

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's Rules)	
Related to Retransmission Consent)	MB Docket No. 10-71
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**COMMENTS OF STARZ ENTERTAINMENT, LLC
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

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Starz Entertainment, LLC ("Starz")¹ submits these comments in response to the Notice of Proposed Rulemaking in this proceeding. *See Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, FCC 11-31 (rel. Mar. 3, 2011) ("NPRM"). The NPRM was issued in response to a Petition for Rulemaking filed jointly by a number of cable television, direct broadcast satellite, and telephone/IPTV operators, in addition to several public interest groups, asking that the Commission amend and supplement its retransmission consent rules. Starz filed comments with the Commission on May 18, 2010,

¹ As Starz explained in its original comments at 1-2, it is one of the largest providers of video programming networks to cable, satellite, and telephone company distributors. Starz provides sixteen different programming networks, including the Starz channel and its five multiplex channels, the Encore channel and its six multiplex channels, MoviePlex, IndiePlex, and RetroPlex, most of which are available in both standard definition and high definition feeds. Starz also offers the subscription video on demand services Starz On Demand, Encore On Demand, and MoviePlex On Demand. Starz not only distributes its content through traditional terrestrial and satellite technologies, but also through the broadband services Starz Online and Encore Online that are or will be featured in several distributors' "TV Everywhere" offerings. Starz's video programming services generally feature full length, theatrically released motion pictures, as well as original series and entertainment specials. Unlike a number of other programming networks carried on cable and satellite video platforms, Starz currently has *de minimis* common ownership with television broadcast stations.

supporting the request that the Commission institute a rulemaking proceeding to amend and supplement the Commission's retransmission consent rules. In particular, Starz requested that the Commission amend its rules by prohibiting the tying of broadcaster retransmission consent to the carriage of non-broadcast programming networks that are commonly owned by broadcasters.

Introduction and Summary

The Commission's retransmission consent regulations, 47 C.F.R. §§76.64-65, along with the related "must carry" rules, were adopted by the Commission to effectuate provisions added to the Communications Act by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). Over the past two decades, the retransmission consent structure increasingly has led to serious disruptions in the provision of local broadcast signals to the customers of multichannel video programming distributors ("MVPDs"). Recognizing the MVPD subscribers' demand for local broadcast programming, broadcasters not only have demanded high compensation for their broadcast television programming, but also have used their unusual leverage to obtain carriage advantages for other non-broadcast networks. For example, the Fox Television broadcast station group has used its leverage from withholding retransmission consent for carriage of its local television stations to extract carriage commitments and advantageous positioning of their non-broadcast Fox Movie Network and f/x channels on MVPD systems. Similarly, Viacom used its local CBS station

ownership leverage to extract carriage and positioning advantages for many non-broadcast networks, such as MTV and VH1 that previously were commonly owned. Each of the “big four” broadcast network station groups owns a long list of major cable networks, and the retransmission consent negotiations now involve requirements that MVPDs distribute these non-broadcast channels as part of a package that includes retransmission consent for the broadcast network’s owned and operated broadcast stations.

Starz supports the following central proposals of Petitioners and commenters identified by the Commission in the NPRM for reforming the retransmission consent process:

1. Creation of one or more dispute resolution mechanisms to protect consumers from unreasonably high retail prices, service interruptions, and/or additional unwanted programming services, such as compulsory arbitration or a similar process;
2. Amendment of the retransmission consent rules to prohibit broadcast station owners from “tying” retransmission consent for their local broadcast stations with the licensing of other non-broadcast programming services, including web-based content; and
3. Elimination or limited application of syndicated exclusivity and network non-duplication rules.

As set forth below, Starz respectfully submits that the re-examination and overhaul of the Commission’s retransmission consent regulations are in the public interest.

I. Adoption of Mandatory Dispute Resolution Procedures Will Mitigate Service Interruptions, Unjustifiably High Prices and Unwanted Programming Services.

Starz disagrees with the assertion that the Commission lacks authority to implement a dispute resolution mechanism, such as baseball-style arbitration, for settling retransmission consent disputes. However, Starz defers to others in the cable industry and in the public interest community who will present the case that the Commission does have such authority and should exercise such authority here and now.

