

§ 1.6006

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