



# The Changing Face of Telecommunications and Broadband

November 16, 2016

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# TWO ISSUES ADDRESSED HERE

- The future of cable, given the growth of video streaming “over the top”\*
- Siting of wireless communications facilities in public rights of way

\* with thanks to Tony Perez, Seattle Office of Broadband and Cable, for some of the content in this presentation



The revolution will  
not be televised.

Gil Scott-Heron

It will be streamed to multiple devices

# DISRUPTION OF CABLE BUSINESS MODEL IS CERTAIN. CURRENT MODEL IS UNSUSTAINABLE: MAJOR FORCES AT PLAY

- Intense Customer Dissatisfaction with Cable Companies
- Increased Bandwidth



# DISRUPTION OF CABLE BUSINESS MODEL IS CERTAIN. CURRENT MODEL IS UNSUSTAINABLE: MAJOR FORCES AT PLAY

- Emergence and Acceptance of low-cost alternatives (platforms and content)
- Tech industry \$\$\$
- FCC set top box proceeding - Apps



NETFLIX



amazon  
fireTV



apple tv



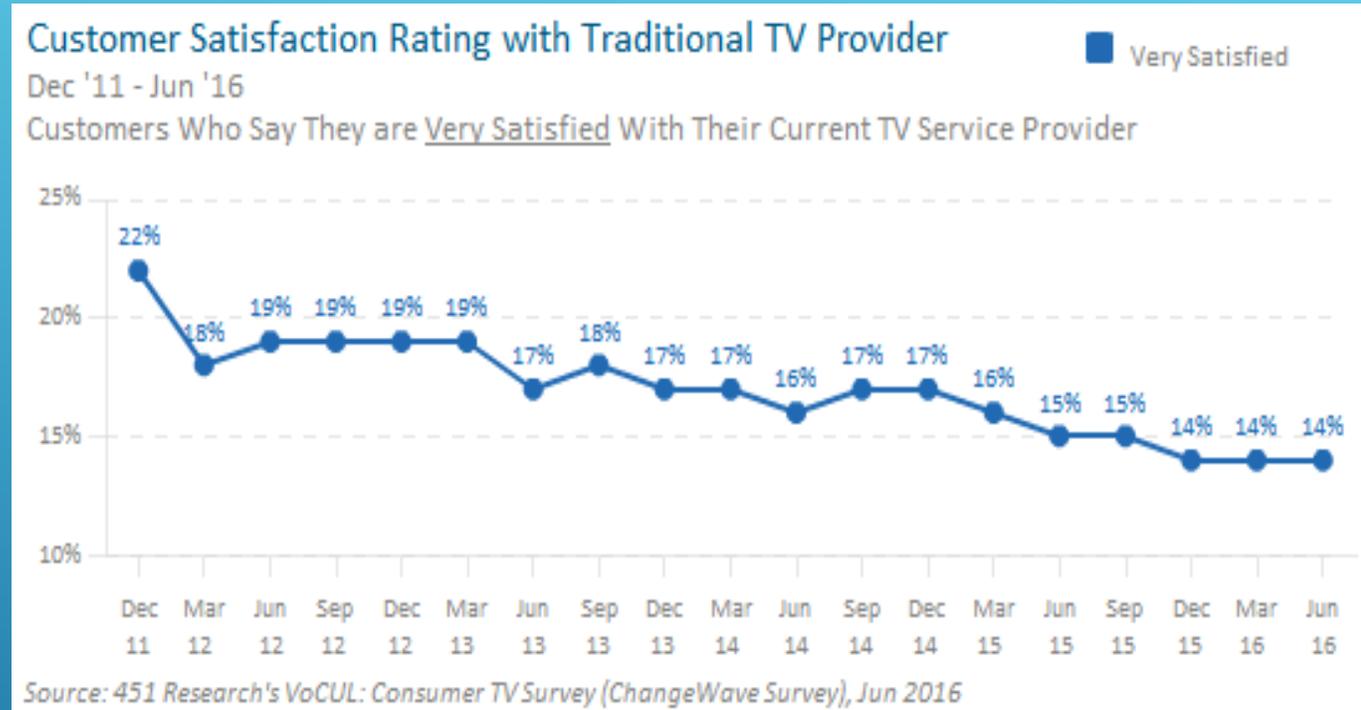
XBOX ONE sling TELEVISION



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# SATISFACTION LEVELS WITH PAY TV AT RECORD LOW

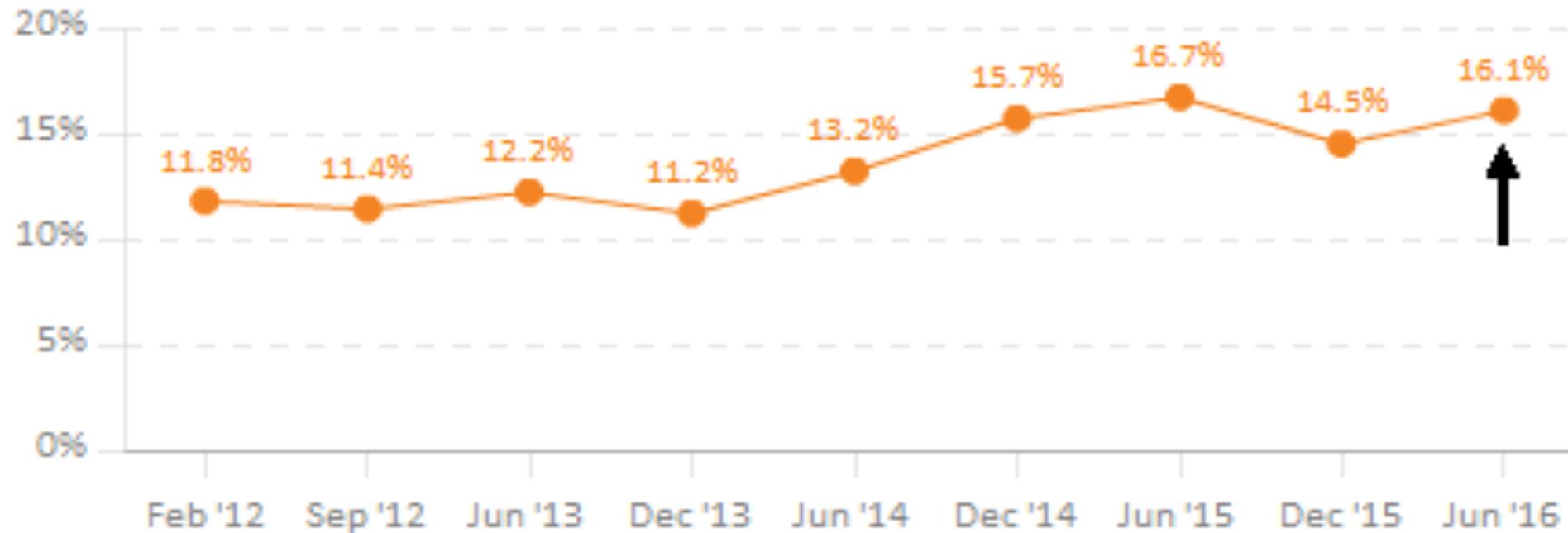
- High prices – don't see value
- Too many commercials