Consistent with its prior comments, Starz shares the view of virtually all other non-broadcast participants in the television industry, as well as representatives of the public, that the current retransmission consent structure distorts the negotiations between local broadcasters and MVPDs in a manner that tends to increase artificially consumer prices for cable service. Broadcasters have an unfair advantage over local cable and satellite operators because the operators cannot replace programming aired by broadcasters, due in part to the Commission's network non-duplication and syndicated exclusivity rules. The net result is that consumers are paying higher prices because of this skewed market and, with increasing frequency, have lost programming due to stalemates over retransmission consent. It is in this context that Starz respectfully submits that a mandatory dispute resolution mechanism is warranted.

II. Broadcasters Should Be Prohibited from Tying Retransmission Consent to the Carriage of Multicast and Non-Broadcast Programming Services.

Starz strongly believes that there is a critical need to prohibit the “tying” of broadcast retransmission consent to MVPDs’ carriage of multicast and non-broadcast cable networks. Such tying of negotiations distorts the otherwise very competitive cable network marketplace and unfairly and unjustifiably favors those cable networks co-owned with local television broadcast stations over those, such as the Starz networks, that have no meaningful broadcast ownership relationship. The NPRM at Paragraph 29 specifically noted Starz’s support for action to prohibit tying of retransmission consent negotiations to carriage of non-broadcast networks owned by the broadcasters, and asked specifically whether a broadcaster engaging in such tying practices should be considered not to be negotiating in good faith.

Starz continues to maintain that tying of non-broadcast networks to the retransmission consent structure skews the marketplace for programming networks, and is not in the interest of consumers or programming entrepreneurs. The Commission should determine that a broadcast station is not engaging in good faith negotiation if it requires carriage of non-broadcast programming networks that are owned or operated by the broadcast station or its affiliate.

The practice of tying a broadcaster’s retransmission consent to carriage of commonly owned cable networks is a major disruption in the market for cable networks. The cable program network marketplace is highly competitive. There is

intense competition among cable networks for limited channel capacity, positioning in tiers and packages of cable services, marketing and consumer sales opportunities and license fees. Even with the growth and pervasiveness of digital cable, channel capacity is still limited, and available cable networks far outnumber available channels even on the most advanced systems. Even though Starz's channels are generally premium movie networks, Starz competes directly and continually with other expanded basic, digital tier, and premium networks for that limited channel capacity on each MVPD system. In addition, Starz competes with other networks for placement in higher or lower penetrated digital tiers and packages and in single premium and multi-premium packages. Starz also competes aggressively against other networks to participate in cable system marketing opportunities and consumer campaigns. Regardless of when carriage contracts begin and end, cable networks such as Starz and Encore are continually negotiating with MVPDs over the number of channels to be carried, the tiers or packaging for such channels, and marketing campaigns to feature their respective services. We compete for consumers' attention as well, but our first and foremost competition is with other cable networks, for distribution and marketing opportunities with MVPDs.

The present regulation creates a two-class system in the negotiations with MVPDs. Those cable networks whose negotiations with MVPDs include retransmission consent for groups of local broadcast channels are given priority in the negotiation process, with a distinct competitive advantage over those cable networks

that have no common ownership with local broadcast stations. The cable networks owned by broadcast interests exploit the added leverage granted to them through governmentally-enforced retransmission consent to gain an unfair, governmentally-enhanced competitive advantage over those cable networks not associated with broadcast stations. Broadcaster-owned cable networks gain considerable competitive leverage due to the regulatory restrictions and advantages of retransmission consent. The combination of government-licensed broadcast stations with cable networks in the same negotiations skews the otherwise unregulated cable network marketplace to the distinct advantage of such large broadcast station--cable network co-owners. This unintended consequence of retransmission consent disrupts what is otherwise a very competitive cable programming marketplace, to the unfair advantage of the common broadcast station--cable network owners.

Consumers are harmed by this distortion of competition. Decisions as to which cable program networks will be carried by MVPDs are not based on the merits, popularity, or quality of the cable program networks, but rather, in the first instance, by whether or not the cable networks are owned by broadcasters which can leverage their retransmission consent rights. Starz repeatedly has been advised by MVPDs that decisions for carriage of its own new channels are subject to how much channel capacity is left over after their retransmission consent negotiations with broadcasters are finished and their commitments for other new broadcaster-owned channels are made for retransmission consent for critical local market broadcast stations. The

MVPDs' carriage decisions are skewed toward those cable channels that are owned by broadcasters, regardless of consumer preferences. Thus, even if the Commission does not adopt a dispute resolution mechanism to help control retransmission battles, the Commission should prohibit the tying of retransmission consent to carriage of multicast channels or of non-broadcast cable networks so that carriage decisions are made on the basis of value and demand -- for the benefit of consumers, rather than for the benefit of broadcast station owners.

