

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON , DC 20554

In the Matter of)	
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)	
Amendment of the Commission's Rules Related to)	MB Docket No. 10-71
Retransmission Consent)	
)	

REPLY COMMENTS OF DIRECTORS GUILD OF AMERICA, INC.

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I. Introduction

The Directors Guild of America, Inc. (“DGA”) submits the following reply in response to the FCC’s Notice of Proposed Rulemaking (“NPRM”), MB Docket No. 10-71, expressing the Guild’s opposition to the proposed amendments to the current retransmission consent rules. We want to be sure this proceeding fully recognizes that in addition to the multitude of business interests who have filed before the FCC, there are tens of thousands of working men and women, DGA members among them, who have a strong stake in these proceedings. Our members work for networks, local television stations, and for numerous outside producers who provide television programming for the networks. Their livelihoods are directly tied to the ability of broadcasters to produce and purchase television programming. If the broadcast networks and local stations cannot recoup their investment in television programming, job opportunities for our members will disappear. We want to ensure that the interests of our members, and the many others who earn their living creating quality television programming for television (whether writers, actors, or craftspeople), are taken into consideration. Their interests are very much at stake and would be directly and adversely harmed by the proposed amendments.

The DGA represents over 14,500 directors and members of the directorial team working in film, television, commercials, documentaries, news and sports, and new media. Thousands of DGA members work in broadcast television, many are employed by the networks and local stations, and many others work for producers who create dramatic television programming on the networks today. The programs produced by our members are the most watched and most critically acclaimed television programs produced throughout the world. The cost to produce these high quality programs continues to grow and unless the networks can recoup their investment, they will cease producing dramatic programs and replace them with other programs

that are cheaper to produce and employ far fewer workers at substantially inferior wages and working conditions. Consequently, a reduction in the quantity or quality of network programming directly affects the availability of jobs for our members, as well as direct and residuals compensation and network payments to their health and pension plans. We believe the proposed amendments to the FCC's retransmission content rules, by adversely affecting the ability of broadcasters to fairly negotiate the true value of the programming on their networks, would impact the creation of that programming and thus very directly (and adversely) affect DGA members who work in network television.

Network programming has a long and storied history, a history filled with both comedies and hour long dramas that have reflected American culture and impacted the American psyche in a myriad of ways. Network television programming is a part of the daily lives of almost every American – and has been for the past 60 years. But “larger than life” quality programming is not created out of thin air – it takes significant time, talent, resources and money. It is also a risky investment, since many television shows never become hits. In order to pay for this kind of quality programming, broadcasters must be able to recoup the financial investment they make in its creation. If they can't recoup their investment, broadcasters will be neither willing, nor able, to pay for this programming to come to the small screen. We believe the proposed amendments to retransmission consent rules insert the government into the valuation of network content, which undermines broadcasters' ability to equitably negotiate marketplace payments for their high-risk investments in network content. If the end result of that government intrusion is a reduction in the ability of broadcasters to pay for quality programming – and thus to employ those who create that programming – then it is not just the broadcasters who are harmed by the currently proposed amendments. The loss of this programming not only adversely impacts our

members, but it will also impact the American consumer who will be deprived of the highest quality programming on television. The DGA asks the FCC to maintain the existing retransmission consent rules.

II. Existing Rules Are Appropriate and Effective

Existing retransmission consent rules recognize the economic value of our members' work by requiring Multichannel Video Programming Distributors ("MVPDs") to obtain approval before exploiting programming produced or licensed by broadcast networks. This is appropriate, because MVPDs do not create, finance, produce, or play any role in the creation or licensing of this broadcast content. Under the current system, broadcasters, production companies, and DGA members are fairly compensated for the investment they make in developing these creative works – which are among the most valuable on television – while MVPDs negotiate the right to retransmit this high-end content to their paying customers.

The FCC recognized the value of our members' creative works with passage of the Cable Television Consumer Protection and Competition Act (the "Act"), which established current retransmission consent rules. Congress intended the Act to protect broadcasters and content creators from the growing market power of cable operators. Prior to the Act, MVPDs transmitted broadcasters' programming without paying for the right to do so.¹ The Act created a level playing field by ensuring that "programming services which originate on a broadcast channel . . . not be treated differently [than other content]."² This goal is even more important today than it was in 1992, because the proliferation of cable and reality programming has made high-quality network programming increasingly rare and valuable.

¹ Senate Report No. 102-92, page 35

² *Id.*

III. Alleged Changed Conditions Do Not Justify Amending Existing Rules

The NPRM was issued to reevaluate existing retransmission consent rules in light of alleged changes to the “video programming marketplace.”³ Proponents of amending the current rules, particularly MVPDs who must obtain approval before exploiting our members’ creative works, wish to use the rulemaking process to marginalize broadcasters’ bargaining power during retransmission negotiations. This would benefit MVPDs by allowing them to retransmit our members’ work product at a reduced cost. As we previously stated, such a change in the market valuation of their work would be devastating to DGA’s members, whose employment depends on broadcasters’ ability to recoup their investments in quality network content through balanced retransmission negotiations.

To the extent changes have occurred in the programming marketplace, they do not cast doubt on the fundamental effectiveness of the current rules promulgated by the Act. A few things have remained constant since the Act was promulgated. First, network television viewing still draws the largest audience and the greatest number of eyeballs, despite the plethora of television and media options today. This is due in large part to the consistently high quality of programming they carry. Second, network programming has great value in the marketplace, and that value is created by the talents and skills of our members and others who make the programming. Third, and perhaps most importantly, given their contribution to the value of television programming, creators still deserve to be fairly compensated for the programs they create. The existing retransmission consent rules take account of all these factors, and in turn make it possible for our members to find jobs – and be compensated for those jobs – in network television.

³ In the Matter of Amendment of the Commission’s Rules Related to Retransmission Consent, Notice of Proposed Rulemaking, FCC 11-31, page 2.

IV. Proposed Changes Must Protect Creators' Rights

Any changes to existing rules should be tempered by this simple and uncontroversial principle: broadcasters, production companies, and content creators deserve to be fairly compensated for the investment they make in quality programming. By contrast, MPVDs should not receive an unfair windfall by being permitted to sell content they do not pay for, finance or create. Existing retransmission consent rules ensure a fairly negotiated outcome for both parties by placing a market-driven value on network content. There are no credible justifications to modify a free-market system that is functioning exactly as intended by Congress and replace it with a government created valuation on programming.

The majority of amendments proposed during the NPRM comment period would unilaterally benefit MVPDs by undermining the broadcasters' position during retransmission negotiations. This sole benefit to the MPVD would be to the detriment of all other parties. A proposed change that compromises broadcasters during negotiations stands to jeopardize the amount and quality of network programming, which, as we have pointed out, would adversely impact DGA members by reducing employment opportunities, direct compensation, residual payments, and pension and health plan benefits.

IV. Conclusion

Existing retransmission consent rules operate exactly as intended: they guarantee retransmission negotiations are conducted on an even playing field, and they ensure that financial and creative benefits accrue to content-creators based on the market value of their programming. We would ask that the FCC give careful consideration to the impact of any rule changes that disadvantage those who create and finance television programs on the thousands of DGA members who work in the television industry. Quite simply, permitting MPVDs to sell content

which they obtain through unbalanced negotiations undermines broadcasters' incentives to invest in new programming, harming both our members and consumers. The DGA therefore requests that the FCC maintain the existing retransmission consent rules.

Respectfully submitted,

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