

**Title: Cable Carriage of Television Broadcast Stations: Section 76.56(a) Carriage of qualified noncommercial educational stations; Section 76.57, Channel positioning; Section 76.61(a)(1)-(2) Section 76.64, Retransmission consent**

## SUPPORTING STATEMENT

### A. Justification

**The Commission is eliminating duplicative collections and is making adjustments and seeking a three year extension of the remaining existing information collection requirements contained in this supporting statement.**

1. Under Section 614 of the Communications Act and the implementing rules adopted by the Commission, commercial TV broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's television market.<sup>1</sup> Under Section 325(b) of the Communications Act, commercial TV 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."<sup>2</sup> Under Section 615 of the Communications Act, noncommercial educational (NCE) stations are also entitled to assert mandatory carriage rights on cable systems located within the station's market; however, noncommercial TV broadcast stations are not entitled to retransmission consent.<sup>3</sup>

#### **Cable Carriage Must-Carry / Retransmission Consent Election Process**

**Under 47 CFR 76.64(f)**, commercial broadcast television stations are required to make cable carriage elections between retransmission consent and must-carry status at three year intervals.<sup>4</sup> If a station fails to make an election, the station is deemed to have elected must-carry status for the three year period.

**In addition, under 47 CFR 76.64**, commercial broadcast television stations may make cable carriage elections after certain types of events:<sup>5</sup>

- **Under 47 CFR 76.64(f)(4)**, new commercial television stations must make their initial election any time between 60 days prior to commencing broadcast and 30 days after commencing broadcast.
- **Under 47 CFR 76.64(f)(5)**, commercial television stations that become eligible for must carry status with respect to a cable system or systems due to a change in the market definition may, within 30 days of the effective date of the new definition, elect must-carry status with respect to such system or systems. Such elections shall take effect 90 days after they are made.
- **Under 47 CFR 76.64(k):**
  - A cable system commencing new operation is required to notify all local commercial and noncommercial broadcast stations of its intent to commence service. The cable operator must send such notification, by certified mail, at least 60 days prior to commencing cable service (New Cable System Notices). The new cable system must notify each station if its signal quality does not meet the standards for carriage and if any copyright liability would be incurred for the carriage of such signal.

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<sup>1</sup> 47 USC 534; see 47 CFR 76.56(b) (Carriage of local commercial television stations). See also *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, MM Docket No. 92-259, FCC 93-144, Report and Order, 8 FCC Rcd 2965 (1993) (*Must Carry Order*); modified by FCC 94-251, Memorandum Opinion and Order, 9 FCC Rcd 6723 (1994); corrected by Erratum, 9 FCC Rcd 7882 (CSB 1994). A television station's television market is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company.

<sup>2</sup> 47 USC 325(b); see 47 CFR 76.64.

<sup>3</sup> 47 USC 535; see 47 CFR 76.56(a) (Carriage of qualified noncommercial educational stations).

<sup>4</sup> 47 CFR 76.64(f) (triennial cable carriage elections by commercial television stations).

<sup>5</sup> See, e.g., 47 CFR 76.64(f)(4) (cable carriage elections by new commercial television stations); 47 CFR 76.64(f)(5) (cable carriage elections after a station's television market is modified); 47 CFR 76.64(k) (cable carriage elections after a new cable system commences operations).

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- o Commercial broadcast stations must notify the cable system within 30 days of the receipt of such notice of their election for either must-carry or retransmission consent with respect to such new cable system. If the commercial broadcast station elects must-carry, it must also indicate its channel position in its election statement to the cable system. Such election shall remain valid for the remainder of any three-year election interval, as established in §76.64(f) (2). Noncommercial educational broadcast stations should notify the cable operator of their request for carriage and their channel position. Pursuant to §76.57(e), a commercial broadcast station which fails to respond to such a notice shall be deemed to be a must-carry station for the remainder of the current three-year election period.

Finally, under 47 CFR 76.56(a), qualified noncommercial educational broadcast television stations may make cable carriage requests to assert mandatory cable carriage rights.<sup>6</sup>

**Under 47 CFR 76.57(e)**, at the time a local commercial station elects must-carry status pursuant to 47 CFR 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 CFR 76.57.

**Pre-Carriage Complaint Notifications**<sup>7</sup>

**Under 47 CFR 76.61(a)(1)-(2)**, broadcast stations must notify cable operators about alleged failures to meet carriage or channel positioning obligations and cable operators must respond to such notices:

- 47 CFR Section 76.61(a)(1) states that whenever a local commercial television station or a qualified low power television station believes that a cable operator has failed to meet its carriage or channel positioning obligations, pursuant to Sections 76.56 and 76.57, such station shall notify the 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.
- 47 CFR Section 76.61(a)(2) states that the cable operator shall, within 30 days of receipt of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of the must-carry rules. If a refusal for carriage is based on the station's distance from the cable system's principal headend, the operator's response shall include the location of such headend. If a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue, in its response.

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<sup>6</sup> See 47 CFR 76.56(a).

<sup>7</sup> This is a previously existing collection. These collections pursuant to Section 76.61(a)(1)-(2) are not moved to OMB Control No. 3060-0888 because they precede the filing of a complaint. The filing of carriage complaints are contained in OMB Control No. 3060-0888 because such involves the procedures of Section 76.7.

