Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	MB Docket No. 07-269

COMMENTS

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May 20, 2009

I. Introduction

The American Cable Association ("ACA") submits these comments in response to the *Notice of Inquiry*[1] and *Supplemental Notice of Inquiry*[2] issued by the Commission on January 16, 2009 and April 8, 2009, respectively. Both the *Notice* and *Supplemental Notice* seek data and information for the purpose of evaluating the status of competition in the video marketplace, changes in the marketplace, and other related issues.

The Commission's inquiry into the status of competition in the video marketplace is of major importance to ACA and its members, and ACA appreciates and welcomes, the opportunity to address these issues. ACA provides these comments specifically in response to the Commission's inquiries regarding the retransmission consent process, including "the ability of small cable operators to secure retransmission consent on fair and reasonable terms."[3] Over the years, ACA has filed numerous filings with the Commission emphasizing that small and medium-sized cable companies are unable to obtain carriage rights for broadcast signals at fair market values, and face per-subscriber fees that are many times higher than what larger MVPDs pay for the exact same broadcast stations. We refer to these filings throughout these Comments. We

[1] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, Notice of Inquiry, 24 FCC Rcd 750 (2009) ("*Notice*").

[2] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, Supplemental Notice of Inquiry (rel. Apr. 9, 2009) ("*Supplemental Notice*").

[3] *Notice*, ¶ 37 ("We ask commenters to address the retransmission consent process, including the effect of retransmission consent compensation on cable rates, <u>the ability of small cable operators to secure retransmission consent on fair and reasonable terms</u>, and the impact on MVPDs and consumers of agreements that require the carriage of nonbroadcast networks in exchange for the right to carry local broadcast stations. We seek comment on these and any other issues relating to must carry and

ask that the Commission incorporate those filings into the record of this proceeding.[4]

Unfortunately, the 2008 retransmission consent round posed far greater challenges than previous rounds for small cable operators to obtain broadcast programming at fair and reasonable prices, terms and conditions. To show the Commission the status of retransmission consent in 2008 and 2009, the ACA commissioned a study by Clarus Research Group ("CRG") of ACA's membership.[5] Over 25% of our members responded,[6] and the results from this survey demonstrate that these operators and their customers continue to suffer harm due to the enormous leverage that broadcasters have in retransmission consent negotiations. Therefore, these comments address the following:

- Prices, terms, and conditions for access to broadcast programming have increased substantially.

- Small cable operators face substantial discrimination in prices for access to broadcast programming.

- Increasing retransmission consent demands results in subscribers of small and medium-sized operators losing temporary and permanent access to broadcast signals.

- Retransmission consent costs raise the cost of cable service, harm competition, and hinder the deployment of advanced services.

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retransmission consent that affect competition in the market for the delivery of video programming.")

[4] We attach a list of pertinent Commission filings as *Appendix 1*, and ask that the Commission incorporate these filings into the record of this proceeding.

[5] We attach the findings and data collected by Clarus Research Group's *Impact of Retransmission Consent Costs On Members of the American Cable Association* survey as *Appendix 2*. ACA will also submit these findings in comments due July 29, 2009 in response to the Commission's request for information as of June 20, 2009. *Supplemental Notice* ¶ 1 ("By this *Supplemental Notice*, we request additional information to ensure that the 14th Annual Report includes information as of June 30, 2008, and June 30, 2009") (citations omitted).

American Cable Association. Small markets and rural areas across the country receive video, high-speed broadband, and phone services from more than 900 small and medium-sized independent operators represented by ACA.

ACA member operators range from family run businesses serving a single town, to multiple system operators with small systems in small markets. ACA member systems are located in all 50 states and in virtually every congressional district. More than half of ACA's members serve fewer than 1,000 subscribers.

ACA's membership is comprised of cable, phone, and fiber-to-the-home operators and municipalities, who deliver affordable basic and advanced services, such as high-definition television, next generation Internet access, and digital phone services to more than 7 million households and businesses, some of whom have no other means of receiving these vital services.

