a profitable, long term, sustainable service. They want to offer a full package, and they do. They offer broadband most of the that's the biggest market at the moment, and they'll have other services as we go along, but including wireless and other things, but the video side is really shrinking. So the question is, to Tim's point, do you try and take that old regime and put it onto the new providers, or do you scrap the burdens that are on this shrinking video marketplace? And the answer is the second, there's no ability in my mind to take those burdens and apply them to a universe that's so dynamic and so capable program access if you have a creative idea, it's going to be picked up. If you see the influencers that are today, they're making more than this panel combined, more than this probably room combined, in terms of how much money the influencers can make. Not everyone's going to be an influencer, but there's opportunities out there without being the strategic you know, old video getting on that marketplace you know, having used program access to try and get and they rules never worked in the first place. Leaks access from 1993 never worked. It's a mess from to begin with, program access, a mess to begin with, rate regulation pretty much struck down in the 96 act that was created in the 93 act, a lot of these burdens have already started to evaporate. I was at the commission. We expanded the definition of effective competition to get rid of a lot of these burdens, and now the commission is saying, what's left? Why do we have to keep it and like the truth of the matter is, but a couple things I would probably keep the rest of it should go away. You've got some things on pole attachments that

probably have to stay. You probably keep some things on retransmit mission to just because it's such a messy situation. And you probably say, Okay, we'll deal with that another day. But pretty much everything else can go by the wayside and doesn't need to exist in the current universe. We're talking about rate regulation. The commission has a open. Meeting in a week or so, and it's going to, probably, more than likely, get rid of a number of rate regulations that were created in the 1990s 93 to be specific, none of them ever worked, and they're going away, but they're going to have no impact on consumers and no impact on video services. That's not a bad thing, but it's burdens the provider has to live with train lawyers to make sure that they're in compliance for things that make no longer any sense. So the universe we're going is wonderful opportunities for consumers and for providers and all the different things that you want to do. And the old universe is fading. There's no monopoly anymore. You've got all the opportunity in the world and all the burdens that now lie on video providers, cable video providers, to be specific, should go away post haste.

Cheryl Leanza 25:43

Well, I just would want to say one thing, which is that there still are programmers who can't get uptake, and who are actually being forced to sign contracts that tell them, if you want to be hot, if you want to be carried on Comcast or Dish, then you must not go direct to the consumer. You may not bring your content directly to the consumer. We're going to lock you in so you either go one distribution mechanism or no other. So the marketplace isn't quite working the way that we want, as much as we would hope.

Tim Lordan 26:12

They can go to they have rules that they can go to Comcast and to Direct TV and negotiate for lease access. There's those rules exist for online services well, so

Cheryl Leanza 26:25

they go to YouTube TV, just want to be sure we're not mixing up to yeah, there's a leased access rule, which is super old, and you should just forget about it, because it never worked program. I mean, it was a good idea, but that was the early time when they thought, Oh, nobody can get on to cable What if somebody wanted their own channel? What if they just leased the channel from cable operator, and they could just make their own channel? And cable operators fought it really hard, and it was very difficult to make work program access is a way to request getting on. Unfortunately, the FCC has not enforced it. So the reason that it doesn't work is not because the idea couldn't work, but because it was never really enforced the right way. But the current situation, which is mostly just in the marketplace, where cable operators use their market power, if you're an independent provider, and let's think about it. We're talking about, say, TV one creates black oriented programming. Newsmax creates conservative program trying to compete with Fox, right? These are the programmers you're talking about. They're trying to get their content out to the public. I think a lot of people really like that content. They would like it, but how are they going to get it? Is it going to be on? Is it going to because you subscribe to Comcast and you get it through your cable operator, or you're going to have to pay YouTube to see it? You know? Can you see it just by subscribing to them individually? We all know right now, our biggest problem is that everybody wants \$20 a month so you can watch stuff, right? It's like, Disney, and then you play Netflix, and then you pay Apple, and it's like, it's so much money you're paying just to see maybe four or five shows. But they're all in a different place. So these independent creators of this

content, they're trying, for example, they want to be on a system where you only you can just pay one thing and get a whole bunch of content. But when these independent providers, like the newsmaxes, the TV ones of the world, go to a cable operator. The cable operator says, well, we might carry you, which is great, because then you get really great distribution. But you can't go to the public direct. That is against the rule. When you sign the contract to come with us, you can't go the other

