

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

In the Matter of)	
)	
Gray Television Licensee, LLC and Gray Media Group, Inc.,)	MB Docket No. 20-441
)	
Complainants,)	CSR No. 8996-C
)	
v.)	
)	
Citizens Telecom Services Company, LLC d/b/a Frontier Communications,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

Adopted: April 21, 2021

Released: April 21, 2021

By the Chief, Media Bureau:

I. INTRODUCTION

1. On December 22, 2020, Gray Television Licensee, LLC and Gray Media Group, Inc. (collectively, Gray) filed a good faith negotiation complaint (Complaint)¹ against Citizens Telecom Services Company, LLC d/b/a Frontier Communications (Frontier) pursuant to section 325(b)(3)(C) of the Communications Act of 1934, as amended (the Act), and sections 76.7 and 76.65 of the Commission's rules.² Gray alleges that Frontier failed to negotiate in good faith for consent to carry the signals of three broadcast television stations (the Stations), which are licensed to Gray Television Licensee, LLC, and, in addition, that Frontier violated the customer notice requirements of section 76.1603 of the Commission's rules.³ The existing retransmission consent agreement governing Frontier's carriage of the Stations expired at 5 pm on December 18, 2020, at which point Frontier removed the

¹ Gray Television Licensee, LLC and Gray Media Group, Inc. v. Citizens Telecom Services Company, LLC d/b/a Frontier Communications, Good Faith Complaint, MB Docket No. 20-441 (filed Dec. 22, 2020). Gray also filed a confidential version of the Complaint. Because we do not rely on any confidential information in this order, we need not provide any redactions.

² 47 U.S.C. § 325(b)(3)(C); 47 CFR §§ 76.7, 76.65.

³ Complaint at 1-2; 47 CFR § 76.1603. The Stations are: WWSB(TV), an ABC affiliate in Sarasota, Florida; WCSC-TV, a CBS affiliate in Charleston, South Carolina; and WMBF-TV, an NBC affiliate in Myrtle Beach, South Carolina. Complaint at 1. Gray Media Group, Inc. wholly owns Gray Television Licensee, LLC. *Id* at 1, n.1.

Stations from its systems.⁴ Frontier filed an Answer,⁵ and Gray opted not to file a reply.⁶ For the reasons set forth below, we deny the Complaint.

II. BACKGROUND

A. Relevant Law and Commission Rules

2. Section 325(b)(3)(C) of the Act obligates broadcasters and multichannel video programming distributors (MVPDs) to negotiate retransmission consent in good faith.⁷ Specifically, section 325(b)(3)(C)(ii) directs the Commission to establish regulations that:

prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations.⁸

In its *Good Faith Order*, the Commission adopted rules implementing the good faith negotiation standard in section 325 and complaint procedures for alleged violations of these rules.⁹ The *Good Faith Order* adopted a two-part test for good faith.¹⁰ The first part of the test consists of an objective list of negotiation standards.¹¹ All of these standards apply to “Negotiating Entities,” which the rules define as “a broadcast television station or [MVPD].”¹² If a broadcast television station or MVPD violates any of the standards on this list during negotiations, it constitutes a *per se* breach of the duty to negotiate in good faith.¹³

3. There are two *per se* standards directly at issue in this case. First, a Negotiating Entity may not refuse to negotiate regarding retransmission consent.¹⁴ As the Commission has explained, “[t]his

⁴ *Id.* at 1.

⁵ Answer to Good Faith Complaint, MB Docket No. 20-441 (filed Jan. 11, 2021) (Answer).

⁶ See 47 CFR § 76.7(c)(2) (“Failure to reply will not be deemed an admission of any allegations contained in the responsive pleading, except with respect to any affirmative defense set forth therein.”).

⁷ 47 U.S.C. § 325(b)(3)(C).

⁸ *Id.* § 325(b)(3)(C)(ii).

⁹ *Implementation of the Satellite Home Viewer Improvement Act of 1999; Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, CS Docket No. 99-363, First Report and Order, 15 FCC Rcd 5445 (2000) (*Good Faith Order*).

