

**TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS**  
**CHAPTER 5 - WIRE OR RADIO COMMUNICATION**  
**SUBCHAPTER III - SPECIAL PROVISIONS RELATING TO RADIO**  
**Part I - General Provisions**

**§ 340. Significantly viewed signals permitted to be carried**

**(a) Significantly viewed stations**

In addition to the broadcast signals that subscribers may receive under section <sup>1</sup> 338 and 339 of this title, a satellite carrier is also authorized to retransmit to a subscriber located in a community the signal of any station located outside the local market in which such subscriber is located, to the extent such signal—

- (1) has, before December 8, 2004, been determined by the Federal Communications Commission to be a signal a cable operator may carry as significantly viewed in such community, except to the extent that such signal is prevented from being carried by a cable system in such community under the Commission's network nonduplication and syndicated exclusivity rules; or
- (2) is, after December 8, 2004, determined by the Commission to be significantly viewed in such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community.

**(b) Limitations**

**(1) Analog service limited to subscribers taking local-into-local service**

With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338 of this title.

**(2) Digital service limitations**

With respect to a signal that originates as a digital signal of a network station, this section shall apply only if—

- (A) the subscriber receives from the satellite carrier pursuant to section 338 of this title the retransmission of the digital signal of a network station in the subscriber's local market that is affiliated with the same television network; and
- (B) either—
  - (i) the retransmission of the local network station occupies at least the equivalent bandwidth as the digital signal retransmitted pursuant to this section; or
  - (ii) the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station.

**(3) Limitation not applicable where no network affiliates**

The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.

**(4) Authority to grant station-specific waivers**

Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph <sup>2</sup> (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.

**(c) Publication and modifications of lists; regulations**

**(1) In general**

The Commission shall—

**(A)** within 60 days after December 8, 2004—

- (i)** publish a list of the stations that are eligible for retransmission under subsection (a)(1) of this section and the communities in which such stations are eligible for such retransmission; and
- (ii)** commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking;

**(B)** adopt rules pursuant to such rulemaking within 1 year after December 8, 2004.

**(2) Public availability of list**

The Commission shall make readily available to the public in electronic form, on the Internet website of the Commission or other comparable facility, a list of the stations that are eligible for retransmission under subsection (a) of this section and the communities in which such stations are eligible for such retransmission. The Commission shall update such list within 10 business days after the date on which the Commission issues an order making any modification of such stations and communities.

**(3) Modifications**

In addition to cable operators and television broadcast station licensees, the Commission shall permit a satellite carrier to petition for decisions and orders—

- (A)** by which stations may be added to those that are eligible for retransmission under subsection (a) of this section, and by which communities may be added in which such stations are eligible for such retransmission; and
- (B)** by which network nonduplication or syndicated exclusivity regulations are applied to the retransmission in accordance with subsection (e) of this section.

**(d) Effect on other obligations and rights**

**(1) No effect on carriage obligations**

Carriage of a signal under this section is not mandatory, and any right of a station licensee to have the signal of such station carried under section 338 of this title is not affected by the eligibility of such station to be carried under this section.

**(2) Retransmission consent rights not affected**

The eligibility of the signal of a station to be carried under this section does not affect any right of the licensee of such station to grant (or withhold) retransmission consent under section 325 (b)(1) of this title.

**(e) Network nonduplication and syndicated exclusivity**

**(1) Not applicable except as provided by commission regulations**

Signals eligible to be carried under this section are not subject to the Commission's regulations concerning network nonduplication or syndicated exclusivity unless, pursuant to regulations adopted by the Commission, the Commission determines to permit network nonduplication or syndicated exclusivity to apply within the appropriate zone of protection.

**(2) Limitation**

Nothing in this subsection or Commission regulations shall permit the application of network nonduplication or syndicated exclusivity regulations to the retransmission of distant signals of network stations that are carried by a satellite carrier pursuant to a statutory license under section 119 (a)(2)(A) or (B) of title 17, with respect to persons who reside in unserved households, under<sup>3</sup> 119(a)(4)(A), or under section 119(a)(12), of such title.

**(f) Enforcement****(1) Orders and damages**

Upon complaint, the Commission shall issue a cease and desist order to any satellite carrier found to have violated this section in carrying any television broadcast station. Such order may, if a complaining station requests damages—

(A) provide for the award of damages to a complaining station that establishes that the violation was committed in bad faith, in an amount up to \$50 per subscriber, per station, per day of the violation; and

(B) provide for the award of damages to a prevailing satellite carrier if the Commission determines that the complaint was frivolous, in an amount up to \$50 per subscriber alleged to be in violation, per station alleged, per day of the alleged violation.

**(2) Commission decision**

The Commission shall issue a final determination resolving a complaint brought under this subsection not later than 180 days after the submission of a complaint under this subsection. The Commission may hear witnesses if it clearly appears, based on 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 written filings by the parties.

