## TESTIMONY OF GLENN A. BRITT CHAIRMAN, PRESIDENT AND CEO TIME WARNER CABLE

on

## TELEVISION VIEWERS, RETRANSMISSION CONSENT, AND THE PUBLIC INTEREST

before the

## COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION SUBCOMMITTEE ON COMMERCE, TECHNOLOGY AND THE INTERNET

UNITED STATES SENATE WASHINGTON, DC

**NOVEMBER 17, 2010** 

Good afternoon Mr. Chairman, Ranking Member Ensign, and members of the subcommittee. I am Glenn Britt, Chairman, President and CEO of Time Warner Cable.

I want to thank you for inviting me to be here today and to express my appreciation to Senator Kerry and other Members of Congress who have recognized that the current retransmission consent regime is fundamentally broken and in need of common sense reforms. Congress created retransmission consent 18 years ago as a new property right to subsidize free, over-the-air broadcasting. Much has changed since that time.

In my testimony, I will focus on three points to demonstrate why reform is needed:

First – and somewhat ironic – is the fact that greater competition in the pay TV industry from satellite and telco providers has had the unintended effect of dramatically increasing the power of broadcasters in retransmission consent negotiations. When retransmission consent was first created, broadcasters and cable operators each had monopolies in the local market. As a result, for a number of years the parties negotiated from relatively equal positions of strength and with a shared interest in reaching an agreement on mutually beneficial terms. This produced a retransmission consent process that was essentially invisible to the public.

But retransmission consent negotiations occur in a vastly different environment today. The pay TV industry has become robustly competitive, while local broadcasters have retained their government-granted monopolies and other benefits that now distort carriage negotiations. Under these rules, pay TV providers are limited to dealing with only one broadcast supplier in a local market. This has allowed broadcasters to play multiple distributors off of each other and has encouraged broadcasters to take more extreme, disruptive positions rather than to seek compromise. Consumers, caught in the middle, are the ones getting hurt.

Unfortunately, this imbalance in negotiating power is exacerbated by the FCC's current rules which take a hands-off approach based on the outdated assumption that broadcasters have neither the incentive nor the ability to disrupt viewers' access to their signals. In 1992, Congress gave the FCC broad authority to govern the exercise of retransmission consent. Time Warner Cable has joined with an unprecedented coalition of diverse interests in asking the FCC to exercise that authority by initiating a proceeding to update its rules with new measures that would protect consumers, such as interim carriage and dispute resolution procedures. Despite an outpouring of support for this request and the continued occurrence of disruptive retransmission consent disputes, the FCC has failed to act. Instead, the FCC

has repeatedly signaled – incorrectly, we believe – that its hands are tied when it comes to protecting the public from the consequences of retransmission consent fights.

My second point focuses on the impact on consumers, who are bearing the brunt of the FCC's inaction. Broadcasters have both the incentive and ability to put consumers in harm's way during negotiations. As we have now seen on several occasions, broadcasters clearly are willing to hold consumers hostage by pulling their signals as a negotiating tactic when discussions are ongoing. Even when a service interruption is avoided, consumers still needlessly suffer from weeks and even months of misleading advertising designed not to inform them, but to exert pressure on pay TV providers to give in to demands for higher fees that ultimately will be paid by consumers.

Finally, I would like to put to rest one of the arguments often made by those opposing reasonable reforms – namely that the government should not "interfere" with "free market" negotiations. Time Warner Cable agrees with the principle that free markets are preferable to regulated markets. Retransmission consent, however, is not a free market. Retransmission consent negotiations are conducted under a thicket of outdated regulations that have not kept pace with the dramatic changes in this dynamic industry. Retransmission consent is only one of a number of special privileges that the

government has given to broadcasters. These special privileges, which include must carry rights, territorial exclusivity protection, a guaranteed right to basic tier carriage and, of course, the broadcasters' free use of the public airwaves, were meant to safeguard, not threaten the public's access to broadcast programming.

If the broadcasters truly want to operate in a "free market," then they should give up these special privileges. But if broadcasters want to retain their special privileges, then the retransmission consent rules need to be updated to prevent broadcasters from using consumers to gain leverage in negotiations. Time Warner Cable does not object to paying broadcasters to retransmit their signals; we pay them today. Our objection is to a government sanctioned process that favors broadcasters by allowing them to put consumers at risk.

We look forward to working with Senator Kerry and other members of this Committee on legislation to fix the problems with retransmission consent. Moreover, the time has come for the FCC to fulfill its duty to protect the public interest.

I would be happy to answer any questions you might have.