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"Television Viewers, Retransmission Consent, and the Public Interest"
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Good morning Chairman Kerry, Chairman Rockefeller, Ranking Members Hutchison and Ensign, and Members of the Subcommittee, and thank you for the invitation to testify.

The retransmission consent law was established almost twenty years ago to provide a mechanism for carriage negotiations between broadcasters and video programming distributors. Yet distributors for the first time are claiming that the law is broken. No one -- not even distributors -- object to the notion that broadcasters *should* be paid for the very popular and expensive content we air. And any reasonable examination of how *much* broadcasters are asking for -- compared to the rates distributors pay for other channels – can conclude only that the broadcast rates are more than fair. In light of this fact, we find it hard to believe that the negotiations for broadcast channels should be different, in structure or form, from the negotiations for the 100's of other channels carried by multichannel distributors. Let me elaborate.

In the nearly two decades since the retransmission consent law was enacted, there have been thousands of deals negotiated. Less than one percent – a small handful – of these thousands of deals has resulted in service disruptions. The few disruptions that did occur typically lasted for a very short amount of time: most only minutes, hours, or days. Some of those disruptions have been high profile, leading some to overlook the fact that 99.9% of retransmission consent deals get done without incident. But let me emphasize again: in the overall scheme of retransmission consent, actual disruptions are few. In fact, an American household is about 10 times more likely to experience a complete cable system outage than to be deprived of a television channel because of a retransmission consent dispute.

Those disruptions that did occur were because a few distributors have been unwilling initially to pay fair cash value for broadcast channels. Why? Two reasons: first, until recently, cable operators have not paid a single penny in cash compensation to Fox for our incredibly valuable broadcast programming. Second, some cable operators have made it clear that their goal is to politicize this process by dragging the government into negotiations that should be settled at the bargaining table, presumably in the hope that they can get our broadcast stations for a lower rate. Thus, dramatic claims by some cable operators that broadcasters are seeking a 100% increase in rates are in fact true. Any increase over zero is a 100% increase.

The amount of compensation that Fox is seeking for its broadcast stations is well BELOW what they are worth when compared to cable channels that command as much as $4 and $5 per subscriber per month. This includes any comparison based on the quality and quantity of unique programming offered, the amount invested in programming, or the ratings of that programming. Fox has, on average, 8 million viewers in prime time, more than the top three cable channels combined. Our programming lineup includes the top sporting events on television such as the World Series and the Super Bowl, and the top prime time entertainment shows such as *American Idol, Glee, House*, and *The Simpsons.* And, of course, we offer the local programming that makes broadcasting unique: the local news, sports, weather, and traffic that viewers rely on every day.

We find it hard to understand why some distributors are so opposed to paying a fair rate for broadcast programming when it is the most valuable and most viewed programming in the bundle of services they sell their customers. These protestations are particularly ironic coming from companies that until recently were a monopoly in their markets, and even today in many markets serve well over 50% of households. At its core, retransmission consent is about negotiations over rates, and the fact that we are asking several times LESS than cable channels that boast a fraction of broadcast station ratings is proof that we are seeking a fair rate.

Take Cablevision for example. More than a year ago, Fox began negotiations with Cablevision over the carriage of its local television stations in the New York and Philadelphia markets. Despite a significant investment of time and resources, and a one-year agreement that delayed the onset of cash payments by Cablevision, we still found ourselves in October of this year facing the imminent expiration of our carriage agreement. This was a surprise to us given that we were seeking from Cablevision the *exact same rate* we had just negotiated with other large video distributors. Cablevision even acknowledged that the rate we asked for Fox was fair. Most frustrating was Cablevision's admission that its "negotiating" objective was to get the government to step in and change the law, thereby giving cable operators an advantage going forward.

Our stations came off of Cablevision for more than two weeks, causing pain primarily to viewers, but also to both companies. In the end, a deal with Cablevision was reached after it became clear that the government was not going to step in to "rescue" Cablevision from a free market negotiation with Fox. Once Cablevision came back to the bargaining table, we were able to negotiate a deal quickly.

Had the government modified the retransmission consent law, Cablevision would not have come back to the bargaining table, and we likely would still not have a contract in place. So-called "reforms," if adopted, would clearly tip the balance of negotiations toward distributors. If broadcasters aren't able to negotiate on a level playing field for a fair carriage rate then we would be relegated to second class status, and our future viability would be threatened.

In other words, if we can't sell our content for a price that allows us a fair return on our investment, we will no longer be able to invest in the high quality content that viewers enjoy. The most expensive – and highest quality – sports and entertainment content would migrate to a cable channel where it would have a better chance of securing a fair market rate. In fact, this migration has already begun. When Fox attempted to renew our contract for college football's Bowl Championship Series, we were outbid by a cable channel offering 100 million dollars more than we offered. Fox could not justify the price for the BCS because we did not have a second revenue stream. This is just one example among many, as we have been watching the migration of major events in the MLB, NFL, NBA and college football and college basketball to subscription channels because broadcasters have been unable to compete for the rights.

Additionally, local news, which is very expensive to produce, could be eliminated entirely or become less local in nature, as advertising alone can no longer cover the hefty production costs. Broadcast channels would become much less desirable, and broadcasters and the people they employ and the viewers they serve, would be irreparably harmed. Ultimately, this result would be devastating for the more than 30 million Americans who rely exclusively on over-the-air television because they do not have cable, satellite, or telco video service.

We understand how difficult it is to ignore these disputes and stay out of them when you hear from frustrated viewers who have lost their service. We all care about viewers. After all, without viewers, we have no business. However, it is critically important that the government not let a sector of the industry manipulate an honest process to gain advantage. Instead, we believe there are steps that can be taken to protect consumers that keep the government out of private business negotiations.

First, we can educate them on their options for getting broadcast signals elsewhere. This is something Fox started doing nearly 30 days before our contract with Cablevision expired. We informed viewers that they can get their broadcast signals by simply hooking up an over-the-air antenna. Or, they can switch to another content distributor.

Second, we can protect viewers by requiring that consumers get a rebate, credit, or decrease in their bill if channels are removed from their line-up. Distributors are quick to raise rates when they add channels; likewise, they should be quick to lower rates when they delete channels.

In conclusion, the retransmission consent law is experiencing growing pains because broadcasters like Fox are, for the first time, seeking cash compensation for their content. But the good news is, the actual interruptions in service are few and far between, and this period of adjustment will be short-lived once distributors accept that they have to pay a fair price for the right to re-sell broadcast content just like they have to pay for all the other content they provide to their customers. Keeping the focus on consumer education and protection is the most effective and efficient way to help consumers weather this temporary and short-lived unrest.