- Too many different fees; fee, sports fees
- Poor Customer Service
- Excessive equipment and other (e.g. HD fee)
- Forced channel bundles
- Lack of transparency in prices and service options
- Confusing bills



## Planned Cord Cutters - Next 6 Months

Feb 2012 - Jun 2016

Respondents Who Say They're Very Likely or Somewhat Likely To Cancel Cable, Satellite or Fiber-Optic TV Service Altogether



Source: 451 Research's VoCUL: Trends in TV and Streaming Video (ChangeWave Survey), Jun 2016

## IMBD RANKING MOST POPULAR TV SERIES IN PRODUCTION IN 2015

Show	Network	Need Cable or Satellite
Game of Thrones	HBO	NO
Walking Dead	AMC	NO
Arrow	CW	NO
Daredevil	Netflix	NO
Narcos	Netflix	NO
American Horror Story	FX	NO
Orange is the New Black	Netflix	NO
Fear the Walking Dead	AMC	NO
True Detectives	HBO	NO
Flash	CW	NO

## MOST POPULAR SHOWS 2016 (18-49 AGE GROUP)

	Show	Network	Need Cable or Satellite?
1	<b>The Walking Dead</b>	AMC	NO
2	<b>NFL Sunday Night Football</b>	NBC	NO
3	<b>Empire</b>	Fox	NO
4	<b>NFL Thursday Night Football</b>	CBS/NFL Network	NO
5	<b>The Big Bang Theory</b>	CBS	NO
6	<u><b>Game of Thrones</b></u>	HBO	NO
7	<b>The X-Files</b>	Fox	NO
8	<b>NFL Monday Night Football</b>	ESPN	NO
9	<b>Modern Family</b>	ABC	NO
10	<b>Grey's Anatomy</b> ABC	ABC	NO

