

Federal Communications Commission.

Daniel Kahn,

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 20-31; FCC 20-10; FRS 16469]

Implementation of Provisions of the Television Viewer Protection Act of 2019 Governing Negotiation of Retransmission Consent Between Qualified Multichannel Video Programming Distributor Buying Groups and Large Station Groups

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes revisions to its rules governing good faith negotiation of retransmission consent, to implement provisions of the Television Viewer Protection Act of 2019 governing negotiations between qualified multichannel video programming distributor buying groups and large broadcast station groups.

DATES: Comments are due on or before March 5, 2020; reply comments are due on or before March 16, 2020.

ADDRESSES: You may submit comments, identified by MB Docket No. 20-31, by any of the following methods:

- *Federal Communications Commission's Website:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail

and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau at Raelynn.Remy@fcc.gov, or (202) 418-2936.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 20-10, adopted and released on January 31, 2020. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <https://docs.fcc.gov/public/attachments/FCC-20-10A1.docx>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. In this Notice of Proposed Rulemaking (NPRM), we propose revisions to section 76.65 of our rules, which governs good faith negotiation of retransmission consent, to implement provisions in section 1003 of the Television Viewer Protection Act of 2019 (TVPA).¹ Section 1003 principally

¹ The Television Viewer Protection Act of 2019, Public Law 116-94, 133 Stat. 2534, 3198 (2019) (amendments to be codified at 47 U.S.C. 325). Through this NPRM, we satisfy Congress's directive in section 325(b)(3)(C) of the Communications Act of 1934, as amended by section 1003(a)(3) of the TVPA, to commence a rulemaking proceeding to revise the Commission's rules to specify that "certain small MVPDs can meet the obligation to negotiate [retransmission consent] in good faith . . . by negotiating with a large station group

directs the Commission to adopt rules that provide for negotiation of retransmission consent between "qualified multichannel video programming distributor [MVPD] buying group[s]" and "large [broadcast] station group[s]" as those terms are defined in the TVPA. As discussed below, we propose to adopt rules defining: (i) The term "large station group" as used in section 1003 of the TVPA to mean, in relevant part, an entity whose individual television station members *collectively* have a national audience reach of more than 20 percent; and (ii) the term "qualified MVPD buying group" as used in section 1003 to mean, in relevant part, an entity that negotiates on behalf of MVPDs that collectively serve no more than 25 percent of all households receiving service from *any* MVPD in a given local market. In addition, we propose to codify in section 76.65 the provisions governing negotiation of retransmission consent between qualified MVPD buying groups and large station groups, as well as the definitions of "local market" and "multichannel video programming distributor" set forth in section 1003(b)(3). Finally, we propose to make minor conforming changes to section 76.65. We seek comment on these proposals.²

I. Background

2. The TVPA, enacted on December 20, 2019, is the latest in a series of statutes that have amended the Communications Act to establish parameters for the carriage of television broadcast stations by MVPDs. As relevant to this NPRM, section 1003 of the TVPA revised section 325(b) of the Act principally by allowing smaller MVPDs to negotiate collectively as a buying group for retransmission consent with large broadcast station groups. In particular, section 1003(a)(3) of the TVPA amends section 325(b)(3)(C) of the Act by adding new subsection 325(b)(3)(C)(vi), which, read as part of section 325(b)(3)(C) as a whole, requires the Commission to commence a rulemaking proceeding to revise its

through a qualified MVPD buying group." Section 325(b)(3)(C), as amended, requires that the Commission specify such rules "not later than 90 days after the date of enactment of the TVPA," or March 19, 2020.

² This NPRM proposes rule revisions that implement only section 1003 of the TVPA; TVPA provisions not covered herein will be implemented in separate proceedings. In view of the 90-day deadline established in section 325(b)(3)(C) of the Act, as amended by section 1003(a)(3) of the TVPA, we find that establishing the abbreviated pleading cycle set forth above is necessary to meet our statutory responsibility and serves the public interest.

retransmission consent rules to specify that:

(I) A [MVPD] may satisfy its obligation to negotiate [retransmission consent] in good faith under [section 325(b)(3)(C)(iii)] . . . with a large [broadcast] station group by designating a qualified MVPD buying group to negotiate on its behalf, so long as the qualified MVPD buying group itself negotiates in good faith in accordance with such clause;

(II) It is a violation of the obligation to negotiate in good faith under [section 325(b)(3)(C)(iii)] for the qualified MVPD buying group to disclose the prices, terms, or conditions of an ongoing negotiation or the final terms of a negotiation to a member of [such] . . . group that is not intending, or is unlikely, to enter into the final terms negotiated by the . . . group; and

(III) A large [broadcast] station group has an obligation to negotiate [retransmission consent] in good faith under [section 325(b)(3)(C)(ii)] with respect to a negotiation . . . with a qualified MVPD buying group.