Tim Lordan 28:16

way. So I think one of the reasons why we're here is because, you know, to the extent that members of the House of the House of Representatives and to a certain Senate, these independent providers of video have do all sorts of things right, whether it be all different types of content that they serve to local community. And when those things change, and those video providers change, and we'll get to sports in a second, but when those things change, usually people come up, or providers come up and say, You we've just been cut off. And so those fights inevitably end up here. And those channels, I think one of them, is Hallmark. Hallmark, an independent hallmark is an

28:56

independent provider, but I'm sorry, wouldn't they? No, just

Tim Lordan 28:58

like, if my father, if my parents ever lost the Hallmark Channel, like they'd be up here in a heartbeat, right?

29:04

Most popular channels in the country,

Mike O'Rielly 29:05

but that's the point. It's very popular, and then, therefore, that's why it's carried. Where you find there's some really bizarre channels and the cable providers like, that's actually how you have no audience. Why would I spend and consider, you know, carrying this channel that makes no sense. It doesn't. No one wants to watch it, and I've got limited amount of capacity for the video side. And anything I put on the video side I'm not dedicating to broadband, which everyone loves,

Cheryl Leanza 29:30

yeah, but I mean, all of the content creators, the other thing they do is force the distributors to take multiple channels, right? Like that was the classic Disney play, which is okay, we'll give you Disney Channel, but you also have to take Disney channels one through 11 as well. Disney's not stupid. They want to be on the platform where people have a ready made audience. So it's not just, it's not just always like, You're confusing little

Mike O'Rielly 29:52

apples and oranges, because a lot of that was retransmission consent and must carry. That was a trade off. Some of that was, lot of it was like, you carry 10. Is an E, and we're not going to actually make you pay for carriage

Kristian Stout 30:03

so well, there's, there's a because there's a fundamental problem with the way we're talking about this. I think to where, when you mentioned market power, that I think that kind of describes the problem as we're thinking about it. And the same time we keep talking about content creators, right? There's a there's a difference between the world in which we imagine cable and broadcast, where we would make a movie and we'd make a film, and we'd make a record album, and then today where we make content, and what we're trying to do is attract attention. So the actual money that everybody's trying to chase is in the attention the content is almost second order when you look at a lot of these industries. So when we're trying to imagine a regulatory apparatus that tries to create a regulation that governs like, how you get access to particular video from a consumer perspective, frequently, that's not the way they think about it. Many people multitask, and they put many things up at once, and they're watching a stream and they have a song on in the background, and they're talking on a discord, and they're doing this and that it's not the world that we live in where you sit down and watch cable anymore frequently, even though people like us still think

Tim Lordan 31:05

it is and you're at the Center for Law and Economics. So that's a bit of an economics question, like right now, like, I've always grown up thinking that the cable companies and those studios that you just mentioned are just huge, huge companies with all these resources. The reality is that today, a lot of the tech companies are actually, from a market capitalization perspective, much bigger. Can you explain like, when sometimes you think of like the cable companies and the mvps as really huge companies? It could be that the tech companies, like YouTube, Hulu, have more resources than 100%

Kristian Stout 31:40

Yeah, you're completely correct on that. So it's getting even more complicated by the day. So we keep hearing about how different Legacy video providers you mentioned at the top are trying to figure out ways to spin off assets aren't performing well. So in a way, they're like reconfiguring their own capitalization structure, which affects their market size relative to that. But yeah, they're competing in a world where there are technology platforms that have much greater resources in absolute terms in order to distribute content. So like Amazon Prime Video The last I haven't looked at it in a few years, the last time I looked at it, it's like making money for Amazon, but they almost don't care if they make money, because it's really more a part of the Amazon ecosystem so they can sort of put the content out. I love it as an Amazon Prime subscriber to get access to all that stuff, but that makes it really hard when you want to be a video distributor solely like that's your company, and you're trying to make money in that market, and then you're facing a company that has five different markets that it's like a leader in. That makes it much more challenging for these

