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Regulatory

February 13, 2018

VIA GC Key

Mr. Claude Doucet  
Secretary-General  
CRTC  
1 Promenade du Portage  
Les Terrasses de la Chaudière  
Central Building  
Gatineau, QC  
K1A 0N2

Dear Mr. Doucet:

Subject: **Broadcasting Notice of consultation CRTC 2017-359: Call for comments on the Governor in Council's request for a report on future programming distribution models - Phase 2 Comments**

- E1. The Canadian Cable Systems Alliance ("CCSA") speaks for independent communications distributors – smaller cable companies, telephone companies and ISPs – across Canada. CCSA represents more than 115 companies operating from sea to sea to sea, including across the North.
- E2. CCSA wishes to appear at any oral hearing of this matter to address the submissions of other intervenors.

### **Executive Summary**

- E3. Government policy should encourage investment by local communications providers in the upgrade and extension of their existing networks and, more particularly, should not discourage such investment.
- E4. In that context, CCSA addresses four main topics in the comments that follow:



- in the current environment of unparalleled opportunity for Canadian content creators and producers, any new levy on BDUs or ISPs, especially smaller ones, to support Canadian content production would be both unjustified and highly damaging;
- the continuing use of commercial contracts by the VI companies to force “big bundle” packaging and to increase prices to consumers for their services is a threat to the regulated system and, especially, to the independent BDUs such that protections like the *Wholesale Code* and the “standstill rule” are absolutely necessary;
- implementation of a “retransmission consent” regime in Canada would be a disaster for both small distributors and consumers in Canada, just as it has been in the U.S.; and
- in an environment of increased interest in “hyper local” content, community channels have an important role to play which should be encouraged whenever possible, with new revenue streams, including the sale of local advertising on community channels.

E5. CCSA thanks the Commission for the opportunity to provide these comments.

Sincerely,

Christopher J. Edwards  
Vice-President, Regulatory Affairs



**CCSA**

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**Regulatory**

CANADIAN CABLE SYSTEMS ALLIANCE INC.

**Broadcasting Notice of Consultation CRTC 2017-359:  
Call for Comments on The Governor In Council's Request  
for a Report on Future Programming Distribution Models  
Phase 2 Comments**

February 13, 2018



**CCSA**

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## Introduction

1. The Canadian Cable Systems Alliance (“CCSA”) believes very strongly that independent communications distributors will remain a vital component of Canada’s content creation and delivery infrastructure for years to come.
2. A number of parties to this proceeding have commented on the importance of extending broadband networks, as the primary future platform for delivering broadcasting, to all Canadians and the difficulty of the economic case for building such networks in low-density markets such as most CCSA members serve.<sup>1</sup>
3. Government policy should encourage investment by local communications providers to upgrade and extend their existing networks and, more particularly, should not discourage such investment.
4. In that context, CCSA addresses four main topics in the comments that follow:
  1. in the current environment of unparalleled opportunity for Canadian content creators and producers, any new levy on BDUs or ISPs, especially smaller ones, to support Canadian content production would be both unjustified and highly damaging;
  2. the continuing use of commercial contracts by the VI companies to force “big bundle” packaging and to increase prices to consumers for their services is a threat to the regulated system and, especially, to the independent BDUs such that protections like the *Wholesale Code* and the “standstill rule” are absolutely necessary;

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<sup>1</sup> See, e.g. PIAC, “Broadcasting Notice of Consultation CRTC 2017-359, Call for comments on the Governor in Council’s request for a report on future programming distribution models: First Intervention of the Public Interest Advocacy Centre”, December 1, 2017 [hereinafter *PIAC Phase 1*] at para. E4; SaskTel, “Broadcasting Notice of Consultation CRTC 2017-359, Call for comments on the Governor in Council’s request for a report on future programming distribution models, as amended: Intervention”, December 1, 2017 at para. 45; Shaw Communications, Inc., “Re: Broadcasting Notice of Consultation CRTC 2017-359 – Call for comments on the Governor in Council’s request for a report on future programming distribution models”, December 1, 2017 [hereinafter *Shaw Phase 1*] at para. 23, TELUS Communications, Inc., “Broadcasting Notice of Consultation CRTC 2017-359: Call for comments on the Governor in Council’s request for a report on future programming distribution models: Comments of TELUS Communications Inc.”, December 1, 2017 at para. E15.