3. Moreover, section 1003(b) of the TVPA amended section 325(b)(7) of the Act principally by adding new subsections 325(b)(7)(C) and (D), which define the terms “qualified MVPD buying group” and “large station group,” respectively, for the purpose of applying the new good faith negotiation provisions of section 325(b)(3)(C)(vi). In particular, section 325(b)(7)(C) of the Act, as added by the TVPA, defines “qualified MVPD buying group,” in relevant part, as an entity that:

(i) Negotiates [retransmission consent] on behalf of two or more multichannel video programming distributors—

(I) None of which is a [MVPD] that serves more than 500,000 subscribers nationally; and

(II) That do not collectively serve more than 25 percent of all households served by a [MVPD] in any single local market in which the applicable large station group operates.

4. In addition, section 325(b)(7)(D) of the Act, as added by the TVPA, defines “large station group” as a group of television broadcast stations that:

(i) Are directly or indirectly under common de jure control permitted by the regulations of the Commission;

(ii) Generally negotiate agreements for retransmission consent . . . as a single entity; and

(iii) Include only television broadcast stations that have a national audience reach of more than 20 percent.

5. There are ambiguities in the statutory definitions of “large station group” and “qualified MVPD buying group.” With respect to “large station group,” this term could mean a group of television broadcast stations whose members *collectively* have over 20 percent national audience reach, or it could mean that each station in the

group individually has such coverage. Similarly, the term “qualified MVPD buying group” could mean an entity that negotiates on behalf of MVPDs that collectively serve no more than 25 percent of all households receiving service from *any* MVPD in any single local market in which the large station group operates. Or it could be referring to an entity that negotiates on behalf of MVPDs that collectively serve no more than 25 percent of all households receiving service from a *single* MVPD in any single local market in which the large station group operates. We initiate this proceeding to clarify these terms in order to permit applicable parties to utilize the new TVPA protections promptly, as reflected in the expedited deadline specified in the new statute.

II. Discussion

6. We propose to implement section 1003 of the TVPA by revising section 76.65 of our rules: (i) To define the term “large station group” as, among other things, an entity whose individual television station members collectively have a national audience reach of more than 20 percent; and (ii) to define the term “qualified MVPD buying group” as, among other things, an entity that negotiates on behalf of MVPDs that do not collectively serve more than 25 percent of all households served by MVPDs in any single local market in which the applicable large station group or television broadcast station operates.

7. We tentatively conclude that this interpretation of the term “large station group” finds support in the text and structure of the TVPA, and would best effectuate Congressional intent.³ First, we note that the text of the first two clauses in the definition of “large station group” require, respectively, that stations comprising a “large station group” be under “common de jure control” and negotiate agreements as a “single entity.” We tentatively find that these two requirements properly characterize only stations that collectively comprise a group, rather than individual stations, and that the third clause of the definition thus should be interpreted as imposing a requirement that must be true of the stations collectively. Second, we note that the TVPA contemplates that “qualified MVPD buying groups” and “large station groups” would be counterparties in a retransmission consent negotiation. Because the former term imposes a market share cap of 25 percent on the MVPDs “collectively,” we tentatively conclude that the 20

percent market share threshold for “large station groups” similarly should be construed to apply to the stations collectively.⁴ Third, given that a key purpose of the new good faith negotiation provisions is to level the playing field by “allow[ing] smaller MVPDs to collectively negotiate as a buying group [with large station groups] for retransmission consent,” we tentatively find that Congress could not have intended to create a collective negotiation mechanism to address the growing bargaining power of large station groups but then defined those groups in a way that would render the mechanism unavailable as a practical matter. Significantly, a contrary interpretation, whereby each station in the group individually must have at least a 20 percent national audience reach, would be illogical given that there are currently no stations that meet this threshold.⁵

8. We also propose to construe the phrase “all households served by a [MVPD]” in the statutory definition of “qualified MVPD buying group” to mean all households that receive service from *any* MVPD, rather than all households served by a *specific* MVPD in a given local market. Because the percentage of households that subscribe to a particular MVPD (or class of MVPDs) relative to the total number of households that subscribe to any MVPD in a given market is a competition metric that the Commission historically has utilized, we tentatively conclude that this is the most reasonable reading of the relevant phrase. We also believe that adopting the alternative interpretation would create practical problems given that the statute provides no guidance as to which MVPD in a given market should serve as the benchmark for the relevant threshold. We seek comment on these proposals and tentative conclusions.

