

(5) Television network

The term “television network” means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

(June 19, 1934, ch. 652, title III, § 339, as added Pub. L. 106-113, div. B, § 1000(a)(9) [title I, § 1008(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-534; amended Pub. L. 106-553, § 1(a)(2) [title X, § 1008], Dec. 21, 2000, 114 Stat. 2762, 2762A-140; Pub. L. 108-447, div. J, title IX [title II, §§ 204, 209], Dec. 8, 2004, 118 Stat. 3416, 3429.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-447, § 204(a)(1), inserted at end “Such two network stations may be comprised of both the analog signal and digital signal of not more than two network stations.”

Subsec. (a)(2). Pub. L. 108-447, § 204(a)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 108-447, § 204(a)(4), which directed amendment of par. (3) by inserting “, except that paragraph (2)(D) of this subsection, relating to the provision of distant digital signals, shall be enforceable under the provisions of section 340(f) of this title” at end, was executed by making the insertion before period at end, to reflect the probable intent of Congress.

Pub. L. 108-447, § 204(a)(2), redesignated par. (2) as (3).

Subsec. (c)(1). Pub. L. 108-447, § 204(b), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “For the purposes of identifying an unserved household under section 119(d)(10) of title 17, within 1 year after November 29, 1999, the Commission shall conclude an inquiry to evaluate all possible standards and factors for determining eligibility for retransmissions of the signals of network stations, and, if appropriate—

“(A) recommend modifications to the Grade B intensity standard for analog signals set forth in section 73.683(a) of its regulations (47 CFR 73.683(a)), or recommend alternative standards or factors for purposes of determining such eligibility; and

“(B) make a further recommendation relating to an appropriate standard for digital signals.”

Subsec. (c)(4)(D), (E). Pub. L. 108-447, § 209, added subpars. (D) and (E).

2000—Subsec. (c)(5). Pub. L. 106-553 added par. (5).

§ 340. Significantly viewed signals permitted to be carried**(a) Significantly viewed stations**

In addition to the broadcast signals that subscribers may receive under section¹ 338 and 339 of this title, a satellite carrier is also authorized to retransmit to a subscriber located in a community the signal of any station located outside the local market in which such subscriber is located, to the extent such signal—

(1) has, before December 8, 2004, been determined by the Federal Communications Commission to be a signal a cable operator may carry as significantly viewed in such community, except to the extent that such signal is prevented from being carried by a cable system in such community under the Commission’s network nonduplication and syndicated exclusivity rules; or

(2) is, after December 8, 2004, determined by the Commission to be significantly viewed in

such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community.

(b) Limitations**(1) Analog service limited to subscribers taking local-into-local service**

With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338 of this title.

(2) Digital service limitations

With respect to a signal that originates as a digital signal of a network station, this section shall apply only if—

(A) the subscriber receives from the satellite carrier pursuant to section 338 of this title the retransmission of the digital signal of a network station in the subscriber’s local market that is affiliated with the same television network; and

(B) either—

(i) the retransmission of the local network station occupies at least the equivalent bandwidth as the digital signal retransmitted pursuant to this section; or

(ii) the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station.

(3) Limitation not applicable where no network affiliates

The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.

(4) Authority to grant station-specific waivers

Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph² (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.

(c) Publication and modifications of lists; regulations**(1) In general**

The Commission shall—

(A) within 60 days after December 8, 2004—

(i) publish a list of the stations that are eligible for retransmission under sub-

¹ So in original. Probably should be “sections”.

² So in original. Probably should be “paragraphs”.

section (a)(1) of this section and the communities in which such stations are eligible for such retransmission; and

(ii) commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking;

(B) adopt rules pursuant to such rulemaking within 1 year after December 8, 2004.

(2) Public availability of list

The Commission shall make readily available to the public in electronic form, on the Internet website of the Commission or other comparable facility, a list of the stations that are eligible for retransmission under subsection (a) of this section and the communities in which such stations are eligible for such retransmission. The Commission shall update such list within 10 business days after the date on which the Commission issues an order making any modification of such stations and communities.