These independent cable operators face unique challenges in providing competitive video, broadband, and telephony services to smaller and rural markets. Providing advanced services in smaller and rural markets is a costly and difficult undertaking in low-density markets, as the cost of system builds and upgrades cannot be spread among a large subscriber base. This inherent difficulty is compounded by substantial discrimination in retransmission consent prices, terms, and conditions.

II. Comments

A. Prices, terms, and conditions for access to broadcast programming have increased substantially for small and medium-sized cable operators.

[6] *Appendix 2* at 2.

There exists an enormous disparity in market power between broadcasters and smaller cable operators, the effects of which can be seen in the year-over-year retransmission consent prices broadcasters extract from small and medium-sized cable operators. ACA members report that the non-cash/in-kind compensation terms and conditions broadcasters require for carriage of their stations have increased dramatically. The increase in both cash and non-cash compensation for retransmission consent profoundly impacts independent cable operators that operate in an increasingly competitive video marketplace.

ACA would therefore like to take this opportunity to present the Commission with new data that demonstrates how retransmission consent rules and regulations are impacting small and medium-sized cable operators, harming the providers, competition, consumers, and the public interest.

Retransmission consent fees. Dramatic increases in retransmission consent fees are well-documented. Unfortunately, while competition in the video marketplace has greatly increased, so too have the retransmission consent fees broadcasters extract from small and medium-sized cable operators. While larger MVPDs may have sufficient market power to stand up to broadcast licensees and broadcast groups, small and medium-sized independent cable operators certainly do not have the market power or the resources to do so.

In a recent survey of small and medium-sized operators conducted by CRG, respondents reported that total annual retransmission consent fees paid by their respective companies surged from $31,622 in 2008 to $117,392 in 2009.[7] That is an overall **<u>371%</u>** increase from year-to-year.[8] As shown in Table 1 below, broadcasters have the same leverage to demand unreasonable increases in retransmission consent fees whether a small operator serves less than 500 subscribers, or more than 25,000 subscribers.[9]

<u>Table 1</u>

MEAN	**All**	**Less than 1,000 subs**	**1,000 to 4,999 subs**	**5,000 subs or more**	**Less than 500 subs**	**25,000 subs or more**
Total dollar amount **2008**	$31,622	$6,342	$14,405	$99,020	$1,243	$333,845
Total dollar amount **2009**	$117,392	$32,693	$45,873	$396,063	$4,081	$1,029,251
Calculated Shift from **2008** to **2009**	**+371%**	**+515%**	**+318%**	**+399%**	**+328%**	**+308%**

Moreover, retransmission consent fees for small cable operators have increased faster than the costs of other types of programming. According to the CRG survey results, retransmission consent fees amount to 8.03% of total video programming expenses in 2009, up from 2.40% in 2008.[10] That is a difference of 5.63% from 2008 to 2009. As shown in Table 2 below, the results are once again consistent across ACA's

[7] *Id.* at 1, 4.

[8] *Id.*

[9] *Id.* at 4.

[10] *Id.* at 7.

membership.[11]

Table 2

MEAN	**All**	**Less than 1,000 subs**	**1,000 to 4,999 subs**	**5,000 subs or more**	**Less than 500 subs**	**25,000 subs or more**
Total % **2008**	2.40%	2.65%	2.73%	1.02%	3.00%	1.62%
Total % **2009**	8.03%	8.00%	8.95%	6.65%	7.66%	5.29%
Calculated Shift from **2008** to **2009**	**+5.63%**	**+5.35%**	**+6.22%**	**+5.63%**	**+4.66%**	**+3.67%**

The impact that these rapidly increasing retransmission consent fees have on small and medium-sized cable operators and their customers is significant. CRG survey results show that **97%** of respondents reported that rising retransmission consent costs will have a negative impact on their businesses.[12] Of those respondents, **77%** indicated that rising retransmission consent costs will have a big negative impact on their businesses, while only 1% indicated that these costs will have a positive impact.[13] Once again, the high assessment of negative impact affects cable operators across ACA's membership.[14]

Non-cash/in-kind compensation. ACA members also report that broadcast licensees and broadcast groups have also increased their demands for non-cash/in-kind

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[11] *Id.*

[12] *Appendix 2* at 1, 3.

