

Federal Communications Commission

§ 1.6005

Before the Federal Communications
Commission

Washington, D.C. 20554

In the Matter of Complainant,
v.
Defendant
File No. (to be inserted by the staff)

Complaint

To: The Commission.
The complainant (here insert the name, address, and call letters of the complaining television broadcast station) avers that: On (here insert the dates upon which the alleged transmission occurred), retransmission of the broadcast television station's signal was made by (insert here name and address of the satellite carrier) to (here insert the street address of at least one person in the local market of the station to whom the alleged retransmission was made). The complainant avers that (here insert a statement that the retransmission was not expressly authorized by the television broadcast station), and requests that the appropriate relief be granted by the Commission, as provided by the pertinent provisions of the Communications Act of 1934, as amended, and the Commission's Rules.

Date:
(here insert the name and address of counsel for the complaining station).

(b) A complaint lacking any of the foregoing information shall be dismissed by the FCC without prejudice to the complaining station.

(c) Additional information may be provided, and, where applicable, should conform to the requirements set forth in §§1.48 through 1.52 of the Commission's rules.

§ 1.6003 Service requirements.

(a) *General.* Pursuant to 47 U.S.C. 325(e), for purposes of any proceeding under this subsection, any satellite carrier that retransmits the signal of any broadcast station shall be deemed to designate the Secretary of the Commission as its agent for service of process.

(b) *Specific.* (1) A television broadcast station shall serve a satellite carrier with a complaint concerning an alleged violation of 47 U.S.C. 325(b)(1) by filing the original and two copies of the complaint on the Secretary of the Commission and serving a copy of the complaint by means of two commonly used overnight delivery services, each addressed to the chief executive officer of

the satellite carrier at its principal place of business and each marked "URGENT LITIGATION MATTER" on the outer packaging. Service shall be deemed complete one business day after a copy of the complaint is provided to the delivery services for overnight delivery. On receipt of a complaint filed by a television broadcast station under this subsection, the Secretary of the Commission shall send the original complaint by United States mail, postage prepaid, receipt requested, addressed to the chief executive officer of the satellite carrier at its principal place of business.

(2) Satellite carriers shall provide the name, address, and telephone number (including area code) of their chief executive officers to the Secretary of the Commission, no later than April 15, 2000. Satellite carriers shall update this information, as necessary, in the event that the identity or the address of their respective chief executive officers changes. These updates shall be made by United States mail within seven (7) days of such changes. Complaints sent to the last known address shall be deemed served if the satellite carrier fails to notify the Secretary of the Commission in accordance with this provision.

§ 1.6004 Answers.

Within five (5) business days after the date of service, without regard to §1.4 of this part, the satellite carrier shall file its answer with the Commission, and shall contemporaneously serve the answer upon counsel designated in the complaint, at the address listed for such counsel in the complaint. Service of the answer shall be made by use of one commonly used overnight delivery service and by the United States mail.

§ 1.6005 Exclusive defenses.

(a) The defenses listed in paragraphs (a)(1) through (a)(4) of this section, are the only defenses available to a satellite carrier against which a complaint under this section is filed.

(1) The satellite carrier did not retransmit the television broadcast station's signal to any person in the "local market" of the television broadcast station, as that term is defined in 17 U.S.C. 122(j) (Designated Market

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Area as determined by Nielsen Media Research and county containing the station's community of license), during the time period specified in the complaint;

(2) The television broadcast station had, in a writing signed by an officer of the television broadcast station, expressly authorized the retransmission of the station by the satellite carrier to each person in the "local market" of the television broadcast station, as that term is defined in 17 U.S.C. 122(j), to which the satellite carrier made such retransmissions for the entire time period during which it is alleged that a violation of 47 U.S.C. 325 (b)(1) has occurred;

(3) The retransmission was made after January 1, 2002, and the television broadcast station had elected to assert the right to carriage under 47 U.S.C. 338 as against the satellite carrier for the relevant period; or

(4) The television broadcast station whose signal is being retransmitted is a noncommercial television broadcast station.

(b) [Reserved]

§ 1.6006 Counting of violations.

Each day of retransmission without consent of a particular television broadcast station to one or more persons in the local market of the station shall be considered a separate violation of 47 U.S.C. 325(b)(1).

§ 1.6007 Burden of proof.

With respect to each alleged violation, the burden of proof shall be on a television broadcast station to establish that the satellite carrier retransmitted the station to at least one person in the local market of the station on the day in question. The burden of proof shall be on the satellite carrier with respect to all defenses other than the defense under § 1.6005(a)(1).

§ 1.6008 Determinations.

(a) *In General.* Within forty five (45) days after the filing of a complaint, the Commission shall issue a final determination in any proceeding brought under this subsection. The Commission's final determination shall specify the number of violations committed by the satellite carrier. The Commission

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shall hear witnesses only if it clearly appears, based on the written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on the written filings by the parties.

(b) *Discovery.* The Commission may direct the parties to exchange pertinent documents, and if necessary, to take prehearing depositions, on such schedule as the Commission may approve, but only if the Commission first determines that such discovery is necessary to resolve a genuine dispute about material facts, consistent with the obligation to make a final determination within forty five (45) days. In this connection, the Commission may utilize the discovery or other evidentiary procedures set forth in §§ 1.311 through 1.364 of the Commission's rules.

§ 1.6009 Relief.

If the Commission determines that a satellite carrier has retransmitted the television broadcast station to at least one person in the local market of such station and has failed to meet its burden of proving one of the defenses under § 1.6005 (a)(2) through (a)(4) with respect to such retransmission, the Commission shall:

(a) Make a finding that the satellite carrier violated 47 U.S.C. 325(b)(1) with respect to that station; and

(b) Issue an order, within forty-five (45) days after the filing of the complaint, containing—

(1) A cease-and-desist order directing the satellite carrier immediately to stop making any further retransmissions of the television broadcast station to any person within the local market of such station until such time as the Commission determines that the satellite carrier is in compliance with 47 U.S.C. 325(b)(1) with respect to such station;

(2) If the satellite carrier is found to have violated 47 U.S.C. 325(b)(1) with respect to more than two television broadcast stations, a cease-and-desist order directing the satellite carrier to stop making any further retransmission of any television broadcast station to any person within the local