§ 325. False, fraudulent, or unauthorized transmissions

(a) False distress signals; rebroadcasting programs

No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto, nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

(b) Consent to retransmission of broadcasting station signals

(1) No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—

(A) with the express authority of the originating station;
(B) under section 534 of this title, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section; or
(C) under section 338 of this title, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

(2) This subsection shall not apply—

(A) to retransmission of the signal of a noncommercial television broadcast station;
(B) to retransmission of the signal of a television broadcast station outside the station’s local market by a satellite carrier directly to its subscribers, if—

(i) such station was a superstation on May 1, 1991;
(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of section 119 of title 17; and
(iii) the satellite carrier complies with any network nonduplication, syndicated exclusivity, and sports blackout rules adopted by the Commission under section 339 (b) of this title;
(C) until December 31, 2014, to retransmission of the signals of network stations directly to a home satellite antenna, if the subscriber receiving the signal—

(i) is located in an area outside the local market of such stations; and
(ii) resides in an unserved household;
(D) to retransmission by a cable operator or other multichannel video provider, other than a satellite carrier, of the signal of a television broadcast station outside the station’s local market if such signal was obtained from a satellite carrier and—

(i) the originating station was a superstation on May 1, 1991; and
(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of section 119 of title 17; or
(E) during the 6-month period beginning on November 29, 1999, to the retransmission of the signal of a television broadcast station within the station’s local market by a satellite carrier directly to its subscribers under the statutory license of section 122 of title 17.

For purposes of this paragraph, the terms “satellite carrier” and “superstation” have the meanings given those terms, respectively, in section 119 (d) of title 17, as in effect on October 5, 1992, the term “unserved household” has the meaning given that term under section 119(d) of such title, and the term “local market” has the meaning given that term in section 122(j) of such title.

(3)
(A) Within 45 days after October 5, 1992, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 534 of this title, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations prescribed under this subsection do not conflict with the Commission’s obligation under section 543 (b)(1) of this title to ensure that the rates for the basic service tier are reasonable. Such rulemaking proceeding shall be completed within 180 days after October 5, 1992.

(B) The regulations required by subparagraph (A) shall require that television stations, within one year after October 5, 1992, and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 534 of this title. If there is more than one cable system which services the same geographic area, a station’s election shall apply to all such cable systems.

(C) The Commission shall commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection, and such other regulations as are necessary to administer the limitations contained in paragraph (2). Such regulations shall—

(i) establish election time periods that correspond with those regulations adopted under subparagraph (B) of this paragraph;

(ii) until January 1, 2015, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station 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; and

(iii) until January 1, 2015, prohibit a multichannel video programming distributor from failing to negotiate in good faith for retransmission consent under this section, and it shall not be a failure to negotiate in good faith if the 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.

(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 534 of this title shall not apply to the carriage of the signal of such station by such cable system. If an originating television station elects under paragraph (3)(C) to exercise its right to grant retransmission consent under this subsection with respect to a satellite carrier, section 338 of this title shall not apply to the carriage of the signal of such station by such satellite carrier.

(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 338, 534, or 535 of this title of any station electing to assert the right to signal carriage under that section.

(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17 or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers.

(7) For purposes of this subsection, the term—

(A) “network station” has the meaning given such term under section 119 (d) of title 17; and

(B) “television broadcast station” means an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47,
Code of Federal Regulations, except that such term does not include a low-power or translator television station.

(c) **Broadcast to foreign countries for rebroadcast to United States; permit**

No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.

(d) **Application for permit**

Such application shall contain such information as the Commission may by regulation prescribe, and the granting or refusal thereof shall be subject to the requirements of section 309 of this title with respect to applications for station licenses or renewal or modification thereof, and the license or permission so granted shall be revocable for false statements in the application so required or when the Commission, after hearings, shall find its continuation no longer in the public interest.

(e) **Enforcement proceedings against satellite carriers concerning retransmissions of television broadcast stations in the respective local markets of such carriers**

1. **Complaints by television broadcast stations**

   If after the expiration of the 6-month period described under subsection (b)(2)(E) of this section a television broadcast station believes that a satellite carrier has retransmitted its signal to any person in the local market of such station in violation of subsection (b)(1) of this section, the station may file with the Commission a complaint providing—

   A) the name, address, and call letters of the station;

   B) the name and address of the satellite carrier;

   C) the dates on which the alleged retransmission occurred;

   D) the street address of at least one person in the local market of the station to whom the alleged retransmission was made;

   E) a statement that the retransmission was not expressly authorized by the television broadcast station; and

   F) the name and address of counsel for the station.