[13] *Id.*

[14] *Id.* at 3.

compensation for retransmission consent rights. We address four of the most prevalent forms of non-cash compensation below.

Multicast Feeds. ACA members report that many broadcasters require them to carry a multicast feed or feeds in addition to the broadcast station. Moreover, some broadcasters also require operators to reserve channel capacity for a multicast feed or feed that has not yet been launched. For many small and medium-sized operators, carriage of these additional channels or planned channels takes up valuable bandwidth. As a result, the operator may be precluded from using limited bandwidth capacity for other purposes, such as carrying independent multichannel video programming networks, low-power broadcast stations, or even multicast feeds of broadcast stations that elect must carry, or providing faster broadband speeds.

With competition from DBS providers and telephone companies offering video programming, the inability of a small or medium-sized cable operator to deliver advanced services can have a significant impact on its ability to keep and attract new customers—especially those serving small markets or rural areas. Broadcaster demands to set aside additional bandwidth for multicast feeds can therefore be a significant consideration. According to the CRG survey, 66% of respondents reported that they are required to carry a broadcaster's multicast feed or feeds, while 40% indicated that they are required to reserve channel capacity for a broadcaster's multicast feed or feeds in 2009.[15] This is a <u>**35%**</u> and <u>**26%**</u> increase from 2008,

[15] *Id.* at 1, 5.

respectively.[16]

Tying and Bundling. ACA members also report that broadcast licensees and broadcast groups require them to carry non-broadcast programming networks affiliated with the owner of the broadcaster. The carriage of additional non-broadcast programming networks, much like the carriage of multicast channels, places a burden on a small or medium-sized operators' bandwidth capacity. For example, a broadcaster may require a cable operator to carry a new regional sports channel that it owns as part of a retransmission consent deal. By doing so, the broadcaster increases the number of households the channel reaches, thus increasing the channel's visibility and, potentially, its value to advertisers.

As ACA noted last year, "[i]n retransmission consent, the rights to distribute the four major broadcast networks are tied or bundled with at least 35 other channels."[17] According to respondents in the CRG survey, 27% of respondents indicated that they were required to carry affiliated non-broadcast programming networks in 2009, compared with 20% in 2008—a 7% increase.[18]

Advertising Time. ACA members further report that broadcast licensees and broadcast groups require them to purchase broadcast television advertising time from the broadcaster as part of their retransmission consent agreement. This allows broadcasters to increase advertising revenue in addition to the retransmission consent

[16] *Id.* at 6.

[17] *In the Matter of Implementation Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, Report and Order and Notice of Proposed Rulemaking, MB Docket No. 07-198, Comments of the American Cable Association at 7-8 (filed Jan. 3, 2008).

[18] *Appendix 2* at 4-6.

fees that it extracts from an operator. The CRG survey found that 9% of respondents had to purchase broadcast television advertising time from a broadcaster in 2009, compared to 8% in 2008.[19]

Joint Marketing. Finally, ACA members report that broadcasters require cable operators to participate in joint marketing campaigns with a broadcaster, or require a cable operator to provide cross-channel cable television advertising time to a broadcaster for free or at a reduced rate as part of their retransmission consent agreement. This provides broadcasters with valuable advertising spots that it can use to highlight its own programming to an operator's customers at free or reduced costs, or to sell those advertising spots to third parties. According to the CRG survey, 17% of respondents were required to provide this type of non-cash compensation in 2009, compared with 12% in 2008.[20]

Non-cash/in-kind compensation provides another avenue for broadcast licensees and broadcast groups to extract valuable consideration from small and medium-sized cable operators. This form of compensation is particularly difficult for small operators that have limited bandwidth capacity. The use of scarce bandwidth capacity for multicast channels or non-broadcast programming networks limits consumer choice by hindering small operators' ability to offer new channels of interest to its subscribers and deploy advanced services, which, in turn, places small operators at a competitive disadvantage in an increasingly competitive video marketplace.

[19] *Id.* at 4-5.

