



May 2016

STATUTORY COPYRIGHT LICENSES

Stakeholders' Views on a Phaseout of Licenses for Broadcast Programming

Why GAO Did This Study

Most U.S. households rely on cable or satellite operators to watch television broadcast programming. These operators are able to provide their subscribers with broadcast programming—including local news—by retransmitting local broadcast television stations' over-the-air signals. Three statutory licenses permit operators to offer copyrighted broadcast programming in return for paying a government-set royalty fee. For 2014, these fees totaled about \$320 million. Congress created statutory licenses as a cost-effective way for operators to air broadcast programming without obtaining permission to do so from those that own the copyrights for this programming. However, changes in the video marketplace have led some industry stakeholders to question the need for the licenses.

The Satellite Television Extension and Localism Reauthorization Act of 2014 included a provision for GAO to review possible effects of phasing out the statutory licenses. This report addresses (1) what is known about the feasibility of phasing out the statutory licenses and (2) views of selected stakeholders on the implications of such a phaseout. GAO analyzed FCC's cable price data from 2010 to 2014 and the U.S. Copyright Office's royalty data from 2014, the most recently available; reviewed relevant laws and reports; and interviewed 42 industry stakeholders, selected for their role in the video marketplace and expertise on the issue.

View [GAO-16-496](#). For more information, contact Mark Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

STATUTORY COPYRIGHT LICENSES

Stakeholders' Views on a Phaseout of Licenses for Broadcast Programming

What GAO Found

A phaseout of the statutory licenses for broadcast programming may be feasible for most participants in the video marketplace, although there may be statutory implications for the "carriage requirements" governing which local broadcast television stations are carried by cable and satellite operators. These licenses allow cable and satellite operators to carry copyrighted content, such as television shows and movies, embedded in local broadcast stations' signals to their subscribers' television sets without negotiating with individual copyright owners. At the same time, these cable and satellite operators also engage in market-based negotiations to make some or all of this content available in other contexts, such as online. Of the 42 selected stakeholders GAO interviewed, 21 either use the statutory licenses or have their content provided through the statutory licenses. 20 of these 21 stakeholders—including content producers, broadcast networks, and cable and satellite operators—also engage in market-based negotiations to license broadcast content for video-on-demand or online viewing. Therefore, for stakeholders representing these business interests, a market-based approach to licensing secondary transmission rights may be feasible. However, some participants in the video marketplace—most notably, public television and small cable operators—may face logistical challenges and financial constraints in the event of a phaseout of the statutory licenses.

Phasing out the statutory licenses could have implications for the "must-carry" and "carry-one, carry-all requirements," which require cable and satellite operators, respectively, to carry the signals of local broadcast television stations upon request. As GAO has previously reported, the must-carry requirement could become impractical if Congress phased out the statutory license that applies to cable operators, as these operators could find themselves in the paradoxical position of being required to transmit the copyrighted content on a local broadcast television station's signal for which they may not have the legal right to air. In addition, according to Federal Communications Commission (FCC) and the U.S. Copyright Office, the carry-one, carry-all requirement would no longer apply to satellite operators if the applicable statutory license were phased out because the requirement is premised on the use of the license.

The 42 selected stakeholders GAO interviewed varied in their support for a phaseout of the statutory licenses and many stakeholders were uncertain about the potential effects on the marketplace and consumers. For example:

- 15 supported a full or partial phaseout; 13 did not have a position; and 14 did not support a phaseout, because most believe the current system works,
- About half were uncertain how a phaseout would affect the video marketplace. This uncertainty stems from uncertainty over how the carriage requirements may change and the video marketplace would respond; 10 thought a phaseout would affect competition in the market, but differed on whether this would increase or decrease programming costs.
- 6 thought consumers' access to programming would be negatively affected, 7 thought diversity of programs offered would decrease, and 13 thought consumer prices would rise.

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Abbreviations

FCC	Federal Communications Commission
OVD	online video distributor

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May 4, 2016

Congressional Committees:

Local broadcast television stations¹ provide their programming free over-the-air to the public. However, almost 84 percent² of U.S. households' receive local broadcast television stations through a paid subscription to a cable or satellite operator, such as Comcast, Verizon Fios, or DISH Network.³ When a local broadcast television station airs its programming over-the-air, this is referred to as the primary transmission of its programming. When a cable or satellite operator provides its subscribers with access to a local broadcast television station's programming through its infrastructure, it is providing a secondary transmission of the station's signal. Because programming contained on a local broadcast television station's signal is typically protected by copyright,⁴ a license is required to secure the public performance rights for the secondary transmission of these works.⁵ Under existing law, three statutory licenses enable cable and satellite operators to retransmit copyrighted material without seeking

¹ In this report, we use the term "local broadcast television stations" to refer to local television stations that are provided free over-the-air to the public, such as WJZ—a television station available to viewers in Baltimore, Maryland. Local broadcast television stations include commercial local broadcast television stations, which may be affiliated with a national broadcast network like ABC, and noncommercial educational broadcast television stations, such as those affiliated with the Public Broadcasting System. When referring to "local broadcast television stations," we include both commercial and noncommercial educational stations. When referring to "commercial local broadcast television stations" or "noncommercial educational broadcast television stations" we are discussing a point that is relevant only to that particular group of stations.

² In 2014, according to Bloomberg data, 83.9 percent of U.S. television households subscribed to a video service offered by cable, satellite, or telecommunication operators.

³ Consistent with the requirements in the Satellite Television Extension and Localism Act (STELAR) Reauthorization Act of 2014. – Pub. L. No. 113-200, 128 Stat. 2059, we include, in referring to cable and satellite operators, telecommunication companies such as AT&T and Verizon that distribute video services to subscribers for a fee and would be classified as multichannel video programming distributors as defined in 47 C.F.R. § 76.64(d). See *also* Communications Act (of 1934, as amended, ch. 652, 48 Stat. 1064, § 602 (codified at 47 U.S.C. § 522).

⁴ 17 U.S.C. §102.

⁵ 17 U.S.C. §106(4).

permission from copyright owners (such as Sony Pictures Entertainment or the National Football League) of this programming, allowing these operators to offer secondary transmissions of radio and television broadcast programming.⁶ To take advantage of the statutory licenses, cable and satellite operators must comply with the terms of the statutory licenses, including depositing with the U.S. Copyright Office a government-set royalty, which is later distributed to copyright owners.⁷ Using these licenses, cable and satellite operators transmit a variety of copyright-protected works, including network and syndicated programming,⁸ movies, sports programming, local news broadcasts, public television, religious material, and music of all types. For 2014, the U.S. Copyright Office collected about \$320 million in copyright royalty fees from cable and satellite operators under the statutory licenses.⁹

The cable industry was still developing when, in 1976, Congress amended U.S. copyright law, and with the enactment of the Section 111 statutory license, granted cable operators the ability to retransmit broadcast programs to their subscribers without obtaining the permission of the copyright owners of the programs being retransmitted.¹⁰ At the time, the statutory license was seen as a cost-effective way to reduce the transaction costs of licensing all the rights necessary to retransmit broadcast programs. Likewise, as the satellite television industry expanded, Congress established additional statutory licenses (Section 119 in 1988 and Section 122 in 1999) to provide a cost-effective mechanism for satellite operators to retransmit out-of-local market (“distant-into-local”) and local market (“local-into-local”) broadcast station signals without obtaining the permission of the embedded programming’s

⁶ 17 U.S.C. §§111, 119, and 122. These three statutory licenses are discussed in greater detail later in the report.

⁷ 17 U.S.C. §§111(d), 119, and 122.

⁸ Syndicated programming is non-network programming or post-network programming (a rerun) that is licensed directly to individual broadcast stations in more than one market.

⁹ This figure covers the two accounting periods in 2014 for which the U.S. Copyright Office collects royalty fees from cable and satellite operators—January 1 to June 30 and July 1 to December 31.

¹⁰ Pub. L. No.94-553, 90 Stat. 2550(1976).

copyright owners.¹¹ However, changes in the video marketplace have led some industry stakeholders to question the premise that high transaction costs make a market-based approach to licensing these rights infeasible.¹² Congress, in the Satellite Television Extension and Localism Reauthorization Act of 2014, included a provision for us to study and evaluate possible effects of phasing out statutory licensing of secondary transmission of television broadcast programming.¹³ This report addresses the following questions:

1. What is known about the potential feasibility of a phaseout of the statutory licenses?
2. What are selected stakeholders' views on the implications of a phaseout of the statutory licenses?

To address these questions, we reviewed relevant statutes and regulations; reports on related subjects by the U.S. Copyright Office, Congressional Research Service, and GAO;¹⁴ and related documentation on how the statutory licenses work. We analyzed Federal Communications Commission's (FCC) 2010 to 2014 cable price survey data, U.S. Copyright Office Statement of Account data on satellite subscribers' use of distant signals for calendar year 2014, and computer-processed data from Bloomberg Analytics on nationwide use of cable and satellite video services and trends in cable and satellite subscription rates between 2010 and 2014, the most recent available data. Our data analysis provided context on how the video marketplace operates, such as the number of local broadcast stations carried by cable operators, and

¹¹ Local signals are the signals that local broadcast stations provide over-the-air to households within the local market of the subscriber ("local-into-local service"). The local market is defined by using the Nielsen Media Research designated market areas. Distant signals are broadcast signals imported by a cable or satellite operator from outside a subscriber's local market area.

¹² A market-based approach to licensing copyrights would consist of private negotiations between copyright owners and those that want to use their copyrighted content.

¹³ Pub. L. No. 113-200, § 107, 128 Stat. 2059.

¹⁴ These reports include: GAO, *Statutory Copyright Licensing: Implications of a Phaseout on Access to Television Programming and Consumer Prices Are Unclear*, [GAO-12-75](#) (Washington, D.C.: Nov. 23, 2011); GAO, *Video Marketplace: Competition Is Evolving, and Government Reporting Should Be Reevaluated*, [GAO-13-576](#) (Washington, D.C.: June 25, 2013); and GAO, *Broadcast Exclusivity Rules: Effects of Elimination Would Depend on Other Federal Actions and Industry Response*, [GAO-15-441](#) (Washington, D.C.: Apr. 11, 2015).

the potential impacts on consumers in the event of a phaseout. We assessed the reliability of the data used in this report by reviewing existing information about the data and the systems that produced them. For FCC and U.S. Copyright Office data, we also interviewed officials from FCC and the U.S. Copyright Office about measures taken to ensure the reliability of the data. We determined the data were sufficiently reliable for our purposes. We reviewed FCC, U.S. Copyright Office, Congressional Research Service, GAO, and industry reports on changes in the video marketplace to understand the factors influencing changes in the consumption and distribution of video content. Finally, we interviewed 42 selected stakeholders—including experts, industry associations, and industry participants (broadcast networks and station owners, cable and satellite operators, online video distributors, and content producers/copyright owners)—to understand how the video marketplace has changed in the last 5 years, the potential feasibility of a phaseout of the statutory licenses, and potential implications of a phaseout for the requirements governing the carriage of local broadcast television stations (“carriage requirements”) and consumer access to programming and prices paid for cable and satellite services. We selected these stakeholders to include those with expertise on this topic as well as those representing a range of key roles in the video marketplace. We selected these individuals and organizations based on published literature, including U.S. Copyright Office filings and reports, our previous work, and stakeholders’ recognition and affiliation with a segment of the video marketplace, and recommendations from other stakeholders we interviewed. See appendix I for more details on our scope and methodology, including a list of industry stakeholders interviewed.

