

§ 252.30 [Amended]

2. Section 252.30 is amended as follows:

a. In paragraph (a), by adding to the first sentence of text before the period, the words "except for the ODS rates applicable to maintenance and repair expenses, as described separately in § 252.32".

b. In paragraph (a), by adding in the third sentence, after "ODSA", the parenthetical "(with the exception of ODS rates applicable to maintenance and repair expenses)".

§ 252.32 [Amended]

3. Section 252.32 is amended as follows:

a. In paragraph (a), by revising the heading "Basis for subsidy." to read "Subsidy items."; and by removing the entire text of the paragraph after "46 CFR part 272," and adding in its place the words "incurred by the operator during the calendar year."

b. In paragraph (b), by revising the heading and introductory text to read as set forth below.

c. In paragraph (b)(3), by removing all the sentences after the third sentence and adding in their place the sentence "If such information is unavailable, repairing practices shall be determined on the basis of the industry as a whole."

d. In paragraph (b)(4), by revising the paragraph heading, to read "M&R subsidy rate."

e. In the table in paragraph (b)(4), by removing in the heading the words "U.S.-FOREIGN COST DIFFERENTIAL, 1985" and adding in their place the words "MAINTENANCE and REPAIR SUBSIDY RATE"; and by removing in the first column the words "U.S.-foreign cost differential" and adding in their place the words "Subsidy rate".

f. By revising paragraph (c) introductory text to read as set forth below.

§ 252.32 Maintenance (upkeep) and repairs.

* * * * *

(b) *Subsidy rate.* The subsidy rate for maintenance and repair shall be the U.S.-foreign cost differential determined from price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition. See paragraph (b)(4) of this section for an example calculation.

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(c) *Data submission requirement.* The operator is required to submit a Subsidy Repair Summary (Form MA-140) quarterly, in accordance with 46 CFR part 272.

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§ 252.40 [Amended]

4. Section 252.40 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 252.40 Payment of subsidy.

* * * * *

(b) *Maintenance and repair subsidy.* In the case of payments for maintenance and repair subsidy only, the subsidized operator shall submit an initial voucher and include for payment in such voucher a percentage of the ODS payable for the period covered by the voucher, which percentage shall be negotiated between MARAD and the subsidized operator, but in no instance shall exceed 90 percent. Upon the completion of MARAD's determinations that the expenses are fair and reasonable, MARAD's computation of the ratio of subsidized vs. nonsubsidized days during the calendar year in which the last voyage terminated, and the Office of the Inspector General's audit of subsidizable expenses, the subsidized operator shall submit a final voucher for an adjustment of the amount of subsidy paid.

By Order of the Acting Maritime Administrator.

Dated: March 30, 1993.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 93-7719 Filed 4-1-93; 8:45 am]

BILLING CODE 4810-81-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 92-195; RM-7091, RM-7146, RM-8123, RM-8124]

Radio Broadcasting Services; Beverly Hills, Chiefland, Holiday, Micanopy, and Sarasota, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292C3 for Channel 246A at Beverly Hills, Florida, and modifies the construction permit of Station WXOF, Beverly Hills, Florida, to specify operation on Channel 292C3; Channel 246C2 for Channel 292A at Holiday, Florida, and modifies the license of Station WLVO, Holiday, Florida, to specify operation on Channel 246C2; Channel 247C2 for Channel 249A at Micanopy, Florida, and modifies the license of Station WRRX, Micanopy, Florida, to specify operation on Channel

247C2; Channel 293C2 for Channel 292A at Sarasota, Florida and modifies the license of Station WSRZ, Sarasota, Florida, to specify operation on Channel 293C2; and Channel 300A for Channel 247A at Chiefland, Florida, and modifies the construction permit of Station WLQH, Chiefland, Florida, to specify operation on Channel 300A. See 57 FR 42537, published September 15, 1992. The reference coordinates for the Channel 292C3 allotment at Beverly Hills, Florida, are 28-44-09 and 82-29-56; the Channel 246C2 allotment at Holiday, Florida, are 28-16-51 and 82-42-52; the Channel 247C2 allotment at Micanopy, Florida, are 29-38-55 and 82-25-30; the Channel 293C2 allotment at Sarasota, Florida, are 27-27-49 and 82-40-01; and Channel 300A at Chiefland, Florida, are 29-31-00 and 82-53-11. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 10, 1993.

FOR FURTHER INFORMATION CONTACT:

Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-195, adopted March 9, 1993, and released March 29, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida is amended by removing Channel 246A and adding Channel 292C3 at Beverly Hills; removing Channel 247A and adding Channel 300A at Chiefland; removing Channel 292A and adding Channel 246C2 at Holiday; removing Channel 249A and adding Channel 247C2 at Micanopy; and removing Channel 292A and adding Channel 293C2 at Sarasota.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 93-7621 Filed 4-1-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket Nos. 92-258, 90-4, 92-295; FCC
93-144]Cable Act of 1992—Must-Carry and
Retransmission Consent ProvisionsAGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this Report and Order, adopts the rules needed to implement the mandatory television broadcast signal carriage ("must-carry") and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 (Cable Act of 1992" or "1992 Act"). The 1992 Cable Act requires the Commission to adopt rules establishing carriage rights for commercial and noncommercial broadcast television stations. This action is taken in order to comply with the 1992 Act.

EFFECTIVE DATE: Sections 76.58(a) and 76.59 are effective April 2, 1993; §§ 76.56 and 76.58(e) are effective June 2, 1993; §§ 76.54 and 76.302 are effective June 17, 1993; all other provisions are effective May 3, 1993.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, Policy and Rules Division, (202) 632-5414 or Jonathan Levy, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 92-259, FCC 93-144, adopted March 11, 1993, and released March 29, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC reference Center, 1919 M Street, NW., Washington, DC., and also may be purchased from the Commission's copy contractor, International Transcription Service (ITS), at (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of the Report and Order

1. By this Report and Order ("Order"), the Commission adopts the rules needed to implement the mandatory television broadcast signal carriage ("must-carry") and retransmission consent provisions of the Cable Television Consumer

Protection and Competition Act of 1992 ("Cable Act of 1992" or "1992 Act"). On November 5, 1992, the Commission adopted a Notice of Proposed Rule Making ("Notice"), 57 FR 56298 (November 27, 1992), in the proceeding to consider two provisions of the Cable Act of 1992 concerning the carriage of broadcast signals by cable television systems and other "multichannel video programming distributors". The first of these, set forth in Sections 4 and 5 of the 1992 Act, concerns mandatory signal carriage ("must-carry") rights of commercial and noncommercial television broadcasting stations that are "local" to the area served by a cable system. The second provision, set forth in Section 6 of the 1992 Act, is one that prohibits cable operators and other multichannel video programming from carrying the signals of broadcast stations without first obtaining their consent in certain circumstances. While each of the provisions is distinct and functions in a separate fashion, they are related in that, once every three years commercial broadcasters must now choose whether their relationship with local cable systems will be governed by the must-carry rules or retransmission consent requirement. The Commission decided to address these two matters in a single rulemaking proceeding, based primarily on administrative convenience.¹

2. **Implementation Schedule.** The rules and requirements described herein are subject to a number of different implementation and effective dates. On the date of publication of this summary of the Report and Order, the Commission will begin to accept petitions for special relief for modifying the local television markets of commercial broadcast stations. Starting on that date, cable operators must notify broadcast licensees and cable subscribers at least 30 days before deleting any broadcast television from carriage or repositioning any such signal. On May 3, 1993, cable operators must designate their principal headend, send a certified letter identifying that principal headend to all qualified noncommercial educational stations and notify by certified mail those local

stations, commercial and noncommercial, that may not be entitled to carriage because they either fail to meet the signal strength requirement or may cause increased copyright liability to the cable system. Cable systems must begin carriage of the complement of commercial must-carry signals on June 2, 1993. On that date, a cable operator must send by certified mail a list of the broadcast television signals carried on its system, and their channel positions, to all local broadcasters, commercial and noncommercial, including those not designated as must-carry signals and those not carried on its system. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide such equipment, the operator also must notify subscribers on the need for and the use of such equipment by June 2, 1993. By June 17, 1993, local stations must elect whether they want retransmission consent or must-carry rights and, for those selecting must-carry status, state their preferred channel position. In addition, on that date, cable operators must place in their public files a list identifying the must-carry signals and the designated location of their principal headend. On October 6, 1993, the retransmission consent and channel positioning provisions of the rules become effective, and all stations must be carried pursuant to their provisions, on that date.

3. **Carriage of Noncommercial Educational Television Stations.** Under section 615(i)(1) of the 1992 Act, a noncommercial educational (NCE) station qualifies for must-carry rights if it is licensed by the Commission as an NCE station and if it is owned and operated by a public agency, nonprofit foundation, or corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting.² An NCE station is also considered qualified if it is owned and operated by a municipality and transmits predominately noncommercial programs for educational purposes. In the Order, the Commission determined that a municipally-owned station will be deemed to transmit predominately noncommercial programming for

¹ On December 23, 1992, a three-judge court of the U.S. District Court for the District of Columbia held that it will hear only constitutional challenges to the must-carry rules pursuant to section 23 of the Cable Act of 1992, which provides that challenges to the constitutionality of sections 4 and 5 shall be heard by a district court of three judges. *Turner Broadcasting Systems, Inc. v. Federal Communications Commission*, No. 92 Civ. 2247 (D. D.C. Dec. 23, 1992). Thus, constitutional challenges to the retransmission consent and other provisions of the 1992 Act will be considered separately. As these matters are currently under court review, we will not address them here.

