

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Amendment of the Commission's Rules Related to Retransmission Consent*, MB  
Docket No. 10-71

Retransmission Consent is a curious animal. Intended originally in 1992 largely to protect consumers by ensuring them cable access to their local TV stations, the issue morphed over the years into a fight between well-financed special interests to see who could best game the rules to their own advantage. The FCC—intended first and foremost to be a consumer protection agency—has maintained it has inadequate authority to do much about it and has settled on statutory ambiguities to vacate the field and let the big guys fight it out. These Retransmission Consent disputes are painful for everyone involved, to be sure, but they are most acutely painful for consumers who can be denied access to programming like the World Series or the Academy Awards while broadcast and cable fight it out for the spoils. When there is a blackout, we hear from the public and Members of Congress clearly and in great numbers, looking for relief. And guess who ends up paying the bill when the dispute is finally settled? We, the people.

In 1992, when the Cable Act passed Congress, it was clear that the Retransmission Consent provisions were concerned more with protecting small broadcasters and cable companies than enriching media giants who, at that time, were less powerful and consolidated than they are today. While there are some small players left—who get consistently rolled given their lack of leverage under the current rules—the norm now is big money against big money, with the consumer getting pummeled between two Sumo wrestlers. Ransom notes in the largest newspapers, fear inducing videos before children's programming, and nasty advertisements everywhere issue from both sides of the battlefield.

Today we take a step in the right direction to confront this very difficult situation. We need to know what we can and cannot do under the present statute and if we can do more than we have been doing. Arguably we have been too timid in approaching the statute. Maybe so, maybe no. So parties should weigh in on the legal analysis contained in today's Notice of Proposed Rulemaking. In the absence of action by Congress to clarify the parameters, the FCC has to take a hard and detailed look at how best to handle these Retransmission Consent impasses and, most importantly, at the harms caused to consumers. So, I am pleased we try to look at issues, such as Early Termination Fees, that influence the ability of consumers to change providers—assuming an alternative provider is even available—to avoid blackouts.

There are lots of good questions that are raised in this item. What authority does the Commission have under the "good faith" mandate of the Cable Act? Indeed, what does "good faith" mean in the dog-eat-dog world of big media? We inquire about the impact of stations that are not commonly owned, the LMAs and JSAs, that I have previously raised as problematic, and we ask whether it should be a *per se* violation if a

party with one of those agreements is negotiating on another station's behalf without being commonly owned. We raise the question of networks negotiating on behalf of the affiliates and how that impacts the negotiation. We have offered up questions on the notification requirements and if there is a way to better inform consumers about the possibility of a disruption. Early notification could help, but improperly done it might merely serve as "a further front" in the Retransmission wars. We have raised questions on the network non-duplication and syndicated exclusivity rules and how these syndex rules impact the negotiations. I am pleased that we also ask how the elimination of those rules would ultimately affect localism. It's an important question. I look forward to the parties' response to all of these questions. And I want especially to emphasize the input of all other interested stakeholders—and that surely means consumers and the organizations representing them.

The Cable Act also requires us to consider the impact Retransmission Consent has on basic service tier rates. So it is important that we examine in this proceeding how these disputes and consent agreements ultimately affect the cable bills of consumers. I also happen to think we should go a step beyond and explore ways to inform consumers just how much—in dollars and cents—they are paying every month to finance these Retransmission Consent agreements. A little ray of sunshine on what consumers have to pay might actually enhance the Retrans process quite considerably.

My thanks to the Chairman for bringing this item to us and to the Bureau for all the hard work that went into it.