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(ii) The applicable DMA list for the 2002 election pursuant to § 76.64(f) will be the DMA assignments specified in the 2000–2001 list, and so forth for each triennial election pursuant to § 76.64(f).

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

(4) A cable system's television market(s) shall be the one or more ADI markets in which the communities it serves are located until January 1, 2000, and the one or more DMA markets in which the communities it serves are located thereafter.

(5) In the absence of any mandatory carriage complaint or market modification petition, cable operators in communities that shift from one market to another, due to the change in 1999–2000 from ADI to DMA, will be permitted to treat their systems as either in the new DMA market, or with respect to the specific stations carried prior to the market change from ADI to DMA, as in both the old ADI market and the new DMA market.

(6) If the change from the ADI market definition to the DMA market definition in 1999–2000 results in the filing of a mandatory carriage complaint, any affected party may respond to that complaint by filing a market modification request pursuant to § 76.59, and these two actions may be jointly decided by the Commission.

NOTE TO PARAGRAPH (e): For the 1996 must-carry/retransmission consent election, the ADI assignments specified in the 1991–1992 *Television ADI Market Guide*, available from the Arbitron Ratings Co., 9705 Patuxent Woods Drive, Columbia, MD, will apply. For the 1999 election, which becomes effective on January 1, 2000, DMA assignments specified in the 1997–98 *DMA Market and Demographic Rank Report*, available from Nielsen Media Research, 299 Park Avenue, New York, NY, shall be used. The applicable DMA list for the 2002 election will be the 2000–2001 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

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more hours per week to at least 25 affiliates in 10 or more states.

[58 FR 17359, Apr. 2, 1993, as amended at 58 FR 44951, Aug. 25, 1993; 59 FR 62344, Dec. 5, 1994; 61 FR 29313, June 10, 1996; 64 FR 42617, Aug. 5, 1999; 68 FR 17312, Apr. 9, 2003; 73 FR 5685, Jan. 30, 2008]

§ 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 all qualified local NCE television stations requesting carriage, but in any event at least three such signals; however a cable system with more than 36 channels shall not be required to carry an additional qualified local NCE station whose programming substantially duplicates the programming of another qualified local NCE station being carried on the system.

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. In the case of a cable system that is required to import a distance qualified NCE signal, and such system imported the signal of a qualified NCE station as of March 29, 1990, such cable system shall continue to import such signal until such time as a qualified local NCE signal is available to the cable system. This requirements 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 qualified local commercial television stations, except that if such system serves 300 or fewer subscribers it shall not be subject to these requirements as long as it does not delete from carriage the signal of a broadcast

television station which was carried on that system on October 5, 1992.

(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.

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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) [Reserved]

(7) A local commercial television station carried to fulfill the requirements of this paragraph, which subsequently elects retransmission consent pursuant to § 76.64, shall continue to be carried by the cable system until the effective date of such retransmission consent election.

(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.

(e) Carriage of additional broadcast television signals on such system shall

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

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

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

NOTE 1 TO § 76.56: Section 76.1620 provides notification requirements for a cable operator who authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections.

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

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

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

§ 76.57 Channel positioning.

(a) At the election of the licensee of a local commercial broadcast television station, and for the purpose of this section, a qualified low power television station, carried in fulfillment of the must-carry obligations, a cable operator shall carry such signal on the cable system channel number on which the local commercial television station