Tim Lordan 32:39

video distributors to compete one one more program carriage question, just because it's here, right? So we have CSpan right here. We have our little channel on YouTube, not YouTube TV, but like I think there, CSPAN does not they, they do not have access to they're not carried by YouTube TV or Hulu, from what I understand. And why is that like? I think you know, CSPAN is was created by the cable industry at a time when you know the government, the Capitol Building, where we are, people were able to see what was going on, but unless you actually could get a ticket to the gallery, which is a

limited number of seats for a huge country, you know, seeing how the government worked was kind of hard. So, so cable came in with CSPAN and created the service where you could see hearings and the floor of the House, the floor of the Senate, and there's a bill in the Senate right now for different online providers to carry CSPAN, I think it's their 39th anniversary. How does, how does that work, and why? Why, what certain channels like CSPAN would not be on YouTube TV.

Cheryl Leanza 33:56

So, I mean, I think this is where it gets to this interesting world of convergence. So originally, CSPAN was actually created by the cable industry, and it was something that they did because I wanted to, I think, get Congress on its side. It was like, Hey, you can all be on television in the homes of all of your constituents every day, all day. Wouldn't that be great? And this is the same time that Congress was looking at these really significant regulation of the cable industry that Mike was referencing in 1984 and 1992 so in essence, the cable industry said, hey, well, we'll do this as a volunteer activity. Well, now you fast forward to today, and the question is, who should support that infrastructure? Where should, who should pay for all those cameras all that time? How should people expect to be able to see Congress at work? If they, you know, if they want to just watch it, are they going to watch it on streaming? Are they going to watch it at home? And so there's really not a mandate specifically, as far as I know, for CSPAN, except I guess there's a proposal to get CSPAN a. Carried. I think this is a really good example of how we have goals for public good, things that will help the public, help democracy, because people can at least hopefully, see their members of Congress doing their work day to day, see a hearing, see what's going on. How should we provide for that. And a lot of times, the regulations would provide for that in a really particularized way based on the economics and market configuration and the technology of the time. And then those things change. But the question is, can we just get rid of the rules, or do we still think it's really important that members of Congress can be seen and heard by the citizens of their districts in the country? Yeah,

Tim Lordan 35:41

I bring up the Chuck Grassley Bill largely because you'll have a lot of different providers that'll have different stakeholders in the House and Senate that are going to be advocating for that content. And I guess the question is, how does

Mike O'Rielly 35:52

that all work? But in fairness, though, I mean, CSpan is a wonderful service, and I spend a lot of time with the CSpan folks. I've seen the bus, I've done tours with them. I've done a lot of interviews, so I'm a big fan. But as Tim mentioned, this is something that the cable industry paid for. It's not governed by FCC rules. It's not governed by statute. And so now you have a bill saying, well, we want to mandate. Congress should mandate that this has to be carried on these different times. This these types of distribution models and that's just not how the model has worked. It's not how we've gotten to this point. And if you want to change that, that's that's something for Congress to consider, but it seems like a very big stretch take a private offering by the cable industry and saying it has to be mandated elsewhere

Kristian Stout 36:35

well, and I would just say on that point, it's always important, when you're thinking about laws and regulations to understand that by definition, when you're writing a law that puts that kind of imposition

on you are introducing some form of inefficiency into the market, because the market is not trying to do the thing you want it to do. So you're trying to figure out how to make it do that thing. And there's different ways you can do that. You can write obligations into law that then force some third party to figure out how to pay for it, and that has different kinds of distortionary facts, or you can just take a subsidy approach and say, look, it's a thing we want to purchase with our money. And instead of making private companies figure out how to distort their own business models and not serve consumer interests, we're just gonna create a fund of money, and then we're gonna make sure CSpan is funded. And that's another way to do it. But you have to look at the economics of those things and make sure that you're not doing something that makes it difficult for the private actors to actually still compete and develop things in the market they want to give to consumers.