We conducted this performance audit from June 2015 to May 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Statutory Licenses

A statutory license, also called a compulsory license, permits the use of copyright-protected material¹⁵ without the express permission of the copyright owner under specific circumstances and provided the licensee meets certain requirements.¹⁶ Three statutory licenses pertaining to the retransmission of broadcast programming are codified in U.S. copyright law. These statutory licenses refer to cable operators, in the Section 111 license, and satellite carriers, in the Sections 119 and 122 licenses. These licenses, as described in figure 1 below, allow cable or satellite operators to retransmit broadcast programming without obtaining permission from the copyright owners of that material.

¹⁵ A copyright is the set of exclusive legal rights granted by law to the creator of an original work to protect the use of their work. This protection covers many artistic works, including books, movies, photographs, and music (See 17 U.S.C. §102). The Copyright Act confers a bundle of exclusive rights to the owner of a copyright (See 17 U.S.C. §106). Public performance rights usually allow a copyright owner to control when and how a copyrighted work is performed publicly, such as performance through transmission over television and radio. These rights may be further subdivided, transferred, and owned separately pursuant to 17 U.S.C. § 201(d)(2).

¹⁶ 17 U.S.C. §§ 111, 119 and 122.

Figure 1: Overview of the Statutory Licenses for the Retransmission of Broadcast Programming by Cable and Satellite Operators

 Section 111	 Section 119	 Section 122
<ul style="list-style-type: none"> • Codified in 1976 • Allows cable operators to retransmit local and distant broadcast stations' signals without obtaining permission from the copyright owners of each program embedded in the signal • Permanent • Royalty fees based on many factors including cable operators' gross receipts and number of distant signals carried • All cable operators, even those that do not carry distant signals, must pay a minimum fee for use of the Section 111 license • Royalty funds are distributed to copyright owners of non-network programming transmitted on distant signals by cable operators 	<ul style="list-style-type: none"> • Codified in 1988 • Allows satellite operators to retransmit distant broadcast stations' signals without obtaining permission from the copyright owners of each program embedded in the signal • Expires in 2019, unless reauthorized • Royalty fees based on the number of distant signals received per satellite service subscriber • Royalty funds are distributed to copyright owners of non-network and network programming transmitted on distant signals by satellite operators 	<ul style="list-style-type: none"> • Codified in 1999 • Allows satellite operators to retransmit local broadcast stations' signals without obtaining permission from the copyright owners of each program embedded in the signal • Permanent • No associated royalty fees^a

Source: GAO Analysis of U.S. Copyright Law, U.S. Copyright Office reports, and GAO reports. | GAO-16-496

Note: Local signals are the signals that local broadcast stations provide over-the-air to households within the local market of the subscriber ("local-into-local service"). The local market is defined by using the Nielsen Media Research designated market areas. Distant signals are broadcast signals imported by a cable or satellite operator from outside a subscriber's local area. Section 111(f)(6) defines "network station" as a "primary stream of a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of the primary stream's typical broadcast day." Under this definition, programming provided by ABC, CBS, and NBC has been considered network programming.

^a Certain exceptions would require royalty fee payments under Section 122(a)(4)-(5).

Certain telecommunication companies, such as Verizon and AT&T—which in the past provided telephone service but now offer video services as well—were determined by the U.S. Copyright Office to function as

cable operators and allowed to use the statutory licenses.¹⁷ Given this report's focus on the statutory licenses, we use the term "cable and satellite operators" to refer to all those entities that use the statutory licenses. This term includes telecommunications companies, such as Verizon and AT&T.

According to the U.S. Copyright Office, the statutory licenses supported the growth of the cable and satellite industries and facilitated the delivery of local broadcast television stations' programming on these platforms.¹⁸ The section 111 license was enacted, in part, to reduce the transaction costs that a then nascent cable industry would have faced if cable operators were required to negotiate with every copyright owner whose work was embedded in a local broadcast television station's signal. The section 119 and 122 licenses were extended to satellite operators to reduce transaction costs and provide the same general efficiencies offered to cable operators under the Section 111 license. Transaction costs are a concern because each television program may contain material from multiple copyright owners.¹⁹ Since a typical day of programming on a local broadcast television station would likely include 20 or more programs, hundreds of copyright owners may have royalty claims on a single day's worth of programming.

Under the statutory licenses, the U.S. Copyright Office collects copyright royalty fees and invests them in government securities until fees are allocated and distributed to copyright owners. Under the Copyright Act, the Copyright Royalty Judges are responsible for determining the distribution of royalties and adjudicating royalty claim disputes.²⁰ In June 2015, the Copyright Royalty Judges granted a partial distribution of the

¹⁷ In contrast to the Copyright Act's definition of "cable system" in §111(f)(3) and "satellite carrier" in §§119(d)(6) and 122(j)(4), the requirements, which must be met to use the statutory licenses, instead use the term "Multichannel Video Programming Distributors," which as defined in 47 U.S.C. § 522(13) includes "cable operator[s]," "direct broadcast satellite service[s]," and "television receive-only satellite program distributor[s]" which includes cable and satellite operators.

¹⁸ U.S. Copyright Office, *Satellite Television Extension and Localism Act § 302 Report: A Report of the Register of Copyrights* (Section 302 Report) (Washington, D.C., Aug. 29, 2011).

¹⁹ In this context, transaction costs include the cost of identifying and negotiating agreements with copyright owners.

²⁰ 17 U.S.C. §111(d)(4).

2013 cable and satellite royalty funds to the claimant groups listed in table 1.²¹

Table 1: Partial Distribution of 2013 Cable and Satellite Royalty Funds by Claimant Group (Distributed on June 18, 2015)

Claimant group	Distribution amount
Joint Sports Claimants (professional and college sports programming)	\$97,625,027
Program Suppliers (commercial entertainment programming)	46,050,918
Commercial Television (local commercial television programming)	21,983,038
Public Television Claimants (national and local noncommercial television programming)	8,674,330
Music Claimants (musical works included in television programming)	5,135,051
Devotional Claimants (religious television programming)	4,643,089
Canadian Claimants (Canadian television programming)	2,469,564
National Public Radio (noncommercial radio programming)	243,678
Total	\$186,824,695

Source: U.S. Copyright Office. | GAO-16-496

Note: The amounts above represent a distribution of 60 percent of the 2013 Satellite Royalty Funds and a distribution of 59 percent of the 2013 Cable Royalty Funds. The distribution amounts are rounded to the nearest dollar.

Copyright owners have historically submitted copyright claims through the claimant groups shown in table 1. These groups then allocate their share of the distribution to their group members.

Intersection between Copyright Law and Communications Law

To use the statutory licenses, cable and satellite operators must comply with certain requirements on the carriage of local broadcast television stations. These carriage requirements are summarized below.

- **Must-Carry and Carry-One, Carry-All:** The must-carry and carry-one, carry-all requirements provide local broadcast television stations with the right to have their signals carried by cable and satellite operators serving their markets.²² The must-carry provision enables local broadcast television stations—commercial local broadcast television

²¹ The distribution of copyright royalties can be delayed if a proceeding before the Copyright Royalty Judges or other legal action becomes necessary. *In the Matter of Distribution of the 1998 and 1999 Cable Royalty Fund*, Sixth Order, Docket No. 2008-1 CRB 98-99 (Copyright Royalty Judges, July 18, 2011).

²² 47 U.S.C. § 338 (Satellite); 47 U.S.C. §§ 534 and 535 (Cable).

stations and qualified noncommercial educational broadcast television stations²³—to require each cable operator in its local market to carry its signal, generally for no cost.^{24, 25} The carry-one, carry-all provision requires satellite operators that choose to offer one local broadcast television station in a local market, to carry all of the local broadcast television stations in that market, also for no cost.²⁶ Satellite operators are only subject to the carry-one, carry-all provision if they use the Section 122 statutory license, which allows them to retransmit the signals of local broadcast television stations without obtaining permission from the copyright owners of the content on that signal.²⁷ The choice to invoke must-carry and carry-one, carry-all is made every 3 years by commercial local broadcast television stations. Qualified noncommercial educational broadcast television stations request carriage by cable and satellite operators through the must-carry and carry-one, carry-all requirements.

- Retransmission Consent: Instead of opting for must-carry or carry-one, carry-all, commercial local broadcast television stations may opt to negotiate “retransmission consent.” Retransmission consent gives commercial local broadcast television stations a property right over their broadcast signal, which, prior to the 1992 Cable Act did not

²³ Among other things, a noncommercial educational broadcast television station must serve the same must carry market as the cable system on which it seeks carriage, deliver a good quality signal, and not air duplicative programming. See 47 U.S.C. § 535. Under specially enumerated criteria, qualified low-power broadcast television stations may also be eligible for mandatory carriage by cable operators. See 47 U.S.C. § 534.

²⁴ Each cable operator’s obligation to carry all stations within its designated market area is dependent upon its total capacity; however, the capacity of most modern cable systems has rendered these distinctions largely meaningless.

²⁵ Except for costs associated with delivering a good quality signal for transmission and increased costs relating to distant signal copyright indemnification. See 47 C.F.R. §76.60.

²⁶ Generally, a satellite carrier carrying a station under the carry-one, carry-all requirement may not accept or request any fee for carriage. See 47 C.F.R. § 76.66(l).

²⁷ 47 U.S.C. § 338.

exist.²⁸ This property right is distinct from the right to perform copyright-protected material embedded in the broadcast signal. Retransmission consent applies only to commercial local broadcast television stations and allows them to grant permission to cable and satellite operators to retransmit their signals, usually in return for a negotiated payment.²⁹ By opting for retransmission consent, commercial local broadcast television stations give up the guarantee of carriage in exchange for the right to negotiate compensation for carriage of their signal. SNL Kagan, a media research firm, estimates these fees at \$6.3 billion in 2015 and projects that they may reach \$10.3 billion by 2021.

