

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Implementation of Sections 101, 103 and 105 of
the STELA Reauthorization Act of 2014
MB Docket No. 15-37

ORDER

Adopted: February 13, 2015

Released: February 18, 2015

By the Commission:

I. INTRODUCTION

1. In this Order, we amend our rules to implement three provisions of the STELA Reauthorization Act of 2014 ("STELAR"). Collectively, those provisions: (i) extend to January 1, 2020 the good faith negotiation requirements applicable to multichannel video programming distributors ("MVPDs") and television broadcast stations, and the exclusive contract prohibition applicable to such broadcast stations; (ii) prohibit same-market television broadcast stations from coordinating negotiations or negotiating on a joint basis for retransmission consent except under certain conditions; (iii) prohibit a television broadcast station from limiting the ability of an MVPD to carry into its local market television signals that are deemed "significantly viewed" or that otherwise are permitted to be carried by the MVPD, with certain exceptions; and (iv) eliminate the "sweeps prohibition" in Section 614(b)(9) of the Communications Act of 1934, as amended ("the Act").

2. The STELAR requires the Commission, among other things, to undertake several proceedings to adopt new rules, amend or repeal existing rules, and conduct analyses. This proceeding implements Sections 101, 103 and 105 of the STELAR. We address those provisions in one order because their implementation entails no exercise of our administrative discretion and, therefore, notice and comment procedures are unnecessary under the "good cause" exception to the Administrative Procedure Act ("APA"). We discuss each provision, in turn.

1 See Pub. L. No. 113-200, 128 Stat. 2059 (2014). The STELAR was enacted on December 4, 2014 (H.R. 5728, 113th Cong.).

2 See 47 U.S.C. § 325(b)(3)(C) (as amended by Section 101 of the STELAR).

3 See id. (as amended by Section 103(a) of the STELAR).

4 See id. (as amended by Section 103(b) of the STELAR).

5 See id. § 534(b)(9) (as amended by Section 105 of the STELAR).

6 Provisions of the STELAR that we do not implement in this Order will be addressed in other proceedings.

7 See 5 U.S.C. § 553(b)(B). See also Metzbaum v. Federal Energy Regulatory Commission, 675 F.2d 1282, 1291 (D.C. Cir. 1982) (agency order, issued pursuant to Congressional waiver of certain provisions of federal law that otherwise would have governed construction and operation of Alaskan natural gas pipeline, was appropriately issued

II. DISCUSSION

A. Section 101 of the STELAR: Extension of Sunset Dates in Retransmission Consent Rules

3. We revise Section 76.64(b)(3)(ii) of our rules (relating to the retransmission consent exemption for carriage of distant network signals by satellite carriers), Section 76.64(l) (relating to the prohibition on exclusive retransmission consent contracts) and Section 76.65(f) (relating to the expiration of the reciprocal good faith negotiation requirements) to reflect the new sunset dates established in Section 101 of the STELAR. Section 101 amends Section 325(b)(2)(C) of the Act by replacing the previous sunset date of December 31, 2014 with a new sunset date of December 31, 2019. Section 101 also amends Section 325(b)(3)(C) of the Act to replace the previous sunset date of January 1, 2015 with a new sunset date of January 1, 2020.⁸ Accordingly, we amend Sections 76.64(b)(3)(ii), 76.64(l), and 76.65(f) of our rules to reflect those new sunset dates.⁹

B. Section 103(a) of the STELAR: Ban on Joint Negotiation for Retransmission Consent

4. We also revise Section 76.65(b) of our rules (setting forth standards for good faith negotiation) to incorporate new provisions of Section 325 added by the STELAR. In particular, Section 103(a) of the STELAR revises Section 325 by adding new subsection 325(b)(3)(C)(iv), which, read as part of Section 325(b)(3)(C) as a whole, requires the Commission to revise its retransmission consent rules:

[to] prohibit a television broadcast station from coordinating negotiations or negotiating on a joint basis with another television broadcast station in the same local market (as defined in section 122(j) of title 17, United States Code) to grant retransmission consent under this section to a [MVPD], unless such stations are directly or indirectly under common de jure control permitted under the regulations of the Commission.¹⁰