- 3. implementation of a “retransmission consent” regime in Canada would be a disaster for both small distributors and consumers in Canada, just as it has been in the U.S.; and
- 4. in an environment of increased interest in “hyper local” content, community channels have an important role to play which should be encouraged whenever possible, with new revenue streams, including the sale of local advertising on community channels.

### Canadian Content Funding

- 5. In his Phase 1 comments in this proceeding, Professor Michael Geist observed that:

Notwithstanding the doomsayers who fear that the emergence of digital services such as Netflix will result in less money for production in Canada, the 2016 annual report by the Canadian Media Producers Association on the state of screen-based media production in Canada confirms that financing of Canadian television production continues to grow, reaching its highest point in the last five years;

and that:

... foreign financing now contributes more toward English-language television production than the licensing fees paid by private or public broadcasters, federal tax credits, Canadian distributors, and the Canadian Media Fund.<sup>2</sup>

- 6. The recently released CMPA *Profile 2017* report reflects an even more positive picture. According to a recent CARTT.ca article:

According to the latest figures released today by the Canadian Media Producers Association, overall production volume in Canada soared to an all-time high of \$8.38 billion in 2016/17.

This is a 24% rise in volume over the previous year, helped generate 171,000 full-time jobs and added \$12 billion to the country’s GDP, says the association’s annual report *Profile 2017: An Economic Report on the Screen-Based Media Production Industry in Canada*.

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<sup>2</sup> Michael Geist, “Re: Notice 2017-359 Call for Comment on the Governor in Council’s Request for a Report on Future Programming Distribution Models, University of Ottawa, November 30, 2017 at 2.



“With record growth across much of Canada’s production sector, there is much to celebrate this year, including the creation of jobs and a significant contribution to the country’s economy,” said Reynolds Mastin, president and CEO of the CMPA, in the press release.<sup>3</sup>

7. That trend is consistent with CCSA’s observation in its Phase 1 comments, based on a Boston consulting Group report, that English-language content production has entered a “golden age”.<sup>4</sup>

8. The positive trend is strong, as well, in all regions of the country:

Every province involved in FLS production saw an increase over last year: British Columbia (46% increase), Ontario (23% increase), Quebec (43% increase), Manitoba (67% increase), Alberta (59% increase), Nova Scotia and the Territories (more than 200% increase)<sup>5</sup>

and with respect to both English and French-language content production:

Both English-language and French-language production contributed to this annual increase. English-language production was up by 16.6% to an all-time high of \$2.44 billion. French-language production increased by 15.9% to an all-time high of \$856 million.<sup>6</sup>

9. In that environment, any new or additional levy on BDUs or ISPs to support Canadian content production cannot be justified.

10. Moreover, imposition of any such levy could have a damaging effect on the availability and affordability of programming through both BDUs and ISPs, especially for those Canadians who are served by the smaller independents.

11. As PIAC pointed out in its Phase 1 comments:

<sup>3</sup> CARTT.ca, “Prime Time in Ottawa: Film/TV production soars in Canada”, February 1, 2018, accessed at [https://cartt.ca/article/prime-time-ottawa-film-tv-production-soars-canada?utm\\_source=prime-time-in-ottawa-taking-data-to-new-necessary-heights&utm\\_medium=email&utm\\_content=html&utm\\_name=newsletter](https://cartt.ca/article/prime-time-ottawa-film-tv-production-soars-canada?utm_source=prime-time-in-ottawa-taking-data-to-new-necessary-heights&utm_medium=email&utm_content=html&utm_name=newsletter) on February 6, 2018.

<sup>4</sup> Boston Consulting Group, “The Future of Television: Where the US Industry is Heading” June 9, 2016 [hereinafter *BCG US Future Report, 2016*] at 8 of 12, accessed at <https://www.bcg.com/de-de/publications/2016/media-entertainment-technology-digital-future-television-where-us-industry-is-heading.aspx>, on November 21, 2017.

