

## SUPPORTING STATEMENT

### A. Justification

1. On July 10, 1998, the Commission released a *Notice of Proposed Rulemaking (NPRM)* seeking comment on the carriage of digital broadcast television signals by cable television systems. The Notice addressed the need for compatibility between digital systems, sought comment on possible changes to the mandatory carriage rules (must carry rules),<sup>1</sup> and explored the impact that carriage of digital television signals may have on other Commission rules. At the time of the *NPRM*, the Commission sought and received OMB approval for the information collections relating to carriage requirements covering all DTV broadcast television stations.

On January 23, 2001, the Commission adopted a *Report and Order (R&O)* and *Further Notice of Proposed Rulemaking (FNPRM)* summarized at 66 FR 16533 and 66 FR 16524 respectively, in CS Docket No. 98-120, CS Docket No. 00-96, and CS Docket No. 00-2. The *Report and Order* resolved a limited number of legal and technical issues concerning the carriage of digital broadcast (DTV) signals through retransmission consent agreements<sup>2</sup> and mandatory carriage of commercial and noncommercial educational television stations. Specifically, the *Report and Order* modified Section 76.64(f) of the Commission's rules to permit digital-only broadcast stations to elect must-carry or retransmission consent status using the same election procedures as those used by new television stations.<sup>3</sup> The Commission also modified several sections of the rules to establish a framework for retransmission consent agreements between Digital Television (DTV) station licensees and multichannel video program distributors.<sup>4</sup> In the *FNPRM*, the Commission sought additional comments on the carriage of digital television stations as introduced in the *NPRM*.

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<sup>1</sup> Under Section 614 of the Communications Act and the implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market. See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-77 (1993). Under Section 615 of the Communications Act, noncommercial stations are also entitled to assert mandatory carriage rights on cable systems located within the station's market. See 47 USC 615; see also 47 C.F.R. § 76.56.

<sup>2</sup> Under Section 325(b) of the Communications Act, commercial television broadcast stations are entitled to negotiate with local cable systems for carriage of their signal pursuant to retransmission consent agreements in lieu of asserting must carry rights. See 47 USC 325(b); see also 47 C.F.R. §76.64. Noncommercial television broadcast stations are not entitled to retransmission consent but may assert must carry rights on local cable systems.

<sup>3</sup> The Commission's rules require commercial television stations to make an election between must carry and retransmission consent at the beginning of each triennial cycle. The failure to make this election results in a default must carry status for stations. See 47 C.F.R. § 76.64(f). Stations that come into existence during a triennial cycle or that return their analog spectrum allocation and broadcast in a digital-only format may elect either must carry or retransmission consent status between 60 days prior to commencing broadcast and 30 days after commencing broadcast or commencing broadcast in digital only format. See 47 C.F.R. § 76.64(f)(4).

<sup>4</sup> A multichannel video programming distributor (MVPD) is defined by 47 C.F.R. § 76.1000(e) as:

an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

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On February 10, 2005, the Commission adopted a Second Report and Order (*Second R&O*) and First Order on Reconsideration (*First Reconsideration Order*) summarized at 70 FR 14412 in CS Docket No. 98-120. In the *Second R&O*, the Commission affirmed its tentative decision in the *R&O* not to require cable operators to carry both the digital and analog signals of a station during the digital transition (the “dual carriage” issue). The Commission also affirmed its earlier conclusion in the *R&O* that cable systems must carry only one programming stream pursuant to the “primary video” limitation in Sections 614(b)(3)(A) (for commercial stations) and 615(g) (1) (for noncommercial stations) of the Communications Act.<sup>5</sup> Because this *Second R&O* affirmed tentative conclusions previously addressed in the *R&O*, the *Second R&O* did not revise or add to those paperwork burdens established in the *R&O*.