- Broadcast Exclusivity Rules:³⁰ The broadcast exclusivity rules—the syndicated exclusivity rule and the network non-duplication rule—are an administrative mechanism for local broadcast television stations to enforce their exclusive rights obtained through contracts with broadcast networks and syndicators. The syndicated exclusivity rule protects a local broadcast television station’s right to be the exclusive provider of syndicated programming³¹ in its market. Similarly, the network non-duplication rule protects a local broadcast television station’s right to be the exclusive provider of network programming in its market.³² The exclusivity rules—when invoked by local broadcast television stations—require cable and satellite³³ operators to block, in

²⁸ Prior to the 1992 Cable Act, cable operators could retransmit local broadcast television stations’ signals without the approval of the broadcast station and without compensating them. In 1992, Congress determined that cable operators obtained great benefit from the broadcast signals that they were able to carry without broadcast stations’ consent, which resulted in an effective subsidy to cable operators. See Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, §2(a), 106 Stat. 1460(1992)(Cable Act).

²⁹ Noncommercial educational broadcast television stations typically cannot request a fee from cable and satellite operators for the retransmission of their signal.

³⁰ FCC issued a further Notice of Proposed Rulemaking to consider eliminating or modifying the broadcast exclusivity rules. This notice is still under consideration. *In the Matter of Amendment of the Commission’s Rules Related to Retransmission Consent* 29 FCC Rcd 3351; March 31, 2014, Released, March 31, 2014, Adopted.

³¹ Syndicated programming is non-network programming or post-network programming (a rerun) that is licensed directly to individual broadcast stations in more than one market.

³² 47 C.F.R. §§ 76.92 and 76.122.

³³ For satellite operators, the broadcast exclusivity rules only apply to nationally distributed superstations, not distant network station signals. See 47 U.S.C. § 339(b)(1)(A), 339(d)(2).

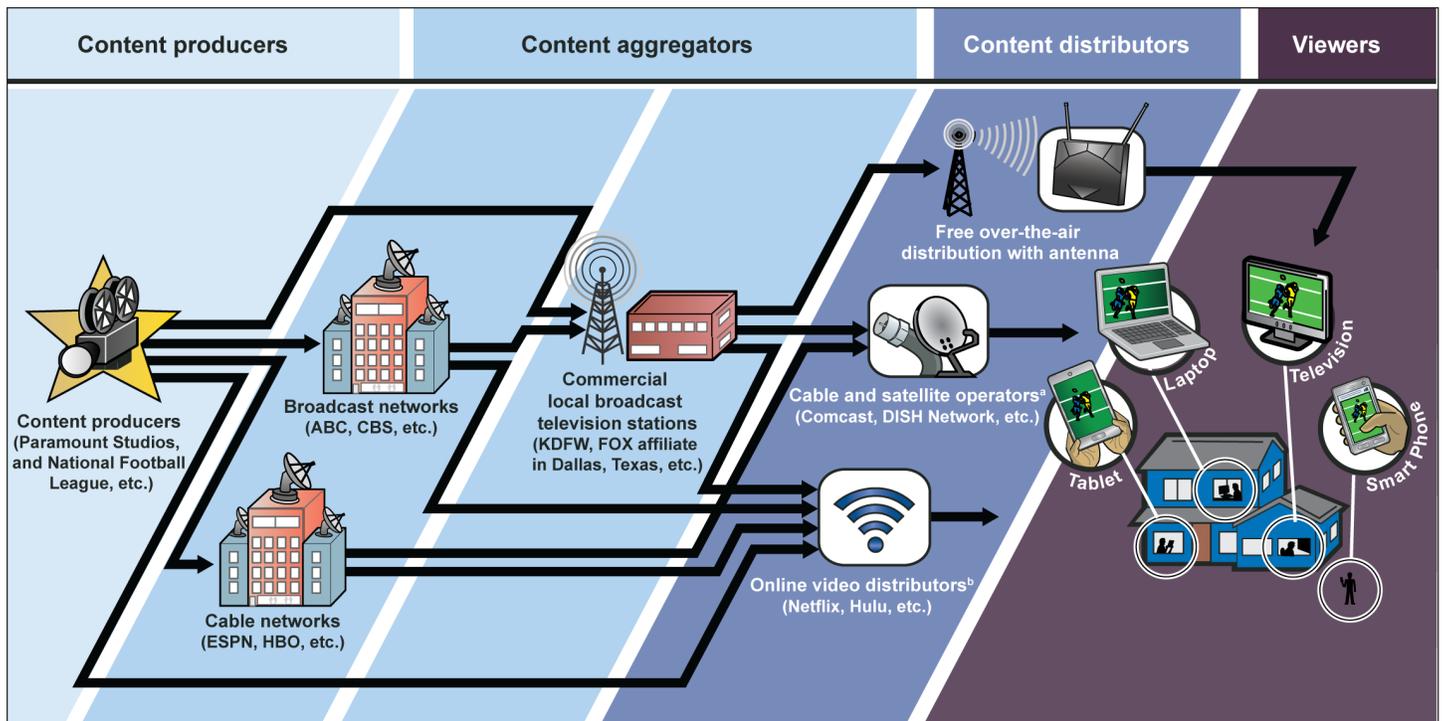
some manner, duplicative content carried by a local broadcast television station in another market (a distant signal) imported into a station's local market. For example, these rules allow WJZ, the CBS-affiliated local broadcast station in Baltimore, to prohibit cable operators from showing duplicative network content on a CBS-affiliated station from another market (e.g., WUSA, the CBS-affiliated local broadcast station in Washington, D.C.) in the event WUSA was imported into Baltimore. Similarly, the rules would allow WJZ to prohibit cable operators from showing any duplicated syndicated content from any other market's station that is imported into Baltimore.

Video Content: from Production to Viewer

Video programming, or video content, is the television programs watched by viewers including primetime shows, news, and movies.³⁴ The flow of this content from development to distribution involves many entities, including those that create the video content, those that aggregate the content into a schedule, and those that distribute the content to viewers (see fig. 2).

³⁴ Video content and video programming are terms used to describe the television series, movies, and other programs that viewers watch on their televisions, tablets, smartphones, and other Internet-connected devices. Broadcast programming or content is a subset of video content, specifically video content initially shown on a local broadcast television station.

Figure 2: Distribution of Video Content by Commercial Entities to Viewers



Source: GAO analysis of GAO reports. | GAO-16-496

^a Cable and satellite operators also provide their viewers access to online content through authenticated services in addition to or as part of their subscription service.

^b Online video distribution requires a broadband internet connection that is often provided by but not limited to cable and satellite operators..

A single entity in the video marketplace may produce content, aggregate it, and distribute the content. For example, CBS is primarily known as a broadcast network; however, CBS also produces its own video content, through CBS Television Studios. It owns several CBS-affiliated local broadcast television stations. CBS also functions as an online video distributor, such as through its offering of a subscription online streaming service, CBS All Access—which offers live streams of local CBS-affiliated broadcast television stations as well as video content on an on-demand basis.

Before video content can be watched by viewers, financial and contractual arrangements between those that produce, aggregate, and distribute video content must be made—through market-based

negotiations or under certain circumstances, through the statutory licenses. Market-based negotiations involve private negotiations between copyright owners or licensees and those that want to use their copyrighted content. These negotiations can include a variety of contracted terms covering such items as when the content will be aired, how the content will be promoted, and the price that will be paid for the right to license that content. The price ultimately agreed to for the public performance rights of video content in market-based negotiations depends on a variety of factors, including, the expected ratings and associated advertising revenues for the content.

Content Producers

Content producers, such as Paramount Studios and the National Football League, create the video content viewers ultimately will watch. Content producers may license their public performance rights³⁵ over a variety of distribution platforms that include:

- Online distribution—video content is streamed online to any Internet-connected device. Requires the licensing of online rights.
- Primary transmission—the over-the-air broadcast of content by a local broadcast television station. Requires the licensing of primary rights and only applies to content shown by local broadcast television stations.
- Through-to-viewer distribution—the content on a cable network is distributed by a cable or satellite operator to their subscribers' television sets. Requires the licensing of through-to-viewer rights.
- Video-on-demand distribution—cable and satellite operators offer individual programs to their subscribers for free or for a nominal fee to watch at a time of the viewer's choosing. Requires the licensing of video-on-demand rights.

Content producers do not explicitly license secondary transmission³⁶ rights for broadcast content that is retransmitted by cable and satellite operators to viewers' television sets. As discussed above, the statutory licenses allow these operators to carry copyrighted programming without licensing those rights from the individual copyright owners of that content.

³⁵ This is the right to perform the copyright-protected work in public. 17 U.S.C. § 106(4).

³⁶ A "secondary transmission" is the further transmitting of a primary transmission simultaneously with the primary transmission, or non-simultaneously with the primary transmission if by a cable system not located in whole or in part within the boundary of the 48 contiguous States, Hawaii, or Puerto Rico [...] 17 U.S.C. § 111(f)(2).

As reported by the U.S. Copyright Office, most types of public performance rights are licensed by private parties through market-based negotiations.³⁷

Content producers are paid for the public performance rights of their content in several ways. They receive licensing fees from broadcast networks and other “content aggregators” or “content distributors” like online video distributors that license the right to use their content on online platforms. Content producers can also receive licensing fees for selling syndicated programming to local broadcast television stations. Additionally, content producers may receive royalty fees paid by cable and satellite operators to the U.S. Copyright Office through the statutory licenses.

Content Aggregators

Content aggregators—typically broadcast networks, local broadcast television stations, and cable networks, as described in more detail below—are those that purchase the rights to a variety of copyrighted content which they arrange into a schedule for viewers. Content aggregators license the public performance rights for content by paying a fee to the producers of the content.

- Broadcast networks range from major commercial networks, such as ABC, CBS, FOX, and NBC, to other commercial networks, such as ION Television and Univision. Broadcast networks purchase the rights for programs, arrange programs into a schedule, and then through network-affiliate agreements convey these rights to their affiliates. Broadcast networks receive payments through affiliate fees, as discussed below, and advertising revenues.
- Commercial local broadcast television stations, network-affiliated and independent stations (e.g., WJLA—an ABC affiliate in Washington, DC, and KUBE—an independent station in Houston, TX) may own the rights to transmit local content (e.g., local news) or license from content producers the rights to transmit syndicated content (e.g., *Seinfeld* reruns) in their local markets. They receive revenue from selling advertising spots and from cable and satellite operators via retransmission consent fees, if elected. Network-affiliated local broadcast television stations pay affiliate fees to broadcast networks in exchange for the right to air broadcast network content.

³⁷ Section 302 Report.

Content Distributors

- Cable networks (e.g., ESPN and HBO), similar to broadcast networks, can obtain video content for their networks from content producers through market-based negotiations. However, instead of licensing their network content to an affiliate, cable networks license their signal to a cable or satellite operator for transmission. They receive money through license fees, advertising revenues, and in some cases, subscription fees directly from viewers.

Content distributors are those entities that distribute video content to households. Local broadcast television stations, cable and satellite operators, and online video distributors all distribute video content.

