



# Virginia Association of Broadcasters Legal Review



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## Legal Memorandum

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### How to Implement the New Retransmission Consent/Must Carry Election Rules

As we prepare to turn the calendar page to July, we write today to provide you with a “how-to” memo regarding implementation of the FCC’s new retransmission consent/must carry election rules—and to remind you that the new rules’ first compliance deadline of **July 31<sup>st</sup>** is fast approaching.

At the outset, it may be helpful to try to forget most of what you thought you knew since the 1992 Cable Act about how to make retransmission consent or must carry elections. As we’ve reported, in a [Report and Order](#) adopted last summer as part of the FCC’s Modernization of Media Regulation Initiative, the Commission jettisoned the long-standing requirement that broadcast television stations make a retransmission consent/must carry election every three years by sending written notices to MVPDs via U.S. Certified Mail (Return Receipt Requested). Instead, the FCC will now require stations to post their carriage elections in their online public inspection files. And, significantly, a station will be required to send an email carriage election to an MVPD only when the station is changing its carriage election status (i.e., from retransmission consent to must carry or vice versa). So, gone are the green return receipt cards and the time-consuming task of trying to find addresses for MVPDs and sending multiple notices to the same MVPD “just in case.”

This memorandum aims to help guide you and your stations through the new process.

*What Has NOT Changed.* Let’s begin with what remains the same:

- (1) Stations still need to make a carriage election decision once every three years. The next carriage cycle is from January 1, 2021, through December 31, 2023, and stations will need to make their elections no later than October 1, 2020.
- (2) Stations still need to identify which MVPDs are operating in their DMA.

- (3) Stations cannot make inconsistent carriage elections in the same geographic area with respect to cable systems. That is, if Cable System A and Cable System B both operate in Smithville, then the station must make the same election for both cable systems in Smithville.
- (4) If a station receives a notice from a cable system that it intends to commence new operations, a commercial television station must make an affirmative carriage election within 30 days of receipt of such notice. Otherwise, the station will default to mandatory carriage (must carry) with respect to the new system.
- (5) If a station is involved in a market modification proceeding in which the FCC modifies the station's "television market" to include a new area, a commercial television station must make an affirmative carriage election within 30 days of the release of the market modification order with respect to the MVPDs that serve that area; otherwise, both commercial and non-commercial television stations will default to mandatory carriage with respect to cable systems and to retransmission consent with respect to satellite carriers.

*The Commission's New Requirements And Processes.* Now, we'll turn to the new requirements and processes regarding carriage elections.

**(1) Update Online Public Inspection File with Carriage Election Contact Information by July 31, 2020**

By **July 31, 2020**, each station must include in its online public inspection file an up-to-date email address and phone number for carriage election questions. Any inquiries received from MVPDs must be responded to as soon as is reasonably possible.

You may have noticed that, back in late February, the FCC created a new field on the front page of each station's online public inspection file. This is where stations should enter the above-mentioned email address and phone number.

Broadcasters should consider carefully what information they enter here. Options include:

- designating a station representative who is knowledgeable about the station's carriage elections,
- designating a corporate representative who may handle retransmission consent across multiple stations or an entire station group, or
- creating a new email address and obtaining a new phone number that will be monitored by an appropriate representative, such as the individuals referred to in the bullet points above.

This contact information will be forward-facing, accessible to anyone. Therefore, stations ought to consider the volume of emails and calls that may be made to the number by individual viewers, especially during a retransmission consent impasse. Regardless of which route a station pursues, the station must respond to any inquiries received from MVPDs as soon as is reasonably possible.

Broadcasters are required to keep the contact information up to date.

As a reminder, the FCC will know exactly when each station enters the contact information into the online public inspection file, so **be sure to make the initial entry by July 31, 2020.**

Also by July 31, 2020, cable operators and DIRECTV and DISH must provide a single up-to-date email address for carriage election notice submissions by television stations with respect to their systems and a single phone number for carriage-related questions. In the case of MSOs (multiple-system operators) and the satellite carriers, this contact information will apply regardless of the number of systems operated or markets served. These MVPDs must respond to questions from broadcasters as soon as is reasonably possible.