**Information Collection Requirements****Proposed Rules****Requests for television market modifications**

In the 1998 *NPRM* and the 2001 *FNPRM*, the Commission sought comment on whether any change to the market modification process<sup>6</sup> is necessary to accommodate digital broadcasting, particularly since these signals have neither a history of carriage nor measured audience. Under 47 USC 614(h)(1)(c) and 47 C.F.R. 76.59, a cable operator or a broadcast licensee may request that the Commission include or exclude communities within the market of a particular television broadcast station to better effectuate the purposes of the Act's must carry provisions. Under 47 C.F.R. 76.7, the opposing party may file an opposition, and the complainant may file a reply.

**Notification requirement pursuant to Section 614(b)(7) of the Communications Act**

In the 1998 *NPRM* and the 2001 *FNPRM*, the Commission sought comment on the application of 47 U.S.C. 614(b) (7) to cable system carriage of digital broadcast signals Under 47 U.S.C. § 614(b)(7), if a cable operator authorizes, but does not itself provide, additional receiver connections to subscribers, the operator must notify these subscribers of all broadcast stations carried on the cable system which are not able to viewed without a converter box.

**Notification requirement pursuant to Section 76.964(a) of the Commission's Rules**

In the 1998 *NPRM* and the 2001 *FNPRM*, the Commission sought comment on how any new digital broadcast television carriage requirements will affect the notification requirements required by 47 C.F.R. § 76.964(a). Under 47 C.F.R. § 76.964(a), cable operators are required to notify subscribers of any changes in rates, programming services or channel positions.

**Final Rules**

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<sup>5</sup> Section 614(b)(3) of the Communications Act requires cable operators to carry “the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers.” See 47 USC 534(b)(3). Section 615(g)(1) includes the same “primary video” language but adds a proviso to the carriage of the program-related material, requiring carriage when “necessary for receipt of programming by handicapped persons or for educational or language purposes.” See 47 USC 535(g)(1).

<sup>6</sup> A station may assert carriage rights on any cable system operating within its market. A station's market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research. A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. While there is a presumption that the DMA is the natural economic market of local stations, the Commission may modify the market of a local station to include or exclude particular communities in order to ensure that television stations are carried by cable operators in communities served by the local station and which forms its economic market.

**Title: Carriage of the Transmissions of Digital Television Broadcast Stations****Digital must-carry/retransmission consent election process**

In the 1998 *NPRM*, the Commission sought comment on whether changes to the retransmission consent process were necessary to accommodate digital broadcasting. In the 2001 *R&O*, the Commission modified Section 76.64(f) of the Commission's rules to permit digital-only broadcast stations to elect must-carry or retransmission consent status using the same election procedures as those used by new television stations. Under 47 C.F.R. § 76.64, a commercial broadcast television station is required to make elections between retransmission consent and must-carry status at three year intervals. If a station fails to make an election, the station is deemed to have elected must-carry status for the three year period. The election process that may be designed for digital broadcast may commence in the same three-year cycle that applies to analog broadcast.

**Digital must-carry complaint process**

In the 1998 *NPRM*, the Commission sought comment on the alteration of a digital signal. In the 2001 *R & O*, the Commission determined that a broadcast signal delivered to the cable headend in (HD) must be carried in HD pursuant to the material degradation prohibition. Cable operators are required to ensure that consumers with DTV equipment are able to receive any HD digital signal delivered by broadcasters. Under 47 C.F.R. §§ 76.7 and 76.61, a television station that believes that a cable operator has failed to meet its must carry obligations, including its obligation not to material degrade a broadcast signal, may file a complaint with the Commission. 47 C.F.R. § 76.61 states that whenever a television or low power station believes that a cable operator has failed to meet its carriage or channel positioning obligations, such station shall notify the cable operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or position such signal on a particular channel. The cable operator then must respond in writing within 30 days to the notification and either commence to carry the station or state its reasons for believing it is not obligated to carry such signal. The station may then file a must-carry complaint. Under 47 C.F.R. § 76.7, the Commission outlines the general procedures to be followed by the parties filing complaints and/or responsive pleadings.

