**STATEMENT OF**
**COMMISSIONER MIGNON L. CLYBURN**

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

The combination of two words can stir passions. Flight and delayed. Redskins and Cowboys. Pop and Quiz. Net and Neutrality. Retransmission and consent. In the worlds of broadcasting and cable, the last two words can get people yelling just as much as the joining of government and shutdown. While retransmission consent disputes that result in disruptions are few and far between, when they do happen, people get angry. And with good reason.

When consumers subscribe to and pay for a service, that service is expected: uninterrupted, reliable, and on demand. People have come to expect that delivered service, no matter what entity is providing the programming. And tempers rise when screens go dark. We can all relate to those levels of frustration.

While many have been frustrated at one time or another about the inability to watch television because of a power outage or a quick-passing storm, imagine being unable to enjoy the service you have subscribed to for longer periods of time. I for one hope to never hear about another retransmission consent dispute, but I won't hold my breath. The interruption that ensued following last October's impasse between Fox and Cablevision reverberated not only throughout the Northeast corridor, but the august corridors inside the Rayburn Building, The Hart Building, The Capitol, and the FCC. People were angry, and who could fault them?

When a TV screen goes dark, people blame not only the companies, but the government as well. During blackouts, we hear from a number of aggrieved individuals, who desperately want their favorite show to again grace their screen. But the law here is clear: the Commission holds limited authority via limited methods.

However, I am pleased that we are proactively recognizing that further examination into the existing retransmission consent regime is needed and that further comment is essential. Through the NPRM we consider today, points of view are sought on various ways to utilize and reinforce the authority that we do have in weighing-in on retransmission consent disputes. In seeking input on a variety of revisions to the existing rules, we hope to give companies a clearer perspective on how to operate and negotiate in good faith, and what we expect of them in doing so. Refusing to negotiate, using delay tactics, and crying wolf via inflammatory notices are actions that should never take place, and I'm confident that the proposed language in this item will serve to improve the current guidelines.

Our good faith framework, including the seven objective standards, is well thought-out and properly directed, and additions to it will only serve to bolster its impact and keep companies mindful of their tactics during negotiations. Through this item, we take worthwhile steps in this regard, seeking feedback on the effects of network veto power over retransmission consent agreements, clarifying what constitutes an unreasonable delay in coming to the negotiation table, and the value and purpose of the most favored nation designation. I truly feel that all of this will allow us to further shape our good faith requirements and assist both MVPDs and broadcasters in knowing what methods we find acceptable – or, more to the point, which ones we feel are unacceptable.

Whenever we discuss retransmission consent, our good faith applications thereto, and actions toward improving negotiations between parties, I want us to do so with an eye toward preventing disruptions of any kind, be they two minutes or two weeks. As the item so eloquently states, "in light of the changing marketplace, our proposals in this NPRM are intended to update the good faith rules and remedies in order to better utilize the good faith requirement as a consumer protection tool."

However, while the public is not being served when channels go dark due to monetary stand-offs, under current authority given to us by Congress we may not intervene outside of or further than the afore-mentioned good faith considerations. When it first applied retransmission consent to MVPDs in 1992, Congress stated that its intention was "to establish a marketplace for the disposition of the rights to retransmit broadcast signals", and not to "dictate the outcome of the ensuing marketplace negotiations". With this understanding in place, we know our boundaries, as they currently exist.

I mention that language to not only affirm that I understand what we can and cannot do, but to also make clear that if change is to be made, and further action from the FCC during retransmission consent disputes is desired, then our statutory authority must be addressed not in this hearing room, but farther up Independence Avenue. If Congress chooses to overhaul the retransmission consent and related rules that we use to address retransmission consent battles, then we will react accordingly. Short of that, we will do the best, with what we have.

The item seeks comment on a variety of considerations, and I urge all interested parties to seize this opportunity to better inform us. If companies and individuals have thoughts and counsel on where our authority begins and ends, what it does and does not do, and how it can be used, I look forward to hearing from you.