In accordance with our statutory mandate in Section 325(b)(3)(C), we revise Section 76.65(b) of our rules to incorporate this new provision virtually verbatim. Specifically, we repeal Section 76.65(b)(1)(viii) of our rules (governing joint negotiation of retransmission consent) and replace that provision with language implementing new Section 325(b)(3)(C)(iv) of the Act.¹¹ We take this action based on our conclusion that the prohibition on joint negotiation in new Section 325(b)(3)(C)(iv) is broader than, and thus supersedes, the Commission's existing prohibition.¹²

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without notice and comment under the APA's "good cause" exception as a nondiscretionary ministerial action); *Komjathy v. Nat'l Transp. Safety Bd.*, 832 F.2d 1294, 1296-97 (D.C. Cir. 1987) (notice and comment is unnecessary where the regulation does no more than repeat, virtually verbatim, the statutory grant of authority), *cert. denied*, 486 U.S. 1057 (1988).

⁸ See 47 U.S.C. § 325(b)(3)(C) (as amended by Section 101 of the STELAR) (requiring MVPDs and television broadcast stations to negotiate retransmission consent in good faith and prohibiting such stations from engaging in exclusive contracts for carriage).

⁹ See Appendix.

¹⁰ See 47 U.S.C. § 325(b)(3)(C) (as amended by Section 103 of the STELAR).

¹¹ See Appendix.

¹² For example, the prohibition on joint negotiation codified in Section 76.65(b)(1)(viii) of our existing rules applies by its terms only to same-market "Top Four" television broadcast stations, whereas the new statutory ban applies to *all* same-market television broadcast stations. Moreover, in contrast to the existing ban on joint negotiation (which permits joint negotiation of retransmission consent by stations that are commonly owned, operated or controlled as determined by the Commission's broadcast attribution rules), the new statutory ban permits joint negotiation only by stations that "are directly or indirectly under common de jure control permitted under the regulations of the

(continued....)

C. Section 103(b) of the STELAR: Protections for Significantly Viewed and Other Television Signals

In addition, Section 103(b) of the STELAR amends Section 325 by adding new subsection 325(b)(3)(C)(v). Read as part of Section 325(b)(3)(C) in its entirety, that new subsection directs the Commission to amend its retransmission consent rules:

[to] prohibit a television broadcast station from limiting the ability of a [MVPD] to carry into the local market (as defined in section 122(j) of title 17, United States Code) of such station a television signal that has been deemed significantly viewed, within the meaning of section 76.54 of title 47, Code of Federal Regulations, or any successor regulation, or any television broadcast signal such distributor is authorized to carry under section 338, 339, 340, or 614 of [the] Act, unless such stations are directly or indirectly under common de jure control permitted by the Commission.¹³

5. Thus, we amend Section 76.65(b) of our rules by adding new subsection 76.65(b)(1)(ix), which incorporates the protections for significantly viewed and other television signals established in Section 103(b) of the STELAR.¹⁴

D. Section 105 of the STELAR

6. We amend Section 76.1601 of our rules by removing the prohibition on deletion or repositioning of local commercial television stations by cable operators during periods in which major television ratings services measure such stations' audience size, otherwise known as the "sweeps prohibition."¹⁵ Section 105(a) of the STELAR amends Section 614(b)(9) of the Act by eliminating the sweeps prohibition,¹⁶ and Section 105(b) directs the Commission to conform its rules accordingly.¹⁷ Pursuant to Congress's directive in Section 105(b), therefore, we amend our rules to eliminate Note 1 of Section 76.1601.¹⁸

E. "Good Cause" under Section 553(b)(B) of the APA

7. Consistent with previous decisions, we amend our rules as set forth above without providing for prior public notice and comment.¹⁹ Our action here is largely ministerial because it simply

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Commission." Compare 47 C.F.R. § 76.65(b)(1)(viii) with 47 U.S.C. § 325(b)(3)(C) (as amended by Section 103(a) of the STELAR).

¹³ See 47 U.S.C. § 325(b)(3)(C) (as amended by Section 103 of the STELAR).

¹⁴ See Appendix.

¹⁵ See 47 C.F.R. § 76.1601, Note 1.

