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Subpart A—General

§ 76.1 Purpose.

The rules and regulations set forth in this part provide for the certification of cable television systems and for their operation in conformity with standards for carriage of television broadcast signals, program exclusivity, cablecasting, access channels, and related matters. The rules and regulations in this part also describe broadcast carriage requirements for cable operators and satellite carriers.

[37 FR 3278, Feb. 12, 1972, as amended at 70 FR 21670, Apr. 27, 2005]

§ 76.3 Other pertinent rules.

Other pertinent provisions of the Commission's rules and regulations relating to Multichannel Video and the Cable Television Service are included in the following parts of this chapter:

Part 1—Practice and Procedure.
Part 11—Emergency Alert System (EAS).
Part 21—Domestic Public Radio Services (Other Than Maritime Mobile).
Part 63—Extension of Lines and Discontinuance of Service by Carriers.
Part 64—Miscellaneous Rules Relating to Common Carriers.
Part 78—Cable Television Relay Service.
Part 79—Closed Captioning of Video Programming.
Part 91—Industrial Radio Services.

[65 FR 53614, Sept. 5, 2000]

§ 76.5 Definitions.

(a) *Cable system or cable television system.* A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(1) A facility that services only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves subscribers without using any public right-of-way;

(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with Section 653 of the Communications Act; or

(5) Any facilities of any electric utility used solely for operating its electric utility systems.

NOTE TO PARAGRAPH (a): The provisions of Subparts D and F of this part shall also apply to all facilities defined previously as cable systems on or before April 28, 1985, except those that serve subscribers without using any public right-of-way.

(b) *Television station; television broadcast station.* Any television broadcast station operating on a channel regularly assigned to its community by § 73.606 or § 73.622 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. Further provided that a television broadcast station operating on channels regularly assigned to its community by both §§ 73.606 and 73.622 of this chapter may assert a claim for carriage pursuant to subpart D of this part only for a channel assigned pursuant to § 73.606.

(c) *Television translator station.* A television broadcast translator station as defined in § 74.701 of this chapter.

(d) *Grade A and Grade B contours.* The field intensity contours defined in § 73.683(a) of this chapter.

(e) *Specified zone of a television broadcast station.* The area extending 56.3 air km (35 air miles) from the reference point in the community to which that station is licensed or authorized by the Commission. A list of reference points is contained in § 76.53. A television broadcast station that is authorized but not operating has a specified zone that terminates eighteen (18) months

after the initial grant of its construction permit.

(f) *Major television market*. The specified zone of a commercial television station licensed to a community listed in § 76.51, or a combination of such specified zones where more than one community is listed.

(g) *Designated community in a major television market*. A community listed in § 76.51.

(h) *Smaller television market*. The specified zone of a commercial television station licensed to a community that is not listed in § 76.51.

(i) *Significantly viewed*. Viewed in other than cable television households as follows: (1) For a full or partial network station—a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent; and (2) for an independent station—a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent. See § 76.54.

NOTE: As used in this paragraph, ''share of viewing hours'' means the total hours that noncable television households viewed the subject station during the week, expressed as a percentage of the total hours these households viewed all stations during the period, and ''net weekly circulation'' means the number of noncable television households that viewed the station for 5 minutes or more during the entire week, expressed as a percentage of the total noncable television households in the survey area.

(j) *Full network station*. A commercial television broadcast station that generally carries in weekly prime time hours 85 percent of the hours of programing offered by one of the three major national television networks with which it has a primary affiliation (*i.e.*, right of first refusal or first call).

(k) *Partial network station*. A commercial television broadcast station that generally carries in prime time more than 10 hours of programming per week offered by the three major national television networks, but less than the amount specified in paragraph (j) of this section.

(l) *Independent station*. A commercial television broadcast station that generally carries in prime time not more than 10 hours of programing per week offered by the three major national television networks.

(m) A network program is any program delivered simultaneously to more than one broadcast station regional or national, commercial or noncommercial.

(n) *Prime time*. The 5-hour period from 6 to 11 p.m., local time, except that in the central time zone the relevant period shall be between the hours of 5 and 10 p.m., and in the mountain time zone each station shall elect whether the period shall be 6 to 11 p.m. or 5 to 10 p.m.

NOTE: Unless the Commission is notified to the contrary, a station in the mountain time zone shall be presumed to have elected the 6 to 11 p.m. period.

(o) *Cablecasting*. Programming (exclusive of broadcast signals) carried on a cable television system. See paragraphs (y), (z) and (aa) (Classes II, III, and IV cable television channels) of this section.

(p) *Origination cablecasting*. Programing (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator.

(q) *Legally qualified candidate*. (1) Any person who:

(i) Has publicly announced his or her intention to run for nomination or office;

(ii) Is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and

(iii) Has met the qualifications set forth in either paragraphs (q)(2), (3) or (4) of this section.

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (q)(1) of this section, that person:

(i) Has qualified for a place on the ballot, or

(ii) Has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a

substantial showing that he or she is a bona fide candidate for nomination or office.

Persons seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those States or territories (or the District of Columbia) in which they have met the requirements set forth in paragraphs (q) (1) and (2) of this rule; except that any such person who has met the requirements set forth in paragraphs (q) (1) and (2) in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for election in all States, territories and the District of Columbia for purposes of this Act.

(3) A person seeking nomination to any public office except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (q)(1) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination; except that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition meeting the requirements set forth in paragraph (q)(1) of this section.

(i) He or she, or proposed delegates on his or her behalf, have qualified for the primary of Presidential preference ballot in that State, territory or the District of Columbia, or

(ii) He or she has made a substantial showing of bona fide candidacy for such nomination in that State, territory of the District of Columbia; except that such person meeting the requirements set forth in paragraph (q) (1) and (4) in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all States, territories and the District of Columbia for purposes of the Act.

(5) The term ''substantial showing'' of bona fide candidacy as used in paragraph (q) (2), (3) and (4) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

(r) *Class I cable television channel.* A signaling path provided by a cable television system to relay to subscriber terminals television broadcast programs that are received off-the-air or are obtained by microwave or by direct connection to a television broadcast station.

(s) *Class II cable television channel.* A signaling path provided by a cable television system to deliver to subscriber terminals television signals that are intended for reception by a television broadcast receiver without the use of an auxilliary decoding device and which signals are not involved in a broadcast transmission path.

(t) *Class III cable television channel.* A signaling path provided by a cable television system to deliver to subscriber terminals signals that are intended for reception by equipment other than a television broadcast receiver or by a television broadcast receiver only when used with auxiliary decoding equipment.

(u) *Class IV cable television channel.* A signaling path provided by a cable television system to transmit signals of any type from a subscriber terminal to

another point in the cable television system.

(v) *Subscriber terminal*. The cable television system terminal to which a subscriber's equipment is connected. Separate terminals may be provided for delivery of signals of various classes. Terminal devices interconnected to subscriber terminals of a cable system must comply with the provisions of part 15 of this Chapter for TV interface devices.

(w) *System noise*. That combination of undesired and fluctuating disturbances within a cable television channel that degrades the transmission of the desired signal and that is due to modulation processes or thermal or other noise-producing effects, but does not include hum and other undesired signals of discrete frequency. System noise is specified in terms of its rms voltage or its mean power level as measured in the 4 MHz bandwidth between 1.25 and 5.25 MHz above the lower channel boundary of a cable television channel.

(x) *Terminal isolation*. The attenuation, at any subscriber terminal, between that terminal and any other subscriber terminal in the cable television system.

(y) *Visual signal level*. The rms voltage produced by the visual signal during the transmission of synchronizing pulses.

(z) *Affiliate*. When used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

(aa) *Person*. An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

(bb) *Significant interest*. A cognizable interest for attributing interests in broadcast, cable, and newspaper properties pursuant to §§ 73.3555, 73.3615, and 76.501.

(cc) *Cable system operator*. Any person or group of persons (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(dd) *System community unit: Community unit*. A cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

(ee) *Subscribers*. A member of the general public who receives broadcast programming distributed by a cable television system and does not further distribute it.

(ff) *Cable service*. The one-way transmission to subscribers of video programming, or other programming service; and, subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, ''video programming'' is programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and, ''other programming service'' is information that a cable operator makes available to all subscribers generally.

(gg) [Reserved]

(hh) *Input selector switch*. Any device that enables a viewer to select between cable service and off-the-air television signals. Such a device may be more sophisticated than a mere two-sided switch, may utilize other cable interface equipment, and may be built into consumer television receivers.

(ii) A *syndicated program* is any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming as defined in § 76.5(m).

(jj) *Rural area*. A community unit with a density of less than 19 households per route kilometer or thirty households per route mile of coaxial and/or fiber optic cable trunk and feeder line.

(kk) *Technically integrated*. Having 75% or more of the video channels received from a common headend.

(ll) *Cable home wiring*. The internal wiring contained within the premises of a subscriber which begins at the demarcation point. Cable home wiring includes passive splitters on the subscriber's side of the demarcation point,

but does not include any active elements such as amplifiers, converter or decoder boxes, or remote control units.

(mm) *Demarcation point.* (1) For new and existing single unit installations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's premises.

(2) For new and existing multiple dwelling unit installations with non-loop-through wiring configurations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit, or, where the wire is physically inaccessible at such point, the closest practicable point thereto that does not require access to the individual subscriber's dwelling unit.

(3) For new and existing multiple dwelling unit installations with loop-through wiring configurations, the demarcation points shall be at (or about) twelve inches outside of where the cable wire enters or exits the first and last individual dwelling units on the loop, or, where the wire is physically inaccessible at such point(s), the closest practicable point thereto that does not require access to an individual subscriber's dwelling unit.

(4) As used in this paragraph (mm)(3), the term ''physically inaccessible'' describes a location that:

(i) Would require significant modification of, or significant damage to, preexisting structural elements, and

(ii) Would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring.

NOTE TO § 76.5 PARAGRAPH (mm)(4): For example, wiring embedded in brick, metal conduit, cinder blocks, or sheet rock with limited or without access openings would likely be physically inaccessible; wiring enclosed within hallway molding would not.

(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 § 76.1708. Except for good cause, an operator may not change its choice of principal headend.

(qq) Emergency Alert System (EAS). The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; cable systems and wireless cable systems; and other entities and industries operating on an organized basis during emergencies at the National, State, or local levels.

[37 FR 3278, Feb. 12, 1972]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 76.5, see the List of CFR Sections Affected which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: At 61 FR 6137, Feb. 16, 1996, in § 76.5, paragraph (ll) was revised. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.6 General pleading requirements.

(a) *General pleading requirements.* All written submissions, both substantive and procedural, must conform to the following standards:

(1) A pleading must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy, should be pleaded fully and with specificity.

(2) Pleadings must contain facts which, if true, are sufficient to warrant a grant of the relief requested.

(3) Facts must be supported by relevant documentation or affidavit.

(4) The original of all pleadings and submissions by any party shall be signed by that party, or by the party's attorney. Complaints must be signed by the complainant. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Each submission must contain a written verification that the signatory has read the submission and to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose. If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose appropriate sanctions.

(5) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority. Opposing authorities must be distinguished. Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(6) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(b) *Copies to be Filed.* Unless otherwise directed by specific regulation or the Commission, an original and two (2) copies of all pleadings shall be filed in accordance with § 0.401(a) of this chapter, except that petitions 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.

(c) *Frivolous pleadings.* It shall be unlawful for any party to file a frivolous pleading with the Commission. Any violation of this paragraph shall constitute an abuse of process subject to appropriate sanctions.

[64 FR 6569, Feb. 10, 1999]

§ 76.7 General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.

(a) *Initiating pleadings.* In addition to the general pleading requirements, initiating pleadings must adhere to the following requirements:

(1) *Petitions.* On petition by any interested party, cable television system operator, a multichannel video programming distributor, local franchising authority, or an applicant, permittee, or licensee of a television broadcast or translator station, the Commission may waive any provision of this part 76, impose additional or different requirements, issue a ruling on a complaint or disputed question, issue a show cause order, revoke the certification of the local franchising authority, or initiate a forfeiture proceeding. Petitions may be submitted informally by letter.

(2) *Complaints.* Complaints shall conform to the relevant rule section under which the complaint is being filed.

(3) *Certificate of service.* Petitions and Complaints 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 is likely to be directly affected if the relief requested is granted.

(4) *Statement of relief requested.* (i) The petition or 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.

(ii) The petition or 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.

(iii) A petition or complaint may, on request of the filing party, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the petition or complaint. A

request for the return of an initiating document will be regarded as a request for dismissal.

(5) *Failure to prosecute.* Failure to prosecute petition or complaint, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice if it occurs prior to the adoption date of any final action taken by the Commission with respect to the initiating pleading.

(b) *Responsive pleadings.* In addition to the general pleading requirements, responsive pleadings must adhere to the following requirements:

(1) *Comments/oppositions to petitions.* Unless otherwise directed by the Commission, interested persons may submit comments or oppositions within twenty (20) days after the date of public notice of the filing of such petition. Comments or oppositions shall be served on the petitioner and on all persons listed in petitioner's certificate of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on.

(2) *Answers to complaints.* (i) Unless otherwise directed by the Commission, any party who is served with a complaint shall file an answer in accordance with the following, and the relevant rule section under which the complaint is being filed.

(ii) The answer shall be filed within 20 days of service of the complaint, unless another period is set forth in the relevant rule section.

(iii) The answer shall advise the parties and the Commission fully and completely of the nature of any and all defenses, and shall respond specifically to all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Any party against whom a complaint is filed failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

(iv) The answer shall admit or deny the averments on which the adverse party relies. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the answer shall specify so much of it as is true and shall deny only the remainder. The defendant may make its denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the defendant expressly admits. When the defendant intends to controvert all averments, the defendant may do so by general denial.

(v) Averments in a complaint are deemed to be admitted when not denied in the answer.

(c) *Reply.* In addition to the general pleading requirements, reply comments and replies must adhere to the following requirements:

(1) The petitioner or complainant may file a reply to a responsive pleading 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. Unless expressly permitted by the Commission, reply comments and replies to an answer shall not contain new matters.

(2) Failure to reply will not be deemed an admission of any allegations contained in the responsive pleading, except with respect to any affirmative defense set forth therein.

(3) Unless otherwise directed by the Commission or the relevant rule section, comments and replies to answers must be filed within ten (10) days after submission of the responsive pleading.

(d) *Motions.* Except as provided in this section, or upon a showing of extraordinary circumstances, additional motions or pleadings by any party will not be accepted.

(e) *Additional procedures and written submissions.* (1) The Commission may specify other procedures, such as oral argument or evidentiary hearing 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.

(2) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including copies of all contracts and documents reflecting arrangements and understandings alleged to violate the requirements set forth in the Communications Act and in this part, as well as affidavits and exhibits.

(3) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(i) These briefs shall contain the findings of fact and conclusions of law which that party is urging the Commission to adopt, with specific citations to the record, and supported by relevant authority and analysis.

(ii) Any briefs submitted shall be filed concurrently by both the complainant and defendant at such time as is designated by the staff. Such briefs shall not exceed fifty (50) pages.

(iii) Reply briefs may be submitted by either party within twenty (20) days from the date initial briefs are due. Reply briefs shall not exceed thirty (30) pages.

(f) *Discovery*. (1) The Commission staff may in its discretion order discovery limited to the issues specified by the Commission. Such discovery may include answers to written interrogatories, depositions or document production.

(2) The Commission staff may in its discretion direct the parties to submit discovery proposals, together with a memorandum in support of the discovery requested. Such discovery requests may include answers to written interrogatories, document production or depositions. The Commission staff may hold a status conference with the parties, pursuant to § 76.8 of this part, to determine the scope of discovery, or direct the parties regarding the scope of discovery. If the Commission staff determines that extensive discovery is required or that depositions are warranted, the staff may advise the parties that the proceeding will be referred to an administrative law judge in accordance with paragraph (g) of this section.

(g) *Referral to administrative law judge*. (1) After reviewing the pleadings, and at any stage of the proceeding thereafter, the Commission staff may, in its discretion, designate any proceeding or discrete issues arising out of any proceeding for an adjudicatory hearing before an administrative law judge.

(2) Before designation for hearing, the staff shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) days to elect to resolve the dispute through alternative dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission.

(3) Unless otherwise directed by the Commission, or upon motion by the Media Bureau Chief, the Media Bureau Chief shall not be deemed to be a party to a proceeding designated for a hearing before an administrative law judge pursuant to this paragraph (g).

(h) *System community units outside the Contiguous States*. 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.

(i) *Commission ruling*. The Commission, after consideration of the 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, issue an order to show cause, or initiate a forfeiture proceeding.

NOTE 1 TO § 76.7: After issuance of an order to show cause pursuant to this section, the rules of procedure in Title 47, part 1, subpart A, §§ 1.91–1.95 of this chapter shall apply.

NOTE 2 TO § 76.7: Nothing in this section is intended to prevent the Commission from initiating show cause or forfeiture proceedings on its own motion; Provided, however, that show cause proceedings and forfeiture proceedings pursuant to § 1.80(g) of this chapter will not be initiated by such motion until the affected parties are given

an opportunity to respond to the Commission's charges.

NOTE 3 TO § 76.7: Forfeiture proceedings are generally nonhearing matters conducted pursuant to the provisions of § 1.80(f) of this chapter (Notice of Apparent Liability). Petitioners who contend that the alternative hearing procedures of § 1.80(g) of this chapter should be followed in a particular case must support this contention with a specific showing of the facts and considerations relied on.

NOTE 4 TO § 76.7: To the extent a conflict is perceived between the general pleading requirements of this section, and the procedural requirements of a specific section, the procedural requirements of the specific section should be followed.

[64 FR 6569, Feb. 10, 1999, as amended at 67 FR 13234, Mar. 21, 2002]

§ 76.8 Status conference.

(a) In any proceeding subject to the part 76 rules, the Commission staff may in its discretion direct the attorneys and/or the parties to appear for a conference to consider:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of amendments to the pleadings, additional pleadings, or other evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of the matters in controversy by agreement of the parties;

(5) The necessity for and extent of discovery, including objections to interrogatories or requests for written documents;

(6) The need and schedule for filing briefs, and the date for any further conferences; and

(7) Such other matters that may aid in the disposition of the proceeding.

(b) Any party may request that a conference be held at any time after an initiating document has been filed.

(c) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(d) The failure of any attorney or party, following advance notice with an opportunity to be present, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

(e) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of matters relevant to the conduct of the proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within ten (10) days from the date of the written memorialization unless otherwise directed by the staff.

[64 FR 6571, Feb. 10, 1999]

§ 76.9 Confidentiality of proprietary information.

(a) Any materials filed in the course of a proceeding under this provision may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in FOIA.