B. Small cable operators face substantial discrimination in prices for access to broadcast programming.

Retransmission consent fees and non-cash compensation have risen at an alarming rate through the years, with small and medium-sized cable operators bearing the brunt of these meteoric increases. Small cable operators often concede to the demands of broadcasters for fear of losing "must have" broadcast network programming that would place them at a competitive disadvantage in an increasingly competitive video marketplace. The result has been increased basic cable service rates, reduced consumer choice, and less competition.

The incredible percentage increases in retransmission consent fees paid by small cable operators have even outpaced the truly excessive to borderline obscene first quarter 2009 retransmission consent revenue increases that have recently been reported by publicly traded broadcast television companies. While Gray Television, Inc. reported a 463% increase to $3.6 million in retransmission consent revenue from 2008 to 2009,[21] other publicly traded broadcast television companies have seen a percentage increase below the 371% year-over-year percentage increase that independent cable operators are paying in retransmission consent fees. We provide a sampling of first quarter (January-March) 2009 financial reports released by other publicly traded broadcast television companies, showing retransmission consent revenue in both percentage increases and dollar terms:

[20] *Id.*

[21] *See* Press Release, Gray Television, Inc., Gray Reports Operating Results for the Three-Month Period Ended March 31, 2009, *available at* http://www.graycommunications.com/phoenix.zhtml?c=104784&p=irol-newsArticle&ID=1286274&highlight (last visited May 19, 2009).

- **Journal Communications, Inc.** Retransmission consent revenue increased 333.3% to $1.3 million.[22]

- **Hearst-Argyle Television, Inc.** Retransmission consent revenue increased 97.8% to $12.4 million.[23]

- **LIN TV Corp.** Retransmission consent revenue increased 82% to $8.9 million.[24]

- **Nexstar Broadcasting Group, Inc.** Retransmission consent revenues increased 42% to $6.6 million.[25]

- **Fisher Communications, Inc.** Retransmission consent revenue increased 39% to $973,000.[26]

- **Belo Corp.** Retransmission consent revenue increased 10% to $9.7 million.[27]

The financial information reported by broadcast television companies begs the question: Why are broadcasters reporting lower retransmission consent revenue gains by percentage than the percentage increases in retransmission consent fees paid by

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[22] *See* Press Release, Journal Communications, Inc., Journal Communications Reports First Quarter 2009 Results, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=145779&p=irol-newsArticle&ID=1279209&highlight (last visited May 19, 2009).

[23] *See* Hearst-Argyle Television, Inc., Management's Discussion and Analysis of Financial Condition and Results of Operations, *available at* http://www.marketwatch.com/story/story/print?guid=332EC2BF-4356-4C34-B1A6-AA7F5C878521 (last visited May 20, 2009).

[24] *See* Press Release, LIN TV Corp., LIN TV Corp. Announces First Quarter 2009 Results, *available at* http://www.lintv.com/investor/images/pdfs/quarterly_reports/Q1_2009_Earnings%20Release%20FINAL.pdf (last visited May 19, 2009).

[25] *See* Press Release, Nexstar Broadcasting Group, Inc., Nexstar Broadcasting to Report 2009 First Quarter Results, Host Conference Call and Webcast on May 13, *available at* http://www.nexstar.tv/index.php?option=com_content&view=article&id=291:nexstar-broadcasting-to-report-2009-first-quarter-results-host-conference-call-and-webcast-on-may-13&catid=40:cat-newsarticles&Itemid=97 (last visited May 19, 2009).

[26] *See* Press Release, Fisher Communications, Inc., Fisher Communications, Inc. Reports First Quarter 2009 Financial Results, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=61026&p=irol-newsArticle&t=Regular&id=1281381& (last visited May 19, 2009).

[27] *See* Press Release, Belo Corp., Television Company Belo Corp. Reports Results for First Quarter 2009, *available at* http://www.belo.com/pressRelease.x2?release=20090429-1816.html (last visited May 19, 2009).

small cable operators? The most logical explanation is that broadcasters are demanding and receiving far greater retransmission consent fee increases from smaller operators than larger MVPDs, such as Comcast, Time Warner, Cox, etc. Smaller operators are facing higher increases in retransmission consent fees than larger MVPDs, with <u>no economic rationale for the disparity in fees</u>. This is further evidence that retransmission consent price discrimination is real—and profitable for broadcasters.