<sup>5</sup> Canadian Media Producers Association, *Profile 2017: Economic Report on the Screen-Based Media Production Industry in Canada*, accessed at <http://www.primetimeinottawa.ca/wp-content/uploads/2018/02/PROFILE2017.pdf> on February 7, 2018 [hereinafter *Profile 2017*] at 7.

<sup>6</sup> *Profile 2017* at 32.



It is also important to bear in mind that the availability and affordability of high-speed broadband Internet service will continue to constrain the ability of many Canadians, particularly rural and low-income consumers, from regularly watching high-quality television online. These communities will continue to rely on their BDU service as the primary means of television news and entertainment.<sup>7</sup>

12. PIAC continued:

The availability and affordability of broadband Internet access service will continue to be a central issue. Notably, a levy on Internet service providers intended to fund the production of Canadian programming could have a serious, negative impact on the affordability of Internet access service and set a dangerous precedent – levying Internet access service based on the content which Canadians access through it.<sup>8</sup>

13. For those reasons, CCSA agrees with Shaw’s recommendation, in its Phase 1 comments, that :

No measure should be introduced that would increase the costs of connectivity to Canadians, undermine access to high-quality affordable broadband internet across Canada, or divert resources away from building the strength and capacity of our networks.<sup>9</sup>

and its observations that:

Such measures would detract from ISPs’ efforts to satisfy Canadian society’s fundamental and ever-growing demands for connectivity.<sup>10</sup>

and that:

Contrary to the objectives of the Government’s Innovation Agenda, an ISP Tax would exacerbate the digital divide by raising the retail price of internet services and diverting investment in network development in rural and remote areas.<sup>11</sup>

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<sup>7</sup> *PIAC Phase 1* at para. E3.

<sup>8</sup> *PIAC Phase 1* at para. E4.

<sup>9</sup> *Shaw Phase 1* at para. 23.

<sup>10</sup> *Shaw Phase 1* at para. 26.

<sup>11</sup> *Shaw Phase 1* at para. 27.





14. Finally, CCSA agrees with Rogers' comment that:

ISPs are common carriers and they are the aggregator of platforms. They are not platforms themselves. That is not where a tax should be collected to help support the production of Canadian programming.<sup>12</sup>

15. For all of those reasons, imposition of any levy to fund Canadian content production on either BDUs or ISPs would impair the availability and affordability of programming to Canadians in low-density markets and would run directly counter to the Federal Government's objective of ensuring that all Canadians have access to broadband services.
16. Accordingly, the notion of such a levy should be rejected.

### Protections Against Anti-Competitive Behaviour Are Necessary

17. In its Phase 1 comments, the IBG said:

The Commission's *Wholesale Code* is the single most important regulatory mechanism that is focused on ensuring fair terms of access to these closed markets. IBG/GDI is concerned, however, that the *Wholesale Code* is not as effective as it could be given the market power held by BDU networks.<sup>13</sup>

18. CCSA agrees with both parts of that statement; first, as to the importance of the *Wholesale Code* and, second, as to the insufficiency of the *Code*.
19. As a representative of many smaller BDUs, CCSA can attest to the continuing difficulties it has in securing contractual terms that comply with the letter and intent of the *Wholesale Code* and with enforcement of that *Code*.
20. CCSA continues to find itself in a position of having to accept rate cards that are "make whole" or even greater than "make whole", with requirements to maintain placement of programming services in large packages and with an inability to package programming flexibly in response to consumer demand.

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<sup>12</sup> Rogers Communications, Inc. "Broadcasting Notice of Consultation CRTC 2017-359, Call for comments on the Governor in Council's request for a report on future programming distribution models: Rogers Communications Inc. (Rogers) Intervention", December 1, 2017 at para. 134.

<sup>13</sup> Independent Broadcast Group, "Re: Broadcasting Notice of Consultation CRTC 2017-359, Call for comments on future programming distribution models", December 1, 2017 at response to Question 9.



