

United States Senate  
WASHINGTON, DC 20510

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October 1, 2015

The Honorable Thomas Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington DC 20554

Dear Chairman Wheeler:

I write today to urge you not to move forward with your proposal changing the network non-duplication and syndication exclusivity rules.

The existing rules were passed in the context of a broad, complicated regulatory system that closely ties non-duplication and exclusivity to the compulsory license. Your Media Bureau Chief has argued that these rules are not in fact linked because they were not all passed at the same moment in time; however, even he acknowledges that the relevant stakeholders only agreed to support the exclusivity rules as part of a broader agreement to move forward with compulsory license legislation as a part of copyright reform in the 1970s. Since the passage of the Communications Act of 1992, Congress has had multiple opportunities to revisit the question of whether retransmission consent has changed the need for the exclusivity rules and Congress has repeatedly declined to disrupt the broader regulatory system, including in the STELAR legislation that passed just last year.

You have argued that the exclusivity rules are outdated and need to be revisited; you may very well be correct that the time has come for a closer look at the complex regulatory and statutory scheme that governs the broadcasting industry, including the interplay of broadcasting regulation with copyright law. It is very clear that technological and market innovations have changed the nature of broadcasting dramatically. And, certainly, no party to the current system is entirely happy with how it is working. However, that look must be comprehensive, and must include a broad, public dialogue with Congress and all the relevant stakeholders. It is not appropriate or consistent with Congressional intent for the Commission to unilaterally disrupt one aspect of the current regulatory and statutory regime outside of the context of that broader debate.

I would encourage the Commission to work with members of Congress on these issues; we would welcome your input and expertise. In the interim, however, I hope that you will

refrain from moving forward with a proposal that does not have adequate input from relevant stakeholders and will foster controversy rather than consensus.

Sincerely,

A handwritten signature in blue ink that reads "Charles Sch". The signature is stylized and appears to be a first-name basis or a shortened version of the name.

Charles E. Schumer

cc:

Commissioner Mignon Clyburn

Commissioner Jessica Rosenworcel

Commissioner Ajit Pai

Commissioner Michael O'Rielly



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

November 10, 2015

The Honorable Charles E. Schumer  
United States Senate  
322 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Schumer:

Thank you for your recent correspondence regarding the proposal to change the network non-duplication and syndication exclusivity rules. Your views will be entered into the record of both our ongoing retransmission consent and exclusivity proceedings.

Congress instructed the Commission in the Satellite Television Extension and Localism Act Reauthorization Act (STELAR) to open a proceeding to examine the “totality of circumstances” involved in retransmission consent negotiations. The purpose of this proceeding, which is ongoing at the Commission, is to examine both forces that act to drive up cable rates, as well as the ability of consumers to fairly access video programming. An integral part of any review of the retransmission consent regime is consideration of the Commission’s exclusivity rules.

As you are aware, consumers are often the victims of retransmission disputes. Frequent press accounts have highlighted that the negotiations between broadcasters and cable operators over retransmission rights often result in program blackouts where cable consumers are denied the ability to see a particular channel until the dispute is resolved. The Commission’s exclusivity rules serve to exacerbate this problem for consumers by prohibiting the importation of distant signals, as well as strengthen the position of broadcasters in retransmission disputes, thereby constituting a distortion of free market processes.

In the early days of the cable industry, cable companies often supplemented their programming with signals imported from distant broadcasters. Congress provided a compulsory copyright license for the programming carried on the distant signals with an important condition: that the signals and their constituent programming would only be covered by the compulsory license if the importation of the distant signals were consistent with FCC rules. This statutory provision, codified at 17 U.S.C. 111 and 119, is the reason that the FCC exclusivity rules have any relevance today.

A great deal has changed since the compulsory copyright law was enacted. Two things seem especially relevant: private contracts between and among programmers, networks, and broadcasters typically include exclusivity provisions; and, in 1992, Congress passed retransmission consent legislation giving broadcasters the right to negotiate with cable and DBS companies over the right to transmit their signals.

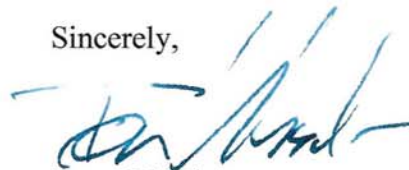
There are many who argue that retransmission fees drive up consumers' cable bills without any corresponding benefit. Indeed, some broadcasters have told Wall Street they expect continuing double digit increases in the retransmission fees they charge cable companies. These fees, of course, are ultimately paid by consumers.

An elimination of the exclusivity rules is unlikely to have an immediate effect on programmers, broadcasters, cable companies, or consumers. This is because, as noted, current broadcast program contracts and network affiliation agreements normally contain their own exclusivity provisions prohibiting a program from being imported into a market if it is being shown on a local broadcast station. In these circumstances, retaining the exclusivity provisions may well be redundant and a federal intrusion, without cause, into the marketplace.

Faith in the free market would suggest that government get out of the way, absent an indication of harm. Since the rules appear redundant to existing contractual provisions based on the record, their elimination would not be the trigger for such harm. However, the presence of the exclusivity rules prohibits the market from operating in a fair and efficient manner and aggravates the harm to consumers during retransmission consent disputes. Simply put, there is a possibility that the exclusivity rules protect broadcasters from the marketplace by substituting an anti-market government mandate and in the process contribute to high cable and DBS prices.

I appreciate your thoughtful input on this issue. I am sure it will continue to be discussed as we pursue Congress's mandate on retransmission consent negotiations.

Sincerely,



Tom Wheeler