Recognizing the value of broadcaster programming, federal law allows broadcasters to negotiate for the retransmission of their signals by cable and other multichannel video providers (MVPDs). The Federal Communications Commission (FCC) reviewed the current state of retransmission consent and has reported, “Our review of the record does not lead us to recommend any changes to the retransmission consent regime at this time.” In spite of the FCC’s rejection of the need to alter the current structure, some in the cable industry have distorted the issue, arguing that cable monopolies are at a disadvantage when negotiating with broadcasters.

Retransmission consent negotiations between local television broadcasters and cable and satellite companies are private, market-based discussions. When enacting the 1992 Cable Act, Congress stressed that it did not intend to dictate the outcome of negotiations between broadcasters and MVPDs.

Retransmission negotiations are fair and market driven when exercised. The market system has evolved organically since Congress formulated retransmission consent and must-carry in the 1992 Cable Act, when Congress wisely recognized that cable operators derive great value from broadcasters’ signals. Thus, retransmission consent negotiations are an important mechanism by which local television stations receive the acknowledged value that this programming brings to MVPDs. Before the retransmission consent system was created, cable would simply take broadcasters’ product – our signals and programming – and use it to attract subscribers, without the station’s consent.

The retransmission consent rules do not guarantee any compensation; rather, the rules only provide an opportunity for the broadcaster to negotiate for compensation for the use of its signal. Additionally, accepting extra or bundled programming is a decision made by the cable operator, not the broadcaster. Broadcasters routinely give cable companies the choice to either pay for the right to carry a broadcaster’s signal or consent to carrying additional programming. Cable’s resistance to monetary compensation for local broadcast programming has resulted in bundling as an alternative.

Retransmission consent has benefited viewers in many situations by increasing their access to programming such as local news. Turning back the clock to an era when cable monopolies took stations’ signals, without permission or compensation, will do more to restrict programming choice than enhance it. In short, the system is working as Congress intended.

Some in Congress have considered the introduction of legislation to change the current retransmission consent system. In 2006, when the House Energy and Commerce Committee marked up the video franchising bill, a potential amendment to undermine the current retransmission consent process was ultimately not introduced.

Will you oppose the attempt by cable monopolies to create an unfair advantage for cable in private, market-based negotiations?
Satellite radio has been deceptive about its local content plans. When the Federal Communications Commission (FCC) authorized a satellite radio service, it authorized a national-only service. The satellite radio industry has repeatedly tried to circumvent that authorization.

While publicly claiming it had no intention of offering localized content, XM Satellite Radio pursued and obtained a patent for technology that would allow it to insert localized programming into its ground-based repeater network. The FCC intended these repeaters to be used only to fill in interference gaps for national satellite programming. For 19 months, XM Satellite Radio stonewalled, refusing to clarify its true intentions.

In December 2003, the company finally relented and signed an agreement precluding the use of repeaters for local programming. Just a few weeks later, XM Satellite Radio announced that it would indeed offer local programming by earmarking some of its national channels for localized traffic and weather information. This announcement clearly violated the spirit of the agreement.

In February 2004, Sirius Satellite Radio announced that it would also designate some of its national channels for local programming, meaning both companies would no longer be a national-only satellite radio service as the FCC intended.

Today, XM Satellite Radio offers local traffic and weather on 21 channels, while Sirius Satellite Radio offers 11 channels of locally differentiated content.

Satellite’s actions: Sirius CEO Mel Karmazin has discussed pursuing local advertising dollars. Mr. Karmazin has told Wall Street analysts that Sirius might run various local feeds of Howard Stern’s show in such cities as Los Angeles and New York, whereby local weather and contests might be featured in order to lure local advertisers.

Additionally, there is persistent chatter among Wall Street analysts and officials affiliated with XM and Sirius about a possible merger of the two companies. This, in spite of the fact that Section 170 of the FCC’s Digital Audio Radio Service (DARS) rules states, “Even after DARS licenses are granted, one licensee will not be permitted to acquire control of the other remaining satellite DARS licensee. This prohibition on transfer of control will help assure continuing competition in the provision of satellite DARS service.”

Clearly, satellite radio has been less than forthcoming with regulators, legislators and the public.

