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Cable and Satellite Television Issues in the 116th Congress

More than 119 million U.S. households watch television. Of those, more than three-quarters receive television signals via cable, telephone lines, or direct broadcast satellite.

Federal laws govern which broadcast signals subscribers to these services can view. The laws also govern the compensation that owners of copyrighted programming carried on certain broadcast signals can receive and the negotiations between broadcasters and cable and satellite operators for the right to retransmit broadcast signals. Some of these provisions of the Communications Act of 1934 and the Copyright Act, most recently revised in 2014 in the Satellite Television Extension and Localism Act Reauthorization Act (STELAR Act; P.L. 113-200), are set to expire at the end of 2019.

As Congress considers whether to renew these provisions or otherwise revise communications and copyright laws, technological, consumer, and business forces are reshaping the television industry.

Background

There are two primary ways for a household to receive broadcast television programs: by using an individual antenna that receives signals over the air from a television station or by subscribing to a multichannel video programming distributor (MVPD), such as a cable or satellite company, which retransmits signals of broadcast stations to subscribers. In addition, a growing number of viewers are watching broadcast television over the internet.

Since the 1970s, Congress and the Federal Communications Commission (FCC) have constructed a regulatory framework for the retransmission of broadcast television signals by MVPDs. This regulatory framework attempts to balance a number of potentially conflicting public policy goals, including the competitive provision of video services, protection of property rights, localism, the provision of television service to customers unable to receive over-the-air broadcasts, and the interests of broadcasters, television networks, MVPDs, content owners, device manufacturers, small businesses, and consumers.

Retransmission Consent and Flow of Payments

Broadcast television stations produce some of the programming they transmit and also contract with television networks, which supply them with programs. The networks produce some of the programming they distribute and therefore own the copyrights to those programs. In the case of other programs, however, third parties such as sports leagues and studios may own the copyrights.

MVPDs may not redistribute a broadcast signal to their customers unless they have obtained the permission of the broadcast station that originated the signal. When granting permission, a commercial station has two options: it may require cable operators, and, to a more limited extent, satellite operators to carry its signal without compensation to subscribers located within the station's market, or it may negotiate retransmission consent in exchange for payment.

Provisions in broadcast stations' network affiliation agreements typically give them the exclusive right to negotiate for the retransmission of their signals, including the network programming that airs on an established schedule. These negotiations often occur at the corporate level, between a company that owns multiple broadcast stations and an MVPD that operates many cable systems or a nationwide satellite service, rather than the local level. If a station's parent company and an MVPD fail to reach an agreement, the broadcasting company may require the MVPD to black out its stations' signals and not retransmit the stations' broadcasts to subscribers.

The broadcast networks have claimed that much of the value of broadcasters' signals derives from the networks' sports, entertainment, and news programming. Broadcast stations' network affiliation agreements may require them to pay the network a portion of their retransmission consent revenues.

DMAs and Geographic Exclusivity

The Nielsen Company, a market research firm, assigns each television station and each U.S. county to one of 210 separate geographic markets, known as Designated Market Areas (DMAs). In the private sector, advertisers and television stations rely on Nielsen's audience measurements to negotiate rates for advertising slots. Broadcast television networks use DMAs in their contracts with stations to define geographic zones within which each station has the exclusive right to broadcast the network's programs.

The DMAs generally define the geographic zones of exclusivity for retransmission of broadcast signals. In general, a cable or satellite operator must retransmit the broadcast signal of a network affiliate to subscribers within the affiliate's DMA, and may not import the signal of a network affiliate based in one DMA into a DMA served by another of that network's affiliates. The policy rationale is that protecting broadcast stations' rights to geographic exclusivity enables them to invest in local programming that is responsive to viewers living within the stations' communities.

Television Trends

Since Congress enacted STELAR in 2014, television viewing habits have changed in ways that could make retransmission consent negotiations more contentious. MVPDs have lost about 9.1 million subscribers since 2014 (**Table 1**), and the share of television households subscribing to MVPDs has fallen from 88% to 77%. As of June 2018, the total of number of households subscribing to MVPDs was 92.5 million.