III. The Commission Should Eliminate the Syndicated Exclusivity and Network Non-Duplication Rules.

The NPRM at Paragraphs 42-45 also questions whether the Commission should eliminate the rules concerning network non-duplication and syndicated programming exclusivity. See 47 C.F.R. §§ 76.92 *et seq.*, 76.101 *et seq.*, 76.122, 76.123. The network non-duplication rules permit a broadcast station with exclusive rights to network programming to assert those rights to prevent a local cable system from carrying the same network programming from a distant network television station. Similarly, the syndicated exclusivity rules allow a broadcast station to assert its contractual rights to exclusivity within a specified geographic zone to prevent a cable system from carrying the same syndicated programming aired by another distant station.

Both the network non-duplication and syndicated exclusivity rules protect local broadcast station owners from competition in their local market areas by preventing cable systems from retransmitting programming on distant signals that are otherwise

licensed to those local broadcast stations. The rules do little else beyond protecting local broadcasters from competition. Indeed, the rules have had a checkered history at the FCC, with the syndicated exclusivity rules having been repealed in 1980 and reinstated in 1988. See *Cable Television Syndicated Program Exclusivity Rules*, 79 F.C.C. 2d 663 (1980); *Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, 3 F.C.C. Rcd 5299 (1988), *on recon.*, 4 F.C.C.Rcd 2711 (1989), *aff'd*, *United Video, Inc. v. FCC*, 890 F.2d 1173 (1989).

The NPRM seeks comment on the potential benefits and harm of eliminating the syndicated exclusivity and network non-duplication rules. NPRM at ¶42. Although the re-adoption of syndicated exclusivity included a vague argument that the public somehow benefited from the reduction in competing outlets carrying favorite programming, the main "benefit" of the rules is to reduce competition for the benefit of local television broadcast stations. Moreover, the rules require deletion of the programs imported from distant television stations even if the local station has refused to provide retransmission consent for carriage of its signal and those programs on the local cable system. How do local consumers possibly benefit from these rules? Indeed, especially where a retransmission consent battle results in a local station being removed from the cable system, it would greatly benefit consumers to have the most popular syndicated or network programming still available to them on their cable system via an imported distant independent or network affiliate.

Should the Commission have reservations about wholesale elimination of the syndicated exclusivity and network non-duplication rules, the Commission should adopt a rule whereby in the event a local television station, independent or network, is deleted from a cable system due to a retransmission consent dispute, the affected cable system may then be permitted a temporary waiver of compliance with the syndicated exclusivity and network non-duplication rules until the dispute is resolved. In other words, for the period that the station is off the cable system, the local television station would lose its protection from these exclusivity rules. If a local network-affiliated or independent station never grants retransmission consent, the waiver of the rules would continue. Such a system of temporary waivers would remove yet another of the thumbs on the scale that unfairly favor the broadcast stations in retransmission consent negotiations.

The elimination of the syndicated exclusivity and network non-duplication rules, even on a temporary basis during a retransmission consent dispute, would greatly benefit consumers who are at risk of losing popular television programming as a result of such dispute. In many of the recent retransmission disputes, the brinkmanship occurred around major network programming events -- college football bowl games, the Superbowl, awards shows, and the like. In all of these disputes, consumers would no longer be held hostage if such major event programming were available via an imported distant signal. Although the Commission tentatively has determined that it does not have authority to require continued carriage of a station

after the retransmission consent period has expired, it clearly does have the authority to temporarily relax these questionable exclusivity rules in order to avoid these types of programming disruptions for viewers.

Conclusion

For these reasons, Starz urges the Commission to: adopt a dispute resolution mechanism; determine that a broadcaster which ties its grant of retransmission consent for its broadcast stations to MVPD carriage of the broadcasters' other non-broadcast cable networks is not negotiating in good faith; and eliminate or limit the syndicated exclusivity and network non-duplication rules. This will restore fair competition between broadcast-owned and independent programming networks to the benefit of viewers.

May 27, 2011

Respectfully submitted,

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