Tim Lordan 37:25

So, you know, we have plenty of time. Actually don't. But I'm gonna go to questions again. I'm just gonna tee up because of all these questions, nothing gets people worked up more than access to sports programming, right? And the drive, like sports programming has always been really a mainstay for broadcast and cable, but that's increasingly seeing exponentially that moving towards online streaming, where you see, like, for instance, the NFL Sunday Ticket, which used to be provided by direct TV, is now carried by YouTube TV, I think MLS is carried by Apple TV, not exclusive, not exclusively. But those deals are going towards online streamers, which would have been laughable 15 years ago, like it would have been saying that that would happen. But here we are, and it's happening

Speaker 1 38:15

very quickly. Twitter. Twitter had some exclusivity over there was a couple games. Who does Twitter at one point, had a couple streaming

Tim Lordan 38:21

exclusive Yeah, and so when, when sports become exclusive to a certain distribution outlet people, people get upset, right and like, it manifests itself in all sorts of ways. And none of us are sports experts on sports programming experts. Michael probably is better than all of us, but I just want to, like, raise the issue on where we think this is going. I will say this from a fan of women's soccer and women's basketball, having online distribution of the emerging phenomenon, which is women's sports has been, I think, at this critical juncture, has been really fascinating and really good. But if I could get you guys to just talk a little bit about sports and those old blackout rules and must carry rules, and just kind of get us get the audience a sense of what's going on

Speaker 2 39:10

there. Yeah, I guess I'll start. But a lot, a lot of the rules, it's not really blackout rules. I mean, some of those things that we've moved past them, and playoffs and all those things, if we've moved past them, that we've moved to the universe where you used to watch your sports on your broadcast channels, and then a lot of the programming shifted to cable, and now a lot of the programming is being bought by new tech and new platforms. And that that's been, you know, actually expanded the options for consumers that use those services. And you think about the Monday Night Football was was purchased by, you know, and has the rights by ESPN, and they moved it from ABC to ESPN, and so you have to be an ESPN subscriber. And ESPN, in the next 18 months or so, it's going to have a direct to home,

direct to consumer offering, and it's going to be its own, effectively, distribution model, and you can watch Monday Night Football. Assuming that the rights are worked out with the NFL. So programming that is highly demanded, which sports tends to lead over all other programming and demands the most amount of money. There's a certain portion of the population that really likes this content, and it's going to continue to pay for it, and they're going to try and find a way to get that content to consumers. More than not, it's going to direct to consumer structure, rather than a broadcast channel you get to you know, as a Buffalo Bills fan, I can now purchase just the Buffalo Bills game in my market, or if I want to watch whatever I want, I can watch it in my home and pay for it and buy a package online for just that purpose. It's never been so easy to be more structured for a fan in the entirety of sports and new sports are getting so much more attention. I'm glad and so pleased that we're seeing women's basketball and women's soccer and things that are going to happen in the Olympics. We're going to get more options for consumers, and all that's happening with a dynamic universe. And the sports rights are going to continue to change on who's holding them and who's paying but that's a good thing overall in terms of consumer perspective.

Cheryl Leanza 41:11

So I am quickly curious, how much does it cost to

Mike O'Rielly 41:15

get the bills? Well, the bills are in a very good position right now. This is their year. They're going to win the Super Bowl. Okay,

