

§ 76.57

be at the discretion of the cable operator, subject to the retransmission consent rules, § 76.64. A cable system may also carry any ancillary or other transmission contained in the broadcast television signal.

(f) *Calculation of broadcast signals carried.* When calculating the portion of a cable system devoted to carriage of local commercial television stations under paragraph (b) of this section, a cable operator may count the primary video and program-related signals of all such stations, and any alternative-format versions of those signals, that they carry.

(g) *Channel sharing carriage rights.* A broadcast television station that voluntarily relinquishes spectrum usage rights under 73.3700 of this chapter in order to share a television channel and that possessed carriage rights under section 338, 614, or 615 of the Communications Act of 1934 (47 U.S.C. 338; 534; 535) on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel.

(h) *Next Gen TV carriage rights.* (1) A broadcast television station that chooses to deploy Next Gen TV service, see § 73.682(f) of this chapter, may assert mandatory carriage rights under this section only with respect to its ATSC 1.0 signal and may not assert mandatory carriage rights with respect to its ATSC 3.0 signal.

(2) With respect to a Next Gen TV station that moves its 1.0 simulcast signal to a host station's (*i.e.*, a station whose facilities are being used to transmit programming originated by another station) facilities, the station may assert mandatory carriage rights under this section only if it:

(i) Qualified for, and has been exercising, mandatory carriage rights at its original location; and

(ii) Continues to qualify for mandatory carriage at the host station's facilities, including (but not limited to) delivering a good quality 1.0 signal to the cable system principal headend, or agreeing to be responsible for the costs of delivering such 1.0 signal to the cable system.

NOTE 1 TO § 76.56: Section 76.1620 provides notification requirements for a cable oper-

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ator who authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections.

NOTE 2 TO § 76.56: Section 76.1614 provides response requirements for a cable operator who receives a written request to identify its must-carry signals.

NOTE 3 TO § 76.56: Section 76.1709 provides recordkeeping requirements with regard to a cable operator's list of must-carry signals.

[58 FR 17360, Apr. 2, 1993, as amended at 58 FR 39161, July 22, 1993; 58 FR 40368, July 28, 1993; 59 FR 62344, Dec. 5, 1994; 65 FR 53614, Sept. 5, 2000; 66 FR 16553, Mar. 26, 2001; 73 FR 6054, Feb. 1, 2008; 77 FR 30426, May 23, 2012; 77 FR 36192, June 18, 2012; 83 FR 5028, Feb. 2, 2018; 83 FR 7626, Feb. 22, 2018]

§ 76.57 Channel positioning.

(a) At the election of the licensee of a local commercial broadcast television station, and for the purpose of this section, a qualified low power television station, carried in fulfillment of the must-carry obligations, a cable operator shall carry such signal on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992.

(b) At the election of the licensee of a qualified local NCE broadcast television station carried in fulfillment of the must-carry obligations, a cable operator shall carry such signal on the cable system channel number on which the qualified NCE television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985.

(c) With respect to digital signals of a television station carried in fulfillment of the must-carry obligations, a cable operator shall carry the information necessary to identify and tune to the broadcast television signal.

(d) Any signal carried in fulfillment of the must-carry obligations may be carried on such other channel number as is mutually agreed upon by the station and the cable operator.

(e) At the time a local commercial station elects must-carry status pursuant to § 76.64, such station shall notify the cable system of its choice of channel position as specified in paragraphs

(a), (b), and (d) of this section. A qualified NCE station shall notify the cable system of its choice of channel position when it requests carriage.

(f) Pursuant to § 76.64(f)(3), a local commercial broadcast television station that fails to make an election is deemed a must-carry station. A cable operator shall carry such a television station on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992. In the event that none of these specified channel positions is available due to a channel positioning request from a commercial television station affirmatively asserting its must-carry rights or such a request from a qualified local noncommercial educational station, the cable operator shall place the signal of such a television station on a channel of the cable system's choice, so long as that channel is included on the basic service tier.

NOTE TO § 76.57: Any existing agreement for channel position between a local commercial station entitled to must-carry status and a cable operator entered into prior to June 26, 1990, may continue through the expiration of such agreement.

[58 FR 17361, Apr. 2, 1993, as amended at 58 FR 40368, July 28, 1993; 59 FR 62345, Dec. 5, 1994; 66 FR 16553, Mar. 26, 2001; 83 FR 7626, Feb. 22, 2018]

§ 76.59 Modification of television markets.

(a) The Commission, following a written request from a broadcast station, cable system, satellite carrier or county government (only with respect to satellite modifications), may deem that the television market, as defined either by § 76.55(e) or § 76.66(e), of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market. In this respect, communities may be considered part of more than one television market.

(b) Such requests for modification of a television market shall be submitted in accordance with § 76.7, petitions for

special relief, and shall include the following evidence:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Noise-limited service contour maps (for full-power digital stations) or protected contour maps (for Class A and low power television stations) delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.

NOTE TO PARAGRAPH (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.

(7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.

(c) Petitions for Special Relief to modify television markets that do not include such evidence shall be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee.