

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. The Commission is seeking an extension without change of this currently approved collection for the full three-year period.

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.¹ 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."² 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.³

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.⁴ If a station fails to make an election, the station is deemed to have elected must-carry status for the three year period.⁵

In addition, under 47 CFR 76.64, commercial broadcast television stations may make cable carriage elections after certain types of events:⁶

- **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):**

¹ 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.

² 47 USC 325(b); see 47 CFR 76.64.

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

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

⁵ 47 CFR 76.64(f)(3).

⁶ 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 **(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 public file if the station is required to maintain a public file.⁷
- 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 station⁸ 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.
- o **(h)(5):** Low Power Television (LPTV) stations and noncommercial educational (NCE) translator stations that are qualified under § 76.55 and retransmitted by a multichannel video programming distributor shall, beginning no later than July 31, 2020, respond as soon as is reasonably possible to messages or calls from multichannel video programming distributors that are received via the email address

⁷ LPTV stations are not currently required to maintain a public file with copies of their carriage election notices. All qualified LPTV stations, whether being carried pursuant to must carry or retransmission consent, were required to send a one-time e-mail notice to all MVPDs that were or would be carrying the station no later than the October 1, 2020 carriage election deadline. Qualified LPTVs were required to do so even if they were not changing their carriage status from the current election cycle. These notifications were required to be sent to an MVPD's carriage election-specific e-mail address, copied to ElectionNotices@FCC.gov, and were required to include the same information required for a change notification except that the notification may simply confirm the existing carriage status rather than a change in status. Similarly, all qualified NCE translator stations were required to provide e-mail notice to all MVPDs that were or would be carrying the translator no later than the October 1, 2020 carriage election deadline. Similar to qualified LPTVs, these notifications were required to be sent to an MVPD's carriage election-specific e-mail address, copied to ElectionNotices@FCC.gov, and were required to include the station's call sign, the station's community of license, and the DMA where the station is located and within which it has elected to be carried.

⁸ We clarify that this includes LPTV stations.

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or phone number the station provides in the Commission's Licensing and Management System (LMS).

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• **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). After July 31, 2020, the cable operator must send such notices by electronic delivery in accordance with § 76.1600. 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 (NCE) broadcast television stations may make cable carriage requests to assert mandatory cable carriage rights.⁹

Under 47 CFR 76.57(e), at the time a local commercial station elects must-carry status pursuant to 47 CFR 76.64, 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. A qualified NCE station shall notify the cable system of its choice of channel position when it requests carriage.

Pre-Carriage Complaint Notifications¹⁰

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.

⁹ See 47 CFR 76.56(a).

¹⁰ 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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- 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.

History: In 2019, the Commission adopted a Report and Order (FCC 19-69) establishing 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, 34 FCC Rcd 5922 (2019) (*2019 Report and Order*). That decision modernized the carriage election notice rules by moving the process online for most broadcasters and multichannel video programming distributors (MVPDs), but the Commission sought comment on how to apply these updated rules to certain small broadcast stations and MVPDs.

In 2020, the Commission adopted a Report and Order (FCC 20-14) that resolved the remaining issues regarding carriage election notice rules for small broadcast stations and MVPDs. *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, MB Docket Nos. 17-105, 17-317, Report and Order, 35 FCC Rcd. 1636 (2020) (*2020 Report and Order*). Pursuant to that decision, the obligations of certain small broadcasters and MVPDs were slightly modified.

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, 338, 614, 615, 631, 632, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 325, 338, 534, 535, 551, 552, and 573.

2. These requirements are required for the cable carriage must-carry/retransmission consent election process. Commercial TV broadcast stations provide the information to cable systems and other MVPDs in order to assert carriage rights, either must-carry or retransmission consent, with respect to these cable systems or MVPDs. Noncommercial educational broadcast stations provide the information to cable systems and MVPDs in order to assert their cable must-carry rights.

3. By modernizing the carriage election notice rules to permit small broadcast stations to send

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notices via e-mail, the Commission uses information technology 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.
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 in the Federal Register on February 23, 2023 (88 FR 11441) seeking public comment on the information collection requirements contained in the collection. No comments were received from the public.
9. There will be no payments or gifts given to respondents.in the
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.¹²
12. We estimate the burden on the public as follows:¹¹

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	70 Commercial Broadcast TV Stations	22 notices / per station ¹³	1,540 ¹⁴ notices	0.5 hr.	770 hours	\$48.08/hr	\$37,021.60

¹¹ These estimates are based on FCC staff’s knowledge and familiarity with the availability of the data required.

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(47 CFR 76.56(a), 76.64(f), & 76.57(e) ¹²)						
Other Cable Carriage Elections (47 CFR 76.64(f)(4)-(5), 76.64(k) ¹⁵)	30 Broadcast TV Stations ¹⁶		660 notices		330 hours	\$15,866.40
New Cable System Notices (47 CFR 76.64(k))	10 Cable Systems ¹⁷	9 notices / per system ¹⁸	90 notices	1 hr.	90 hours	\$4,327.20
Cable Operator contact information (47 CFR 76.64(h) (2))	50 Cable Systems ¹⁹	1 per system	50 notices	0.5 hr.	25 hours	\$1,202.00
Pre-Carriage Complaint Station Notices of Potential Complaint & Operator Responses (47 CFR 76.61(a)(1)-	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

¹² 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.

¹³ 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.

¹⁴ 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. In addition, the total pool of LPTV stations is 1,892, of which we estimate that only about 1 percent qualify for must carry.

¹⁵ Section 76.64(k) carriage elections by stations are in response to new cable system notices (separately listed).

¹⁶ 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.

¹⁷ This number of respondents is added to correct oversight.

¹⁸ 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).])

¹⁹ The Commission required that 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. Thus, the one-time submission of information aspect is complete. Accordingly, contact information now only needs to be filed to update the information provided or if there is a new cable operator. We thus estimate that 50 such notices will be filed.

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(2)							
Baseline Notices (FCC 20-14) ²⁰	10 LPTV and NCE Translator Stations	1 notice/station	10 notices	0.5 hrs.	5 hours	\$48.08/hr	\$240.40
TOTALS:	370 respondents		2,550 responses		2,220 hours		\$106,738

Burden Summary:

- **Total Number of Annual Respondents:** 370 respondents
- **Total Number of Annual Responses:** 2,550 responses
- **Total Number of Annual Burden Hours:** 2,220 hours
- **Total Annual "In-House" Cost:** \$106,738

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. There are adjustments to this collection due to less submissions being made for this collection. The adjustments are as follows: -4,532 to the number of respondents, -4,532 to the number of responses and -2,266 to the annual burden hours.

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.

²⁰ The *Commission* required all qualified LPTV and NCE Translator stations to send a one-time e-mail notice to all MVPDs that are or will be carrying the station by October 1, 2020 to provide MVPDs with baseline information regarding the carriage election status of these stations. (We estimated that only about 1 percent of LPTV and NCE Translator stations qualify for must carry.) Thus, the one-time baseline notices are complete. Accordingly, baseline notices now only need to be filed to update the information provided or if there is a new qualified LPTV and NCE Translator station. We thus estimate that 10 such notices will be filed.