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**The portion of this collection related to the filing of market modification petitions in Section 76.59 is duplicative of OMB Control No. 3060-0546 and thus is eliminated from this collection.**

**The portion of this collection related to the filing of cable carriage complaints under Section 76.61 (through the Section 76.7 procedures) is duplicative of OMB Control No. 3060-0888 (which covers filings pursuant to Section 76.7) and thus is eliminated from 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. These requirements are effective for the cable carriage must-carry/retransmission consent election process. Commercial TV broadcast stations provide the information to cable systems in order to assert cable carriage rights, either must-carry or retransmission consent, with respect to these cable systems. Noncommercial educational broadcast stations provide the information to cable systems in order to assert its cable must-carry rights.
3. These requirements are in the form of unique information transmitted from one entity to another (third-party disclosures.) These responses are not automated.
4. We do not impose similar requirements on the respondents. There are no similar data available.
5. These requirements do not affect significantly impact a substantial number of small businesses/entities.
6. The Commission is required by the Communications Act to establish procedures for the cable carriage of television broadcast stations. If this collection of information were not sponsored by the Commission, then television broadcast stations would be unable to make cable carriage elections/requests.
7. There are no special circumstances that apply to this collection of information.
8. The Commission published a Notice (80 FR 70210) in the *Federal Register* on November 13, 2015 seeking public comment on these requirements. No comments were received.
9. There will be no payments or gifts given to respondents.
10. There is no need for confidentiality concerning these information collection requirements.
11. Information requirements in this collection do not address matters of a sensitive nature.

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

Services/ Rule Section	Total Number of Respondents	Number of Responses	Total Number of Responses	Burden Hours	Total Burden Hours	Hourly "In House" Cost	Total Annual "In-House" Cost
Cable Carriage Elections / Requests (47 CFR 76.56(a), 76.64(f), & 76.57(e) <sup>9</sup> )	463 Commercial Broadcast TV Stations <sup>10</sup>	22 notices / per station <sup>11</sup>	10,186 notices	1 hr.	10,186 hours	\$48.08/hr	\$489,742.88
	132 NCE Broadcast TV Stations <sup>12</sup>		2,904 notices		2,904 hours		\$139,624.32
	30 Broadcast TV Stations <sup>14</sup>		660 notices		660 hours		\$31,732.80
Other Cable Carriage Elections (47 CFR 76.64(f)(4)-(5), 76.64(k) <sup>13</sup> )							
New Cable System Notices (47 CFR 76.64(k) )	10 Cable Systems <sup>15</sup>	9 notices / per system <sup>16</sup>	90 notices	1 hr.	90 hours		\$4,327.20
Pre-Carriage Complaint Station Notices of Potential Complaint & Operator Responses (47 CFR 76.61(a)(1)-(2))	100 Broadcast TV Stations	1 notice / station	100 notices	5 hrs.	500 hours		\$24,040
	100 Cable Systems	1 notice / system	100 notices	5 hrs.	500 hours		\$24,040
<b>TOTALS:</b>	<b>835 respondents</b>		<b>14,040 responses</b>		<b>14,840 hours</b>		<b>\$713,507.20</b>

**Burden Summary:**

<sup>8</sup> These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

<sup>9</sup> Section 76.57(e) requires a television station to include its choice of channel position in its cable carriage election/request. The minimal burden associated with such notification requirement is included in this burden for stations making cable carriage elections/requests.

<sup>10</sup> As of September 30, 2015, there are 1,389 commercial TV stations. Therefore, every three years, 1,389 commercial TV stations will be required to make cable carriage elections/requests for each cable system in their local television market. [1,389 / 3 = 463]. This number of respondents is adjusted upward by 5 from 458 commercial TV stations.

<sup>11</sup> We estimate stations will send carriage elections/requests to each cable system in its local television market (defined as the DMA in which it is located). We estimate approximately 4,562 cable systems nationwide. Therefore, we estimate an average of 22 cable systems are in a local television market. (4,562 cable systems divided by the 210 television markets or DMAs.) [4562 / 210 = 22 (rounded up).] The collection previously estimated an average of 34 cable systems are in a local television market.

<sup>12</sup> As of September 30, 2015, there are 395 NCE TV stations. Therefore, every three years, 395 NCE TV stations will be required to make cable carriage requests for each cable system in their local television market. [395 / 3 = 132 (rounded up)]. This number of respondents is added to correct oversight.

<sup>13</sup> Section 76.64(k) carriage elections by stations are in response to new cable system notices (separately listed).

<sup>14</sup> In addition to triennial elections/requests, stations may make cable carriage elections after certain types of events. We estimate 30 such additional responses. This number of respondents is added to correct oversight.

<sup>15</sup> This number of respondents is added to correct oversight.

<sup>16</sup> New cable systems must send notices to each television broadcast station in the local television market or DMA in which it is located. As discussed above, there are 1,784 total television broadcast stations (both commercial and NCE). Therefore, we estimate an average of 9 television broadcasts are in a DMA. (1,784 stations divided by the 210 DMAs. [1,784 / 210 = 9 (rounded up).])

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- **Total Number of Annual Respondents:** 835 respondents (increase from 818)
- **Total Number of Annual Responses:** 14,040 responses (decrease from 15,932)
- **Total Number of Annual Burden Hours:** 14,840 hours (decrease from 21,372)
- **Total Annual “In-House” Cost:** \$713,507.20 (decrease from \$1,027,566.00)

13. Annual Cost Burden:

- (a) Total annualized capital/startup costs: None
- (b) Total annual costs (O&M): None
- (c) Total annualized cost requested: None

14. There is no cost to the Federal Government.

15. The Commission does not have any program changes to this collection. There are adjustments of +17 to the number of respondents, -1,892 to the number of responses, -6,532 to the annual burden hours and -\$43,972 to the annual cost burden. These adjustments are due to a variety of changes to this collection which include eliminating duplication and making adjustments to the figures currently approved in OMB’s inventory.

16. The results of these data are not planned to be published.

17. We will 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.