

**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

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>

In 2019, the Commission adopted new rules governing the delivery and form of carriage election notices. *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, MB Docket Nos. 17-105, 17-317, Report and Order and Further Notice of Proposed Rulemaking, FCC 19-69, 2019 WL 3065517 (rel. Jul. 11, 2019). Pursuant to that decision, the obligations of broadcasters and cable operators were slightly modified (*see* 47 CFR 76.64(h) below for the modified rule which requires review and approval from the Office of Management and Budget (OMB)).

#### **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(h)**:
  - o **(h)(1)**: On or before each must-carry/retransmission consent election deadline, each television broadcast station shall place a copy of its election statement, and copies of any election change notices applying to the upcoming carriage cycle, in the station's

<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).

**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**

- public file
- o **(h)(2):** Each cable operator shall, no later than July 31, 2020, provide an up-to-date email address for carriage election notice submissions with respect to its systems and an up-to-date phone number for carriage-related questions. Each cable operator is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.
  - o **(h)(3):** A station shall send a notice of its election to a cable operator only if changing its election with respect to one or more of that operator's systems. Such notice shall be sent to the email address provided by the cable system and carbon copied to ElectionNotices@FCC.gov. A notice must include, with respect to each station referenced in the notice, the:
    - call sign;
    - community of license;
    - DMA where the station is located;
    - specific change being made in election status;
    - email address for carriage-related questions;
    - phone number for carriage-related questions;
    - name of the appropriate station contact person; and,
    - if the station changes its election for some systems of the cable operator but not all, the specific cable systems for which a carriage election applies.
  - o **(h)(4):** Cable operators must respond via email as soon as is reasonably possible, acknowledging receipt of a television station's election notice.
  - **Under 47 CFR 76.64(k):**
    - o 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.
    - 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.

**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>

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

**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**

**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.

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. Where possible, information technology has been relied upon to reduce the burden of compliance for these procedures.
4. We do not impose similar requirements on the respondents. There are no similar data available.
5. The requirements accounted for in this information collection do not have a significant impact on a substantial number of small businesses or other small entities.

<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.

**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**

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 (84 FR 59619) in the *Federal Register* on November 5, 2019 seeking public comment on these requirements. No comments were received from the public.
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.

**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**

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
<b>Cable Carriage Elections / Requests (47 CFR 76.56(a), 76.64(f), &amp; 76.57(e)<sup>9</sup>)</b>	70 Commercial Broadcast TV Stations	22 notices / per station <sup>10</sup>	1,540 <sup>11</sup> notices	0.5 hr.	770 hours	\$48.08/hr	\$37,021.60
<b>Other Cable Carriage Elections (47 CFR 76.64(f)(4)-(5), 76.64(k)<sup>12</sup>)</b>	30 Broadcast TV Stations <sup>13</sup>		660 notices		330 hours		\$15,866.40
<b>New Cable System Notices (47 CFR 76.64(k))</b>	10 Cable Systems <sup>14</sup>	9 notices / per system <sup>15</sup>	90 notices	1 hr.	90 hours		\$4,327.20
<b>Cable Operator contact information (47 CFR 76.64(h)(2))</b>	4,562 Cable Systems	1 per system	4,562 notices	0.5 hr.	2,281 hours		\$109,670.48
<b>Pre-Carriage Complaint Station Notices of Potential Complaint &amp; Operator Responses (47 CFR 76.61(a)(1)-(2))</b>	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>4,872 respondents</b>		<b>7,052 responses</b>		<b>4,471 hours</b>		

<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> We estimate stations will send carriage election notices to each cable system in its local television market (defined as the DMA in which it is located), on the rare occasions when they send any notices. 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.) [4,562 / 210 = 22 (rounded up).] The collection previously estimated an average of 34 cable systems are in a local television market.

<sup>11</sup> Notices will be submitted to the twenty-two local cable operators at most every three years, and even then only when the station is changing its election, an uncommon occurrence. We estimate a maximum of fifteen percent of stations will send notices, to twenty-two local cable operators, during every three-year cycle. That is an average of five percent annually, or roughly 70 stations sending twenty-two notices each year. The total pool of commercial broadcast TV stations is 1,384.

<sup>12</sup> Section 76.64(k) carriage elections by stations are in response to new cable system notices (separately listed).

<sup>13</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>14</sup> This number of respondents is added to correct oversight.

<sup>15</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).])

**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**

**Burden Summary:**

- **Total Number of Annual Respondents:** 4,872 respondents
- **Total Number of Annual Responses:** 7,052 responses
- **Total Number of Annual Burden Hours:** 4,471 hours
- **Total Annual "In-House" Cost:** \$210,638.48

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. There are program changes to this collection which are due to the information collection requirements adopted in FCC 19-69. They are as follows: (+4,037) from 835 respondents to 4,872 respondents, (-6,988) from 14,040 responses to 7,052 responses and (-10,369) from 14,840 hours to 4,471 hours.

There are no adjustments to this collection.

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.