Cheryl Leanza 41:21

I grew up in Northern New York state, so I'm also a Bills fan, but, or at least I watched them a lot. So I just wanted to quickly say that one thing that is important to understand in terms of the big structure, right? Quite often. So first of all, the NFL is different. The NFL sells its own its own signal, its own channel, so that is kind of done one way. But then when you talk about major league baseball, some of the other, some of the other sports, they're sold in different ways. Each team has the rights to Sonic over its own shows, its own games. And what happens quite often is they get bought up by these regional sports networks, and then owning a regional sports network that has control over, say, the Milwaukee Brewers or something, becomes an incredibly important leverage point, because now you have this musty content, but you get to, you know, that regional sports network gets to decide who sees it, and quite often those were owned by cable operators, so they would use it as sort of a leverage point. And then we've had, unfortunately, some situations recently where a couple of these networks, these regional sports networks, have actually gone out of business. So I think the Brewers, the Diamondbacks, all of a sudden, they kind of disappeared, because the entity that held their broadcast rights and their production rights were defunct. So I think it does get very complicated in terms of this situation, but just remember, sort of the basics are that your local broadcast television often has rights. They have to come into an agreement with the cable operator. So your local NBC four, your local ABC seven, that channel has to have an agreement with the cable operator to have their signal carried on cable. And so when you're often hearing about blackouts. What you're really hearing about is a breakdown in what we call retransmission consent. That's when the broadcast channel is negotiating with the cable operator and says, can your signal go onto the cable TV platform, and if they have a disagreement, then that finally, the TV station will say, Look, we have no we have no option but to just

cut off our signal for these cable or sometimes even satellite customers, because the distributor is not negotiating with us and our agreement is over, we're just not going to give our content for free. So as a staffer, what I would say is you need to drill down a couple of levels. If you're starting to hear that your local sports team, which is a really important cultural touchstone. In fact, one thing that brings us all together quite often, even when so many other things are difficult, is that we all can cheer for the local sports team. You watch your bosses. You know everybody's always betting on their sports teams, whether it's college or professional, but you have to dig down. Who is it that owns the rights to transmit that signal? Where? Where where is the, is the commercial breakdown in the marketplace? And right now, I think the marketplace is so much in flux, you're really not getting a completely pro consumer outcome. Because quite often, you know, maybe you can get a direct from the direct from the league. You know, bills only all the time. But otherwise, sometimes you're trying to see, like, Okay, wait, that if it's this day, I have to be on Apple TV, and if it's that day, I have to be on Amazon Prime, and all of that is a separate subscription and a separate place to go and look, and you're trying to figure out, like, Where can I just watch this game? So that's what I would say about

Tim Lordan 44:33

sports and Kristian Where do consumers find themselves while watching?

Kristian Stout 44:36

Say that I sympathize with the frustration I hear. I am not a sports guy, but I have a 12 year old daughter who only will watch women's basketball, and learning how to find Caitlin Clark games for her was very difficult, and I did not succeed most of the time, so I'm not winning in that game, but I think the what we're hearing actually illustrates some of the points that I mentioned earlier. Is that we see a tremendous amount of evolution going on in these packages. You see last year, there was the joint venture between was Disney Fox Warner Brothers, where they were trying to offer some sort of comprehensive sports package. As far as I understand, it was like mostly comprehensive because there's still other rights that are owned elsewhere. That joint venture fell apart, but Disney is now going to be offering a super ESPN package that will give you everything that ESPN currently offers. If you subscribe to I think it's like 30 a month. I believe Warner Brothers is part of what they're redoing. They're doing with the restructuring is trying to figure out how to create the a certain kind of sports package. You see the same thing. I believe there's a YouTube TV version that allows you to have, like, a sports, sports only, I think there was a Hulu focus, sports focus package. So you see a tremendous amount of experimentation in the market. And it's, it's not, I wouldn't call it not pro consumer, because I think these companies are trying to figure out how to meet consumer demand. But the fact is that the sports teams themselves do own rights to their own games, and you don't want to take that away from them, I assume. But what you need to do is figure out how to enable that a more efficient bargaining between the sports teams and these different companies that are trying to offer the video in the format that the consumers want, because we're still kind of stuck in this halfway in between world where a lot of people still on cable, a lot of people still in satellite, many people are moving over to streaming, and these companies are trying to figure out how to make this market work for consumers, while also continuing to stay in business,

Cheryl Leanza 46:29

right? But just to be clear, the situation with fubo was we want to create a skinny sports package. Go to the rights holders and guess what? They won't sell the inputs necessary for fubo to make a skinny package. Then FUBO seems happy now, well, right? Because FUBO sued Disney was about to win in court on an antitrust suit, because they were withholding the impact that they were about to, well, they settled, and then Disney bought fubo settled,

46:56

liability or no liability.