Services from Jan 11, 2016 to Feb 10, 2016

### Your new charges in detail

<b>XFINITY bundle</b>	<b>\$194.95</b>
HD Preferred Plus XF Includes Digital Preferred, HBO, STARZ, TMC, Streampix, HD Technology Fee, Digital Converter with Access to On Demand Programming, Blast! Pro Internet and XFINITY Voice Unlimited	194.95
<b>Additional services and equipment</b>	<b>\$32.89</b>
<b>XFINITY TV</b>	
Additional Outlet	2.99
Digital Adapter	
Additional Outlet	9.95
Digital Converter	
HD/DVR Converter	9.95
<b>XFINITY Internet</b>	
Voice/Data Modem Rental (formerly Voice Equipment)	10.00
<b>XFINITY Voice</b>	
Phone number: (206) 283-2817	
<b>Other charges and credits</b>	<b>\$6.96</b>
Universal Connectivity Charge	1.10
Regulatory Recovery Fees	1.61
Broadcast TV Fee	3.25
Regional Sports Fee	1.00
<b>Taxes and fees</b>	<b>\$33.99</b>
Franchise Costs	0.12
Franchise Fees	9.59
Local Taxes	18.63
FCC Regulatory Fee	0.08
State Sales Tax	4.62
911 Fee(s)	0.95
<b>New charges</b>	<b>\$268.79</b>

### Additional information

The regulatory recovery fee is neither government mandated nor a tax, but is assessed by Comcast to recover the costs of certain federal, state and local impositions related to voice services.

The broadcast TV fee recovers a portion of the costs of retransmitting television broadcast signals.

The regional sports fee recovers a portion of the costs to transmit certain regional sports networks.



# COMPARE THIS BILL

# WITH THIS BILL (OTT AND OTA)

- ▶ OTA \$0
- ▶ Internet \$69
- ▶ Netflix \$10
- ▶ Hulu \$10
- ▶ HBO \$15
  
- ▶ **Total \$104\***
- ▶
- ▶ MLB \$9.00\*\*
- ▶ Add Voice ? \$2.00

**\$1977 per year savings of which \$886 is taxes, fees and equipment charges**



## What's Missing ?

- PEG fees
- PEG content (if no App)
- Franchise Fees, Taxes
- Equipment charges

Could add Sling TV for variety and more sports for \$20.00/mo. Showtime for \$11.00

\*consumer owns: modem, OTT device like Roku or Apple TV, or Ooma-like device for voice (one time \$120-\$200)

\*\*Can subscribe to MLB network for \$109/year and easily circumvent home team blackout

# IF OTT VIDEO IS NOT A CABLE SERVICE ...

- there is no requirement for franchise fees or PEG support under Cable Act
- cable operators may transition most video to OTT, which has the potential to significantly reduce the number of subscribers to traditional cable service
- raises a question of whether PEG fees can be used to support OTT provision of access programming (and does it make a difference if the PEG fees are used for capital expenditures for products used to support both PEG delivered over traditional cable access channels as well as OTT?)
- the service is not subject to cable service consumer protections
- consumer protection and customer service enforcement issues will be complicated when complaints arise implicating both traditional cable and OTT service

# HOW FAR ARE WE INTO A DIGITAL DISRUPTION?

## ● Consider ...

### The Digital Disruption Has Already Happened

- World's largest taxi company owns no taxis ( Uber )
- Largest accommodation provider owns no real estate ( Airbnb )
- Largest phone companies own no telco infra ( Skype, WeChat )
- World's most valuable retailer has no inventory ( Alibaba )
- Most popular media owner creates no content ( Facebook )
- Fastest growing banks have no actual money ( SocietyOne )
- World's largest movie house owns no cinemas ( NetFlix )
- Largest software vendors don't write the apps ( Apple & Google )



RELEVANT TO MY  
INTERESTS THIS IS...

