



Virginia Association of Broadcasters Legal Review



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** Legislative Alert **

Broadcasters Claiming Victory as Congress Passes “STELAR” Legislation

The broadcast industry is ending 2019 on a high note after securing what is generally being considered a big win on the STELAR legislation. No doubt by now you have heard many, many times the word “STELAR”—the acronym for the “Satellite Television Extension and Localism Act Reauthorization.”

It’s the law that has, for decades, granted satellite television providers a license to import distant network programming, instead of local television signals, into local TV markets. (Only DirecTV still avails itself of the distant-signal license, and it does so in 12 largely rural television markets.) The STELAR law also includes the portion of the retransmission consent rules that requires broadcasters and MVPDs to negotiate in “good faith.”

Various iterations of the STELAR legislation have been around since the late 1980s, thanks to Congress’ pattern of reauthorizing the law every time it is set to expire (which, generally, has happened every five years). That regular, “rubber-stamp” renewal of the legislation has proven problematic for broadcasters, not only because the distant-signal portion of the law has long outlived its usefulness, but also because MVPD interests opposed to broadcasters have frequently used the debate surrounding reauthorization of the law as an opportunity to try and pass ancillary legislative items that are harmful to the television and radio industries.

The Favorable Outcome of the Year-Long STELAR Debate. With the current version of STELAR set to expire on December 31st, 2019, obtaining a favorable outcome regarding the law has been broadcasters’ top federal legislative priority all year. And, thanks to the tireless advocacy efforts of broadcasters across the country, we are pleased to report that such a favorable outcome has been achieved.

Provisions related to the expiring STELAR legislation are included in the omnibus spending bill—the Further Consolidated Appropriations Act of 2020—passed by Congress on Thursday, December 19th. President Trump is expected to sign the bill into law. The provisions

of the bill relevant to broadcasters, which were agreed upon after lengthy negotiations and compromises among the Appropriations, Commerce, and Judiciary Committees in the House and Senate, include the following:

- DirecTV must deliver local television signals to the 12 “unserved” markets where it is still importing distant signals no later than May 31, 2020. With the narrow exceptions discussed in the next bullet point, the distant-signal license will expire.
- Once DirecTV complies with the aforementioned “local-into-local” requirement for those 12 markets, it will be permitted to continue to import distant signals only to a very narrow segment of the population—to RVs, truckers, tailgaters, and “short markets” (i.e., the handful of television markets that do not have a full slate of local ABC, CBS, NBC, and Fox-affiliated stations).
- The requirement that broadcasters and pay-TV providers negotiate retransmission consent in “good faith” will be made permanent.
- Pay-TV companies will be required to adhere to certain “truth-in-billing” fee disclosures.
- Certain MVPDs will be allowed to designate cable buying groups to negotiate retransmission consent on their behalf with larger broadcasters without violating the “good faith” requirement. Specifically, this language in the bill permits an MVPD to designate a buying group to negotiate in good faith: (1) with a broadcaster whose national reach is greater than 20 percent; (2) where the cable company has less than 500,000 total subscribers; and (3) the buying group’s reach does not exceed 25 percent in any local market. We’ll provide more information on this aspect of the bill in a future memorandum.

Broadcasters are considering the outcome a significant victory. With the crux of the distant-signal license for satellite providers going away, most viewers in those 12 “underserved” markets should get their local television signals by the end of May 2020 at the latest. Perhaps even more important, the sunset of the distant-signal license (outside of the narrow exceptions discussed above) means that broadcasters should not have to fight the same battle every five years!

Here’s what NAB President Gordon Smith had to say about where the STELAR debate ended up: “NAB strongly supports key pro-consumer provisions in the appropriations bill . . . that address the expiring STELAR bill. Under this legislation, AT&T-DirecTV will be encouraged to finally serve all satellite TV subscribers with their local TV stations. The bill also ends the five-year renewal cycle of satellite TV legislation that has incentivized pay TV companies to deny carriage of broadcast TV stations during retransmission consent negotiations.”

Background on STELAR. While STELAR has gotten a lot of discussion in industry trade publications over the past year, we recognize that it may not have been top of mind for you and your stations. As such, we think some background may be useful in helping provide context for the recent legislative developments.

As mentioned, the issues addressed in STELAR date back decades. In 1988, Congress first enacted legislation to give nascent satellite providers a substantially discounted copyright license,

allowing them to import the signals of out-of-market—or “distant”—television stations into local markets to serve viewers who were otherwise unable to receive their local television stations via cable or satellite. That allowed satellite TV providers to import into local markets distant broadcast TV network programming from an ABC, CBS, NBC, or FOX affiliate from New York or Los Angeles, rather than retransmitting the local TV stations serving that community. The idea, originally, was to allow these new satellite providers to better compete with cable companies, especially as the satellite providers faced technological limitations.

Obviously, technology has changed in the decades since, as has the competitive landscape. DISH Network has long carried local television stations in all markets. AT&T/DirecTV has been the holdout—refusing to carry local signals in the underserved 12 markets, in reliance on the STELAR license. Doing so has allowed DirecTV to profit (because of the discounted distant-signal license) and also, as discussed, to attack the retransmission consent ecosystem on Capitol Hill every time the STELAR legislation comes up for renewal.

The legislative victory broadcasters can celebrate on STELAR, of course, does not mean that the industry’s fight to preserve retransmission consent is over. It is not.

But, at least, the battles won’t be so nicely teed up for MVPD interests to wage on what had become a rather predictable “STELAR reauthorization” schedule.

We will be watching as the provisions discussed above take effect—and we’ll provide relevant updates as that happens. In the meantime, please do not hesitate to reach out to us with any questions regarding the matters discussed in this Legislative Alert.

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