**Carriage Disputes**

We estimate that half (50) of the digital must carry carriage disputes will result in must-carry complaints rather than resolution. Each must-carry complaint filing is assumed to involve two parties: a complaining party and a responding party.

**Program exclusivity notifications**

In the 1998 *NPRM*, we sought comment on how the transition to digital television may affect program exclusivity rules.<sup>7</sup> Specifically, we request comment on whether operators will be able to accommodate a potential increase in station black-out requests because individual stations are able to offer multiple standard definition programming streams on a single channel. In the 2001 *R&O*, the Commission decided to retain its existing program access exclusivity rules. Under these program exclusivity rules, local television broadcast licensees may require cable systems serving more than 1000 subscribers and carrying distant broadcast signals to blackout any programming on these signals that the licensee has exclusive contractual rights to air.

The Commission's exclusivity rules require several notifications.

<sup>7</sup> Exclusivity rules refer generally to the right of a local station to require a cable system within its market to block out certain programming provided by a distant station (including the right of local stations to require cable systems within their DMA to block out the signal of a distant network affiliate (i.e. network nonduplication rights) and the right of local stations to require cable systems within their DMA to block out syndicated programming for which the local station has exclusive contractual rights in the DMA (syndicated exclusivity)). See e.g., 47 C.F.R. § 76.92; 47 C.F.R. § 76.101.

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- Under 47 C.F.R. §§ 76.94(a) (cable network non-duplication programming) and 76.105(a) (cable syndicated programming), television stations and program distributors must provide cable operators a notice that includes: (1) the name and address of the party requesting non-duplication protection/exclusivity rights and the television broadcast station holding the right; (2) the name of the program or series for which protection is sought; and (3) the dates on which protection is to begin and end. When broadcasters enter into contracts for network non-duplication protection, 47 C.F.R. § 76.94(b) requires broadcasters to provide either a notice, as described above, or a modified notice containing the name of the network extending non-duplication protection, the time periods by time of day for each day of the week that the broadcaster will be broadcasting programs from that network, and the duration and extent of that protection.
- Notices must be updated when circumstances change. If the time for protection is limited or expires before the time specified in the notice, or if the time for protection is shifted, then under 47 C.F.R. §§ 76.94(d) and 76.105(d), the broadcaster and/or program distributor must inform the cable operator of these changes as soon as possible. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster must, as soon as possible, notify the cable television system operator of the occurrence of the relevant contingency. Under 47 C.F.R. § 76.94(d), if the time for protection is extended beyond that provided in the notice, the broadcaster must provide notice of this expansion at least 60 days prior to broadcast of the protected program.
- 47 C.F.R. §§ 76.94(e)(2) and 76.105(c)(2) further state that if a cable television system asks a television station for information about its program schedule, the television station must answer the request.

The Commission is requesting an extension of this information collection in order to receive the full three year OMB approval/clearance for this collection.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

The statutory authority for this action is contained in Sections 1, 4(i) and (j), 325, 336, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 325, 336, 534, and 535.

2. This collection has been created as a result of the Commission's proceeding in the matter of carriage of the transmissions of digital television broadcast stations. The actions taken thus far in this proceeding have not resolved all of the issues associated with post-transition carriage of digital signals. The Commission requires an information collection to serve the following purposes:

- (a) The digital must-carry/retransmission consent electron process, market modification process, and digital must-carry complaint process enable broadcast licensees to effectively exercise their must-carry/retransmission consent rights.
- (b) The various broadcast licensee notification obligations contained in the Commission's program exclusivity rules protect the exclusive distribution rights afforded to broadcast licensees; and
- (c) The subscriber notification requirements protects consumer rights by ensuring that cable operators provide notice whenever new digital channels are added to the cable system and whenever

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subscribers require a converter box in order to view channels carried by the cable system.