2. **Service of complaints on satellite carriers**

   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. A television broadcast station may serve a satellite carrier with a complaint concerning an alleged violation of subsection (b)(1) of this section through retransmission of a station within the local market of such station by filing the original and two copies of the complaint with the Secretary of the Commission and serving a copy of the complaint on the satellite carrier 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.

3. **Answers by satellite carriers**
Within five business days after the date of service, the satellite carrier shall file an answer with the Commission and shall serve the answer by a commonly used overnight delivery service and by United States mail, on the counsel designated in the complaint at the address listed for such counsel in the complaint.

(4) **Defenses**

(A) **Exclusive defenses**

The defenses under this paragraph are the exclusive defenses available to a satellite carrier against which a complaint under this subsection is filed.

(B) **Defenses**

The defenses referred to under subparagraph (A) are the defenses that—

(i) the satellite carrier did not retransmit the television broadcast station to any person in the local market of the station during the time period specified in the complaint;

(ii) 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 to which the satellite carrier made such retransmissions for the entire time period during which it is alleged that a violation of subsection (b)(1) of this section has occurred;

(iii) the retransmission was made after January 1, 2002, and the television broadcast station had elected to assert the right to carriage under section 338 of this title as against the satellite carrier for the relevant period; or

(iv) the station being retransmitted is a noncommercial television broadcast station.

(5) **Counting of violations**

The retransmission without consent of a particular television broadcast station on a particular day to one or more persons in the local market of the station shall be considered a separate violation of subsection (b)(1) of this section.

(6) **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 paragraph (4)(B)(i).

(7) **Procedures**

(A) **Regulations**

Within 60 days after November 29, 1999, the Commission shall issue procedural regulations implementing this subsection which shall supersede procedures under section 312 of this title.

(B) **Determinations**

(i) In general

Within 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 shall hear witnesses only 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.

(ii) **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 45 days.

(8) 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 paragraph (4) with respect to such retransmission, the Commission shall be required to—

(A) make a finding that the satellite carrier violated subsection (b)(1) of this section with respect to that station; and

(B) issue an order, within 45 days after the filing of the complaint, containing—

(i) 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 subsection (b)(1) of this section with respect to such station;

(ii) if the satellite carrier is found to have violated subsection (b)(1) of this section 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 market of such station, until such time as the Commission, after giving notice to the station, that the satellite carrier is in compliance with subsection (b)(1) of this section with respect to such stations; and

(iii) an award to the complainant of that complainant’s costs and reasonable attorney’s fees.

(9) Court proceedings on enforcement of Commission order

(A) In general

On entry by the Commission of a final order granting relief under this subsection—

(i) a television broadcast station may apply within 30 days after such entry to the United States District Court for the Eastern District of Virginia for a final judgment enforcing all relief granted by the Commission; and

(ii) the satellite carrier may apply within 30 days after such entry to the United States District Court for the Eastern District of Virginia for a judgment reversing the Commission’s order.

(B) Appeal

The procedure for an appeal under this paragraph by the satellite carrier shall supersede any other appeal rights under Federal or State law. A United States district court shall be deemed to have personal jurisdiction over the satellite carrier if the carrier, or a company under common control with the satellite carrier, has delivered television programming by satellite to more than 30 customers in that district during the preceding 4-year period. If the United States District Court for the Eastern District of Virginia does not have personal jurisdiction over the satellite carrier, an enforcement action or appeal shall be brought in the United States District Court for the District of Columbia, which may find personal jurisdiction based on the satellite carrier’s ownership of licenses issued by the Commission. An application by a television broadcast station for an order enforcing any cease-and-desist relief granted by the Commission shall be resolved on a highly expedited schedule. No discovery may be conducted by the parties in any such proceeding. The district court shall enforce the Commission order unless the Commission record reflects manifest error and an abuse of discretion by the Commission.

(10) Civil action for statutory damages
Within 6 months after issuance of an order by the Commission under this subsection, a television broadcast station may file a civil action in any United States district court that has personal jurisdiction over the satellite carrier for an award of statutory damages for any violation that the Commission has determined to have been committed by a satellite carrier under this subsection. Such action shall not be subject to transfer under section 1404 (a) of title 28. On finding that the satellite carrier has committed one or more violations of subsection (b) of this section, the District Court shall be required to award the television broadcast station statutory damages of $25,000 per violation, in accordance with paragraph (5), and the costs and attorney’s fees incurred by the station. Such statutory damages shall be awarded only if the television broadcast station has filed a binding stipulation with the court that such station will donate the full amount in excess of $1,000 of any statutory damage award to the United States Treasury for public purposes. Notwithstanding any other provision of law, a station shall incur no tax liability of any kind with respect to any amounts so donated. Discovery may be conducted by the parties in any proceeding under this paragraph only if and to the extent necessary to resolve a genuinely disputed issue of fact concerning one of the defenses under paragraph (4). In any such action, the defenses under paragraph (4) shall be exclusive, and the burden of proof shall be on the satellite carrier with respect to all defenses other than the defense under paragraph (4)(B)(i). A judgment under this paragraph may be enforced in any manner permissible under Federal or State law.