(3) Modifications

In addition to cable operators and television broadcast station licensees, the Commission shall permit a satellite carrier to petition for decisions and orders—

(A) by which stations may be added to those that are eligible for retransmission under subsection (a) of this section, and by which communities may be added in which such stations are eligible for such retransmission; and

(B) by which network nonduplication or syndicated exclusivity regulations are applied to the retransmission in accordance with subsection (e) of this section.

(d) Effect on other obligations and rights

(1) No effect on carriage obligations

Carriage of a signal under this section is not mandatory, and any right of a station licensee to have the signal of such station carried under section 338 of this title is not affected by the eligibility of such station to be carried under this section.

(2) Retransmission consent rights not affected

The eligibility of the signal of a station to be carried under this section does not affect any right of the licensee of such station to grant (or withhold) retransmission consent under section 325(b)(1) of this title.

(e) Network nonduplication and syndicated exclusivity

(1) Not applicable except as provided by commission regulations

Signals eligible to be carried under this section are not subject to the Commission's regulations concerning network nonduplication or syndicated exclusivity unless, pursuant to regulations adopted by the Commission, the Commission determines to permit network nonduplication or syndicated exclusivity to apply within the appropriate zone of protection.

(2) Limitation

Nothing in this subsection or Commission regulations shall permit the application of network nonduplication or syndicated exclu-

sivity regulations to the retransmission of distant signals of network stations that are carried by a satellite carrier pursuant to a statutory license under section 119(a)(2)(A) or (B) of title 17, with respect to persons who reside in unserved households, under³ 119(a)(4)(A), or under section 119(a)(12), of such title.

(f) Enforcement

(1) Orders and damages

Upon complaint, the Commission shall issue a cease and desist order to any satellite carrier found to have violated this section in carrying any television broadcast station. Such order may, if a complaining station requests damages—

(A) provide for the award of damages to a complaining station that establishes that the violation was committed in bad faith, in an amount up to \$50 per subscriber, per station, per day of the violation; and

(B) provide for the award of damages to a prevailing satellite carrier if the Commission determines that the complaint was frivolous, in an amount up to \$50 per subscriber alleged to be in violation, per station alleged, per day of the alleged violation.

(2) Commission decision

The Commission shall issue a final determination resolving a complaint brought under this subsection not later than 180 days after the submission of a complaint under this subsection. The Commission may hear witnesses if it clearly appears, based on written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on written filings by the parties.

(3) Remedies in addition

The remedies under this subsection are in addition to any remedies available under title 17.

(4) No effect on copyright proceedings

Any determination, action, or failure to act of the Commission under this subsection shall have no effect on any proceeding under title 17 and shall not be introduced in evidence in any proceeding under that title. In no instance shall a Commission enforcement proceeding under this subsection be required as a predicate to the pursuit of a remedy available under title 17.

(g) Notices concerning significantly viewed stations

Each satellite carrier that proposes to commence the retransmission of a station pursuant to this section in any local market shall—

(1) not less than 60 days before commencing such retransmission, provide a written notice to any television broadcast station in such local market of such proposal; and

(2) designate on such carrier's website all significantly viewed signals carried pursuant to section 340 of this title and the communities in which the signals are carried.

³ So in original. Probably should be followed by "section".

(h) Additional corresponding changes in regulations**(1) Community-by-community elections**

The Commission shall, no later than October 30, 2005, revise section 76.66 of its regulations (47 CFR 76.66), concerning satellite broadcast signal carriage, to permit (at the next cycle of elections under section 325 of this title) a television broadcast station that is located in a local market into which a satellite carrier retransmits a television broadcast station pursuant to section 338 of this title, to elect, with respect to such satellite carrier, between retransmission consent pursuant to such section 325 of this title and mandatory carriage pursuant to section 338 of this title separately for each county within such station's local market, if—

(A) the satellite carrier has notified the station, pursuant to paragraph (3), that it intends to carry another affiliate of the same network pursuant to this section during the relevant election period in the station's local market; or

(B) on the date notification under paragraph (3) was due, the satellite carrier was retransmitting into the station's local market pursuant to this section an affiliate of the same television network.