3. Most of the information collection requirements in this collection will take the form of unique information transmitted from one entity to another as third-party disclosures. None of the information collection requirements in this collection involve automated responses transmitted to the Commission.
4. This agency does not impose a similar information collection on the respondents. There are no similar data available.
5. This collection of information does not have a significant impact on a substantial number of small businesses/entities.
6. If the Commission did not sponsor the various information collection requirements in this collection, the program exclusivity rights and must-carry/retransmission rights of broadcasters and the consumer rights of cable television subscribers would all be jeopardized. The Commission would also not be in compliance with the Communications Act of 1934, as amended.
7. There are no special circumstances that cause these collections of information to be conducted in a manner inconsistent with the requirements set forth in the Paperwork Reduction Act of 1995.
8. The Commission published a Notice (75 FR 35813) in the *Federal Register* on June 23, 2010 seeking public comment for the information collection requirements contained in this supporting statement. No comments were received from the public as a result of the Notice.
9. There will be no payments or gifts given to respondents.
10. Confidentiality is not an issue with the information being requested
11. Information collection requirements contained in this collection do not address matters of a sensitive nature.

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12. We estimate<sup>8</sup> the burden on the public as follows:

Services/ Rule Section	Total Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Burden Hours per Respondent	Total Annual Burden Hours
<b>Services/Rule Sections for which Final Rules have not been Adopted</b>					
<b>Market Modification</b>	20 requesting parties	1 request/party	20 requests	20 hours	400 hours
	20 opposing parties	1 response/party	20 responses	10 hours	200 hours
	20 replying parties	1 reply/party	20 replies	10 hours	200 hours
<b>Section 614(b)(7)</b>	7,115 Cable TV and Open Video Systems	2 notices/system	14,230 notices	0.5 hours	7,115 hours
<b>Section 76.964(a)</b>	7,115 Cable TV and Open Video Systems	4 notices/party	28,460 notices	1 hour	28,460 hours
<b>Services/Rule Sections for Which Rules have been Adopted</b>					
<b>Must-Carry Complaint Process</b>	100 TV Stations	1 notification /station	100 notifications	5 hours	500 hours
	100 Cable Stations	1 response/station	100 responses	5 hours	500 hours
<b>Carriage Disputes</b>	50 complaining parties	1 complaint/party	50 complaints	40 hours	2,000 hours
	50 responding parties	1 reply/party	50 replies	40 hours	2,000 hours
<b>Election Process</b>	458 Commercial Broadcast TV Stations	34 notices/stations	15,572 notices	1 hour	15,572 hours
<b>Program Exclusivity</b>	5,274 Broadcast TV Stations, Cable and Open Video Systems serving 1,000 or more subscribers	---	19,800 responses <sup>9</sup>	---	18,255 hours <sup>10</sup>
<b>TOTALS:</b>	<b>20,322 Respondents</b>		<b>78,422 Responses</b>		<b>75,202 Hours</b>

**Total Number of Annual Respondents: 20,322**

**Total Number of Annual Responses: 78,422**

**Total Number of Annual Burden Hours: 75,202 hours**

**Total Annual “In-House” Cost:**

**Staff paid at an average of \$48.08 per hour x 75,202 hours = \$3,615,712.10**

<sup>8</sup> Unless otherwise indicated, these estimates are based on FCC staff’s knowledge and familiarity with the availability of the data required.

<sup>9</sup> This number represents an estimated 10 percent increase in the frequency of program exclusivity notifications during the early stages of digital broadcast carriage.

<sup>10</sup> This number represents an estimated 10 percent increase in the burden hours associated with preparing exclusivity notifications.

