

§ 76.64

47 CFR Ch. I (10–1–10 Edition)

(h) If a digital television broadcast signal is carried in accordance with § 76.62(b) and either (c) or (d), the carriage of that signal in additional formats does not constitute material degradation.

[58 FR 17362, Apr. 2, 1993, as amended at 59 FR 62345, Dec. 5, 1994; 66 FR 16553, Mar. 26, 2001; 73 FR 6054, Feb. 1, 2008]

§ 76.64 Retransmission consent.

(a) After 12:01 a.m. on October 6, 1993, no multichannel video programming distributor shall retransmit the signal of any commercial broadcasting station without the express authority of the originating station, except as provided in paragraph (b) of this section.

(b) A commercial broadcast signal may be retransmitted without express authority of the originating station if—

(1) The distributor is a cable system and the signal is that of a commercial television station (including a low-power television station) that is being carried pursuant to the Commission's must-carry rules set forth in § 76.56;

(2) The multichannel video programming distributor obtains the signal of a superstation that is distributed by a satellite carrier and the originating station was a superstation on May 1, 1991, and the distribution is made only to areas outside the local market of the originating station; or

(3) The distributor is a satellite carrier and the signal is transmitted directly to a home satellite antenna, provided that:

(i) The broadcast station is not owned or operated by, or affiliated with, a broadcasting network and its signal was retransmitted by a satellite carrier on May 1, 1991, or

(ii) The broadcast station is owned or operated by, or affiliated with a broadcasting network, and the household receiving the signal is an unserved household.

(c) For purposes of this section, the following definitions apply:

(1) A satellite carrier is an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station sig-

nals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing;

(2) A superstation is a television broadcast station other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier;

(3) An unserved household with respect to a television network is a household that

(i) Cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity of a primary network station affiliated with that network, and

(ii) Has not, within 90 days before the date on which that household subscribes, either initially or on renewal, received secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with the network.

(4) A primary network station is a network station that broadcasts or rebroadcasts the basic programming service of a particular national network;

(5) The terms "network station," and "secondary transmission" have the meanings given them in 17 U.S.C. 111(f).

(d) A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming.

(e) The retransmission consent requirements of this section are not applicable to broadcast signals received by master antenna television facilities or by direct over-the-air reception in conjunction with the provision of service by a multichannel video program

distributor provided that the multichannel video program distributor makes reception of such signals available without charge and at the subscribers option and provided further that the antenna facility used for the reception of such signals is either owned by the subscriber or the building owner; or under the control and available for purchase by the subscriber or the building owner upon termination of service.

(f) Commercial television stations are required to make elections between retransmission consent and must-carry status according to the following schedule:

(1) The initial election must be made by June 17, 1993.

(2) Subsequent elections must be made at three year intervals; the second election must be made by October 1, 1996 and will take effect on January 1, 1997; the third election must be made by October 1, 1999 and will take effect on January 1, 2000, etc.

(3) Television stations that fail to make an election by the specified deadline will be deemed to have elected must carry status for the relevant three-year period.

(4) New television stations and stations that return their analog spectrum allocation and broadcast in digital only shall make their initial election any time between 60 days prior to commencing broadcast and 30 days after commencing broadcast or commencing broadcasting in digital only; such initial election shall take effect 90 days after it is made.

(5) Television broadcast stations that become eligible for must carry status with respect to a cable system or systems due to a change in the market definition may, within 30 days of the effective date of the new definition, elect must-carry status with respect to such system or systems. Such elections shall take effect 90 days after they are made.

(g) If one or more franchise areas served by a cable system overlaps with one or more franchise areas served by another cable system, television broadcast stations are required to make the same election for both cable systems.

(h) On or before each must-carry/retransmission consent election deadline,

each television broadcast station shall place copies of all of its election statements in the station's public file, and shall send via certified mail to each cable system in the station's defined market a copy of the station's election statement with respect to that operator.

(i) Notwithstanding a television station's election of must-carry status, if a cable operator proposes to retransmit that station's signal without according the station must-carry rights (*i.e.*, pursuant to § 76.56(e)), the operator must obtain the station's express authority prior to retransmitting its signal.

