

**TESTIMONY OF THOMAS RUTLEDGE
CHIEF OPERATING OFFICER
CABLEVISION SYSTEMS CORP.**

United States Senate Commerce Committee

November 17, 2010

I am Tom Rutledge, Chief Operating Officer of Cablevision Systems Corporation. We are a cable and media company that serves 3 million residential households in New York, New Jersey and Connecticut. I appreciate the opportunity to present our perspective on retransmission consent.

Let me begin by thanking Chairman Kerry for the leadership he has shown in this area. These disputes are wreaking havoc on consumers and we should find a way to resolve them without holding consumers hostage. Senator Kerry's draft legislation is a good framework for advancing this goal.

In my testimony, I would like to make two overarching points today.

First, retransmission consent negotiations do not take place in a free market but rather under an umbrella of statutory provisions and FCC rules that heavily favor the broadcaster over the cable operator or multi-channel video programming distributor (MVPD). It is a scheme based on a perception of the video marketplace that is 20 years out of date. As a result, consumers are increasingly faced with broadcast blackouts, threats of blackouts, and spiraling fee increases. This is because of outdated laws and regulations that literally put the government at the negotiating table. These laws *reward* brinksmanship and blackout threats with higher fees, undermining the very public interest that the law is intended to support.

Second, because government laws and regulations created the problem, only the government – the FCC or Congress – can fix it. We have proposed a few changes that, though modest, will restore balance to this regime. The FCC already has the authority to adopt these rules and, at the very least, should issue a notice of proposed rulemaking to engage the parties and begin the process of fixing a broken government mandate system. Alternatively, Congress could adopt legislation that repeals the outdated laws that distort the relationship among broadcasters, MVPDs, and consumers in favor of a free market, a longer term solution.

What is clear is that the status quo is hurting consumers and must be changed now.

Government-Granted Advantages For Broadcasters Means That Retransmission Consent Is Not A Marketplace Negotiation

The relationship between broadcasters and MVPDs has largely been established by government action. It does not resemble a free market in any meaningful sense. In a true market, sellers do not have monopolies and buyers have a choice of suppliers. Whatever value

they had in 1992, the laws that govern the relationship between broadcasters and MVPDs today encourage broadcasters to threaten to withhold broadcast programming and block availability of marquee events to force increases in the cost of their broadcasts against the interests of our customers.

First, FCC rules give every broadcaster in the country an exclusive franchise for its network – in other words, a *government-sanctioned, local monopoly* in its local market. If an MVPD thinks the local broadcaster's (monopoly) price is too high but still wants to carry the must-have programming from other affiliates – too bad -- FCC rules prevent the MVPD from negotiating with any other broadcast station that has that content, leaving them at the mercy of the local broadcast monopoly.

Second, government rules require that every one of our subscribers buy and pay for the broadcast channels as part of any cable service– even if the subscriber doesn't want them and no matter how much money the broadcaster charges us to carry their signal. This shields broadcasters from the consequences of their pricing decisions, since everyone is required to buy the product no matter the price.

Third, when a broadcaster and MVPD cannot reach a retransmission agreement, government rules *prohibit* the MVPD from dropping the broadcast channel during “sweeps” – periods of time when TV ratings are set – because it would be costly to the broadcaster. Yet nothing prevents the broadcaster from pulling the signal from the MVPD before marquee events – such as the Super Bowl or the World Series – even though doing so would be costly to the MVPD *and* harm consumers.

Over the years, broadcasters have used these rules to expand their presence on cable, primarily by requiring operators to carry and pay for other cable networks as a condition of carrying the broadcasts. Every three years, broadcast contracts are renewed on condition that cable operators agree to carry other cable networks owned by the broadcaster – often for terms of 10 years or more. Cycle after cycle, broadcasters have sought carriage of their affiliated programming networks, increasing the cost of expanded basic service, displacing independent programmers and exacting enormous compensation from cable operators. As a result, broadcaster-affiliated cable networks have grown exponentially – from 8 in 1993, to 19 in 1996, to more than 90 today. And broadcasters have enjoyed billions in compensation *through* these affiliation deals, negotiated on the strength of their powerful broadcast rights.

