§ 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 signals, 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 re-broadcasts 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.
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distributor provided that the multi-
channel video program distributor
makes reception of such signals avail-
able without charge and at the sub-
scribers 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 avail-
able 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 sec-
ond 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 dead-
line will be deemed to have elected
must carry status for the relevant
three-year period.

(4) New television stations and sta-
tions that return their analog spec-
trum allocation and broadcast in dig-
ital only shall make their initial elec-
tion any time between 60 days prior to
commencing broadcast and 30 days
after 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 sys-
tems 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 broad-
cast stations are required to make the
same election for both cable systems.

(h) On or before each must-carry/re-
transmission consent election deadline,
each television broadcast station shall
place copies of all of its election state-
ments 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 oper-
atore.

(i) Notwithstanding a television sta-
tion'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., pur-
suant to § 76.56(e)), the operator must
obtain the station's express authority
prior to retransmitting its signal.

(j) Retransmission consent agree-
ments between a broadcast station and
a multichannel video programming dis-
tributor 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 dig-
ital signal of a television station.

(k) A cable system commencing new
operation is required to notify all local
commercial and noncommercial broad-
cast 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 re-
mainder of any three-year election in-
terval, as established in § 76.64(f)(2).
Noncommercial educational broadcast
stations should notify the cable oper-
atore 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 stand-
ards for carriage and if any copyright
liability would be incurred for the car-
riage of such signal. Pursuant to
§76.57(e), a commercial broadcast sta-
tion 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.
§ 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, that are based on competitive market place 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