- Commercial local broadcast television stations—like KDFW, the FOX affiliate in Dallas, TX—transmit their signals over-the-air for free and are accessible by most households via antenna.³⁸ Stations are not paid by viewers for the broadcast of their signals over-the-air. As discussed above, however, commercial local broadcast television stations can receive retransmission consent fees from cable and satellite operators for the secondary transmission of their signals as well as advertising revenue.
- Cable and satellite operators, such as Time Warner Cable and DISH Network, distribute video content, including the signals of local broadcast television stations and cable networks, to viewers for a subscription fee. Cable and satellite operators obtain the right to retransmit local broadcast television station's signals either through a local station's assertion of must-carry or carry-one, carry-all or through retransmission consent negotiations. As discussed above, cable and satellite operators that rely on the statutory licenses do not have to obtain the rights to retransmit the content embedded in a local broadcast television station's signal. An estimated average of 14 local broadcast television stations are carried in cable operators' channel lineups with an estimated average of around 10 local broadcast

³⁸ Over-the-air content is distributed by local broadcast stations via terrestrial transmitters. According to FCC, in 2014, 11.4 million U.S. households relied exclusively on over-the-air transmission for their television viewing.

television stations carried under the must-carry requirement.^{39,40}

Cable and satellite operators receive revenue through subscription fees. They also receive revenue for advertising spots.

- Online video distributors (OVDs) provide video content to consumers through several business models, including on a subscription (e.g., Netflix) or an advertising-supported basis (e.g., Go90) through internet connections that can be provided by cable and satellite operators.⁴¹ The video content includes programs available on-demand and, in some cases, as a live stream of a local broadcast television station or cable network with the same schedule of shows and aired at the same time as is offered over-the-air or through a cable or satellite operator. They receive payments through subscription fees or advertising revenue—depending on their business model.

Consumers have several options through which to access video content. Consumers may watch local broadcast television stations on their television set using an antenna or they may watch local broadcast television stations and cable networks on their television set through a cable or satellite service subscription. Using an internet connection, consumers can watch video content on, for example, tablets, smartphones, and other mobile devices, through an existing subscription with a cable or satellite operator or using an OVD service.

³⁹ Based on our analysis of FCC's 2014 Cable Service Price Survey (From 333) data. Averages are subscriber weighted means of the survey responses. Cable operators were asked the number of local broadcast television stations carried in their channel lineup for a particular community. The survey asked that respondents count each local station only once—for example if a local broadcast television channel has an analog channel and a separate HD digital channel these should be counted as one station. Also, local broadcast multicast channels were not to be counted.

⁴⁰ Within this report, all numerical estimates based on FCC's Cable Service Price Survey data have margins of error at the 95 percent confidence level of plus or minus 3.2 percent or less of the value of those numerical estimates.

⁴¹ FCC has defined an OVD as any entity that offers video content by means of the Internet or another Internet Protocol-based transmission path provided by a person or entity other than the OVD. See, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 30 FCC Rcd 3253, Released April, 2, 2015, Adopted March 31, 2015 Sixteenth Report, (2015). In our report, we use the term OVD, as defined, to describe any entity that offers video content over the internet.

Noncommercial Educational
Broadcast Television Stations

The video marketplace also includes noncommercial educational broadcast television stations, such as public television stations.⁴² Similar to commercial local broadcast television stations, these stations are available to viewers over-the-air and through secondary transmission by cable and satellite operators. As discussed earlier, unlike commercial local broadcast television stations, these stations typically cannot request a fee from cable and satellite operators for the retransmission of their signal; instead they request carriage by cable and satellite providers through the must-carry or carry-one, carry-all requirements. In addition, noncommercial educational stations are prohibited from accepting on-air advertisements.

As the Video
Marketplace
Changes, a Phaseout
of the Licenses May
Be Feasible for Most
Market Participants,
but Could Have
Implications for
Carriage
Requirements

In the Video Marketplace,
Video Content is
Increasingly Distributed
and Accessed On-
Demand and Online

How viewers access and consume video content is changing.

- Over-the-air: According to FCC, the percentage of television households relying on over-the-air reception to watch local broadcast television stations has remained relatively steady. While the number of households that use over-the-air service increased from 11.2 million households in 2013 to 11.4 million households in 2014,

⁴² GAO. *Telecommunications: Issues Related to the Structure and Funding of Public Television*. [GAO-07-150](#). (Washington, D.C.: Jan. 19, 2007).

reliance on over-the-air service by all U.S. television households remained the same at 9.8 percent.⁴³

- Cable and satellite video services:⁴⁴ The percentage of U.S. television households that receive video content through cable and satellite services has declined even as the number of subscribers to these services has increased. Our analysis of industry data indicates that from 2010 to 2014, the total number of U.S. video service subscribers to cable, satellite, and telecommunication companies increased from 99.2 million to 99.6 million. Over that same period of time, cable operators lost subscribers, satellite operators maintained about the same number of subscribers, and telecommunication companies increased their number of subscribers. However, the percentage of U.S. television households that use cable and satellite subscriptions to receive video services declined from 85.4 percent to 83.9 percent over the 5 year period.⁴⁵
- Online video services: As of 2013, more than 53 million U.S. households watched video content online with at least one Internet-connected device.⁴⁶ Thirty-nine of the 42 industry stakeholders we interviewed identified the growth of OVDs and increasing usage of online video services as a trend in the video marketplace over the last 5 years. SNL Kagan estimates that 4.9 percent of occupied U.S. households watched television programs or movies through OVDs without receiving cable and satellite service in 2013, compared to 3.9 percent in 2012.⁴⁷

⁴³ Viewers may also be using a combination of over-the-air services and online video services such as Netflix, Amazon Prime, etc.

⁴⁴ The data included in this section on the percentage of U.S. television households that use video services and subscriber numbers for cable, satellite, and telecommunication companies are based on our analysis of Bloomberg data.

⁴⁵ According to Bloomberg data, the number of U.S. television households increased from 116.1 million in 2010 to 118.8 million in 2014.

⁴⁶ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Sixteenth Report*, 30 FCC Rcd 3253, ¶ 10, Released April 2, 2015, Adopted, March 31, 2015.

⁴⁷ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Sixteenth Report*, 30 FCC Rcd 3253, ¶ 302, Released April 2, 2015, Adopted, March 31, 2015.

Our analysis of FCC reports, industry reports, and stakeholder opinions identified several factors influencing the changes in the video marketplace and the consumption of video content, including:

- **Programming costs:** The rising cost of video content impacts how much each entity—from content aggregators (e.g., CBS and ABC) to content distributors (e.g., Time Warner Cable and Netflix) to viewers—involved in the flow of video content must pay to obtain the rights to distribute or view video content. SNL Kagan data show that cable and satellite operators’ programming expenses are increasing at a greater rate than their revenues. For example, cable and satellite operators’ programming expenses as a percent of video service revenue increased from 34.6 percent in 2006 to 44.6 percent in 2013. Twenty-one out of the 42 stakeholders we interviewed identified rising programming costs as a trend in the video marketplace over the last 5 years.
- **Affordability and flexibility:** Industry reports we reviewed suggest that the emergence of low-cost alternatives to cable and satellite video services could accelerate viewers’ use of online services.⁴⁸ Factors influencing this trend include pressures on disposable income for low income cohorts of all ages, the desire to only pay for the content consumers want to watch, and viewers’ preference to watch content when they want, where they want, and on the device of their choosing. According to FCC and consistent with our analysis, the average monthly per-subscriber cost for an expanded basic service cable subscription increased from \$54.44 in 2010 to \$66.61 in 2014.⁴⁹ This suggests that emerging options may provide consumers with greater flexibility to choose a service that more closely meets their desired price and content preferences.

⁴⁸ MoffettNathanson Research, *The Poverty Problem, Six Years On*, U.S. Telecom and U.S. Cable & Satellite Broadcasting (Mar. 12, 2015); PWC, *Videoquake 3.0: The Evolution of TV’s Revolution*, Consumer Intelligence Series (December 2015); and Pew Research Center, *Home Broadband 2015* (Dec. 21, 2015).

⁴⁹ For more on FCC’s analysis of cable industry data, see *Report on Cable Industry Prices* (MM Docket No. 92-266), 29 FCC Rcd 14895, Released December 15, 2014, December 15, 2014, Adopted. For more details on our analysis of this data, see appendix I.

Changes in Consumer Viewing Habits

- **Cord-Cutters:** Consumers who cancel a cable or satellite video service subscription. Cord-Cutters may access local broadcast television stations over-the-air with an antenna or use an Internet-based service.
- **Cord-Nevers:** Consumers who never subscribed to a cable or satellite video service.

Source: GAO. | GAO-16-496

- **Generational viewing habits:** According to several industry reports, younger consumers are more likely to be “cord-nevers” or “cord-cutters” than those in other age groups.⁵⁰ Subscriptions to cable and satellite services are lowest among households headed by younger adult consumers (e.g., 18 to 29 years old).⁵¹ However, it is unclear whether younger consumers who currently do not subscribe to cable and satellite video services will eventually do so.⁵²

As reported by FCC, cable and satellite operators have developed a variety of competitive strategies to adapt to the changing marketplace.⁵³ In response to the video marketplace changes mentioned above—changes in distribution platforms and viewing habits—cable and satellite operators, broadcast networks, and cable networks are increasingly offering video content online, including:

- **TV Everywhere:** Video services that allow subscribers to cable and satellite video services to access both linear⁵⁴ and video-on-demand content on a variety of in-home and mobile Internet-connected devices. While not yet widespread, according to industry reports the availability and use of TV Everywhere appears to be growing.⁵⁵ For example, Comcast’s Xfinity TV Go allows viewers to access video

⁵⁰ MoffettNathanson Research, *The Poverty Problem, Six Years On*, U.S. Telecom and U.S. Cable & Satellite Broadcasting (Mar. 12, 2015); PWC, *Videoquake 3.0: The Evolution of TV’s Revolution*, Consumer Intelligence Series (December 2015); and Pew Research Center, *Home Broadband 2015* (Dec. 21, 2015).

⁵¹ Pew Research Center, *Home Broadband 2015* (Dec. 21, 2015).

⁵² MoffettNathanson Research, *The Poverty Problem, Six Years On*, U.S. Telecom and U.S. Cable & Satellite Broadcasting (Mar. 12, 2015).

⁵³ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, 30 FCC Rcd 3253, ¶¶ 85 and 240, Released April 2, 2015, Adopted, March 31, 2015.

⁵⁴ Programming that is offered at a certain time and on a certain channel (e.g., *The Big Bang Theory* on a CBS affiliate station at 8pm ET on a Thursday) is also called linear programming.

⁵⁵ In *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, 30 FCC Rcd 3253, ¶¶ 86, Released April 2, 2015, Adopted, March 31, 2015.; FCC cites data from SNL Kagan showing that use of TV Everywhere in 2013 was estimated at 2.5 million viewers. In Adobe Digital Index’s *Digital Video Benchmark Report Q2 2015*, the active monthly share of cable and satellite (Pay-TV) viewers using TV Everywhere increased from 10.7 percent in the 2nd quarter of 2014 to 12.7 percent in the 2nd quarter of 2015.