¹⁰ *Id.* at 5457, para. 30.

¹¹ 47 CFR §§ 76.65(b)(1)(i)–(ix) (list of *per se* negotiating standards).

¹² *Id.* § 76.65(b)(1). While the good faith negotiation requirement was originally imposed only on television broadcast stations, a reciprocal obligation was later imposed on MVPDs. See *Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004: Reciprocal Bargaining Obligation*, Report and Order, MB Docket No. 05-89, 20 FCC Rcd 10339 (2005).

¹³ See, e.g., *Good Faith Order*, 15 FCC Rcd at 5462-64, paras. 40-46.

¹⁴ 47 CFR § 76.65(b)(1)(i).

requirement goes to the very heart of Congress' purpose in enacting the good faith negotiation requirement."¹⁵ Broadcasters and MVPDs must actively participate in retransmission consent negotiations, with the intent of reaching agreement, though failure to reach agreement is not itself a violation of the rules or statute.¹⁶ Second, a Negotiating Entity may not refuse to designate a representative with authority to make binding representations on retransmission consent.¹⁷ The Commission has explained that "[f]ailure to appoint a negotiating representative vested with authority to bargain on retransmission consent issues indicates that a broadcaster is not interested in reaching an agreement."¹⁸

4. The second part of the good faith test considers the "totality of the circumstances." Under this standard, a broadcaster or MVPD may present facts to the Commission that could constitute a failure to negotiate in good faith, even though they do not allege a violation of the *per se* standards.¹⁹ When adopting this standard, the Commission explained that it would apply if "specific retransmission consent proposals are sufficiently outrageous. . . as to breach [the] good faith negotiation obligation."²⁰

5. A broadcaster or MVPD believing itself aggrieved under the good faith rules may file a complaint pursuant to section 76.7 of the Commission's rules.²¹ The burden of proof in good faith complaints is on the complainant.²² The Commission has stated that "disagreement over the rates, terms and conditions of retransmission consent – even fundamental disagreement – is not indicative of a lack of good faith."²³

6. The Commission's customer notice requirements are also at issue in this case. The applicable Commission rule requires cable operators to notify subscribers of any changes in rates or services "at least 30 days in advance of the change, unless the change results from circumstances outside of the cable operator's control (including failed retransmission consent or program carriage negotiations during the last 30 days of a contract), in which case notice shall be provided as soon as possible using any reasonable written means at the operator's sole discretion, including Channel Slates."²⁴ When the Commission revised this rule in 2020, it explained that "as soon as possible" means "without delay after

¹⁵ *Good Faith Order*, 15 FCC Rcd at 5462, para. 40.

¹⁶ *Id.*

¹⁷ 47 CFR § 76.65(b)(1)(ii).

¹⁸ *Good Faith Order*, 15 FCC Rcd at 5463, para. 41.

¹⁹ 47 CFR § 76.65(b)(4).

²⁰ *Good Faith Order*, 15 FCC Rcd at 5458, para. 32.

²¹ 47 CFR §§ 76.65(c), 76.7.

²² *Id.* § 76.65(d).

²³ *Mediacom Communications Corporation v. Sinclair Broadcast Group, Inc.*, Memorandum Opinion and Order, CSR-7058-C, 22 FCC Rcd 35, 38, para. 6 (2007).

²⁴ 47 CFR § 76.1603(b).

negotiations have failed.”²⁵ In other words, once negotiations are at “the point where a cable operator is reasonably certain it will no longer be carrying the programming at issue,” it must notify its viewers.²⁶

B. Factual Summary

7. Gray Television Licensee, LLC is the licensee of the Stations.²⁷ Frontier currently “owns and operates cable television systems in 10 states and, in total, provides video service to about 490,000 video subscribers.”²⁸ Gray and Frontier were parties to a retransmission consent agreement that governed Frontier’s carriage of the Stations as follows: WWSB(TV) on Frontier’s cable system serving the Tampa and Sarasota, Florida areas; and WMBF-TV and WCSC-TV on Frontier’s cable system serving the Myrtle Beach/Charleston, South Carolina area.²⁹ The parties’ retransmission consent agreement expired on December 18, 2020.³⁰ Gray and Frontier are both “Negotiating Entities” for the purposes of the Commission’s retransmission consent rules.