9. We also propose to implement section 1003 by: (i) Codifying in section 76.65 of our rules the provisions governing negotiation of retransmission consent between qualified MVPD buying groups and large station groups required by section 1003(a)(3) of the

⁴ We note that the term “collective” is absent from the statutory definition of “large station group,” whereas it is included in the definition of “qualified MVPD buying group.” We seek comment on whether this has any relevance to the interpretation of this term.

⁵ Indeed, no individual broadcast station even meets the 20 percent national audience threshold. We note that the largest Designated Market Area (DMA) is New York, which covers roughly six percent of U.S. television households.

³ Our proposed interpretation also is harmonious with the Commission’s ownership restrictions.

TVPA⁶ and the definitions of “local market” and “multichannel video programming distributor” set forth in section 1003(b)(3); and (ii) deleting the phrase “as defined in 17 U.S.C. 122(j)” in section 76.65(viii) and (ix). We seek comment on these proposed rule revisions and on whether other revisions are needed to implement section 1003 of the TVPA.

Initial Paperwork Reduction Act Analysis

10. This document does not contain proposed new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, therefore, it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Ex Parte Rules

11. Permit-But-Disclose. The proceeding this NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents

shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Filing Requirements

12. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

13. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. These documents will also be available via

ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

14. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional Information

15. For additional information on this proceeding, contact Raelynn Remy of the Media Bureau, Policy Division, at Raelynn.Remy@fcc.gov or (202) 418–2936.

Initial Regulatory Flexibility Act Analysis

16. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

17. In this NPRM, pursuant to section 325(b)(3)(C) of the Act, as amended by section 1003 of the Television Viewer Protection Act of 2019, we commence a rulemaking proceeding to revise our retransmission consent rules to specify, among other things, that certain small multichannel video programming distributors (MVPDs) may satisfy their obligation to negotiate retransmission consent in good faith by negotiating with a large broadcast station group through a qualified MVPD buying group. In particular, we propose to revise section 76.65 of our rules to define: (i) The term “large station group” as used in section 1003 of the TVPA to mean, in relevant part, an entity whose individual television station members *collectively* have a national audience reach of more than 20 percent; and (ii) the term “qualified MVPD buying group” as used in section 1003 to mean, in relevant part, an entity that negotiates on behalf of MVPDs that

⁶ Our proposed rule makes minor, non-substantive changes to this statutory provision, such as revising the statutory phrase “may satisfy its obligation to negotiate in good faith under clause (iii) with respect to a negotiation for retransmission consent under this section with a large station group” to read “may satisfy its obligation to negotiate in good faith for retransmission consent with a large station group.”

collectively serve no more than 25 percent of all households receiving service from any MVPD in a given local market. In addition, we propose to codify in section 76.65 the provisions governing negotiation of retransmission consent between qualified MVPD buying groups and large station groups, as well as the definitions of “local market” and “multichannel video programming distributor” set forth in section 1003(b)(3). We also propose to make minor conforming changes to section 76.65.⁷ The NPRM seeks comment on these proposals and on whether other rule revisions are needed to implement section 1003 of the TVPA.

B. Legal Basis

18. The proposed action is authorized pursuant to sections 4(i), 4(j), 303(r), and 325 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 325, and section 1003 of the Television Viewer Protection Act of 2019.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

19. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁸ Below is a list of such small entities.

- Cable Companies and Systems
- Cable System Operators
- Open Video Services
- Satellite Master Antenna Television (SMATV) Systems
- Direct Broadcast Satellite (DBS) Service
- Television Broadcasting

⁷ For example, consistent with the statute, the proposed rules delete the phrase “as defined in 17 U.S.C. 122(j)” in section 76.65(viii) and (ix). Section 1003(c)(2) of the TVPA directs the Commission to strike this phrase from section 325(b)(3)(C) of the Act.