(b) Submissions containing information claimed to be proprietary under this section shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked ''Not for Public Inspection.'' An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited reply is submitted, and shall be served on the opposing parties.

(c) Except as provided in paragraph (d) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in the proceeding, and only to the extent

necessary to assist in the prosecution or defense of the case:

(i) Counsel of record representing the parties in the proceeding and any support personnel employed by such attorneys;

(ii) Officers or employees of the parties in the proceeding who are named by another party as being directly involved in the proceeding;

(iii) Consultants or expert witnesses retained by the parties;

(iv) The Commission and its staff; and

(v) Court reporters and stenographers in accordance with the terms and conditions of this section.

(d) The Commission will entertain, subject to a proper showing, a party's request to further restrict access to proprietary information as specified by the party. The other parties will have an opportunity to respond to such requests.

(e) The persons designated in paragraphs (c) and (d) of this section shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense of the case before the Commission. Each individual who is provided access to the information by the opposing party shall sign a notarized statement affirmatively stating, or shall certify under penalty of perjury, that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(f) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (c) and (d) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(g) Upon termination of the complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

[64 FR 6571, Feb. 10, 1999]

§ 76.10 Review.

(a) *Interlocutory review.* (1) Except as provided below, no party may seek review of interlocutory rulings until a decision on the merits has been issued by the staff or administrative law judge.

(2) Rulings listed in this paragraph are reviewable as a matter of right. An application for review of such ruling may not be deferred and raised as an exception to a decision on the merits.

(i) If the staff's ruling denies or terminates the right of any person to participate as a party to the proceeding, such person, as a matter of right, may file an application for review of that ruling.

(ii) If the staff's ruling requires production of documents or other written evidence, over objection based on a claim of privilege, the ruling on the claim of privilege is reviewable as a matter of right.

(iii) If the staff's ruling denies a motion to disqualify a staff person from participating in the proceeding, the ruling is reviewable as a matter of right.

(b) *Petitions for reconsideration.* Petitions for reconsideration of interlocutory actions by the Commission's staff or by an administrative law judge will not be entertained. Petitions for reconsideration of a decision on the merits made by the Commission's staff should be filed in accordance with §§ 1.104 through 1.106 of this chapter.

(c) *Application for review.* (1) Any party to a part 76 proceeding aggrieved by any decision on the merits issued by the staff pursuant to delegated authority may file an application for review by the Commission in accordance with § 1.115 of this chapter.

(2) Any party to a part 76 proceeding aggrieved by any decision on the merits by an administrative law judge may file an appeal of the decision directly with the Commission, in accordance with §§ 1.276(a) and 1.277(a) through (c) of this chapter, except that in proceedings brought pursuant to §§ 76.1003,

76.1302, and 76.1513 of this part, unless a stay is granted by the Commission, the decision by the administrative law judge will become effective upon release and will remain in effect pending appeal.

[64 FR 6571, Feb. 10, 1999]

§ 76.11 Lockbox enforcement.

Any party aggrieved by the failure or refusal of a cable operator to provided a lockbox as provided for in Title VI of the Communications Act may petition the Commission for relief in accordance with the provisions and procedures set forth in § 76.7 for petitions for special relief.

[50 FR 18661, May 2, 1985]

Subpart B—Registration Statements

§ 76.29 Special temporary authority.

(a) In circumstances requiring the temporary use of community units for operations not authorized by the Commission's rules, a cable television system may request special temporary authority to operate. The Commission may grant special temporary authority, upon a finding that the public interest would be served thereby, for a period not to exceed ninety (90) days, and may extend such authority, upon a like finding, for one additional period, not to exceed ninety (90) days.

(b) Requests for special temporary authority may be submitted informally, by letter, and shall contain the following:

(1) Name and address of the applicant cable system.

(2) Community in which the community unit is located.

(3) Type of operation to be conducted.

(4) Date of commencement of proposed operations.

(5) Duration of time for which temporary authority is required.

(6) All pertinent facts and considerations relied on to demonstrate the need for special temporary authority and to support a determination that a grant of such authority would serve the public interest.

(7) A certificate of service on all interested parties.

(c) A request for special temporary authority shall be filed at least ten (10) days prior to the date of commencement of the proposed operations, or shall be accompanied by a statement of reasons for the delay in submitting such request.

(d) A grant of special temporary authority may be rescinded by the Commission at any time upon a finding of facts which warrant such action.

[39 FR 35166, Sept. 30, 1974; 42 FR 19346, Apr. 13, 1977, as amended at 43 FR 49008, Oct. 20, 1978]

Subpart C—Federal-State/Local Regulatory Relationships [Reserved]

Subpart D—Carriage of Television Broadcast Signals

§ 76.51 Major television markets.

For purposes of the cable television rules, the following is a list of the major television markets and their designated communities:

(a) First 50 major television markets:

(1) New York, New York-Linden-Paterson-Newark, New Jersey.

(2) Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif.

(3) Chicago, Ill.

(4) Philadelphia, Pa.-Burlington, N.J.

(5) Detroit, Mich.

(6) Boston-Cambridge-Worcester-Lawrence, Mass.

(7) San Francisco-Oakland-San Jose, Calif.

(8) Cleveland-Lorain-Akron, Ohio.

(9) Washington, DC.

(10) Pittsburgh, Pa.

(11) St. Louis, Mo.

(12) Dallas-Fort Worth, Tex.

(13) Minneapolis-St. Paul, Minn.

(14) Baltimore, Md.

(15) Houston, Tex.

(16) Indianapolis-Bloomington, Ind.

(17) Cincinnati, Ohio-Newport, Ky.

(18) Atlanta-Rome, Ga.

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

(20) Seattle-Tacoma, Wash.

(21) Miami, Fla.

(22) Kansas City, Mo.

(23) Milwaukee, Wis.

(24) Buffalo, N.Y.

(25) Sacramento-Stockton-Modesto, Calif.
(26) Memphis, Tenn.
(27) Columbus-Chillicothe, Ohio.
(28) Tampa-St. Petersburg-Clearwater, Florida.
(29) Portland, Oreg.
(30) Nashville, Tenn.
(31) New Orleans, La.
(32) Denver-Castle Rock, Colorado.
(33) Providence, R.I.-New Bedford, Mass.
(34) Albany-Schenectady-Troy, N.Y.
(35) Syracuse, N.Y.
(36) Charleston-Huntington, W. Va.
(37) Kalamazoo-Grand Rapids-Battle Creek, Mich.
(38) Louisville, Ky.
(39) Oklahoma City, Okla.
(40) Birmingham, Ala.
(41) Dayton-Kettering, Ohio.
(42) Charlotte, N.C.
(43) Phoenix-Mesa, Ariz.
(44) Norfolk-Newport News-Portsmouth-Hampton, Va.
(45) San Antonio, Tex.
(46) Greenville-Spartanburg-Anderson, S.C.-Asheville, N.C.
(47) Greensboro-High Point-Winston Salem, N.C.
(48) Salt Lake City, Utah.
(49) Wilkes Barre-Scranton, Pa.
(50) Little Rock-Pine Bluff, Arkansas.
(b) Second 50 major television markets:
(51) San Diego, Calif.
(52) Toledo, Ohio.
(53) Omaha, Nebr.
(54) Tulsa, Okla.
(55) Orlando-Daytona Beach-Melbourne-Cocoa-Clermont, Florida.
(56) Rochester, N.Y.
(57) Harrisburg-Lancaster-York, Pa.
(58) Texarkana, Tex.-Shreveport, La.
(59) Mobile, Ala.-Pensacola, Fla.
(60) Davenport, Iowa-Rock Island-Moline, Ill.
(61) Flint-Bay City-Saginaw, Mich.
(62) Green Bay, Wis.
(63) Richmond-Petersburg, Va.
(64) Springfield-Decatur-Champaign, Illinois.
(65) Cedar Rapids-Waterloo, Iowa.
(66) Des Moines-Ames, Iowa.
(67) Wichita-Hutchinson, Kans.
(68) Jacksonville, Fla.
(69) Cape Girardeau, Mo.-Paducah, Ky.-Harrisburg, Ill.
(70) Roanoke-Lynchburg, Va.
(71) Knoxville, Tenn.
(72) Fresno-Visalia-Hanford-Clovis-Merced-Porterville, California.
(73) Raleigh-Durham-Goldsboro-Fayetteville, North Carolina.
(74) Johnstown-Altoona, Pa.
(75) Portland-Poland Spring, Maine.
(76) Spokane, Wash.
(77) Jackson, Miss.
(78) Chattanooga, Tenn.
(79) Youngstown, Ohio.
(80) South Bend-Elkhart, Ind.
(81) Albuquerque, N. Mex.
(82) Fort Wayne-Roanoke, Ind.
(83) Peoria, Ill.
(84) Greenville-Washington-New Bern, N.C.
(85) Sioux Falls-Mitchell, S. Dak.
(86) Evansville, Ind.
(87) Baton Rouge, La.
(88) Beaumont-Port Arthur, Tex.
(89) Duluth, Minn.-Superior, Minn.
(90) Wheeling, W. Va.-Steubenville, Ohio.
(91) Lincoln-Hastings-Kearney, Nebr.
(92) Lansing-Onondaga, Mich.
(93) Madison, Wis.
(94) Columbus, Ga.
(95) Amarillo, Tex.
(96) Huntsville-Decatur, Ala.
(97) Rockford-Freeport, Ill.
(98) Fargo-Valley City, N.D.
(99) Monroe, La.-El Dorado, Ark.
(100) Columbia, S.C.

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.

[37 FR 3278, Feb. 12, 1972, as amended at 37 FR 13866, July 14, 1972; 39 FR 24373, July 2, 1974; 39 FR 27572, July 30, 1974; 39 FR 37988, Oct. 25, 1974; 58 FR 17359, Apr. 2, 1993; 58 FR 30995, May 28, 1993; 58 FR 64168, Dec. 6, 1993; 58 FR 67694, Dec. 22, 1993; 59 FR 25344, May 16, 1994; 59 FR 46358, Sept. 8, 1994; 60 FR 45376, Aug. 31, 1995; 60 FR 51928, Oct. 4, 1995; 61 FR 18292, Apr. 25, 1996; 65 FR 68101, Nov. 14, 2000; 69 FR 3270, Jan. 23, 2004]

§ 76.53 Reference points.

The following list of reference points shall be used to identify the boundaries of the major and smaller television markets (defined in § 76.5). Where a community's reference point is not given, the geographic coordinates of

the main post office in the community shall be used.

State and community	Latitude	Longitude
Alabama:		
Anniston	33°39′49″	85°49′47″
Birmingham	33°31′01″	86°48′36″
Decatur	34°36′35″	86°58′45″
Demopolis	32°30′56″	87°50′07″
Dothan	31°13′27″	85°23′35″
Dozier	31°29′30″	86°21′59″
Florence	34°48′05″	87°40′31″
Huntsville	34°44′18″	86°35′19″
Louisville	31°47′00″	85°33′09″
Mobile	30°41′36″	88°02′33″
Montgomery	32°22′33″	86°18′31″
Mount Cheaha State Park	33°29′26″	85°48′30″
Selma	24°24′26″	87°01′15″
Tuscaloosa	33°12′05″	87°33′44″
Alaska:		
Anchorage	61°13′09″	149°53′29″
College	64°51′22″	147°48′38″
Fairbanks	64°50′35″	147°41′51″
Juneau	58°18′06″	134°25′09″
Sitka	57°02′58″	135°20′12″
Arizona:		
Flagstaff	35°11′54″	111°39′02″
Mesa	33°24′54″	111°49′41″
Nogales	31°20′14″	110°56′12″
Phoenix	33°27′12″	112°04′28″
Tucson	32°13′15″	110°58′08″
Yuma	32°43′16″	114°37′01″
Arkansas:		
El Dorado	33°12′39″	92°39′40″
Fayetteville	36°03′41″	94°09′38″
Fort Smith	35°23′10″	94°25′36″
Jonesboro	35°50′14″	90°42′11″
Little Rock	34°44′42″	92°16′37″
California:		
Bakersfield	35°22′31″	119°01′16″
Chico	39°44′07″	121°49′57″
Concord	37°58′46″	122°01′51″
Corona	33°52′35″	117°33′56″
El Centro	32°47′25″	115°32′45″
Eureka	40°48′08″	124°09′46″
Fontana	34°05′45″	117°26′29″
Fresno	36°44′12″	119°47′11″
Guasti	34°03′48″	117°35′10″
Hanford	36°19′51″	119°38′48″
Los Angeles	34°03′15″	118°14′28″
Modesto	37°38′26″	120°59′44″
Monterey	36°35′44″	121°53′39″
Oakland	37°48′03″	122°15′54″
Palm Springs	33°49′22″	116°32′46″
Redding	40°34′57″	122°23′34″
Sacramento	38°34′57″	121°29′41″
Salinas	36°40′24″	121°39′25″
San Bernardino	34°06′30″	117°17′28″
San Diego	32°42′53″	117°09′21″
San Francisco	37°46′39″	122°24′40″
San Jose	37°20′16″	121°53′24″
San Luis Obispo	35°16′49″	120°39′34″
San Mateo	37°34′08″	122°19′16″
Santa Barbara	34°25′18″	119°41′55″
Santa Maria	34°57′02″	120°26′10″
Stockton	37°57′30″	121°17′16″
Tulare	36°12′31″	119°20′35″
Ventura	34°16′47″	119°17′22″
Visalia	36°19′46″	119°17′30″
Colorado:		
Colorado Springs	38°50′07″	104°49′16″
Denver	39°44′58″	104°59′22″
Durango	37°16′29″	107°52′25″
Grand Junction	39°04′06″	108°33′54″
Montrose	38°28′44″	107°52′31″
Pueblo	38°16′17″	104°36′33″
Sterling	40°37′29″	103°12′25″
Connecticut:		
Bridgeport	41°10′49″	73°11′22″
Hartford	41°46′12″	72°40′49″
New Britain	41°40′02″	72°47′08″
New Haven	41°18′25″	72°55′30″
Norwich	41°31′36″	72°04′31″
Waterbury	41°33′13″	73°02′31″
Delaware:		
Wilmington	39°44′46″	75°32′51″
District of Columbia:		
Washington	38°53′51″	77°00′33″
Florida:		
Clearwater	27°57′56″	82°47′51″
Daytona Beach	29°12′44″	81°01′10″
Fort Lauderdale	26°07′11″	80°08′34″
Fort Myers	26°38′42″	81°52′06″
Fort Pierce	27°26′48″	80°19′38″
Gainesville	29°38′56″	82°19′19″
Jacksonville	30°19′44″	81°39′42″
Largo	27°54′54″	82°47′32″
Leesburg	28°48′43″	81°52′30″
Melbourne	28°04′41″	80°36′29″
Miami	25°46′37″	80°11′32″
Ocala	29°11′34″	82°08′14″
Orlando	28°32′42″	81°22′38″
Panama City	30°09′24″	85°39′47″
Pensacola	30°24′51″	87°12′56″
St. Petersburg	27°46′18″	82°38′16″
Sarasota	27°20′05″	82°32′29″
Tallahassee	30°26′30″	84°16′50″
Tampa	27°56′58″	82°27′26″
West Palm Beach	26°42′36″	80°03′05″
Georgia:		
Albany	31°34′36″	84°09′22″
Athens	33°57′34″	83°22′39″
Atlanta	33°45′10″	84°23′37″
Augusta	33°28′20″	81°58′00″
Chatsworth	34°46′08″	84°46′10″
Cochran	32°23′18″	83°21′18″
Columbus	32°28′07″	84°59′24″
Dawson	31°46′33″	84°26′20″
Macon	32°50′12″	83°37′36″
Pelham	31°07′42″	84°09′02″
Savannah	32°04′42″	81°05′37″
Thomasville	30°50′25″	83°58′59″
Waycross	31°12′19″	82°21′47″
Wrens	33°12′21″	82°23′23″
Guam:		
Agana	13°28′23″	144°45′00″
Hawaii:		
Hilo	19°43′42″	155°05′30″
Honolulu	21°18′36″	157°51′48″
Wailuku	20°53′21″	156°30′27″
Idaho:		
Boise	43°37′07″	116°11′58″
Idaho Falls	43°29′39″	112°02′28″
Lewiston	46°25′05″	117°01′10″
Moscow	46°43′58″	116°59′54″
Pocatello	42°51′38″	112°27′01″
Twin Falls	42°33′25″	114°28′21″
Illinois:		
Aurora	41°45′22″	88°18′56″
Bloomington	40°28′58″	88°59′32″
Carbondale	37°43′38″	89°13′00″
Champaign	40°07′05″	88°14′48″
Chicago	41°52′28″	87°38′22″
Decatur	39°50′37″	88°57′11″
Elgin	42°02′14″	88°16′53″
Freeport	42°17′57″	89°37′07″
Harrisburg	37°44′20″	88°32′25″
Jacksonville	39°44′03″	90°13′44″
Joliet	41°31′37″	88°04′52″