21. Contrary to the objectives of the *Wholesale Code*, the imposition of “make whole” rate cards insulates the large VI companies from any risk related to the relative quality or popularity of their programming services.
22. Despite repeated attempts to resolve such issues in the Commission’s staff-assisted mediation and other dispute mechanisms, CCSA and its members continue to labour under such rate cards some two and one-half years after introduction of the *Code*.
23. To CCSA, the primary action required to make the *Wholesale Code* “as effective as it could be” is timely and vigorous enforcement of the rules that already exist. In CCSA’s view, that is not happening today.
24. Similarly, despite the existence of a “standstill rule” that applies to parties in commercial disputes before the Commission, CCSA members continue to be prevented from launching and re-packaging programming services of the VI companies during such disputes.
25. CCSA’s purpose here is not to attempt to “litigate” ongoing commercial disputes but rather, to emphasize how vital protections such as the *Wholesale Code* and the “standstill rule” are to the smaller independent players – BDUs and programmers alike – in their dealings with the VI companies.
26. We note and agree with Eastlink’s Phase 1 comment that:

Not only do some Commission policies permit the VI providers to withhold certain content from Eastlink and other independent BDUs, but the VI providers have been engaging in a concerted campaign to undermine the Commission’s authority to regulate them.<sup>14</sup>
27. That reflects CCSA’s experience. CCSA understands that the VI companies continue to wage a campaign, at all levels and consistent with Bell’s requests in this proceeding, to have those rules removed.<sup>15</sup>

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<sup>14</sup> Eastlink, “Re: BNC 2017-359 – Call for comments on the Governor in Council’s request for a report on future programming distribution models (the “Notice””, December 1, 2017 at response to question 7(c).

<sup>15</sup> Bell Canada Enterprises, Inc., “Before the Canadian Radio-television and Telecommunications Commission, Broadcasting Notice of Consultation CRTC 2017-359 Call for comments on the Governor-In-Council's request for a report on future programming distribution models: Comments of BCE Inc.”, December 1, 2017 at paras. 19, 127 and 149-50.



28. While we have concerns with the timeliness and effectiveness of enforcement, we can say, at least, that the existing rules have some effect in conditioning the behaviour of the VI companies. The protections they provide are absolutely necessary.
29. Without such rules, many of CCSA's members already would have been driven out of the market, to the detriment of their customers and the broadcasting system.

### Retransmission Consent

30. Implementation of a retransmission consent regime in Canada, either directly by legislation or indirectly by a repeal of s. 31 of the *Copyright Act*, would be the single most damaging measure the Government could take with respect to regulation of Canada's broadcasting system.
31. In the United States, the retransmission consent regime was implemented by passage of the *1992 Cable Act*.
32. Ever since, the American retransmission consent regime has been nothing short of a disaster for both smaller distributors of video programming and their customers.
33. The regime has resulted in dramatic price increases to American consumers and numerous black-outs of broadcasting services that hold television viewers hostage, often during the most important and popular televised events.
34. Included as **Attachment A** to this submission is a recent release of the American Cable Association ("ACA"), which represents some 750 small and medium-sized distributors throughout America. ACA's release describes and quantifies the punishing effect of this regime on video programming distributors and American consumers.
35. CCSA wishes to make it clear that repeal of s. 31 of the *Copyright Act*, by itself, would make the currently legal retransmission of both local and distant "over the air" channels by BDUs an infringement of copyright and therefore illegal.
36. In practice, repeal of s. 31 would actually make retransmission of any over-the air channels by BDUs virtually impossible.



37. The only way BDUs would be able to transmit those channels legally would be to secure the consent of the broadcast networks and all other rightsholders to retransmission of the works contained in free “over the air” signals. To secure such consent, they would have to pay fees to all of the rightsholders.
38. Otherwise, the only practical way in which the rights to retransmission of the works contained in over-the-air channels by BDUs could be cleared would be if the television station, itself, acquired the retransmission rights for all of the programming it broadcasts and then conveyed those same rights to the BDUs.
39. However, there is no evidence or reason to believe that the broadcasters could acquire those rights.
40. CCSA agrees with Shaw’s statement in its Phase 1 comments that:

Broadcasters do not own the vast majority of the programming they broadcast: the programs are owned by the producers, studios and professional sports leagues that create the programs. These rightsholders generally do not convey the retransmission rights to OTA broadcasters given that these rights have, together, a value of approximately \$120 million annually under Canada’s current retransmission tariff.<sup>16</sup>