(2) Unified negotiations

In revising its regulations as required by paragraph (1), the Commission shall provide that any such station shall conduct a unified negotiation for the entire portion of its local market for which retransmission consent is elected.

(3) Additional provisions

The Commission shall, no later than October 30, 2005, revise its regulations to provide the following:

(A) Notifications by satellite carrier

A satellite carrier's retransmission of television broadcast stations pursuant to this section shall be subject to the following limitations:

(i) In any local market in which the satellite carrier provides service pursuant to section 338 of this title on December 8, 2004, the carrier may notify a television broadcast station in that market, at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of—

(I) each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market pursuant to this section during the next election cycle under such section of such regulations; and

(II) for each such affiliate, the communities into which the satellite carrier reserves the right to make such retransmissions.

(ii) In any local market in which the satellite carrier commences service pursuant to section 338 of this title after December 8, 2004, the carrier may notify a station in

that market, at least 60 days prior to the introduction of such service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle under such section of such regulations.

(iii) Beginning with the 2005 election cycle, a satellite carrier may only retransmit pursuant to this section during the pertinent election period a signal—

(I) as to which it has provided the notifications set forth in clauses (i) and (ii); or

(II) that it was retransmitting into the local market under this section as of the date such notifications were due.

(B) Harmonization of elections and retransmission consent agreements

If a satellite carrier notifies a television broadcast station that it reserves the right to retransmit an affiliate of the same television network during the next election cycle pursuant to this section, the station may choose between retransmission consent and mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

(i) Definitions

As used in this section:

(1) Local market; satellite carrier; subscriber; television broadcast station

The terms "local market", "satellite carrier", "subscriber", and "television broadcast station" have the meanings given such terms in section 338(k) of this title.

(2) Network station; television network

The terms "network station" and "television network" have the meanings given such terms in section 339(d) of this title.

(3) Community

The term "community" means—

(A) a county or a cable community, as determined under the rules, regulations, and authorizations of the Commission applicable to determining with respect to a cable system whether signals are significantly viewed; or

(B) a satellite community, as determined under such rules, regulations, and authorizations (or revisions thereof) as the Commission may prescribe in implementing the requirements of this section.

(4) Bandwidth

The terms "equivalent bandwidth" and "entire bandwidth" shall be defined by the Commission by regulation, except that this paragraph shall not be construed—

(A) to prevent a satellite operator from using compression technology;

(B) to require a satellite operator to use the identical bandwidth or bit rate as the

local or distant broadcaster whose signal it is retransmitting;

(C) to require a satellite operator to use the identical bandwidth or bit rate for a local network station as it does for a distant network station;

(D) to affect a satellite operator's obligations under subsection (a)(1) of this section; or

(E) to affect the definitions of "program related" and "primary video".

(June 19, 1934, ch. 652, title III, § 340, as added Pub. L. 108-447, div. J, title IX [title II, § 202(a)], Dec. 8, 2004, 118 Stat. 3409.)

§ 341. Carriage of television signals to certain subscribers

(a)(1) IN GENERAL.—A cable operator or satellite carrier may elect to retransmit, to subscribers in an eligible county—

(A) any television broadcast stations that are located in the State in which the county is located and that any cable operator or satellite carrier was retransmitting to subscribers in the county on January 1, 2004; or

(B) up to 2 television broadcast stations located in the State in which the county is located, if the number of television broadcast stations that the cable operator or satellite carrier is authorized to carry under paragraph (1) is less than 3.

