

SUPPORTING STATEMENT

A. Justification

1. 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.¹ 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. This system is therefore referred to as "Must Carry and Retransmission Consent."² Noncommercial television broadcast stations are not entitled to retransmission consent but may assert must carry rights on local cable systems.

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 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.³ 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.⁴ In the *FNPRM*, the Commission sought additional comments on the carriage of digital television stations.

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

¹ 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.

² See 47 USC 325(b); see also 47 C.F.R. § 76.64.

³ 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).

⁴ 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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614(b)(3)(A) (for commercial stations) and 615(g) (1) (for noncommercial stations) of the Communications Act.⁵ 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**Requests for television market modifications**

A station may assert carriage rights on any cable system operating within its DMA.⁶ 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. 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.

Digital must-carry/retransmission consent election process

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. Under 47 C.F.R. § 76.57(e), at the time a local commercial station elects must-carry status pursuant to 47 C.F.R. § 76.64 or a qualified noncommercial educational station requests carriage, such station shall notify the cable system of its choice of channel position as specified in paragraphs (a), (b), and (d) of 47 C.F.R. § 76.57.

Digital must-carry complaint process

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. 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. 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,

⁵ 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).

⁶ 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.

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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 under 47 C.F.R. § 76.61 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.

The Commission is requesting that the Office of Management and Budget (OMB) approve the revision of this collection for a three year time period. This collection is being revised to receive approval for the information collection requirements that are contain in 47 CFR 76.57(e), as well as modified to remove collections which have already been approved under OMB Control Nos. 3060-0419 (Network Non-duplication Protection and Syndication Exclusivity: Sections 76.94, Notification; 76.95, Exceptions; 76.105, Notifications; 76.106, Exceptions; 76.107, Exclusivity Contracts; and 76.1609, Non Duplication and Syndicated Exclusivity), 3060-0548 (Cable Television System Signal Carriage Obligation Recordkeeping: Section 76.1708, Principal Headend; Sections 76.1709 and 76.1620, Availability of Signals; Section 76.1614, Identification of Must-Carry Signals), and 3060-0652 (Section 76.309, Customer Service Obligations; Section 76.1602, Customer Service – General Information, Section 76.1603, Customer Service – Rate and Service Changes and 76.1619, Information and Subscriber Bills).

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. To effectuate this program, information collections are required for the digital must-carry/retransmission consent election process, market modification process, and digital must-carry complaint process enable broadcast licensees to effectively exercise their must-carry/retransmission consent rights.
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.

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8. The Commission published a Notice (77 FR 65880) in the *Federal Register* on October 31, 2012 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.

12. We estimate⁷ the burden on the public as follows:

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⁷ Unless otherwise indicated, these estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

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TOTALS:	818 Respondents		15,932 Responses		21,372 Hours
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Services/ Rule Section	Total Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Burden Hours per Respondent	Total Annual Burden Hours
Market Modification (47 CFR § 76.59)	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
Must-Carry Complaint Process (47 CFR § 76.61)	100 TV Stations	1 notification /station	100 notifications	5 hours	500 hours
	100 Cable Stations	1 response/station	100 responses	5 hours	500 hours
Carriage Disputes (47 CFR § 76.61)	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
Election Process (47 CFR §§ 76.57, 76.57(e),⁸ 76.64)	458 Commercial Broadcast TV Stations	34 notices/stations	15,572 notices	1 hour	15,572 hours
TOTALS:	818 Respondents		15,932 Responses		21,372 Hours

Total Number of Annual Respondents: 818

Total Number of Annual Responses: 15,932

Total Number of Annual Burden Hours: 21,372 hours

Total Annual “In-House” Cost:

Staff paid at an average of \$48.08 per hour x 21,372 hours = \$1,027,566

⁸ We estimate the notification requirement of indicating a desired channel number under 47 CFR 76.57(e) will take minimum periods of time and will not place any additional burden on the cable television systems.

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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 ⁹
Market Modifications	20 requesting parties	1 request/party	20 requests	\$1,250.00 filing fee ¹⁰	\$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 ¹¹	34 notices/stations	15,572 notices	\$1/notice	\$15,572
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
TOTAL COST:					\$43,972

Total Annual Cost Burden: \$ 43,972

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

⁹ 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).

¹⁰ 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.

¹¹ 1,374 commercial broadcast television stations operating in the United States divided by three years is 458 commercial broadcast television stations.

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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
Market Modification	20 requests, 20 oppositions, 20 replies = 60 responses	78 hours	\$57.13/hour ¹²	\$267,368.40	2 hours	\$18.50/ ¹³ Hour	\$2,220	\$269,588.40
Carriage Disputes	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
Total								\$718,902.40

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

15. There are program changes of 19,504 respondents, 62,490 responses, 53,830 burden hours and \$2,715,900 in annual costs. There are no adjustments to this collection. This collection is being revised to receive approval for the information collection requirements that are contain in 47 CFR 76.57(e),¹⁴ as well as modified to remove collections which have already been approved under OMB Control Nos. 3060-0419 (Network Non-duplication Protection and Syndication Exclusivity: Sections 76.94, Notification; 76.95, Exceptions; 76.105, Notifications; 76.106, Exceptions; 76.107, Exclusivity Contracts; and 76.1609, Non Duplication and Syndicated Exclusivity), 3060-0548 (Cable Television System Signal Carriage Obligation Recordkeeping: Section 76.1708, Principal Headend; Sections 76.1709 and 76.1620, Availability of Signals; Section 76.1614, Identification of Must-Carry Signals), and 3060-0652 (Section 76.309, Customer Service Obligations; Section 76.1602, Customer Service – General Information, Section 76.1603, Customer Service – Rate and Service Changes and 76.1619, Information and Subscriber Bills).

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.

¹² This figure reflects the hourly wage of a GS-14 step 5 Federal employee.

¹³ This figure reflects the hourly wage of a GS-5 step 5 Federal employee.

¹⁴We estimate the notification requirement of indicating a desired channel number under 47 CFR 76.57(e) will take minimum periods of time and will not place any additional burden on the cable television systems.

OMB Control Number: 3060-0844

January 2013

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B. Collections of Information Employing Statistical Methods

No statistical methods are employed.