² The statutory must-carry requirements for NCE stations became effective on December 4, 1992, the general effective date of the Cable Act of 1992. On December 9, 1992, the U.S. District Court for the District of Columbia issued a "Standstill Order" that contemplates that during the pendency of the District Court case the Commission will take the full 120 days permitted under the statute to resolve any complaint filed by an NCE station. *Turner Broadcasting Systems, Inc. v. Federal Communications Commission*, CA Nos. 92-2247, et al. (D.D.C. Dec. 9, 1992).

educational purposes if it broadcasts such programming, as it is defined in § 73.621 of the Commission's Rules, for at least 50 percent of its broadcast week.

4. Section 615(l)(1) of the 1992 Cable Act provides that the term qualified NCE station also includes the translator of any NCE station with five watts or higher power serving the franchise area, a full-service station or translator licensed to a channel reserved for noncommercial educational use, and such stations and translators operating on channels not so reserved as the Commission determines are qualified NCE stations. In the Order, the Commission concludes that stations and translators on non-NCE channels will be considered qualified if they meet the qualification criteria set forth in Section 5 of the 1992 Cable Act.

5. Section 615(l)(2) of the 1992 Act defines a qualified local NCE station as an NCE station licensed to a principal community whose reference point, as defined in § 76.53 of the Commission's Rules, is within 50 miles of the principal headend of the cable system, or whose Grade B service contour, as defined in § 73.683(a) of the Commission's Rules, encompasses the principal headend of the cable system. The Notice proposed that a cable operator with multiple headend facilities should be permitted to select which of those headends will serve as its "principal headend," as long as the choice is not intended to circumvent the system's must-carry obligations. The Commission concludes that a cable system with multiple headends may select its own principal headend. It will require an operator to designate its principal headend by May 3, 1993, and notify all qualified NCE stations of this choice on that date. The Commission expects that the principal headend will generally be the headend serving the most subscribers, accommodating the most signal proceeding equipment, or lying closest to the geographical center of the system. The Commission will require an operator to place in its public file the location of its designated principal headend by June 17, 1993. A cable operator may change its principal headend only for good cause (e.g., where the system adds communities that necessitate redesignation or relocation of its headend). An operator making any subsequent change in its principal headend must notify all stations carried on its system pursuant to the must-carry rules at least 60 days before the change takes place, and include the new designation in its public file.

6. The 1992 Cable Act requires cable operators to carry all qualified local

NCE television stations requesting carriage, except that systems with 12 or fewer usable activated channels, must carry the signal of one qualified local NCE station and systems with 13 to 36 usable activated channels, must carry up to three qualified local NCE stations. Cable systems with 36 or fewer channels that operate beyond the presence of a qualified local NCE station are further required to import and carry a qualified NCE station. In addition, section 615(c) requires that cable operators continue to provide carriage to all qualified local NCE television stations whose signals were carried on their systems as of March 29, 1990, regardless of the proximity of those stations to the system's principal headend. Further, section 615(h) provides that qualified NCE signals shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

7. As proposed in the Notice, the Commission adopts the 1992 Cable Act definition of "activated channels" as "channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use." It also adopts the statutory definition of "usable activated channels" as "activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as defined by the Commission."

8. In the Order, the Commission concludes that, if a cable system with 36 or fewer channels receives requests for carriage of qualified local NCE stations in excess of its must-carry obligations, the cable system may select which signals to carry. The 1992 Cable Act exempts medium and large capacity systems from carriage of certain duplicating signals. Section 615(b)(3)(C) provides that a cable operator with 13 through 36 channels shall not be required to carry the more than one local NCE station affiliated with the same state public television network, if the programming of one station substantially duplicates the programming of another such station. Similarly, section 615(e) provides that systems with more than 36 channels shall not be required to carry the signals of additional local NCE stations if the programming of those stations substantially duplicates the programming of a qualified local NCE

station requesting carriage. The Commission adopts a two-part test for these purposes. First, the amount of duplicative (simultaneous or non-simultaneous) prime time weekly programming broadcast over the course of a three-month period will be calculated. Second, the amount of duplicative (simultaneous or non-simultaneous) weekly programming broadcast outside of prime time over the course of the same three-month period will be determined. The end of the three-month period must fall within 30 days prior to the date the cable system notifies the NCE station that it is denying or discontinuing carriage based on substantial duplication. Only if the station duplicates more than 50 percent of the other station's weekly programming in both of these respects will it be denied must-carry status. The Commission will use the definition of "prime time" in § 76.5(n) of the Commission's Rules (i.e., 5-10 PM in the central time zone and 6-11 PM in all other time zones; stations in mountain time zone may choose either). For application of this test, if a station broadcasts a program in prime time that is broadcast on another station during the day, the two broadcasts will not be considered duplicative. Moreover, programs broadcast in foreign languages will not be considered duplicative of the same programs broadcast in English and only identical episodes of a series will be considered duplicative.

9. In the Notice, the Commission sought comment on implementation of section 615(d) of the Act, which permits a cable operator to place a qualified NCE station on a channel reserved for PEG programming when no other channel capacity exists. The Commission declines to adopt stringent requirements regarding the use of PEG channels for NCE must-carry purposes. The Commission concludes that adoption of additional PEG channel requirements and procedures here would infringe upon the discretion given to franchising authorities under this Section of the 1992 Act and under Section 611 of the Communications Act. Thus, the Commission defers at this time to the judgment of franchising authorities with respect to the procedures to be used to delineate the rights of must-carry NCE stations and PEG channel users, respectively.

10. Section 615(k) of the 1992 Act requires a cable operator, upon request by any person, to identify the NCE signals carried on its system in fulfillment of must-carry requirements. The Notice sought comment on procedures for providing this information and whether the

Commission should require a cable operator to retain a list in its public file of all stations carried on its system pursuant to the must-carry rules. The Commission will require that, by June 17, 1993, a cable operator shall include in its public file a list of the NCE stations carried on its system pursuant to the must-carry rules, including the call sign, city of license, broadcast channel number and cable channel position on the system for each must-carry station, and whether the station was carried on the cable system on March 29, 1990. The Commission also will require that this list be provided in writing within 30 days in response to a written inquiry.

11. *Carriage of Commercial Television Stations.* Section 614(a) requires each cable operator to carry local commercial television stations and qualified low power television stations. Pursuant to Section 614(b), most cable operators must set aside up to one-third of their usable activated channel capacity for the carriage of local commercial stations, although systems with 12 or fewer usable activated channels are only required to carry at least three such stations. In addition, such cable systems with 12 or fewer channels are exempt from the commercial must-carry requirements if they serve 300 or fewer subscribers, as long as they do not delete from carriage any signal of a broadcast television station.

12. Since the Cable Act of 1992 gives the Commission minimal discretion in implementing the general must-carry obligation provisions, these statutory provisions will be added to the Commission's Rules and will be effective on June 2, 1993. In addition, the Commission adopts October 5, 1992, the date this Act was enacted, as the date for judging whether a system with 12 or fewer channels and 300 or fewer subscribers need only carry those broadcast stations that it carried on that date.

13. For purposes of these must-carry obligations, a "local commercial television station" is defined in section 614(h)(1)(A) of the 1992 Act as any full power commercial television broadcast station licensed by the Commission that is located in the same television market as the cable system. The term does not include: (1) Low power television stations, television translator stations, or passive repeaters; (2) a television broadcast station that would be considered a distant signal under section 111 of the Copyright Act, unless such station agrees to indemnify the cable operator for any copyright liability resulting from carriage on the cable system; or (3) a television broadcast

station that does not deliver to the principal headend of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, unless such station agrees to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal. The Commission adds this specific statutory definition of a local commercial television station entitled to must-carry rights to its rules. However, the Commission will require cable operators to notify by certified mail by May 3, 1993, those local signals that may not be entitled to carriage because they either (1) fail to meet the signal strength requirement or (2) may cause increased copyright liability. In addition, on the date cable systems begin carrying their complement of commercial must-carry signals, June 2, 1993, cable operators will be required to send by certified mail to all local broadcast stations a list of all broadcast television signals carried on their systems and their channel positions. This notification must be sent to all local television stations, including those not designated as must-carry signals and those not carried on the system.

14. In response to the questions in the Notice about the statutory requirements to make all must-carry signals available to all subscribers and all cable-connected television sets, the Commission believes that the 1992 Act is clear in its requirement that all local commercial television stations carried in fulfillment of the must-carry requirements must be provided to every cable subscriber and must be viewable on all television sets that are connected to the cable system by a cable operator or for which the cable operator provides a connection. The Act further states that, if a cable operator authorizes subscribers to install additional receiver connections, but does not provide such connections or the equipment and materials for such connections, the operator must notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box. Thus, the Commission will require cable operators provide such notification to all affected subscribers by June 2, 1993. The notice must explain the circumstances under which additional equipment is needed, whether the equipment is available from the cable operator or available from local stores and provide information regarding installation of such equipment. The Commission will permit cable operators to include this notice in a monthly

billing statement. In addition, the Commission will require cable operators to provide new subscribers with such notification at the time of the initial installation and all affected subscribers once a year of the need for additional equipment to receive the must-carry signals.

15. Consistent with its decision regarding identification of NCE stations carried to fulfill the must-carry requirements, the Commission also will require that, by June 17, 1993, a cable operator must place in its public file a list of the local commercial broadcast stations carried on its system pursuant to section 614. For each must-carry signal, the list must identify the call sign, city of license, broadcast channel number and channel position on the cable system. In response to a written request for the system's list identifying its must-carry signals, a cable operator will be required to respond within 30 days, in writing.

16. The 1992 Act provides that a local commercial television station will be entitled to must-carry status on all cable systems located in the same Area of Dominant Influence (ADI), as defined by Arbitron, as the station. The Notice requested comment regarding the appropriate procedures for accommodating the sporadic changes that occur in ADI assignments from year to year, for determining the relevant market for stations located outside the continental U.S. and for determining the market of cable systems serving communities in multiple ADIs. The Commission will establish a scheme whereby ADI designations will be set for a three-year period designed to coincide with the three-year election time frame for the must-carry/retransmission consent election. The current list of ADIs will be in effect for the initial election period. For the next election period in 1996, the Commission will use the list published in the Spring of 1995; for the election in 1999, the applicable list of ADIs will be the one published in the Spring of 1998, etc. Thus, each broadcast television station will be considered local in those counties listed in the same ADI to which it is assigned. Each station also will be considered a must-carry station in its home county, even if that station is assigned to an ADI different from that of its home county. For Alaska and Hawaii, the Commission believes that Nielsen's DMAs, which are developed in a manner similar to the ADIs, should be used. Furthermore, the Commission will consider Puerto Rico, U.S. Virgin Islands and Guam each to be a separate individual ADI.

17. The Commission believes it is appropriate to require a cable operator

to provide the subscribers in each community its serves with the broadcast television stations that are local to that community. Thus, in situations where a cable system serves communities in more than one county and those counties are assigned to different ADIs, the cable operator will be subject to different must-carry obligations depending on the location of the community served. Where it is technically possible, the cable operator may offer different must-carry channel line-ups in different communities based on the location. Alternatively, if the cable operator is unable to alter its channel line-up on a community-by-community basis, the commercial stations in the multiple ADIs will be considered local to all the communities for must-carry purposes.

18. Section 614(h)(1)(C) of the 1992 Act permits the Commission to add communities to or subtract communities from a station's television market to better reflect marketplace conditions following a written request. The Commission also may determine that particular communities are part of more than one television market. The statute specifies that, when considering requests to modify a television station's market, the Commission shall afford particular attention to the value of localism by taking into account such factors as (1) whether the station, or similarly situated stations, have been historically carried on the cable system or systems within such community; (2) whether the station provides coverage or other local service to the community; (3) whether any other station qualified for carriage provides coverage of news or programming of local interest; and (4) the local viewing patterns in both cable and noncable homes in the community. The Commission sought comment on the procedural aspects of requests for modifications to ADI markets and whether more specific or additional criteria are needed to implement this provision.

19. The Commission concludes that requests for modification of a station's ADI market should be made in accordance with the procedures specified in § 76.7 of its rules for special relief filings. It will allow either broadcasters or cable operators to file market modification requests, since either party may have legitimate interests in such matters, and will begin accepting such requests immediately. In order not to restrict the types of evidence that can be submitted, the Commission declines to adopt additional criteria. Consistent with section 614(h)(C)(iii), cable operators

will be required to maintain the status quo with regard to signal carriage.

20. Section 614(f) requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in § 76.51 of the existing rules, as part of the implementation of these must-carry provisions. This list was derived largely from Arbitron's 1970 prime time household rankings. The Commission notes that since Congress specifically directed the Commission to use current ADI markets for determining must-carry rights, it appears that updating the Section 76.51 list would primarily affect copyright liability under the compulsory license, although it would also have some impact on the application of the Commission's territorial exclusivity, syndicated exclusivity and network nonduplication rules.

21. On the basis of the record, the Commission does not believe that a major update of the § 76.51 market list is necessary. Wholesale changes in or reranking the markets on the list would have significant implications under the copyright law and the Commission's broadcast and cable program exclusivity rules that the Commission is not prepared to make on the present record. Therefore, at this time, the Commission will only update the existing list by adding the following designated communities: (1) Rename the Columbus, Ohio, market to include Chillicothe; (2) add New London to the Hartford-New Haven-New Britain-Waterbury, Connecticut, market; and (3) change the Atlanta, Georgia, market to Atlanta-Rome. The Commission will consider further revisions to this list on a case-by-case basis under an expedited rulemaking procedure whereby it will issue a notice of proposed rulemaking based on the submitted petition without first seeking public comment on whether it should do so.

22. The Notice asked commenters to consider the potential effects of any modifications to current market designations on other existing rules and potential conflicts caused by using different geographic areas for must-carry rules and other purposes. The Commission believes that it has alleviated many concerns by making only minor, well-documented revisions to the existing top 100 market list. Since market rankings will remain the same, the zones of exclusivity protection will be unchanged for each market, except in those few cases where additional designated communities are now named. Thus, the Commission will not modify its syndicated exclusivity or network nonduplication rules at this

time. With respect to copyright matters, the Commission believes that Congress intended for its updated § 76.51 list to be applied to assess copyright liability, since ADIs are used for market designations for must-carry purposes.

23. The 1992 Act requires the Commission to define the term "network" for purposes of applying the must-carry provisions in situations where the programming schedules of two or more stations are similar. In the Notice, the Commission observed that section 614(b)(2) and one part of Section 614(b)(5) address duplicating network affiliates and the second part of Section 614(b)(5) addresses any duplicating local commercial signal and proposed a source-neutral definition that incorporated the substantial duplication concept for purposes of both sections 614(b)(2) and 614(b)(5). Upon evaluation, the Commission now believes that it is appropriate to treat the provisions of sections 614(b)(2) and section 614(b)(5) separately as the two provisions are intended to accommodate different situations and are addressed separately in the statute and its legislative history.

24. Specifically, the Commission will adopt the definition of a "network" applicable to the filing of network affiliation agreements (§ 73.3613(a)(i)) of "an entity that offers programming on a regular basis for 15 or more hours per week to at least 25 affiliates in 10 or more states." To define "substantial duplication" for the application of section 614(b)(5), the Commission uses the guidance provided in the legislative history that indicates that this term is intended to refer to the "simultaneous transmission of identical programming on two stations" and which "constitutes a majority of the programming on each station." Accordingly, two stations will be considered to substantially duplicate each other "if they simultaneously broadcast identical programming for more than 50 percent of the broadcast week." Moreover, for purposes of this definition, identical programming means the identical episode of the same program series.

25. Pursuant to section 614(a) of the 1992 Act, a cable system's signal carriage obligation includes carriage of "qualified" low power television (LPTV) stations in certain limited circumstances where full power stations are absent. An LPTV station, as defined in section 614(h)(2), qualifies for must-carry rights if the station conforms to the Commission's LPTV rules, broadcasts for at least the minimum number of hours required of commercial broadcast stations by the Commission, and adheres to certain Commission

requirements regarding non-entertainment programming and employment. However, an LPTV station will not be qualified unless the Commission determines that the provision of programming by such station would address local news and informational needs not being adequately served by full power television stations, because such full power stations are distant from the LPTV station's community of license. In addition, the LPTV station must comply with the Commission's interference regulations for LPTV stations; it must be within 35 miles of the cable system's principal headend and deliver to the headend a good quality over-the-air signal; its community of license and the franchise area of the cable system must both have been located outside of the largest 160 Metropolitan Statistical Areas (MSAs) on June 30, 1990, and the population of the LPTV station's community of license on that date must not have exceeded 35,000; and there cannot be any full power television station licensed to any community within the county or other political subdivision (of a State) served by the cable system.

26. The Notice first inquired whether a case-by-case determination by the Commission of an LPTV station's qualification for must-carry status would be required. In the Order, the Commission decided that the statutory definition of a qualified LPTV station is sufficiently rigorous to eliminate the need for such Commission determinations. As a general rule, the Commission believes that an LPTV station asserting must-carry rights must provide the cable operator with the same evidence regarding its must-carry qualifications (including its role in addressing community needs) that the station would present to the Commission should its request for carriage be denied. The cable operator will then be obligated to give full consideration to the request, and to respond to the LPTV station within the time frames specified herein. In the event an LPTV station asserting must-carry rights is denied carriage, the station must follow the procedures detailed herein with respect to remedies for denial of carriage.

27. Cable systems are required to carry a qualified LPTV station only if there are not sufficient full power local commercial television stations to fulfill the cable operator's must-carry obligations under section 614(b). Assuming this requirement is met, section 614(c)(1) provides that a cable system with 35 or fewer channels must carry one qualified LPTV station and

other systems must carry two such signals.

28. A cable operator required to carry more than one signal of a qualified LPTV station may place the additional station on public, educational or governmental (PEG) channels not in use for their designated purposes, subject to approval by the franchising authority. Consistent with the discussion regarding the use of PEG channels for NCE carriage, the Commission will defer all such decisions to the franchising authority.

