
UPDATE
November 12, 2019

FCC Grants AT&T's Retransmission Consent Good Faith Complaint

Last Friday, the FCC's Media Bureau released an [Order](#) granting a good faith complaint filed by AT&T against seven station groups, all represented by a single negotiator. This marks the first time that the FCC has found that a broadcaster (or its designated representative) failed to negotiate retransmission consent in good faith.

Although the Media Bureau's Order is replete with redactions, there are a few important points that can be gleaned:

- Each of the stations (and station groups) were Sinclair spin-offs, managed and controlled through shared services agreements, and had delegated their negotiations to a common agent, Max Retrans.
- Through their common agent, the station groups refused to negotiate, unreasonably delayed negotiations and failed to respond to AT&T's proposals, each a *per se* violation under the FCC's retransmission consent good faith rules.
- Although the FCC stated that nothing in the Communications Act or FCC's rules prohibit broadcast stations located in different markets from jointly negotiating for retransmission consent, each entity remains ultimately responsible for its own compliance with the good faith requirements.
- Despite repeated attempts by AT&T to negotiate, Max Retrans ongoing delay, even as the stations were blacked out, was "the most egregious example of delay that [the FCC has] encountered since the good faith rules were adopted."
- The stations failed in their individual obligation to respond, or have their common agent respond, to AT&T's proposals with respect to retransmission of each Station's signals.
- At the same time, the FCC declined to address AT&T's arguments that the station groups also violated the totality of the circumstances test for good faith retransmission consent negotiation.

In summary, the FCC found that negotiating jointly does not excuse any member of that joint negotiation from its individual obligation to comply with the good faith obligations of the Communications Act and the FCC's rules. The FCC directed the parties to commence good faith negotiations, although it declined at this time to take enforcement action against the station groups.

If you have questions regarding retransmission consent and the good faith negotiation rules, please contact Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com or Bruce Beard at (314) 394-1535 or bbeard@cinnamonmueller.com.

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