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In the long run, the traditional cable model *is* going to change ... we just can't

predict exactly how

- State law will continue to limit revenue to local governments for use of the rights of way by broadband providers that are not cable operators providing cable service

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# CONCLUDING THOUGHTS ABOUT CABLE

- How will Comcast, Charter and other operators respond to DirectTV Now entering their markets?
- Will Comcast Stream service remain a cable service if Net Neutrality is undone by a new FCC or Congress?
- To what extent will sports on OTT quicken cord cutting phenomena?
- To what extent does loss of local revenue, consumer protections due to OTT, change the risk/reward profile for Muni broadband?

# CONCLUDING THOUGHTS ABOUT CABLE

- The Federal Communications Act needs to change
  - Remove the silos that treat different technologies in different ways, even though they all provide broadband service
- If it is ever changed, we don't know how Congress will treat public interest obligations going forward, but we need to prepare for an end to those obligations, including franchise fees and PEG
- Even if Congress provides a new model for fees and network capacity as a public interest obligation, state law may still prohibit it
- NATOA's Blueprint for Localism in Communications: "Communications Policy in an IP Environment: Principles, Challenges and Strategies"
  - <https://www.natoa.org/policy-advocacy/documents/NATOAS%20Blueprint%20for%20Localism%20in%20Communications%209-15-2013.pdf>
  - A great resource for promoting policies that recognize localism



# RIGHTS OF WAY: WIRELESS SITING CHALLENGES

- Multiple companies, some service providers and some infrastructure entities are seeking ROW access



- Communications



towers and other wireless facilities in the ROW – how do we address them?

# DO COMPANIES SEEKING TO PUT VERTICAL ASSETS IN THE ROW HAVE AN UNRESTRICTED LEGAL RIGHT TO DO SO?

- Not under federal law
- They may or may not, depending upon your state law



# DO COMPANIES SEEKING TO PUT VERTICAL ASSETS IN THE ROW HAVE AN UNRESTRICTED LEGAL RIGHT TO DO SO?

- Is the company a “public utility?”
- Is the company a “utility?”
- Is the company a “communications service provider?”
- Both federal and state law may impact the answers



# IF THE COMPANY IS ENTITLED TO ROW ACCESS UNDER STATE LAW, ARE THERE ANY LOCAL POLICE POWER CONTROLS?

- Can local governments impose height limits in ROW?
  - Do your height limitations set forth in each zoning district apply on public as well as private property?
  - Many do
- Do you have local authority to limit the number of poles in the ROW, either to protect public safety or for aesthetic reasons?



# FEDERAL LAW



- Section 332 (c)(7) shot clock issues:
  - Relates to the placement, construction, and modification of personal wireless service *facilities*
  - Facilities are those used to provide personal wireless services, which are “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services” 47 U.S.C. § 332(c)(7)(C)(i)
- Likely means that even if a company (Moblitie, Crown Castle, American Tower) is not a provider, to the extent that it proves it is building infrastructure for a provider of personal wireless services, the 332 (c)(7) shot clocks likely apply

# FEDERAL LAW

- Section 332 (c)(7) “no unreasonable discrimination” requirements:
  - The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not unreasonably discriminate **among providers of functionally equivalent services**
  - Query: if you’ve previously allowed wireless facilities in the ROW, but required them to be camouflaged or otherwise restricted, if you allow stand alone towers from a new company do you subject your jurisdiction to charges of unreasonable discrimination?

# FRANCHISES, PERMITS OR LICENSES?

- What's the best way to assert your authority, and protect your jurisdiction?
- **Once again, it depends upon state law**
  - You may have authority to require a franchise,
    - If they have CLEC status from BPU, need franchise from municipality
  - You likely have authority to address police power regulations in a ROW access or license agreement,
  - You may need (or want) to permit facilities on an individual basis, depending upon what is proposed,
  - Or you may need to advocate for local control at your friendly neighborhood state capitol building

# GETTING INFORMATION AND ACTING

- Look at amending your code if necessary, and treat applications the same as you would for any other applicant
- Are the wireless facilities proposed for attachment to investor owned utility light poles?
  - Does the applicant have a pole attachment agreement?
- Are the facilities in NJ Department of Transportation rights of way?
  - If so, does the applicant have a ROW agreement with NJDOT?
- So ... don't feel pressured; ask questions; get all the information you need to make a complete application under your local requirements, and act accordingly
- And if your policy is to limit big ugly poles in the ROW, make sure, to the extent you have the authority, that your code and regulations reflect that

THANKS!

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