29. Section 614(g) provides that a cable operator will neither be required to carry nor be prohibited from carrying the signal of a commercial television station that is predominantly used for the transmission of sales presentations or program length commercials until the Commission completes a related proceeding to determine whether such broadcast television stations serve the public interest, convenience, and necessity and are entitled to must-carry status. On January 14, 1993, the Commission initiated such a proceeding.³ Until a final definition of "predominantly utilized for the transmission of sales presentations or program length commercials" is adopted in MM Docket No. 93-8, an interim definition is needed in order to implement section 614(g).

30. In the Notice, the Commission sought comment on whether an appropriate interim definition would be one that considers channels to be "predominantly utilized" for such purposes if more than 50 percent of their programming week consists of sales presentations or program length commercials. The Commission concludes that its proposed definition is appropriate for use during the interim period because it is simple to apply. It declines, however, to adopt commenters' suggestion to use the definition of commercial matter in Section 76.225 to describe such programming, as it also describes traditional commercials. The Commission believes that it is generally understood that the programming in question includes sales presentations longer than traditional commercials inserted in programming.

31. Manner of Carriage. Pursuant to sections 614(b)(3)(A) and 615(g)(1) of the 1992 Act, cable operators are faced with three broad categories of carriage content obligation. First, cable operators are mandated to carry must-carry signals in their entirety, including the primary video, accompanying audio and line 21

closed caption transmissions of both qualified local commercial and NCE stations. Second, cable operators are required, where technically feasible, to carry program-related material on the vertical blanking interval (VBI) or subcarriers of both types of stations. Third, with respect to local qualified NCE stations, cable operators, where technically feasible, must carry program-related material that may be necessary for the receipt of programming by handicapped persons or for educational or language purposes. Lastly, the 1992 Act gives cable operators discretion to carry any other information in a station's VBI or subcarriers.

32. With respect to determining what is program-related material, the Commission believes the best guidance is to be found in the factors enumerated in the copyright decision *WGN Continental Broadcasting v. United Video*, 685 F.2d 218 (7th Cir. 1982). There, the Court held that the copyright of a television program include program material encoded in the VBI when "related images" are involved. With regard to the "technical feasibility" of the carriage of program-related material in the VBI or on subcarriers, the Commission generally concludes that such carriage should be considered "technically feasible" if it does not require the cable operator to incur additional expenses and to change or add equipment in order to carry such material. However, the Commission would consider signal carriage to be "technically feasible" if only nominal costs, additions or changes of equipment are necessary.

33. The 1992 Act permits a cable operator, where appropriate and technically feasible, to remove signal enhancements, such as ghost-cancelling information carried in a commercial station's VBI if the cable operator employs such technology at the cable system's headend. Thus, the Commission determined that ghost-cancelling technology can only be stripped from the television signal if the cable operator applies an adequate alternative methodology at the headend. It also believes that the same treatment should apply to NCE stations.

34. Section 614(b)(6) provides that the signals of local commercial television stations carried pursuant to the new must-carry rules must be carried on either (1) the same channel on which the station is broadcast over the air, (2) the cable channel on which it was carried on July 19, 1985, or (3) the cable channel on which it was carried on January 1, 1992. Similarly, section 615(g)(5) requires that NCE signals

³ See Notice of Proposed Rule Making in MM Docket 93-8, 58 FR 7875 (February 10, 1993).

carried pursuant to must-carry requirements must appear on the cable system channel number on which the qualified local NCE station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station. In either case, the station is entitled to choose among these alternatives or to select another channel that is mutually agreed upon by the station and cable operator.

35. In the Order, the Commission observes that the Act clearly contemplates that the broadcaster, not the cable operator, gets to select which of the channel positioning alternatives will apply in its case. The Commission will require stations to indicate their choice of channel position when they initially elect retransmission consent or must-carry status, although cable operators will have until October 6, 1993, to fulfill such requests. In the interim, channel positioning will be at the discretion of the cable operator.

36. With respect to conflicts between the carriage or channel positioning rights of a must-carry signal and prior agreements between cable operators and cable programming services, the Commission finds that the provisions of the 1992 supersede any such contracts. Moreover, the Commission declines to adopt a formal priority structure for resolving conflicting channel position claims among broadcasters at this time. Nonetheless, the Commission suggests that parties give consideration to maintaining current channel positions to avoid disruptions.

37. The notice solicited comment on whether the Commission's recently adopted Cable Technical Report and Order⁴ satisfies the requirements for signal quality standards specified in the 1992 Act. The Commission believes its current technical standards, when taken as a whole, ensure no material degradation occurs on any video signal delivered to a subscriber. The notice also cited the requirement adopted in the Cable Technical Report and Order that cable operators must make reasonable efforts and use good engineering practices and proper equipment to guard against unnecessary degradation of broadcast television signals. Given that the Commission's current technical standards adopted in the Cable Technical Report and Order require a cable operator to provide to the subscriber a good quality signal for all classes of cable channels, including

broadcast channels, without material degradation, the Commission is not convinced that additional requirements for broadcast television stations are needed at this time. The Commission continues to believe that its technical standards, considered as a whole, currently ensure that cable systems will deliver a good quality picture to subscribers.

38. A broadcast television station is not entitled to must-carry status if it does not deliver a good quality signal to the cable system's headend. The Commission states that it expects cable operators to cooperate with broadcasters in such cases and to provide the relevant data for the broadcaster to determine whether it wishes to pay for the signal improvements required to attain must-carry status. The Commission concludes that it is the television station's obligation to bear the cost of delivery of a good quality signal, including equipment improvement expenses.

39. Procedures. The 1992 Act requires a cable operator to provide written notice to a local television station, and subscribers in the case of NCE stations, at least 30 days prior to either deleting from carriage or repositioning that station on the system. In addition, a cable operator may not delete or reposition a local commercial station during a ratings period. In the Notice, the Commission sought comment on the implementation of these provisions, including whether it should require cable operators to notify subscribers of changes in commercial must-carry signal carriage, as is required by the Act for NCE stations. In the Notice, the Commission also proposed to prohibit deletion or channel repositioning solely during the four national four-week ratings periods—roughly February, May, July and November. Generally, the Commission adopts the proposed notification requirements, including notification of subscribers about changes in the carriage of both commercial and noncommercial stations. Furthermore, consistent with the Commission's March 11, 1993, action in its customer service proceeding (Report and Order in MM Docket No. 92-263, FCC 93-145) cable operators will be required to notify any broadcaster 30 days prior to deletion or repositioning of its signal.

40. Under the 1992 Act, a cable operator is generally prohibited from accepting or requesting compensation for carriage or channel positioning of a television station, NCE or commercial, carried in fulfillment of the must-carry requirements. However, as discussed above, a station may be required to bear

the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system. Moreover, the cable operator may accept payments as indemnification for any increased copyright liability resulting from carriage of commercial must-carry stations that would be considered distant signals for copyright purposes. In this regard, the Commission expects cooperation between cable operators and broadcasters to ensure that operators are compensated for the cost of carriage of "distant" must-carry signals and that broadcast licensees pay only their fair share. Thus, a broadcaster will only be responsible for the increased copyright costs associated with carriage of its station as a must-carry signal.

41. Section 614(d)(1) and section 615(j) of the 1992 Act provide for the resolution of carriage and channel positioning disputes between a broadcast station and a cable operator. The Act requires a local commercial station to notify the cable operator of an alleged violation, and further requires the cable operator to respond within 30 days, prior to that station filing a complaint with the Commission. An NCE station is permitted to file a complaint with the Commission prior to notifying the cable operator. Once a complaint is filed, the Commission has 120 days to either dismiss the complaint or take remedial action. The Notice sought comment on whether the special relief provisions of § 76.7 should be used, with modified time periods and the difference in treatment of local commercial stations and NCE stations.

42. The Commission believes that the special relief procedures of § 76.7 provide the best method of expediting complaints filed pursuant to sections 614(d)(1) and 615(j) because time is of the essence under 120-day statutory limit. Therefore, the Commission is amending § 76.7 to accommodate the filing of complaints, which will be exempt from the fee provisions of § 76.7.

43. In the Order, the Commission recommends that commercial station's initial notification to the cable operator of an alleged failure to comply with its must-carry obligations be made with the same level of specificity, raising all issues, as the station would raise before the Commission if the request should be denied. This initial notification will act as a condition precedent to a commercial station filing a complaint with the Commission, and will serve as a primary part of the pleadings in the event a complaint is filed. The Commission also believes the cable operator's response to a commercial

⁴ See Report and Order in MM Docket Nos. 91-169 and 85-38, 57 FR 11000 (April 1, 1992), (Cable Technical Report and Order) and Memorandum Opinion and Order in MM Docket Nos. 91-169 and 85-38, 57 FR 61009 (December 23, 1992) (Cable Technical Reconsideration).

station should contain the same level of specificity as the cable operator would raise before the Commission in defense of a complaint against it. This initial response will serve as a primary part of the pleadings in the event a complaint is filed by an aggrieved commercial station.

44. With respect to an NCE station, although the statute gives the NCE station the right to directly file a complaint with the Commission, it is anticipated, though not required, that if there is any question relating to the carriage obligations of the cable system, the NCE station will make inquiries of the cable system prior to filing a complaint. In the event the NCE station chooses to notify a cable operator of an alleged failure to comply with the Act, the Commission believes it appropriate that it uses the procedures outlined for commercial stations. If the NCE station chooses to avail itself of the plain language of the statute and file a complaint directly with the Commission, the NCE station must serve the cable system as provided in § 76.7 of the Commission's rules.