H.R. 983 — Holding satellite radio to its word. Rep. Gene Green (TX-29) and Rep. Chip Pickering (MS-3) have introduced the “Local Emergency Radio Service Preservation Act” to remedy this situation. H.R. 983 would codify the original terrestrial repeaters agreement, ensuring that satellite radio does not use its terrestrial translators to insert local content. It would also clarify that satellite radio companies could not use future applications – ground or satellite based – to insert locally differentiated programming. Finally, the bill would instruct the FCC to conduct a rulemaking on whether satellite radio licensees ought to be permitted to provide locally-based content on their national distribution channels.

If you have not already cosponsored H.R. 983, will you contact Andrew Wallace in the office of Rep. Gene Green at 225-1688 or Chad Adams in the office of Rep. Chip Pickering at 225-5031 and add your name to the list of cosponsors?
Preparing Consumers for the Digital Television Transition

As you may be aware, the digital television (DTV) transition in this country will be completed by February 17, 2009, as set by Congress. America’s broadcasting industry is in the midst of exciting and dramatic changes as it transitions from analog to digital technology. Since the late 1990s, television broadcasters have been building digital facilities and airing digital channels alongside regular analog broadcasts in preparation for the transition from analog to DTV.

The transition to digital will free up the airwaves for first responders in cases of emergencies, and will also significantly improve the services television stations can offer consumers. For example, digital technology makes it possible for stations to broadcast multiple programming streams simultaneously and offer superb clarity of picture and sound through high definition television (HDTV).

Most Americans are not aware of the DTV transition. More than 34 million households receive over-the-air signals in their homes and will be affected by the end of analog TV broadcasting in February 2009. At least 19.6 million consumers receive only over-the-air (OTA) signals in their homes, and there are approximately 70 million analog OTA television sets currently in use that will cease to work after February 17, 2009, unless consumers take action.

Prior to the February 2009 transition date, consumers who receive only free, over-the-air broadcast television signals on analog sets will have three options for continuing their television service:

- Purchase a new television set with a built-in digital tuner;
- Purchase a set-top converter box that will convert the digital signal into analog for an existing television set; or
- Subscribe to cable, satellite or a telephone company television service provider.

Those most affected by the DTV transition will be seniors, minority populations, the economically disadvantaged and those living in rural areas.

Broadcasters are working arm-in-arm with industry and government partners, including members of Congress, to make the transition as consumer-friendly as possible. The National Association of Broadcasters (NAB) is undertaking an aggressive consumer education campaign to make sure the public is ready, and will be leading private sector efforts to ensure the transition goes smoothly. It is a top priority of the association to ensure no consumer is left without access to free over-the-air television due to a lack of information about the transition. NAB is working with a coalition of consumer, trade and business groups, as well as Congress, the Administration and state and local governments to educate Americans on how to prepare for the digital transition.

Congress has appropriated up to $1.5 billion to be spent on a coupon program for consumers who choose the option of purchasing converter boxes. The program is being administered by the U.S. Department of Commerce. The converter boxes will be available for purchase at local retailers in early 2008. Beginning on January 1, 2008, households can request up to two coupons valued at $40 each. Each coupon will go toward the purchase of a single set-top converter box that will allow consumers to continue receiving free over-the-air television on an analog set. NAB is working closely with consumer electronic companies now to make sure that the technical standards for converter boxes become open standards for any manufacturer so the price of converter boxes will be affordable. This will be important if additional boxes are necessary beyond the two coupons allotted per household.

With all the benefits that DTV will bring, it is vital that together we make sure that no consumer’s television set loses reception in 2009 due to a lack of information about the transition. Will you assist in this national education effort by helping to educate your constituents about the digital transition?
Some propose creating a new “performance tax” for over-the-air radio broadcasts, requiring broadcasters to pay for the use of sound recordings when they are aired on the radio. This new tax would upend the longstanding symbiotic business relationship between recording artists, composers, record labels and broadcasters that has enabled American music, recording and commercial local radio industries to thrive and grow.