State and community	Latitude	Longitude
La Salle	41°19′49″	89°05′44″
Moline	41°30′31″	90°30′49″
Mount Vernon	38°18′29″	88°54′26″
Olney	38°43′47″	88°05′00″
Peoria	40°41′42″	89°35′33″
Quincy	39°55′59″	91°24′12″
Rockford	42°16′07″	89°05′48″
Rock Island	41°30′40″	90°34′24″
Springfield	39°47′58″	89°38′51″
Urbana	40°06′41″	88°13′13″
Indiana:		
Bloomington	39°09′56″	86°31′52″
Elkhart	41°40′56″	85°58′15″
Evansville	37°58′20″	87°34′21″
Fort Wayne	41°04′21″	85°08′26″
Gary	41°35′59″	87°20′07″
Hammond	41°35′13″	87°27′43″
Indianapolis	39°46′07″	86°09′46″
Lafayette	40°25′11″	86°53′39″
Marion	40°33′17″	85°39′49″
Muncie	40°11′28″	85°23′16″
Richmond	39°49′49″	84°53′26″
Roanoke	40°57′50″	85°22′30″
St. John	41°27′00″	87°28′13″
South Bend	41°40′33″	86°15′01″
Terre Haute	39°28′03″	87°24′26″
Vincennes	38°40′52″	87°31′12″
Iowa:		
Ames	42°01′36″	93°36′44″
Cedar Rapids	41°58′48″	91°39′48″
Davenport	41°31′24″	90°34′21″
Des Moines	41°35′14″	93°37′00″
Dubuque	42°29′55″	90°40′08″
Fort Dodge	42°30′12″	94°11′05″
Iowa City	41°39′37″	91°31′52″
Mason City	43°09′15″	93°12′00″
Sioux City	42°29′46″	96°24′30″
Waterloo	42°29′40″	92°20′20″
Kansas:		
Ensign	37°38′48″	100°14′00″
Garden City	37°57′54″	100°52′20″
Goodland	39°20′53″	101°42′35″
Great Bend	38°22′04″	98°45′58″
Hays	38°52′16″	99°19′57″
Hutchinson	38°03′11″	97°55′20″
Pittsburg	37°24′50″	94°42′11″
Salina	38°50′36″	97°36′46″
Topeka	39°03′16″	95°40′23″
Wichita	37°41′30″	97°20′16″
Kentucky:		
Ashland	38°28′36″	82°38′23″
Bowling Green	36°59′41″	86°26′33″
Covington	39°05′00″	84°30′29″
Elizabethtown	37°41′38″	85°51′35″
Hazard	37°14′54″	83°11′31″
Lexington	38°02′50″	84°29′46″
Louisville	38°14′47″	85°45′49″
Madisonville	37°19′45″	87°29′54″
Morehead	38°10′53″	83°26′08″
Murray	36°36′35″	88°18′39″
Newport	39°05′28″	84°29′20″
Owensboro	37°46′27″	87°06′46″
Owenton	38°32′11″	84°50′16″
Paducah	37°05′13″	88°35′56″
Pikesville	37°28′49″	82°31′09″
Somerset	37°05′35″	84°36′17″
Louisiana:		
Alexandria	31°18′33″	92°26′47″
Baton Rouge	30°26′58″	91°11′00″
Houma	29°35′34″	90°43′09″
Lafayette	30°13′24″	92°01′06″
Lake Charles	30°13′45″	93°12′52″
Monroe	32°30′02″	92°06′55″
New Orleans	29°56′53″	90°04′10″
Shreveport	32°30′46″	93°44′58″
West Monroe	32°30′51″	92°08′13″
Maine:		
Augusta	44°18′53″	69°46′29″
Bangor	44°48′13″	68°46′18″
Calais	45°11′04″	67°16′43″
Orono	44°53′15″	68°40′12″
Poland Spring	44°01′42″	70°21′40″
Portland	43°39′33″	70°15′19″
Presque Isle	46°40′57″	68°00′52″
Maryland:		
Baltimore	39°17′26″	76°36′45″
Cumberland	39°39′01″	78°45′45″
Hagerstown	39°38′39″	77°43′15″
Salisbury	38°21′56″	75°35′56″
Massachusetts:		
Adams	42°37′30″	73°07′05″
Boston	42°21′24″	71°03′25″
Cambridge	42°21′58″	71°06′24″
Greenfield	42°35′15″	72°35′54″
New Bedford	41°38′13″	70°55′41″
Springfield	42°06′21″	72°35′32″
Worcester	42°15′37″	71°48′17″
Michigan:		
Allen Park	42°15′12″	83°12′57″
Battle Creek	42°18′58″	85°10′48″
Bay City	43°36′04″	83°53′15″
Cadillac	44°15′10″	85°23′52″
Cheboygan	45°38′38″	84°28′38″
Detroit	42°19′48″	83°02′57″
Escanaba	45°44′45″	87°03′18″
Flint	43°00′50″	83°41′33″
Grand Rapids	42°58′03″	85°40′13″
Jackson	42°14′43″	84°24′22″
Kalamazoo	42°17′29″	85°35′14″
Lansing	42°44′01″	84°33′15″
Marquette	46°32′37″	87°23′43″
Mount Pleasant	43°16′12″	84°46′31″
Muskegon	43°14′17″	86°15′02″
Onondaga	42°26′41″	84°33′43″
Saginaw	43°25′52″	83°56′05″
Sault Ste. Marie	46°29′58″	84°20′37″
Traverse City	44°45′47″	85°37′25″
University Center	43°33′31″	83°59′09″
Minnesota:		
Alexandria	45°53′06″	95°22′39″
Appleton	45°12′00″	96°01′02″
Austin	43°39′57″	92°58′20″
Duluth	46°46′56″	92°06′24″
Hibbing	47°25′43″	92°56′21″
Mankato	44°09′49″	94°00′09″
Minneapolis	44°58′57″	93°15′43″
Rochester	44°01′21″	92°28′03″
St. Cloud	45°33′35″	94°09′38″
St. Paul	44°56′50″	93°05′11″
Walker	47°05′57″	94°35′12″
Mississippi:		
Biloxi	30°23′43″	88°53′08″
Bude	31°27′46″	90°50′34″
Columbus	33°29′40″	88°25′33″
Greenwood	33°31′05″	90°10′55″
Gulfport	30°22′04″	89°05′36″
Jackson	32°17′56″	90°11′06″
Laurel	31°41′40″	89°07′48″
Meridian	32°21′57″	88°42′02″
Oxford	34°22′00″	89°31′07″
State College	33°27′18″	88°47′13″
Tupelo	34°15′26″	88°42′30″
Missouri:		
Cape Girardeau	37°18′29″	89°31′29″
Columbia	38°57′03″	92°19′46″
Hannibal	39°42′24″	91°22′45″
Jefferson City	38°34′40″	92°10′24″
Joplin	37°05′26″	94°30′50″

State and community	Latitude	Longitude
Kansas City	39°04′56″	94°35′20″
Kirksville	40°11′37″	92°34′58″
Poplar Bluff	36°45′20″	90°23′38″
St. Joseph	39°45′57″	94°51′02″
St. Louis	38°37′45″	90°12′22″
Sedalia	38°42′08″	93°13′26″
Springfield	37°13′03″	93°17′32″
Montana:		
Anaconda	46°07′40″	112°57′12″
Billings	45°47′00″	108°30′04″
Butte	46°01′06″	112°32′11″
Glendive	47°06′42″	104°43′02″
Great Falls	47°29′33″	111°18′23″
Helena	46°35′33″	112°02′24″
Kalispell	48°11′45″	114°18′44″
Miles City	46°24′34″	105°50′30″
Missoula	46°52′23″	113°59′29″
Nebraska:		
Albion	41°41′23″	97°59′53″
Alliance	42°06′04″	102°52′08″
Bassett	42°35′00″	99°32′10″
Grand Island	40°55′33″	98°20′23″
Hastings	40°35′21″	98°23′20″
Hayes Center	40°30′36″	101°01′18″
Hay Springs	42°41′03″	102°41′22″
Kearney	40°41′58″	99°04′53″
Lexington	40°46′30″	99°44′41″
Lincoln	40°48′59″	96°42′15″
McCook	40°12′02″	100°37′32″
Merriman	42°55′07″	101°42′02″
Norfolk	42°01′56″	97°24′42″
North Platte	41°08′14″	100°45′43″
Omaha	41°15′42″	95°56′14″
Scottsbluff	41°51′40″	103°39′00″
Superior	40°01′12″	98°04′00″
Nevada:		
Elko	40°50′00″	115°45′41″
Henderson	36°02′00″	114°58′57″
Las Vegas	36°10′20″	115°08′37″
Reno	39°31′27″	119°48′40″
New Hampshire:		
Berlin	44°28′20″	71°10′43″
Durham	43°08′02″	70°55′35″
Hanover	43°42′03″	72°17′24″
Keene	42°56′02″	72°16′44″
Lebanon	43°38′34″	72°15′12″
Littleton	44°18′22″	71°46′13″
Manchester	42°59′28″	71°27′41″
New Jersey:		
Atlantic City	39°21′32″	74°25′53″
Burlington	40°04′21″	74°51′47″
Camden	39°56′45″	75°07′20″
Glen Ridge	40°48′16″	74°12′14″
Linden	40°37′57″	74°15′22″
Newark	40°44′14″	74°10′19″
New Brunswick	40°29′38″	74°26′49″
Paterson	40°54′51″	74°09′51″
Trenton	40°13′16″	74°45′28″
Vineland	39°29′13″	75°01′17″
Wildwood	38°59′18″	74°48′43″
New Mexico:		
Albuquerque	35°05′01″	106°39′05″
Carlsbad	32°25′09″	104°13′47″
Clovis	34°24′11″	103°12′08″
Portales	34°10′58″	103°20′10″
Roswell	33°23′47″	104°31′26″
New York:		
Albany	42°39′01″	73°45′01″
Binghamton	42°06′03″	75°54′47″
Buffalo	42°52′52″	78°52′21″
Carthage	43°58′50″	75°36′26″
Elmira	42°05′26″	76°48′22″
Garden City	40°43′26″	73°38′03″
Ithaca	42°26′33″	76°29′42″
Jamestown	42°05′45″	79°14′40″
New York	40°45′06″	73°59′39″
North Pole	44°23′59″	73°51′00″
Norwood	44°45′00″	75°59′39″
Oneonta	42°27′21″	75°03′42″
Patchogue	40°45′56″	73°00′42″
Plattsburgh	44°42′03″	73°27′07″
Riverhead	40°55′06″	72°39′51″
Rochester	43°09′41″	77°36′21″
Schenectady	42°48′52″	73°56′24″
Syracuse	43°03′04″	76°09′14″
Utica	43°06′12″	75°13′33″
Watertown	43°58′30″	75°54′48″
North Carolina:		
Asheville	35°35′42″	82°33′26″
Chapel Hill	35°54′51″	79°03′11″
Charlotte	35°13′44″	80°50′45″
Columbia	35°55′06″	76°15′04″
Concord	35°24′29″	80°34′45″
Durham	35°59′48″	78°54′00″
Fayetteville	35°03′12″	78°52′54″
Greensboro	36°04′17″	79°47′25″
Greenville	35°36′49″	77°22′22″
Hickory	35°43′54″	81°20′20″
High Point	35°57′14″	80°00′15″
Jacksonville	34°45′00″	77°25′54″
Linville	36°04′06″	81°52′16″
New Bern	35°06′33″	77°02′23″
Raleigh	35°46′38″	78°38′21″
Washington	35°32′35″	77°03′16″
Wilmington	34°14′14″	77°56′58″
Winston-Salem	36°05′52″	80°14′42″
North Dakota:		
Bismark	46°48′23″	100°47′17″
Devils Lake	48°06′42″	98°51′29″
Dickinson	46°52′55″	102°47′06″
Fargo	46°52′30″	96°47′18″
Minot	48°14′09″	101°17′38″
Pembina	48°58′00″	97°14′37″
Valley City	46°55′31″	98°00′04″
Williston	48°08′47″	103°36′59″
Ohio:		
Akron	41°05′00″	81°30′44″
Athens	39°19′38″	82°06′09″
Bowling Green	41°22′37″	83°39′03″
Canton	40°47′50″	81°22′37″
Cincinnati	39°06′07″	84°30′35″
Cleveland	41°29′51″	81°41′50″
Columbus	39°57′47″	83°00′17″
Dayton	39°45′32″	84°11′43″
Kettering	39°41′22″	84°10′07″
Lima	40°44′29″	84°06′34″
Lorain	41°27′48″	82°10′23″
Marion	40°35′14″	83°07′36″
Newark	40°03′35″	82°24′15″
Oxford	39°30′28″	84°44′26″
Portsmouth	38°44′06″	82°59′39″
Springfield	39°55′38″	83°48′29″
Steubenville	40°21′42″	80°36′53″
Toledo	41°39′14″	83°32′39″
Youngstown	41°05′57″	80°39′02″
Zanesville	39°56′59″	82°00′56″
Oklahoma:		
Ada	34°46′24″	96°40′36″
Ardmore	34°10′18″	97°07′50″
Lawton	34°36′27″	98°23′41″
Oklahoma City	35°28′26″	97°31′04″
Sayre	35°17′34″	99°38′23″
Tulsa	36°09′12″	95°59′34″
Oregon:		
Coos Bay	43°22′02″	124°13′09″
Corvallis	44°34′10″	123°16′12″
Eugene	44°03′16″	123°05′30″
Klamath Falls	42°13′32″	121°46′32″

State and community	Latitude	Longitude
La Grande	45°19′47″	118°05′45″
Medford	42°19′33″	122°52′31″
Portland	45°31′06″	122°40′35″
Roseburg	43°12′34″	123°20′26″
Salem	44°56′21″	123°01′59″
Pennsylvania:		
Allentown	40°36′11″	75°28′06″
Altoona	40°30′55″	78°24′03″
Bethlehem	40°37′57″	75°21′36″
Clearfield	41°01′20″	78°26′10″
Erie	42°07′15″	80°04′57″
Harrisburg	40°15′43″	76°52′59″
Hershey	40°17′04″	76°39′01″
Johnstown	40°19′35″	78°55′03″
Lancaster	40°02′25″	76°18′29″
Philadelphia	39°56′58″	75°09′21″
Pittsburgh	40°26′19″	80°00′00″
Reading	40°20′09″	75°55′40″
Scranton	41°24′32″	75°39′46″
Wilkes-Barre	41°14′32″	75°53′17″
York	39°57′35″	76°43′36″
Puerto Rico:		
Aguadilla	18°25′53″	67°09′18″
Arecibo	18°28′26″	66°43′39″
Caguas	18°13′59″	66°02′06″
Fajardo	18°19′35″	65°39′21″
Mayaguez	18°12′16″	67°08′36″
Ponce	18°00′51″	66°36′58″
San Juan	18°26′55″	66°03′55″
Rhode Island:		
Providence	41°49′32″	71°24′41″
South Carolina:		
Allendale	33°00′30″	81°18′26″
Anderson	34°30′06″	82°38′54″
Charleston	32°46′35″	79°55′53″
Columbia	34°00′02″	81°02′00″
Florence	34°11′49″	79°46′06″
Greenville	34°50′50″	82°24′01″
Spartanburg	34°57′03″	81°56′06″
South Dakota:		
Aberdeen	45°27′31″	98°29′03″
Brookings	44°18′38″	96°47′53″
Florence	45°03′14″	97°19′35″
Lead	44°21′07″	103°46′03″
Mitchell	43°42′48″	98°01′36″
Pierre	44°22′06″	100°20′57″
Rapid City	44°04′52″	103°13′11″
Reliance	43°52′45″	99°36′18″
Sioux Falls	43°32′35″	96°43′35″
Vermillion	42°46′52″	96°55′35″
Tennessee:		
Chattanooga	35°02′41″	85°18′32″
Jackson	35°36′48″	88°49′15″
Johnson City	36°19′04″	82°20′56″
Kingsport	36°32′57″	82°33′44″
Knoxville	35°57′39″	83°55′07″
Lexington	35°38′58″	88°23′31″
Memphis	35°08′46″	90°03′13″
Nashville	36°09′33″	86°46′55″
Sneedville	36°31′46″	83°13′04″
Texas:		
Abilene	32°27′05″	99°43′51″
Amarillo	35°12′27″	101°50′04″
Austin	30°16′09″	97°44′37″
Beaumont	30°05′20″	94°06′09″
Belton	31°03′31″	97°27′39″
Big Spring	32°15′03″	101°28′38″
Bryan	30°38′48″	96°21′31″
College Station	30°37′05″	96°20′41″
Corpus Christi	27°47′51″	97°23′45″
Dallas	32°47′09″	96°47′37″
El Paso	31°45′36″	106°29′11″
Fort Worth	32°44′55″	97°19′44″
Galveston	29°18′10″	94°47′43″
Harlingen	26°11′29″	97°41′35″
Houston	29°45′26″	95°21′37″
Laredo	27°30′22″	99°30′30″
Longview	32°28′24″	94°43′45″
Lubbock	33°35′05″	101°50′33″
Lufkin	31°20′14″	94°43′21″
Midland	31°59′54″	102°04′31″
Monahans	31°35′16″	102°53′26″
Nacogdoches	31°36′13″	94°39′20″
Odessa	31°50′49″	102°22′01″
Port Arthur	29°52′09″	93°56′01″
Richardson	32°57′06″	96°44′05″
Rosenberg	29°33′30″	95°48′15″
San Angelo	31°27′39″	100°26′03″
San Antonio	29°25′37″	98°29′06″
Sweetwater	32°28′24″	100°24′18″
Temple	31°06′02″	97°20′22″
Texarkana	33°25′29″	94°02′34″
Tyler	32°21′21″	95°17′52″
Victoria	28°48′01″	97°00′06″
Waco	31°33′12″	97°08′00″
Weslaco	26°09′24″	97°59′33″
Wichita Falls	33°54′34″	98°29′28″
Utah:		
Logan	41°44′03″	111°50′11″
Ogden	41°13′31″	111°58′21″
Provo	40°14′07″	111°39′34″
Salt Lake City	40°45′23″	111°53′26″
Vermont:		
Burlington	44°28′34″	73°12′46″
Rutland	43°36′29″	72°58′56″
St. Johnsbury	44°25′16″	72°01′13″
Windsor	43°28′38″	72°23′32″
Virginia:		
Bristol	36°35′48″	82°11′04″
Charlottesville	38°01′52″	78°28′50″
Goldvein	38°26′54″	77°39′19″
Hampton	37°01′32″	76°20′32″
Harrisonburg	38°27′01″	78°52′07″
Lynchburg	37°24′51″	79°08′37″
Norfolk	36°51′10″	76°17′21″
Norton	36°56′05″	82°37′31″
Petersburg	37°13′40″	77°24′15″
Portsmouth	36°50′12″	76°17′54″
Richmond	37°32′15″	77°26′09″
Roanoke	37°16′13″	79°56′44″
Staunton	38°09′02″	79°04′34″
Virgin Islands:		
Charlotte Amalie	18°20′36″	64°55′53″
Christiansted	17°44′44″	64°42′21″
Washington:		
Bellingham	48°45′02″	122°28′36″
Kennewick	46°12′28″	119°08′32″
Lakewood Center	47°07′37″	122°31′15″
Pasco	46°13′50″	119°05′27″
Pullman	46°43′42″	117°10′46″
Richland	46°16′36″	119°16′21″
Seattle	47°36′32″	122°20′12″
Spokane	47°39′32″	117°25′33″
Tacoma	47°14′59″	122°26′15″
Yakima	46°36′09″	120°30′39″
West Virginia:		
Bluefield	37°15′29″	81°13′20″
Charleston	38°21′01″	81°37′52″
Clarksburg	39°16′50″	80°20′38″
Grandview	37°49′28″	81°04′20″
Huntington	38°25′12″	82°26′33″
Morgantown	39°37′41″	79°57′28″
Oak Hill	37°58′31″	81°08′45″
Parkersburg	39°15′57″	81°33′46″
Weston	39°02′19″	80°28′05″
Wheeling	40°04′03″	80°43′20″
Wisconsin:		
Eau Claire	44°48′31″	91°29′49″

State and community	Latitude	Longitude
Fond Du Lac	43°46′35″	88°26′52″
Green Bay	44°30′48″	88°00′50″
Janesville	42°40′52″	89°01′39″
Kenosha	42°35′04″	87°49′14″
La Crosse	43°48′48″	91°15′02″
Madison	43°04′23″	89°22′55″
Milwaukee	43°02′19″	87°54′15″
Rhinelander	45°38′09″	89°24′50″
Superior	46°43′14″	92°06′07″
Wausau	44°57′30″	89°37′40″
Wyoming:		
Casper	42°51′00″	106°19′22″
Cheyenne	41°08′09″	104°49′07″
Rawlins	41°47′23″	107°14′37″
Riverton	43°01′29″	108°23′03″

[37 FR 3278, Feb. 12, 1972, as amended at 37 FR 13866, July 14, 1972; 51 FR 18451, May 20, 1986; 51 FR 44608, Dec. 11, 1986; 54 FR 25716, June 19, 1989; 56 FR 49707, Oct. 1, 1991]

§ 76.54 Significantly viewed signals; method to be followed for special showings.