45. The Notice proposed a 30- or 60-day time limit from the triggering action in which to allow stations to file complaints. The Commission believes that a time limit for the filing of a must-carry or channel positioning complaint is appropriate and concludes that it is appropriate that a station be required to file its complaint within sixty (60) days of an "affirmative action" by a cable operator which directly affects the rights and interests of the station. An affirmative action for these purposes includes a notice from the cable operator of its intent to discontinue carriage or reposition the channel, or a denial from a cable operator in response to a demand by the station for either carriage or channel position.

46. The Act requires the Commission to make a determination regarding a must-carry complaint within 120 days after it is filed. Thus, the Notice suggested that cable operators be given ten (10) days to respond to a complaint filed with the Commission by either a commercial or an NCE station in order to meet this deadline. The Commission believes that the twenty (20) day opportunity to reply or oppose a complaint set forth in that rule will be sufficient time for cable operators to react to either a commercial or NCE station complaint. These amended provisions of 76.7 will be applied to all complaints.

47. The Act provides that the Commission shall require a cable system that has failed to meet its must-carry obligation to carry the affected

commercial station for at least 12 months. With respect to NCE stations, the Act states that the Commission shall determine the needed remedial actions. The Commission believes that 45 days is an appropriate amount of time for the cable operator to implement any order of the Commission; however, the Commission reserves the right to reduce or extend such period of time where warranted by the circumstances of a particular case. Although the statute appears to contemplate remedial action on behalf of NCE stations be determined on a case-by-case basis, the Commission anticipates that orders relating to such complaints will also carry a 45-day deadline.

48. Retransmission consent. The new section 325(b) of the Communications Act provides that, as of October 6, 1993, no cable system or other multichannel video programming distributor shall retransmit the signal of any broadcasting station unless the multichannel distributor has the express authority of the originating station or, in the case of a cable system, a television broadcasting station has elected to assert must-carry rights. The new subsection contains four exceptions. The retransmission consent requirements do not apply to: (1) Noncommercial broadcasting stations; (2) home satellite dish reception of superstations provided that the signal was retransmitted by a satellite carrier on May 1, 1991; (3) home satellite dish reception of network stations, provided that reception is by an unserved household; and (4) cable or other multichannel distributor retransmission of superstations provided that the signal was obtained from a satellite carrier and the originating station was a superstation as of May 1, 1991.

49. The Commission finds that retransmission consent requirements do apply to commercial radio signals and to low power television signals, unless a low power television signal is being carried pursuant to the must-carry rules. Retransmission consent requirements, also apply to distant commercial television signals that are not superstations, notwithstanding the fact that television stations cannot opt for must-carry rights with respect to cable systems outside their local market. However, the retransmission consent requirements do not apply to foreign stations.

50. The Commission determines that "multichannel video programming distributor" should be defined to include satellite master antenna television systems, but that a pure video dial tone provider is not a multichannel distributor. Rather, customers of a pure video dialtone provider would be

responsible for meeting retransmission consent obligations. The Commission also determines that provision of local broadcast signals by master antenna television facilities or VHF/UHF antennas on individual dwellings is not subject to retransmission consent, provided that these signals are available without charge at the residents' option. To ensure that these conditions are met, the facilities in question must be the property of the building owner or individual subscriber.

51. The statute requires commercial television broadcast stations to make an election between must-carry and retransmission consent rights within one year of the date of enactment of the 1992 Act and every three years thereafter. The Commission adopts the following schedule for implementing the must-carry and retransmission consent requirements.

52. Effective April 2, 1993, cable operators will be required to give subscribers 30 days notice of deletion or repositioning of any television broadcast station carried. As of May 3, 1993, cable systems must notify qualified noncommercial educational stations of the location of their principal headend and notify any local television stations that may not be entitled to must-carry status due to failure to meet signal strength requirements or imposition of increased copyright liability on cable systems.

53. On June 2, 1993, cable systems must begin carriage of their complement of commercial must-carry signals. Cable operators will not be required to conform to the channel positioning rules until the retransmission consent requirements go into effect. By June 17, 1993, local commercial television stations will be required to make their initial election of must-carry or retransmission consent status, and stations electing must-carry must notify cable operators of their preferred channel positions. The retransmission consent and channel positioning requirements will take effect on October 6, 1993. Subsequent election deadlines are October 1 of 1996, 1999, etc. Those elections will take effect on January 1 of 1997, 2000 etc.

54. The Commission notes that cable operators wishing to drop signals due to a failure to reach retransmission consent agreements will be required to notify subscribers by September 6, 1993 and that the lead time for preparing such notifications for insertion in subscriber bills and for making necessary equipment changes may be even longer. Therefore, the Commission expects that, in general, retransmission consent

agreements will be concluded by early August of 1993.

55. Stations will be required to make the same election for cable systems with overlapping franchise areas. If a station fails to make an election by the deadline, the default election will be must-carry. Stations will be required to place copies of all election statements in their public files and to send each cable operator in the local market a copy of the station's election statement with respect to that operator. New television stations must make their initial must-carry/retransmission consent elections within 30 days of commencing regular broadcasts, and this initial election will take effect 90 days after it is made.

56. The Commission, rejecting its tentative conclusion, finds that the requirement in new section 614(b)(3)(B) that cable operators must "carry the entirety of the program schedule of any television station carried on the cable system" (subject to Commission rules on sports broadcasting, syndicated exclusivity, and network nonduplication) applies to all television stations carried, including retransmission consent and must-carry stations. Moreover, local television signals carried pursuant to retransmission consent agreements count against the must-carry signal complement required.

57. The Commission determines that retransmission consent is a new right, created by the Communications Act, that vests in a broadcaster's signal. This right is distinct from copyright, which applies to the programming carried on the signal. Broadcasters may bargain away their retransmission consent rights. However, in order to maintain the Congressionally-mandated distinction between retransmission consent and copyright, the Commission finds that any bargaining must be for retransmission consent rights in the entire signal and not for individual programs carried on the signal. Thus, any retransmission rights acquired will be for the entire signal of a broadcast station. The Commission expects purely contractual disputes to be resolved in the courts, but broadcast stations and, in certain circumstances, television networks, may file complaints with the Commission regarding alleged violations of section 325(b).

58. With respect to ensuring that retransmission consent fees do not result in basic service tier rates that are not reasonable, the Commission determines that its rate regulation proceeding is the appropriate forum for addressing reasonableness of retransmission consent rates. Accordingly, the Commission declines

to adopt specific regulations limiting retransmission consent rates.

59. The new retransmission consent rules also prohibit exclusive retransmission consent agreements. The Commission will revisit this issue in three years. Additionally, the Commission concludes that television broadcast stations that elect retransmission consent may exercise network nonduplication rights and denies a petition from the National Cable Television Association to revisit the network nonduplication rules.

Final Regulatory Flexibility Analysis

60. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and Purpose of this Action

This action is taken to implement the provisions of the Cable Television Consumer Protection and Competition Act of 1992 pertaining to the mandatory carriage of broadcast signals ("must-carry") and retransmission consent.

II. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were received in response to the request for comments to the Initial Regulatory Flexibility Analysis, however comments received in response to the Notice of Proposed Rule Making indicate that smaller cable systems that primarily serve rural areas are concerned about their ability to compete effectively under the same regulatory scheme as that applied to larger cable systems. Concerns focus generally on the smaller system's ability to financially meet technical requirements and to effectively negotiate for retransmission rights in its market.

III. Significant Alternatives Considered and Rejected

None. The Act is specific with regard to the must-carry and retransmission rights available to broadcasters and the resulting obligation on cable systems. The Act provides that rights and obligations are proportionate to the size of the business.

61. The Secretary shall cause a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ordering Clauses

62. Accordingly, it is ordered, That pursuant to authority contained in Section 4(i) and (j), and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, part 76 of the Commission's Rules, 47 CFR part 76, is amended as set forth in below.

63. It is further ordered, That pursuant to the need to avoid disruption to cable subscribers and broadcast television stations during the transition to the new broadcast signal carriage rules and the authority contained in the Administrative Procedure Act, 5 U.S.C. 553(d)(3), section 76.58(a) and 76.59 of the rules set forth below will be effective April 2, 1993.

64. It is further ordered, That §§ 76.56 and 76.58(e) of the rules set forth below will be effective June 2, 1993.

65. It is further ordered, That §§ 76.64 and 76.302 of the rules set forth below will be effective June 17, 1993.

66. It is further ordered, That all other sections of the rules set forth below will be effective May 3, 1993.

67. It is further ordered, That the Petition for Rule Making filed by the National Cable Television Association on January 19, 1993, is denied.

68. It is further ordered, That MM Docket No. 90-4 is terminated.

69. It is further ordered, That MM Docket No. 92-295 is terminated.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

Amendatory Text

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 is revised to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 543, 552.

2. Section 76.5 is amended by revising paragraph (b) and adding paragraphs (nn), (oo) and (pp) to read as follows:

§ 76.5 Definitions.