Retransmission consent price discrimination significantly harms consumers, competition, and the public interest by: (i) increasing costs for consumers, especially in the smaller and rural markets served by ACA members; (ii) undercutting smaller companies' ability to compete on price, thus hurting competition; and (iii) impeding the deployment of advanced services such as broadband in rural markets by diverting valuable resources from infrastructure investment. Retransmission consent price discrimination therefore significantly harms consumers, competition, and the public interest.

C. Increasing retransmission consent demands results in subscribers of small and medium-sized operators losing temporary and permanent access to broadcast signals.

The leverage that retransmission consent rules and regulations provide broadcasts also leads to the temporary or permanent dropping of broadcast television signals. The dropping of a broadcast station signal—whether temporary or permanent—harms both consumers and the public interest.

ACA members report that they are often faced with take-it-or-leave-it retransmission consent "offers." These "offers" include double- or even triple-digit percentage increases in retransmission consent fees, as well as considerable non-cash compensation demands, for carriage of a broadcast station signal. Broadcast licensees and broadcast groups can make these take-it-or-leave-it retransmission consent "offers" to smaller operators because stations suffer *de minimis* financial harm if their "offers" are not accepted, their deals expire, and their signals are no longer offered on these smaller systems. However, the public harm to these system's subscribers is significant because they lose access to information on news, weather, government, sports, etc. while the broadcaster and operator continue to negotiate.

The CRG survey found that, during the latest round of retransmission consent negotiations, 20% of respondents were forced to temporarily drop a broadcast station's signal at some point because an old retransmission consent agreement had expired before the parties reached a new agreement.[28] The percentage of respondents who responded that they had to temporarily drop a signal was largely the same among all ACA members regardless of size.

ACA members also reported having permanently dropped some broadcast stations from their channel lineup because broadcasters were asking for unreasonable prices, terms, and/or conditions as part of their retransmission consent negotiations last year. In many of these instances, smaller operators and those in rural areas are dropping a second network affiliate from a neighboring market that might provide their customers with more local information on news, weather, government, politics, etc. Due to escalating prices, terms, and conditions, these operators can no longer afford to offer

[28] *Appendix 2* at 8.

their customers more than one network affiliate due to unreasonable retransmission consent demands of broadcasters. The CRG survey also found that 35% of respondents decided to permanently drop a broadcast station's signal during the latest round of retransmission consent negotiations.[29]

D. Retransmission consent costs raise the cost of cable service, harm competition, and hinder the deployment of advanced services.

The triple-digit increases in the retransmission consent fees broadcast licensees and broadcast groups charge small and medium-sized operators results in higher costs for consumers.

In the CRG survey, **<u>88%</u>** of respondents indicated that they have already, or plan to, increase cable rates on their basic service packages this year due to new retransmission consent deals.[30] Among operators with less than 1,000 subscribers, **<u>91%</u>** of respondents indicated that they have already increased basic cable rates, or plan to do so sometime this year.[31] As illustrated in Table 3 below, planned cable rate increases on basic service packages are consistent across ACA's membership.[32]

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[29] *Id.*

[30] *Id.* at 2, 7.

[31] *Id.* at 7.

[32] *Id.* at 7.

Table 3

	All	Less than 1,000 subs	1,000 to 4,999 subs	5,000 subs or more	Less than 500 subs	25,000 subs or more
Yes	88%	91%	85%	89%	90%	88%
No	11%	8%	14%	11%	8%	12%

Skyrocketing retransmission consent fees not only harm consumers by increasing the cost of basic cable service, but they also significantly affect small and medium-sized operators' ability to deploy advanced services. The increased amounts of scarce capital earmarked for retransmission consent fees significantly restricts small and medium-sized cable operators' ability to fund capital improvements, or to deploy advanced services—all important consumer benefits.

III. Conclusion.

The meteoric rise in retransmission consent costs for small and medium-sized cable operators limit these operators' ability to offer their customers a good value and deploy advanced services, including broadband, in the smaller and rural markets that they serve. The Commission should consider closely the impact of retransmission consent regulations on consumers and independent cable operators' ability to compete in a competitive marketplace, and should act where necessary.

