
Upcoming Deadlines Relating to Cable and Satellite Carriage of Television Stations

by Lauren Lynch Flick and John K. Hane

July 31, 2008 is the deadline by which television stations are required to file claims for copyright royalties with the Copyright Office. FCC rules require television stations to make signal carriage elections by October 1, 2008 for the period 2009-2012. The upcoming termination of analog broadcasts makes this year's carriage elections especially important. In addition, television stations that will terminate analog broadcasting have a special October 1 notice obligation with respect to satellite operators.

July 31, 2008

Deadline to File Claims with Copyright Office for Distant Cable Carriage of Television Stations **Deadline to File Claims with Copyright Office for Distant Satellite Carriage of Television Stations**

July 31, 2008 is the deadline for television stations that were carried by a cable or satellite operator on a "distant signal" basis **during calendar year 2007** to file claims for royalty fees arising from the distant retransmission of their locally produced programming. When cable and satellite operators carry stations on a distant signal basis, they must pay copyright royalties to the Copyright Office. The holders of the copyrights in the programs that were retransmitted on a distant signal basis are then entitled to seek a portion of those fees attributable to distant viewing of the programs to which they hold copyrights. In the case of local television news or other locally produced programming, it is usually the station itself that is entitled to the fees.

The term "distant signal" is a term of art. In general, a station will be distant on any cable system that is located outside of the station's DMA, is located more than 35 miles from the station's community of license **and** is outside the station's Grade B contour. In addition, the station cannot be significantly viewed in the area served by the cable operator and cannot have given the cable operator a direct license (permission to rebroadcast the station without paying royalties) for that carriage. A station is distant on a satellite system where its signal is delivered to viewers located outside of the station's DMA. If you are not certain whether your station has been carried on a "distant signal" basis, please contact the firm immediately as this determination has to be made on a case-by-case basis.

All claims are filed with the Copyright Office electronically, not with the FCC. Also, separate claims must be filed for cable and satellite distant carriage.

October 1, 2008

Deadline to Elect Between Retransmission Consent and Must Carry on Cable Systems

Deadline to Elect Between Retransmission Consent and Must Carry on Satellite Systems

Deadline to Notify Satellite Carriers of Station's Intent to Terminate Analog Early

October 1, 2008 is the deadline for television stations to make their triennial election between retransmission consent and must-carry on both cable and satellite systems.

This year's elections are especially important because the rules governing digital carriage differ from legacy analog carriage rules in significant ways and because ongoing changes in the competitive landscape may affect markets and stations differently. Examples of some considerations include:

- Whether high definition signals will be viewable on standard definition or analog sets. The answer may differ from one DBS or cable provider to another, from market to market, and may change during the upcoming three year election cycle. Choice of retransmission consent or must-carry may also affect the outcome.
- Which party controls and pays for any signal down-conversion and adjustment of aspect ratio.
- Whether and how multiplexed program streams and ancillary data will be carried.
- The capabilities of each multichannel platform and the need to access advanced capabilities, such as pass-through of interactive elements.
- Differential carriage on DBS systems. DBS carriers are permitted to carry some local stations in high definition while denying high definition carriage to others during a phase-in period. Electing retransmission consent may reduce the risk of differential treatment, or may lead to refusal of the DBS provider to carry the station altogether, depending on the DBS provider's spot beam capacity.

Most existing carriage agreements are analog-centric, and digital-only carriage is covered inadequately, if at all. The practice of many stations and multichannel providers of simply renewing or extending prior agreements can lead to many unfavorable and unanticipated post-transition consequences for both parties. *We highly recommend that you speak to us about your options and the impact of the digital transition on your station before making elections.* Making informed elections requires advance research and preparation.

The FCC's rule specifically dictates the required contents of the satellite notice and requires that such notice be sent by Certified Mail -- Return Receipt Requested. While the rules do not dictate the content of cable elections, they must nevertheless be in writing, and should contain the same sort of information as the satellite elections. Accordingly, we **strongly** recommend that stations follow the satellite election rule for cable as well and send all elections via Certified Mail. The FCC rule identifying the required contents of the satellite elections is reprinted at the end of this Advisory.

October 1, 2008 is also the deadline by which stations must notify satellite carriers if they intend to terminate analog service after January 1 and before February 17, 2009. Under the FCC's *Second Report and Order in the Implementation of the Satellite Home Viewer Act, Local Broadcast Signal Carriage Issues*,

as of January 1, 2009, satellite carriers are required to commence carriage of stations' digital signals upon termination of analog broadcasting, so long as stations notify the satellite carriers in writing by October 1, 2008 of their intent to terminate analog operation early. Again, we recommend that this notification be sent by Certified Mail. Stations that will terminate analog operations prior to January 1, 2009 should contact the firm for assistance in coordinating notice to satellite carriers.

If you have any questions about these deadlines, or if you would like assistance in preparing your claims or election letters, please contact any of the lawyers in the Communications Practice Section.

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Sec. 76.66 Satellite broadcast signal carriage.

- (d) Carriage procedures—(1) Carriage requests.
- (i) An election for mandatory carriage made by a television broadcast station shall be treated as a request for carriage. For purposes of this paragraph concerning carriage procedures, the term election request includes an election of retransmission consent or mandatory carriage.
 - (ii) An election request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested.
 - (iii) A television station's written notification shall include the:
 - (A) Station's call sign;
 - (B) Name of the appropriate station contact person;
 - (C) Station's address for purposes of receiving official correspondence;
 - (D) Station's community of license;
 - (E) Station's DMA assignment; and
 - (F) For commercial television stations, its election of mandatory carriage or retransmission consent.
 - (iv) Within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing:
 - (A) those local television stations it will not carry, along with the reasons for such a decision; and
 - (B) those local television stations it intends to carry.
 - (v) A satellite carrier is not required to carry a television station, for the duration of the election cycle, if the station fails to assert its carriage rights by the deadlines established in this section.