June 3, 2019

The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

The Honorable Michael Doyle
Chairman
Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Robert Latta
Ranking Member
Subcommittee on Communications and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Pallone and Doyle and Ranking Members Walden and Latta:

On behalf of RIDE TV and other unique and diverse voices on television, I write to inform you on the impact of retransmission consent on independent television networks. Without hesitation I can say that retransmission consent threatens independent voices.

Broadcasters already wield significant marketplace power. Some of their programming continues to be highly valued by video consumers, and they use their bargaining leverage to impose ever-higher retransmission consent costs on MVPDs, directly affecting consumers in the form of higher bills.

In recent years, broadcasters have used the threat of blackouts, or actual blackouts, as leverage in negotiations to extract increasing retransmission consent fees. In 2017 alone, broadcasters blacked out the Super Bowl, NFL and College Football post-season Games, NCAA Men's Basketball Tournament, the Grammys, and network TV premiers[1].

Predictably, retransmission fees have increased dramatically over the last twelve years. According to SNL Kagan, retransmission consent fees increased from $215 million in 2006 to $10.1 billion in 2018 – an increase of 4,950 percent.To put this increase in perspective, if federal spending rose as quickly as retransmission consent has over the last twelve years, Congress would be appropriating $131.4 trillion per year.

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[1] In 2017 alone, broadcasters blacked out the Super Bowl, NFL and College Football post-season Games, the Grammys, and network TV premiers. *Broadcasters Go Nuclear on Blackouts*, American Television Alliance, Apr. 3, 2017, http://www.americantelevisionalliance.org/broadcasters-go-nuclear-on-blackouts.

Unfortunately, there is no end in sight for retransmission consent fee increases. ACA Connects estimates that retransmission consent fees demanded of small cable providers will increase another 88 percent by 2020 and Dish Network believes that, by 2023, retransmission fees will reach $12.82 billion.[2] These astronomical retransmission consent fee increases pose an existential threat to unique and diverse voices, particularly the rural-focused programming RIDE TV provides.

Due in large part to new competition from virtual MVPD and streaming video-on-demand services, the price elasticity of demand for traditional MVPD service is higher than ever.[3] Increases in retransmission consent fees cannot continue to be passed on to consumers and must be offset with cuts to other programming and capital expenditures.

Independent programmers disproportionately bear the brunt of the more limited programming budgets that remain after higher payments for retransmission consent. Based on the current average monthly retransmission consent fee of $1.78 to $2.27 reported by SNL Kagan[4], a 20 percent fee increase would result in additional programming costs of $0.35 to $0.45, or approximately five to six times the average monthly payment received by an independent programmer.[5]

Exorbitant retransmission consent fees harm unique and diverse voices not only on the linear feed, but on over the top and streaming platforms. A study conducted by ACA Connects concluded that raising retransmission consent fees threaten broadband deployment, particularly in rural areas. "Based on the current market trajectory, the business case for broadband deployment for all use cases would be expected to decline and eventually become unprofitable in

[2] FCC Petition to Deny of Dish Network Corporation, MB Docket No. 19-30 (Mar. 18, 2019) ("[R]ecent projections estimate that, by 2023, retransmission fees will increase to $12.82 billion, or 5,880% of 2006 revenues"); Mike Farrell, *ACA Members Believe Retrans Fees Will Rise 88% by 2020*, Multichannel News (Feb. 16, 2018), https://www.multichannel.com/news/aca-members-believe-retrans-fees-will-rise-88-2020-418199 ("Retransmission consent fees are expected to rise an average of 88% by 2020 for small cable operators").

[3] *See, e.g.*, *Applications of AT&T Inc. and DirecTV*, 30 FCC Rcd. 9131, ¶ 122 (2015) (finding that "figures suggest that demand for cable MVPD service has become more elastic in recent years. This trend is certainly plausible given a number of factors, including the entry of fiber-based competitors (especially Telcos since 2006), the launch of a new satellite by DISH in 2006, which expanded DISH's channel capacity significantly, and, probably to a lesser extent, the recent advent of online video distributors . . . and the resulting increase in so-called 'cord-cutting' . . . The first and third factors listed above also may account for an increase (which the above figures suggest) in the elasticity of demand for satellite-based MVPD service")

[4] Fourth quarter retrans rates grew to an estimated $1.78 per subscriber on a station/network basis and $2.27 per subscriber on a market-level basis, per SNL Kagan's analysis of 12 publicly traded U.S. T.V. Station groups. Justin Nielson, *TV Stations Retrans Per-Sub Growth Ticks Up Despite Disruptions, Sub Losses* (Apr. 9, 2019), https://www.snl.com/web/client?auth=inherit#news/article?id=50996253.

[5] Based on an average of approximately $0.07-0.08 affiliate revenue per subscriber per month. *See* SNL Kagan TV Network Summary, Affiliate Revenue per Avg Sub/Month.

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the coming decade. The Rural Expansion use case appears to be the most vulnerable due to the high cost of building out new broadband."[6]

This is particularly harmful to independent programmers, like RIDE TV, that serve rural viewers. Quite simply, rising retransmission consent fees deny RIDE TV access to viewers on traditional linear platforms as well as hinder rural broadband expansion that would enable RIDE TV to reach subscribers over the top.

Allowing the Distant Signal License to Expire Would Exacerbate the Harm to Independent Voices

Advocacy materials circulated by the National Association of Broadcasters complain that "Royalties under [the Section 119 distant signal license] are discounted substantially below the carriage fees for these stations negotiated in the market by other pay- TV providers."[7]

This is Washington speak for "copyright royalties haven't increased at the same 4950 percent clip as retransmission consent rates." And that's a good thing, because retransmission consent fees are harming consumers and independent voices. In fact, if the distant signal license expires it is unclear exactly how expensive the combined cost of retransmission consent and copyright payments could be, if it is even possible to negotiate a solution for the hundreds of thousands of subscribers that rely on the distant signal.

For the long-haul trucker, horse enthusiast with an RV or the rural viewer in a short market, NAB offers no specifics on what it might cost that person to replace the network content they receive today if the distant signal license expires. These are the viewers that watch RIDE TV and if the cost of network content increases dramatically, these viewers are highly likely to cancel their satellite service or downgrade to a package that doesn't include RIDE TV to offset the cost increase.

Even more concerning is NAB's position that Congress should allow STELAR to expire so that the requirement that broadcasters and pay-TV providers negotiate in good faith for carriage of local TV stations expires, too.

Broadcasters already rely on blackouts of marquis events like the Super Bowl and the Grammys to inflate the value of retransmission consent. If the good faith rules are allowed to expire, broadcasters could demand single, unilateral proposals; delay the course of negotiations; or refuse to negotiate altogether. Allowing these rules to expire would unquestionably increase retransmission consent fees and further harm diverse and independent voices.

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[6] American Cable Association, *High and Increasing Video Programming Fees Threaten Broadband Deployment* (2015) available at https://drive.google.com/file/d/0BxUDdYFi5gnEa2xJdnhwSThWUUE/view

[7] *See e.g.* National Association of Broadcasters, *Narrow Satellite Legislation Should Expire as Congress Intended* (2018) available at http://www.nab.org/documents/newsRoom/pdfs/NAB_STELAR_expiration.pdf

RIDE TV is not asking for a government hand out. We are ready and willing to compete in a free market. However, RIDE TV does not enjoy government benefits like free spectrum and must carry rules to reach viewers and build our audience. All we ask is that Congress does not continue to weaken the handful of safeguards that keep retransmission consent fees from exploding faster than they already have.

Sincerely,

Craig Morris
Co-Founder and President
Ride Television Network, Inc.