Oral Testimony of Gigi B. Sohn President & CEO, Public Knowledge

"The Future of Video"

Chairman Walden, Ranking Member Eshoo, members of the Subcommittee, thank you for inviting me to talk about the future of video.

There is widespread agreement that we are currently living in the golden age of television. But despite all of the great programming and groundbreaking devices, Americans are still locked into a TV business model that limits competition and choice, keeps prices for video high and limits technology and online video from achieving their full potential. This business model is made possible largely by an outdated regulatory structure created by incumbents to gain competitive advantage. It is time for policymakers to revamp this regulatory structure so that new video competition can thrive – giving consumers greater options and the ability to watch video whenever they want and on the device of their choosing. This will result in lower prices, better services, and more flexibility and control for consumers.

The Internet is changing the video marketplace just as it changed the market for music, news, books, and other forms of media. Consumers are attempting to drive this change by demanding that more content be provided to them through the Internet. One grassroots campaign by consumers called "Take My Money HBO," advocates for HBO content (which is only available if you subscribe to cable or satellite TV service), to be available for purchase on the Internet. More than 60,000 people visited the petition website within twelve hours of its launch leading many of them to express over Twitter their willingness to pay money directly to HBO if it were available on the Internet.

Despite this level of excitement for Internet video distribution, it is not a foregone conclusion that the Internet will *disrupt* the video marketplace. Dominant players in the market today control both the content their online competitors need for their service, and the pipes they must use to reach consumers. As a result, much high-value programming is not available to online video providers. They also have to contend

with artificially and arbitrarily low data caps and other discriminatory practices that keep them from reaching their full potential.

So while it's inevitable that IP technologies and the Internet will play an ever-larger part of video delivery, it's not inevitable that the market will reach its full competitive potential. That's why policymakers should extend policies that ensure that new competitors can access high-value content at reasonable prices. If they do this while at the same time protecting Internet openness, they can ensure that the video marketplace normalizes and becomes truly competitive.

There are other regulations that permeate the video marketplace that should be repealed today. The network non-duplication, syndicated exclusivity and the sports blackout rules do little more than preserve old business models. If these protectionist rules ever made any sense in the pre-Internet era, they certainly don't today.

Representative Scalise and Senator DeMint are on the right track with their bill that would clear away much of the regulatory underbrush that holds back the evolution of the video marketplace, although the bill goes too far by eliminating media ownership restrictions. Other rules, like retransmission consent, the compulsory copyright license and must carry are also outdated, but are part of an interwoven fabric of regulatory and business expectations. They should be reformed, but cautiously. And copyright law is regulation that is often misused to hold back innovation – witness the lawsuits against Aereo & Dish's Auto-Hop service.

By taking these simple steps, policymakers will be able to facilitate the development of competitive online video and subsequently disengage from regulations that were designed to counter the effects of bottleneck control. If they fail to do this, it is likely that incumbents will continue to shape the development of the video market and extend their dominance indefinitely. While the Internet provides grounds for hoping that the future of video will be better for consumers, a lot of work remains for that hope to become reality.

Thank you. I look forward to your questions.