This contact information will be available in the online public inspection file for satellite carriers and for those cable systems required to maintain an online public inspection file. These online public inspection files can be accessed via search at <https://publicfiles.fcc.gov>, and the contact information will appear on the front page of such MVPDs' online public inspection files. Cable systems with fewer than 1,000 subscribers are not required to maintain an online public inspection file. For those operators and for OVS operators, the contact information will be available through the FCC's Cable Operations and Licensing System (COALS) at <https://apps.fcc.gov/coals/>.

## **(2) Include Election Statements in the Online Public Inspection File by October 1, 2020**

By **October 1, 2020**, each station must include in its online public inspection file an election statement showing whether the station elected retransmission consent or mandatory carriage with respect to each MVPD for the election cycle commencing January 1, 2021, and ending December 31, 2023. This can be one single election statement for all MVPDs and need not be separate election statements for each MVPD. We suggest that if a station elected retransmission consent for some MVPDs and mandatory carriage for other MVPDs, the station may wish to separate the MVPDs by category and include both election statements in the online public inspection file.

For broadcast groups of more than one station, each station will have to include its own complete election statement. Therefore, even if the group intends to elect retransmission consent with respect to MSOs (multiple-system operators) in multiple markets, each station must include that MSO on its own election statement. For example, if Comcast carries a group's stations in more than one market, then each station carried by Comcast must include Comcast on its election statement.

As noted above, stations will need to determine all MVPDs operating in their DMA. Stations should not rely only on their past election notices for this determination. In addition, stations should determine whether new operators have commenced service during the current election cycle and whether a market modification proceeding has added new geographic areas to the station's "television market" in which the station may exercise mandatory carriage rights or elect retransmission consent. This part of the election process has not changed substantially as a result of the new rules. If in doubt as to a particular operator, a station should not hesitate to contact that operator at the contact information provided on the front page of the operator's online

public inspection file or in COALS. Because it will nevertheless remain difficult in some circumstances to determine all MVPDs operating in a station's market, stations may wish to include a catch-all provision at the end of a station's list in its election statement such as the following: "All other multichannel video programming distributors not listed above that are operating in [Station's] Designated Market Area or 'television market' as defined in 47 C.F.R. § 76.55(e)."

**Once the election statement is uploaded to the station's online public inspection file, the station need not mail or otherwise provide an election notice to any MVPD for which the station does not intend to change its current carriage election.** If no changes in carriage election are being made for the 2021-2023 election cycle, the station is done, other than responding to MVPD inquiries concerning the station's carriage and carriage election.

The election statement must remain in the station's online public inspection file for the complete three-year election cycle to which the statement applies, in this case through December 31, 2023.

Again, remember that the FCC will know when the station posts its election statement to its online public inspection file, so upload the election statement no later than **October 1, 2020**.

**(3) Send Notices of Election Changes and Include Such Notices in the Online Public Inspection File by October 1, 2020**

If a station desires to change its carriage election from what it had elected for the current cycle ending December 31, 2020, or if the station defaulted to must-carry in the case of cable operators, or defaulted to retransmission consent in the case of satellite carriers, and the station desires to change that default, then the station must email a notice of election carriage change to the applicable MVPD and include such notice in its online public inspection file by **October 1, 2020**.

A carriage election change notice must contain the following information:

- (1) the station's call sign;
- (2) the station's community of license;
- (3) the station's DMA;
- (4) the specific change in election status that is being made;
- (5) the station's own email address for carriage-related questions;
- (6) the station's own phone number for carriage-related questions;
- (7) the name of the appropriate station contact person; and
- (8) if the change in election status applies only to some, but not all, of a cable operator's systems, the specific cable systems to which the carriage election applies.

The email change notice should be sent to the email address provided by the MVPD in its online public inspection file or in COALS, if applicable, and, importantly, the station must email a "carbon copy" the notice to the FCC at [ElectionNotices@FCC.gov](mailto:ElectionNotices@FCC.gov).

The MVPD to which a station has sent an election carriage change is required to verify its receipt as soon as is reasonably possible. We suggest that you contact the MVPD again if you

have not received the verification within a week to 10 days. However, as long as you copied the FCC on your carriage election change notice and sent it on or before **October 1**, your change notice will be valid.

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Clearly, there's a lot of information here. Please do not hesitate to reach out to us via the Association Hotline with questions.

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*Tim Nelson, Editor*

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