



May 18, 2010

Julius Genachowski
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Petition for Rulemaking to Amend the Commission's Rules Governing
Retransmission Consent.
A Business Viewpoint from an Independent Programmer.

Dear Chairman Genachowski:

Over the past year, you have been inundated with a variety of opinions, letters and commentaries on the detrimental repercussions of the retransmission consent regulatory structure. As CEO of Ovation, an independent television channel focused on the arts and contemporary culture, I'm writing to you today to present the viewpoint of a viable independent programmer that has earned competitive carriage at a fair rate from many of the leading cable, satellite and telco distributors. Put simply, without a resetting of the playing field among large distributors and large broadcast programmers, the very existence of independent networks like Ovation is threatened.

Only four years ago, our nation, whose largest export is our culture, was the only major industrialized nation that did not have a widely distributed television outlet that made art and culture accessible to its citizens. Since acquiring Ovation in 2006, we have climbed our way from a subsistent base of 5 million subscribers to our current 40 million household footprint. Our growth has been achieved because we provide entertaining and unique programming in the broadly appealing but underserved category of the arts. We are the only national television channel in America dedicated to the arts. On a daily basis, we offer viewers a collection of programming about artists and art of all types --

film, photography, design, music, fine art, performance, and architecture. What we do is simply nonpareil in television.

Core to our mission is using our media to support cultural institutions, local arts agencies and arts education organizations around the nation. Our numerous partnerships with museums, performing arts groups and arts education institutions across the country, have resulted in over \$5 million in direct support and in-kind media donations. Through these partnerships, we have helped these institutions broaden their reach and mission, and by making connections to our distributors, helped our distributors support the arts in their communities.

Ovation is well capitalized, allowing us to adequately invest in the programming and marketing necessary to compete in the marketplace and fulfill our promises to our many stakeholders. Among other things, we have created over 60 jobs in the past four years in California, New York, New Jersey and Illinois. And finally, we have offered Ovation's distributors a competitive value proposition.

This combination of a rich, underserved programming category, community support, appropriate financing and an experienced management team has made us a viable independent programming network. Leading multichannel video programming distributors (MVPDs) such as DirecTV, DISH Network, Time Warner Cable, Comcast Cable, and FiOS, among many others have opened the door, providing competitive carriage to 40 million homes nationwide at a fair rate.

While Ovation has achieved the minimum scale necessary for a national programming service to thrive, we have a long way to go before we are truly able to compete with networks owned by the large programming companies on equal footing. Gaining competitive carriage at a fair rate has never been easy for independent programming services, but the competitive landscape has been never been more volatile and uncertain than it is today. This environment did not develop overnight. In fact, its roots took hold as the unintended consequences of the introduction of the must-carry/retransmission consent regulatory structure in 1992.

No doubt you have read a number of missives enumerating the negative impact retransmission consent rules on the television business and consumers, including those from MVPDs who are getting hit by increasing fees charged by network affiliates for their signals. We know their argument has merit when you look at the huge increase in retransmission-consent revenues in the past two years alone. And it's only going to get bigger. According to SNL Kagan data, retransmission revenue is on pace to top \$1.3 billion by 2012.

Naturally, MVPDs looked to their subscribers to make up the difference at first, but with increased competition between cable, satellite and telcos, the decision and ability to raise rates to pass along retransmission costs to consumers may be hampered. All it takes is one aggressive competitor in a market to try and take share and the consumer impact at the wallet may be muted. To best protect their businesses against losses on retransmission fees and position themselves for competitive response, MVPDs will be looking to cut costs.

The first and easiest place to save will be by deleting independent programmers, where they are more likely to have the contractual right to do so and the programmers will have the least ability to successfully defend their carriage. Thus, as retransmission gets more expensive, independent programmers have less resource to compete. Diversity in media will decrease, and with it, a small part of our freedom will die.

Nevertheless, it seems that it is the issue of “program tying” that has raised the ire of independent programmers and MVPDs more than anything else. This unfair practice used by many, if not all, of the large content providers consumes large amounts of bandwidth and limits opportunities for independent channels, as well as programming choices for consumers. Since 1992, broadcast networks have traded retransmission consent in previous cycles to gain carriage for other networks. Many of these new services have gone on to great success, and now get paid rates well in excess of the average rates paid to many independents. As those initial affiliate deals expired, service bundling resulted in even greater consolidation of affiliate fee revenue among the largest programmers. Now, after running out of new ways to repackage the same programming, broadcast networks that also own cable networks are seeking to effectively get paid twice. Once directly through retransmission fees and again through rate increases on the channels they leveraged their retransmission consent to get launched in prior cycles. This has grossly tilted the playing field against viable independent networks, but this is only half the story.

For any independent programmer to survive, two factors are essential: carriage and a fair rate. Carriage without obtaining a fair rate, or even being forced to pay for carriage, is not a sustainable business model. However, this is the losing proposition that many of us independent programmers are faced with on a regular basis. Without the leverage of a large media company or affiliation with a MVPD, the independent programmer has been singled out as the path of least resistance in recouping some of those rising retransmission fees charged by the network affiliates. Clearly, the deterioration of the balance between distributors and broadcasters has directly affected

independent programmers' ability to negotiate business terms that allow us to thrive and continue to offer consumers programming they cannot get elsewhere.

When Congress created the must-carry/retransmission consent regulatory structure in 1992, the purpose was to ensure that consumers would continue to have access to local broadcast content, especially local news and information content. In fact, the result has yielded higher cable bills for consumers and less access to a variety of views and opinions.

This is not an argument for burdensome protectionist policies. It is, however, a call to reform this regulatory structure to ensure a continuing level playing field for independent networks. If an independent programmer like Ovation can make a case for the viability of its programming category and business model, why should we be forced to comply with carriage conditions that could only assure that our business would ultimately fail?

I believe the greatest measure of a democracy is the freedom it gives to its people to express their views and have access to a myriad of different voices. Under the current retransmission-consent regulatory structure, those freedoms are being compromised, as well as the principles of fair play. The American public has a vested interest in keeping our independent networks viable. The FCC is imbued with the mandate to examine and adjust these safeguards. I hope you will consider this perspective and work toward reform of the current policies that are inherently flawed and damaging to independent programmers, distributors and consumers alike.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'CD' followed by a stylized flourish.

Charles Segars
Chief Executive Officer
Ovation