* * * * *

(b) *Television station; television broadcast station.* Any television broadcast station operating on a channel regularly assigned to its community by § 73.606 of this chapter, and any

television broadcast station licensed by a foreign government: *Provided, however, That a television broadcast station licensed by a foreign government shall not be entitled to assert a claim to carriage, program exclusivity, or retransmission consent authorization pursuant to subpart D or F of this part, but may otherwise be carried if consistent with the rules on any service tier.*

(nn) *Activated channels.* Those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational or governmental use.

(oo) *Usable activated channels.* Those activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations. See part 76, subpart K.

(pp) *Principal headend.* (1) The headend, in the case of a cable system with a single headend or,

(2) In the case of a cable system with more than one headend, the principal headend designated by the cable operator, except that such designation shall not undermine or evade the requirements of subpart D of this part. The designation of a principal headend shall be made by May 3, 1993, and each cable system shall place in its public file the location of its designated principal headend by June 17, 1993, as provided in § 76.302. Except for good cause, an operator may not change its choice of principal headend.

3. Section 76.7 is revised in its entirety to read as follows:

§ 76.7 Special relief and must-carry complaint procedures.

(a)(1) *Petitions for special relief.* On petition by a cable television system operator, a franchising authority, an applicant, permittee, or licensee of a television broadcast or translator station, or by any other interested person, the Commission may waive any provision of the rules relating to cable television systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question.

(2) *Complaints filed pursuant to § 76.61.* In response to a complaint filed by a television broadcast station under § 76.61 (must-carry complaint), the Commission may order a cable television system operator to commence or resume carriage of the complaining station, or position or reposition the

complaining station's channel on the cable television system, pursuant to subpart D of this part.

(b) The petition for special relief or must-carry complaint may be submitted informally, by letter, but shall be accompanied by a certificate of service on any cable television system operator, franchising authority, station licensee, permittee, or applicant, or other interested person who may be directly affected if the relief requested is granted.

(c)(1) The petition for special relief or must-carry complaint shall state the relief requested. It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(2) A petition for special relief or must-carry complaint shall set forth all steps taken by the parties to resolve the problem, except where the only relief sought is a clarification or interpretation of the rules.

(3) An original and two (2) copies of the petition for special relief or must-carry complaint, and all subsequent pleadings shall be filed in accordance with § 0.401(a) of this chapter, except the petitions for special relief requiring fees as set forth at part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter. Must-carry complaints filed pursuant to § 76.61 are not covered by part 1, subpart G of this chapter and do not require fees.

(4)(i) Must-carry complaints filed pursuant to § 76.61(a) (Complaints regarding carriage of local commercial television stations) shall be accompanied by the notice from the complainant to the cable television system operator (§ 76.61(a)(1)), and the cable television system operator's response (§ 76.61(a)(2)), if any. If no timely response was received, the complaint should so state.

(ii) Must-carry complaints filed pursuant to § 76.61(b) (Complaints regarding carriage of qualified local NCE television stations) should be accompanied by any relevant correspondence between the complainant and the cable television system operator.

(iii) No must-carry complaint filed pursuant to § 76.61 will be accepted by the Commission if filed more than sixty (60) days after the date of the specific event described in this paragraph. Must-

carry complaints filed pursuant to § 76.61(a) or § 76.61(b) should affirmatively state the specific event upon which the complaint is based, and shall establish that the complaint is being filed within sixty (60) days of such specific event. With respect to must-carry complaints filed pursuant to § 76.61(a), the specific event shall be

(A) The denial by a cable television system operator of a request for carriage or channel position contained in the notice required by § 76.61(a)(1), or

(B) The failure to respond to such notice within the time period allowed by § 76.61(a)(2). With respect to must-carry complaints filed pursuant to § 76.61(b), the specific event shall be when the complainant first believes that the cable television system operator has failed to comply with the applicable provisions of subpart D of this part.

(d) Interested persons may submit comments or oppositions to a petition for special relief or a must-carry complaint within twenty (20) days after the date of public notice of the filing of such petition or complaint. For good cause shown in the petition for special relief or must-carry complaint, the Commission may, by letter or telegram to known interested persons, specify an altered time for such submissions. Comments or oppositions shall be served on the petitioner or complainant and on all persons listed in petitioner's or complainant's certificate of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on.

(e) The petitioner or complainant may file a reply to the comments or oppositions within ten (10) days after their submission, which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. For good cause shown, the Commission may specify a shorter time for the filing of reply comments.

(f) The Commission, after consideration of a petition for special relief and the responsive pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on the complaint or dispute. The Commission will resolve must-carry complaints pursuant to paragraphs (a)(4) and (b)(2) of § 76.61. The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings

and such other procedures as it may specify, whether temporary relief should be afforded any party pending the hearing and the nature of any such temporary relief.

(g) On a finding that the public interest so requires, the Commission may determine that a system community unit operating or proposing to operate in a community located outside of the 48 contiguous states shall comply with provisions of subparts D, F, and G of this part in addition to the provisions thereof otherwise applicable.

Note: Each party filing a petition, comments, opposition or other pleading pursuant to § 76.7 is responsible for the continuing accuracy and completeness of all information in such document. The provisions of § 1.65 of this chapter are wholly applicable to pleadings involving § 76.7, except that where specific provisions of the latter conflict with the former, the specific provisions of § 76.7 are controlling, e.g., where requirements for service on specified parties of certain information may vary.

4. Section 76.51 is amended by revising the names of markets ranked numbers 18, 19 and 27, and by adding a note at the end of the section, to read as follows:

§ 76.51 Major television markets.

* * * * *

(18) Atlanta-Rome, Ga.

(19) Hartford-New Haven-New Britain-Waterbury-New London, Ct.

* * * * *

(27) Columbus-Chillicothe, Ohio

* * * * *

Note: Requests for changes to this list shall be made in the form of a petition for rulemaking pursuant to § 1.401 of this chapter, except that such petitions shall not be subject to the public notice provisions of § 1.403 of this chapter.

5. Section 76.55 is added to subpart D to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

For purposes of the must-carry rules set forth in this subpart, the following definitions apply:

(a) *Qualified noncommercial educational (NCE) television station.* A qualified NCE television station is any television broadcast station which

(1)(i) Under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as an NCE television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

(ii) Has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public

Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) of the Communications Act of 1934, as amended; or

(2) Is owned and operated by a municipality and transmits noncommercial programs for educational purposes, as defined in Section 73.612 of this chapter, for at least 50 percent of its broadcast week.

(3) This definition includes:

(i) The translator of any NCE television station with five watts or higher power serving the franchise area,

(ii) A full-service station or translator if such station or translator is licensed to a channel reserved for NCE use pursuant to § 73.606 of this chapter, or any successor regulations thereto, and

(iii) Such stations and translators operating on channels not so reserved but otherwise qualified as NCE stations.

(b) *Qualified local noncommercial educational (NCE) television station.* A qualified local NCE television station is a qualified NCE television station:

(1) That is licensed to a community whose reference point, as defined in § 76.53 is within 50 miles of the principal headend, as defined in § 76.5(pp), of the cable system; or

(2) Whose Grade B service contour encompasses the principal headend, as defined in § 76.5(pp), of the cable system.

(c) *Local commercial television station.* A local commercial television station is any full power television broadcast station, other than a qualified NCE television station as defined in paragraph (a) of this section, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market, as defined below in paragraph (e) of this section, as the cable system, except that the term local commercial television station does not include:

(1) Low power television stations, television translator stations, and passive repeaters with operate pursuant to part 74 of this chapter.

(2) A television broadcast station that would be considered a distant signal under the capable compulsory copyright license, 17 U.S.C. 111, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

(3) A television broadcast station that does not deliver to the principal headend, as defined in § 76.5(pp), of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of

the signal processing equipment, i.e., the input to the first active component of the signal processing equipment relevant to the signal at issue, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

(d) *Qualified low power station.* A qualified low power station is any television broadcast station conforming to the low power television rules contained in part 74 of this chapter, only if:

(1) Such station broadcasts for at least the minimum number of hours of operation required by the Commission for full power television broadcast stations under part 73 of this chapter;

(2) Such station meets all obligations and requirements applicable to full power television broadcast stations under part 73 of this chapter, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;

(3) Such station complies with interference regulations consistent with its secondary status pursuant to part 74 of this chapter;

(4) Such station is located no more than 35 miles from the cable system's principal headend, as defined in § 76.5(pp), and delivers to that headend an over-the-air signal of good quality;

(5) The community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

(6) There is no full power television broadcast station licensed to any community within the county or other equivalent political subdivision (of a State) served by the cable system.

(e) *Television market.* For purposes of the must-carry rules:

(1) A local commercial broadcast television station's market shall be defined as its Area of Dominant

Influence (ADI) as determined by Arbitron and published in its *Television ADI Market Guide* or any successor publication, as noted below, except that for areas outside the contiguous 48 states the area of dominant influence may be defined using Nielsen's Designated Market Area (DMA), where applicable, and that Puerto Rico, the U.S. Virgin Islands and Guam will each be considered one ADI;

(2) A cable system's television market(s) shall be the one or more ADIs in which the communities it serves are located;

(3) In addition, the county in which a station's community of license is located will be considered within its market.