41. In short, repeal of s. 31 of the *Copyright Act* would make it practically impossible for BDUs to retransmit distant over-the air channels and would result in a loss of those channels for BDU customers.
42. CCSA also agrees with Shaw’s following comment:

Implementing retransmission consent would compel BDUs to negotiate with broadcasters for the right to retransmit broadcasters’ signals, despite the fact that BDUs have paid program owners for the right to retransmit their programs, and broadcasters do not own most of the programming they broadcast. When broadcasters and BDUs are unable to come to terms, retransmission consent would enable broadcasters to withhold consent, preventing BDUs from retransmitting the signal and denying subscribers programming. This is precisely the type of consumer disruption and inefficiency that the Canadian retransmission regime is designed to avoid.<sup>17</sup>

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<sup>16</sup> *Shaw Phase 1* at para. 34.

<sup>17</sup> *Shaw Phase 1* at para. 40 [emphasis added].



43. As the Commission knows and as the attached ACA release attests, black-outs resulting from broadcasters and BDUs failing to come to terms on retransmission consent fees have been frequent and have caused great harm to American television viewers.

44. Perhaps most egregious is the following example cited by ACA in its release:

As Hurricane Irma targeted the Gulf Coast, Hearst Television took down its signal for two markets in the path of the storm – Orlando and New Orleans – even as broadcasters touted on Capitol Hill their commitment to the public during extreme weather events.

45. Canadians should not be exposed to such harms for the sake of further enriching the largest media companies in Canada and the United States.

46. In fact, creation of a new consent right, which necessarily includes the right to block retransmission of a channel, flies directly in the face of Parliament’s intent in creating the *Copyright Act’s* existing compulsory licensing regime.

47. The decision of the Supreme Court of Canada in *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168* cited Parliament’s deliberations on that point:

Studies on the same question had preceded this enactment; there, too, a major concern was that copyright owners “should not be permitted to stop retransmission because this activity is too important to Canada’s communications system” (Standing Committee on Communications and Culture. *A Charter of Rights for Creators: Report of the Sub-Committee on the Revision of Copyright* (1985), at p. 80 (A.R., vol. III, at p. 118) . . . .<sup>18</sup>

48. The American experience demonstrates the wisdom of Parliament’s decision to implement a compulsory licensing regime that automatically clears retransmission rights in exchange for the payment by BDUs of tariffed royalties and that eliminates the prospect of broadcaster black-outs.

49. Finally, CCSA agrees with Shaw’s statement that:

Especially alarming is that Bell’s proposal for a retransmission consent regime includes both Canadian and US broadcasters. Retransmission consent would add billions of dollars to the cost structures of Canadian BDUs – including a

<sup>18</sup> 2012 SCC 68 at para. 75 [emphasis added].



large outflow of broadcasting system revenues to the US – while creating no new value for Canadians.<sup>19</sup>

- 50. That is, in addition to the threat of harm to Canadian caused by inevitable channel black-outs, introduction of a new retransmission consent regime would substantially increase Canadians’ monthly bills for access to the same broadcasting they can view today while adding absolutely no new value for those Canadians.
- 51. Rather, any new value would go directly to Canadian and American broadcast networks.
- 52. The truth is that, as Shaw notes<sup>20</sup>, this proposal is yet another iteration – by CCSA’s count, the fourth – of Bell’s bid for “Fee for Carriage” or “Value for Signal”.
- 53. The difference, this time around, is that Bell’s proposal is far worse for Canada and Canadians because much of the “value” would flow out of Canada and into the hands of the major U.S. networks rather than into any improvement of the economics of the Canadian OTA broadcasters, including their ability to present local news and sports programming.
- 54. For all of those reasons, introduction of a retransmission consent regime into Canada by direct legislation or by repeal of s. 31 of the *Copyright Act* would be an unmitigated disaster for Canada and Canadian television viewers.
- 55. Government should not even consider such a proposal.

**Support To “Hyper Local” Content On Community Channels**

- 56. In its Phase 1 comments in this proceeding, CCSA cited a recent Boston Consulting Group report for the propositions that:

. . . pro-am and amateur content creation, much of which is “hyperlocal” in focus, has become a significant factor in the cultural landscape

and that:

<sup>19</sup> *Shaw Phase 1* at para. 41.

