

Getting



Defining the Terms

RETRANSMISSION CONSENT WAS established by Congress in the 1992 Cable Television Protection and Competition Act. It allows market forces to determine the compensation that cable operators pay broadcasters for the right to carry their signal.

A broadcast owner has two choices regarding carriage on multichannel platforms - whether they are cable, telephone or satellite systems. In addition to opting for retransmission consent, there is the "must carry" alternative. Must carry is a regulatory framework that mandates carriage of the affiliate network to all subscribers within a given market with no opportunity for compensation from multichannel systems.

Election for retransmission consent initiates a negotiated process governed only by good-faith efforts. It does not necessarily guarantee that an agreement will be reached between a broadcaster and a cable operator, or that cash will be the basis of the agreement. Rather, it sets the framework for both parties to negotiate an appropriate level of compensation for carriage of a local broadcast TV station.



to a Retrans 'YES'

**By clearing up
misperceptions and
gathering vital information,
cable operators and
broadcasters stand a
better chance of reaching
agreement during
retransmission consent
negotiations.**

By BRUCE LAZARUS

AT THE STROKE OF MIDNIGHT ON Oct. 2, 2008, more than 1.5 million Time Warner Cable subscribers lost their signal for stations owned by LIN TV. The reason: neither the cable operator nor the broadcaster could agree to a retransmission consent pact.

In the finger pointing that ensued in the press, Time Warner Cable officials called LIN TV “greedy,” and Vincent Sadosky, president and CEO of LIN TV, indicated that the basis of negotiations was to achieve fair market value for his company, which has network affiliate deals with several broadcast networks including Fox, NBC and CBS. Less than a month later, an agreement was reached, and viewers could finally tune in LIN stations.

This type of altercation is hardly new. Within the last year alone, similar scenarios played out with Sinclair Broadcasting and other major broadcast TV groups looking for the same kinds of subscription fees that their cable network competitors garner. Few industry issues are being as bitterly fought. And there’s rarely a voice of reason that’s willing to acknowledge the merits of both sides. Too often, broadcasters and multichannel providers come to the bargaining table without enough information to effectively communicate their positions. Misconceptions about each other’s businesses are common.

Before separating the facts from the fictions, it is useful to understand the stakes that are involved. Because consumers now enjoy a multitude of entertainment choices – and among them hundreds of TV channels – the one-revenue-stream business model for TV outlets is going the way of the dino-

saur. It's not a case of broadcast stations just wanting a "piece of the action." They can't exist without both advertising and subscription revenue. And they are coming under increased pressure to provide broadcast networks with reverse compensation.

In the last year, Les Moonves, president and CEO of CBS, forecast that his company's TV outlets would receive \$250 million in retransmission fees by 2010. Hispanic heavyweight Univision declared its intention to ask for \$1 per subscriber per month. And the research company SNL Kagan predicted that broadcast retransmission fees could reach \$1 billion by 2010.

This all came to the dismay of the cable industry executives who had hoped they could avoid cash payments as part of future retransmission consent negotiations – and limit the "give backs" to such things as shared equity in news channels or reruns of local sports shows on video on demand (VOD) services.

Cable operators have believed, over the years, that the additional advertising revenue directly resulting from carriage on a cable system is sufficient compensation.

Very little that is written on the subject of retransmission consent contains adequate granularity about how to approach the whole negotiating process. It's time for both sides to formulate positions on the basis of facts and in good faith, and erase the tint of opportunism that seems to cloud these interactions from the outset.

Valuing Stations

One of the big points of contention has to do with how program signals are valued. Unlike physical inventory, there are no fixed and variable costs, and therefore no markup to show a reasonable return. Broadcasters and cable operators must be prepared to not only quantify what is to be gained, but also, what can be lost if an agreement is not consummated and the local TV signal is pulled.

Local broadcasters often use rating comparisons between themselves and linear cable networks as a means of establishing their relative importance during negotiations. They must recognize that linear cable networks – such as ESPN, Fox News, Discovery and CNN – invested billions of dollars in rights fees and in their infrastructure. Those costs are far more than what TV stations have expended. So ratings, while important, aren't enough to establish parity, or

superiority over cable network competitors.

It's also important for broadcasters to recognize that small cable operators believe that they lack sufficient clout to defend themselves in retransmission consent negotiations with large broadcast TV groups. The American Cable Association has been extremely vocal, submitting a multitude of filings demonstrating how the current negotiation process will harm consumers.

Be that as it may, cable operators need to recognize that quality network programming and local TV news come at a price. Broadcasters have suffered financially from

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an increasingly fractured advertising sales market and audience erosion. But they still attract large audiences and have been the anchor in any cable system's program lineup. This has contributed to the growth of the cable television industry. For the broadcast TV industry, retransmission consent is the means to attain financial equality.