8. On November 23, 2020, Frontier’s lead retransmission consent negotiator asked Gray to provide an extension proposal for the Stations.³¹ Gray states that it had expected that its agreement with Frontier would be covered by the master agreement Gray was already negotiating with the National Cable Television Cooperative (NCTC), but Frontier’s negotiator indicated that Frontier did not intend to opt into that agreement and instead would like to negotiate with Gray directly.³² Frontier explains that it believed it was ineligible to participate in any NCTC negotiation because at the end of October it exceeded the maximum of 500,000 subscribers nationally.³³ Gray offered to extend the parties’ existing agreement until December 31, 2020, to provide more time for the negotiation, but Frontier responded that it would prefer to finalize a new agreement by December 18, 2020, because it had many other agreements scheduled to expire on December 31.³⁴

9. The parties negotiated for weeks, exchanging at least eight drafts of the renewal agreement.³⁵ Gray states that each draft brought the parties’ positions on rates and rate structure closer together, and negotiations were cordial.³⁶ For 25 days the parties exchanged emails and telephone calls, and while they made progress on the non-economic terms and conditions, they ultimately did not come to

²⁵ See *Cable Service Change Notifications, Modernization of Media Regulation Initiative, Amendment of the Commission’s Rules Related to Retransmission Consent*, Report and Order, MB Docket Nos. 19-347, 17-105, and 10-71, 35 FCC Rcd 11052, 11059, para. 11 (2020) (*Cable Service Change Notifications Order*).

²⁶ *Id.*

²⁷ Complaint at 1, n.1.

²⁸ Answer at 5.

²⁹ *Id.*

³⁰ Complaint at 3.

³¹ *Id.*; Answer at 6.

³² Complaint at 3.

³³ Answer at 6-7, n.18.

³⁴ Complaint at 3; Answer at 6-7.

³⁵ Complaint at 1-2, 3; Answer at 2.

³⁶ Complaint at 3.

an agreement on the value of the Stations.³⁷ During the course of the negotiation, Frontier's lead negotiator explained in conversations with Gray that the negotiation involved a "unique situation of having multiple ABC affiliates in one market," and that Frontier needed to minimize costs because it was in bankruptcy.³⁸

10. On December 18, 2020, at approximately 4 pm, Frontier's negotiator informed Gray that Frontier would be dropping the Stations when the agreement expired at 5 pm.³⁹ At that point, Frontier's negotiator indicated that Frontier rejected Gray's most recent offer, and that Frontier's management also would not accept Frontier's own most recent offer.⁴⁰ Gray asserts that Frontier's negotiator indicated that she lacked authority to enter into a retransmission consent agreement on any terms,⁴¹ while Frontier characterizes this assertion as "unsupportable."⁴² Gray indicates that it requested an explanation for the failure to reach agreement, and Frontier's negotiator expressed "some vague concerns regarding payment on a 'duplicate' ABC affiliate in the Tampa DMA, even though WWSB(TV) exclusively serves the Sarasota market (previously, a separate television market)."⁴³ According to Gray, Frontier's negotiator did not explain why Frontier would no longer discuss carriage of the South Carolina stations, which were not impacted by any "duplicate" concerns.⁴⁴