Cheryl Leanza 46:58

Okay, I don't think that you normally turn over and they were going to, they were going to get money out of that, but then they merged. So, you know, I think we had an independent competitor in the streaming world that couldn't, would not, could not purchase the inputs that they needed to offer a package that their market research showed that consumers wanted, because the folks that owned those rights wanted to make more money themselves, and so they wouldn't. They said, Oh, you either have to buy the whole fat package or nothing. And food was like, that's not what people want. We want to sell the skinny package. They couldn't buy the inputs. So you always got to dig a little bit deeper into figuring out what's going on. And it may work out with regard to sports programming, and eventually we'll get to a place where it will be more pro consumer. But I think we have not hit Nirvana yet,

Tim Lordan 47:40

so we haven't gotten to privacy yet, as one of those rules that, you know, goes from Legacy videotape rentals at your at your blockbuster, anybody remember blockbuster? There are all sorts of rules for video that came out of a cassette, and those translated eventually to cable and then, and then Congress tried to pass a bunch of rules for online services like, you know, Tiktok and everything else didn't, wasn't successful. We can get to that. But I want to go to the audience for questions. If anybody has questions, I'm sure you've digested 80 years of video regulation in the last 45 minutes. So questions, and I think we have a boom mic from CSpan. If no one's going to hit you in the head, it's just a microphone. Go ahead, we still have technology. There you go. Yeah, just talking to the mic. Okay, yeah, and

Speaker 3 48:40

we funded, but it's funded by the local networks and all that. And you obviously want to talk in the congressional world about this capacity for PBS, and now PBS, this box has to be street or, like, there's like, a merger there. And I'm just kind of wondering where the FCC comes into that, or if it does, and kind of how that looks like. How can CSPAN be similar but different? Similar, but different and

Speaker 1 49:03

like not be at risk for funding on well, they're similar, but they're distinct in that PBS is an actual funded organ, or partially funded organization, from government funds where CSPAN started as a private channel from cable companies in order to provide that so it's completely private right now. C

Cheryl Leanza 49:30

CSPAN was created by the cable industry. So cable industry is like Comcast, charter, et cetera. They offer new spectrum. The cable industry said, Hey, we're going to use our money to create a channel that brings the Congress into the homes of Americans. Was completely private. They decided to do it because it looked good for them, and it gave them a great opportunity to, you know, be friendly with the members of Congress, and they and they offered a great public service, a great public service that was created much later. That was in the 90s. The Corporation for Public Broadcasting goes back to the 60s. Back in that era, we only had TV and radio in most homes in America, and folks were worried, don't we have more to offer the American public than just commercial television? I mean, one of the clients that I work with is United Church of Christ, and we try to think of people as more than just opportunities to buy something. We have education, we have other things. So Congress came together in the 60s and created the Corporation for Public Broadcasting, which would then help fund public, non commercial radio and television stations. So the Federal Communications Commission doesn't really have anything to do with the funding structure. And I'll say one of the great things about that funding structure was that Congress said, You know what, we don't want Congress to be interfering with what is on public television and radio, so we're going to forward fund it. So there's not a direct from one year to the next day. Congress is mad about one thing one year and then we cut off PBS the next year. What they said was we're going to fund it into the future. So there's a little bit of insulation between the funding that comes from Congress and what's on public television and radio, the FCC doesn't have anything to do with the funding. Now all of these public broadcast stations do have FCC licenses, just like all other TV and radio stations have licenses. They're non commercial licenses, so they are restricted in what they can do. You might have heard earlier in the year, FCC chair Brendan Carr made a claim that public TV and radio was not following some of those rules about not offering advertising. That is an FCC rule, that they can't offer commercial advertising on and on commercial spectrum. So mostly, the FCC doesn't have that much to do with it. And as you can see, that's what's really interesting. And I think what Kristian was talking about earlier. We have these public goods that we really want our media infrastructure to produce, but how do we do it? Do we explicitly set aside funding to do that? And then how does that funding go through? And I think we do really need to keep talking. We haven't had a chance to talk about it today, but a really important dearth that we're having facing now is in creation of local journalism, local accountable journalism, which for the most part, is created by the local broadcast TV station. And, you know, we could talk about that for a while, but I just wanted to say that that's a place where I think we should really