(a) Signals that are significantly viewed in a county (and thus are deemed to be significantly viewed within all communities within the county) are those that are listed in Appendix A of the memorandum opinion and order on reconsideration of the Cable Television Report and Order (Docket 18397 et al.), FCC 72–530.

(b) Significant viewing in a cable television community for signals not shown as significantly viewed under paragraph (a) or (d) of this section may be demonstrated by an independent professional audience survey of non-cable television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. If surveys are taken for more than 2-weekly periods in any 12 months, all such surveys must result in an average figure at least one standard error above the required viewing level. If a cable television system serves more than one community, a single survey may be taken, provided that the sample includes non-cable television homes from each community that are proportional to the population.

(c) Notice of a survey to be made pursuant to paragraph (b) of this section shall be served on all licensees or permittees of television broadcast stations within whose predicted Grade B contour the cable community or communities are located, in whole or in part, and on all other system community units, franchisees, and franchise applicants in the cable community or communities at least (30) days prior to the initial survey period. Furthermore, if a survey is undertaken pursuant to the provisions of § 76.33(a)(2)(i) of the rules, notice shall also be served on the franchising authority. Such notice shall include the name of the survey organization and a description of the procedures to be used. Objections to survey organizations or procedures shall be served on the party sponsoring the survey within twenty (20) days after receipt of such notice.

(d) Signals of television broadcast stations not encompassed by the surveys (for the periods May 1970, November 1970 and February/March 1971) used in establishing appendix B of the *Memorandum Opinion and Order on Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326 (1972), may be demonstrated as significantly viewed on a county-wide basis by independent professional audience surveys which cover three separate, consecutive four-week periods and are otherwise comparable to the surveys used in compiling the above-referenced appendix B: *Provided, however,* That such demonstration shall be based upon audience survey data for the first three years of the subject station's broadcast operations.

[37 FR 3278, Feb. 12, 1972, as amended at 37 FR 13866, July 14, 1972; 40 FR 48930, Oct. 20, 1975; 41 FR 32429, Aug. 3, 1976; 42 FR 19346, Apr. 13, 1977; 53 FR 17051, May 13, 1988; 56 FR 33392, July 22, 1991]

§ 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 programs for educational purposes, as defined in § 73.621 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.

NOTE TO PARAGRAPH (a): For the purposes of § 76.55(a), ''serving the franchise area'' will be based on the predicted protected contour of the NCE translator.

(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 80.45 km (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.

(3) Notwithstanding the provisions of this section, a cable operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provision of § 76.56(a)(5), where such signal would be considered a distant signal for copyright purposes unless such station agrees to indemnify the cable operator for any increased copyright liability resulting from carriage of such signal on 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 56.32 km (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.

NOTE TO PARAGRAPH (d): For the purposes of this section, a good quality signal shall mean a signal level of either -45 dBm for UHF signals or -49 dBm for VHF signals at the input terminals of the signal processing equipment, or a baseband video signal.

(e) *Television market.* (1) Until January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to §76.59, shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in the Arbitron 1991–1992 Television ADI Market Guide, as noted below, except that for areas outside the contiguous 48 states, the market of a station shall be defined using Nielsen's Designated Market Area (DMA), where applicable, as published in the Nielsen 1991–92 DMA Market and Demographic Rank Report, and that Puerto Rico, the U.S. Virgin Islands, and Guam will each be considered a single market.

(2) Effective January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to §76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its Nielsen Station Index Directory and Nielsen Station Index US Television Household Estimates or any successor publications.

(i) For the 1999 election pursuant to §76.64(f), which becomes effective on January 1, 2000, DMA assignments specified in the 1997–98 Nielsen Station Index Directory and September 1997 Nielsen Station Index US Television Household Estimates, available from Nielsen Media Research, 770 Broadway, New York, NY, shall be used.

(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/retransimission 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 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]

§ 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. 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) [Removed]

(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 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.

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]

§ 76.57 Channel positioning.

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

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

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

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

(e) At the time a local commercial station elects must-carry status pursuant to § 76.64, such station shall notify the cable system of its choice of channel position as specified in paragraphs (a), (b), and (d) of this section. A qualified NCE 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.

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

NOTE TO § 76.57: Any existing agreement for channel position between a local commercial station entitled to must-carry status and a cable operator entered into prior to June 26,

1990, may continue through the expiration of such agreement.

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

§ 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, and shall include the following evidence:

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

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

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

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

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

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

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

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

(d) 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.

[58 FR 17361, Apr. 2, 1993, as amended at 64 FR 33796, June 24, 1999; 67 FR 53892, Aug. 22, 2002]

§ 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.

(c) A cable operator may accept payments from stations pursuant to a retransmission consent agreement, even if such station will be counted towards the must-carry complement, as long as all other applicable rules are adhered to.

[58 FR 17362, Apr. 2, 1993, as amended at 59 FR 62345, Dec. 5, 1994]

§ 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 of this part. In addition to the requirements of § 76.7 of this part, such complaint shall specifically:

(i) Allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

(ii) Be accompanied by the notice from the complainant to the cable television system operator, and the cable television system operator's response, if any. If no timely response was received, the complaint shall so state.

(iii) Establish the complaint is being filed within the sixty-day deadline stated in paragraph (a)(5) of this section.

(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.

(5) No must-carry complaint filed pursuant to paragraph (a) of this section will be accepted by the Commission if filed more than sixty (60) days after—

(i) The denial by a cable television system operator of request for carriage or channel position contained in the notice required by paragraph (a)(1) of this section, or

(ii) The failure to respond to such notice within the time period allowed by paragraph (a)(2) of this section.

(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 through 76.57 of this part, the station may file a complaint with the Commission in accordance with the procedures set forth in § 76.7 of this part. In addition to the requirements of § 76.7 of this part, such complaint shall specifically:

(i) Allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

(ii) Be accompanied by any relevant correspondence between the complainant and the cable television system operator.

(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.

(3) With respect to must-carry complaints filed pursuant to paragraph (b) of this section, such complaints may be filed at any time the complainant believes that the cable television system operator has failed to comply with the applicable provisions of subpart D of this part.

[58 FR 17362, Apr. 2, 1993, as amended at 64 FR 6572, Feb. 10, 1999]

§ 76.62 Manner of carriage.

(a) Cable operators shall carry the entirety of the program schedule of any television station (including low power television stations) carried by the system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under § 76.67 or subpart F of part 76, or unless carriage is pursuant to a valid retransmission consent agreement for the entire signal or any portion thereof as provided in § 76.64.

(b) Each such television broadcast signal carried shall be carried without material degradation, and, for analog signals, 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.

(g) With respect to carriage of digital signals, operators are not required to carry ancillary or supplementary transmissions or non-program related video material.

[58 FR 17362, Apr. 2, 1993, as amended at 59 FR 62345, Dec. 5, 1994; 66 FR 16553, Mar. 26, 2001]

§ 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 of a superstation that is distributed by a satellite carrier and the originating station was a superstation on May 1, 1991, and the distribution is made only to areas outside the local market of the originating station; 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 BRS/EBS provider, 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) The retransmission consent requirements of this section are not applicable to broadcast signals received by master antenna television facilities or by direct over-the-air reception in conjunction with the provision of service by a multichannel video program distributor provided that the multichannel video program distributor makes reception of such signals available without charge and at the subscribers option and provided further that the antenna facility used for the reception of such signals is either owned by the subscriber or the building owner; or under the control and available for purchase by the subscriber or the building owner upon termination of service.

(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 and stations that return their analog spectrum allocation and broadcast in digital only shall make their initial election any time between 60 days prior to commencing broadcast and 30 days after commencing broadcast or commencing broadcasting in digital only; such initial election shall take effect 90 days after it is 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(e)), the operator must obtain the station's express authority prior to retransmitting its signal.

(j) Retransmission consent agreements between a broadcast station and a multichannel video programming distributor shall be in writing and shall specify the extent of the consent being granted, whether for the entire signal or any portion of the signal. This rule applies for either the analog or the digital signal of a television station.

(k) A cable system commencing new operation is required to notify all local commercial and noncommercial broadcast stations of its intent to commence service. The cable operator must send such notification, by certified mail, at least 60 days prior to commencing cable service. Commercial broadcast stations must notify the cable system within 30 days of the receipt of such notice of their election for either must-carry or retransmission consent with respect to such new cable system. If the commercial broadcast station elects must-carry, it must also indicate its channel position in its election statement to the cable system. Such election shall remain valid for the remainder of any three-year election interval, as established in § 76.64(f)(2). Noncommercial educational broadcast stations should notify the cable operator of their request for carriage and their channel position. The new cable system must notify each station if its signal quality does not meet the standards for carriage and if any copyright liability would be incurred for the carriage of such signal. Pursuant to § 76.57(e), a commercial broadcast station which fails to respond to such a notice shall be deemed to be a must-carry station for the remainder of the current three-year election period.

(l) Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make or negotiate any agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming distributors. This paragraph shall terminate at midnight on December 31, 2009.

(m) A multichannel video programming distributor providing an all-band FM radio broadcast service (a service that does not involve the individual processing of specific broadcast signals) shall obtain retransmission consents from all FM radio broadcast stations that are included on the service that have transmitters located within 92 kilometers (57 miles) of the receiving antenna for such service. Stations outside of this 92 kilometer (57 miles) radius shall be presumed not to be carried in an all-band reception mode but may affirmatively assert retransmission consent rights by providing 30 days advance notice to the distributor.

NOTE 1 TO § 76.64: Section 76.1608 provides notification requirements for a cable system

that changes its technical configuration in such a way as to integrate two formerly separate cable systems.

[58 FR 17363, Apr. 2, 1993, as amended at 59 FR 62345, Dec. 5, 1994; 65 FR 15575, Mar. 23, 2000; 65 FR 53615, Sept. 5, 2000; 66 FR 16553, Mar. 26, 2001; 67 FR 17015, Apr. 9, 2002; 69 FR 72045, Dec. 10, 2004; 70 FR 40224, July 13, 2005]

§ 76.65 Good faith and exclusive retransmission consent complaints.

(a) *Duty to negotiate in good faith.* Television broadcast stations and multichannel video programming distributors shall negotiate in good faith the terms and conditions of retransmission consent agreements to fulfill the duties established by section 325(b)(3)(C) of the Act; provided, however, that it shall not be a failure to negotiate in good faith if:

(1) The television broadcast station proposes or enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations; or

(2) The multichannel video programming distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations. If a television broadcast station or multichannel video programming distributor negotiates in accordance with the rules and procedures set forth in this section, failure to reach an agreement is not an indication of a failure to negotiate in good faith.

(b) *Good faith negotiation*—(1) *Standards.* The following actions or practices violate a broadcast television station's or multichannel video programming distributor's (the ''Negotiating Entity'') duty to negotiate retransmission consent agreements in good faith:

(i) Refusal by a Negotiating Entity to negotiate retransmission consent;

(ii) Refusal by a Negotiating Entity to designate a representative with authority to make binding representations on retransmission consent;

(iii) Refusal by a Negotiating Entity to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations;

(iv) Refusal by a Negotiating Entity to put forth more than a single, unilateral proposal;

(v) Failure of a Negotiating Entity to respond to a retransmission consent proposal of the other party, including the reasons for the rejection of any such proposal;

(vi) Execution by a Negotiating Entity of an agreement with any party, a term or condition of which, requires that such Negotiating Entity not enter into a retransmission consent agreement with any other television broadcast station or multichannel video programming distributor; and

(vii) Refusal by a Negotiating Entity to execute a written retransmission consent agreement that sets forth the full understanding of the television broadcast station and the multichannel video programming distributor.

(2) *Totality of the circumstances.* In addition to the standards set forth in § 76.65(b)(1), a Negotiating Entity may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station or multichannel video programming distributor breached its duty to negotiate in good faith as set forth in § 76.65(a).

(c) *Good faith negotiation and exclusivity complaints.* Any television broadcast station or multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the regulations set forth in this section or § 76.64(l) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7.

(d) *Burden of proof.* In any complaint proceeding brought under this section, the burden of proof as to the existence of a violation shall be on the complainant.

(e) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) A complainant enters into a retransmission consent agreement with a television broadcast station or multichannel video programming distributor that the complainant alleges to violate one or more of the rules contained in this subpart; or

(2) A television broadcast station or multichannel video programming distributor engages in retransmission consent negotiations with a complainant that the complainant alleges to violate one or more of the rules contained in this subpart, and such negotiation is unrelated to any existing contract between the complainant and the television broadcast station or multichannel video programming distributor; or

(3) The complainant has notified the television broadcast station or multichannel video programming distributor that it intends to file a complaint with the Commission based on a request to negotiate retransmission consent that has been denied, unreasonably delayed, or unacknowledged in violation of one or more of the rules contained in this subpart.

(f) *Termination of rules*. This section shall terminate at midnight on December 31, 2009.

[70 FR 40224, July 13, 2005]

§ 76.66 Satellite broadcast signal carriage.

(a) *Definitions*—(1) *Satellite carrier*. A satellite carrier is an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, 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 a 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) *Secondary transmission*. A secondary transmission is the further transmitting of a primary transmission simultaneously with the primary transmission.

(3) *Subscriber*. A subscriber is a person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(4) *Television broadcast station*. A television broadcast station is an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.

(5) *Television network*. For purposes of this section, a television network is an entity which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

(6) *Local-into-local television service*. A satellite carrier is providing local-into-local service when it retransmits a local television station signal back into the local market of that television station for reception by subscribers.

(b) *Signal carriage obligations*. (1) Each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) of title 47, United States Code, and other paragraphs in this section.

(2) A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall, no later than December 8, 2005, carry upon request the signal originating as an analog signal of each television broadcast station that is located in a local market in Alaska or Hawaii; and shall, no later than June 8, 2007, carry upon request the signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii. Such satellite carrier is not required to carry

the signal originating as analog after commencing carriage of digital signals on June 8, 2007. Carriage of signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii shall include the entire free over-the-air signal, including multicast and high definition digital signals.

(c) *Election cycle.* In television markets where a satellite carrier is providing local-into-local service, a commercial television broadcast station may elect either retransmission consent, pursuant to section 325 of title 47 United States Code, or mandatory carriage, pursuant to section 338, title 47 United States Code.

(1) The first retransmission consent-mandatory carriage election cycle shall be for a four-year period commencing on January 1, 2002 and ending December 31, 2005.

(2) The second retransmission consent-mandatory carriage election cycle, and all cycles thereafter, shall be for a period of three years (e.g. the second election cycle commences on January 1, 2006 and ends at midnight on December 31, 2008).

(3) A commercial television station must notify a satellite carrier, by July 1, 2001, of its retransmission consent-mandatory carriage election for the first election cycle commencing January 1, 2002.

(4) Except as provided in paragraphs (c)(6), (d)(2) and (d)(3) of this section, local commercial television broadcast stations shall make their retransmission consent-mandatory carriage election by October 1st of the year preceding the new cycle for all election cycles after the first election cycle.

(5) A noncommercial television station must request carriage by July 1, 2001 for the first election cycle and must renew its carriage request at the same time a commercial television station must make its retransmission consent-mandatory carriage election for all subsequent cycles.

(6) A commercial television broadcast station located in a local market in Alaska or Hawaii shall make its retransmission consent-mandatory carriage election by October 1, 2005, for carriage of its signal that originates as an analog signal for carriage commencing on December 8, 2005, and by April 1, 2007, for its signal that originates as a digital signal for carriage commencing on June 8, 2007 and ending on December 31, 2008. For analog and digital signal carriage cycles commencing after December 31, 2008, such stations shall follow the election cycle in paragraphs (c)(2) and (4). A noncommercial television broadcast station located in a local market in Alaska or Hawaii must request carriage by October 1, 2005, for carriage of its signal that originates as an analog signal for carriage commencing on December 8, 2005, and by April 1, 2007, for its signal that originates as a digital signal for carriage commencing on June 8, 2007 and ending on December 31, 2008.

(d) *Carriage procedures*—(1) *Carriage requests.* (i) An election for mandatory carriage made by a television broadcast station shall be treated as a request for carriage. For purposes of this paragraph concerning carriage procedures, the term election request includes an election of retransmission consent or mandatory carriage.

(ii) An election request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested.

(iii) A television station's written notification shall include the:

(A) Station's call sign;

(B) Name of the appropriate station contact person;

(C) Station's address for purposes of receiving official correspondence;

(D) Station's community of license;

(E) Station's DMA assignment; and

(F) For commercial television stations, its election of mandatory carriage or retransmission consent.

(iv) Within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing:

(A) those local television stations it will not carry, along with the reasons for such a decision; and

(B) those local television stations it intends to carry.

(v) A satellite carrier is not required to carry a television station, for the duration of the election cycle, if the station fails to assert its carriage rights by the deadlines established in this section.

(2) *New local-into-local service.*

(i) A new satellite carrier or a satellite carrier providing local service in a market for the first time after July 1, 2001, shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage

(A) Of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;

(B) Of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

(C) That such licensee has 30 days from the date of the receipt of such notice to make such election; and

(D) That failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

(ii) Satellite carriers shall transmit the notices required by paragraph (d)(2)(i) of this section via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

(iii) A satellite carrier with more than five million subscribers shall provide the notice as required by paragraphs (d)(2)(i) and (ii) of this section to each television broadcast station located in a local market in Alaska or Hawaii, not later than March 1, 2007 with respect to carriage of digital signals; provided, further, that the notice shall also describe the carriage requirements pursuant to 47 U.S.C. 338(a)(4), and paragraph (b)(2) of this section.

(iv) A satellite carrier shall commence carriage of a local station by the later of 90 days from receipt of an election of mandatory carriage or upon commencing local-into-local service in the new television market.

(v) Within 30 days of receiving a local television station's election of mandatory carriage in a new television market, a satellite carrier shall notify in writing: Those local television stations it will not carry, along with the reasons for such decision, and those local television stations it intends to carry.