TV broadcasters must also estimate the short-term and long-term impact to their advertising revenue base when the signal is withdrawn from a cable operator's system. The cable operator must perform a similar analysis in order to understand the consequences of losing a local TV station signal.

Other factors that should be considered include: local broadcast competition (i.e., duplicate signals and significantly viewed stations); the impact of potential subscriber migration to alternative platforms when popular content is no longer available, and how disenfranchised the customer base is right now, and what consumer attitudes would be like if the lineup changed.

It's no secret that the cable industry's new subscriber acquisition numbers have been flat for some time, so a lot of effort is aimed at retention. Public filings may give broadcasters insight into the subscriber trends for specific multichannel operators.

Gather Information

Anyone who has participated in team sports at any level understands that there is a great

deal of practice that takes place before an actual game is played. Those that think they can use game time to get better usually get clobbered. It is imperative that both parties at the bargaining table understand each other's business perspective before the real game of negotiating starts.

Hearsay, while sometimes entertaining, is not an effective educator when it comes time to stake a position. Sources may gossip that a certain sports channel is receiving \$3 per subscriber from a major operator. But that "information" won't win any debates during negotiations.

Too often, both broadcasters and cable operators depend upon non-analytical methodologies to assign value, such as reading the trades. Such an approach is not an efficient way to estimate the fair-market value of a local TV signal in given market.

Instead, consider the idea of seeking out individuals who have a deep knowledge of how the broadcast industry and the cable industry really work. Broadcasters will benefit from relationships with financial service firms that know the economic and subscriber intricacies of how cable really records revenue and subscriber numbers.

For cable operators, engaging the advisory services of those well versed in Federal Communications Commission actions and media regulatory law will be an invaluable resource. Trade associations can be good, albeit partisan, voices for their respective constituencies. Some organizations – such as the Media Financial Management Association (publisher of *The Financial Manager*) and the National Cable & Telecommunications Association – straddle content and distribution sides of the equation.

Broadcasters need to have data that will help them identify where their signal is carried in a given market, and by which companies. While broadcasters generally define their turf by DMAs (designated market areas), a cable operator's areas of coverage are defined by franchise agreements and other business rationale. But understanding what communities are serviced by an operator isn't enough. When local broadcasters ink an affiliation agreement with an operator, it doesn't necessarily mean their signal is being carried in 100% of the cable operator's systems.

Both sides will be better prepared if they are armed with knowledge of previous retransmission consent agreements in their

market. And they should consider the advantages of VOD platforms. On demand offerings can provide a station with new ways to extend its brand, and they give cable operators a chance to differentiate themselves from the competition by making valuable local content more available to their customers.

However, the ability to monetize VOD must be carefully weighed against the guarantee of revenue generated from a cash-based retransmission consent agreement.

Sprechen Sie Cable?

It's one thing to understand the intent of the person with whom you negotiate. But it's also important to understand their language. Here are some examples of different terms used by the respective industries:

Broadcast: Grade A contour, Grade B contour, Significantly Viewed, Non-duplication, Distant Signal, SHEVERA, Audit, Market, HD, Viewer, Share, TVHHs.

Cable: BST, EBU, Commercial Account, MFN, SD, HD, SVOD, DVR, Subscriber, FTA, Gratis, Penetration, Grandfathered Tiers, Predominant Package, Digi-

tal Access, Digital Basic, Channel Lineup, EOM, BOM.

Will you comprehend what your negotiation counterpart is saying if he or she mentions one of these terms?

It's also worth noting that new develop-

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ments on the technology front are having an impact on negotiations between operators and broadcasters. Historically, a cable system's bandwidth has been a finite piece of real estate. But operators are gradually shifting to switched digital video, which together with improvements in compression technology allow for more channels to fit in the same amount of bandwidth. But that doesn't mean an operator has the inclination to let in every signal that comes its way. In fact, many are devoting the extra channel capacity to high-definition and VOD content.

Broadcast television is undergoing a similar real estate boon with the advent of digital multicasts. While multicasting can be viewed as an opportunity to generate additional revenues, competitive factors in the market will determine what course of action is the best for the broadcaster. News and weather channels can provide new revenue sources for a broadcast TV station, but how many news and weather channels does a market need?

When broadcasters and cable operators are well equipped with insights about each other's business, they can enter into negotiations in a more pragmatic manner and eliminate emotional exchanges that can lead to delays and damaged relationships. While it may seem impossible to isolate the value of the local TV signal to a "fee per subscriber," both parties should be able at least estimate what they believe is the appropriate market value for the local broadcast signal.

Bruce Lazarus is CEO of Cable Audit Associates, Inc., a firm that provides subscriber and contract compliance audits to the cable and broadcast TV industry. He can be reached at blazarus@cableaudit.com or (303) 694-0444.