

UPDATE

May 5, 2020

FCC Enters into Consent Decree with Broadcaster to Resolve Good Faith Violations

On May 1, 2020, the FCC's Media Bureau and Howard Stirk Holdings, licensee of stations in Alabama, Michigan, Nevada, Pennsylvania and South Carolina, entered into a [Consent Decree](#) to resolve an investigation into the broadcaster's failure to negotiate retransmission consent in good faith. As part of the agreement, Howard Stirk Holdings will pay a \$100,000 civil penalty to the United States Treasury.

Background. This Consent Decree stems from the Media Bureau's [Order](#) last fall granting a good faith complaint filed by AT&T against seven station groups, all represented by a single negotiator. Each of the stations (and station groups, including Howard Stirk) 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 Media Bureau found that 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. This delay, in the Media Bureau's words, was "the most egregious example of delay that [the FCC has] encountered since the good faith rules were adopted."

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. 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. The FCC directed the parties to commence good faith negotiations, although it declined at that time to take enforcement action against the station groups.

Consent Decree. Pursuant to the Media Bureau's directive in the Order, Howard Stirk and AT&T subsequently engaged in good faith negotiations and completed a retransmission consent agreement that the parties filed with the FCC on November 12, 2019.

In addition to the \$100,000 civil penalty, the Consent Decree requires Howard Stirk to appoint a compliance officer, develop and implement a compliance plan, including new operating procedures, develop and distribute a detailed compliance manual, establish and implement a compliance training program, and maintain a hotline for employees to obtain advice on compliance and to report violations. Moreover, Howard Stirk must report any noncompliance with the retransmission consent rules, or the terms and conditions of the Consent Decree, within 30 days after discovering any noncompliance. Howard Stirk must follow these new procedures for three years.

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.

FCC Reminds Video Programming Distributors of Televised Emergency Information Accessibility Obligations During CoVid-19 Pandemic

Recently, the FCC reminded video programming distributors (“VPDs”), including MVPDs and other distributors of video programming, of their obligation to make televised emergency information accessible, as required by FCC rules, to persons who are deaf, hard of hearing, blind or visually impaired. In doing so, the FCC directed VPDs to review last August’s [Public Notice](#) and the FCC’s [Consumer Guide](#).

Background. Under FCC rules, VPDs must make televised emergency information, such as critical details or information regarding current emergencies, including how to respond to the emergency, accessible. Examples of emergencies include natural disasters, severe weather watches and warnings, widespread power outages, industrial explosions, civil disruptions and school closings.

Blind or Visually Impaired Accessibility. VPDs must make all emergency information provided in the video portion of a regularly scheduled or interrupting newscast accessible to individuals who are blind or visually impaired by aurally describing the emergency information in the main audio portion of the programming. If emergency information is conveyed visually during programming other than newscasts, such as crawling or scrolling text, the VPD must also provide an aural tone and immediately thereafter convey the emergency information aurally through a secondary audio stream. The aural tone will alert customers who are blind or visually impaired to switch to the secondary audio stream to hear the information, which VPDs must convey on the secondary audio stream in full, at least twice.

In addition, MVPDs must pass through the secondary audio stream containing emergency information when it is provided on linear programming accessed on a second screen, such as smartphones, tablets and laptops, over their networks as part of their MVPD services.

Deaf or Hard of Hearing Accessibility. VPDs must make all emergency information provided in the audio portion of programming accessible using closed captioning or other methods of visual representation, including open captioning, crawls or scrolls on screen. Information provided by these means may not block or obstruct any closed captioning, and closed captioning may not block or obstruct any emergency information provided by visual means. As with VPDs’ general closed captioning obligations, emergency information must also be passed through from the original source to subscribers.

Individuals with Cognitive Disabilities. Although not required by FCC rules, the FCC encourages VPDs to make emergency information more accessible to individuals with cognitive disabilities, through practices such as providing content in plain and understandable English, including easy-to-understand instructions for emergency responses, providing content through multiple means, and avoiding scrolling information unrelated to the emergency during the broadcast of emergency information.

If you have further questions, please contact Bruce Beard at (314) 394-1535 or bbeard@cinnamonmueller.com.

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