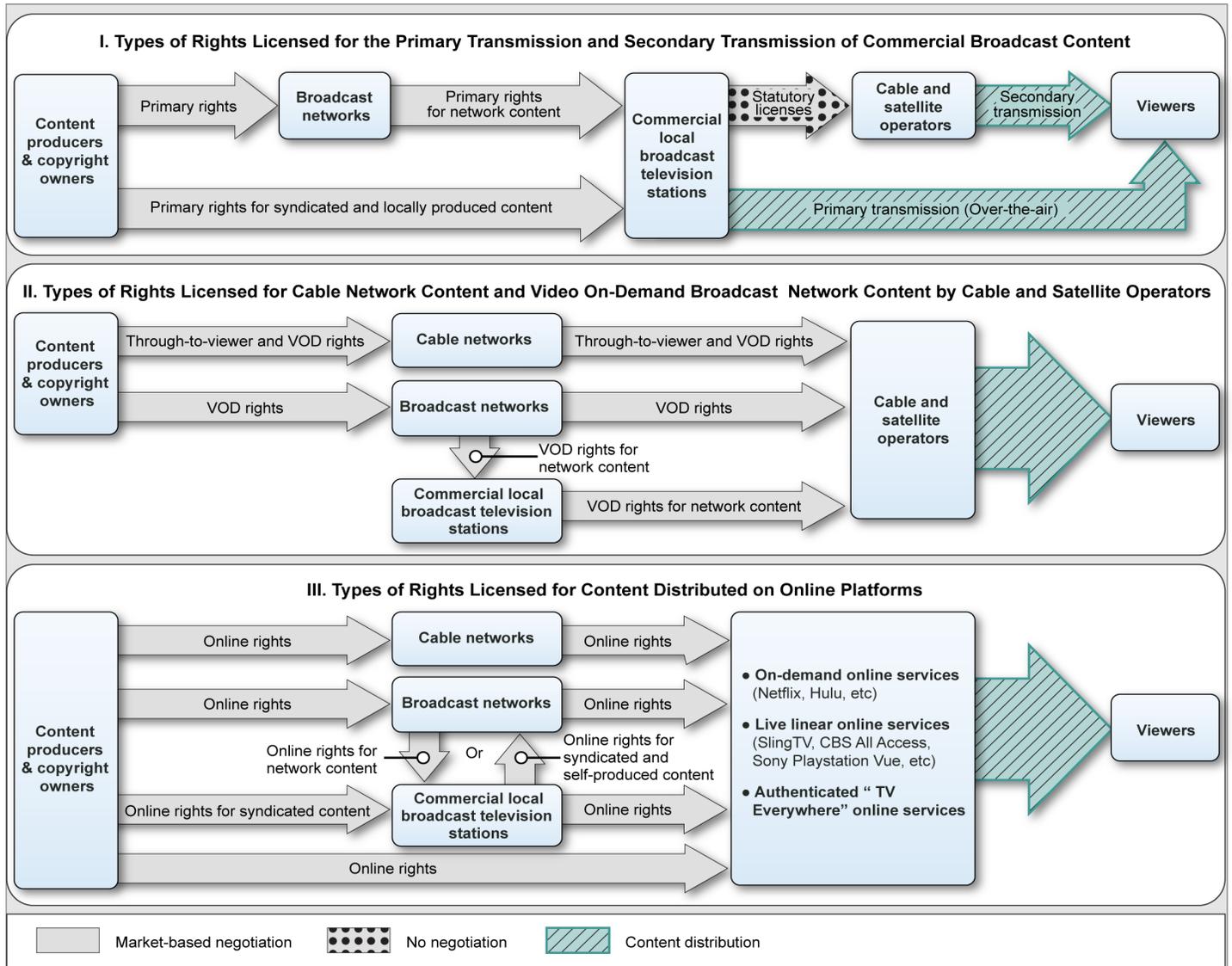
content online, live and on-demand, through their existing cable subscription.

- Online linear programming: Some cable and satellite operators are also offering subscription-based online video services that allow subscribers to stream television channels over the Internet in real-time. For example, DISH's *SlingTV* is a subscription service that allows viewers to access certain television channels live or watch video-on-demand content via the Internet.
- Broadcast and cable network online video services: Broadcast networks are increasingly offering their content online, with video-on-demand offerings and streaming of their affiliated local broadcast television stations, through network websites and applications that are accessible via Internet-connected devices (i.e., computers, tablets, and smartphones). For example, the CBS network offers *CBS All Access*, an online video service that provides access to live linear streams of local CBS affiliate broadcast programming over the Internet and video-on-demand content to consumers for a monthly subscription fee. Cable networks also offer similar online services. For example, HBO offers a standalone subscription service, *HBO Now*, which allows viewers to watch episodes of shows in real time as well as on-demand.

Market-Based Negotiations for the Licensing of Online, On-Demand and Other Video Content Rights Illustrate a Phaseout May be Feasible for Most Industry Participants

Our analysis of recent changes in the video marketplace, as discussed above, indicates that the types of rights licensed have increased as online and video-on-demand distribution platforms have multiplied. Much of this video content—including content aired by local broadcast television stations—is licensed through private market-based negotiations. Figure 3, below, diagrams the parties and types of rights that can be licensed for different distribution platforms (e.g., over-the-air, video-on-demand, and online) for commercial video content.

Figure 3: Types of Rights Licensed for Video Content Distributed by Commercial Providers



Statutory licenses:

Under the section 111, 119, and 122 statutory licenses, cable and satellite operators can retransmit the content embedded in a local broadcast station's signal without obtaining permission from the copyright owners of that content. To use these statutory licenses, cable and satellite operators must comply with requirements on the carriage of local broadcast stations and pay government set royalty fees.

Types of rights licensed within the video marketplace

Online — allow content to be streamed online using any Internet-connected device

Primary — allow content to be distributed through an over-the-air broadcast

Through-to-viewer — allow cable networks to make their content available to cable and satellite operators for transmission to their subscribers

Video-on-demand (VOD) — allow cable and satellite operators to offer individual programs to their subscribers at a time of the viewer's choosing

Source: GAO analysis of interviews with selected industry stakeholders, U.S. Copyright Office reports, and GAO reports. | GAO-16-496

As shown in figure 3, it may be feasible to license the rights for the secondary transmission of broadcast content in a manner similar to the market-based negotiations used for other distribution platforms. The only rights in the video marketplace not licensed through market-based negotiations are the secondary transmission rights for broadcast content, as shown in the first panel of figure 3. All other rights depicted in figure 3 are licensed through market-based negotiations. The growth in online and video-on-demand content provides evidence that suggests the video marketplace can develop a market-based approach to license secondary transmission rights for broadcast content in the absence of the statutory licenses. Of the 42 stakeholders we interviewed, 21 play a role in licensing rights for the over-the-air (primary) transmission of broadcast content or secondary transmission of broadcast signals (e.g., negotiations with content producers for primary transmission rights, network-affiliate agreements, and retransmission consent negotiations). Twenty of these 21 stakeholders told us they also participate in the licensing of online and video-on-demand rights for broadcast content. This suggests that the same parties⁵⁶ (e.g., broadcast networks, local broadcast television stations, and cable and satellite operators) that currently rely on the statutory licenses to facilitate the retransmission of broadcast content by cable and satellite operators already use market-based negotiations to license other public performance rights for broadcast content. In addition, 11 out of the 14 of these stakeholders that participate in negotiations for primary transmission rights thought it was feasible to license secondary transmission rights when primary transmission rights are licensed.

The emergence of live linear online video services that allow viewers to stream, via Internet-connected devices, the live signal of their local broadcast television station, also illustrates the potential feasibility of licensing all public performance rights related to broadcast content using market-based negotiations. For example, CBS offers a direct-to-consumer online video service, *CBS All-Access*. In another example, Sony's *PlayStation Vue* allows viewers to stream live television channels, including local broadcast television station affiliates of ABC, CBS, FOX, and NBC in select cities. Online video distributors (e.g., Sony Playstation Vue or CBS All Access) must license the online rights for all the content

⁵⁶ While cable and satellite operators are the users of the statutory licenses, their use of the licenses means that broadcast networks and local broadcast television stations do not need to ensure they have the rights to license their content to cable and satellite operators.

on the local broadcast television station’s signal—including the broadcast network’s content (e.g., primetime dramas and comedies) and the local broadcast television station’s content (e.g., local news programs). The method by which these online rights are licensed varies by broadcast network and by online video distributor; however, the content they must license—without the benefit of the statutory licenses—is similar to the content covered by the statutory licenses. Therefore, it seems feasible that just as broadcast content is licensed for online viewing using market-based negotiations; it can also be licensed for viewing through cable and satellite operators using market-based negotiation and without the statutory licenses.

Moreover, over the past 25 years, FCC and the U.S. Copyright Office have reported that the transaction costs that statutory licenses were created to address may have become more manageable and that licensing secondary transmission rights in the absence of the statutory licenses could be feasible.⁵⁷ Specifically, in its 1989 statutory licensing study, FCC reported that in the absence of the section 111 license, television stations would be able to acquire cable retransmission rights to “packages” of the programming they broadcast.⁵⁸ Cable operators could then negotiate with a single entity—the broadcast station—for carriage rights to each package (e.g., sublicensing).⁵⁹ Thus, cable and satellite operators would not have to license the rights to transmit each program with each copyright owner, minimizing the number of negotiations and subsequently the transaction costs. FCC reported that the existence of cable networks provided “convincing” evidence that the transaction costs associated with full copyright liability are manageable and concluded that the “networking mechanism” appeared well-suited to the acquisition of cable retransmission rights for broadcast signals as well.⁶⁰ Moreover, the

⁵⁷ Section 302 Report; U.S. Copyright Office, *Satellite Home Viewer Extension and Reauthorization Act § 109 Report* (Section 109 Report) (Washington, D.C.: June 30, 2008); and FCC, *Compulsory Copyright License for Cable Retransmission*, 4 FCC Rcd 6562, 6712. Released, Aug. 3, 1989, Adopted October 27, 1988.

⁵⁸ FCC, *Compulsory Copyright License for Cable Retransmission*, 4 FCC Rcd 6562, 6712. ¶ 12, Released, Aug. 3, 1989, Adopted October 27, 1988.

⁵⁹ The market alternatives to the statutory licenses—direct licensing, sublicensing, and collective licensing—are described below.

⁶⁰ FCC, *Compulsory Copyright License for Cable Retransmission*, 4 FCC Rcd 6562, 6712. ¶ 12, Released, Aug. 3, 1989, Adopted October 27, 1988.

U.S. Copyright Office reported in 2008 and 2011 that sublicensing is a reasonable alternative to statutory licenses.⁶¹ Cable and satellite operators could negotiate for the secondary retransmission rights for broadcast content at the same time and potentially with the same entities they negotiate retransmission consent for the entire broadcast signal.

