



NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

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FCC Extends Good Faith Bargaining Obligations to Cable and Satellite Providers

Washington, DC – The Federal Communications Commission (FCC) today adopted a *Report and Order* to extend reciprocal good faith bargaining obligations for retransmission consent to cable and satellite providers. The adoption of the item fulfills the statutory deadline set forth in the *Satellite Home Viewer Extension and Reauthorization Act of 2004* (SHVERA).

The move continues the Commission's implementation of the SHVERA and imposes the same bargaining obligations on multichannel video programming distributors (MVPD) as had previously been applied to broadcasters in retransmission consent negotiations. The obligations were initially required for broadcasters only under the *Satellite Home Viewer Improvement Act of 1999* (SHVIA).

The FCC found that the statutory provision within SHVERA requires the Commission to apply the reciprocal bargaining obligation to the negotiation of all retransmission consent in and out of their designated market. In so finding, the Commission determined that the distance between the broadcaster and the MVPD will often be a critical factor in determining compliance with the good faith rules.

The Commission amended the seven good faith negotiating standards set forth in SHVIA to make them equally applicable to broadcasters and MVPDs. The Order establishes the following actions or practices as a violation of a broadcast television station's or MVPD's (Negotiating Entity) duty to negotiate retransmission consent agreements in good faith:

- Refusal by a Negotiating Entity to negotiate retransmission consent;
- Refusal by a Negotiating Entity to designate a representative with authority to make binding representations on retransmission consent;
- Refusal by a Negotiating Entity to meet and negotiate consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations;
- Refusal by a Negotiating Entity to put forth more than a single, unilateral proposal;
- 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;
- 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; and

- 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.

In addition to the standards test above, a Negotiating Entity may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station or MVPD breached its duty to negotiate in good faith.

Action by the Commission June 6, 2005, by *Report and Order* (FCC 05-119). Chairman Martin, Commissioners Abernathy, Copps and Adelstein.

Docket 05-181

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