

commercial and noncommercial broadcast stations of its intent to commence service. The cable operator must send such notification, by certified mail, at least 60 days prior to commencing cable service. 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 §76.64(f)(2). 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 an agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming distributors. This paragraph shall terminate at midnight on December 31, 2005.

(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]

EFFECTIVE DATE NOTE: At 65 FR 53615, Sept. 5, 2000, §76.64 was amended in paragraph (i) by removing "76.56(f)" and adding "§76.56(e)," by removing paragraph (j), by redesignating paragraphs (k), (l), (m), and (n) as paragraphs (j), (k), (l), and (m), and by adding a Note, effective Oct. 5, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 76.64 Retransmission consent.

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(j) A cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems must give 90 days notice of its intention to do so to any television broadcast stations that have elected must-carry status with respect to one system and retransmission consent status with respect to the other. If the system and the station do not agree on a uniform election 45 days prior to integration, the cable system may require the station to make such a uniform election 30 days prior to integration.

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§ 76.65 Good faith and exclusive retransmission consent complaints.

(a) *Duty to negotiate in good faith.* Television broadcast stations that provide retransmission consent shall negotiate in good faith the terms and conditions of such agreements to fulfill the duties established by section 325(b)(3)(C) of the Communications Act 47 U.S.C. 325; provided, however, that it shall not be a failure to negotiate in good faith if 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. If a television broadcast station negotiates with multichannel video programming distributors 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 duty to negotiate retransmission consent agreements in good faith:

(i) Refusal by a television broadcast station to negotiate retransmission consent with any multichannel video programming distributor;

(ii) Refusal by a television broadcast station to designate a representative with authority make binding representations on retransmission consent;

(iii) Refusal by a television broadcast station 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 television broadcast station to put forth more than a single, unilateral proposal.

(v) Failure of a television broadcast station to respond to a retransmission consent proposal of a multichannel video programming distributor, including the reasons for the rejection of any such proposal;

(vi) Execution by a television broadcast station of an agreement with any party, a term or condition of which, requires that such television broadcast station not enter into a retransmission consent agreement with any multichannel video programming distributor; and

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

(2) *Totality of the circumstances*. In addition to the standards set forth in section 76.65(b)(1), a multichannel video programming distributor may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station breached its duty to negotiate in good faith as set forth in section 76.65(a).

(c) *Good faith negotiation and exclusivity complaints*. Any multichannel video programming distributor ag-

grieved by conduct that it believes constitutes a violation of the regulations set forth in this § 76.64(m) 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 multichannel video programming provider enters into a retransmission consent agreement with a television broadcast station that the complainant alleges to violate one or more of the rules contained in this subpart; or

(2) A television broadcast station 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

(3) The complainant has notified the television broadcast station 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 December 31, 2005.

[65 FR 15575, Mar. 23, 2000]

§ 76.67 Sports broadcasts.

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live