Although feasible for most, some video marketplace participants may face negative effects and may have difficulty licensing secondary transmission rights to ensure distribution of their video content in the event of a phaseout. Specifically:

- **Small Cable Operators:** Based on our analysis of stakeholder interviews and the U.S. Copyright Office's 2011 report, cable operators with small customer bases may face financial and logistical challenges in the event of a phaseout of the Section 111 license. As the U.S. Copyright Office has reported, small cable operators are particularly vulnerable to increases in the costs of doing business. Similarly, some stakeholders told us they believe that small cable operators do not have the financial and legal resources to adapt to a change in the statutory licenses. These stakeholders were concerned that any increase in transaction costs (due to additional negotiations) or an increase in the actual cost of content may make it difficult for small cable operators to stay in business.
- **Public Television:** Public television, in particular, may be negatively affected by a phaseout of the statutory licenses. Public television stations and program suppliers, such as the Public Broadcasting Service (PBS), tend to license a smaller bundle of rights⁶² at a relatively low cost. In addition, producers of public television content rely on the distribution of statutory license copyright royalty fees to supplement the payments received from public television. According to public television stakeholders,⁶³ given the terms by which content is currently licensed for public television, neither direct licensing or

⁶¹ Section 302 Report and Section 109 Report.

⁶² According to public television stakeholders, they typically license the primary transmission rights. In some cases, online rights may also be licensed, but these are typically restricted to a short online viewing window.

⁶³ This group included representatives from an industry association for public television stations, a public television program supplier and a public television station. See appendix I for further information

sublicenses⁶⁴—marketplace alternatives to the statutory licenses—would work. These licensing mechanisms would likely result in cable and satellite operators or public television stations and program suppliers facing significant transaction costs to obtain the necessary secondary transmission rights. As we, along with the U.S. Copyright Office reported in 2011,⁶⁵ there are also concerns that some local public television stations may not have the financial resources to deal with the transaction costs associated with obtaining these rights for all of their content.

A Phaseout of the Statutory Licenses Could Impact Some Carriage Requirements

A phaseout of the statutory licenses could have implications for the must-carry and carry-one, carry-all requirements, as currently implemented.

- **Must-carry:** As we have previously reported, if Congress phases out the Section 111 statutory license, cable operators may have difficulty complying with the must-carry requirement.⁶⁶ Eliminating this statutory license would remove the current mechanism used by cable operators to license broadcast programming and, unless the must-carry provision was at least revised, would leave cable operators in a seemingly paradoxical situation. Cable operators would be required to transmit without modification local broadcast station signals containing copyrighted content for which they might not be able to license the needed public performance rights, or only be able to do so at a potentially significant burden and cost.⁶⁷
- **Carry-one, carry-all:** If Congress phases out the Section 122 statutory license, according to FCC and the U.S. Copyright Office, the carry-

⁶⁴ Direct licensing and sublicensing are discussed in greater detail below.

⁶⁵ [GAO-12-75](#) and Section 302 Report.

⁶⁶ [GAO-12-75](#).

⁶⁷ The potential for copyright owners to act as holdouts in negotiations with cable operators over the secondary transmission rights for the broadcast programming embedded in the signals of stations that elect must carry is largely driven by the legal requirement that broadcast signals must be retransmitted without modification. The hold-out problem is a well-recognized phenomenon in economic literature, which is usually discussed in the context of real estate development.

one, carry-all provision would no longer apply to satellite operators.⁶⁸ According to the U.S. Copyright Office, a repeal of the Section 122 license would render carry-one, carry-all effectively “null and void,”⁶⁹ which could have a detrimental effect on television stations that do not or cannot elect retransmission consent due to a poor bargaining position. Local broadcast television stations that currently gain carriage by satellite operators through the carry-one, carry-all provision, may no longer be carried in the event of a phaseout of the Section 122 license. In this scenario, cable operators would have a mandatory obligation to carry any local broadcast television station that requested carriage, while satellite operators would face no such obligation.

As we have reported in the past, a phaseout of the statutory licenses would not necessarily require modification to the other carriage requirements, specifically retransmission consent and the broadcast exclusivity rules, as discussed below.⁷⁰

- Retransmission consent: Commercial local broadcast television stations can pursue this option, discussed earlier, when they do not invoke must-carry or carry-one, carry-all. A phaseout of the statutory licenses would not necessarily change how cable and satellite operators negotiate for the rights to transmit commercial local broadcast stations’ signals.⁷¹ However, without the statutory licenses, cable and satellite operators would be required to obtain the rights to retransmit the content⁷² embedded on a broadcast station’s signal—

⁶⁸ Carry-one, carry-all is required by the Communications Act, § 338(a) (47 U.S.C. § 338(a)), which provides, “Each satellite carrier providing, under section 122 of Title 17, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market...”

⁶⁹ Section 302 Report, p. 60.

⁷⁰ [GAO-12-75](#).

⁷¹ [GAO-12-75](#).

⁷² According to FCC, cable operators must carry in its entirety the signal of any station that is eligible to elect must-carry even if that station elects carriage via retransmission consent. The same requirement applies to satellite operators. Therefore, cable and satellite operators would need to obtain the secondary transmission rights to all of the content on a commercial local broadcast stations’ signal in the event of a phaseout of the statutory licenses.

the potential mechanisms for obtaining these rights (direct licensing, sublicensing, and collective licensing) are discussed further below.

- Broadcast exclusivity rules: These include the network non-duplication and syndicated exclusivity rules that, as mentioned earlier, were designed to protect local broadcast stations from competition with local broadcast stations imported by cable or satellite carriers from outside the local market being served. A phaseout of the statutory licenses would not, on its face, require a change to the exclusivity rules.⁷³ We previously reported that eliminating the exclusivity rules may have varying effects, but these would depend on other federal actions and industry response.⁷⁴

Stakeholders Vary in Their Support for a Potential Phaseout and Are Uncertain about its Potential Effects on the Video Marketplace and Consumers

Stakeholder Positions on a Phaseout of the Statutory Licenses Vary

Stakeholder support for a phaseout of the statutory licenses varied. Of the 42 selected stakeholders we interviewed, all of whom provided a response to our questions asking their position on a phaseout, 15 supported either a full or partial phaseout of the statutory licenses, and in some cases cited contingent factors:

- Six of the 42 stakeholders supported a full phaseout of all three statutory licenses.⁷⁵ Reasons given for supporting a full phaseout

⁷³ [GAO-12-75](#).

⁷⁴ [GAO-15-441](#).

⁷⁵ This group of stakeholders consisted of a commercial broadcast network, three content producers, an industry association, and an industry expert.

included that direct negotiations and sublicensing to license the rights to distribute broadcast content on online and on-demand platforms are already taking place in the video marketplace. In addition, cable networks aggregate all rights needed for cable and satellite operators to transmit their content to viewers. According to some of these stakeholders, they see no reason the same system could not be employed to address the retransmission of broadcast content by cable and satellite operators.

- Five of the 42 stakeholders said their support of a full phaseout was contingent on other factors, such as the phaseout or reform of some or all of the carriage requirements.⁷⁶ Four of these would support a phaseout of the licenses but only if all carriage requirements were eliminated. One stakeholder overall supported a phaseout of the statutory licenses, but thought the licenses could be retained to help smaller copyright holders. One reason given for wanting either the elimination or amendment of the carriage requirements at the same time as a phaseout was concern that if the requirements remain in effect they could undermine any benefits of a system without the statutory licenses. For example, if a sublicensing system was the primary replacement for the current statutory licenses and cable and satellite operators paid for the right to license the underlying broadcast content rights in addition to current fees for retransmission consent; there were concerns that programming costs would increase significantly.
- Four of the 42 stakeholders said they supported a partial phaseout of the statutory licenses, and all four specified that the licenses related to distant signal transmission—section 119 and the relevant portions of section 111—as those that should be phased out.⁷⁷ These stakeholders said the statutory licenses were functioning as intended, however, they thought the distant signal portions of the licenses had a negative impact on the marketplace.

⁷⁶ This group of stakeholders consisted of two commercial broadcast networks, two cable and satellite providers and a public interest group.

⁷⁷ This group of stakeholders consisted of three commercial local broadcast television station owners and an industry association.

In contrast, 14 of the 42 selected stakeholders said they did not support a phaseout.⁷⁸ Five of the 14 specified that they did not support a phaseout of the statutory licenses for stations that elect must-carry or carry-one, carry-all, but did not take a position on what should happen to the statutory licenses for commercial local broadcast television stations that participate in retransmission consent negotiations. This position is in part due to the issues discussed above, such as financial concerns if noncommercial participants had to license a larger bundle of rights through market-based negotiations. Half of these stakeholders (7 of 14 stakeholders) said that the current system is operating as intended. These stakeholders were concerned that changes to the system might unfairly benefit one industry segment over another as well as possibly have unintended consequences that could damage the video marketplace. For example, stakeholders had concerns that sublicensing or direct licensing could add transaction costs and reduce efficiencies gained through the statutory license system, and hurt the video marketplace.

Thirteen of the 42 selected stakeholders told us they had no position on a possible phaseout.⁷⁹ One of these stakeholders told us he or she did not have a position on a phaseout because this stakeholder has other higher priority regulatory and legislative concerns requiring their attention. Additionally, the five stakeholders representing OVDs are not a part of the statutory licensing system so this issue was not relevant to their role in the video marketplace.

⁷⁸ This group of stakeholders consisted of three industry associations, four cable or satellite companies and one content producer. Additionally, four public television stakeholders and one commercial broadcast station owner also opposed a phaseout of the licenses, but limited their position to stations that elect must-carry or carry-one, carry-all status.

⁷⁹ This group of stakeholders consisted of five OVDs, three industry associations and five industry experts.

Selected Stakeholders Were Uncertain about Potential Impacts of a Phaseout on the Video Marketplace

Selected stakeholder views on how a phaseout might affect the video marketplace were varied and appeared to be influenced by uncertainty related to the carriage requirements,⁸⁰ marketplace alternatives, and competition. Given this uncertainty, generally only about half or fewer of the 42 selected stakeholders interviewed had a position on these issues.

Carriage Requirements: Of the 42 selected stakeholders we interviewed, on any given requirement, only about half (a range of 19-22 stakeholders)⁸¹ had a position on what should happen with the carriage requirements if the statutory licenses were phased out. Those without a position who offered a reason, cited not wanting to speculate on the issue, in some cases due to uncertainty about what, if any, federal actions would be taken and what the impacts of those actions on the video marketplace may be.⁸² As discussed above, if the statutory licenses are fully or partially phased out, it may be necessary to adjust the must-carry requirement. For example, several stakeholders representing cable operators told us that the must-carry requirement would put cable operators in a difficult position if the statutory licenses were phased out. Specifically, must-carry would require carriage of a station, but cable operators would have no guarantee that the rights for the content on a station's signal were licensed for secondary transmission. Similarly, public television stakeholders told us that without the statutory licenses, the party responsible for obtaining the secondary transmission rights—either public television stations or program suppliers—would face difficulties due to high transaction costs. Some selected stakeholders also raised concerns about how, if the licenses were phased out, retransmission consent negotiations for the commercial local broadcast television station signal would co-exist with market-based negotiations to license the rights for the broadcast station's content.