(3) *New television stations.* (i) A television station providing over-the-air service in a market for the first time on or after July 1, 2001, shall be considered a new television station for satellite carriage purposes.

(ii) A new television station shall make its election request, in writing, sent to the satellite carrier's principal place of business by certified mail, return receipt requested, between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by paragraph (d)(1)(iii) of this section.

(iii) A satellite carrier shall commence carriage within 90 days of receiving the request for carriage from the television broadcast station or whenever the new television station provides over-the-air service.

(iv) Within 30 days of receiving a new television station's election of mandatory carriage, a satellite carrier shall notify the station in writing that it will not carry the station, along with the reasons for such decision, or that it intends to carry the station.

(4) Television broadcast stations must send election requests as provided in paragraphs (d)(1), (2), and (3) of this section on or before the relevant deadline.

(5) *Elections in markets in which significantly viewed signals are carried.* (i) Beginning with the election cycle described in § 76.66(c)(2), the retransmission of significantly viewed signals pursuant to § 76.54 by a satellite carrier that provides local-into-local service is subject to providing the notifications to stations in the market pursuant to paragraphs (d)(5)(i)(A) and (B) of this section, unless the satellite carrier was retransmitting such signals as of the date these notifications were due.

(A) In any local market in which a satellite carrier provided local-into-local service on December 8, 2004, at least 60 days prior to any date on which a station must make an election under paragraph (c) of this section, identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's

local market during the next election cycle and the communities into which the satellite carrier reserves the right to make such retransmissions;

(B) In any local market in which a satellite carrier commences local-into-local service after December 8, 2004, at least 60 days prior to the commencement of service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under § 76.66(c) or (d)(2), identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle.

(ii) A television broadcast station located in a market in which a satellite carrier provides local-into-local television service may elect either retransmission consent or mandatory carriage for each county within the station's local market if the satellite carrier provided notice to the station, pursuant to paragraph (d)(5)(i) of this section, that it intends to carry during the next election cycle, or has been carrying on the date notification was due, in the station's local market another affiliate of the same network as a significantly viewed signal pursuant to § 76.54.

(iii) A television broadcast station that elects mandatory carriage for one or more counties in its market and elects retransmission consent for one or more other counties in its market pursuant to paragraph (d)(5)(ii) of this section shall conduct a unified negotiation for the entire portion of its local market for which retransmission consent is elected.

(iv) A television broadcast station that receives a notification from a satellite carrier pursuant to paragraph (d)(5)(i) of this section with respect to an upcoming election cycle may choose either retransmission consent or mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

(e) *Market definitions.* (1) A local market, in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, and

(i) In the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and

(ii) In the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

(2) A designated market area is the market area, as determined by Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication. In the case of areas outside of any designated market area, any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska.

(3) A satellite carrier shall use the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates to define television markets for the first retransmission consent-mandatory carriage election cycle commencing on January 1, 2002 and ending on December 31, 2005. The 2003–2004 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates shall be used for the second retransmission consent-mandatory carriage election cycle commencing January 1, 2006 and ending December 31, 2008, and so forth for each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999–2000 Nielsen Station Index Directory or any subsequent issue of that publication. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in an area in the State of Alaska that is outside of a

designated market, as described in paragraph (e)(2) of this section.

(4) A local market includes all counties to which stations assigned to that market are licensed.

(f) *Receive facilities.* (1) A local receive facility is the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.

(2) A satellite carrier may establish another receive facility to serve a market if the location of such a facility is acceptable to at least one-half the stations with carriage rights in that market.

(3) Except as provided in 76.66(d)(2), a satellite carrier providing local-into-local service must notify local television stations of the location of the receive facility by June 1, 2001 for the first election cycle and at least 120 days prior to the commencement of all election cycles thereafter.

(4) A satellite carrier may relocate its local receive facility at the commencement of each election cycle. A satellite carrier is also permitted to relocate its local receive facility during the course of an election cycle, if it bears the signal delivery costs of the television stations affected by such a move. A satellite carrier relocating its local receive facility must provide 60 days notice to all local television stations carried in the affected television market.

(g) *Good quality signal.* (1) A television station asserting its right to carriage shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

(2) To be considered a good quality signal for satellite carriage purposes, a television station shall deliver to the local receive facility of a satellite carrier either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment.

(3) A satellite carrier is not required to carry a television station that does not agree to be responsible for the costs of delivering a good quality signal to the receive facility.

(h) *Duplicating signals.* (1) A satellite carrier shall not be required to carry upon request the signal of any local television broadcast station that substantially duplicates the signal of another local television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States.

(2) A satellite carrier may select which duplicating signal in a market it shall carry.

(3) A satellite carrier may select which network affiliate in a market it shall carry.

(4) A satellite carrier is permitted to drop a local television station whenever that station meets the substantial duplication criteria set forth in this paragraph. A satellite carrier must add a television station to its channel lineup if such station no longer duplicates the programming of another local television station.

(5) A satellite carrier shall provide notice to its subscribers, and to the affected television station, whenever it adds or deletes a station's signal in a particular local market pursuant to this paragraph.

(6) A commercial television station substantially duplicates the programming of another commercial television station if it simultaneously broadcasts the identical programming of another station for more than 50 percent of the broadcast week.

(7) A noncommercial television station substantially duplicates the programming of another noncommercial station if it simultaneously broadcasts the same programming as another noncommercial station for more than 50 percent of prime time, as defined by § 76.5(n), and more than 50 percent outside of prime time over a three month period, Provided, however, that after three noncommercial television stations are carried, the test of duplication shall be whether more than 50 percent of prime time programming and

more than 50 percent outside of prime time programming is duplicative on a non-simultaneous basis.

(i) *Channel positioning.* (1) No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels.

(2) The television stations subject to this paragraph include those carried under retransmission consent.

(3) All local television stations carried under mandatory carriage in a particular television market must be offered to subscribers at rates comparable to local television stations carried under retransmission consent in that same market.

(4) Within a market, no satellite carrier shall provide local-into-local service in a manner that requires subscribers to obtain additional equipment at their own expense or for an additional carrier charge in order to obtain one or more local television broadcast signals if such equipment is not required for the receipt of other local television broadcast signals.

(5) All television stations carried under mandatory carriage, in a particular market, shall be presented to subscribers in the same manner as television stations that elected retransmission consent, in that same market, on any navigational device, on-screen program guide, or menu provided by the satellite carrier.

(j) *Manner of carriage.* (1) Each television station carried by a satellite carrier, pursuant to this section, 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. For noncommercial educational television stations, a satellite carrier must also carry any program-related material that may be necessary for receipt of programming by persons with disabilities or for educational or language purposes. Secondary audio programming must also be carried. Where appropriate and feasible, satellite carriers may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the local receive facility.

(2) A satellite carrier, at its discretion, may 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.

(k) *Material degradation.* Each local television station whose signal is carried under mandatory carriage shall, to the extent technically feasible and consistent with good engineering practice, be provided with the same quality of signal processing provided to television stations electing retransmission consent. A satellite carrier is permitted to use reasonable digital compression techniques in the carriage of local television stations.

(l) *Compensation for carriage.* (1) A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the mandatory carriage requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the receive facility of the satellite carrier.

(2) A satellite carrier may accept payments from a station pursuant to a retransmission consent agreement.

(m) *Remedies.* (1) Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations.

(2) The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations.

(3) A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission, in accordance with § 76.7 of title 47, Code of Federal Regulations. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

(4) The satellite carrier against which a complaint is filed is permitted to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(5) The Commission shall determine whether the satellite carrier has met its obligations under this section. If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of this section, it shall dismiss the complaint.

(6) The Commission will not accept any complaint filed later than 60 days after a satellite carrier, either implicitly or explicitly, denies a television station's carriage request.

[66 FR 7430, Jan. 23, 2001, as amended at 66 FR 49135, Sept. 26, 2001; 70 FR 21670, Apr. 27, 2005; 70 FR 51668, Aug. 31, 2005; 70 FR 53079, Sept. 7, 2005]

§ 76.70 Exemption from input selector switch rules.

(a) In any case of cable systems serving communities where no portion of the community is covered by the predicted Grade B contour of at least one full service broadcast television station, or non-commercial educational television translator station operating with 5 or more watts output power and where the signals of no such broadcast stations are ''significantly viewed'' in the county where such a cable system is located, the cable system shall be exempt from the provisions of § 76.66. Cable systems may be eligible for this exemption where they demonstrate with engineering studies prepared in accordance with § 73.686 of this chapter or other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

(b) Where a new full service broadcast television station, or new noncommercial educational television translator station with 5 or more watts, or an existing such station of either type with newly upgraded facilities provides predicted Grade B service to a community served by a cable system previously exempt under paragraph (a) of this section, or the signal of any such broadcast station is newly determined to be ''significantly viewed'' in the county where such a cable system is located, the cable system at that time is required to comply fully with the provisions of § 76.66. Cable systems may retain their exemption under paragraph (a) of this section where they demonstrate with engineering studies prepared in accordance with § 73.686 of this chapter or other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

[54 FR 25716, June 19, 1989]

Subpart E—Equal Employment Opportunity Requirements

SOURCE: 50 FR 40855, Oct. 7, 1985, unless otherwise noted.

§ 76.71 Scope of application.

(a) The provisions of this subpart shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system. Cable entities subject to these provisions include those systems defined in § 76.5(a), all satellite master antenna television systems serving 50 or more subscribers, and any multichannel video programming distributor. For purposes of the provisions of this subpart, a multichannel video programming distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a video dialtone program service provider, who makes available

for purchase, by subscribers or customers, multiple channels of video programming, whether or not a licensee. Multichannel video programming distributors do not include any entity which lacks control over the video programming distributed. For purposes of this subpart, an entity has control over the video programming it distributes, if it selects video programming channels or programs and determines how they are presented for sale to consumers. Nothwithstanding the foregoing, the regulations in this subpart are not applicable to the owners or originators (of programs or channels of programming) that distribute six or fewer channels of commonly-owned video programming over a leased transport facility. For purposes of this subpart, programming services are ''commonly-owned'' if the same entity holds a majority of the stock (or is a general partner) of each program service.

(b) *Employment units.* The provisions of this subpart shall apply to cable entities as employment units. Each cable entity may be considered a separate employment unit; however, where two or more cable entities are under common ownership or control and are interrelated in their local management, operation, and utilization of employees, they shall constitute a single employment unit.

(c) *Headquarters office.* A multiple cable operator shall treat as a separate employment unit each headquarters office to the extent the work of that office is primarily related to the operation of more than one employment unit as described in paragraph (b) of this section.

[50 FR 40855, Oct. 7, 1985, as amended at 58 FR 42250, Aug. 9, 1993; 69 FR 72045, Dec. 10, 2004]

§ 76.73 General EEO policy.

(a) Equal opportunity in employment shall be afforded by each cable entity to all qualified persons, and no person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age or sex.

(b) Each employment unit shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity to every aspect of cable system employment policy and practice. Under the terms of its program, an employment unit shall:

(1) Define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and progam and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, age or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age or sex from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

§ 76.75 Specific EEO program requirements.

Under the terms of its program, an employment unit must:

(a) Disseminate its equal employment opportunity program to job applicants, employees, and those with whom it regularly does business. For example, this requirement may be met by:

(1) Posting notices in the employment unit's office and places of employment informing employees, and applicants for employment, of their equal employment opportunity rights, and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency, if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants, or residents of the community of a

cable television system of the relevant labor area are Hispanic, such notices should be posted in Spanish and English. Similar use should be made of other languages in such posted equal employment opportunity notices, where appropriate;

(2) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of race, color, religion, national origin, age or sex is prohibited and that they may notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against.

(b) Establish, maintain and carry out a positive continuing program of outreach activities designed to ensure equal opportunity and nondiscrimination in employment. The following activities shall be undertaken by each employment unit:

(1) Recruit for every full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Nothing in this section shall be interpreted to require a multichannel video programming distributor to grant preferential treatment to any individual or group based on race, national origin, color, religion, age, or gender.

(i) An employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to using such recruitment sources, a multichannel video programming distributor employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the multichannel video programming distributor employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least two (if the unit has more than ten full-time employees and is not located in a smaller market) or one (if the unit has six to ten full-time employees and/or is located, in whole or in part, in a smaller market) of the following initiatives during each twelve-month period preceding the filing of an EEO program annual report:

(i) Participation in at least two job fairs by unit personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least two events sponsored by organizations representing groups present in the community interested in multichannel video programming distributor employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community in acquiring skills needed for multichannel video programming distributor employment;

(vi) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in a scholarship program designed to assist students interested in pursuing a career in multichannel video programming communications;

(viii) Establishment of training programs designed to enable unit personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for unit personnel;

(x) Participation in at least two events or programs sponsored by educational institutions relating to career opportunities in multichannel video programming communications;

(xi) Sponsorship of at least one event in the community designed to inform and educate members of the public as

to employment opportunities in multichannel video programming communications;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for multichannel video programming employment and/or other career development assistance pertinent to multichannel video programming communications;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in multichannel video programming employment opportunities that would enable them to better refer job candidates for multichannel video programming positions;

(xvi) Participation in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in multichannel video programming to job candidates who might otherwise be unaware of such opportunities.

(c) Retain records sufficient to document that it has satisfied the requirements of paragraphs (b)(1) and (b)(2) of this section. Such records, which may be maintained in an electronic format, shall be retained for a period of seven years. Such records need not be submitted to the Commission unless specifically requested. The following records shall be maintained:

(1) Listings of all full-time job vacancies filled by the cable employment unit, identified by job title;

(2) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person, and telephone number;

(3) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing job vacancies;

(4) Documentation necessary to demonstrate performance of the initiatives required by paragraph (b)(2) of this section, if applicable, including information sufficient to fully disclose the nature of the initiative and the scope of the unit's participation, including the unit personnel involved;

(5) The total number of interviewees for each vacancy and the referral sources for each interviewee; and

(6) The date each vacancy was filled and the recruitment source that referred the hiree.

(d) Undertake to offer promotions of minorities and women in a non-discriminatory fashion to positions of greater responsibility. For example, this requirement may be met by:

(1) Instructing those who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(2) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower paid employees with respect to any of the higher paid positions, followed by assistance, counselling, and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(3) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority group or female employees.

(e) Encourage minority and female entrepreneurs to conduct business with all parts of its operation. For example, this requirement may be met by:

(1) Recruiting as wide as possible a pool of qualified entrepreneurs from sources such as employee referrals, community groups, contractors, associations, and other sources likely to be representative of minority and female interests.

(f) A multichannel video programming distributor shall analyze its recruitment program on an ongoing basis

to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis.

(g) Analyze on an ongoing basis its efforts to recruit, hire, promote and use services without discrimination on the basis of race, national origin, color, religion, age, or sex and explain any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(1) Where union agreements exist, cooperating with the union or unions in the development of programs to ensure all persons equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(2) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(3) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race, national origin, color, religion, age, or sex discrimination;

(4) Evaluating the recruitment program to ensure that it is effective in achieving a broad outreach to potential applicants.

(5) Utilizing media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion, age, or sex over another; and

(6) Avoiding the use of selection techniques or tests that have the effect of discriminating against qualified minority groups or women.

(h) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more.

(i) The provisions of paragraphs (b)(1)(ii), (b)(2), (c), and (f) of this section shall not apply to multichannel video programming distributor employment units that have fewer than six full-time employees.

(j) For the purposes of this rule, a smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

[50 FR 40855, Oct. 7, 1985, as amended at 65 FR 7457, Feb. 15, 2000; 68 FR 691, Jan. 7, 2003]

§ 76.77 Reporting requirements and enforcement.

(a) *EEO program annual reports.* Information concerning a unit's compliance with the EEO recruitment requirements shall be filed by each employment unit with six or more full-time employees on FCC Form 396–C on or before September 30 of each year. If a multichannel video programming distributor acquires a unit during the twelve months covered by the EEO program annual report, the recruitment activity in the report shall cover the period starting with the date the entity acquired the unit.

(b) *Certification of Compliance.* The Commission will use the recruitment information submitted on a unit's EEO program annual report to determine whether the unit is in compliance with the provisions of this subpart. Units found to be in compliance with these rules will receive a Certificate of Compliance. Units found not to be in compliance will receive notice that they are not certified for a given year.

(c) *Investigations.* The Commission will investigate each unit at least once every five years. Employment units are required to submit supplemental investigation information with their regular EEO program annual reports in the years they are investigated. If an entity acquires a unit during the period covered by the supplemental investigation, the information submitted by the unit as part of the investigation shall cover the period starting with the date the operator acquired the unit. The supplemental investigation information shall include a copy of the unit's EEO public file report for the preceding year.

(d) *Records and inquiries.* Employment units subject to this subpart shall maintain records of their recruitment activity in accordance with § 76.75 to demonstrate whether they are in compliance with the EEO rules. Units shall ensure that they maintain records sufficient to verify the accuracy of information provided in their EEO program annual reports and the supplemental

investigation responses required by § 76.1702 to be kept in a unit's public file. To determine compliance with the EEO rules, the Commission may conduct inquiries of employment units at random or if the Commission has evidence of a possible violation of the EEO rules. Upon request, employment units shall make records available to the Commission for its review.

(e) *Public complaints*. The public may file complaints based on EEO program annual reports, supplemental investigation information, or the contents of a unit's public file.

(f) *Sanctions and remedies*. The Commission may issue appropriate sanctions and remedies for any violation of the EEO rules.

[68 FR 692, Jan. 7, 2003]

§ 76.79 Records available for public inspection.

A copy of every annual employment report, and any other employment report filed with the Commission, and complaint report that has been filed with the Commission, and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the cable entity and the Commission pertaining to the reports after they have been filed in all documents incorporated therein by reference, unless specifically exempted from the requirement, are open for public inspection at the offices of the Commission in Washington, DC.

NOTE TO § 76.59: Cable operators must also comply with the public file requirements § 76.1702.

[65 FR 7459, Feb. 15, 2000]

Subpart F—Network Non-duplication Protection, Syndicated Exclusivity and Sports Blackout

SOURCE: 65 FR 68101, Nov. 14, 2000, unless otherwise noted.

§ 76.92 Cable network non-duplication; extent of protection.

(a) Upon receiving notification pursuant to § 76.94, a cable community unit located in whole or in part within the geographic zone for a network program, the network non-duplication rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

(b) For purposes of this section, the order of nonduplication priority of television signals carried by a community unit is as follows:

(1) First, all television broadcast stations within whose specified zone the community of the community unit is located, in whole or in part;

(2) Second, all smaller market television broadcast stations within whose secondary zone the community of the community unit is located, in whole or in part.