Congress has long recognized the importance of the mutually beneficial relationship between radio broadcasters and the recording industry. The recording industry reaps enormous promotional benefits from radio exposure, resulting in increased popularity, visibility and record sales. Record companies and their artists benefit from radio airplay and on-air interviews, in many cases timed to coincide with concert appearances in the radio station’s service area. Radio stations often provide new and emerging artists with needed exposure and access to a listening audience.

A performance tax is not needed to create a level playing field. Congress has long acknowledged the unique role of local, over-the-air radio. In 1995 and 1998, during the most recent consideration of this issue, Congress reaffirmed that new burdens should not be imposed on FCC-licensed local radio broadcasters and drew distinctions between radio broadcasters and subscription and other non-subscription services. Among other findings, Congress noted that radio broadcasts are free, non-subscription services, relying exclusively on advertising as their sole source of revenue. These broadcasters provide a mix of entertainment and non-entertainment programming, and must fulfill public interest and other licensing obligations to serve their local communities.

Arguing that a performance tax should be adopted in the United States because it may exist in other countries ignores the fundamental differences between the American system of broadcasting and other countries, as well as differences between various countries’ copyright structures. For instance, unlike the U.S., the broadcasting system in many countries has traditionally been government subsidized. Also, many countries that provide a performance tax have significant differences in copyright law, extending less generous protections than the United States.

The U.S. music licensing system already compensates composers, record companies and performing artists. Radio stations pay hundreds of millions of dollars annually to composers and publishers through fees paid to ASCAP, BMI and SESAC. Imposing a new performance tax on radio broadcasters would radically alter this balanced, fair system that has worked well for broadcasters, artists, composers and the recording labels for many years. Broadcasters also pay record companies and artists royalties to stream their signals over the Internet.

Will you oppose a new performance tax on free, local, over-the-air broadcasts?
In the 110th Congress, Direct-to-consumer (DTC) advertising – including pharmaceutical and children’s nutrition products – will be closely examined. The National Association of Broadcasters (NAB) has worked to develop and maintain programs of self-regulation and public-private partnerships to guide the broadcast industry in matters relating to advertising and program content.

Senators Mike Enzi (R-WY) and Ted Kennedy (D-MA) have introduced S. 484, the “Enhancing Drug Safety and Innovation Act of 2007” in the Senate Committee on Health, Education, Labor and Pensions (HELP). The bill contains two provisions that threaten free speech and could adversely impact broadcasters’ advertising revenue and bottom line. First, the bill would require all ads for prescription medicines to be pre-cleared by the FDA Commissioner. Additionally, the bill calls for a moratorium for up to two years on the advertising of a newly approved prescription drug. To require prior FDA approval of ads constitutes prior restraint of speech and would violate the First Amendment to the U.S. Constitution. These provisions unconstitutionally restrict commercial free speech and are in conflict with decades of Supreme Court decisions.

It is also important to note, consumers cannot obtain prescription drugs without first visiting a doctor and receiving an examination. At that time, the doctor – not the patient – recommends the best treatment, which may or may not include a prescription.

We strongly urge you to oppose these provisions in the Enhancing Drug Safety and Innovation Act (S. 484). While we understand the importance of raising the standards for approving new drugs to make them safer, the bill would deny the public information about new medicines. According to the results of a Prevention magazine study, ads for prescription drugs may help remind people to properly use their medicines. In the study, 33% of respondents said the ads reminded them to refill their prescriptions, and 22% reported the ads made them more likely to take their medicine regularly.

More than 30 million Americans asked a doctor for the first time about a new medical condition because they saw an ad for prescription medicine. According to a Harvard University study, 35% of new patients who went to a doctor because of an ad were diagnosed as having one of 10 serious illnesses as defined by a federal healthcare agency – diseases like diabetes, high blood pressure and depression.

An ad can also prompt a doctor’s visit where other conditions can be discovered. Direct-to-consumer ads have closed the gap considerably on under-diagnosed conditions in this country. These ads can reach the estimated six million Americans who suffer from diabetes but have not been diagnosed. Additionally, as many as 56 million Americans have high blood pressure, yet it appears that 18 million are unaware of it. Another eight million Americans know they have high blood pressure but are not taking medication.
The content and tone of prescription drug ads have been improved substantially as pharmaceutical companies have adopted and implemented voluntary industry advertising guidelines. Since January 1, 2006, the guidelines have helped to eliminate many ads with vague risk descriptions or offensive content. The new advertisements are clearer and educational, and they help consumers communicate better with their physicians.