<sup>20</sup> *Shaw Phase 1* at para. 37.



... the share of local stories in pro-am and amateur content has actually been rising in recent years.<sup>21</sup>

57. CCSA stated that:

Independent distributors, both as BDUs and as ISPs, are ideally placed to play a powerful role in the creation and exhibition of such content, particularly in relation to communities outside the urban markets.<sup>22</sup>

58. CCSA recommended that independent BDU community channels be supported in fulfilling that role, especially as the major broadcasting networks continue to retreat from production of local news and sports programming.

59. With respect to their production of local news programming, the broadcasting networks are now supported with a new revenue stream in the form of the Independent Local News Fund.

60. Community channels have no such revenue stream upon which they can rely.

61. Rather, they are dependent on their related BDUs' ability to direct five percent or less of their broadcasting revenues – their required contributions to Canadian content production – to operation of their community channels.

62. CCSA notes the following Phase 1 comments of the First Mile Connectivity Consortium:

A common desire for people in remote and rural communities is to act as creators and producers of programming, especially using Indigenous languages, instead of only being consumers of material and content created in urban centres.<sup>23</sup>

63. CCSA echoes that observation and notes that it applies broadly to both indigenous and non-indigenous communities throughout Canada.

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<sup>21</sup> Boston Consulting Group, "The Future of Television: The Impact of OTT on Video production Around the World" September 2016 at 6 and 36, accessed at <https://www.friends.ca/files/PDF/bcg-the-future-of-television.pdf>, on November 21, 2017.

<sup>22</sup> Canadian Cable Systems Alliance, Inc., "Broadcasting Notice of consultation CRTC 2017-359: Call for comments on the Governor in Council's request for a report on future programming distribution models", December 1, 2017 [hereinafter *CCSA Phase I*] at page 2, para. 6.

<sup>23</sup> First Mile Connectivity Consortium, Broadcasting Notice of Consultation CRTC 2017-359, "Call for comments on the Governor in Council's request for a report on future programming distribution models: Comments from the First Mile Connectivity Consortium", December 1, 2017 at para. 3.



64. Support of that desired local creation and production is consistent with and vital to meeting the objectives of the *Broadcasting Act*. As CCSA stated in its Phase 1 comments:

Such content is especially relevant to the objectives at s. 3 of the *Broadcasting Act* that programming be “drawn from “local, regional, national and international sources” and that it “reflect Canada and its regions to national and regional audiences”. Such content is a powerful and growing form of local expression and reflection.<sup>24</sup>

65. Given the increasing importance to Canadians – especially those in rural and remote areas – of “hyper local” content, their desire to create and produce such content, their gradual loss of network-produced local content and, finally, the unique suitability of locally-based community channels to enable creation, production and exhibition of such content, it makes abundant sense to support such endeavours in every way possible.
66. To that end, the Commission and Government should re-consider existing policies that restrict community channels from selling local advertising.
67. As local BDU-operated community channels fill the void left by the retreating broadcasting networks, they assume, more and more, the relatively expensive tasks of producing local news and sports programming.
68. The ability to sell local advertising would create a critically important – even if relatively small – revenue stream that would greatly assist community channels in meeting their missions to serve their communities by assisting with the creation and production of truly local content that engages and is highly relevant to those communities.
69. CCSA urges the Commission to re-consider its policy in this area and recommend to Government that attention be paid to finding positive ways to encourage community channels to enable the growth of locally-based content creation and production, especially outside the urban centres.
70. CCSA thanks the Commission for the opportunity to provide these comments.

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<sup>24</sup> CCSA *Phase 1* at para. 41.



## APPENDIX A – ACA PRESS RELEASE ON RETRANSMISSION CONSENT

### ACA Launches “TV Ransom” To Highlight Broadcasters’ Abusive Behavior With Retransmission Consent Resulting In Consumer Harm<sup>25</sup>

[OCTOBER 4, 2017](#) IN [PRESS RELEASES](#)

*Campaign Launch Timed To 25th Anniversary Of Retrans’ Birth*

**PITTSBURGH, October 4, 2017** – The American Cable Association today launched TV Ransom, a national campaign to set the record straight that corporate broadcasters are to blame for out-of-control retransmission consent fees and TV station blackouts that blindside consumers with the needless loss of their favorite news, weather reports, and national sporting and entertainment events.