(c) For purposes of this section, all noncommercial educational television broadcast stations licensed to a community located in whole or in part within a major television market as specified in § 76.51 shall be treated in the same manner as a major market commercial television broadcast station, and all noncommercial educational television broadcast stations not licensed to a community located in whole or in part within a major television market shall be treated in the same manner as a smaller market television broadcast station.

(d) Any community unit operating in a community to which a 100-watt or higher power translator is located within the predicted Grade B signal contour of the television broadcast station that the translator station retransmits, and which translator is carried by the community unit shall, upon request of such translator station licensee or permittee, delete the duplicating network programming of any television broadcast station whose reference point (See § 76.53) is more than 88.5 km (55 miles) from the community of the community unit.

(e) Any community unit which operates in a community located in whole or in part within the secondary zone of a smaller market television broadcast station is not required to delete the duplicating network programming of any major market television broadcast station whose reference point (See § 76.53)

is also within 88.5 km (55 miles) of the community of the community unit.

(f) A community unit is not required to delete the duplicating network programming of any television broadcast station which is significantly viewed in the cable television community pursuant to § 76.54.

(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.

NOTE: With respect to network programming, the geographic zone within which the television station is entitled to enforce network non-duplication protection and priority of shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter, except that small market television stations shall be entitled to a secondary protection zone of 32.2 additional kilometers (20 additional miles). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) of this Chapter for each named community in that market.

§ 76.93 Parties entitled to network non-duplication protection.

Television broadcast station licensees shall be entitled to exercise non-duplication rights pursuant to § 76.92 in accordance with the contractual provisions of the network-affiliate agreement.

§ 76.94 Notification.

(a) In order to exercise non-duplication rights pursuant to § 76.92, television stations shall notify each cable television system operator of the non-duplication sought in accordance with the requirements of this section. Except as otherwise provided in paragraph (b) of this section, non-duplication protection notices shall include the following information:

(1) The name and address of the party requesting non-duplication protection and the television broadcast station holding the non-duplication right;

(2) The name of the program or series (including specific episodes where necessary) for which protection is sought; and

(3) The dates on which protection is to begin and end.

(b) Broadcasters entering into contracts providing for network non-duplication protection shall notify affected cable systems within 60 calendar days of the signing of such a contract. In the event the broadcaster is unable based on the information contained in the contract, to furnish all the information required by paragraph (a) of this section at that time, the broadcaster must provide modified notices that contain the following information:

(1) The name of the network (or networks) which has (or have) extended non-duplication protection to the broadcaster;

(2) The time periods by time of day (local time) and by network (if more than one) for each day of the week that the broadcaster will be broadcasting programs from that network (or networks) and for which non-duplication protection is requested; and

(3) The duration and extent (e.g., simultaneous, same-day, seven-day, etc.) of the non-duplication protection which has been agreed upon by the network (or networks) and the broadcaster.

(c) Except as otherwise provided in paragraph (d) of this section, a broadcaster shall be entitled to non-duplication protection beginning on the later of:

(1) The date specified in its notice (as described in paragraphs (a) or (b) of this section, whichever is applicable) to the cable television system; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the cable television system receives notice from the broadcaster.

(d) A broadcaster shall provide the following information to the cable television system under the following circumstances:

(1) In the event the protection specified in the notices described in paragraphs (a) or (b) of this section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the cable system in a notice pursuant to paragraph (b) of this section, for which a

broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. Notice to be furnished ''as soon as possible'' under this paragraph shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

(2) In the event the protection specified in the modified notices described in paragraph (b) of this section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each cable system operator that has previously received notice of all changes from the original notice.

(e) In determining which programs must be deleted from a television signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available:

(1) Newspapers or magazines of general circulation.

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The broadcaster requesting exclusivity.

(f) A broadcaster exercising exclusivity pursuant to § 76.92 shall provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed.

§ 76.95 Exceptions.

(a) The provisions of §§ 76.92 through 76.94 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection against it.

(b) Network non-duplication protection need not be extended to a higher priority station for one hour following the scheduled time of completion of the broadcast of a live sports event by that station or by a lower priority station against which a cable community unit would otherwise be required to provide non-duplication protection following the scheduled time of completion.

§ 76.101 Cable syndicated program exclusivity: extent of protection.

Upon receiving notification pursuant to § 76.105, a cable community unit located in whole or in part within the geographic zone for a syndicated program, the syndicated exclusivity rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

NOTE: With respect to each syndicated program, the geographic zone within which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-network program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter. To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) of this Chapter for each named community in that market.

§ 76.103 Parties entitled to syndicated exclusivity.

(a) Television broadcast station licensees shall be entitled to exercise exclusivity rights pursuant to § 76.101 in

accordance with the contractual provisions of their syndicated program license agreements, consistent with § 76.109.

(b) Distributors of syndicated programming shall be entitled to exercise exclusive rights pursuant to § 76.101 for a period of one year from the initial broadcast syndication licensing of such programming anywhere in the United States; provided, however, that distributors shall not be entitled to exercise such rights in areas in which the programming has already been licensed.

§ 76.105 Notification.

(a) In order to exercise exclusivity rights pursuant to § 76.101, distributors or television stations shall notify each cable television system operator of the exclusivity sought in accordance with the requirements of this section. Syndicated program exclusivity notices shall include the following information:

(1) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;

(2) The name of the program or series (including specific episodes where necessary) for which exclusivity is sought;

(3) The dates on which exclusivity is to begin and end.

(b) Broadcasters entering into contracts on or after August 18, 1988, which contain syndicated exclusivity protection shall notify affected cable systems within sixty calendar days of the signing of such a contract. Broadcasters who have entered into contracts prior to August 18, 1988, and who comply with the requirements specified in § 76.109 shall notify affected cable systems on or before June 19, 1989. A broadcaster shall be entitled to exclusivity protection beginning on the later of:

(1) The date specified in its notice to the cable television system; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the cable television system receives notice from the broadcaster;

(c) In determining which programs must be deleted from a television broadcast signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available.

(1) Newspapers or magazines of general circulation;

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The distributor or television station requesting exclusivity.

(d) In the event the exclusivity specified in paragraph (a) of this section has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the cable television system operator of the occurrence of the relevant contingency. Notice to be furnished ''as soon as possible'' under this paragraph shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

§ 76.106 Exceptions.

(a) Notwithstanding the requirements of §§ 76.101 through 76.105, a broadcast signal is not required to be deleted from a cable community unit when that cable community unit falls, in whole or in part, within that signal's grade B contour, or when the signal is significantly viewed pursuant to § 76.54 in the cable community.

(b) The provisions of §§ 76.101 through 76.105 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a

notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

§ 76.107 Exclusivity contracts.

A distributor or television station exercising exclusivity pursuant to § 76.101 shall provide to the cable system, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.

§ 76.108 Indemnification contracts.

No licensee shall enter into any contract to indemnify a cable system for liability resulting from failure to delete programming in accordance with the provisions of this subpart unless the licensee has a reasonable basis for concluding that such program deletion is not required by this subpart.

§ 76.109 Requirements for invocation of protection.

For a station licensee to be eligible to invoke the provisions of § 76.101, it must have a contract or other written indicia that it holds syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after August 18, 1988, must contain the following words: ''the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Compulsory Copyright License, as provided in § 76.101 of the FCC rules [or 'as provided in the FCC's syndicated exclusivity rules'].'' Contracts entered into prior to August 18, 1988, must contain either the foregoing language or a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against cable television broadcast signal carriage by the cable system in question upon the contingency that the government reimposed syndicated exclusivity protection. In the absence of such a specific reference in contracts entered into prior to August 18, 1988, the provisions of these rules may be invoked only if the contract is amended to include the specific language referenced in this section or a specific written acknowledgment is obtained from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgment by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this section shall be construed as a grant of exclusive rights to a broadcaster where such rights are not agreed to by the parties.

§ 76.110 Substitutions.

Whenever, pursuant to the requirements of the syndicated exclusivity rules, a community unit is required to delete a television program on a broadcast signal that is permitted to be carried under the Commission's rules, such community unit may, consistent with these rules and the sports blackout rules at § 76.111, substitute a program from any other television broadcast station. Programs substituted pursuant to this section may be carried to their completion.

§ 76.111 Cable sports blackout.

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live on a television broadcast station meeting the criteria specified in § 76.128. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is

not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this section shall include the following information:

(1) As to programming to be deleted from television broadcast signals regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;

(iii) The call letters of the television broadcast station(s) from which the deletion is to be made.

(2) As to programming to be deleted from television broadcast signals not regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted.

(c) Notifications given pursuant to this section must be received, as to regularly scheduled events, no later than the Monday preceding the calendar week (Sunday through Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) Whenever, pursuant to this section, a community unit is required to delete a television program on a signal regularly carried by the community unit, such community unit may, consistent with the rules contained in subpart F of this part, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the community unit need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

(e) The provisions of this section shall not be deemed to require the deletion of any portion of a television signal which a community unit was lawfully carrying prior to March 31, 1972.

(f) The provisions of this section shall not apply to any community unit having fewer than 1,000 subscribers.

§ 76.120 Network non-duplication protection, syndicated exclusivity and sports blackout rules for satellite carriers: Definitions.

For purposes of §§ 76.122–76.130, the following definitions apply:

(a) *Satellite carrier*. The term ''satellite carrier'' means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, 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.

(b) *Nationally distributed superstation*. The term ''nationally distributed superstation'' means a television broadcast station, licensed by the Commission, that—

(1) Is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States;

(2) On May 1, 1991, was retransmitted by a satellite carrier and was not a network station at that time; and

(3) Was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of Section 119 of title 17, United States Code.

(c) *Television network*. The term ''television network'' means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

(d) *Network station.* The term ''network station'' means—

(1) A television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

(2) A noncommercial educational broadcast station (as defined in Section 397 of the Communications Act of 1934); except that the term does not include the signal of the Alaska Rural Communications Service, or any successor entity to that service.

(e) *Zone of protection.* The term ''zone of protection'' means—

(1) With respect to network non-duplication, the zone of protection within which the television station is entitled to enforce network non-duplication protection shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter, except that small market television stations shall be entitled to a secondary protection zone of 32.2 additional kilometers (20 additional miles). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) of this Chapter for each named community in that market.

(2) With respect to each syndicated program, the zone of protection within which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-network program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter. To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) of this chapter for each named community in that market.

(3) With respect to sports blackout, the zone of protection is the ''specified zone'' of a television broadcast station, as defined in § 76.5(e). If there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

§ 76.122 Satellite network non-duplication.

(a) Upon receiving notification pursuant to paragraph (c) of this section, a satellite carrier shall not deliver, to subscribers within zip code areas located in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation when the network non-duplication rights to such program are held by the commercial television station providing notice, except as provided in paragraphs (j), (k) or (l) of this section.

(b) Television broadcast station licensees shall be entitled to exercise non-duplication rights pursuant to § 76.122 in accordance with the contractual provisions of the network-affiliate agreement, and as provided in § 76.124.

(c) In order to exercise non-duplication rights pursuant to § 76.122, television stations shall notify each satellite carrier of the non-duplication sought in accordance with the requirements of this section. Non-duplication protection notices shall include the following information:

(1) The name and address of the party requesting non-duplication protection and the television broadcast station holding the non-duplication right;

(2) Where the agreement between network and affiliate so identifies, the name of the program or series (including specific episodes where necessary) for which protection is sought;

(3) The dates on which protection is to begin and end;

(4) The name of the network (or networks) which has (or have) extended non-duplication protection to the broadcaster;

(5) The time periods by time of day (local time) and by network (if more than one) for each day of the week that the broadcaster will be broadcasting programs from that network (or networks) and for which non-duplication protection is requested;

(6) The duration and extent (e.g., simultaneous, same-day, seven-day, etc.) of the non-duplication protection which has been agreed upon by the network (or networks) and the broadcaster; and

(7) A list of the U.S. postal zip code(s) that encompass the zone of protection under these rules.

(d) Broadcasters entering into contracts providing for network non-duplication protection shall notify affected satellite carriers within 60 calendar days of the signing of such a contract; provided, however, that for such contracts signed before November 29, 2000, the broadcaster may provide notice on or before January 31, 2001, or with respect to pre-November 29, 2000 contracts that require amendment in order to invoke the provisions of these rules, notification may be given within sixty calendar days of the signing of such amendment.

(e) Except as otherwise provided in this section, a broadcaster shall be entitled to non-duplication protection beginning on the later of:

(1) The date specified in its notice to the satellite carrier; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the satellite carrier receives notice from the broadcaster; Provided, however, that with respect to notifications given pursuant to this section prior to June 1, 2001, a satellite carrier is not required to provide non-duplication protection until 120 days after the satellite carrier receives such notification.

(f) A broadcaster shall provide the following information to the satellite carrier under the following circumstances:

(1) In the event the protection specified in the notices described in paragraph (c) of this section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the satellite carrier in a notice pursuant to paragraph (c) of this section, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice. Notice to be furnished ''as soon as possible'' under this paragraph shall be furnished by telephone, telegraph, facsimile, e-mail, overnight mail or other similar expedient means.

(2) In the event the protection specified in the notices described in paragraph (c) of this section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each satellite carrier that has previously received notice of all changes from the original notice.

(g) In determining which programs must be deleted from a television signal, a satellite carrier may rely on information from newspapers or magazines of general circulation, the broadcaster requesting exclusivity protection, or the nationally distributed superstation.

(h) If a satellite carrier asks a nationally distributed superstation for information about its program schedule, the nationally distributed superstation shall answer the request:

(i) Within ten business days following its receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast, whichever comes later.

(i) A broadcaster exercising exclusivity pursuant to this section shall provide to the satellite carrier, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal

exhibition to which the parties have agreed.

(j) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64

(i) Within the station's local market;

(ii) If the station is ''significantly viewed,'' pursuant to § 76.54, in zip code areas included within the zone of protection; or

(iii) If the zone of protection falls, in whole or in part, within that signal's grade B contour.

(k) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation from an individual subscriber who is located outside the zone of protection, notwithstanding that the subscriber lives within a zip code provided by the broadcaster pursuant to paragraph (c) of this section.

(l) A satellite carrier is not required to delete programming if it has fewer than 1,000 subscribers within the relevant protected zone who subscribe to the nationally distributed superstation carrying the programming for which deletion is requested pursuant to paragraph (c) of this section.

[65 FR 68101, Nov. 14, 2000, as amended at 67 FR 68951, Nov. 14, 2002]

§ 76.123 Satellite syndicated program exclusivity.

(a) Upon receiving notification pursuant to paragraph (d) of this section, a satellite carrier shall not deliver, to subscribers located within zip code areas in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation when the syndicated program exclusivity rights to such program are held by the commercial television station providing notice, except as provided in paragraphs (k), (l) and (m) of this section.

(b) Television broadcast station licensees shall be entitled to exercise exclusivity rights pursuant to this Section in accordance with the contractual provisions of their syndicated program license agreements, consistent with § 76.124.

(c) Distributors of syndicated programming shall be entitled to exercise exclusive rights pursuant to this Section for a period of one year from the initial broadcast syndication licensing of such programming anywhere in the United States; provided, however, that distributors shall not be entitled to exercise such rights in areas in which the programming has already been licensed.

(d) In order to exercise exclusivity rights pursuant to this Section, distributors of syndicated programming or television broadcast stations shall notify each satellite carrier of the exclusivity sought in accordance with the requirements of this paragraph. Syndicated program exclusivity notices shall include the following information:

(1) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;

(2)The name of the program or series (including specific episodes where necessary) for which exclusivity is sought;

(3)The dates on which exclusivity is to begin and end; and

(4) A list of the U.S. postal zip code(s) that encompass the zone of protection under these rules.

(e) A distributor or television station exercising exclusivity pursuant to this Section shall provide to the satellite carrier, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.

(f) Television broadcast stations or distributors entering into contracts on or after November 29, 2000, which contain syndicated exclusivity protection with respect to satellite retransmission of programming, shall notify affected satellite carriers within sixty calendar days of the signing of such a contract. Television broadcast stations or distributors who have entered into contracts prior to November 29, 2000, and who comply with the requirements

specified in § 76.124 shall notify affected satellite carriers on or before January 31, 2001; provided, however, that with respect to pre-November 29, 2000 contracts that require amendment in order to invoke the provisions of these rules, notification may be given within sixty calendar days of the signing of such amendment.

(g) Except as otherwise provided in this section, a television broadcast station shall be entitled to exclusivity protection beginning on the later of:

(1) The date specified in its notice to the satellite carrier; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the satellite carrier receives notice from the broadcaster.

Provided, however, that with respect to notifications given pursuant to this section prior to June 1, 2001, a satellite carrier is not required to provide syndicated exclusivity protection until 120 days after the satellite carrier receives such notification.

(h) In determining which programs must be deleted from a television broadcast signal, a satellite carrier may rely on information from the distributor or television broadcast station requesting exclusivity; newspapers or magazines of general circulation; or the nationally distributed superstation whose programs may be subject to deletion.

(i) If a satellite carrier asks a nationally distributed superstation for information about its program schedule, the nationally distributed superstation shall answer the request:

(1) Within ten business days following the its receipt of the request; or

(2) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(j) In the event the exclusivity specified in paragraph (a) of this section has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the satellite carrier of the occurrence of the relevant contingency. Notice to be furnished ''as soon as possible'' under this Subsection shall be furnished by telephone, telegraph, facsimile, e-mail, overnight mail or other similar expedient means.

(k) A satellite carrier is not required to delete the programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64:

(1) Within the station's local market;

(2) If the station is ''significantly viewed,'' pursuant to § 76.54, in zip code areas included within the zone of protection; or

(3) If the zone of protection falls, in whole or in part, within that signal's grade B contour.

(l) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation from an individual subscriber who is located outside the zone of protection, notwithstanding that the subscriber lives within a zip code provided by the broadcaster pursuant to paragraph (d) of this section.

(m) A satellite carrier is not required to delete programming if it has fewer than 1,000 subscribers within the relevant protected zone who subscribe to the nationally distributed superstation carrying the programming for which deletion is requested pursuant to paragraph (d) of this section.

§ 76.124 Requirements for invocation of protection.

For a television broadcast station licensee or distributor of syndicated programming to be eligible to invoke the provisions of § 76.122 or § 76.123 of this subpart, it must have a contract or other written indicia that it holds network program non-duplication or syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after November 29, 2000, must contain the following words: ''the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming

imported under the Statutory Copyright License, as provided in § 76.122 or § 76.123 of the FCC rules [or 'as provided in the FCC's satellite network non-duplication or syndicated exclusivity rules'].'' Contracts entered into prior to November 29, 2000, must contain the foregoing language plus a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against signal carriage by the satellite carrier in question, or by satellite carriage in general in a protected, geographic or specified zone. In the absence of such a specific reference in contracts entered into prior to November 29, 2000, the provisions of these rules may be invoked only if the contract is amended to include the specific language referenced in this section or a specific written acknowledgment is obtained from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgment by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this section shall be construed as a grant of exclusive rights to a broadcaster where such rights are not agreed to by the parties.