11. Frontier provides a different perspective on its bargaining position. Specifically, Frontier explains that "[d]ue to the small number of subscribers receiving WMBF and WCSC programming on Frontier's Myrtle Beach system (about 300), Frontier's economic focus during negotiations was the duplicative carriage of WWSB on its Tampa system (about 150,000 subscribers), where Frontier also retransmits WFTS, the ABC affiliate in Tampa, Florida owned by Scripps. This unique situation stems from the Tampa, Florida designated market area ('DMA') having two ABC-affiliated stations – WWSB and WFTS."⁴⁵ Due to the Commission's finding that WFTS-TV is significantly viewed in Sarasota County, Frontier is permitted to air all WFTS programming there, including national ABC programming.⁴⁶ Because of network non-duplication and syndicated exclusivity, "Frontier only airs WWSB's local, non-network or [non-]syndicated programming to about 100,000 of its 150,000 Tampa system subscribers. About 50,000 Frontier subscribers (in the Sarasota area) receive the national ABC network and syndicated programming airing on WWSB."⁴⁷ In addition, during the negotiation Frontier determined that WWSB's locally produced content, including newscasts, was available live and for free on WWSB's website and mobile application.⁴⁸ Contending that "replays of WWSB's locally produced content, including newscasts, were also available for viewing free of charge," Frontier asserts that the

³⁷ Answer at 2-3, 7, Ex. 3.

³⁸ *Id.* at 8.

³⁹ Complaint at 1, 3-4.

⁴⁰ *Id.* at 4.

⁴¹ *Id.* at 2, 4.

⁴² Answer at 2.

⁴³ Complaint at 4.

⁴⁴ *Id.*

⁴⁵ Answer at 5.

⁴⁶ *Id.* at 5-6.

⁴⁷ *Id.* at 6, n.13.

⁴⁸ *Id.* at 8.

value of retransmitting WWSB was seriously diminished for Frontier once this information was known, particularly given the duplicative ABC network programming available via WFTS.⁴⁹

12. During the parties' 4 pm call on December 18, 2020, Gray reiterated its offer to extend the parties' existing agreement until December 31, 2020, and it confirmed the offer through a follow-up email.⁵⁰ Frontier again rejected the extension offer, and at 5 pm Frontier removed the Stations from its systems.⁵¹ In Sarasota, Frontier immediately replaced the signal of station WWSB with what Gray characterizes as "a slate falsely informing its subscribers that the content for WWSB(TV) had merely 'moved' to another channel."⁵² Frontier, in contrast, explains that it accurately notified its Florida customers that content from WWSB was available via alternate means, namely, the national ABC network programming was available on WFTS, and WWSB's locally produced content was available on WWSB's website and mobile application.⁵³

13. The parties also present different perspectives on the timing of Frontier's decision to cease carrying the Stations and of Frontier's customer notices. Gray claims that Frontier decided more than a month prior to the agreement's expiration that it did not intend to enter into a renewal agreement, as evidenced by the date on its channel lineup card excluding the Stations, and that it failed to notify its customers of this decision as soon as possible as is required by the Commission's rules.⁵⁴ Frontier states that these claims are false, and that the notice it provided to its customers was consistent with the Commission's rules.⁵⁵ Specifically, Frontier explains, "[a]s soon as it became apparent that Frontier would need to remove the stations, Frontier notified customers via a channel slate, set-top box message, email, social media, and through updated channel guides on Frontier's website."⁵⁶ Frontier states that it did not update its channel lineup card before the agreement expired, but rather it did so once it became clear that the parties had failed to reach agreement.⁵⁷ Frontier further asserts that in its haste to provide prompt customer notice, it failed to update the date on the card.⁵⁸ Frontier explains that it attempted to "further minimize[] customer disruption by promptly securing WFTS's permission to simulcast the station on WWSB's former channel, ensuring that customers could receive the same national ABC network programming without changing channels."⁵⁹ According to Frontier, the Complaint "is simply an attempt by a broadcaster to add additional leverage to the retransmission consent process – either accept

⁴⁹ *Id.*

⁵⁰ Complaint at 4.

⁵¹ *Id.* at 4-5.

⁵² *Id.* at 5 and Ex. A.

⁵³ Answer at 9.

⁵⁴ Complaint at 2, 8, Ex. B.

⁵⁵ Answer at 2-3, 4.

⁵⁶ *Id.* at 8-9.

⁵⁷ *Id.* at 13.

