

March 9, 2010

The Honorable John Rockefeller  
United States Senate  
Washington, DC 20510

The Honorable Henry Waxman  
U.S. House of Representatives  
Washington, DC 20510

The Honorable Kay Bailey Hutchison  
United States Senate  
Washington, DC 20510

The Honorable Joe Barton  
U.S. House of Representatives  
Washington, DC 20510

Dear Chairmen and Ranking Members:

The undersigned serve, or represent companies that serve, over 65 million video consumers. We write to you today to bring to your attention to, and to seek your assistance in addressing, the harm that is being caused to those consumers as a result of increasingly contentious negotiations over the terms that broadcasters are demanding from multichannel video programming distributors for retransmission consent. The most recent retransmission consent dispute, between ABC and Cablevision, resulted in over three million consumers losing access temporarily to ABC programming. That dispute is just the latest example of how the retransmission consent regime is broken and in need of repair, and comes immediately in the wake of similar highly publicized disputes that occurred at the turn of the year. During the impasse between ABC and Cablevision, over 70 state legislators and a number of Members of Congress raised concerns about the impact retransmission consent-related service disruptions and threats of such disruptions are having on consumers.

Congress gave broadcasters retransmission consent rights in 1992 as part of a regulatory scheme that was intended to ensure the broadest availability of broadcast programming to the public. The video marketplace is dramatically different today on the distribution side with MVPDs competing with one another in nearly every community nationwide. These changes in the market are allowing broadcasters to wield the very government protections meant to preserve access to the public in order to threaten to deny – or actually deny – their signals to consumers as a tactic to increase their profits.

Not surprisingly, the broadcasters would prefer that Congress and the Federal Communications Commission stay on the sidelines and leave consumers helpless in the face of such brinkmanship tactics. But that argument – and the related argument that negotiations for the carriage of broadcast stations should be treated no differently than negotiations for non-broadcast programming services like the NFL Network or the Discovery Channel – ignores the unique government benefits and privileges conferred on broadcasters that preclude the normal give and take of private contractual negotiations.

As a result of these government benefits, broadcasters alone enjoy channel location and tier placement guarantees that maximize their access to viewers, and broadcasters alone are guaranteed undue leverage in carriage negotiations by virtue of a detailed set of program exclusivity and blackout rules. Additionally, broadcasters alone have been the beneficiaries of mandatory carriage rights – must carry – that have allowed them over decades to grow their

audiences through the free use of facilities built by video providers while at the same time having been granted the freedom to dictate the terms on which they will allow the retransmission of the same programming that is available over the air and increasingly over the Internet for free.

Congress was aware of the fact that retransmission consent could, if abused, lead to higher prices for consumers or service interruptions. But Congress believed that these risks could and would be managed by the Federal Communications Commission. Unfortunately, as recent events confirm, the balance of power that existed in 1992 has shifted and it is consumers who are caught in the crosshairs. It is time to consider how to restore balance to the unique retransmission consent process and take steps to protect consumers against either seeing access to broadcast signals priced out of their reach or having that access denied to them.

We respectfully urge you and other Members of Congress to carefully examine the circumstances that have resulted in the current imbalance in retransmission consent negotiations. We stand ready to assist you in whatever way possible in taking the necessary steps to ensure that, in the future, retransmission consent benefits those Congress intended for it to serve: the American people.

Sincerely,



American Cable Association



Bright House Networks



Cablevision



Charter Communications



DIRECTV



Dish Network



Insight Communications



Mediacom Communications Corp.



The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)



SuddenLink Communications



Time Warner Cable