

§ 76.65

(2) Each cable operator shall, no later than July 31, 2020, provide an up-to-date email address for carriage election notice submissions with respect to its systems and an up-to-date phone number for carriage-related questions. Each cable operator is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.

(3) A station shall send a notice of its election to a cable operator only if changing its election with respect to one or more of that operator’s systems. Such notice shall be sent to the email address provided by the cable system and carbon copied to *ElectionNotices@FCC.gov*. A notice must include, with respect to each station referenced in the notice, the:

- (i) Call sign;
- (ii) Community of license;
- (iii) DMA where the station is located;
- (iv) Specific change being made in election status;
- (v) Email address for carriage-related questions;
- (vi) Phone number for carriage-related questions;
- (vii) Name of the appropriate station contact person; and,
- (viii) If the station changes its election for some systems of the cable operator but not all, the specific cable systems for which a carriage election applies.

(4) Cable operators must respond via email as soon as is reasonably possible, acknowledging receipt of a television station’s election notice.

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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 (as defined in 17 U.S.C. 122(j)) 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 (as defined in 17 U.S.C. 122(j)) 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) *Totality of the circumstances.* In addition to the standards set forth in § 76.65(b)(1), 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 § 76.65(a).

(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 multi-

channel 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 complainant has notified the television broadcast station or multichannel video programming distributor that it intends to file a complaint with the Commission based on a request to negotiate retransmission consent that has been denied, unreasonably delayed, or unacknowledged in violation of one or more of the rules contained in this subpart.

(f) *Termination of rules.* This section shall terminate at midnight on January 1, 2020, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires.

[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]

#### § 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.