Respectfully submitted,

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May 20, 2009

Appendix 1

Pertinent filings in other proceedings

In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control, News Corp. Petition for Modification of Conditions, MB Docket 03-124, Opposition of the American Cable Association (filed May 1, 2008).

In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control, News Corp. Petition for Modification of Conditions, MB Docket 03-124, Reply Comments of the American Cable Association (filed May 15, 2008).

In the Matter of Implementation Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements, Report and Order and Notice of Proposed Rulemaking, MB Docket No. 07-198, Comments of the American Cable Association (filed Feb. 12, 2008).

In the Matter of Implementation Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements, Report and Order and Notice of Proposed Rulemaking, MB Docket No. 07-198, Reply Comments of the American Cable Association (filed Jan. 3, 2008).

In the Matter of News Corporation and The DirecTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, For Authority to Transfer Control, MB Docket No. 07-18, Comments of the American Cable Association (filed Mar. 23, 2007).

In the Matter of News Corporation and The DirecTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, For Authority to Transfer Control, MB Docket No. 07-18, Reply Comments of the American Cable Association (filed Apr. 9, 2007).

In the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Notice of Inquiry, MB Docket No. 06-189, Comments of the American Cable Association (filed Nov. 29, 2006).

In the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 05-255, Comments of the American Cable Association (filed Sept.19, 2005).

American Cable Association Petition for Rulemaking, *In the Matter of Petition for Rulemaking to Amend 47 CFR 76.64, 76.93 and 76.103 Retransmission Consent, Network Non-Duplication, and Syndicated Exclusivity*, MB Docket No. RM-11203 (filed Mar. 2, 2005).

In the Matter of Petition for Rulemaking to Amend 47 CFR 76.64, 76.93 and 76.103 Retransmission Consent, Network Non-Duplication, and Syndicated Exclusivity, MB Docket No. RM-11203, Reply Comments of the American Cable Association (filed May 3, 2005).

In re Consolidated Application of General Motors Corporation, Hughes Electronic Corporation, and The News Corporation, For Consent to Transfer Control, MB Docket No. 03-124, Comments of the American Cable Association (filed June 16, 2003).

In re Consolidated Application of General Motors Corporation, Hughes Electronic Corporation, and The News Corporation, For Consent to Transfer Control, MB Docket No. 03-124, Reply Comments of the American Cable Association (filed July 1, 2003).

Appendix 2

CLARUS RESEARCH GROUP

Impact of Retransmission Consent Costs
On Members of the American Cable Association

SURVEY FINDINGS
May 2009

Survey Conducted by Dr. Ron Faucheux, President, Clarus Research Group

Purpose of the Survey

To measure the impact of retransmission consent costs on members of the American Cable Association, the ACA retained Clarus Research Group to conduct an independent survey of the group's membership.

Key Findings

- Based on the survey's results, the increased burden of retransmission consent costs that went into effect after 2008 has been sizeable. Furthermore, the bulk of those increased costs are likely to be passed onto cable television customers.

- Ninety-seven percent of the survey's respondents reported that rising retransmission consent costs will have a negative impact on their businesses and only 1 percent reported that these costs will have a positive impact. Fully 77 percent said the negative impact will be "big" and 20 percent said it will be "small." The high assessment of negative impact was across-the-board, affecting cable operators of all sizes.

- The average payment in retransmission fees to all broadcasters reported by ACA members surveyed was $31,622 for calendar year 2008, with the expected average payment rising to $117,392 in calendar year 2009. This represents an average increase of 371 percent.

- In addition to retransmission consent fees paid in cash to broadcasters, ACA members report sharp increases in non-cash/in-kind compensation provided to broadcasters as part of their retransmission consent deals in 2009 over 2008. For example, 66 percent of survey respondents reported that their companies will have to carry broadcaster's multicast feeds in 2009, as compared to 31 percent in 2008, as a result of these deals.

- ACA members report that the proportion of their total video programming expenses that is attributable to retransmission consent fees will increase by 335 percent between 2008 and 2009.