Across the country hundreds of local cable operators are beginning to negotiate with a handful of corporate media conglomerates that own many of the local TV station affiliates for ABC, CBS, FOX and NBC. This process, called retransmission consent, pits ACA’s 750 small and mid-sized cable operator members, who predominantly serve rural Americans and provide competition to large operators in urban markets, against huge corporations with no stake or ties to these local communities. The outcome is predictable: Broadcasters leverage their market power to charge these smaller providers the highest rates in the market, raising the cable bills of more than 7 million cable customers across the country.

“Retransmission consent should be a straight-forward business negotiation, but, unfortunately, these corporate broadcasters abuse their market power to extract outrageous fees from cable customers,” said Matthew M. Polka, President and CEO of the American Cable Association.

Smaller pay-TV providers are not alone regarding concerns about runaway retransmission consent fees. A senior executive of Comcast, which owns the NBC network and 28 NBC and Telemundo local television stations, recently described retransmission consent fees as the “No. 1 driver of increases in cable prices for consumers these days.”

Since passage of the 1992 Cable Act, which marks its 25th anniversary on October 5, cable operators and broadcasters have been negotiating “retrans.” And for 25 years, the fees that cable operators and their customers are forced to pay have been growing at exponential rates even though viewership is down:

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<sup>25</sup> Accessed at <http://www.americancable.org/aca-launches-tv-ransom-to-highlight-broadcasters-abusive-behavior-with-retransmission-consent-resulting-in-consumer-harm/> on October 6, 2017.



Retrans fees rose about 30 times over the last decade while network primetime audiences fell by more than half, according to SNL Kagan and Nielsen.

Furthermore, broadcasters generally extract the highest fees from the smallest cable operators and their customers, and their demands keep escalating. SNL Kagan projects that these fees will cost U.S. consumers and satellite and cable operators \$11.6 billion by 2022, up from \$8.6 billion in 2017, a stunning 35 percent increase in just five years.

Unfortunately, broadcaster overreach doesn't stop with aggressive tactics designed to line their bank accounts. These broadcasters think nothing of disrupting local programming – even in an emergency – in an effort to gain leverage in negotiations. A few examples:

- As Hurricane Irma targeted the Gulf Coast, Hearst Television took down its signal for two markets in the path of the storm – Orlando and New Orleans – even as broadcasters touted on Capitol Hill their commitment to the public during extreme weather events.
- For a month in early 2017, Northwest Broadcasting simultaneously blacked out ABC, CBS, NBC and FOX signals in two Mississippi communities served by Cable ONE.
- Shortly after acquiring an NBC affiliate station in Toledo, Ohio, Sinclair Broadcast Group demanded that Buckeye Broadband pay significantly higher fees to access the station's signal. That demand led to Sinclair taking the station off the air for 212 days before an agreement could be reached.

“Every day, smaller cable operators work hard to ensure our neighbors have access to the video, broadband, and phone services they want and need,” continued Polka. “Meanwhile, the corporate broadcasters are going unchecked as our members and their customers suffer through blackouts and get hit in the wallet, repeatedly.”

The TV Ransom campaign is designed to: 1) illustrate how corporate broadcasters use their market power to take advantage of retransmission consent negotiations to extract escalating fees from cable customers; 2) expose corporate broadcasters' weak business models, which lead to their aggressive negotiation tactics designed to make money off the backs of consumers; and 3) demonstrate how consolidation of broadcast and media companies is taking local TV station ownership corporate, so that local news is no longer local, and “free TV” is no longer free.

**About the American Cable Association:** Based in Pittsburgh, the American Cable Association is a trade organization representing about 750 smaller and medium-sized, independent cable companies who provide broadband services for nearly 7 million cable subscribers primarily located in rural and smaller suburban markets across America. Through active participation in the regulatory and legislative process in Washington, D.C., ACA's members work together to advance the interests of their customers and ensure the future competitiveness and viability of their business. For more information, visit <http://www.americancable.org/>



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#### ABOUT US

For more than 20 years, the American Cable Association has proudly represented independent cable operators throughout America.

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