



For more information, please contact
Courtney Huber, Account Manager at 240.662.2853



BCAP NewsClips

July 11, 2014

Washington Post

[Netflix has hits, Emmys and subscribers. But can it survive its fight with cable?](#)

[Bloomberg Disney, CBS Said to Be Queried by U.S. in Comcast Merger](#)

[Reuters Microsoft says cybercrime bust frees 4.7 million infected PCs](#)

[Philadelphia Inquirer It's a barnyard brawl between Comcast and RFD-TV](#)

Cable and satellite customers feeling weighed down by the contents and costs of their bundled packages have an unlikely advocate on their side: a cable industry trade group.

Green Tree-based American Cable Association, a 20-year-old organization representing more than 1,000 small- and medium-sized independent cable companies, including Butler-based Armstrong Cable, is on a mission to inform consumers that many of the rate hikes and shifts in service they resent aren't necessarily going into smaller providers' pockets.

In fact, if you ask organization president Matthew Polka, a combination of laws surrounding retransmission fees for programming and mandatory package deals set by programmers for popular channels are cutting into smaller cable companies' bottom lines and forcing them, to their detriment, to operate like their larger competitors. "We've been trying to identify these issues for customers as well as lawmakers and regulators to help them understand the genesis of fees that they end up paying for," Mr. Polka said. During a time when consumers are abandoning pricey cable packages in favor of streaming services such as Netflix, small cable companies are losing profits due to both the customers they lost and those they serve.

For instance, Mr. Polka said, broadcast stations have federal authorization to grant or deny permission to cable operators seeking to send their signal to customers and can charge fees for access to their signal. He said those retransmission fees range from \$6 to \$8 per customer per month, with smaller companies sometimes paying up to 20 times more than larger ones. Retransmission consent fees are renegotiated every three years. However, small operators shouldn't expect any relief in the near future, said David Shipley, business manager for Colorado Springs-based cable company CableCo, which does business as TVision. "As a small cable operator, programming is already our largest expense by far and we simply cannot absorb any more increases in our carriage fees," reads his letter posted to the organization's website.

The American Cable Association has petitioned the Federal Communications Commission on behalf of both small and large operators to allow unbundling. Under current law, television programmers or media corporations can force cable or satellite operators to purchase several channels in order to carry a single popular channel, such

Reuters
Verizon says
added over
1.4 million
postpaid
customers in
second
quarter

pennlive.com
Legislators
aren't
rushing back
to Harrisburg
despite
Corbett's
request

Pittsburgh
Post-Gazette
Governor
Corbett, own
party display
years of
mutual
frustration

pennlive.com
Did Corbett
flub his
budget
strategy?
Midstate
analysts
debate

as ESPN. Steven Inzinna, president of Jackson, Miss.-based Trust Communications, said the practice is forcing his company into purchasing a costly tier with channels that customers neither want nor can afford. "Most of our Communication's customers in rural communities are satisfied receiving only 65 channels as basic, especially those in low income areas — not everyone wants to pay for 125 channels," he wrote in a letter posted on the American Cable Association website.

In light of a pending merger between cable monolith Comcast and Time Warner Cable, Mr. Polka said increased consolidation is limiting consumer options. Without the aid of lawmakers and the outcry of citizens, he fears television access in the future could be limited to cash-heavy companies supplying only consumers who can keep up with constant increases. "We stand as independent cable operators to be the canary in the coal mine of the industry," said Mr. Polka. — *Pittsburgh Post-Gazette*

Aereo Inc.'s defiant stance in the wake of an adverse ruling by the Supreme Court last month is setting off debate over a controversial area of the copyright law, with broad implications for the budding online video sector.

The Supreme Court sided with TV broadcasters, which argued that Aereo's streaming-video service infringed on their copyrighted programming. The Court said Aereo was "substantially similar" to a cable system and therefore Aereo needs broadcasters' permission to air their content. Aereo has suspended its service since the ruling. But rather than slink away defeated, the company is hoping to turn the court's decision to its advantage. If it were classified as a cable company, Aereo argues, it should be able to qualify for a "compulsory license"—meaning it could pay limited royalties for the rights to broadcast content. Aereo made that case earlier this week to a lower court judge.

