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the station must-carry rights (*i.e.*, pursuant to § 76.56(e)), the operator must obtain the station's express authority prior to retransmitting its signal.

(j) Retransmission consent agreements between a broadcast station and a multichannel video programming distributor 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 digital signal of a television station.

(k) A cable system commencing new operation is required to notify all local commercial and noncommercial broadcast stations of its intent to commence service. The cable operator must send such notification, by certified mail except as provided in this paragraph (k), at least 60 days prior to commencing cable service. After July 31, 2020, the cable operator must send such notification by electronic delivery in accordance with § 76.1600. 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 remainder of any three-year election interval, as established in paragraph (f)(2) of this section. Noncommercial educational broadcast stations should notify the cable operator 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 standards for carriage and if any copyright liability would be incurred for the carriage of such signal. Pursuant to § 76.57(e), a commercial broadcast station 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.

(l) Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make or negotiate any agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming

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distributors. This paragraph 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.

(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.

[58 FR 17363, Apr. 2, 1993, as amended at 59 FR 62345, Dec. 5, 1994; 65 FR 15575, Mar. 23, 2000; 65 FR 53615, Sept. 5, 2000; 66 FR 16553, Mar. 26, 2001; 67 FR 17015, Apr. 9, 2002; 69 FR 72045, Dec. 10, 2004; 70 FR 40224, July 13, 2005; 74 FR 69286, Dec. 31, 2009; 80 FR 11330, Mar. 3, 2015; 83 FR 7626, Feb. 22, 2018; 84 FR 45669, Aug. 30, 2019; 85 FR 16005, Mar. 19, 2020; 85 FR 22651, Apr. 23, 2020; 85 FR 44217, July 22, 2020]

§ 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

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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 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; 85 FR 36801, June 18, 2020]