⁵⁸ *Id.* The record indicates that although the footer on the revised channel lineup as of December 18, 2020, was dated November 2020, the lineup footer should have been dated December 2020, and Frontier asserts that the revised channel lineup was not placed on Frontier's website until after the parties' agreement expired. *Id.*

⁵⁹ *Id.* at 9.

our last offer or we will claim that all your offers we rejected were fake and you never meant to reach agreement.”⁶⁰

14. On December 22, 2020, Gray filed the Complaint alleging that Frontier failed to negotiate retransmission consent in good faith by: (1) refusing to negotiate regarding retransmission consent, in violation of section 76.65(b)(1)(i) of the Commission’s rules; (2) refusing to designate a representative with authority to make binding representations on retransmission consent, in violation of section 76.65(b)(1)(ii) of the Commission’s rules; and (3) failing to negotiate in good faith under the totality of the circumstances, in violation of section 76.65(b)(4) of the Commission’s rules.⁶¹ Gray also alleges that Frontier violated “its obligation to notify its customers ‘as soon as possible’ that it would be dropping Gray’s stations.”⁶² Gray asks the Commission to impose the maximum forfeiture permitted under the Act, which it says could be as much as \$562,500 for the good faith violations and \$187,500 for the violation of the notice requirements.⁶³ Frontier in its Answer claims that it complied fully with its obligation to negotiate retransmission consent in good faith, and with its customer notice obligations.⁶⁴

III. DISCUSSION

15. For the reasons set forth below, we agree with Frontier that it complied with the obligation to negotiate retransmission consent in good faith, including its *per se* obligation to negotiate retransmission consent, its *per se* obligation to designate a representative with authority to make binding representations on retransmission consent, and compliance with the totality of the circumstances test. We also find that Frontier fulfilled its customer notice obligations.

16. *Refusal to Negotiate.* We first find that Frontier fulfilled its obligation to negotiate for retransmission of the Stations’ signals.⁶⁵ Although the Commission has previously found that an MVPD’s failure to make “a single offer or proposal, formal or informal, that could have resulted in the carriage of [any stations], even if accepted,” constitutes a violation of this *per se* standard,⁶⁶ that is very different from the active negotiations that occurred in this case. Frontier explains that, consistent with other cases in which the Commission has found no violation of the requirement to negotiate, here the parties’ “extensive negotiations” consisted of the exchange of emails, telephone calls, and multiple

⁶⁰ *Id.* at 3.

⁶¹ Complaint at 6-10; 47 CFR §§ 76.65(b)(1)(i)-(ii), (b)(4).

⁶² Complaint at 2.

⁶³ *Id.* at 2. To calculate this total, for the alleged good faith violation Gray utilizes the Commission’s base forfeiture of \$7,500 per day of an ongoing violation, multiplied by three for the three markets at issue, multiplied by 25 for the minimum number of days of the alleged violation (November 23, 2020, through December 18, 2020). *Id.* at 12-13. For the alleged notice violation, Gray utilizes the Commission’s base forfeiture of \$7,500 per day of a continuing violation in the Sarasota market only, multiplied by 25 days. *Id.* at 13. Gray also “requests that the Commission consider an upward adjustment of the base forfeiture with respect to the Sarasota systems” due to “the seriousness of Frontier’s violations and the disregard Frontier has shown to its customers.” *Id.* at 14.

⁶⁴ Answer at 2.

⁶⁵ 47 CFR § 76.65(b)(1)(i).

⁶⁶ *DIRECTV, LLC and AT&T Services, Inc. v. Deerfield Media, Inc. et al.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, MB Docket No. 19-168, 35 FCC Rcd 10695, 10713, para. 43 (2020) (quoting the Bureau decision in that case).