Tim Lordan 52:10

focus some attention. Yeah, we could have an entire, entire briefing on funding of CPV and NPR. We could have an entire panel on access to local news, but we don't have time for that. But yeah, it's really complicated right here, the current existence of

52:31

streaming,

Tim Lordan 52:33

and it's like more fragmented, shifting state.

52:36

Do you think that kind of because that format is kind of a little

Speaker 2 52:45

bit juries out on that, and hard to access at least. Do you think that increases rates of privacy and like, how maybe the ecosystem change

52:53

can kind of reduce the amount

Tim Lordan 52:55

of privacy being done, because it kind of leads to situations? Yeah, I was hoping to get through, not mention copyright either, but here we

Speaker 1 53:03

go. So I the is kind of interesting, the position we're in right now, historically. I know many people in this room won't remember it, but once upon a time in the 90s, everybody complained about how the cable bundle was just so oppressive, and they just did not want to keep paying \$120 a month for the bundle. They wanted to have an outlet part, and they wanted to select everything. And then once we started a everything. And then once we started opening that up and allowing people to select them, and they found out how much it actually cost to purchase programming and provide it. Now everybody's complaining, like, why can't we rebundle them? I get everything I want in a single price. So it's an ironic change. But to your point, there has been evidence on both audio and the video side that piracy actually went down for a while after, I think was like around 2008 2010 it peaked, and then it started going down. Once you started seeing some streaming services being offered, because it's easier to just subscribe to streaming services. As you start to see more streaming services, you're starting to see more piracy at the same time. So that that is, that is a current problem,

Speaker 2 53:57

two parts. One, I just want to answer your question really quickly. On Sesame Street, they licensed their programming. They used to license it for the first runs to PBS, and the corporation broke then they licensed HBO, and this year they're going to license it to Netflix. So it's just like a content for that certain it's not tied necessarily to CPB. They get second runs now, but they used to get first runs, and so it's just a pay to copyright or to sorry to the piracy piece. I don't it's not a problem, in my mind. It's not a practice of legitimate streamers that are that are increasing the piracy issue. You have a lot of rogue entities out there that are doing streaming that is not legal, and the industry tries to protect its rights. Some of that is overseas, and there's been efforts to try and change that equation. I've been really cautious about going too far in that direction and closing some of those avenues, because the tools that people have pushed for are a little too blunt and would really cut off some creators. So trying to find that right universe where you. Stop illegal piracy, but you don't punish people who want to be creators. It's not the legitimate streamers, though. We're not talking about the ones that you all have a subscription to. We're talking a lot of the content available is really insights. Yeah, it's really tough sites that you probably shouldn't be on the first place.

Tim Lordan 55:20

A question right here,

Speaker 4 55:24

CSPAN question. One of the reasons CSPAN exists is because there are requirements that the cable providers have certain public interest programming requirements. The interesting thing though, is that while the cable companies created CSPAN, it helped them satisfy the error. And default interest. Now CSPAN was when it charges other characters. For instance, Google TV would have to pay CSPAN in order to have access to that streaming. You've got this odd situation in which an industry essentially created this public service. Satisfy their requirements, but at the beginning of their process, it hasn't made it difficult for others to provide the same contract in these areas. What can the FCC do to ensure that essentially gives you regulations concerning one group? Bias doesn't make it difficult to charge it for other people to satisfy the same need. And maybe, what can we do to consider more actually, the public funding of public goods. In this case, why would we have the proceedings of Congress only available through a private organization? Probably a private organization, not motivated by the same goals and principles

Speaker 1 56:50

that Congress itself. I mean, Congress can stand up cameras like this right now and have a streaming channel that's totally devoted to congressional hearings. There's nothing stopping them from doing that