§ 76.125 Indemnification contracts.

No television broadcast station licensee shall enter into any contract to indemnify a satellite carrier for liability resulting from failure to delete programming in accordance with the provisions of this Subpart unless the licensee has a reasonable basis for concluding that such program deletion is not required by this Subpart.

§ 76.127 Satellite sports blackout.

(a) Upon the request of the holder of the broadcast rights to a sports event, or its agent, no satellite carrier shall retransmit to subscribers within the area comprising the specified zone a ''nationally distributed superstation'' or ''network station'' carrying the live television broadcast of a sports event if the event is not available live on a television broadcast station meeting the criteria specified in § 76.128. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this Section shall include the following information:

(1) The name and address of the party requesting the program deletion;

(2) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;

(3) The call letters of the nationally distributed superstation or network station(s) from which the deletion is to be made;

(4) The U.S. postal zip codes that encompass the specified zone.

(c) Notifications given pursuant to this section must be received by the satellite carrier:

(1) With respect to regularly scheduled events, within forty-eight (48) hours after the time of the telecast to be deleted is known; or, for events that comprise a season or pre-season period, fifteen (15) days prior to the first event of the season or pre-season, respectively; and no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made.

(2) As to events not regularly scheduled and revisions of notices previously submitted, within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) A satellite carrier is not required to delete a sports event from an individual subscriber who is located outside the specified zone, notwithstanding that the subscriber lives within a zip code provided by the holder of the broadcast rights pursuant to paragraph (b) of this section.

(e) A satellite carrier is not required to delete a sports event if it has fewer than 1,000 subscribers within the relevant specified zone who subscribe to the nationally distributed superstation or network station carrying the sports event for which deletion is requested pursuant to paragraph (b) of this section.

(f) Notwithstanding paragraph (c) of this section, for sports events to be deleted on or before March 31, 2001, notification must be received by satellite carriers at least 60 full days prior to the day the telecast is to be deleted.

[65 FR 68101, Nov. 14, 2000, as amended at 68 FR 14341, Mar. 25, 2003]

§ 76.128 Application of sports blackout rules.

The cable and satellite sports blackout rules (§§ 76.111 and 76.127) may apply when the sports event is not available live on any of the following television broadcast stations carried by a cable system or other MVPD:

(a) Television broadcast stations within whose specified zone the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;

(b) For communities in television markets other than major markets as defined in § 76.51, television broadcast stations within whose Grade B contours the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;

(c) Television broadcast stations licensed to other designated communities which are generally considered to be part of the same television market (Example: Burlington, Vt.-Plattsburgh, N.Y. or Cincinnati, Ohio-Newport, Ky., television markets);

(d) Television broadcast stations that are significantly viewed, pursuant to § 76.54, in the community unit or community within the specified zone.

[65 FR 68101, Nov. 14, 2000, as amended at 67 FR 68951, Nov. 14, 2002]

§ 76.130 Substitutions.

Whenever, pursuant to the requirements of the network program non-duplication, syndicated program exclusivity, or sports blackout rules, a satellite carrier is required to delete a television program from retransmission to satellite subscribers within a zip code area, such satellite carrier may, consistent with this Subpart, substitute a program from any other television broadcast station for which the satellite carrier has obtained the necessary legal rights and permissions, including but not limited to copyright and retransmission consent. Programs substituted pursuant to this section may be carried to their completion.

Subpart G—Cablecasting

§ 76.205 Origination cablecasts by legally qualified candidates for public office; equal opportunities.

(a) *General requirements.* No cable television system is required to permit the use of its facilities by any legally qualified candidate for public office, but if any system shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such system shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any:

(1) Bona fide newscast;

(2) Bona fide news interview;

(3) Bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or

(4) On-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of a system. (section 315(a) of the Communications Act.)

(b) *Uses.* As used in this section and § 76.206, the term ''use'' means a candidate appearance (including by voice or picture) that is not exempt under paragraphs 76.205 (a)(1) through (a)(4) of this section.

(c) *Timing of request.* A request for equal opportunities must be submitted to the system within 1 week of the day on which the first prior use giving rise to the right of equal opportunities occurred: Provided, however, That where the person was not a candidate at the

time of such first prior use, he or she shall submit his or her request within 1 week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

(d) *Burden of proof.* A candidate requesting equal opportunities of the system or complaining of noncompliance to the Commission shall have the burden of proving that he or she and his or her opponent are legally qualified candidates for the same public office.

(e) *Discrimination between candidates.* In making time available to candidates for public office, no system shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any system make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to cablecast to the exclusion of other legally qualified candidates for the same public office.

[57 FR 210, Jan. 3, 1992, as amended at 59 FR 14568, Mar. 29, 1994]

§ 76.206 Candidate rates.

(a) *Charges for use of cable television systems.* The charges, if any, made for the use of any system by any person who is a legally qualified candidate for any public office in connection with his or her campaign for nomination for election, or election, to such office shall not exceed:

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the system for the same class and amount of time for the same period.

(i) A candidate shall be charged no more per unit than the system charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any system practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates upon equal terms. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

(ii) The Commission recognizes non-preemptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time.

(iii) Systems may establish and define their own reasonable classes of immediately preemptible time so long as the differences between such classes are based on one or more demonstrable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstrable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time-sensitive make goods. Systems may not use class distinctions to defeat the purpose of the lowest unit charge requirement. All classes must be fully disclosed and made available to candidates.

(iv) Systems may establish reasonable classes of preemptible with notice time so long as they clearly define all such classes, fully disclose them and make them available to candidates.

(v) Systems may treat non-preemptible and fixed position as distinct classes of time provided that systems articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Systems shall not establish a separate, premium-priced class of time sold only to candidates. Systems may sell higher-priced non-preemptible or fixed time to candidates if such a class of time is made available on a *bona fide* basis to both candidates and commercial advertisers, and provided such class is not functionally equivalent to any lower-priced class of time sold to commercial advertisers.

(vii) [Reserved]

(viii) Lowest unit charge may be calculated on a weekly basis with respect to time that is sold on a weekly basis, such as rotations through particular programs or dayparts. Systems electing to calculate the lowest unit charge

by such a method must include in that calculation all rates for all announcements scheduled in the rotation, including announcements aired under long-term advertising contracts. Systems may implement rate increases during election periods only to the extent that such increases constitute ''ordinary business practices,'' such as seasonal program changes or changes in audience ratings.

(ix) Systems shall review their advertising records periodically throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. Where necessary, systems shall issue such rebates or credits promptly.

(x) Unit rates charged as part of any package, whether individually negotiated or generally available to all advertisers, must be included in the lowest unit charge calculation for the same class and length of time in the same time period. A candidate cannot be required to purchase advertising in every program or daypart in a package as a condition for obtaining package unit rates.

(xi) Systems are not required to include non-cash promotional merchandising incentives in lowest unit charge calculations; provided, however, that all such incentives must be offered to candidates as part of any purchases permitted by the system. Bonus spots, however, must be included in the calculation of the lowest unit charge calculation.

(xii) Make goods, defined as the rescheduling of preempted advertising, shall be provided to candidates prior to election day if a system has provided a time-sensitive make good during the year preceding the pre-election periods, respectively set forth in paragraph (a)(1) of this section, to any commercial advertiser who purchased time in the same class.

(xiii) Systems must disclose and make available to candidates any make good policies provided to commercial advertisers. If a system places a make good for any commercial advertiser or other candidate in a more valuable program or daypart, the value of such make good must be included in the calculation of the lowest unit charge for that program or daypart.

(2) At any time other than the respective periods set forth in paragraph (a)(1) of this section, systems may charge legally qualified candidates for public office no more than the charges made for comparable use of the system by commercial advertisers. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, direct or indirect. A candidate shall be charged no more than the rate the system would charge for comparable commercial advertising. All discount privileges otherwise offered by a system to commercial advertisers must be disclosed and made available upon equal terms to all candidates for public office.

(b) If a system permits a candidate to use its cablecast facilities, the system shall make all discount privileges offered to commercial advertisers, including the lowest unit charges for each class and length of time in the same time period and all corresponding discount privileges, available on equal terms to all candidates. This duty includes an affirmative duty to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers, as provided in § 76.1611. Systems may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(1) A description and definition of each class of time available to commercial advertisers sufficiently complete enough to allow candidates to identify and understand what specific attributes differentiate each class;

(2) A description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(3) A description of the system's method of selling preemptible time based upon advertiser demand, commonly known as the ''current selling level,'' with the stipulation that candidates will be able to purchase at these demand-generated rates in the

same manner as commercial advertisers;

(4) An approximation of the likelihood of preemption for each kind of preemptible time; and

(5) An explanation of the system's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

(c) Once disclosure is made, systems shall negotiate in good faith to actually sell time to candidates in accordance with the disclosure.

[57 FR 210, Jan. 3, 1992, as amended at 57 FR 27709, June 22, 1992; 65 FR 53615, Sept. 5, 2000]

§ 76.209 Fairness doctrine; personal attacks; political editorials.

A cable television system operator engaging in origination cablecasting shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

NOTE TO § 76.209: See public notice, ''Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance,'' 29 FR 10415.

[65 FR 66644, Nov. 7, 2000]

§ 76.213 Lotteries.

(a) No cable television system operator, except as in paragraph (c), when engaged in origination cablecasting shall transmit or permit to be transmitted on the origination cablecasting channel or channels any advertisement of or information concerning any lottery, gift, enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.

(b) The determination whether a particular program comes within the provisions of paragraph (a) of this section depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of paragraph (a) of this section if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize, such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished, or distributed by a sponsor of a program cablecast on the system in question.

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to advertisements or lists of prizes or information concerning:

(1) A lottery conducted by a State acting under authority of State law which is transmitted:

(i) By a cable system located in that State;

(ii) By a cable system located in another State which conducts such a lottery; or

(iii) By a cable system located in another State which is integrated with a cable system described in paragraphs (c)(1)(i) or (c)(1)(ii) of this section, if termination of the receipt of such transmission by the cable systems in such other State would be technically infeasible.

(2) Any gaming conducted by an Indian Tribe pursuant to the Indian Gaming Regulatory Act. (25 U.S.C. 2701 *et seq.*).

(3) A lottery, gift enterprise or similar scheme, other than one described in paragraph (c)(1) of this section, that is authorized or not otherwise prohibited by the State in which it is conducted and which is:

(i) Conducted by a not-for-profit organization or a governmental organization; or

(ii) Conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization.

(d) For the purposes of paragraph (c) *lottery* means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. It does not include the placing or accepting of bets or wagers on sporting events or contests.

(e) For purposes of paragraph (c)(3)(i) of this section, the term ''not-for-profit organization'' means any organization that would qualify as tax exempt under

section 501 of the Internal Revenue Code of 1986.

[37 FR 3278, Feb. 12, 1972, as amended at 40 FR 6210, Feb. 10, 1975; 42 FR 13947, Apr. 13, 1977; 54 FR 20856, May 15, 1989; 55 FR 18888, May 7, 1990]

§ 76.225 Commercial limits in children's programs.

(a) No cable operator shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

(b) The display of Internet Web site addresses during program material is permitted only if the Web site:

(1) Offers a substantial amount of bona fide program-related or other noncommercial content;

(2) Is not primarily intended for commercial purposes, including either e-commerce or advertising;

(3) The Web site's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and

(4) The page of the Web site to which viewers are directed by the Web site address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled ''store'' and no links to another page with commercial material).

(c) The display of Web site addresses in children's programs is prohibited during both program material and commercial material when the site uses characters from the program to sell products or services.

NOTE 1 TO § 76.225: *Commercial matter* means air time sold for purposes of selling a product or service.

NOTE 2 TO § 76.225: For purposes of this section, children's programming refers to programs originally produced and broadcast primarily for an audience of children 12 years old and younger.

NOTE 3 TO § 76.225: Section 76.1703 contains recordkeeping requirements for cable operators with regard to children's programming.

[56 FR 19616, Apr. 29, 1991, as amended at 65 FR 53615, Sept. 5, 2000; 70 FR 38, Jan. 3, 2005]

EFFECTIVE DATE NOTES: 1. At 70 FR 38, Jan. 3, 2005, § 76.225 was amended by adding paragraph (d) and by revising Note 1, effective Jan. 1, 2006. For the convenience of the user, the revised and added text is set forth as follows:

§ 76.225 Commercial limits in children's programs.

* * * * *

(d) This rule shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 U.S.C. 531(e) and 532(c)(2).

NOTE 1 TO § 76.225: Commercial matter means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's educational and informational programming.

* * * * *

2. At 70 FR 24728, May 11, 2005, in § 76.225, paragraphs (b) and (c) were stayed until Jan. 1, 2006.

§ 76.227 [Reserved]

Subpart H—General Operating Requirements

§ 76.309 Customer service obligations.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters

not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability—

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. ''Standard'' installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on ''service interruptions'' promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The ''appointment window'' alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers—

(i) Refunds—Refund checks will be issued promptly, but no later than either—

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits—Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions—

(i) *Normal business hours*—The term ''normal business hours'' means those hours during which most similar businesses in the community are open to serve customers. In all cases, ''normal business hours'' must include some evening hours at least one night per week and/or some weekend hours.

(ii) *Normal operating conditions*—The term ''normal operating conditions'' means those service conditions which are within the control of the cable operator. Those conditions which are *not* within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which *are* ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) *Service interruption*—The term ''service interruption'' means the loss of picture or sound on one or more cable channels.

NOTE TO § 76.309: Section 76.1602 contains notification requirements for cable operators with regard to operator obligations to subscribers and general information to be provided to customers regarding service. Section 76.1603 contains subscriber notification requirements governing rate and service changes. Section 76.1619 contains notification requirements for cable operators with regard to subscriber bill information and operator response procedures pertaining to bill disputes.

[58 FR 21109, Apr. 19, 1993, as amended at 61 FR 18977, Apr. 30, 1996; 65 FR 53615, Sept. 5, 2000; 67 FR 1650, Jan. 14, 2002]

Subpart I—Forms and Reports

§ 76.403 Cable television system reports.

The operator of every operational cable television system that serves 20,000 or more subscribers shall file with the Commission a Form 325 soliciting general information and frequency and signal distribution information on a Physical System Identification Number (''PSID'') basis. These forms shall be completed and filed with (returned to) the Commission within 60 days after the Commission notifies the operator that the form is due.

NOTE: The Commission retains its authority to require Form 325 to be filed by a sampling of cable operators with less than 20,000 subscribers.

[64 FR 28108, May 25, 1999, as amended at 68 FR 27003, May 19, 2003]

Subpart J—Ownership of Cable Systems

§ 76.501 Cross-ownership.

(a)–(c) [Reserved]

(d) No cable operator shall offer satellite master antenna television service (''SMATV''), as that service is defined in § 76.5(a)(2), separate and apart from any franchised cable service in any portion of the franchise area served by that cable operator's cable system, either directly or indirectly through an affiliate owned, operated, controlled, or under common control with the cable operator.

(e)(1) A cable operator may directly or indirectly, through an affiliate owned, operated, controlled by, or under common control with the cable operator, offer SMATV service within its franchise area if the cable operator's SMATV system was owned, operated, controlled by or under common control with the cable operator as of October 5, 1992.

(2) A cable operator may directly or indirectly, through an affiliate owned, operated, controlled by, or under common control with the cable operator, offer service within its franchise area through SMATV facilities, provided such service is offered in accordance with the terms and conditions of a cable franchise agreement.

(f) The restrictions in paragraphs (d) and (e) of this section shall not apply to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(l) of the Communications Act.

NOTE 1 TO § 76.501: Actual working control, in whatever manner exercised, shall be deemed a cognizable interest.

NOTE 2 TO § 76.501: In applying the provisions of this section, ownership and other interests in an entity or entities covered by this rule will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to

5% or more of the outstanding voting stock of a corporation will be cognizable;

(b) Investment companies, as defined in 15 U.S.C. 80a–3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporation, or if any of the officers or directors of the corporation are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(c) Attribution of ownership interests in an entity covered by this rule that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of ''Licensee,'' then X's interest in ''Licensee'' would be 25% (the same as Y's interest since X's interest in Y exceeds 50%), and A's interest in ''Licensee'' would be 2.5% (0.1 × 0.25). Under the 5% attribution benchmark, X's interest in ''Licensee'' would be cognizable, while A's interest would not be cognizable.]

(d) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant entity covered by this rule are subject to said trust.

(e) Subject to paragraph (i) of this Note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (i) of this Note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(f)(1) Subject to paragraph (i) of this Note, a limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies.

(2) In the case of a limited partnership, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. In the case of an LLC or RLLP, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the media activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of these certifications are described in the Memorandum Opinion and Order in MM Docket No. 83–46, FCC 85–252 (released June 24, 1985), as modified on reconsideration in the Memorandum Opinion and Order in MM Docket No. 83–46, FCC 86–410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the media businesses of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the entity seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(g) Officers and directors of an entity covered by this rule are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary media business, it may request the

Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a media entity, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the media subsidiary, and a certification properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a media entity shall not be attributed with ownership of that entity by virtue of such status.

(h) Discrete ownership interests held by the same individual or entity will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through ''passive investors'' is equal to or exceeds 20 percent; or

(2) The sum of the interests other than those held by or through ''passive investors'' is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (i)(1) of this section plus the sum of the interests computed under paragraph (i)(2) of this section is equal to or exceeds 20 percent.

(i) Notwithstanding paragraphs (e) and (f) of this Note, the holder of an equity or debt interest or interests in an entity covered by this rule shall have that interest attributed if the equity (including all stockholdings, whether voting or nonvoting, common or preferred, and partnership interests) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (all equity plus all debt) of that entity, provided however that:

(1) in applying the provisions of paragraph (i) of this note to §§76.501, 76.505 and 76.905(b)(2), the holder of an equity or debt interest or interests in a broadcast station, cable system, SMATV or multiple video distribution provider subject to §§76.501, 76.505, or 76.905(b)(2) (''interest holder'') shall have that interest attributed if the equity (including all stockholdings, whether voting or nonvoting, common or preferred, and partnership interests) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (defined as the aggregate of all equity plus all debt) of that entity; and

(i) the interest holder also holds an interest in a broadcast station, cable system, SMATV, or multiple video distribution provider that operates in the same market, is subject to §§76.501, 76.505, or 76.905(b)(2) and is attributable without reference to this paragraph (i); or

(ii) the interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held.

(2) For purposes of applying subparagraph (i)(1), the term ''market'' will be defined as it is defined under the rule that is being applied.