¹⁶ In particular, Section 105(a) of the STELAR amends Section 614(b)(9) of the Act by striking the second sentence, which states that "[n]o deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations." 47 U.S.C. § 534(b)(9).

¹⁷ Section 105(b) of the STELAR provides that "[n]ot later than 90 days after the date of enactment of this Act, the Commission shall revise section 76.1601 of its rules . . . and any note to such section by removing the [sweeps prohibition]." See Pub. L. No. 113-200, 128 Stat. 2059, § 105(b) (2014).

¹⁸ See Appendix.

¹⁹ See, e.g., *Implementation of SHVERA of 2004*, 20 FCC Rcd 7780, ¶ 1 n.3 (2005); *Implementation of Section 505 of the Telecommunications Act of 1996* (Scrambling of Sexually Explicit Adult Video Service Programming), 11 FCC Rcd 5386, 5387 (1996); *Implementation of Sections 204(A) and 204(C) of the Telecommunications Act of 1996* (Broadcast License Renewal Procedures), 11 FCC Rcd 6363, 6364 (1996); *Implementation of Sections 202(A) and 202(B)(1) of the Telecommunications Act of 1996* (Broadcast Radio Ownership), 11 FCC Rcd 12368, 12371 (1996);

(continued....)

effectuates new sunset dates or other provisions established by legislation, and requires no exercise of administrative discretion. For this reason, we conclude that prior notice and comment would serve no useful purpose and are unnecessary. We, therefore, find that this action comes within the “good cause” exception to the notice and comment requirements of the APA.²⁰

III. PROCEDURAL MATTERS

8. Regulatory Flexibility Act. Because we adopt this *Order* without notice and comment, the Regulatory Flexibility Act (RFA) does not apply.²¹

9. Paperwork Reduction Act. This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).²² In addition, therefore, it does not contain any information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.²³

10. Congressional Review Act. The Commission will send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.²⁴

11. Additional Information. For more information, contact Raelynn Remy, Raelynn.Remy@fcc.gov, Policy Division, Media Bureau, (202) 418-2936.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in Sections 4(i), 4(j), 303(r), 325 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 325, and 534, and Sections 101, 103 and 105 of the STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014), this *Order* **IS ADOPTED and the Commission’s Rules ARE HEREBY AMENDED as set forth in the Appendix**.

13. **IT IS FURTHER ORDERED** that, pursuant to the authority found in Sections 4(i), 4(j), 303(r), 325 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 325, and 534, and Sections 101, 103 and 105 of the STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014), the rules **SHALL BE EFFECTIVE thirty (30) days after the date of publication in the *Federal Register***.

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Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations), 11 FCC Rcd 12374, 12377 (1996).

²⁰ See 5 U.S.C. § 553(b)(B).

²¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

²² The Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

²³ The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. 3506(c)(4).

²⁴ See 5 U.S.C. § 801(a)(1)(A).

14. **IT IS FURTHER ORDERED** that the Commission shall send a copy of this *Order* in MB Docket No. 15-37 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Final Rules

The Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76 – Multichannel Video and Cable Television Service

1. The authority citation for part 76 is amended 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. Section 76.64 is amended by revising paragraph (b)(3)(ii) and by revising the third sentence in paragraph (l) to read as follows:

§ 76.64 Retransmission Consent.

* * * * *

(b) * * *

(3) * * *

(ii) The broadcast station is owned or operated by, or affiliated with a broadcasting network, and the household receiving the signal is an unserved household. This paragraph shall terminate at midnight on December 31, 2019, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires.

* * * * *

(l) * * * This paragraph shall terminate at midnight on January 1, 2020, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires.

3. Section 76.65 is amended by revising paragraph (b)(1)(viii) and adding paragraph (b)(1)(ix) and revising paragraph (f) 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 (as defined in 17 USC 122(j)) 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 (as defined in 17 USC 122(j)) of such station a television signal that has been deemed significantly viewed, within the meaning of section 76.54 of this part, or any successor regulation, or any other television broadcast signal such distributor is authorized to carry under 47 USC 338, 339, 340 or 534, unless such stations are directly or indirectly under common de jure control permitted by the Commission.

* * * * *

(f) Termination of rules. This section shall terminate at midnight on January 1, 2020, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires.

4. Amend § 76.1601 by removing Note 1.