

ALERT

FCC Considers Changes to Retransmission Consent Rules

March 3, 2011

The Federal Communications Commission (FCC or Commission) has adopted a Notice of Proposed Rulemaking (NPRM) to consider changes to its rules governing the negotiation of retransmission consent agreements. The NPRM will also consider elimination of longstanding regulations that protect broadcasters' rights to program exclusivity, namely, the network non-duplication and syndicated exclusivity rules.

According to the Commission's News Release, the key objectives of the proceeding are to facilitate the negotiation of retransmission consent agreements and to minimize service disruptions to consumers.

In the NPRM, the FCC concludes that it currently lacks statutory authority to impose mandatory arbitration or interim carriage in the event of an impasse between broadcasters and pay television operators. The FCC will, however, consider other changes within the scope of its existing authority, including:

- Strengthening the standards for "good faith" negotiations, including expanding the list of practices that constitute bad faith (for example, allowing networks to exercise veto power over the grant of retransmission consent by affiliates, or authorizing an entity to negotiate on behalf of a non-commonly owned station), and providing greater specificity for the "totality of the circumstances" test;
- Enhancing notice to consumers of potential service disruptions, and obligating non-cable multichannel video programming distributors (MVPDs) and broadcasters (as well cable operators) to provide consumer notices;

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- Extending to non-cable MVPDs the rule that prohibits cable operators from taking down a broadcast station's signal during a sweeps period; and
- As noted above, eliminating network nonduplication and syndicated exclusivity rules so that MVPDs may import duplicating signals.