

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
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March 3, 2010

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The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Genachowski:

As the deadline approaches for the end of the retransmission consent negotiations over carriage of ABC signals within Cablevision's New York service area, I can lend my voice to those that have expressed hope they will reach a deal. I would also like to express my view, however, that actual discussion of the deal is best left between the respective companies and their viewers, free from government interference or cajoling. The alternative is to ask the government to weigh the relative value of carriage and of particular programming. This is a risky proposition.

Retransmission consent negotiations are private discussions between broadcasters and cable or satellite operators for access to programming on one side and access to pay-TV distribution on the other. They are best left that way. Pay-TV providers have more sources of content and programmers have more sources of distribution than ever before. In light of this competitive marketplace, justification for government intervention has all but evaporated. Both sides to these negotiations hold valuable assets, and both sides appropriately have a legal right to withhold those assets if they do not believe the proposed deal provides the proper value proposition. It is only when both sides face the risk that programming might be dropped that a true market negotiation can take place.

Whether it is programmers asking for access to "must-have" distribution or distributors asking for access to "must-have" content, calls for "standstills," government-forced arbitration or other regulatory meddling should be seen for what they are: attempts by parties to get a leg up in a private negotiation. Indeed, depending on whether they like or dislike where their latest negotiations are headed, programmers and distributors often flip between their support for or

opposition to government involvement. I know of perhaps no better proof that this is a robust marketplace without need of regulatory intervention.

Ironically, government intervention also hinders another often touted public interest: diversity of programming. What distributor will risk experimenting with carriage of unique content if they have a legal right to carry the most popular content of the moment? What programmer will risk investing in new content if there is little shelf space left for the content to get carried after every other programmer has forced its way onto the cable or satellite system?

Service providers and programmers are closest to their viewers and in a better position than the government to weigh the costs and benefits of carriage deals, especially in as competitive and as complex a video marketplace as we have today. If either party dislikes the deal, either is free to walk away. And both have something to lose: viewers.

The viewers, meanwhile, have other providers and plenty of content to choose from if the parties make a bad decision. In fact, with video available in almost every market from at least one cable operator, two satellite providers, the Internet, and increasingly a phone company, the same content is often accessible from at least one other source. It may even be available free over the air or the Internet. This plethora of alternatives and the parties' mutual interest in reaching a deal are perhaps why the vast majority of content negotiations ultimately result in a carriage deal no matter how many times one of the parties or the other threatens to let the screen go dark.

Sincerely,



Joe Barton
Ranking Member