- Eighty-eight percent of ACA members report that they have already, or plan to, increase cable rates on “basic service packages” this year because of their new retransmission consent deals.

Survey Methodology

The confidential survey questionnaire was sent to all ACA members by Clarus two ways: On April 14, 2009, via e-mail and on April 20, 2009, via postal mail. Survey respondents were given a return date deadline of May 1, 2009.

The total number of completed surveys = 246, for a response rate of 27 percent. One hundred and forty-nine surveys were completed online and returned via e-mail and 97 surveys were completed on a printed questionnaire and returned via postal mail.

Seventeen questionnaires were returned via postal mail after the deadline and were not counted.

All surveys were received, handled and tabulated by Clarus Research Group, its staff and subcontractors.

Topline results from the survey are presented and tabulated by the size of the cable companies surveyed by number of video subscribers. In addition, results are tabulated to display differences between companies with less than 1,000 subscribers (N=88), 1,000 to 4,999 subscribers (N=97), and 5,000 or more subscribers (N=61). Also, results are tabulated to display results from both ends of the company size spectrum: the smallest companies (those with less than 500 subscribers, N=50) and the largest companies (those with 25,000 or more subscribers, N=17).

Clarus Research Group is a nonpartisan survey research firm based in Washington, D.C. with a broad client list of businesses, nonprofits, trade associations and professional societies.

ACA_MemberSurvey_TOPLINE_ May 20 09.doc
Date: May 20, 2009
Contact: *Ron Faucheux or Brynna McCosker*

N = 246 ACA Members
Field Dates: April 14th – May 1st, 2009

1. How many total video subscribers does your company serve?

Less than 1,000 ....35%
1,000 to 4,999 ....39%
5,000 or more.................................25%

Less than 500 ....20%
25,000 or more.................................7%

2. How have rising retransmission consent costs affected your business?

	All	Less than 1,000 subs	1,000 to 4,999 subs	5,000 subs or more	Less than 500 subs	25,000 subs or more
They have had a big negative impact	77%	76%	77%	80%	76%	76%
They have had a small negative impact	20%	22%	21%	18%	20%	18%
They had had no impact	1%	1%	- -	- -	2%	- -
They have had a small positive impact	- -	- -	- -	- -	- -	- -
They have had a big positive impact	1%	- -	2%	2%	- -	6%

3. How much did your company pay in total in retransmission fees to all broadcasters for the entire 2008 year, and how much do you anticipate paying in total in 2009?

MEAN	All	Less than 1,000 subs	1,000 to 4,999 subs	5,000 subs or more	Less than 500 subs	25,000 subs or more
Total dollar amount **2008**	$31,622	$6,342	$14,405	$99,020	$1,243	$333,845
Total dollar amount **2009**	$117,392	$32,693	$45,873	$396,063	$4,081	$1,029,251
Calculated Shift from **2008** to **2009**	+371%	+515%	+318%	+399%	+328%	+308%

4. In addition to paying any retransmission consent fees, what other non-cash/in-kind compensation did your company provide to a broadcaster in 2008 as part of your retransmission consent deals? Also, what do you have to provide this year? ***(Please check ALL that apply.)***

YEAR 2008

Non-cash/In-kind compensation	All	Less than 1,000 subs	1,000 to 4,999 subs	5,000 subs or more	Less than 500 subs	25,000 subs or more
My company must carry a broadcaster's multicast feed(s).	31%	21%	32%	41%	24%	65%
My company must reserve channel capacity for a broadcaster's multicast feed(s) yet to be launched.	13%	9%	11%	23%	10%	41%

My company must carry nonbroadcast programming networks affiliated with the owner of a broadcaster.	20%	16%	19%	31%	12%	59%
My company must purchase broadcast TV advertising time from a broadcaster.	8%	4%	4%	18%	6%	47%
My company must participate in a joint marketing campaign with a broadcaster, and/or provide cross channel cable TV advertising time to a broadcaster for free or at a reduce rate.	12%	3%	6%	36%	2%	71%