⁸⁰ The carriage requirements include must-carry and carry-one, carry-all, retransmission consent, and the broadcast exclusivity rules.

⁸¹ Of the selected stakeholders we interviewed, 22 had a position on changes to the must-carry and carry-one, carry-all requirements, 20 had a position on changes to retransmission consent, and 19 had a position on changes to the broadcast exclusivity rules.

⁸² Additionally some stakeholders, such as OVDs and industry experts, declined to take a position because they do not participate in the statutory license system and are not affected by these requirements.

Marketplace Alternatives: Similarly, of the 30 selected stakeholders asked,⁸³ about half (16 out of 30) had no position on which marketplace alternative could replace the current statutory licensing system. Among these stakeholders, some cited uncertainty about if or when a phaseout would occur, as well as not wanting to comment because they do not support a phaseout. The U.S. Copyright Office outlined in 2011⁸⁴ three possible marketplace alternatives—sublicensing, direct licensing, or collective licensing⁸⁵—that could replace the current system of statutory licenses. Additionally, the office outlined⁸⁶ three approaches—statutory sunset, distant signal first, and station-by-station⁸⁷—for conducting a phaseout. The marketplace alternative used to license the secondary transmission rights for broadcast content after a phaseout would affect video marketplace negotiations and associated transaction costs. Of the 30 selected stakeholders we asked, about half had a position on a preferred marketplace alternative or how a phaseout of statutory licenses should be conducted. Some stakeholders (5) noted that sublicensing, collective licensing, and direct licensing already occur in the current video marketplace to license video content on cable channels and on most distribution platforms (e.g., over-the-air transmission, online, and on-

⁸³ Twelve of the selected stakeholders were not asked questions about how a phaseout of the statutory licenses may impact competition in the video marketplace because these questions were not relevant to their roles in the video marketplace. This group included industry associations and public television stakeholders.

⁸⁴ Section 302 Report.

⁸⁵ In a sublicensing system television broadcast stations could license the rights for the secondary transmission of content in their programming lineup and sublicense those rights to cable and satellite operators concurrent with retransmission consent or other negotiations. In a direct licensing system, cable and satellite operators could negotiate directly with the numerous copyright owners for the right to perform the work publicly through the secondary transmission of stations' programming. In a collective licensing system, negotiations about compensation for the secondary transmission of copyright protected programming could be conducted between organizations representing the copyright owners on one side and the users of the content, such as cable and satellite operators on the other.

⁸⁶ Section 302 Report.

⁸⁷ A statutory sunset approach would involve Congress setting a date to simultaneously phaseout all three statutory licenses. The distant signal first approach would involve Congress incrementally phasing out statutory licensing over a period of time with distant signal licenses being phased out first. A station-by-station approach would sunset use of statutory licenses on a station-by-station basis as each station achieved the ability to license the public performance rights for all of its programs.

demand). As discussed above, with market-based negotiations⁸⁸ already occurring, a phaseout of the licenses may be feasible. However, the approach used to conduct a phaseout and the timeliness of implementation, could also impact the marketplace. Of the stakeholders with a position, 9 out of 10 said a statutory sunset option may be the best option as it would allow the video marketplace participants time to renegotiate any existing contracts for broadcast programming and signal carriage contracts. For example, one broadcast network noted that contracts related to broadcasting of live events, such as professional sports, often cover a multi-year period, and a statutory sunset might help avoid a disruption in carriage.

Competition: Of the 30 selected stakeholders asked, about half (16) had a position on the potential effects of a phaseout on competition in the video marketplace. Of those, only one thought there would be no impact on competition. Five of these stakeholders found it difficult to comment on how competition would change. This was in part due to not knowing how, if at all carriage requirements might change and the marketplace alternatives that might take the place of the statutory licenses. Of the 10 that indicated a possible effect on competition, 5 stakeholders cited a potential increase in competition in the marketplace as a possible result of phasing out the statutory licenses. According to one selected stakeholder, an increase in competition could mean a decrease in programming costs, as new market entrants might spur the creation of more original content. However another stakeholder said that an increase in competition as more participants enter the marketplace could result in higher programming costs. Essentially, more entities would be competing over the same content.

⁸⁸ Collective licensing is currently used to administer copyright licensing of musical works. Organizations represent composers, songwriters, lyricists, and music publishers in negotiations with users such as television and radio broadcasters, and cable systems among others.

Stakeholders Were Uncertain about the Potential Effects of a Phaseout of the Statutory Licenses on Consumers

Given the uncertainty about the implications of a phaseout on the carriage requirements and the video marketplace discussed above, most stakeholders did not have a position regarding the effect of a phaseout on consumer access to programming and prices paid for cable and satellite television. Of the 42 selected stakeholders we interviewed,⁸⁹ about half or less provided responses on a range of possible impacts on consumers' access and prices.

Consumer Access

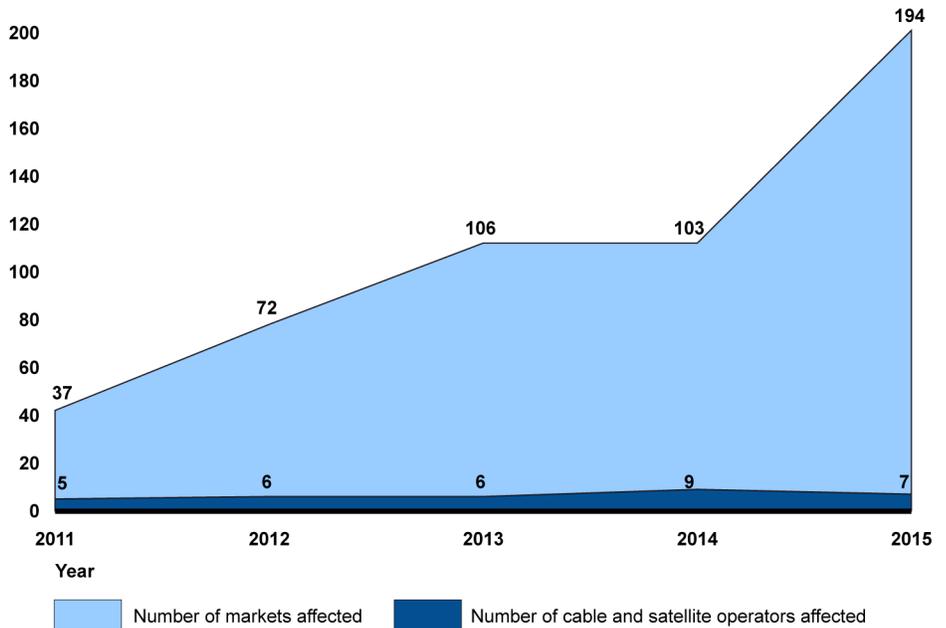
As we have previously reported, a phaseout of the statutory licenses has the potential to result in disruptions of local broadcast television stations' signals being aired by cable and satellite providers. However, the overall impact on the nature of content available and consumer access is unclear.⁹⁰ Consumers might see their access to local broadcast television stations disrupted due to disagreements over the price and terms to retransmit broadcast station's content, and it is unclear what impact a phaseout might have on the nature and availability of this content.

Blackouts: Programming disruptions, often termed blackouts, occur when a cable or satellite operator and a local broadcast television station owner are unable to reach agreement on the carriage of the station's signal, usually during retransmission consent negotiations. This disagreement results in a broadcast station's signal not being retransmitted to viewers via the cable or satellite operator, disrupting their access to the content on a local broadcast television station's signal. Blackouts have increased in recent years, as shown in figure 4.

⁸⁹ Six of the selected stakeholders were not asked this question as it was deemed not relevant. This group included one industry expert and the five selected OVDs.

⁹⁰ [GAO-12-75](#).

Figure 4: Blackouts of Local Broadcast Television Stations' Signals in the United States (2011 to 2015)



Source: GAO Analysis of SNL Kagan LC, we present aggregate information based on underlying proprietary material. | GAO-16-496

Of the 37 selected stakeholders asked,⁹¹ 17 provided responses to our questions about blackouts. These stakeholders were unsure if blackouts in a post-phaseout marketplace would change because of uncertainty around the status of the carriage requirements or other marketplace changes. Six out of 17 stakeholders thought blackouts would definitely increase in the event of a phaseout of the statutory licenses. These stakeholders said this would occur because of the potential for additional negotiations, both in number and the number of parties involved, which could create more opportunity for holdouts and lack of agreement. The remaining 11 stakeholders were split between either no change (6) or those (5) who thought the impacts on blackouts would vary depending on the marketplace alternative selected and the video marketplace response to it, and therefore was difficult to predict. None of the selected

⁹¹ The five OVD stakeholders were not asked these questions because they were not relevant to their roles in the video marketplace.

stakeholders thought blackouts would decrease if the statutory licenses were phased out.

Programming Diversity: Of the 42 selected stakeholders interviewed, 17 commented on how the diversity of programming, such as the nature and availability of content, might be affected if the statutory licenses were phased out. One of these stakeholders thought there could be an increase in the diversity of programming, as the phaseout of the licenses could spur the development of new content into the marketplace. Three selected stakeholders thought there would be no change to the availability and diversity of programming. Another five stakeholders were unsure of what impact might occur because there were unknown factors related to a phaseout that could affect either the availability or diversity of programming. For example, depending on the marketplace alternative selected to replace the statutory licenses, or if any changes were made to the relevant carriage requirements discussed above, diversity of programming could be affected or stay the same.

Seven of the 17 responding stakeholders thought the availability and diversity of content would decrease. Of those that provided additional explanation on their position (6), concerns about less diverse content being available stemmed, in part, from uncertainty over how potential changes to carriage requirements may affect niche programming. For example, if a system has greater transaction costs, availability of programming could decrease. Representatives from one selected industry stakeholder organization said that smaller content producers with less popular programming would have limited leverage in a direct licensing system, in part due to increased transaction costs. Additionally, as discussed above, if in addition to the statutory licenses being phased out, the must-carry requirements were also eliminated, public television and other stations that currently elect must carry could have difficulty licensing the secondary transmission rights and thus might have to alter or diminish their programming.

In our interviews with satellite operators, some cable operators, and public television stakeholders, these stakeholders also raised concerns that consumers might face decreased access to programs in the event of a phaseout of the distant signal licenses (portions of Section 111 license

and the Section 119 license),⁹² although it is not clear the extent of the effect on consumers due to changes in the marketplace.