If Aereo is successful and does manage to qualify for a compulsory copyright license, it would have a profound impact on the way television is distributed online, potentially paving the way for other so-called over-the-top Internet television services from companies like Sony Corp., Dish Network Corp. and Google Inc. To be sure, Aereo's business model would be altered by having to pay copyright royalties, however small. With that added expense, the company likely would have a difficult time keeping its service at its current cost of \$8 a month. Still, just surviving after the Supreme Court's decision would be a major coup and would give hope to Web entrepreneurs looking to get their own online video ventures off the ground.

Many lawyers say it is a long shot. John Hane, a lawyer at the Pillsbury law firm who has done work for broadcasters in the past, said the U.S. Copyright Office has repeatedly denied online television distributors' requests to get compulsory copyright licenses. "It's a long way from a slam dunk," Mr. Hane said. "And even if they succeed, they are subject to all the cable rules." That means they would still have to shell out big dollars to retransmit broadcasts, he said.

Phil Weiser, dean of the University of Colorado Law School, said it would be "a relatively gutsy argument" for online television companies to argue that just because the Supreme Court ruled that Aereo was "similar" to a cable system, that they are eligible for a compulsory copyright license. Cable systems are allowed to get statutory, or compulsory, licenses for the broadcast channels they rebroadcast, as a way of avoiding the administrative headache of having to clear the copyrights to each piece of content individually. Compulsory license fees are generally considered nominal and are paid to the Copyright Office.

Broadcasters, writing in the same joint letter to the court as Aereo's lawyers, marveled at Aereo's legal about-face, noting that Aereo never suggested it was a cable system during all the legal wrangling that led up to the Supreme Court case. "Whatever Aereo may say about its rationale for raising it now, it is astonishing for Aereo to contend the Supreme Court's decision automatically transformed Aereo into a 'cable system,'" under copyright

law given its prior statements, the broadcasters' lawyers wrote.

A big potential roadblock for Aereo: Some media lawyers say that one of the criteria for qualifying for a compulsory license is abiding by the Federal Communications Commission's rules governing cable companies. These rules include having to get broadcasters' permission to rebroadcast their signal, which is usually given by negotiating expensive retransmission fees. But Aereo believes the Supreme Court ruling created an opening in that policy by overturning a precedent from an earlier case.

In the past, online television companies have argued that they should get the good parts of being a cable system without the bad parts: That is, they should qualify for a compulsory license under the 1976 Copyright Act, without having to pay retransmission consent fees under the 1992 Cable Act. Those two laws define cable systems somewhat differently, and the FCC—which oversees the rules laid out in the Cable Act—is still deciding whether to recognize online TV distributors as "multichannel video programming distributor," or MVPD, the government's regulatory category for cable and satellite companies. That is essentially what online video startups FilmOn.com Inc. and Ivi Inc. argued in their defenses after both were sued by broadcasters in 2010 for streaming broadcast content without permission. Ivi lost and shut down, while FilmOn, which serves an array of on-demand and live content, decided to settle and develop new technology.

After the Supreme Court's ruling on Aereo, FilmOn, which has since updated its technology, argued that the court's repeated comparisons of Aereo to a cable system opened the door for online video companies to get compulsory licenses. "It's pretty clear that the Justices defined us as cable companies more than anything else," said Alki David, the CEO of FilmOn. FilmOn has filed paperwork with the Copyright Office to try to pay for a compulsory copyright license for broadcast content. "I have personally always been completely against the notion of not paying for content," Mr. David said. Ryan Baker, FilmOn's lawyer, said that FilmOn would also be open to sitting down with broadcasters and negotiating retransmission fees, should courts and regulators find it to indeed be a cable system.

Aereo plans to take a tack similar to the one that Ivi took with regard to its plea for a compulsory license without having to pay retransmission consent fees, according to a person familiar with the company's thinking. Richard Greenfield, an analyst at BTIG, said this argument is ideal for Aereo and FilmOn, helping them achieve "financial nirvana" by getting valuable broadcast TV content without huge costs. He said he believes the FCC will eventually have to classify online video providers as MVPDs, as companies like Dish, Verizon Communications, Sony and others come out with Web-TV services. "It is hard to imagine the FCC not revising its definitions," Mr. Greenfield said. — *Wall Street Journal*; and in the *Boston Globe*, [Aereo's rebirth as a cable service is far from a sure thing](#)



127 State Street, Harrisburg, PA 17101
717.214.2000 • bcaps.com

**First in Broadband.
The Future of Broadband.®**