

2000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20006
TEL: 202-429-8970

www.lsl-law.com

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FCC Adopts Enforcement Procedures Pursuant to the Satellite Home Viewer Improvement Act

On January 28, 2000, the Federal Communications Commission ("FCC" or "Commission") issued an Order providing a complaint procedure for a television station alleging that a satellite carrier has retransmitted a local television broadcast station signal without the station's consent. The new rules implement Section 1009 of the Satellite Home Viewer Improvement Act ("SHVIA"), signed into law on November 29, 1999, which, among other things, added new Section 325(e) to the Communications Act of 1934. These new rules, Part 1.6000, *et seq.*, of Title 47 of the Code of Federal Regulations, become effective on May 30, 2000.

The new "Retransmission Consent Complaint Procedure" includes the following guidelines and requirements:

Who can file: After May 29, 2000, any television broadcast station believing that a satellite carrier has retransmitted its broadcast station's signal to any person in the local market in violation of 47 U.S.C. § 325(b)(1) may file a complaint. 47 U.S.C. § 325(b)(1) provides that cable systems and other multichannel video programming distributors may not retransmit a broadcasting station's signal unless one of the following is true: (1) the originating station granted express authority to the cable system or multichannel operator to retransmit the signal; or (2) the station has asserted "must carry" rights under SHVIA § 338 (new 47 U.S.C. § 338).⁽¹⁾

Complaint Format: The new rules provide specific format and content requirements, including the requirement that the complainant list the street address of at least one person in the local market who received the alleged retransmitted signal and a statement that the retransmission was not authorized (see attached Rules Appendix).

Service of Process: The new rules specify particularized service of process requirements (e.g., using two different overnight delivery services to serve a copy of the complaint on the satellite carrier's CEO), and deem the Secretary of the Commission as the agent for service of process for satellite carriers that retransmit signals of any

television broadcast station.

Responding to a Complaint: Within five days after receipt of the service of process, a satellite carrier must file an answer with the Commission and also with the counsel for the complainant television broadcast station.

Defenses: 47 U.S.C. § 325(e)(4) provides the following exclusive defenses available to a satellite carrier: (1) the satellite carrier did not retransmit the signal to any person in the "local market" of the complainant television broadcast station during the time period indicated in the complaint; (2) the complainant television broadcast station had expressly authorized the retransmission through a written authorization signed by an officer of the television broadcast station; (3) the retransmission was made after January 1, 2002, and the television broadcast station elected to assert "must carry" for the relevant period; or (4) the complainant is a noncommercial television broadcast station.

Counting Violations: Each day in which an unauthorized retransmission is sent to one or more persons in the local market of the affected television broadcast station is a separate violation of the retransmission consent rule.

Burden of Proof: The complaining television broadcast station has the burden to prove that a satellite carrier transmitted unauthorized retransmissions into the station's local market. The satellite carrier has the burden to prove any of the exclusive defenses listed above.

FCC's Procedural Requirements: The Commission must issue a final determination whether a satellite carrier has wrongfully retransmitted the complaining broadcast station's signal into the station's local market (and cease and desist orders if applicable) within 45 days after a complaint is filed. This ruling may be based solely upon the written filings by the parties and witnesses will be heard only if there is a genuine dispute of material facts. The Commission may require and direct a discovery process if it is necessary to resolve a genuine dispute of material fact.

Satellite Carriers' Duty to Report Remedial Measures if Unauthorized Retransmission has Occurred: The FCC has determined that the additional collection of information is necessary to facilitate Commission oversight of remedial measures. The Commission has added the requirement that if a satellite carrier has been found to have violated 47 U.S.C. § 325(b)(1), it must immediately take steps to comply with the statute and notify the Secretary of the Commission of remedial steps taken within 2 days of receipt of the cease-and-desist order. This notification must be certified by the satellite carrier's chief executive officer and a copy of the cease-and-desist order must be attached. This reporting requirement is not effective until approved by the Office of Management Budget.

1. Retransmission consent is not required for retransmission of noncommercial television broadcast stations, retransmission of a broadcast station's signal outside of the station's local market under certain



circumstances, and retransmission of network station signals outside a station's local market to unserved households until December 31, 2004. Retransmission consent is also not required for satellite retransmission of a local station within a station's local market until May 29, 2000. After May 29, satellite carriers must obtain retransmission consent to carry these local-to-local retransmissions.