- Satellite operators and one cable operator raised the concern that without the distant signal licenses, no marketplace alternative for distant signals would develop. One satellite provider we spoke with said that without the distant signal licenses, no marketplace alternative to provide distant signals may emerge as commercial broadcast networks do not have any financial incentive to allow their affiliates' signals to be transmitted outside of the intended local market. These stakeholders noted how in some local television markets, known as "short markets", there is no local broadcast affiliate station for at least one of the major broadcast networks. Without distant signal importation, these markets may not have access to one or more local broadcast television stations affiliated with a major network. However, according to U.S. Copyright Office data, the most widely viewed distant signal by satellite service subscribers in the United States is that of WGN, a superstation.⁹³ The effects of a partial phaseout of the statutory licenses on the viewers of distant signals may be mitigated by the recent conversion of WGN into a cable network. In Statement of Account filings with the U.S. Copyright Office, the two satellite service providers no longer reported carrying WGN as a superstation during the latter part of the 2015 accounting period and subsequently saw a decrease in the number of their subscribers receiving distant signals.
- Public television stakeholders raised the concern that a phaseout of the distant signal licenses may actually lead to some local markets not being served by a public television station. These stakeholders noted that in the event a local public television station can no longer provide service in a community, it may be necessary to import a public television station from another market as a distant signal. However, without the distant signal licenses, these public television stakeholders said it would be very difficult to license the needed public

⁹² As of October 2013, the Satellite Broadcasting and Communications Association estimated that more than 1.5 million satellite subscribers would lose access to at least one channel if the Section 119 license was phased out.

⁹³ A superstation is a station not affiliated with a major network but carried by distant operators. Superstations are now referred to in copyright law as non-network stations. 17 U.S.C. §§ 119(d)(9) and 122(j)(4).

performance rights for all the content embedded in the signal of a distant public television station.

Consumer Prices

Of the 37 selected stakeholders asked,⁹⁴ 29 responded to our questions about the impacts of a phaseout on consumer prices. Among these stakeholders, there was a general recognition that uncertainty about how the video marketplace would react to a phaseout of the statutory licenses and about what, if any, changes would be made in the regulatory environment made it difficult to speculate on the effects on consumer prices. Thirteen of the 29 who commented on this issue thought consumer prices would increase, in part due to anticipated increases in transactions costs under a new licensing system. In general, an increase in costs to providers of a service may lead to higher consumer prices for the service. If, in the event of a phaseout, the marketplace alternative selected to replace the current statutory license structure entails greater transaction costs, then it is possible that some or all of those costs would be passed onto the consumer. Similarly, if there were no change to stakeholder transaction costs, then there should be no change to consumer prices. This outcome is consistent with our prior work, the effect of a phaseout on consumer prices for cable and satellite television is unclear.⁹⁵ Even so, another 15 selected stakeholders were unsure of the effects or thought there would be no change in consumer prices. Only one cable and satellite provider thought changes to the system would create a downward pricing pressure to lower consumer prices.

Agency Comments

We provided a draft of this report to the FCC and the U.S. Copyright Office for review and comment. FCC provided technical comments, which we incorporated as appropriate. The U.S. Copyright Office stated that it agreed with our finding that a phaseout of the statutory licenses may be feasible for most market participants.

We are sending copies of this report to the appropriate congressional committees, the Chairman of the FCC, and the Register of Copyrights. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

⁹⁴ The five OVD stakeholders were not asked this question because it was not relevant to their roles in the video marketplace.

⁹⁵ [GAO-12-75](#).

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or goldsteinm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.

A handwritten signature in black ink, appearing to read 'Mark Goldstein', with a long horizontal flourish extending to the right.

Mark Goldstein
Director,
Physical Infrastructure

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Appendix I: Objectives, Scope, and Methodology

The Satellite Television Extension and Localism Act Reauthorization Act of 2014 included a provision for us to study and evaluate the possible effects of phasing out statutory licensing of the secondary transmission of television broadcast programming. This report examines (1) what is known about the potential feasibility of a phaseout of the statutory licenses and (2) what are selected stakeholder views on the implications of a phaseout of the statutory licenses.

To address both objectives, we reviewed relevant statutes and regulations of sections 111, 119, and 122 of the United States Code, U.S. Copyright Office, GAO, Congressional Research Service, and Federal Communications Commission (FCC) reports to among other things, determine how the licenses work, identify alternatives to statutory licenses, as well as how the marketplace might function if the statutory licenses were phased out. We conducted semi-structured interviews with or obtained written comments from 42 stakeholders—including experts, industry associations, and industry participants (broadcast networks, broadcast station owners, cable and satellite operators, online video distributors, and content producers/copyright owners). We selected these individuals and organizations based on published literature, including U.S. Copyright Office filings and reports, our previous work, and stakeholders' recognition and affiliation with a segment of the video marketplace, and recommendations from other stakeholders. We conducted a content analysis based on these interviews to determine how the video marketplace has changed in the last 5 years, the potential feasibility of a phaseout of the statutory licenses based on the types of rights licensed in the video marketplace and negotiations stakeholders participate in, and the potential implications of a phaseout of carriage requirements, for the video marketplace, and for consumers' access to programming and the prices consumers pay for cable and satellite services. We spoke with six experts, including analysts with Pivotal Research, Huber Research, MoffettNathanson, and BTIG. We also spoke with Preston Padden, a telecommunications expert, and Gregory Crawford, former Chief Economist at FCC. We also spoke with eight industry associations and one public interest group:

Industry Associations

- American Cable Association (ACA)
- Association of Public Television Stations (APTS)
- Digital Media Association (DiMA)
- Independent Film and Television Alliance (IFTA)
- Motion Picture Association of America (MPAA)

- National Association of Broadcasters (NAB)
- National Cable and Telecommunications Association (NCTA)
- NTCA – The Rural Broadband Association

Public Interest Group

- Public Knowledge

We also interviewed 27 entities that participate in the video marketplace—either producing content (or holding the copyrights to content), aggregating content, or distributing content. Table 2 contains those industry participants we interviewed along with their role(s) in the marketplace.

Table 2: Industry Participants We Interviewed and Their Roles in the Video Marketplace

Stakeholder	Content producer/ Copyright owner	Role in Video Marketplace						
		Content aggregator				Content distributors		
		Broadcast network	Cable network	Broadcast station owner	Non-commercial educational	Cable operator ^a	Satellite operator	Online video distributor
21st Century Fox	✓	✓	✓	✓				✓
Amazon.com	✓							✓
American Society of Composers, Authors, and Publishers (ASCAP)	✓							
AT&T and its subsidiary, DirecTV						✓	✓	✓
Broadcast Music, Inc (BMI)	✓							
CassComm						✓		
CBS Corporation	✓	✓	✓	✓				✓
Charter Communications						✓		
Corporation for Public Broadcasting (CPB)					✓			
DISH Network							✓	✓
Disney-ABC Television Group	✓	✓	✓	✓				✓
Gray Television	✓			✓				
Hulu	✓							✓
Major League Baseball (MLB)	✓		✓					✓
Microsoft								✓ ^c

Appendix I: Objectives, Scope, and Methodology

Stakeholder	Role in Video Marketplace							
	Content producer/ Copyright owner	Content aggregator				Content distributors		
		Broadcast network	Cable network	Broadcast station owner	Non-commercial educational	Cable operator ^a	Satellite operator	Online video distributor
National Cable Television Cooperative, Inc. (NCTC)						✓ ^b		
National Football League (NFL)	✓		✓					
Netflix	✓							✓
News Press & Gazette	✓			✓				
Public Broadcasting System (PBS)	✓				✓			✓
Sinclair Broadcast Group	✓			✓				
Time Warner Cable						✓		
TiVo, Inc.								✓ ^c
Tribune Media Group	✓	✓	✓	✓				
Trinity Broadcasting Network (TBN)	✓	✓		✓	✓ ^d			✓
Verizon						✓		✓
WGBH Educational Foundation	✓				✓			

Source: GAO Analysis based on Interviews with the organizations listed above. | GAO-16-496

^a This category includes telecommunication companies, in this case, Verizon and AT&T.

^b NCTC serves as a cooperative and negotiates with certain cable networks and broadcast stations owned and operated by broadcast networks on behalf of their membership of cable operators.

^c This category includes businesses that provide software and in some cases hardware that allows consumers to access online video services.

^d According to a TBN representative, it is a non-profit corporation that owns both commercial broadcast stations and noncommercial educational broadcast stations.

To understand how the video marketplace is changing and the factors influencing changes in the consumption and distribution of video content, we reviewed FCC, U.S. Copyright Office, Congressional Research Service, GAO, and industry reports. In addition, to understand the potential feasibility of a phaseout of the statutory licenses, we analyzed FCC's Cable Service Price survey data from 2010 through 2014, and computer-processed data from Bloomberg Analytics on nationwide use of cable and satellite video services and trends in cable and satellite subscription rates from 2010 through 2014, the most recent available data. Our data analysis provided context on how the video marketplace operates, such as the number of local broadcast television stations carried by cable operators, and how changes in the video marketplace

make a phaseout of the statutory licenses appear feasible. FCC's cable price survey was based on a stratified random sample design with selection probabilities proportional to the size of the community and a response rate of around 97 percent.¹ Following FCC's survey methodology, we analyzed FCC's 2010 through 2014 cable price survey data using complex survey software accounting for the sample design and weights to produce generalizable estimates to the population of communities, on a per-subscriber basis. Because FCC's cable price survey followed a probability procedure based on random selections, the selected sample is only one of a large number of samples that might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of the particular sample's results as a 95 percent confidence interval (e.g., plus or minus 5 percent). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. Within this report, all numerical estimates based on FCC data have margins of error of plus or minus 3.2 percent or less of the value of those numerical estimates.

To determine how a phaseout of the statutory licenses could impact consumer access to cable and satellite television service and television programming, we used U.S. Copyright Office calendar year 2014 Statement of Account data to understand the number of satellite subscribers receiving distant signals. Statement of Account filings covering 2014 were the most recent full year of data available. To understand how consumer access might be affected by a phase out, GAO reviewed a summary of SNL Kagan LC data, provided by FCC, on local broadcast television station signal blackouts from 2011 through 2015.

We assessed the reliability of the data used in this report by reviewing existing information about the data and the systems that produced them and interviewing officials from FCC and the U.S. Copyright Office about measures taken to ensure the reliability of the data. We determined the data were sufficiently reliable for our purposes.

We conducted this performance audit from June 2015 to May 2016 in accordance with generally accepted government auditing standards.

¹ For further details, see FCC, *Report on Cable Industry Prices*, (MM Docket No. 92-266), 29 FCC Rcd 14895 Released Dec. 15, 2014, p.28 – 32.

Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Mark Goldstein, (202) 512-2834 or goldsteinm@gao.gov

Staff Acknowledgments

In addition to the individual named above, Derrick Collins (Assistant Director), Amy Abramowitz, Sarah Arnett, Michael Clements, Juan Garcia, Samuel Hinojosa, David Hooper, Sara Ann Moessbauer, Malika Rice, Amy Rosewarne, Jerome Sandau, Sonya Vartivarian, and Betsey Ward-Jenks made key contributions to this report.

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