



**WRITERS
GUILD OF
AMERICA, WEST**

WGAW Retransmission Consent Position Statement

WGAW Supports Strong Retransmission Consent Rules

Writers Guild of America, West (WGAW) does not believe the retransmission consent rules are in need of repair and is concerned with the detrimental impact weakening retransmission consent rules would have on both the local and national content created by our members and enjoyed by consumers. Empowering broadcast stations to negotiate for retransmission revenue to fund local and national programming helps the FCC realize its mandate to foster diversity, localism and competition in media. To weaken the rules would undermine these important objectives. The changes put forth by MVPDs and considered by the FCC would hurt the ability of broadcast stations to seek appropriate compensation for network programming. This would in turn reduce the revenue available for investment in new original programming nationally and locally, harming both content creators and consumers.

In 1992, Congress enacted the Cable Television Consumer Protection and Competition Act, which prohibited MVPDs from retransmitting a broadcast station's signal without the station's consent. In passing this law, Congress correctly recognized the government's interest in protecting broadcast television from the growing market power of cable operators in the distribution of television programming. Despite the rise of satellite and telephone providers of cable services, broadcast networks and their affiliate stations must rely on an increasingly concentrated MVPD market to reach the public. The four largest MVPDs in the U.S. provided service to 68 percent of all MVPD subscribers nationally in 2010, up from 50 percent in 2002.¹ This reality makes strong, protective retransmission consent regime more necessary than ever.

Proposed Changes Would Harm Content Creators and Consumers

The WGAW opposes proposed changes to retransmission consent rules as the effect of such action would further enhance the power of MVPDs and ultimately harm content creators and consumers by reducing the revenues available to invest in local and national original programming.

Mandatory Interim Carriage

The WGAW opposes a requirement of mandatory interim carriage in the event of a dispute because such a rule would undermine the ability of broadcast stations to negotiate for adequate compensation. By removing the threat of signal loss, mandatory interim carriage would reduce the incentives for MVPDs to engage in good faith negotiations. In order for consumers to be

¹ Jeffery Eisenach, "The Economics of Retransmission Consent," National Association of Broadcasters, March 2009, p.1, Available from National Association of Broadcasters, <http://www.nab.org/documents/resources/050809EconofRetransConsentEmpiris.pdf>, accessed May 17, 2011. SNL Kagan, "U.S. Multichannel Industry Benchmarks," and "U.S. Cable Subscriber Highlights," Available from SNL Kagan, <http://www.snl.com>, accessed May 23, 2011.

presented the programming they expect, broadcast stations must retain the ability to negotiate for retransmission revenue to reinvest in that programming.

Mandatory Binding Arbitration

The WGAW also opposes any mandated requirement for broadcast stations to submit to binding arbitration in a retransmission consent negotiation. Mandatory binding arbitration would also greatly enhance the power of MVPDs in retransmission negotiations. Requiring a broadcast station to submit to arbitration in advance of a contract's expiration would eliminate the incentive for the MVPD to negotiate in good faith.

Broadcast Station Approach to Retransmission Consent Negotiations

The FCC should not limit broadcast station flexibility in negotiations by increasing the number of *per se* violations of the obligation to negotiate in good faith. For instance, the ability of a broadcast station to grant a network with which it is affiliated the right to approve a retransmission consent agreement should not be considered a *per se* violation. Broadcast networks are interested parties and should not be prohibited from participation in the negotiation. Similarly, the FCC should not prohibit joint retransmission negotiations by broadcast stations that are not commonly owned. Such action should not be deemed a *per se* violation of the obligation to negotiate in good faith as the arrangement may help small local broadcasters.

Non-binding Mediation

Refusal to submit to non-binding mediation should not be seen by the FCC as a *per se* violation of the duty to engage in good faith negotiations. To find a *per se* violation would amount to the institution of a new requirement that broadcast stations to submit to mediation. Such a new requirement would alter the incentives of MVPDs in negotiations and render impasse an attractive option as a means of compelling mediation.

Network Non-Duplication and Syndicated Exclusivity Rules

The WGAW does not believe the Commission should eliminate its rules concerning network non-duplication and syndicated programming exclusivity. By eliminating these rules the FCC would sacrifice its support for the concept of localism in favor of enhancing MVPD power. The ability of an MVPD to carry the signal of another channel to supplement affected programming would significantly undermine the ability of a broadcast station to negotiate for compensation. In effect, MVPDs would have no incentive to reach agreement.

The FCC Must Continue to Protect Broadcast Television

Retransmission consent remains a necessary protection and as such, the WGAW does not support changing the rules to weaken this protection. We believe the proposed changes would only increase the bargaining power of MVPDs, to the detriment of content creators and consumers. Weakening retransmission consent will hinder the ability of broadcast networks and stations to negotiate for compensation from powerful MVPDs. This will limit the amount of revenue received by broadcast networks and stations, which could reduce investment in increased national and local original programming.

WGAW is a labor organization representing more than 8,000 professional writers of motion pictures, television, radio, and Internet programming, including news and documentaries. For more information on the WGAW, please visit: www.wga.org.