

# Retransmission Consent - A Primer for 2023

By Bruce Beard

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Benjamin Franklin wrote “In this world nothing can be said to be certain, except death and taxes”. If alive today, he might have added “rising retransmission consent fees”. This year is a “cycle year,” meaning many retransmission agreements will be up for renewal. Operators will be

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forced to respond to unchecked retransmission fee increases and detailed agreements. As you enter into negotiations, you need to know and remember that there have been recent changes and interpretations of the rules.

First, you will not be receiving multiple certified mailings. Traditionally, the broadcaster had to send its retransmission election notice, noting whether it was electing must carry or to negotiate through retransmission carriage, by certified mail postmarked by October 1. If the broadcaster failed to do so, it defaulted to must

carry - and no carriage fee. The rule was changed a few years ago and notification is no longer required unless the broadcaster changes its election decision. In addition, the contact can be made electronically. Thus, the days of hoping that a broadcaster misses a deadline resulting in must carry are over. Remember, a cable operator may not carry a channel unless it has the written consent of the broadcaster. Thus, if the expiration date on the current retransmission consent agreement is drawing near and you have not heard from the broadcaster, you need to contact the station owner using the contact information in its FCC Online Public File.

Second, the FCC has removed confusion over the notice requirements if a station is being dropped or is going dark. Normally, if a channel is being dropped the operator must give at least 30 days' prior written notice to its customers. The FCC clarified that when service changes occur due to retransmission consent or program carriage negotiations that fail in the last 30 days of a contract, notice to subscribers is required “as soon as possible” rather than 30 days in advance. Operators have flexibility as notice may be given by “any reasonable written means at its sole discretion.” The FCC concluded that placing a channel slate on the vacant channel is a reasonable means followed by some other



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means of written notice. The FCC also backed off previous implications that a newspaper notice would be sufficient notice.

Third, a reshuffling among some broadcaster ownership groups regarding what channels are being carried by what stations may create situations where a Big 4 (ABC, CBS, NBC, Fox) primary channel has been moved to another station and thus the value of the station has dropped significantly. While you must negotiate in good faith, the FCC has stated that good faith negotiation does not require that monetary consideration be given and that a party may refuse to offer monetary compensation for carriage. Thus, \$0.00 does not violate the good faith negotiation requirement.

Finally, every cycle always includes subtle changes to the broadcaster forms - as always, read the fine print, and request an explanation of anything you don't understand. ■