Table 1. Media Usage Trends

Television Household Numbers in Millions

	Q2 2014	Q2 2018
Traditional MVPD	101.6	92.5
Broadcast Only	12.0	15.4
Broadband Only (excluding vMVPDs)	2.2	7.5
vMVPDs	0	4.1
Total TV Households	115.8	119.6

Source: CRS estimates based on data from Nielsen.

Note: A "TV household" is a home with at least one operable TV/monitor that can deliver video via antenna, a cable set top box, a satellite receiver, and/or with an internet connection.

This decline in MVPD subscriptions reflects several converging factors. One is higher prices. According to the Bureau of Labor Statistics, the price of cable and satellite television service for urban consumers rose 12% between June 2014 and June 2018, more than twice the increase in consumer prices in general during the same period.

MVPDs claim the higher prices reflect higher costs for the programming they purchase from cable networks and higher fees paid to television broadcasters for the right to retransmit their programs. Many consumers also pay MVPDs to lease equipment in order to access the programming.

Technological developments have also contributed to the decline in MVPD subscriptions by enabling households to watch television in other ways. As of June 2018, approximately 9.7% of television households (or 11.6 million households) receive video exclusively through an internet connection. Of those, more than one-third (3.4% of all TV households, or 4.1 million households) use "virtual MVPD" (vMVPD) services such as Sling TV, DIRECTV Now, and Hulu with Live TV. These services aggregate programming from selected broadcast and cable networks and, in some cases, broadcast stations into packages that, similar to traditional MVPDs, allow subscribers to view programming on the same established schedule as programming transmitted via traditional MVPDs and over the air.

In contrast to traditional MVPDs, however, vMVPDs offer slimmed-down bundles of programming and refuse to pay for carriage of networks they claim are less popular. While vMVPDs still serve a relatively small percentage of television households, their growing popularity may increase pressure on MVPDs to restrain price increases, and thereby affect retransmission consent negotiations.

Issues for Consideration

In addition to facing competition for viewers from online video services, broadcast stations compete for advertising dollars with social media platforms. Consequently, broadcast stations have sought alternative sources such as retransmission consent. Research firm SNL Kagan estimates that the portion of broadcast industry revenue provided by advertising declined from 93% in 2008 ($21.0 billion) to 62% in 2018 ($20.5 billion).

Companies' quest for greater bargaining power in retransmission consent negotiations has driven consolidation in the broadcast television and MVPD industries. For example, after acquiring the Tennis Channel in 2016, Sinclair Broadcasting, which owns or operates more than 190 television stations, sought carriage of that cable network. The increasing presence of vMVPDs, however, has challenged broadcasters' ability to limit viewing of broadcast network programming within their DMAs. In September 2018, after Sinclair failed to reach an agreement with Hulu with Live TV to retransmit the signals of stations affiliated with the CBS network in 24 DMAs, CBS bypassed Sinclair and reached an agreement with Hulu directly to provide a national feed of its shows.

Two expiring provisions of STELAR relate generally to the retransmission consent process. Section 325(b)(3)(C)(ii) prohibits television broadcast stations from engaging in exclusive contracts with MVPDs for carriage *or* failing to negotiate in good faith. Section 325(b)(3)(C)(iii) also prohibits an MVPD from failing to negotiate in good faith. Under these provisions, the FCC has established criteria for determining whether the parties are acting in good faith. The FCC can investigate allegations of good-faith violations and take enforcement action when a party fails to fulfill its statutory obligations. Absent these provisions, the FCC's involvement in monitoring retransmission consent disputes could be more limited.

Groups representing MVPDs contend that Congress should completely reform retransmission consent laws. Broadcast stations support the current laws, claiming that the negotiation process is market-driven.

Additional expiring provisions of STELAR allow satellite operators, in certain circumstances, to bypass the process of negotiating retransmission consent with broadcast station owners and instead pay royalties set by the Copyright Royalty Board (CRB), a tribunal within the Library of Congress. The CRB sets royalty rates when households cannot receive the signals of one or more local network-affiliated stations and a satellite operator then imports the signals of broadcast stations from a different DMA. After the CRB determines how to allocate the royalties among the copyright owners, the Copyright Office distributes them. Broadcasters favor allowing these provisions to expire, while satellite operators would like Congress to make the provisions permanent. Expiration would require satellite operators to negotiate directly with station owners for the right to retransmit distant signals.

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