We ask that if these two restrictions on speech are not removed from S. 484, you oppose this bill or any possible House companion measure.
The National Association of Broadcasters (NAB) has asked the Federal Communications Commission (FCC) to allow AM radio stations to use FM translators to provide a clearer, more consistent signal to their listeners. The proposal is currently still pending at the FCC. NAB has been working with congressional staff to encourage swift action by the Commission, as this is a top priority for AM radio stations and their listeners. NAB’s request has been bolstered by the overwhelming support of approximately 600 parties that submitted comments to the FCC.

**AM stations face unique technical challenges.** In the daytime, AM listeners experience service outages caused by mountains, buildings, power lines, computers, traffic signals and even fluorescent lighting. And at night, the propagation characteristics of AM signals cause interference among AM stations, even stations that are hundreds of miles away. Because of this, most AM stations must turn off or reduce power levels in the evening, impacting their ability to provide live coverage of nighttime events for their listeners. Unfortunately, federal law extending Daylight Savings Time by four weeks beginning in 2007 will make matters worse. Allowing AM stations to use FM translators will help stations mitigate these technical problems.

**There are many listener benefits of allowing AM stations to use FM translators.** Better AM service will allow stations to provide a higher level of local content for listeners. Instead of having to air tape-delayed evening events, such as political debates or high school football games, stations will be able to deliver *live* coverage. Additionally, stations will be able to cover traffic conditions during rush hours. Better AM service will also help AM stations compete against satellite radio, FM stations, television, the Internet and other new media.

**AM stations use of FM translators will not interfere with FM stations.** The FCC has strict rules about where translators may be located. Translators cannot be deployed if there will be any interference to existing services. Translators are secondary to existing services, and must turn off power if any interference is detected. Additionally, NAB’s petition asks that AM radio stations be able to use FM translators only to fill-in or replicate their normal daytime service. AM stations are not trying to expand or extend their current service, simply improve reception for their listeners.

Please encourage timely action by the FCC on the AM on FM translator proceeding.
Oppose the Monopolistic Merger of Satellite Radio Giants XM and Sirius

On February 19, 2007, the only two existing satellite radio providers – XM and Sirius – announced that they are planning to merge. This merger flies in the face of Federal Communications Commission (FCC) rules prohibiting such a union. It would also create a monopoly in satellite radio that would harm consumers, artists and performers, while rewarding companies that routinely violate FCC regulations.

When the FCC authorized two satellite radio operators in 1997, it specifically prohibited the nationwide systems from merging. Nothing has occurred in the 10 years since to warrant a change in this public policy. XM and Sirius are unique in their ability to provide portable radio service on a nationwide scale to geographically dispersed audiences, which is what the FCC relied upon as the characteristics of satellite radio service. There is no basis for the agency to change its view at this time.

The bad business decisions of these companies, including needlessly spending hundreds of millions of dollars to secure talent, does not necessitate a government bailout by allowing a monopolistic merger. Moreover, both companies have shown a blatant disregard for FCC rules. For example, the companies put devices into the marketplace that violated the FCC’s equipment power limitations, causing numerous consumers to experience interference on their car radios. These devices have never been pulled from the marketplace.

A merger between the only two satellite radio companies is a guaranteed headache for consumers. There are sure to be hidden costs and confusion as XM and Sirius attempt to merge two business philosophies and two different technologies – which have never been interoperable. Currently, XM subscribers cannot receive Sirius’ channels (and vice versa) and will not be able to without obtaining new receiver hardware.

The National Association of Broadcasters (NAB) opposes the merger between satellite radio giants XM and Sirius. While this merger may help line the pockets of financiers and corporate executives, it certainly doesn’t benefit the public interest. The companies have not made the case for a government bailout, and their history of disregarding FCC rules should be a red flag to commissioners and Congress.

Will you oppose the monopolistic merger of satellite radio giants XM and Sirius?