YEAR 2009

Non-cash/In-kind compensation	**All**	**Less than 1,000 subs**	**1,000 to 4,999 subs**	**5,000 subs or more**	**Less than 500 subs**	**25,000 subs or more**
My company must carry a broadcaster's multicast feed(s).	66%	61%	64%	90%	46%	94%
My company must reserve channel capacity for a broadcaster's multicast feed(s) yet to be launched.	40%	31%	36%	69%	20%	82%
My company must carry nonbroadcast programming networks affiliated with the owner of a broadcaster.	27%	22%	22%	46%	18%	47%
My company must purchase broadcast TV advertising time from a broadcaster.	9%	1%	5%	28%	- -	59%
My company must participate in a joint marketing campaign with a broadcaster, and/or provide cross channel cable TV advertising time to a broadcaster for free or at a reduce rate.	17%	8%	11%	46%	2%	71%

CALCULATED SHIFT FROM 2008 to 2009

Non-cash/In-kind compensation	All	Less than 1,000 subs	1,000 to 4,999 subs	5,000 subs or more	Less than 500 subs	25,000 subs or more
My company must carry a broadcaster's multicast feed(s).	+35%	+28%	+32%	+49%	+22%	+29%
My company must reserve channel capacity for a broadcaster's multicast feed(s) yet to be launched.	+26%	+15%	+25%	+46%	+10%	+41%
My company must carry nonbroadcast programming networks affiliated with the owner of a broadcaster.	+7%	+7%	+3%	+15%	+6%	-11%
My company must purchase broadcast TV advertising time from a broadcaster.	+2%	-2%	+1%	+10%	-5%	+12%
My company must participate in a joint marketing campaign with a broadcaster, and/or provide cross channel cable TV advertising time to a broadcaster for free or at a reduce rate.	+4%	- -	+5%	+10%	- -	- -

5. What percentage of your total video programming expenses did your total retransmission consent fees constitute in 2008? Also, what percentage of your total video programming expenses do you anticipate that these fees will constitute in 2009?

MEAN	**All**	**Less than 1,000 subs**	**1,000 to 4,999 subs**	**5,000 subs or more**	**Less than 500 subs**	**25,000 subs or more**
Total % **2008**	2.40%	2.65%	2.73%	1.02%	3.00%	1.62%
Total % **2009**	8.03%	8.00%	8.95%	6.65%	7.66%	5.29%
Calculated Shift from **2008** to **2009**	+5.63%	+5.35%	+6.22%	+5.63%	+4.66%	+3.67%

6. Have you already, or do you have plans to, increase cable rates on any of your **basic service** packages this year because of your new retransmission consent deals?

	All	**Less than 1,000 subs**	**1,000 to 4,999 subs**	**5,000 subs or more**	**Less than 500 subs**	**25,000 subs or more**
Yes	88%	91%	85%	89%	90%	88%
No	11%	8%	14%	11%	8%	12%

7. During your 2008-2009 retransmission consent negotiations with broadcasters, at any point were you forced to temporarily drop a broadcast station, whether for hours, days, or weeks, because your old agreement expired and you hadn't reach a new agreement?

	All	**Less than 1,000 subs**	**1,000 to 4,999 subs**	**5,000 subs or more**	**Less than 500 subs**	**25,000 subs or more**
Yes	20%	19%	16%	28%	20%	53%
No	80%	81%	84%	72%	80%	47%

8. Did your 2008-2009 retransmission consent negotiations with broadcasters cause you to decide to permanently drop a broadcast station after the old agreement expired because, in your judgment, the broadcaster was asking for unreasonable prices, terms, and/or conditions?

	All	**Less than 1,000 subs**	**1,000 to 4,999 subs**	**5,000 subs or more**	**Less than 500 subs**	**25,000 subs or more**
Yes	35%	35%	31%	48%	34%	53%
No	65%	65%	69%	52%	66%	47%

9. How many television markets (DMAs) does your company serve?

	All	**Less than 1,000 subs**	**1,000 to 4,999 subs**	**5,000 subs or more**	**Less than 500 subs**	**25,000 subs or more**
One	76%	65%	79%	56%	88%	47%
Two	14%	21%	15%	18%	10%	12%
Three or more	10%	14%	5%	26%	2%	41%