**(3) Remedies in addition**

The remedies under this subsection are in addition to any remedies available under title 17.

**(4) No effect on copyright proceedings**

Any determination, action, or failure to act of the Commission under this subsection shall have no effect on any proceeding under title 17 and shall not be introduced in evidence in any proceeding under that title. In no instance shall a Commission enforcement proceeding under this subsection be required as a predicate to the pursuit of a remedy available under title 17.

**(g) Notices concerning significantly viewed stations**

Each satellite carrier that proposes to commence the retransmission of a station pursuant to this section in any local market shall—

(1) not less than 60 days before commencing such retransmission, provide a written notice to any television broadcast station in such local market of such proposal; and

(2) designate on such carrier's website all significantly viewed signals carried pursuant to section 340 of this title and the communities in which the signals are carried.

**(h) Additional corresponding changes in regulations****(1) Community-by-community elections**

The Commission shall, no later than October 30, 2005, revise section 76.66 of its regulations (47 CFR 76.66), concerning satellite broadcast signal carriage, to permit (at the next cycle of elections under section 325 of this title) a television broadcast station that is located in a local market into which a satellite carrier retransmits a television broadcast station pursuant to section 338 of this title, to elect, with respect to such satellite carrier, between retransmission consent pursuant to such section 325 of this title and mandatory carriage pursuant to section 338 of this title separately for each county within such station's local market, if—

(A) the satellite carrier has notified the station, pursuant to paragraph (3), that it intends to carry another affiliate of the same network pursuant to this section during the relevant election period in the station's local market; or

(B) on the date notification under paragraph (3) was due, the satellite carrier was retransmitting into the station's local market pursuant to this section an affiliate of the same television network.

**(2) Unified negotiations**

In revising its regulations as required by paragraph (1), the Commission shall provide that any such station shall conduct a unified negotiation for the entire portion of its local market for which retransmission consent is elected.

### **(3) Additional provisions**

The Commission shall, no later than October 30, 2005, revise its regulations to provide the following:

#### **(A) Notifications by satellite carrier**

A satellite carrier's retransmission of television broadcast stations pursuant to this section shall be subject to the following limitations:

(i) In any local market in which the satellite carrier provides service pursuant to section 338 of this title on December 8, 2004, the carrier may notify a television broadcast station in that market, at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of—

(I) each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market pursuant to this section during the next election cycle under such section of such regulations; and

(II) for each such affiliate, the communities into which the satellite carrier reserves the right to make such retransmissions.

(ii) In any local market in which the satellite carrier commences service pursuant to section 338 of this title after December 8, 2004, the carrier may notify a station in that market, at least 60 days prior to the introduction of such service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle under such section of such regulations.

(iii) Beginning with the 2005 election cycle, a satellite carrier may only retransmit pursuant to this section during the pertinent election period a signal—

(I) as to which it has provided the notifications set forth in clauses (i) and (ii); or

(II) that it was retransmitting into the local market under this section as of the date such notifications were due.

#### **(B) Harmonization of elections and retransmission consent agreements**

If a satellite carrier notifies a television broadcast station that it reserves the right to retransmit an affiliate of the same television network during the next election cycle pursuant to this section, the station may choose between retransmission consent and mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

#### **(i) Definitions**

As used in this section:

##### **(1) Local market; satellite carrier; subscriber; television broadcast station**

The terms "local market", "satellite carrier", "subscriber", and "television broadcast station" have the meanings given such terms in section 338 (k) of this title.

##### **(2) Network station; television network**

The terms "network station" and "television network" have the meanings given such terms in section 339 (d) of this title.

##### **(3) Community**

The term “community” means—

(A) a county or a cable community, as determined under the rules, regulations, and authorizations of the Commission applicable to determining with respect to a cable system whether signals are significantly viewed; or

(B) a satellite community, as determined under such rules, regulations, and authorizations (or revisions thereof) as the Commission may prescribe in implementing the requirements of this section.

**(4) Bandwidth**

The terms “equivalent bandwidth” and “entire bandwidth” shall be defined by the Commission by regulation, except that this paragraph shall not be construed—

(A) to prevent a satellite operator from using compression technology;

(B) to require a satellite operator to use the identical bandwidth or bit rate as the local or distant broadcaster whose signal it is retransmitting;

(C) to require a satellite operator to use the identical bandwidth or bit rate for a local network station as it does for a distant network station;

(D) to affect a satellite operator’s obligations under subsection (a)(1) of this section; or

(E) to affect the definitions of “program related” and “primary video”.

**Footnotes**

<sup>1</sup> So in original. Probably should be “sections”.

<sup>2</sup> So in original. Probably should be “paragraphs”.

<sup>3</sup> So in original. Probably should be followed by “section”.

(June 19, 1934, ch. 652, title III, § 340, as added Pub. L. 108–447, div. J, title IX [title II, § 202(a)], Dec. 8, 2004, 118 Stat. 3409.)