Retransmission Fee Regulation

As disputes between broadcasters and multichannel operators continue, and black-outs of local programming in markets affected by these disputes increase, pay-TV operators are calling for government intervention.

Current regulations regarding retransmission fees were established in the Communications Act, which was last amended in 1992. Pay television providers argue that these regulations do not reflect the changes that have taken place in the television landscape in the past two decades. In a time when one cable operator tended to monopolize any given geographic area, the Communications Act gave broadcasters a leg up through must-carry retransmission consent in order to level the playing field. Pay-TV operators argue that today, with multiple cable providers serving any one community, along with the advent of satellite and telco video operators, stations already have the upper hand in negotiations, and that these regulations are outdated and serve only to create an even greater imbalance.

Without new regulation, some fear that disputes between multichannel operators and broadcasters will continue to cause television service interruptions as retransmission agreements come up for renewal. Past notable blackouts occurred in 2010 when Cablevision cut service during some of the World Series games and during the first few minutes of the Academy Awards. In 2011, disputes between DirecTV and Sunbeam Television Corporation caused a channel blackout that threatened to disrupt service to 200,000 subscribers during the Super Bowl.[1] Although the dispute was resolved before the start of the game, many subscribers and lawmakers believe that regulation should be put in place to prevent similar occurrences in the future.

In March of 2011, the Federal Communications Commission released a Notice of Proposed Rulemaking that would examine the relevance of the Communications Act in today's marketplace. In particular, the FCC will examine the section of the Act that requires that retransmission consent agreements are to be negotiated "in good faith." The Notice requests comment on proposals that would provide further guidance on the definition of "in good faith." While the FCC also hopes to make changes that would give subscribers advance warning before blackouts occur, the Commission notes that they do not have the authority to require continued service during retransmission agreement disputes. The stations continue to have the right

1 "DirecTV Signs Accord Ending Super Bowl Blackout Threat for Boston Viewers," Andy Fixmer, Bloomberg, January 27, 2011.

to request that their programming be removed from the multichannel provider with which there is a dispute.

Pay-TV providers wish to push it a step further, asking lawmakers to do away with retransmission consent altogether. The Next Generation Television Marketplace Act, H.R. 3675 and S. 2008, would repeal much of the regulation set forth in the Communications Act. Sponsored by Rep. Steve Scalise (R-La.) and Sen. Jim DeMint (R-S.C.), the bill would put an end to compulsory license, must-carry, and retransmission consent, as well as local broadcast and ownership limits. Supporters of the bill argue that removing these restrictions will encourage accountability and competition, resulting in fewer blackouts and more reasonable prices for customers.[2] Matthew Polka, President and CEO of the American Cable Association, released a statement saying that the ACA "applauds Sen. DeMint and Rep. Scalise for showing vision and leadership in introducing legislation aimed at reforming outdated laws and regulations."[3]

As expected, broadcasters are as much in opposition to the bill as pay television providers are in support. Broadcasters argue that current regulations allow for the preservation of local broadcasting which provides communities with important local news, sports, and weather. Further, broadcasters believe that cable, satellite, and telco video providers already have the upper hand since broadcasters are restricted by public interest mandates and media ownership regulations, while pay-TV providers are not.

If enacted, the law would take effect in July of 2014, though both sides of the debate believe that passage of the bill will be unlikely due to its sweeping push for total deregulation. Polka still emphasizes the ACA's appreciation for the new legislation, saying that he believes it will open a "long overdue" dialogue in Congress.[4]

For more information on the regulatory environment regarding retransmission fees and its potential impact on broadcast revenues and margins, please feel free to contact any of the principals of Bond & Pecaro, Inc.

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2 "Support the Next Generation Television Marketplace Act!" National Taxpayers Union, February 9, 2012.

3 "Bill Aims to Eliminate Retrans Rules," Brian Santo, CED Magazine, December 19, 2011.

4 Ibid.