

Providing Viewers with High-Quality Content Through Retransmission Consent Negotiations

Issue

In 1992, Congress established a process to provide local television stations the opportunity to negotiate with and seek compensation from pay-television providers (such as cable and satellite) for retransmission of stations' valuable signals to subscribers. Under the current system, broadcasters and pay-TV providers must work together to reach mutually beneficial agreements.

This process, known as retransmission consent, is critical to local TV stations' ability to provide local news, community and emergency information, as well as top-quality entertainment programming for viewers. For years, profit-driven pay-TV companies have attracted subscribers using broadcast programming. Recently, some have been urging legislators and regulators to change the system, simply because they don't want to compensate broadcasters for their signals.

Broadcast TV content is still by far the most in demand. Broadcast program ratings are significantly higher than programming offered by pay TV channels. In fact, during the 2009-10 television season, broadcast programming dominated the primetime program rankings, accounting for 98 of the top 100 programs.

The recent calls from powerful pay-TV companies for government intervention – such as the right to continue carrying broadcasters' signals without a negotiated agreement, or mandatory arbitration upon a pay-TV provider's request – do not reform or improve the current system. The possibility of government intervention would remove the incentive to fairly negotiate and would reward pay-TV providers who take negotiations out of the board room and into the media and legislature.

Late last year, Massachusetts Sen. John Kerry circulated draft legislation that would have drastically changed the retransmission consent process, putting local news and other valued broadcast services at risk.

Among the changes, the bill would:

- Introduce government arbitration to private, marketplace negotiations;
- Require continued signal carriage after expiration of existing private contracts;
- Establish less consumer notice than found under current FCC rules;
- Require public disclosure of private contractual offers and terms;
- Impose a narrow snapshot review of the actions of each party; and
- Apply these new rules only to broadcaster negotiations.

To date, that legislation has not been introduced.

Also, in December 2010, the chief of the FCC Media Bureau announced that the agency would initiate a rulemaking in early 2011 to review the rules governing retransmission consent negotiations. On March 3, the commission asked for comment on ways to improve the current good faith negotiating and consumer notice requirements, and they also asked for comment on non-duplication and exclusivity rules. Notable in the FCC announcement, however, was their declaration that they lack authority to impose proposals such as arbitration and continued carriage.

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History

Before 1992, cable companies retransmitted the signals of local television stations without the stations' consent and resold those signals to their subscribers for profit. When enacting the 1992 Cable Act, Congress created a process to allow broadcasters to negotiate for fair compensation in return for cable operators' use of stations' signals – the retransmission consent process. Congress stressed that it did not intend to dictate the outcome of the marketplace negotiations between broadcasters and cable operators; the process simply provides stations with the right to negotiate.

In recent years, the FCC reviewed the retransmission consent process and recommended no changes in a report to Congress. The FCC found that the retransmission consent has benefited broadcasters, cable and satellite operators and, most importantly, consumers.

Over the years, many thousands of retransmission consent agreements have been successfully negotiated between local television stations and cable and satellite companies, nearly all without any disruption in service. Simply put, the process is working as Congress intended. Turning back the clock will do more to restrict viewers' choice than enhance it.

NAB Position

Viewers, local broadcast stations and pay-TV operators all benefit from the retransmission consent process. These negotiations are fair and market-driven, and there is no need to change the process that Congress established and has worked well for nearly two decades.

Action Needed

Congress and the FCC should allow broadcasters and pay-television operators to continue to conduct private, market driven negotiations for retransmission consent and avoid tilting the scales in favor of either party. Government intervention would only disrupt a marketplace that has resulted in more programming choices and services for local television viewers.

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