



Hearing on “The Cable Act at 20”

United States Senate

Committee on Commerce, Science and Transportation

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Statement of the Honorable Gordon H. Smith

President and CEO

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Thank you Chairman Rockefeller, Ranking Member Hutchison, and members of the committee. I appreciate the opportunity to be with you today. I share so many fond memories of service on this committee and in serving with so many of you, that it is very meaningful to be a participant in today's hearing.

I am here on behalf of the 1,300 free, local, over-the-air television stations who are members of the National Association of Broadcasters. Those members are the local television stations that you and your constituents have come to know and depend on: the Quincy station in Bluefield, West Virginia – WVVA; the Post-Newsweek station in Houston, Texas – KPRC; the Saga station in Joplin, Missouri – KOAM; the Allbritton station in Little Rock, Arkansas – KATV; and the Hubbard station in Minneapolis, Minnesota – KSTP, to name a few.

Local television stations are iconic brands that Americans identify with and rely on as a link to their local communities. I believe that everyone has a unique connection to local television – whether it is in the place where they grew up or where they live now. Local television is the go-to choice for news, emergency service, and entertainment and is what people depend on to stay connected daily. Importantly, broadcasters' over-the-air signals enable these stations to remain available during times of crisis when other forms of communication may fail.

Recent events have helped highlight the role local television stations play in providing life-saving coverage in times of emergency. Local broadcasters alert and inform viewers with critical information, as they did during the June derecho that swept through West Virginia and the Washington, D.C. region. Bluefield, West Virginia's WVVA provided wall to wall coverage on the storm giving updates on power restoration, providing locations of shelter areas and cooling stations, and noting road closures in southern West Virginia and southwest Virginia. Local stations, like WVVA, are a trusted source in such challenging times, and make a difference in people's lives.

Several times a year, your offices receive NAB's newsletter, "License to Serve: A Chronicle of Broadcasters' Community Initiatives." This newsletter illustrates the many public service activities broadcasters organize on any given day across the country. A recent spring edition highlighted local broadcaster efforts in Kentucky and Indiana when tornadoes ripped through those two states. Last year, monthly editions covered the local broadcast response to the devastating weather in Missouri and Alabama. These newsletters can be found on NAB's website, NAB.org, under Public Service Initiatives, and may be a great resource to your offices. Simply, these stories show local broadcasters at their best.

A vibrant system of local television serving local communities is the underpinning of our system of telecommunications. Congress envisioned a system where local stations are given the opportunity to compete within defined television markets while serving a larger public interest. Local television stations take that responsibility very seriously by providing local news, programming, and services to their communities. As a result, local stations have immense value to all citizens.

The viability of local broadcast stations, and their continued local service, is tied to their ability to negotiate for fair value and carriage of their signals through a process known as “retransmission consent.” In today’s competitive video market, retransmission consent compensation enables broadcasters to deliver free and locally-focused programming and services. Broadcasters continue to reinvest their revenues in local news and coverage. In 2011, broadcasters hired more than 1,100 additional anchors, reporters, producers and news staff. Total employment in local television newsrooms grew by 4.3 percent to 27,653 employees. This is the second highest total on record. The average television station also set a new record in 2011 for the amount of local news aired – the average amount of news rose to five and a half hours per weekday last year. Retransmission consent is particularly significant for supporting local news operations in smaller markets with more limited advertising revenues.

The fundamental fairness is apparent in allowing stations to negotiate for compensation from pay-TV providers that use a local station’s signal to attract subscribers. The value of the local signal encompasses a broadcaster’s assembly of the total programming package, as well as its promotion and distribution. Of course, this value is enhanced by the quality of broadcast programming, both local and national. With viewership and ratings, broadcast television is unparalleled – 95 of the top 100 rated shows during the 2010 - 2011 television season were on broadcast TV. With respect to price, broadcasters receive only a fraction of the total carriage fees paid by cable companies. Carriers continue to pay considerably more for non-broadcast channels than for broadcast signals, even though the non-broadcast channels attract smaller audiences and yield lower ratings.