Speaker 4 56:59

well, and they do unless they're able to take a camera into the chamber. You can

Speaker 1 57:03

wire the whole chamber and stream it. They could, but they don't, but they could. That's a very low cost way for Congress to provide the service to the public, but they're not doing it. Why aren't they

Cheryl Leanza 57:14

doing it? Yeah, and I don't think, Well, okay, but C Smith wasn't mandated. I mean, the obligation for cable operators come from their local cable franchising, which required, which permitted a local government to impose a requirement, if the local government so chose, for public, educational and governmental channels, but those are typically local channels. There's no requirement that CSPAN be carried, but I see your point. Your point is, we really have a great need in our society to be able to view our government in action when it's there debating, and also to have news by journalists who are following this day to day and sort of explain what happens. Because we all know, I mean, even us that are working in this business, right? Sometimes you look at a hearing or you look at especially if you're talking at the local level, but even at the federal level, and you're like, I have no idea what those people are talking about. And that's why you need a journalist who follows it, who can say, you know, so and so Senator is asking this question because blah, blah, blah, and this is, you know, the context to help people learn. Well, let me throw

58:14

this out there. How about body cameras for Congress?

Speaker 2 58:18

What's your point? Look, I love CSPAN, and I spent 20 years in this institution, and I love, well, sometimes on my side, sometimes it wasn't. But the content, you know, wonderful for educational purposes on what the government's doing, but it is there, you know, it is private content. The FCC doesn't regulate the offering of that and doesn't have ability to tell the cable industry to sell it or to license it to other entities. And the other entities being it's not that they it's the actual, if you look at legislation, it's probably trying to, it's more like trying to mandate that those other entities carry CSPAN if it's offered to them. So it's a really kind of flip to your bigger point. Why? You know, you know, funding for this issue, and the government funding, I'll leave to Congress's hands. It's having lots of debates on program funding for other issues that we talked about a little bit earlier.

Tim Lordan 59:06

So we covered a lot of material. And I just want to ask the panelists just really quickly, over the next, you know, three years, what issues do you think is going to pop up the FCC and up here, when it comes to these video regulations that you think is going to be most profound, and what Congress should do about it, or what the FCC should do about it, just, just, we just have a few few seconds left if you can, if I start maybe with Kristian and go back to

Speaker 1 59:30

me, yeah. So it's going to be figuring out how to enable Legacy video providers to survive in a world of streaming. And probably that's going to involve looking at retransmission consent and program and must carry rules.

Cheryl Leanza 59:44

Yeah. I mean, I think right now we're in an era where it seems as though we're in a knee jerk world of like, just throw everything out and don't really look at why we adopted it. And so I am concerned that what we're going to see is an erosion of rules that. Really help promote democracy and civic discourse. But I do hope that there is, like, you know, there are a few rules that are really archaic, including ones that, like, treat TV stations differently based on what part of the spectrum they're on that make no sense. So I hope that we'll take a look even handedly at those rules and get rid of the ones that don't make sense. But I think a lot of the stuff is really about promoting democracy, and we have to drill down into that. Yeah,

Speaker 2 1:00:22

I might say the opposite. I don't think it's gonna be something that Congress needs to legislate on, but I am hopeful that the FCC will get rid of almost all of its rules. As it relates to video programming. They make no sense in the current marketplace. They have been looked at. It's not something we just, you know, striking blindly. These are things that we examine for. And I, when I was there, I was going through line by line. Okay, these don't make any sense, and we couldn't really build enough support for them. Now, the market has changed so dramatically, and just in five years since I've been outside the building of four and a half, that makes no sense for most of these regulations. They should all be stricken by minus two or three that I would keep these

Tim Lordan 1:00:57

things are happening. This is happening so quickly in the marketplace. It's fast and furious. It's going to be really interesting, and I hope we just gave you kind of the groundwork for what's what you're going to see over the next several years. But I want to thank Mike Cheryl and Kristian and thanks everybody for attending. Thank you so much. Applause.