(2) DEEMED SIGNIFICANTLY VIEWED.—A station described in subsection (a) of this section is deemed to be significantly viewed in the eligible county within the meaning of section 76.54 of the Commission's regulations (47 CFR 76.54).

(3) DEFINITION OF ELIGIBLE COUNTY.—For purposes of this section, the term "eligible county" means any 1 of 4 counties that—

(A) are all in a single State;

(B) on January 1, 2004, were each in designated market areas in which the majority of counties were located in another State or States; and

(C) as a group had a combined total of 41,340 television households according to the U.S. Television Household Estimates by Nielsen Media Research for 2003-2004.

(4) LIMITATION.—Carriage of a station under this section shall be at the option of the cable operator or satellite carrier.

(b) CERTAIN MARKETS.—Notwithstanding any other provision of law, a satellite carrier may not carry the signal of a television station into an adjacent local market that is comprised of only a portion of a county, other than to unserved households located in that county.

(June 19, 1934, ch. 652, title III, § 341, as added Pub. L. 108-447, div. J, title IX [title II, § 211], Dec. 8, 2004, 118 Stat. 3430.)

PART II—RADIO EQUIPMENT AND RADIO OPERATORS ON BOARD SHIP

§ 351. Ship radio stations and operations

(a) Except as provided in section 352 hereof it shall be unlawful—

(1) For any ship of the United States, other than a cargo ship of less than three hundred

gross tons, to be navigated in the open sea outside of a harbor or port, or for any ship of the United States or any foreign country, other than a cargo ship of less than three hundred gross tons, to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with an efficient radio station in operating condition, as specified by subparagraphs (A) and (B) of this paragraph, in charge of and operated by one or more radio officers or operators, adequately installed and protected so as to insure proper operation, and so as not to endanger the ship and radio station as hereinafter provided, and, in the case of a ship of the United States, unless there is on board a valid station license issued in accordance with this chapter.

(A) Passenger ships irrespective of size and cargo ships of one thousand six hundred gross tons and upward shall be equipped with a radio-telegraph station complying with the provisions of this part;

(B) Cargo ships of three hundred gross tons and upward but less than one thousand six hundred gross tons, unless equipped with a radio-telegraph station complying with the provisions of this part, shall be equipped with a radiotelephone station complying with the provisions of this part.

(2) For any ship of the United States of one thousand six hundred gross tons and upward to be navigated in the open sea outside of a harbor or port, or for any such ship of the United States or any foreign country to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with efficient radio direction finding apparatus approved by the Commission, properly adjusted in operating condition as hereinafter provided.

(b) A ship which is not subject to the provisions of this part at the time of its departure on a voyage shall not become subject to such provisions on account of any deviation from its intended voyage due to stress of weather or any other cause over which neither the master, the owner, nor the charterer (if any) has control.

(June 19, 1934, ch. 652, title III, § 351, as added May 20, 1937, ch. 229, § 10(b), 50 Stat. 192; amended Aug. 13, 1954, ch. 729, § 1(a), 68 Stat. 704; Pub. L. 89-121, § 2, Aug. 13, 1965, 79 Stat. 512.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-121 substituted "radio station" for "radio installation", broadened coverage so as to extend to vessels over 300 tons rather than 500 tons, required passenger ships irrespective of size and cargo ships over 1600 tons to be equipped with a radio telegraph station and cargo ships over 300 tons, unless equipped with a radiotelegraph station, to be equipped with a radiotelephone station, and eliminated provisions which empowered the Commission to defer the application of the provisions of paragraphs (1) and (2) of this subsection for periods not beyond Jan. 1, 1955, and Nov. 19, 1954, respectively.

1954—Subsec. (a)(1). Act Aug. 13, 1954, broadened coverage so as to extend to vessels over 500 tons rather than 1,600 tons.

Subsec. (a)(2). Act Aug. 13, 1954, broadened coverage so as to extend to any United States flag vessel of 1,600 gross tons or over rather than any passenger vessel of 5,000 gross tons or over.