Note: For the 1993 must-carry/retransmission consent election, the ADI assignments specified in the 1991-1992 *Television ADI Market Guide*, available from the Arbitron Ratings Co., 312 Marshall Ave., Laurel, MD, will apply. ADI assignments will be updated at three-year intervals. For the 1996 election period, the 1994-1995 ADI list will be used; the applicable list for the 1999 election will be the 1997-1998 list, etc.

(f) *Network.* For purposes of the must-carry rules, a commercial television network is an entity that offers programming on a regular basis for 15 or more hours per week to at least 25 affiliates in 10 or more states.

6. Section 76.56 is added to subpart D to read as follows:

§ 76.56 Signal carriage obligations.

(a) *Carriage of qualified noncommercial educational stations.* A cable television system shall carry qualified NCE television stations in accordance with the following provisions:

(1) Each cable operator shall carry on its cable television system any qualified local NCE television station requesting carriage, except that

(i) Systems with 12 or fewer usable activated channels, as defined in § 76.6(oo), shall be required to carry the signal of one such station;

(ii) Systems with 13 to 36 usable activated channels, as defined in § 76.5(oo), shall be required to carry at least one qualified local NCE station, but not more than three such stations; and

(iii) Systems with more than 36 usable activated channels shall be required to carry the signals of three qualified local NCE educational television stations; however a cable system with more than 36 channels shall not be required to carry stations whose programming substantially duplicates the programming of another qualified local NCE station.

Note: For purposes of this paragraph, a station will be deemed to "substantially duplicate" the programming of another station if it broadcasts the same programming, simultaneous or non-simultaneous, for more than 50 percent of prime time, as defined in § 76.5(n), and more than 50 percent outside of prime time over a three-month period.

(2)(i) In the case of a cable system with 12 or fewer channels that operates beyond the presence of any qualified local NCE stations, the cable operator shall import one qualified NCE television station.

(ii) A cable system with between 13 and 36 channels that operates beyond the presence of any qualified local NCE stations, the cable operator shall import at least one qualified NCE television station.

(3) A cable system with 12 or fewer usable activated channels shall not be required to remove any programming service provided to subscribers as of March 29, 1990, to satisfy these requirements, except that the first available channel must be used to satisfy these requirements.

(4) A cable system with 13 to 36 usable activated channels which carries the signal of a qualified local NCE station affiliated with a State public television network shall not be required to carry more than one qualified local NCE station affiliated with such network, if the programming of such additional stations substantially duplicates, as defined in the note in paragraph (a)(1) of this section, the programming of a qualified local NCE television station receiving carriage.

(5) Notwithstanding the requirements of paragraph (a)(1) of this section, all cable operators shall continue to provide carriage to all qualified local NCE television stations whose signals were carried on their systems as of March 29, 1990. This requirement may be waived with respect to a particular cable operator and a particular NCE station, upon the written consent of the cable operator and the station.

(b) *Carriage of local commercial television stations.* Effective June 2, 1993, a cable television system shall carry local commercial broadcast television stations in accordance with the following provisions:

(1) A cable system with 12 or fewer usable activated channels, as defined in § 76.5(oo), shall carry the signals of at least three local commercial television stations, except that if such system had 300 or fewer subscribers on October 5, 1992, it shall not be subject to these requirements as long as it does not delete from carriage any broadcast television station.

(2) A cable system with more than 12 usable activated channels, as defined in § 76.5(oo), shall carry local commercial television stations up to one-third of the aggregate number of usable activated channels of such system.

(3) If there are not enough local commercial television stations to fill the channels set aside under paragraphs (b)(1) and (b)(2) of this section, a cable operator of a system with 35 or fewer usable activated channels, as defined in § 76.5(oo), shall, if such stations exist, carry one qualified low power television station and a cable system with more than 35 usable activated channels shall carry two qualified low power stations.

(4) Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (b)(1) or (b)(2) of this section, the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that

(i) Under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

(ii) If the cable operator elects to carry an affiliate of a broadcast network, as defined in § 76.55(f), such cable operator shall carry the affiliate of such broadcast network whose community of license reference point, as defined in § 76.53, is closest to the principal headend, as defined in § 76.5(pp), of the cable system.

(5) A cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station that is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network, as defined in § 76.55(f). However, if a cable operator declines to carry duplicating signals, such cable operator shall carry the station whose community of license reference point, as defined in § 76.53, is closest to the principal headend of the cable system. For purposes of this paragraph, substantially duplicates means that a station regularly simultaneously broadcasts the identical programming as another station for more than 50 percent of the broadcast week. For purposes of this definition, only identical episodes of a television series are considered duplicative and commercial inserts are excluded from the comparison. When the stations being compared are licensed to communities in different time zones, programming aired by a station within one hour of the identical program being

broadcast by another station will be considered duplicative.

(6) A cable operator is not required to carry on any tier, and is not prohibited from carrying on any tier, the signal of any commercial television station whose programming week consists of more than 50 percent sales presentations or program length commercials.

(c) *Use of public, educational, or governmental (PEG) channels.* A cable operator required to carry more than one signal of a qualified low power station or to add qualified local NCE stations in fulfillment of these must-carry obligations may do so, subject to approval by the franchising authority pursuant to Section 611 of the Communications Act of 1934, as amended, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

(d) *Availability of signals.* (1) Local commercial television stations carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection.

(2) Qualified local NCE television stations carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

(3) If a cable operator 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, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers. Such notification must be provided by June 2, 1993, and annually thereafter and to each new subscriber upon initial installation. The notice, which may be included in routine billing statements, shall identify the signals that are unavailable without an additional connection, the manner for obtaining such additional connection and instructions for installation.

(e) *Identification of must-carry signals.* A cable operator shall respond in writing within 30 days to any written request by any person for the identification of the signals carried on

its system in fulfillment of the requirements of this section. Pursuant to § 76.302, a cable operator must place a list of the broadcast television signals carried in fulfillment of these must-carry obligations in its public file.

(f) Carriage of additional broadcast television signals on such system shall be at the discretion of the cable operator, subject to the retransmission consent rules, § 76.64. A cable system may also carry any ancillary service transmission on the vertical blanking interval or the aural baseband of any television broadcast signal, including, but not limited to, multichannel television sound and teletext.

7. Section 76.57 is added to subpart D to read as follows:

§ 76.57 Channel positioning.

(a) At the election of the licensee of a local commercial 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 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) 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.

(d) 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)-(c) of this section. A qualified NCE stations shall notify the cable system of its choice of channel position when it requests carriage. Channel positioning requests from local commercial stations shall be fulfilled by the cable operator no later than October 6, 1993.

Note: 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.

8. Section 76.58 is added to subpart D to read as follows:

§ 76.58 Notification.

(a) Effective April 2, 1993, a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such notification shall also be provided to subscribers of the cable system.

Note: No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods—generally including February, May, July and November—commonly known as audience sweeps.

(b) By May 3, 1993, a cable operator must notify all qualified NCE stations of its designated principal headend by certified mail.

(c) A cable operator shall provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend, and shall include the new designation in its public file.

(d) By May 3, 1993, a cable operator must notify all local commercial and NCE stations that may not be entitled to carriage because they either

(1) Fail to meet the standards for delivery of a good quality signal to the cable system's principal headend or
(2) May cause an increased copyright liability to the cable system.

(e) By June 2, 1993, a cable operator must send by certified mail a copy of a list of all broadcast television stations carried by its system and their channel positions to all local commercial and noncommercial television stations, including those not designated as must-carry stations and those not carried on the system.

9. Section 76.59 is added to subpart D to read as follows:

§ 76.59 Modification of television markets.

(a) The Commission, following a written request from a broadcast station or a cable system, may deem that the television market 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.

(c) A cable operator shall not delete from carriage the signal of a commercial

television station during the pendency of any proceeding pursuant to this section.

10. Section 76.60 is revised in its entirety to read as follows:

§ 76.60 Compensation for carriage.

A cable operator is prohibited from accepting or requesting monetary payment or other valuable consideration in exchange either for carriage or channel positioning of any broadcast television station carried in fulfillment of the must-carry requirements, except that

(a) Any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system; or

(b) A cable operator may accept payments from stations which would be considered distant signals under the cable compulsory copyright license, 17 U.S.C. 111, as indemnification for any increased copyright liability resulting from carriage of such signal.

Note: A cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the must-carry requirements, through, but not beyond, the date of expiration of an agreement between a cable operator and a local commercial television station entered into prior to June 26, 1990.

11. Section 76.61 is added to subpart D to read as follows:

§ 76.61 Disputes concerning carriage.

(a) *Complaints regarding carriage of local commercial television stations.* (1) 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 §§ 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.

(2) 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.

(3) A local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in accordance with the must-carry rules by a cable operator may file a complaint with the Commission in accordance with the procedures set forth in § 76.7 relating to must-carry complaints. In addition to the requirements of § 76.7, such complaint shall specifically allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

(4) If the Commission determines that a cable operator has failed to meet its must-carry obligations, the Commission shall order that, within 45 days of such order or such other time period as the Commission may specify, the cable operator reposition the complaining station or, in the case of an obligation to carry a station, commence or resume carriage of the station and continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the must-carry requirements, it shall dismiss the complaint.

