



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF THE
CHAIRWOMAN

March 24, 2023

The Honorable Charles Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

Thank you for writing on behalf of Iowa television stations associated with the Television Operators Caucus concerning a Federal Communication Commission rulemaking proceeding to examine expanding the definition of multichannel video programming distributors (MVPDs).

I agree with you that the that the video marketplace has changed significantly with the introduction of streaming services. There are so many new screens and new ways to watch programming. This is exciting for viewers who can consume content from near and far at virtually anytime and anyplace. At the same time, it is important to recognize that television broadcasting, which is uniquely local, should have the opportunity to thrive in this new landscape.

As you surely know, the primary laws governing the distribution and carriage of broadcast television stations on MVPDs include the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992. Both of these laws amend the Communications Act. Therefore, this remains the legal framework under which the Commission must assess all issues associated with MVPDs.

When the Commission last attempted to address this matter, in a notice of proposed rulemaking in 2014, the record revealed significant concerns with the agency asserting jurisdiction over MVPDs in a way that the statutory framework was not designed to support in 1984 or 1992.

To understand why, consider that Section 602(13) of the Communications Act defines an MVPD as an entity that “makes available for purchase, by subscribers or customers, multiple channels of video programming.” At the same time, Section 602(4) of the Communications Act defines a channel as “a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel.” It is imperative that the Commission give these words full meaning. As reflected in the record, online video programming distributors do not neatly fit in these statutory definitions because they lack a physical connection to subscribers and do not use any electromagnetic frequencies when delivering programming to their viewers. As you know, the Commission lacks the power to change these unambiguous provisions on its own but can do so if Congress changes the underlying law.

In addition, the record demonstrated that even if the Commission were to proceed, it would require changes to underlying copyright policies. It is not clear if the Copyright Office would, with an altered Commission interpretation of the definition of MVPD, allow the current statutory copyright license to be used by online video programming distributors. As you know, the existing statutory copyright license works hand-in-hand with the retransmission consent policies in the Communications Act. What this means in practice is that the carriage of broadcast television station signals on traditional MVPDs can take place without negotiations with every single copyright holder associated with the station programming. Without a statutory copyright license applying to new online video programming distributors, those distributors would be obligated to black out programming for which they are not able to negotiate copyright licenses.

The Commission has been closely following all of these matters in the marketplace and is meeting with stakeholders to learn more. As I noted above, it is important that local broadcast stations have the ability to reach viewers where they are in this new media environment. To this end, we understand that carriage via online video programming distributors is now the subject of private negotiations between local broadcast stations and their affiliated networks. We are monitoring these efforts, to better understand the consequences for carriage and consumers.

Some stakeholders, including the Television Operators Caucus, have recently approached the Commission to request that we update the record in the 2014 proceeding. In light of the statutory constraints outlined above, the Media Bureau is carefully reviewing the record as it assesses appropriate next steps. I have asked the Media Bureau to place your correspondence in the record of the proceeding for full consideration.

Finally, in light of the decades-old legal framework governing these matters, please know I would be happy to work with you to update underlying law to better reflect the current marketplace.

I hope this information is helpful. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Rosenworcel", with a long horizontal flourish extending to the right.

Jessica Rosenworcel