

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Elimination of Termination Dates in Sections
76.64(l) and 76.65(f) of the Commission's Rules

ORDER

Adopted: April 29, 2021

Released: April 29, 2021

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we update our rules by eliminating the termination dates provided in sections 76.64(l) and 76.65(f) of the Commission's rules relating to retransmission consent to conform to the latest Congressional amendments to section 325(b)(3)(C) of the Communications Act of 1934, as amended (the Act).

II. BACKGROUND

2. In 1999, Congress enacted the Satellite Home Viewer Improvement Act (SHVIA), which adopted standards governing retransmission consent negotiations between broadcasters and multichannel video programming distributors (MVPDs). Specifically, Congress directed the Commission to require television stations to negotiate retransmission consent with MVPDs in good faith and to prohibit broadcasters from entering into exclusive retransmission consent agreements. Originally, section 325(b)(3)(C) of the Act specified that the good faith negotiation and exclusivity provisions would terminate after January 1, 2006. Through successive reauthorizations of these provisions, the termination date in section 325(b)(3)(C) was extended to January 1, 2010, then subsequently to March 1, 2010, March 29, 2010, May 1, 2010, June 1, 2010, January 1, 2015, and finally, to January 1, 2020. The termination date is set forth in sections 76.64(l) and 76.65(f) of the Commission's rules, and was last updated in

1 47 CFR §§ 76.64(l), 76.65(f).

2 47 U.S.C. § 325, as amended by section 1002 of the Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019).

3 Pub. L. No. 106-113, 113 Stat. 1501 (1999).

4 See 47 U.S.C. § 325(b)(3)(C); 47 CFR §§ 76.64 (retransmission consent), 76.65 (good faith and exclusive retransmission consent complaints). Although SHVIA imposed the good faith negotiation obligation only on broadcasters, in 2004 Congress made the good faith negotiation obligation reciprocal between broadcasters and MVPDs. Satellite Home Viewer Extension and Reauthorization Act (SHVERA), Pub. L. No. 108-447, 118 Stat. 2809 (2004).

5 47 U.S.C. § 325(b)(3)(C).

6 47 U.S.C. § 325(b)(3)(C) (2004) (effective Dec. 8, 2004); 47 U.S.C. § 325(b)(3)(C) (2009) (effective Dec. 19, 2009); 47 U.S.C. § 325(b)(3)(C) (2010) (effective Mar. 2, 2010); 47 U.S.C. § 325(b)(3)(C) (2010) (effective Mar. 26, 2010); 47 U.S.C. § 325(b)(3)(C) (2010) (effective April 15, 2010); 47 U.S.C. § 325(b)(3)(C) (2010) (effective May 27, 2010); 47 U.S.C. § 325(b)(3)(C) (effective Dec. 4, 2014).

February 2015 to reflect the January 1, 2020 date.⁷

3. In 2019, section 1002 of the Television Viewer Protection Act of 2019 (TVPA) eliminated the “until January 1, 2020” language from each place that it previously appeared in section 325(b)(3)(C).⁸ As a result, the authority for sections 76.64(l) and 76.65(f) now continues indefinitely, yet the text of these specific rule provisions still contains the “until January 1, 2020” termination language. This discrepancy has led to confusion among interested parties as to whether these provisions are still in effect.

III. DISCUSSION

4. In this Order, we eliminate the termination dates set forth in sections 76.64(l) and 76.65(f) of the Commission’s rules. This change simply conforms to the statutory amendments in the TVPA, which eliminated the termination dates in section 325(b)(3)(C) and thus made the provisions effective indefinitely.⁹ Eliminating the outdated termination dates from the Commission’s rules conforms with the directive in the TVPA and therefore will alleviate any confusion as to whether the rules remain in effect.

5. We find that notice and comment procedures are unnecessary under the “good cause” exception of the Administrative Procedure Act (APA) because deleting the termination dates in sections 76.64(l) and 76.65(f) entails no exercise of our administrative discretion.¹⁰ The elimination of the termination dates is already effective as a matter of law under the TVPA. Moreover, the text of our rules already states that if Congress extends the termination date, as it did in the TVPA, the rules remain in effect until the statutory authorization expires. Thus, this rule modification simply updates the Commission’s implementing regulations to conform with the TVPA amendments recently enacted into law.¹¹ The rule change does not establish additional regulatory obligations or burdens on regulated entities. Consequently, we find notice and comment procedures are unnecessary for this action.

IV. PROCEDURAL MATTERS

6. *Regulatory Flexibility Act.* Because these rule changes are being adopted without notice and comment, the Regulatory Flexibility Act¹² does not apply.

7. *Paperwork Reduction Act.* This document does not contain any new or modified

⁷ 47 CFR §§ 76.64(l), 76.65(f); see *Implementation of Sections 101, 103 and 105 of the STELA Reauthorization Act of 2014*, Order, MB Docket No. 15-37, 30 FCC Rcd 2380 (2015). Section 76.64(l) states: “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.” Section 76.65(f) states: “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.”

⁸ Television Viewer Protection Act, § 1002; 47 U.S.C. § 325. Section 1002 states: “Section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)) is amended . . . in paragraph (3)(C), by striking ‘until January 1, 2020,’ each place it appears.”

⁹ *Id.*

¹⁰ 5 U.S.C. § 553(b)(3)(B) (notice and comment is not necessary “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”).

¹¹ The Commission has found the “good cause” exception to apply in similar circumstances. See, e.g., *Implementation of Section 629 of the Consolidated Appropriations Act*, Order, 22 FCC Rcd 4245 (2007) (under the “good cause” exception, notice and comment were not required to modify the rule to specify a 39 percent ownership cap where the statute directed the Commission to revise the rule according to specific terms); see also *Metzenbaum v. FERC*, 675 F.2d 1282, 1291 (D.C. Cir. 1982) (agency orders that were nondiscretionary ministerial actions issued in conformity with statute were properly issued without notice and comment).

¹² 5 U.S.C. § 601 *et seq.* See *id.* § 601(2)

information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).¹³ In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.¹⁴

8. *Congressional Review Act.* The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Bureau will send a copy of this Order to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.¹⁵

9. *Additional Information.* For more information, contact Steven Broeckaert, Steven.Broeckaert@fcc.gov, Policy Division, Media Bureau, (202) 418-1075.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 4(i), 4(j), 303(r), 325 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 325, and 534, and in section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(3)(B), this Order **IS ADOPTED**.

11. **IT IS FURTHER ORDERED** that, pursuant to the authority found in sections 4(i), 4(j), 303(r), 325 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 325, and 534, and in section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(3)(B), the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix A, effective as of thirty (30) days after the date of publication in the *Federal Register*.

12. **IT IS FURTHER ORDERED** that the Commission shall send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

¹³ The Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

¹⁴ The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. 3506(c)(4).

¹⁵ *See* 5 U.S.C. § 801(a)(1)(A).

APPENDIX A

Final Rules

For ease of review, the final rules set forth below show the deleted language in ~~strike~~through.

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The Authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.64 is amended by revising paragraph (l) to read as follows:

§ 76.64 Retransmission consent

* * * * *

(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 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.~~

* * * * *

3. Section 76.65 is amended by removing paragraph (f).

~~(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.~~