(b) *Complaints regarding carriage of qualified local NCE television stations.*

(1) Whenever a qualified local NCE television station believes that a cable operator has failed to comply with the signal carriage or channel positioning requirements, pursuant to §§ 76.56-76.57, the station may file a complaint with the Commission in accordance with the procedures set forth in § 76.7. In addition to the requirements of § 76.7, such complaint shall specifically allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

(2) If the Commission determines that a cable operator has failed to meet its must-carry obligations, the Commission shall order that, within 45 days of such order or such other period as the Commission may specify, the cable operator reposition the complaining station or, in the case of an obligation

to carry a station, commence or resume carriage of the station and continue such carriage for a period of time the Commission deems appropriate for the specific case under consideration. If the Commission determines that the cable operator has fully met the must-carry requirements, it shall dismiss the complaint.

12. Section 76.62 is revised in its entirety to read as follows:

§ 76.62 Manner of carriage.

(a) Cable operators shall carry the entirety of the program schedule of any television station carried unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under § 76.67 or subpart F of part 76.

(b) Each such television broadcast signal carried shall be carried without material degradation in compliance with technical standards set forth in subpart K of this part.

(c) Each local commercial television station whose signal is carried shall, to the extent technically feasible and consistent with good engineering practice, be provided no less than the same quality of signal processing and carriage provided for carriage of any other type of standard television signal.

(d) Each qualified local noncommercial educational television station whose signal is carried shall be provided with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried.

(e) Each commercial broadcast television station carried pursuant to § 76.56 shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

(f) Each qualified local NCE television station carried pursuant to § 76.56 shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes:

§ 76.63 [Removed]

14. Section 76.63 is removed.

15. Section 76.64 is added to subpart D to read as follows:

§ 76.64 Retransmission consent.

(a) After 12:01 a.m. on October 6, 1993, no multichannel video programming distributor shall retransmit the signal of any commercial broadcasting station without the express authority of the originating station, except as provided in paragraph (b) of this section.

(b) A commercial broadcast signal may be retransmitted without express authority of the originating station if—

(1) The distributor is a cable system and the signal is that of a commercial television station (including a low-power television station) that is being carried pursuant to the Commission's must-carry rules set forth in § 76.56;

(2) The multichannel video programming distributor obtains the signal from a satellite carrier and the originating station was a superstation on May 1, 1991; or

(3) The distributor is a satellite carrier and the signal is transmitted directly to a home satellite antenna, provided that:

(i) The broadcast station is not owned or operated by, or affiliated with, a broadcasting network and its signal was retransmitted by a satellite carrier on May 1, 1991; or

(ii) The broadcast station is owned or operated by, or affiliated with a broadcasting network, and the household receiving the signal is an unserved household.

(c) For purposes of this section, the following definitions apply:

(1) A satellite carrier is an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing;

(2) A superstation is a television broadcast station other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier;

(3) An unserved household with respect to a television network is a household that

(i) Cannot receive, through the use of a conventional outdoor rooftop

receiving antenna, an over-the-air signal of grade B intensity of a primary network station affiliated with that network, and

(ii) Has not, within 90 days before the date on which that household subscribes, either initially or on renewal, received secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with the network.

(4) A primary network station is a network station that broadcasts or rebroadcasts the basic programming service of a particular national network;

(5) The terms "network station," and "secondary transmission" have the meanings given them in 17 U.S.C. 111(f).

(d) A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming.

(e) Provision of local broadcast signals by master antenna television (MATV) facilities or by VHF/UHF antennas on individual dwellings is not subject to retransmission consent, provided that these signals are available without charge at the residents' option. That is, the antenna facilities must be owned by the individual subscriber or building owner and not under the control of the multichannel video programming distributor.

(f) Commercial television stations are required to make elections between retransmission consent and must-carry status according to the following schedule:

(1) The initial election must be made by June 17, 1993.

(2) Subsequent elections must be made at three year intervals; the second election must be made by October 1, 1996 and will take effect on January 1, 1997; the third election must be made by October 1, 1999 and will take effect on January 1, 2000, etc.

(3) Television stations that fail to make an election by the specified deadline will be deemed to have elected must carry status for the relevant three-year period.

(4) New television stations must make their initial election within 30 days of commencing regular broadcasts; such

initial elections shall take effect 90 days after they are made.

(5) Television broadcast 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.

(g) If one or more franchise areas served by a cable system overlaps with one or more franchise areas served by another cable system, television broadcast stations are required to make the same election for both cable systems.

(h) On or before each must-carry/retransmission consent election deadline, each television broadcast station shall place copies of all of its election statements in the station's public file, and shall send via certified mail to each cable system in the station's defined market a copy of the station's election statement with respect to that operator.

(i) Notwithstanding a television station's election of must-carry status, if a cable operator proposes to retransmit that station's signal without according the station must-carry rights (i.e., pursuant to § 76.56(f)), the operator must obtain the station's express authority prior to retransmitting its signal.

(j) A cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems must give 90 days notice of its intention to do so to any television broadcast stations that have elected must-carry status with respect to one system and retransmission consent status with respect to the other. If the system and the station do not agree on a uniform election 45 days prior to integration, the cable system may require the station to make such a uniform election 30 days prior to integration.

(k) Retransmission consent agreements between a commercial broadcast station and a multichannel video programming distributor shall be in writing and shall grant consent for retransmission of the station's entire signal. Broadcasters may assign their retransmission consent rights to another party, provided that the right assigned encompasses retransmission of the entire signal of the broadcast station.

§ 76.66 [Removed]

16. Section 76.66 is removed.

17. Section 76.92 is amended by adding paragraph (g) before the note to read as follows:

§ 76.92 Network non-duplication; extent of protection.

(g) A community unit is not required to delete the duplicating network programming of any qualified NCE television broadcast station that is carried in fulfillment of the cable television system's mandatory signal carriage obligations, pursuant to § 76.56.

18. Section 76.300 is amended by revising paragraph (a) to read as follows:

§ 76.300 Scope of applications.

(a) The provisions of §§ 76.302, 76.306, and 76.307 are applicable to all cable television systems.

19. Section 76.302 is added to subpart H to read as follows:

§ 76.302 Required recordkeeping for must-carry purposes.

(a) Effective June 17, 1993, the operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to § 76.56. Such list shall include the call sign, community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990.

(b) The operator of every cable television system shall maintain for public inspection the designation and location of its principal headend.

(c) Such records must be maintained in accordance with the provisions of § 76.305(b).

(d) Upon written request from any person, a cable operator is required to provide the list of signals specified in paragraph (a) of this section in writing within 30 days of receipt of such request.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 921154-3027]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary restrictions with request for comments.

SUMMARY: NMFS notifies owners and operators of vessels conducting gill net fishing from Cape Canaveral (Brevard County) to Jupiter Inlet (Palm Beach County) Florida, that, for the next 30 days, upon request, they must carry a NMFS-approved observer aboard such vessel(s). Owners and operators are also advised that authorized officers may conduct boardings and require the retrieval of nets to investigate incidental takes of sea turtles by gill net fisheries in this area. These actions are necessary to determine the level of incidental take of threatened and endangered sea turtles in gill net fisheries within this area. High stranding rates of green turtles along approximately 100 miles (161 km) of ocean beaches, the documented take of marine turtles entangled in gill nets, and the need to identify accurately the source of mortality justifies the immediate imposition of these requirements. NMFS may extend this requirement beyond 30 days and/or impose temporary sea turtle conservation measures on gill net fisheries as necessary to protect adequately sea turtles.

DATES: This action is effective from March 30, 1993 through April 29, 1993. Comments on this action must be submitted by April 29, 1993.

ADDRESSES: Requests for a copy of the environmental assessment for this action and comments on this action should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams, and to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea

Turtle Coordinator (301/713-2319) or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Region (813/893-3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either "endangered" or "threatened" under the Endangered Species Act of 1973 (ESA), U.S.C. 1531 *et seq.* Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in U.S. coastal waters. Sea turtle take by other types of fishing gear has also been documented, but the specific amount and extent of impact to turtles by other gear types is unknown. Gill nets of different mesh sizes have been reported to take sea turtles; for example, gill nets have been reported to take loggerhead turtles in South Carolina sturgeon fisheries, and loggerhead and green turtles along the Atlantic coast of central and southern Florida. In fact, gill nets were the preferred means of capturing turtles when turtle fisheries were allowed in U.S. waters.

Recent Events

Gill net fisheries predominantly targeting Spanish mackerel, bluefish, and pompano in State waters of the south Atlantic off Florida have long been suspected of taking green turtles. These fisheries are in nearshore waters where an extensive sabellarid and hardbottom reef formation has been identified as the primary developmental habitat for juvenile green turtles. Between January 1989 and September 1992, a total of 316 green turtles stranded along approximately 100 miles (161 km) of ocean beaches from Brevard through Martin Counties, Florida, and gill net fisheries are the most likely source of these mortalities. At least 24 incidents of entanglement in monofilament gill and trammel nets have been documented within the area from Brevard County to Palm Beach County Florida from January 1988 through May 1992, and many stranded turtles on beaches exhibit wounds on necks or flippers characteristic of entanglement. Little or no shrimp or other fishing activities are known to occur in this area.

Last year, NMFS issued an advance notice of proposed rulemaking (57 FR 30709, July 10, 1992) that specifically identified these fisheries as possibly having a significant adverse impact on the recovery of endangered and threatened sea turtles and requested comments on the need to impose monitoring requirements and/or