(j) Retransmission consent agreements between a broadcast station and a multichannel video programming distributor shall be in writing and shall specify the extent of the consent being granted, whether for the entire signal or any portion of the signal. This rule applies for either the analog or the digital signal of a television station.

(k) A cable system commencing new operation is required to notify all local commercial and noncommercial broadcast stations of its intent to commence service. The cable operator must send such notification, by certified mail, at least 60 days prior to commencing cable service. Commercial broadcast stations must notify the cable system within 30 days of the receipt of such notice of their election for either must-carry or retransmission consent with respect to such new cable system. If the commercial broadcast station elects must-carry, it must also indicate its channel position in its election statement to the cable system. Such election shall remain valid for the remainder of any three-year election interval, as established in § 76.64(f)(2). Noncommercial educational broadcast stations should notify the cable operator of their request for carriage and their channel position. The new cable system must notify each station if its signal quality does not meet the standards for carriage and if any copyright liability would be incurred for the carriage of such signal. Pursuant to § 76.57(e), a commercial broadcast station which fails to respond to such a notice shall be deemed to be a must-carry station for the remainder of the current three-year election period.

(1) Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make or negotiate any agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming distributors. This paragraph shall terminate at midnight on February 28, 2010, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires.

(m) A multichannel video programming distributor providing an all-band FM radio broadcast service (a service that does not involve the individual processing of specific broadcast signals) shall obtain retransmission consents from all FM radio broadcast stations that are included on the service that have transmitters located within 92 kilometers (57 miles) of the receiving antenna for such service. Stations outside of this 92 kilometer (57 miles) radius shall be presumed not to be carried in an all-band reception mode but may affirmatively assert retransmission consent rights by providing 30 days advance notice to the distributor.

NOTE 1 TO § 76.64: Section 76.1608 provides notification requirements for a cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems.

[58 FR 17363, Apr. 2, 1993, as amended at 59 FR 62345, Dec. 5, 1994; 65 FR 15575, Mar. 23, 2000; 65 FR 53615, Sept. 5, 2000; 66 FR 16553, Mar. 26, 2001; 67 FR 17015, Apr. 9, 2002; 69 FR 72045, Dec. 10, 2004; 70 FR 40224, July 13, 2005; 74 FR 69286, Dec. 31, 2009]

§ 76.65 Good faith and exclusive retransmission consent complaints.

(a) *Duty to negotiate in good faith.* Television broadcast stations and multichannel video programming distributors shall negotiate in good faith the terms and conditions of retransmission consent agreements to fulfill the duties established by section 325(b)(3)(C) of the Act; provided, however, that it shall not be a failure to negotiate in good faith if:

(1) The television broadcast station proposes or enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multi-

channel video programming distributors if such different terms and conditions are based on competitive marketplace considerations; or

(2) The multichannel video programming distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations. If a television broadcast station or multichannel video programming distributor negotiates in accordance with the rules and procedures set forth in this section, failure to reach an agreement is not an indication of a failure to negotiate in good faith.

(b) *Good faith negotiation*—(1) *Standards.* The following actions or practices violate a broadcast television station's or multichannel video programming distributor's (the "Negotiating Entity") duty to negotiate retransmission consent agreements in good faith:

(i) Refusal by a Negotiating Entity to negotiate retransmission consent;

(ii) Refusal by a Negotiating Entity to designate a representative with authority to make binding representations on retransmission consent;

(iii) Refusal by a Negotiating Entity to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations;

(iv) Refusal by a Negotiating Entity to put forth more than a single, unilateral proposal;

(v) Failure of a Negotiating Entity to respond to a retransmission consent proposal of the other party, including the reasons for the rejection of any such proposal;

(vi) Execution by a Negotiating Entity of an agreement with any party, a term or condition of which, requires that such Negotiating Entity not enter into a retransmission consent agreement with any other television broadcast station or multichannel video programming distributor; and

(vii) Refusal by a Negotiating Entity to execute a written retransmission consent agreement that sets forth the full understanding of the television