

**Before the
Library of Congress
Copyright Office
Washington, D.C.**

Testimony of Ross J. Lieberman

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On behalf of

**American Cable Association
National Telecommunications Cooperative Association
Organization for the Promotion and Advancement of Small Telecommunications
Companies
Western Telecommunications Alliance**

**(“Rural MVPD Group”)
U.S. Copyright Office
Section 302 Report Hearing**

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I. Introduction

Thank you. I am here on behalf of the Rural MVPD Group, which includes ACA, NTCA, OPASTCO, and WTA. Together, we represent nearly all small and medium-sized video providers that rely on the compulsory license to bring affordable service to smaller markets and rural areas.

II. The Copyright Office should include in its report the Rural MVPD Group’s view that the best choice is preservation of the compulsory license and not adoption of some marketplace alternative.

At the outset, let me state the position of the Rural MVPD Group without equivocation: The best policy is to maintain the status quo by retaining the compulsory license.

The compulsory license has served as Congress intended, benefitting consumers, broadcasters, distributors, and the vast majority of rights holders through efficient clearance of copyright on broadcast signals. It has been particularly beneficial to smaller MVPDs that were not disproportionately burdened by the demands of clearing copyright; to smaller must-carry broadcasters, like public television stations, that didn’t need to obtain the rights for secondary retransmissions; and to rural consumers that didn’t lose access to regional broadcast signals that they value.

The Copyright Office’s NOI proposed alternatives that risk major increases in administrative burdens, costs, and service disruptions for smaller MVPDs, broadcasters, and consumers. For some smaller MVPDs and must-carry broadcasters, the harms would threaten the very viability

of their business and the important services they provide. Maintaining the time-tested status quo would avoid these consequences.

Powerful rights holders argue that the license should be eliminated because they are underpaid. Ironically, these rights holders might be overcompensated for their works today. Outdated retransmission consent rules that distort the market allow broadcasters to extract soaring retransmission consent fees, which increasingly flow to the broadcast networks and sports leagues – the same rights holders claiming undercompensation.

To provide Congress with a balanced analysis, the Copyright Office should incorporate in its report our analysis and conclusions that the compulsory license should be retained.

III. Any changes to the compulsory license must also include changes to other broadcast carriage rules, like retransmission consent.

If the Copyright Office reaches a different conclusion, we highlight that changes to the compulsory license cannot be done in isolation. As the Copyright Office and the Federal Communications Commission have long recognized, the compulsory license is intertwined with key broadcast regulations, such as retransmission consent, must carry, network non-duplication, and syndicated exclusivity. Elimination of the compulsory license must coincide with reform of these broadcast rules and laws. We ask the Copyright Office to make this point in its Report.

IV. Any changes to the compulsory license must incorporate policies essential to the interests of rural consumers.

Under any new copyright regime, we recommend retention of two policies that are essential to smaller and rural MVPDs:

- Clear access to distribute “distant” signals; and
- Preservation of special considerations for smaller MVPD systems.

a. Any changes to the compulsory license must ensure continued access to “distant” signals by Rural MVPDs.

For over 35 years, Section 111 has cleared copyright for cable carriage of “distant,” or, as I prefer to say, “regional” broadcast stations. I say “regional” stations because local/distant status is an arbitrary distinction for consumers in rural areas, especially those residing on the outskirts of DMAs, where “local” stations may not even be available over the air.

In adopting Section 111, Congress recognized that many cable systems in rural areas offered “distant” signals because “local” signals were unavailable or limited. Rural consumers benefitted and continue to do so.

In some cases, the “local” stations are actually located out-of-state, requiring importation of “distant” in-state stations to serve customers with in-state news, sports, and political coverage. Elsewhere, these “distant” signals may provide weather warnings prior to, rather than after, the event.

b. Any changes to the compulsory license must preserve special considerations for smaller MVPD systems.

Congress granted smaller cable systems lower license fees and streamlined reporting. These special policies support MVPDs in serving rural markets, where the costs of constructing and operating networks are typically much higher than in more densely populated areas. Congress has maintained the small system provisions throughout every amendment to the compulsory licenses, validating their importance.

Elimination of the compulsory license would likely expose smaller MVPDs to rampant price discrimination by copyright holders. Members of the Rural MVPD group have thoroughly documented to Congress and the FCC that many broadcasters and programmers routinely charge smaller operators substantially higher fees. This price discrimination has no basis in cost; rather, the basis is unconstrained market power.

The current compulsory license protects smaller MVPDs from price discrimination by establishing uniform license fees based on gross revenues and other variables. With no compulsory license, powerful rights holders could “stick it to the small guy” through higher license fees – conduct that would raise costs for rural consumers and multiply the harms of eliminating the compulsory license.

Accordingly, a recommendation to phase out the compulsory license should include ways to protect rural MVPDs and consumers: Smaller MVPDs should not pay more than larger operators.

V. Conclusion

In conclusion, the compulsory license remains a time-tested method of clearing copyrights on retransmitted broadcast signals, benefiting all stakeholders. The Copyright Office should recommend retention of the license.

About the Rural Pay-TV Group:

The American Cable Association, based in Pittsburgh, is a trade organization representing nearly 900 smaller and medium-sized, independent cable companies who provide broadband services for more than 7.6 million cable subscribers primarily located in rural and smaller suburban markets across America. Visit us at: www.americancable.org

The National Telecommunications Cooperative Association represents over 570 small and rural telephone cooperatives and commercial companies providing service to approximately 40 percent of the rural area of the United States. Visit us at: www.ntca.org

The Organization for the Promotion and Advancement of Small Telecommunications Companies is a leading voice for rural telecommunications, representing approximately 460 small incumbent local exchange carriers serving rural areas of the United States. Its members include both commercial companies and cooperatives, which collectively serve more than 3 million customers. Visit us at www.opastco.org

Western Telecommunications Alliance represents more than 250 small, rural telecommunications providers in the 24 states west of the Mississippi River. Visit us at: www.w-t-a.org