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## 13. The total annual cost burden was calculated as follows:

a) **Total capital and start-up costs component:** There are no capital and start-up costs to respondents.

b) **Total operation and maintenance and purchase of services component:**

Services/ Rule Section	Total Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Annual Burden Cost	Total Annual Cost Burden <sup>11</sup>
Market Modifications	20 requesting parties	1 request/party	20 requests	\$1,250.00 filing fee <sup>12</sup>	\$25,000
	20 opposing parties	1 response/party	20 responses	\$10/party	\$200
	20 replying parties	1 reply/party	20 replies	\$10/party	\$200
Election Process	458 Commercial Broadcast TV Stations <sup>13</sup>	34 notices/stations	15,572 notices	\$1/notice	\$15,572
Section 614(b)(7) <sup>14</sup>	---	---	---	---	---
Section 76.964(a)	6,600,000 subscribers <sup>15</sup>	1 notices/party	6,600,000	\$0.41/notice	\$2,706,000
Must-Carry Complaint Process	100 complaints from TV Stations	1 complaints/party	100 complaints	\$10/party	\$1,000
	100 responses to complaints from Cable Systems	1 reply/party	100 replies	\$10/party	\$1,000
Carriage Disputes	50 complaining parties	1 complaint/party	100 complaints	\$5/party	\$500
	50 responding parties	1 response/party	100 responses	\$5/party	\$500
Program Exclusivity Notifications	5,274 Broadcast TV Stations and Cable and Open Video Systems serving 1,000 or more subscribers	---	19,800 responses	\$0.50 per response	\$9,900
<b>TOTAL COST:</b>					<b>\$2,759,872</b>

**Total Annual Cost Burden: \$ 2,759,872**

<sup>11</sup> The cost total annual cost burden is cost related to filing fees, mailing costs, paper and validation and other external fees that the respondent will have to pay (i.e., photo copies).

<sup>12</sup> Request for television market modifications and request for television market changes are filed pursuant to the Commission's petition for special relief rules, and are therefore feeable. The filing fee per request is \$1,250.

<sup>13</sup> 1,374 commercial broadcast television stations operating in the United States divided by three years is 458 commercial broadcast television stations.

<sup>14</sup> There is no cost associated with Section 614(b)(7) of the Communications Act. Notifications may be easily implemented by pre-printing notification information and then incorporating it or enclosing it with regular subscriber billing statements.

<sup>15</sup> The numbers used to estimate this cost differs from the numbers used to calculate the estimated burden on cable operators, as detailed under item 12 above. Item 12 is based on the estimated number of hours required to draft and prepare these notices whereas this item estimates the annual mailing costs associated with these notices based on 10 percent of the 66 million cable subscribers in the United States.

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14. **Cost to the Federal Government.** Within the scope of the Paperwork Reduction Act of 1995, the only direct costs to the federal government are the costs associated with reviewing digital must-carry complaint filings and requests for television market modifications.

Services/ Rule Section	Total Number of Responses	Total Attorney Hours	Hourly Burden for Attorney	Burden Cost for Attorney	Total Clerical Hours	Hourly Burden for Clerical Staff	Burden Cost for Clerical Staff	Total Annual Cost Burden to the Federal Government
<b>Market Modification</b>	20 requests, 20 oppositions, 20 replies = 60 responses	78 hours	\$57.13/hour <sup>16</sup>	\$267,368.40	2 hours	\$18.50 <sup>17</sup> Hour	\$2,220	\$269,588.40
<b>Carriage Disputes</b>	50 complaints, 50 responses to complaints = 100 responses	78 hours	\$57.13/hour	\$445,614.00	2 hours	\$18.50/ hour	\$3,700	\$449,314.00
<b>TOTAL COST:</b>								<b>\$718,902.40</b>

**Total Annual Cost to the Federal Government: \$718,902.40**

- 15. There are no program changes or adjustments to this collection.
- 16. The results of these data are not planned to be published.
- 17. The Commission is not seeking approval to not display the expiration date for this collection of information.
- 18. There are no exceptions to the certification statement.

**B. Collections of Information Employing Statistical Methods**

No statistical methods are employed.

<sup>16</sup> This figure reflects the hourly wage of a GS-14 step 5 Federal employee.

<sup>17</sup> This figure reflects the hourly wage of a GS-5 step 5 Federal employee.