



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 ISSUES ORDER PROMOTING COMPETITION IN THE VIDEO DISTRIBUTION MARKET

Washington, D.C.: The Federal Communications Commission today took an important step toward promoting competition and innovation in the video distribution market by establishing a process for considering, on a case-by-case basis, complaints about the availability of terrestrially delivered, cable-affiliated programming, addressing what is commonly referred to as the “terrestrial loophole.” These new rules allow DBS providers, telcos and other competitors to obtain more of the “must have” programming they need to offer viable alternative video packages to consumers and an opportunity to file complaints if the programming is withheld. The Order promotes competition, fosters innovation and empowers consumers, all while creating a fair process for the Commission to handle pending and new claims in a speedy and just manner.

The Order concludes the Commission has authority under Section 628(b) of the Communications Act to take action if a cable operator engages in unfair acts with respect to terrestrially delivered, cable-affiliated programming that significantly hinder a multichannel video programming distributor from providing satellite cable programming to consumers. The Commission adopts a rebuttable presumption that an unfair act involving a terrestrially delivered, cable-affiliated regional sports network has the purpose or effect set forth in Section 628(b). The Order adopts rules permitting complainants to pursue program access claims similar to the claims they may pursue involving satellite-delivered, cable-affiliated programming. Because the claims involving terrestrial programming require an additional factual inquiry regarding whether the unfair act significantly hinders the complainant from providing satellite cable programming to consumers, additional time will be given to present rebuttal information.

The Commission has before it a number of specific complaints alleging that cable operators have significantly hindered competition by withholding from their rivals terrestrially delivered regional sports networks. The Order does not decide those complaints but describes how they can be handled going forward. It provides that complainants may continue to pursue their complaints as filed. If, instead, a complainant wants a currently pending complaint to be considered under the new rules, it may submit a supplemental filing alleging that the defendant has engaged in an unfair act after the effective date of the rules. The Order also establishes procedures for the Commission’s consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program access complainant seeking renewal of such a contract.

Action by the Commission January 20, 2010, by Report and Order (FCC 10-17). Chairman Genachowski; Commissioners Copps, Clyburn, and Baker issuing separate statements. Commissioner McDowell dissenting and issuing a statement. MB Docket No. 07-198.

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