proposals during the course of 25 days.⁶⁷ We find that a party is permitted to adjust its bargaining position as negotiations proceed and doing so is not bad faith. In this case, Frontier ascertained information causing it to conclude that a station was less valuable to it than previously thought.⁶⁸ Thus, the record demonstrates that through the course of active negotiations, Frontier learned new information that caused its bargaining position to change, and ultimately the parties were unable to agree on mutually acceptable financial terms.⁶⁹ The Commission does not require broadcasters and MVPDs to reach agreement or to agree to an extension, but rather, it requires them to engage in the type of active participation in negotiations that occurred here.⁷⁰ Frontier made multiple offers that, had Gray accepted them at the time they were made, would have resulted in carriage of the Stations.⁷¹ There is no evidence in the record to counter this conclusion. While Gray cites Frontier's refusal to agree to the short-term extension Gray proposed as further evidence of Frontier's "true intent" not to reach agreement,⁷² Frontier explains that the proposed extension would have had negative monetary implications for Frontier and also could have led to customer disruption and confusion.⁷³ In short, nothing in the record supports a finding that Frontier failed in its duty of good faith negotiation of retransmission consent with Gray.

17. *Refusal to Designate an Authorized Representative.* Next, we find that Frontier fulfilled its obligation to designate a representative with authority to make binding representations on retransmission consent.⁷⁴ Contrary to Gray's claim that Frontier's negotiator lacked the necessary authority,⁷⁵ Frontier explains that its negotiator had authority to negotiate the agreement at all times, and that her indication that she could not agree to any of her previous offers simply reflected Frontier's changed bargaining position.⁷⁶ This position evolved during the course of the negotiation when Frontier learned that WWSB's locally produced programming was available for free on its website and mobile application.⁷⁷ We find that the record indicates that both parties negotiated in good faith but could not agree on the value of the Stations. We therefore reject Gray's allegation that Frontier failed to designate an authorized representative.

⁶⁷ Answer at 11 (citing *HITV License Subsidiary, Inc. v. DIRECTV, LLC*, Memorandum Opinion and Order, MB Docket No. 17-292, 33 FCC Rcd 1137, 1140, n.33 (2018); *Holston Connect, LLC v. Nexstar Media Group Inc.*, Memorandum Opinion and Order, MB Docket No. 19-60, 34 FCC Rcd 7833, 7835, para. 7 (2019); *Coastal Television Broad. Co. LLC v. MTA Commun., LLC*, Memorandum Opinion and Order, MB Docket No. 18-208, 33 FCC Rcd 11025, 11028, n.28 (2018).

⁶⁸ Answer at 11-12.

⁶⁹ See *supra* Section II.B.

⁷⁰ See, e.g., *Good Faith Order*, 15 FCC Rcd at 5462, para. 40; *Mediacom v. Sinclair*, 22 FCC Rcd at 38, para. 6 ("disagreement over the rates, terms and conditions of retransmission consent – even fundamental disagreement – is not indicative of a lack of good faith").

⁷¹ See, e.g., *HITV v. DIRECTV*, 33 FCC Rcd at 1140, para. 9 (finding no failure to negotiate where the defendant made multiple offers that, if accepted by the complainant, would have resulted in carriage of the station in question).

⁷² Complaint at 7.

⁷³ Answer at 14.

⁷⁴ 47 CFR § 76.65(b)(1)(ii). This *per se* good faith negotiation requirement would address an instance in which one party is not interested in reaching agreement. See *Good Faith Order*, 15 FCC Rcd at 5463, para. 41.

⁷⁵ Complaint at 6.

⁷⁶ Answer at 12; Ex. 2.

⁷⁷ See *supra* Section II.B.

18. *Totality of the Circumstances.* We next agree with Frontier that it has not violated the totality of the circumstances test for good faith retransmission consent negotiation.⁷⁸ Under the totality of the circumstances test, which is separate from the objective *per se* good faith standards, “a Negotiating Entity may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station or [MVPD] breached its duty to negotiate in good faith.”⁷⁹ In setting this standard, the Commission explained that it “will entertain complaints under the totality of the circumstances test alleging that specific retransmission consent proposals are sufficiently outrageous, or evidence that differences among MVPD agreements are not based on competitive marketplace considerations, as [evidence of a] breach” of the good faith negotiation obligation.⁸⁰ While Gray attempts to portray Frontier’s negotiations as “a complete charade,”⁸¹ Frontier persuasively explains that nothing about its negotiating behavior was “outrageous” so as to violate the totality of the circumstances test, and that, if Gray had accepted any of Frontier’s offers at the time they were made, the parties would have entered into an agreement.⁸² Once Frontier’s bargaining position changed, it was not obligated to agree to its prior offers that Gray had not accepted. The parties simply failed to agree to financial terms, and we agree with Frontier that this type of business disagreement is not a proper basis for a complaint and should be rejected.⁸³