⁸ 15 U.S.C. 632.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The NPRM does not propose to adopt any reporting or recordkeeping requirements. The NPRM proposes to revise the Commission’s rules to permit certain small MVPDs to meet their statutory obligation to negotiate retransmission consent in good faith by designating a qualified MVPD buying group to negotiate on their behalf with a large broadcast station group. In particular, the NPRM proposes to revise such rules by, among other things, clarifying the meaning of the statutory terms “large station group” and “qualified MVPD buying group” so as to facilitate smaller MVPDs’ use of the new collective bargaining provisions consistent with Congressional intent. The proposed rule revisions would impose no new regulatory compliance burdens on small television broadcast stations.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”

22. Through this NPRM, the Commission seeks to implement section 1003 of the TVPA in a way that reduces burdens on smaller MVPDs that negotiate retransmission consent against large broadcast station groups with greater bargaining leverage by allowing them to negotiate collectively as a buying group for retransmission consent with such groups. As noted, the proposals in the NPRM, if adopted, likely would not have an adverse economic impact on any small entities, and would have a positive economic impact on smaller MVPDs that choose to avail themselves of the TVPA’s new collective bargaining provisions to negotiate against large broadcast station groups that have significant market power. We invite comment on the economic impact of our proposals on small entities, and on how the

Commission could minimize any potential burdens on such entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

23. None.

24. We adopt this NPRM pursuant to the authority found in sections 4(i), 4(j), 303(r), and 325 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 325, and section 1003 of the Television Viewer Protection Act of 2019.

List of Subjects in 47 CFR Part 76

Cable television, Communications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend Part 76 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

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. Amend § 76.65 by revising paragraphs (b)(1)(viii) and (ix) and (b)(2), and adding paragraphs (b)(3), and (b)(4) to read as follows:

§ 76.65 Good faith and exclusive retransmission consent complaints.

* * * * *

(b) * * * (1) * * *

(viii) Coordination of negotiations or negotiation on a joint basis by two or more television broadcast stations in the same local market to grant retransmission consent to a multichannel video programming distributor, unless such stations are directly or indirectly under common de jure control permitted under the regulations of the Commission.

(ix) The imposition by a television broadcast station of limitations on the ability of a multichannel video programming distributor to carry into the local market of such station a television signal that has been deemed significantly viewed, within the meaning of § 76.54 of this part, or any successor regulation, or any other television broadcast signal such

distributor is authorized to carry under 47 U.S.C. 338, 339, 340 or 534, unless such stations are directly or indirectly under common de jure control permitted by the Commission.

(2) *Negotiation of retransmission consent between qualified multichannel video programming distributor buying groups and large station groups.* (i) A multichannel video programming distributor may satisfy its obligation to negotiate in good faith for retransmission consent with a large station group by designating a qualified MVPD buying group to negotiate on its behalf, so long as the qualified MVPD buying group itself negotiates in good faith in accordance with this section.

(ii) It is a violation of the obligation to negotiate in good faith for a qualified MVPD buying group to disclose the prices, terms, or conditions of an ongoing negotiation or the final terms of a negotiation to a member of the qualified MVPD buying group that is not intending, or is unlikely, to enter into the final terms negotiated by the qualified MVPD buying group.

(iii) A large station group has an obligation to negotiate in good faith for retransmission consent with a qualified MVPD buying group.

(A) “Qualified MVPD buying group” means an entity that, with respect to a negotiation with a large station group for retransmission consent—

(1) Negotiates on behalf of two or more multichannel video programming distributors—

(i) None of which is a multichannel video programming distributor that serves more than 500,000 subscribers nationally; and

(ii) That do not collectively serve more than 25 percent of all households served by multichannel video programming distributors in any single local market in which the applicable large station group operates; and

(2) Negotiates agreements for such retransmission consent—

(i) That contain standardized contract provisions, including billing structures and technical quality standards, for each multichannel video programming distributor on behalf of which the entity negotiates; and

(ii) Under which the entity assumes liability to remit to the applicable large station group all fees received from the multichannel video programming distributors on behalf of which the entity negotiates.

(B) “Large station group” means a group of television broadcast stations that—

(1) Are directly or indirectly under common de jure control permitted by the regulations of the Commission;

(2) Generally negotiate agreements for retransmission consent under this section as a single entity; and

(3) Include only television broadcast stations that collectively have a national audience reach of more than 20 percent;

(3) *Definitions.* For purposes of this section and § 76.64, the following definitions apply:

(i) “Local market” has the meaning given such term in 17 U.S.C. 122(j); and

(ii) “Multichannel video programming distributor” has the meaning given such term in 47 U.S.C. 522.

(4) *Totality of the circumstances.* In addition to the standards set forth in paragraph (b)(1) of this section, a Negotiating Entity may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station or multichannel video programming distributor breached its duty to negotiate in good faith as set forth in paragraph (a) of this section.

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