Further, as competition among distributors has increased exponentially in recent years, broadcasters' leverage has *increased even more*, because in a fiercely competitive distribution market even a temporary loss of broadcast programming, especially during a marquee event like the World Series, can do damage to a cable or satellite business and its customers. The rules encourage a vicious spiral of inconvenience and price increases: Broadcasters rotate through their contract cycle – from one distributor to the next –threatening blackouts and demanding higher fees in addition to what they already receive for their cable channels. Broadcast retransmission contracts are timed to expire during popular events to increase consumer anxiety and inflict maximum cost on distributors, yielding more price concessions. Every three years it is repeated.

Since 2000, there have been more than 30 threatened blackouts by broadcasters, all possible because of the distortions caused by government regulation of the broadcast and cable television business.

Recent events suggest that this is getting worse. Broadcasters are demanding carriage fees that are multiples of their fair value, and insisting on contracts that fix increases of more than 30% a year, putting enormous pressure on cable prices and consumers. And with government rules that protect broadcasters from the consequences of their pricing decisions, this may be a rational negotiating strategy, but over time it leads to substantially increased programming costs to the detriment of customers and other programmers without the legal leverage granted to broadcasters.

Calls to fix or scrap the regime have grown insistent, and FCC action is imperative.

The Retransmission Consent Regime Can Be Improved

Given that wholesale elimination of the retransmission consent regime is a longer-term goal, we have proposed, and believe that the Commission can readily adopt, a few changes to the retransmission consent rules that will reduce the likelihood of blackouts and threats of blackouts by addressing the kind of tactics that hurt consumers most, and that will restore a rational process to broadcast carriage negotiations.

The FCC can begin the process of reform by issuing a notice of proposed rulemaking, and considering the following reforms:

Forbid tying. Require that all retransmission consent contracts be limited to carriage of the broadcast channel, and not conditioned on the carriage and payment for unrelated but affiliated programming networks. This will eliminate historic abuse and create opportunities for cable networks to compete on merit and value, rather than based on ownership.

Require transparency. Carriage terms between broadcasters and cable, satellite and other distributors in a given market should be disclosed so that the demands of the parties are fully understood.

Forbid discrimination. Broadcasters should be free to set the price for carriage of their broadcast signals, but should not be able to discriminate among MVPDs. This will eliminate the brinksmanship and drama that too often characterizes these negotiations.

Where these simple requirements fail to stem disputes that threaten to disrupt customers, the FCC has authority to impose standstill requirements and mandatory arbitration when negotiations have reached an impasse. The FCC has adopted these measures in the program access context. And Senator Kerry's proposed legislation would make this authority explicit.

We believe that the Commission can pass these rules and enforce them today under its existing authority. A coalition of 35 parties – consumer groups, cable operators, phone companies, and others – have urged the FCC to publish these proposals and seek comment about adopting them. The Commission has not done so, but should do so immediately.

Ensure A Truly Free Market For Retransmission Consent

Broadcasters sometimes say that they want to get fees “just like cable programmers,” and that their tactics – blackouts, threats, and ad campaigns – are nothing more than attempts to get a foothold in a free market.

As should be apparent, broadcasters do not, and have never, operated in a free market. They enjoy unparalleled government-granted protections over the programming networks that they compete with. They enjoy carriage mandates, local monopolies, and free use of public assets that give them substantial advantages, and they have used those advantages to create vast media conglomerates that increasingly dominate the cable television lineup.

We welcome calls to allow a free market, free of this heavy government intervention, to flourish in the broadcast, cable and satellite space. This would mean eliminating free spectrum and special privileges for broadcast, rolling back retransmission consent and must carry, permitting broadcasters to compete, free of rules on “syndicated exclusivity,” “network non-duplication,” and “must buy.” Eliminating these laws would allow a free market to exist, where programming content, distributors and consumers can choose among options without the weight of government intervention.

But until that market is restored, the Government – the FCC in particular, which is charged with implementing the 1992 Cable Act and the retransmission consent regime to protect consumers – must recognize its role and take action to address the imbalances and consumer harm that has resulted from its neglect.