

(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.

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§ 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 multichannel 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;

(vii) Refusal by a Negotiating Entity to execute a written retransmission consent agreement that sets forth the full understanding of the television broadcast station and the multichannel video programming distributor; and

(viii) Coordination of negotiations or negotiation on a joint basis by two or more television broadcast stations in the same local market to grant retransmission consent to a multichannel video programming distributor, unless such stations are directly or indirectly under common de

jure control permitted under the regulations of the Commission.

(ix) The imposition by a television broadcast station of limitations on the ability of a multichannel video programming distributor to carry into the local market of such station a television signal that has been deemed significantly viewed, within the meaning of § 76.54 of this part, or any successor regulation, or any other television broadcast signal such distributor is authorized to carry under 47 U.S.C. 338, 339, 340 or 534, unless such stations are directly or indirectly under common de jure control permitted by the Commission.

(2) *Negotiation of retransmission consent between qualified multichannel video programming distributor buying groups and large station groups.* (i) A multichannel video programming distributor may satisfy its obligation to negotiate in good faith for retransmission consent with a large station group by designating a qualified MVPD buying group to negotiate on its behalf, so long as the qualified MVPD buying group itself negotiates in good faith in accordance with this section.

(ii) It is a violation of the obligation to negotiate in good faith for a qualified MVPD buying group to disclose the prices, terms, or conditions of an ongoing negotiation or the final terms of a negotiation to a member of the qualified MVPD buying group that is not intending, or is unlikely, to enter into the final terms negotiated by the qualified MVPD buying group.

(iii) A large station group has an obligation to negotiate in good faith for retransmission consent with a qualified MVPD buying group.

(A) “Qualified MVPD buying group” means an entity that, with respect to a negotiation with a large station group for retransmission consent—

(1) Negotiates on behalf of two or more multichannel video programming distributors—

(i) None of which is a multichannel video programming distributor that serves more than 500,000 subscribers nationally; and

(ii) That do not collectively serve more than 25 percent of all households served by multichannel video programming distributors in any single local

market in which the applicable large station group operates; and

(2) Negotiates agreements for such retransmission consent—

(i) That contain standardized contract provisions, including billing structures and technical quality standards, for each multichannel video programming distributor on behalf of which the entity negotiates; and

(ii) Under which the entity assumes liability to remit to the applicable large station group all fees received from the multichannel video programming distributors on behalf of which the entity negotiates.

(B) “Large station group” means a group of television broadcast stations that—

(1) Are directly or indirectly under common de jure control permitted by the regulations of the Commission;

(2) Generally negotiate agreements for retransmission consent under this section as a single entity; and

(3) Include only television broadcast stations that collectively have a national audience reach of more than 20 percent;

(3) *Definitions.* For purposes of this section and section 76.64 of this subpart, the following definitions apply:

(i) “Local market” has the meaning given such term in 17 U.S.C. 122(j); and

(ii) “Multichannel video programming distributor” has the meaning given such term in 47 U.S.C. 522.

(4) *Totality of the circumstances.* In addition to the standards set forth in paragraphs (b)(1) and (2) of this section, a Negotiating Entity may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station or multichannel video programming distributor breached its duty to negotiate in good faith as set forth in paragraph (a) of this section.

(c) *Good faith negotiation and exclusivity complaints.* Any television broadcast station or multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the regulations set forth in this section or § 76.64(1) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint.

The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7.

(d) *Burden of proof.* In any complaint proceeding brought under this section, the burden of proof as to the existence of a violation shall be on the complainant.

(e) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) A complainant enters into a retransmission consent agreement with a television broadcast station or multichannel video programming distributor that the complainant alleges to violate one or more of the rules contained in this subpart; or

(2) A television broadcast station or multichannel video programming distributor engages in retransmission consent negotiations with a complainant that the complainant alleges to violate one or more of the rules contained in this subpart, and such negotiation is unrelated to any existing contract between the complainant and the television broadcast station or multichannel video programming distributor; or

(3) The television broadcast station or multichannel video programming distributor has denied, unreasonably delayed, or failed to acknowledge a request to negotiate retransmission consent in violation of one or more of the rules contained in this subpart.

[70 FR 40224, July 13, 2005, as amended at 74 FR 69286, Dec. 31, 2009; 79 FR 28630, May 19, 2014; 80 FR 11330, Mar. 3, 2015; 85 FR 36801, June 18, 2020; 85 FR 81812, Dec. 17, 2020; 86 FR 26186, May 13, 2021]

§ 76.66 Satellite broadcast signal carriage.

(a) *Definitions*—(1) *Satellite carrier.* A satellite carrier is an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, 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 a 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) *Secondary transmission.* A secondary transmission is the further transmitting of a primary transmission simultaneously with the primary transmission.

(3) *Subscriber.* A subscriber is a person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(4) *Television broadcast station.* A television broadcast station is an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.

(5) *Television network.* For purposes of this section, a television network is an entity which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

(6) *Local-into-local television service.* A satellite carrier is providing local-into-local service when it retransmits a local television station signal back into the local market of that television station for reception by subscribers.

(b) *Signal carriage obligations.* (1) Each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) of title 47, United States Code, and other paragraphs in this section. Satellite carriers are required to carry digital-only stations upon request in markets in which the satellite carrier is providing any local-