When put in terms of the average consumer cable bill, the cost of carriage for broadcast-owned signals comprises 2 percent of the cost to the consumer, while non-broadcast channels comprises 41 percent of that cost. Broadcast television accounts for 35 percent of all television viewership, yet broadcasters in total receive only 6.7 percent of carriage fees. That number is projected for slow growth in coming years, but this market dynamic is affected by the suggestion of legislative or regulatory change.

I often hear references to the 20 year-old carriage law as if that, by itself, justifies change. These references ignore how new and recent retransmission consent cash compensation is for television broadcasters. In the 1992 Cable Act, local television stations were given the option for carriage via a must-carry election or through the opportunity to negotiate. However, it has only been very recently that many local broadcasters have come to receive cash compensation for their signals through these negotiations. When some focus only on 1992, we should also remember that for many years carriers refused to pay cash to local broadcasters. The simple fact that the nature of the compensation for retransmission consent has changed does not demonstrate a problem. Rather, it shows the means of achieving the fairness that Congress contemplated has evolved along with the market.

When some suggest that these laws are ripe for a rewrite, they misstate history and facts. Direct broadcast satellite (DBS) services were not a truly viable competitor to cable until Congress authorized local-into-local service in the Satellite Home Viewer Improvement Act of

1999. For households unable to receive local-into-local DBS service for one reason or another, a viable competitor to cable did not come until 2003 when regulatory changes brought fiber to the home. When these new market entrants began clamoring for local broadcast signals, marketplace competition finally vaulted retransmission consent into a revenue stream that began to compensate broadcasters for their true value.

Some proposals have emerged seeking to address aspects of television carriage and video programming. Last Congress, there were suggestions to expand the role of government in private business-to-business carriage negotiations. This Congress, legislation seeks to deregulate the video marketplace. In evaluating each proposal, NAB suggests that the benchmark should be the impact on local broadcasters and their ability to continue offering the level of community service that viewers expect and deserve.

In looking at S.2008, there are some provisions that broadcast groups may look favorably upon and others that raise concerns and may require more thoughtful consideration. Language that would eliminate carriage provisions like retransmission consent and must-carry is a chief concern. These suggestions only fuel those carriers that would rather seek to change the law than engage in meaningful negotiation. They also come at a time when local television stations are more fully realizing the value of their signals.

The legislation also proposes significant changes to cable and satellite compulsory licenses. While NAB could look favorably on the elimination of some of these licenses (such as the distant signal licenses), Congress should know that wholesale changes may well result in serious disruptions and diminish the availability of programming viewers have come to expect on their local stations.

I understand that the intent of this proposal is for broadcasters to maintain control of the copyright interests through direct licensing and to allow for carriage negotiation. As I noted earlier, though, the local broadcasters' value in its signal is not the same as the copyright interests in the programming elements. Many stations may be unable to undertake the expensive and cumbersome responsibility of direct licensing, and such a change might affect the ability of local stations to serve their local markets.

Another impact is on those stations that simply elect carriage through must-carry rules rather than seeking compensation. Telecommunications policy has always acknowledged a public value to these stations and for viewers in a community to have access to local offerings. There is a community value in viewers being able to see WFMZ in Allentown, Pennsylvania and its localized and extensive news coverage of the northern tier of the Philadelphia market. There is also a community value to viewers being able to see religious, minority, and other niche programming. The legislation removes this carriage option which will leave many of these stations off systems and may weaken the diversity of offerings in markets and to viewers.

We will continue to review and engage on this and other legislative proposals before the committee. Our underlying goal is always to enable the continued viability of your local television stations to serve their communities.

Also, as this committee continues its forward looking approach to communications policy, video programming providers - including broadcasters - may benefit from the deployment of new online video distribution platforms and competitive subscription television services. These platforms could provide new opportunities for local broadcast stations to reach more local viewers and augment program services to their communities.

To achieve these public policy objectives, broadcasters must continue to have the right to control the distribution of their signals and to negotiate with broadband video service providers seeking to retransmit such signals. If new technologies are allowed to evade retransmission consent and exploit broadcasters' signals without local stations' consent, the viability of those stations – and their ability to serve their local communities with high quality programming – will be lost.

In conclusion, local broadcasters serve the public interest and have a unique position in the telecommunications marketplace, both today and well into the future. As Congress shapes policy to address the hyper-competitive television marketplace, it is essential that key underpinnings, such as broadcast television carriage, remain cornerstone public policy goals.