

## **Retrans Redux: Lessons for Doing Battle with Broadcasters**

*By: Scott Friedman and Jake Baldwin*

It's that time again – October 1, 2014 marks the triennial deadline for commercial broadcast television stations to make their must carry or retransmission consent elections. With retransmission consent negotiations looming, cable providers should begin preparing for difficult negotiations, increased fees, and potential blackouts.

To help you prepare, this article covers some lessons learned from prior negotiation cycles, and offers some important tips for negotiating with broadcasters

**Understand the Big Picture.** The convergence of two market forces is leading to tougher retransmission consent negotiations. Understanding these forces is the first step to preparing for your negotiations.

First, broadcasters are consolidating. Since the last retransmission consent cycle, a handful of media companies have gone on a buying spree in markets across the country, acquiring broadcast stations, or the rights to operate stations. In some markets, cable providers must negotiate with just one or two entities to retransmit all “Big 4” stations. We’ve seen it in many markets – when two or more stations are on the table in a single negotiation, negotiations get tougher and rates go up.

This brings us to the second point – rates. Continuing the trend of skyrocketing fees, broadcasters are demanding higher rates with each negotiation cycle. There are a few reasons for this. Broadcasters increasingly view their programming as undervalued compared to cable programming. Networks are also demanding a cut of affiliate revenue. And both networks and local affiliates view retransmission consent as a valuable source of revenue growth.

We don’t expect the trend to stop this cycle. If anything, expect the broadcasters to request even higher year-to-year price increases. The best advice is to budget for higher costs and prepare for rate increases. If your contracts for weaker cable channels expire soon, consider dropping them to save on license fees. Moreover, use rate increase notices as an opportunity to educate consumers (more on that later).

**Study Your Markets.** How you approach retransmission consent negotiations depends on your system’s location. In other words, study your markets. Who owns the stations? Do you have alternative stations from other markets that you can carry if the “price” for the in-market station is too high?

For example, if your system serves multiple DMAs, you may be able to pick among broadcast stations from both DMAs. The FCC has consistently determined that where a “technically integrated” system straddles two DMAs, the stations located in both DMAs are local for must carry purposes. What is technically integrated? In short, the FCC defines a technically integrated system as one having 75% or more of the video channels received from a common headend. If you may be in this situation, carefully scrutinize election letters you get from broadcasters.

**Communicate with Customers Early in the Process.** Independent cable providers have built close customer relationship over years of service in their hometown communities. Use this goodwill to reach out to customers early this Fall and educate them on retransmission consent, price increases, and the possibility of blackouts. Telling customers about the potential loss of signals is especially important for purposes of the FCC's notice rules.

FCC rules require 30 days prior written notice when deleting or repositioning a broadcast station, and when making any change in programming services, "if the change is within the control of the operator."

In 2012, the FCC underscored the importance of complying with the notice requirements in retransmission consent disputes. In denying a broadcaster's complaint against a small cable provider, the FCC cautioned that **"if a station is deleted following the expiration of a retransmission consent agreement and the cable operator has not given the required 30 day notice, then the cable operator is in violation of the FCC's rules."**

The good news for cable providers, though, is that notifying your customers gives you the chance to educate them on retransmission consent, the possibility of losing signals, and the certainty of increasing costs. Educating customers *before* negotiations helps you frame the debate and let customers know that you're on their side, while at the same time satisfying FCC notice requirements.

**Read the Fine Print.** Broadcasters' form retransmission consent contracts contain costly traps for the unwary. Scrutinize the fine print, and negotiate the terms and conditions.

One area of increasing importance is device rights. Explosive growth in tablets and smart phones, over-the-top devices, and other new inventions let consumers watch video in a variety of ways. Despite this trend, many retransmission consent contracts limit cable providers' ability to deliver signals to subscriber devices other than TVs or set-top boxes. Don't let broadcasters get in the way – ask for rights to launch advanced technologies such as TV Everywhere and wireless DVRs to give your customers more value from their subscriptions.

If you're interested in providing broadcast signals as part of a TV Everywhere offering, do some research. Find out if other area cable providers have TV Everywhere rights for the network. If so, your broadcaster may have those rights too.

**Conclusion.** This year's retransmission consent battles will be as hard fought as ever. The best-prepared providers put up the best fights. Put yourself in that camp by starting to prepare now.

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