

As the Commission correctly notes, Section 325(b)(3)(A) of the 1992 Cable Act requires the Commission to consider the impact of retransmission consent on rates for basic service to ensure that such rates are reasonable.<sup>33</sup> Although the Commission has indicated that it plans to leave this issue for its rate proceeding, several points deserve mention here. Retransmission consent fees are a direct cost of providing basic service. Cable operators must therefore be allowed to pass through the costs of retransmission consent fees as well as any increases to such fees directly to subscribers without having to obtain approval pursuant to Section 623(a)(2)(A) of the statute. Such costs can not be expected to come out of the pockets of cable programming services without serious negative consequences both to the diversity of programming offered to the American people and to America's global competitiveness. Furthermore, the Commission has an affirmative obligation to ensure that retransmission consent terms demanded by broadcasters are not unreasonable.<sup>34</sup> In fulfilling this obligation, the Commission's regulations must ensure that broadcasters are not allowed to increase their profits at the expense of the cable programming networks and the viewing public.

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<sup>33</sup>NPRM at ¶66.

<sup>34</sup>This is consistent with long established policy developed under the retransmission consent provisions of Section 325(a) of the Communications Act. See, e.g., Roanoke Telecasting Corp., 20 RR 2d 613 (1970); The Heart of the Black Hills Stations, 21 RR 2d 429, affirmed 21 RR 2d 1003, affirmed 22 RR 2d 436 (1971).

WHEREFORE, for the reasons set forth herein, A&E respectfully requests the Commission adopt regulations governing broadcast signal carriage and retransmission consent that will not unfairly hamper the ability of cable programming services to compete fairly in the marketplace or which would create disincentives to the continued investment in highly diverse original programming and new program services.

Respectfully Submitted,

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