19. *Customer Notices.* Finally, we find that Frontier has complied with the Commission’s customer notice requirements.⁸⁴ The Commission’s notice rules require cable operators to notify subscribers “as soon as possible” when a retransmission consent dispute occurs.⁸⁵ Once negotiations are at “the point where a cable operator is reasonably certain it will no longer be carrying the programming at issue,” it must notify its viewers.⁸⁶ Gray objects to the timing of Frontier’s customer notice, claiming that the date on its updated channel slate indicates that it decided to cease carrying the Stations far in advance of the agreement’s expiration. We find, however, that Frontier persuasively explains that it erroneously failed to update the date on the channel slate in its attempt to provide prompt notice.⁸⁷ Such error does not alter the fact that notice was timely given when required by our rules. Gray also claims that Frontier posted “a misleading channel slate claiming that WWSB(TV)’s content had merely ‘moved’” to a different channel.⁸⁸ To the contrary, we credit Frontier’s explanation that it accurately notified its subscribers that previously had access to WWSB that they could access that station’s programming, with the national ABC programming available on WFTS and the locally produced content on WWSB’s own

⁷⁸ Answer at 14-15.

⁷⁹ 47 CFR § 76.65(b)(4).

⁸⁰ *Good Faith Order*, 15 FCC Rcd at 5458, para. 32.

⁸¹ Complaint at 9.

⁸² Answer at 15.

⁸³ *Id.*

⁸⁴ 47 CFR § 76.1603(b). The portions of the Complaint addressing alleged violations are limited to the Sarasota market because Gray was not able to obtain copies of channel slates that Frontier posted in Myrtle Beach or Charleston. Complaint at 10, n.19.

⁸⁵ *Cable Service Change Notifications Order*, 35 FCC Rcd at 11059, para. 11.

⁸⁶ *Id.*

⁸⁷ Complaint at 10; Answer at 13.

⁸⁸ Complaint at 10, 11, Ex. A.

website and mobile application.⁸⁹ In accordance with the notice rules, as soon as it became apparent that the parties would not reach agreement, which was just before the agreement expired, Frontier timely and accurately notified its customers of the service change.⁹⁰ The Commission has stated that “[a] channel slate on the vacant channel that appears after the programming has been dropped is a reasonable means to communicate the service change to the viewers in the immediate aftermath of the channel going dark.”⁹¹ Yet Frontier went farther, notifying its subscribers of the service change through a channel slate on the vacant channels, a set-top box message, email, social media, and an updated online channel guide.⁹²

VI. CONCLUSION

20. For the above reasons, we find that Frontier did not violate the Commission’s *per se* good faith standards, the totality of the circumstances test, or the consumer notice requirements.

V. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED** that Gray Television Licensee, LLC and Gray Media Group, Inc.’s good faith negotiation complaint against Citizens Telecom Services Company, LLC d/b/a Frontier Communications, filed pursuant to section 325(b)(3)(C) of the Act, 47 U.S.C. § 325(b)(3)(C), and sections 76.7, 76.65, and 76.1603 of the Commission’s rules, 47 CFR §§ 76.7, 76.65, and 76.1603, **IS DENIED**.

22. This action is taken pursuant to delegated authority under Section 0.283 of the Commission’s rules.⁹³

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

⁸⁹ Answer at 17-18.

⁹⁰ *Id.* at 15-16.

⁹¹ *2020 Cable Service Change Notifications Order*, 35 FCC Rcd at 11060, para. 13 (internal footnote omitted).

⁹² Answer at 17, Ex. 4.

⁹³ 47 CFR § 0.283.