(11) Appeals

(A) In general

The nonprevailing party before a United States district court may appeal a decision under this subsection to the United States Court of Appeals with jurisdiction over that district court. The Court of Appeals shall not issue any stay of the effectiveness of any decision granting relief against a satellite carrier unless the carrier presents clear and convincing evidence that it is highly likely to prevail on appeal and only after posting a bond for the full amount of any monetary award assessed against it and for such further amount as the Court of Appeals may believe appropriate.

(B) Appeal

If the Commission denies relief in response to a complaint filed by a television broadcast station under this subsection, the television broadcast station filing the complaint may file an appeal with the United States Court of Appeals for the District of Columbia Circuit.

(12) Sunset

No complaint or civil action may be filed under this subsection after December 31, 2001. This subsection shall continue to apply to any complaint or civil action filed on or before such date.


Amendments


Pub. L. 111–157, § 9(b)(2), substituted “June 1, 2010” for “May 1, 2010”.

Pub. L. 111–151, § 2(b)(2), substituted “May 1, 2010” for “March 29, 2010”.


Subsec. (b)(3)(C). Pub. L. 108–447, § 207(a)(1), (2), in introductory provisions, substituted “The” for “Within 45 days after November 29, 1999, the” and struck out second sentence which read “The Commission shall complete all actions necessary to prescribe such regulations within 1 year after November 29, 1999.”


“(A) following the date that is one year after October 5, 1992, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—

“(A) with the express authority of the originating station; or

“(B) pursuant to section 534 of this title, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

“(2) The provisions of this subsection shall not apply to—

“(A) retransmission of the signal of a noncommercial broadcasting station;

“(B) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

“(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

“(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.

For purposes of this paragraph, the terms ‘satellite carrier’, ‘superstation’, and ‘unserved household’ have the meanings given those terms, respectively, in section 119 (d) of title 17 as in effect on October 5, 1992.”


Subsec. (b)(4). Pub. L. 106–113, § 1009(a)(9) [title I, § 1009(a)(3)], inserted at end “If an originating television station elects under paragraph (3)(C) to exercise its right to grant retransmission consent under this subsection with respect to a satellite carrier, section 338 of this title shall not apply to the carriage of the signal of such station by such satellite carrier.”

Subsec. (b)(5). Pub. L. 106–113, § 1009(a)(4) [title I, § 1009(a)(4)], substituted “338, 354, or 535 of this title” for “534 or 535 of this title”.


Subsec. (e). Pub. L. 106–113, § 1009(b) [title I, § 1009(b)], added subsec. (e).

1992—Subsecs. (b) to (d). Pub. L. 102–385 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–175 effective Feb. 27, 2010, see section 307(a) of Pub. L. 111–175, set out as a note under section 111 of Title 17, Copyrights.
Effective Date of 1992 Amendment

Section 28 of Pub. L. 102–385 provided that: “Except where otherwise expressly provided, the provisions of this Act [enacting sections 334, 335, 534 to 537, 544a, 548, and 555a of this title, amending this section and sections 332, 522, 532, 533, 541 to 544, 546, 551 to 555, and 558 of this title, and enacting provisions set out as notes under sections 521, 531, 543, and 554 of this title] and the amendments made thereby shall take effect 60 days after the date of enactment of this Act [Oct. 5, 1992].”

Regulations


Savings Clause Regarding Definitions

Pub. L. 111–175, title II, § 208, May 27, 2010, 124 Stat. 1254, provided that: “Nothing in this title [enacting section 342 of this title, amending this section and sections 335 and 338 to 340 of this title, and enacting provisions set out as notes under sections 338 and 340 of this title] or the amendments made by this title shall be construed to affect—

“(1) the meaning of the terms ‘program related’ and ‘primary video’ under the Communications Act of 1934 [47 U.S.C. 151 et seq.]; or

“(2) the meaning of the term ‘multicast’ in any regulations issued by the Federal Communications Commission.”

Severability

Pub. L. 106–113, div. B, § 1000(a)(9) [title I, § 1010], Nov. 29, 1999, 113 Stat. 1536, 1501A–543, provided that: “If any provision of section 325(b) of the Communications Act of 1934 (47 U.S.C. 325 (b)), or the application of that provision to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of that section, and the application of that provision to other persons and circumstances, shall not be affected.”

Digital Transition Savings Provision


“(1) to impair the authority of the Federal Communications Commission to take any action with respect to the transition by television broadcasters to the digital television service; or

“(2) to require the Commission to take any such action.”