NOTE 3 TO §76.501: In cases where record and beneficial ownership of voting stock is not identical (e.g., bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street names for benefit of customers, investment advisors holding stock in their own names for the benefit of clients, and insurance companies holding stock), the party having the right to determine how the stock will be voted will be considered to own it for purposes of this subpart.

NOTE 4 TO §76.501: Paragraph (a) of this section will not be applied so as to require the divestiture of ownership interests proscribed herein solely because of the transfer of such interests to heirs or legatees by will or intestacy, provided that the degree or extent of the proscribed cross-ownership is not increased by such transfer.

NOTE 5 TO §76.501: Certifications pursuant to this section and these notes shall be sent to the attention of the Media Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

NOTE 6 TO §76.501: In applying paragraph (a) of §76.501, for purposes of paragraph note 2(i) of this section, attribution of ownership interests in an entity covered by this rule that are held indirectly by any party through one or more intervening organizations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product. The ownership percentage for any link in the chain that exceeds 50% shall be included. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of ''Licensee,'' then X's interest in ''Licensee'' would 15% (0.6×0.25), and A's interest in ''Licensee'' would be 1.5% (0.1×0.6×0.25).]

[58 FR 27677, May 11, 1993, as amended at 60 FR 37834, July 24, 1995; 61 FR 15388, Apr. 8, 1996; 64 FR 50646, Sept. 17, 1999; 64 FR 67194, Dec. 1, 1999; 66 FR 9973, Feb. 13, 2001; 67 FR 13234, Mar. 21, 2002; 68 FR 13237, Mar. 19, 2003]

§76.502 Time limits applicable to franchise authority consideration of transfer applications.

(a) A franchise authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable

state or local law to act upon an application to sell, assign, or otherwise transfer controlling ownership of a cable system.

(b) A franchise authority that questions the accuracy of the information provided under paragraph (a) must notify the cable operator within 30 days of the filing of such information, or such information shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(c) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting party otherwise agree to an extension of time.

[61 FR 15388, Apr. 8, 1996]

§ 76.503 National subscriber limits.

(a) Subject to paragraph (b) of this section, no cable operator shall serve more than 30% of all multichannel-video programming subscribers nationwide through multichannel video programming distributors owned by such operator or in which such cable operator holds an attributable interest.

(b) Cable subscribers that a cable operator does not serve through incumbent cable franchises shall be excluded from the cable operator's limit.

(c) For purposes of this section, ''incumbent cable franchise'' means a cable franchise in existence as of October 20, 1999 and all successors in interest to these franchises.

(d) Subscribers that a cable operator serves through incumbent cable franchises shall include all subscribers served by those incumbent cable franchises, regardless of when the subscribers were added to the incumbent cable franchise system.

(e) ''Multichannel video-programming subscribers'' means subscribers who receive multichannel video-programming from cable systems, direct broadcast satellite services, direct-to-home satellite services, BRS/EBS, local multipoint distribution services, satellite master antenna television services (as defined in § 76.5(a)(2)), and open video systems.

(f) ''Cable operator'' means any person or entity that owns or has an attributable interest in an incumbent cable franchise.

(g) Prior to acquiring additional multichannel video-programming providers, any cable operator that serves 20% or more of multichannel video-programming subscribers nationwide shall certify to the Commission, concurrent with its applications to the Commission for transfer of licenses at issue in the acquisition, that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition.

NOTE 1 TO § 76.503: Certifications made under this section shall be sent to the attention of the Media Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

NOTE 2 TO § 76.503: *Attributable Interest* shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided however, that:

(a) Notes 2(f) and 2(g) to § 76.501 to shall not apply;

(b)(1) Subject to Note 2(i) to § 76.501, a limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies.

(2) In the case of a limited partnership, in order for an entity to make the certification set forth in paragraph (b)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the partnership. In the case of an LLC or RLLP, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the LLC or RLLP.

The criteria which would assume adequate insulation for purposes of these certifications are described in the Report and Order, FCC No. 99–288, CS Docket No. 98–82 (released October 20, 1999). In order for the Commission to accept the certification, the certification must be accompanied by facts, e.g. in the form of documents, affidavits or declarations, that demonstrate that these insulation criteria are met. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the video-programming activities of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the entity seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(c) Officers and directors of an entity covered by this rule are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in activities other than video-programming activities, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to the entity's video-programming activities. In the case of common or appointed directors and officers, if common or appointed directors or officers have duties and responsibilities that are wholly unrelated to video-programming activities for both entities, the relevant entity may request the Commission to waive attribution of the director or officer. The officers and directors of a parent company of a video-programming business, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the video-programming subsidiary, and a certification properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a cable system shall not be attributed with ownership of that entity by virtue of such status.

[64 FR 67195, 67199, Dec. 1, 1999, as amended at 67 FR 13234, Mar. 21, 2002; 69 FR 72046, Dec. 10, 2004]

§ 76.504 Limits on carriage of vertically integrated programming.

(a) Except as otherwise provided in this section no cable operator shall devote more than 40 percent of its activated channels to the carriage of national video programming services owned by the cable operator or in which the cable operator has an attributable interest.

(b) The channel occupancy limits set forth in paragraph (a) of this section shall apply only to channel capacity up to 75 channels.

(c) A cable operator may devote two additional channels or up to 45 percent of its channel capacity, whichever is greater, to the carriage of video programming services owned by the cable operator or in which the cable operator has an attributable interest provided such video programming services are minority-controlled.

(d) Cable operators carrying video programming services owned by the cable operator or in which the cable operator holds an attributable interest in excess of limits set forth in paragraph (a) of this section as of December 4, 1992, shall not be precluded by the restrictions in this section.

(e) *Minority-controlled* means more than 50 percent owned by one or more members of a minority group.

(f) *Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

NOTE 1: Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided however, that:

(a) Notes 2(f) and 2(g) to § 76.501 to shall not apply;

(b)(1) Subject to Note 2(i) to § 76.501, a limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies.

(2) In the case of a limited partnership, in order for an entity to make the certification set forth in paragraph (b)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes

that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the partnership. In the case of an LLC or RLLP, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of these certifications are described in the Report and Order, FCC No. 99–288, CS Docket No. 98–82 (released October 20, 1999). In order for the Commission to accept the certification, the certification must be accompanied by facts, e.g. in the form of documents, affidavits or declarations, that demonstrate that these insulation criteria are met. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the video-programming activities of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the entity seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(c) Officers and directors of an entity covered by this rule are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in activities other than video-programming activities, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to the entity's video-programming activities. In the case of common or appointed directors and officers, if common or appointed directors or officers have duties and responsibilities that are wholly unrelated to video-programming activities for both entities, the relevant entity may request the Commission to waive attribution of the director or officer. The officers and directors of a parent company of a video-programming business, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the video-programming subsidiary, and a certification properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a cable system shall not be attributed with ownership of that entity by virtue of such status.

NOTE 2 TO § 76.504: Section 76.1710 contains recordkeeping requirements for cable operators with regard to attributable interests.

[58 FR 60141, Nov. 15, 1993, as amended at 64 FR 67196, Dec. 1, 1999; 65 FR 53615, Sept. 5, 2000]

§ 76.505 Prohibition on buy outs.

(a) No local exchange carrier or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier may purchase or otherwise acquire directly or indirectly more than a 10 percent financial interest, or any management interest, in any cable operator providing cable service within the local exchange carrier's telephone service area.

(b) No cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area.

(c) A local exchange carrier and a cable operator whose telephone service area and cable franchise area, respectively, are in the same market may not enter into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within such market.

(d) Exceptions:

(1) Notwithstanding paragraphs (a), (b), and (c) of this section, a local exchange carrier (with respect to a cable system located in its telephone service area) and a cable operator (with respect to the facilities of a local exchange carrier used to provide telephone exchange service in its cable franchise area) may obtain a controlling interest in, management interest in, or enter into a joint venture or partnership with the operator of such system or facilities for the use of such system or facilities to the extent that:

(i) Such system or facilities only serve incorporated or unincorporated :

(A) Places or territories that have fewer than 35,000 inhabitants; and

(B) Are outside an urbanized area, as defined by the Bureau of the Census; and

(ii) In the case of a local exchange carrier, such system, in the aggregate with any other system in which such carrier has an interest, serves less than 10 percent of the households in the telephone service area of such carrier.

(2) Notwithstanding paragraph (c) of this section, a local exchange carrier may obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of a cable system extending from the last multiuser terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission.

(3) Notwithstanding paragraphs (a) and (c) of this section, a local exchange carrier may obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as ''the subject cable system'') if:

(i) The subject cable system operates in a television market that is not in the top 25 markets, and such market has more than 1 cable system operator, and the subject cable system is not the cable system with the most subscribers in such television market;

(ii) The subject cable system and the cable system with the most subscribers in such television market held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

(iii) The subject cable system is not owned by or under common ownership or control of any one of the 50 cable system operators with the most subscribers as such operators existed on May 1, 1995; and

(iv) The system with the most subscribers in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as such operators existed on May 1, 1995.

(4) Paragraph (a) of this section does not apply to any cable system if:

(i) The cable system serves no more than 17,000 cable subscribers, of which no less than 8,000 live within an urban area, and no less than 6,000 live within a nonurbanized area as of June 1, 1995;

(ii) The cable system is not owned by, or under common ownership or control with, any of the 50 largest cable system operators in existence on June 1, 1995; and

(iii) The cable system operates in a television market that was not in the top 100 television markets as of June 1, 1995.

(5) Notwithstanding paragraphs (a) and (c) of this section, a local exchange carrier with less than $100,000,000 in annual operating revenues (or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier) may purchase or otherwise acquire more than a 10 percent financial interest in, or any management interest in, or enter into a joint venture or partnership with, any cable system within the local exchange carrier's telephone service area that serves no more than 20,000 cable subscribers, if no more than 12,000 of those subscribers live within an urbanized area, as defined by the Bureau of the Census.

(6) The Commission may waive the restrictions of paragraphs (a), (b), or (c) of this section only if:

(i) The Commission determines that, because of the nature of the market served by the affected cable system or facilities used to provide telephone exchange service:

(A) The affected cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions;

(B) The system or facilities would not be economically viable if such provisions were enforced; or

(C) The anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; and

(ii) The local franchising authority approves of such waiver.

(e) For purposes of this section, the term ''telephone service area'' when used in connection with a common carrier subject in whole or in part to title

II of the Communications Act means the area within which such carrier provided telephone exchange service as of January 1, 1993, but if any common carrier after such date transfers its telephone exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier.

(f) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(g) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501.

[61 FR 18977, Apr. 30, 1996, as amended at 64 FR 67196, Dec. 1, 1999]

Subpart K—Technical Standards

§ 76.601 Performance tests.

(a) The operator of each cable television system shall be responsible for insuring that each such system is designed, installed, and operated in a manner that fully complies with the provisions of this subpart.

(b) The operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605(a) and shall be as follows:

(1) For cable television systems with 1000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (e.g., 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, *etc.*). In addition, for technically integrated portions of cable systems that are not mechanically continuous (*i.e.*, employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(a) (3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (e.g., 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217–300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit to 300 to 400 MHz, etc.). The channels selected for testing must be representative of all the channels within the cable television system.

(3) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in

§ 76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

(c) Successful completion of the performance tests required by paragraph (b) of this section does not relieve the system of the obligation to comply with all pertinent technical standards at all subscriber terminals. Additional tests, repeat tests, or tests involving specified subscriber terminals may be required by the Commission or the local franchiser to secure compliance with the technical standards.

(d) The provisions of paragraphs (b) and (c) of this section shall not apply to any cable television system having fewer than 1,000 subscribers: *Provided, however*, that any cable television system using any frequency spectrum other than that allocated to over-the-air television and FM broadcasting (as described in §§ 73.603 and 73.210 of this chapter) is required to conduct all tests, measurements and monitoring of signal leakage that are required by this subpart. A cable television system operator complying with the monitoring, logging and the leakage repair requirements of § 76.614, shall be considered to have met the requirements of this paragraph. However, the leakage log shall be retained for five years rather than the two years prescribed in § 76.1706.

NOTE 1 TO § 76.601: Prior to requiring any additional testing pursuant to § 76.601(c), the local franchising authority shall notify the cable operator who will be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected. The Commission may request cable operators to test their systems at any time.

NOTE 2 TO § 76.601: Section 76.1717 contains recordkeeping requirements for each system operator in order to show compliance with the technical rules of this subpart.

NOTE 3 TO § 76.601: Section 76.1704 contains recordkeeping requirements for proof of performance tests.

[65 FR 53615, Sept. 5, 2000]

§ 76.602 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the FEDERAL REGISTER. The materials are available for purchase at the corresponding addresses as noted, and all are available for inspection at the Federal Communications Commission, 445 12th. St., SW., Reference Information Center, Room CY-A257, Washington, DC 20554 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) The following materials are available for purchase from at least one of the following addresses: Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112 or at *http://global.ihs.com*; or American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, NY 10036 or at *http://webstore.ansi.org/ansidocstore/default.asp*; or Society of Cable Telecommunications Engineers at *http://www.scte.org/standards/index.cfm*; or Advanced Television Systems Committee, 1750 K Street, NW., Suite 1200, Washington, DC 20006 or at *http://www.atsc.org/standards*.

(1) ANSI/SCTE 26 2001 (formerly DVS 194): ''Home Digital Network Interface Specification with Copy Protection,'' 2001, IBR approved for § 76.640.

(2) SCTE 28 2003 (formerly DVS 295): ''Host-POD Interface Standard,'' 2003, IBR approved for § 76.640.

(3) SCTE 41 2003 (formerly DVS 301): ''POD Copy Protection System,'' 2003, IBR approved for § 76.640.

(4) ANSI/SCTE 54 2003 (formerly DVS 241), ''Digital Video Service Multiplex and Transport System Standard for Cable Television,'' 2003, IBR approved for § 76.640.

(5) ANSI/SCTE 65 2002 (formerly DVS 234), ''Service Information Delivered Out-of-Band for Digital Cable Television,'' 2002, IBR approved for § 76.640.

(6) CEA–931–A, ''Remote Control Command Pass-through Standard for Home Networking,'' 2003, IBR approved for § 76.640.

(7) SCTE 40 2003 (formerly DVS 313), ''Digital Cable Network Interface Standard,'' 2003, IBR approved for § 76.640.

(8) ATSC A/65B: ''ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B),'' March 18, 2003, IBR approved for § 76.640.

(9) CEA–542–B: ''CEA Standard: Cable Television Channel Identification Plan,'' July 2003, IBR approved for § 76.605.

[68 FR 66734, Nov. 28, 2003, as amended at 69 FR 18803, Apr. 9, 2004; 69 FR 57861, Sept. 28, 2004]

§ 76.605 Technical standards.

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the output of the modulating or processing equipment (generally the headend) of the cable television system or otherwise as noted. The requirements are applicable to each NTSC or similar video downstream cable television channel in the system:

(1)(i) The cable television channels delivered to the subscriber's terminal shall be capable of being received and displayed by TV broadcast receivers used for off-the-air reception of TV broadcast signals, as authorized under part 73 of this chapter; and

(ii) Cable television systems shall transmit signals to subscriber premises equipment on frequencies in accordance with the channel allocation plan set forth in CEA–542–B: ''Standard: Cable Television Channel Identification Plan,'' (Incorporated by reference, *see* § 76.602).

(2) The aural center frequency of the aural carrier must be 4.5 MHz ± 5 kHz above the frequency of the visual carrier at the output of the modulating or processing equipment of a cable television system, and at the subscriber terminal.

(3) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the cable system as viewed from the subscriber terminal, shall not be less than 1 millivolt across an internal impedance of 75 ohms (0 dBmV). Additionally, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, it shall not be less than 1.41 millivolts across an internal impedance of 75 ohms (+3 dBmV). (At other impedance values, the minimum visual signal level, as viewed from the subscriber terminal, shall be the square root of 0.0133 (Z) millivolts and, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, shall be 2 times the square root of 0.00662(Z) millivolts, where Z is the appropriate impedance value.)

(4) The visual signal level on each channel, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, shall not vary more than 8 decibels within any six-month interval, which must include four tests performed in six-hour increments during a 24-hour period in July or August and during a 24-hour period in January or February, and shall be maintained within:

(i) 3 decibels (dB) of the visual signal level of any visual carrier within a 6 MHz nominal frequency separation;

(ii) 10 dB of the visual signal level on any other channel on a cable television system of up to 300 MHz of cable distribution system upper frequency limit, with a 1 dB increase for each additional 100 MHz of cable distribution system upper frequency limit (e.g., 11 dB for a system at 301–400 MHz; 12 dB for a system at 401–500 MHz, *etc.*); and

(iii) A maximum level such that signal degradation due to overload in the subscriber's receiver or terminal does not occur.

(5) The rms voltage of the aural signal shall be maintained between 10 and 17 decibels below the associated visual

signal level. This requirement must be met both at the subscriber terminal and at the output of the modulating and processing equipment (generally the headend). For subscriber terminals that use equipment which modulate and remodulate the signal (e.g., baseband converters), the rms voltage of the aural signal shall be maintained between 6.5 and 17 decibels below the associated visual signal level at the subscriber terminal.

(6) The amplitude characteristic shall be within a range of ±2 decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries. The amplitude characteristic shall be measured at the subscriber terminal.

(7) The ratio of RF visual signal level to system noise shall not be less than 43 decibels. For class I cable television channels, the requirements of this section are applicable only to:

(i) Each signal which is delivered by a cable television system to subscribers within the predicted Grade B contour for that signal;

(ii) Each signal which is first picked up within its predicted Grade B contour;

(iii) Each signal that is first received by the cable television system by direct video feed from a TV broadcast station, a low power TV station, or a TV translator station.

(8) The ratio of visual signal level to the rms amplitude of any coherent disturbances such as intermodulation products, second and third order distortions or discrete-frequency interfering signals not operating on proper offset assignments shall be as follows:

(i) The ratio of visual signal level to coherent disturbances shall not be less than 51 decibels for noncoherent channel cable television systems, when measured with modulated carriers and time averaged; and

(ii) The ratio of visual signal level to coherent disturbances which are frequency-coincident with the visual carrier shall not be less than 47 decibels for coherent channel cable systems, when measured with modulated carriers and time averaged.

(9) The terminal isolation provided to each subscriber terminal:

(i) Shall not be less than 18 decibels. In lieu of periodic testing, the cable operator may use specifications provided by the manufacturer for the terminal isolation equipment to meet this standard; and

(ii) Shall be sufficient to prevent reflections caused by open-circuited or short-circuited subscriber terminals from producing visible picture impairments at any other subscriber terminal.

(10) The peak-to-peak variation in visual signal level caused by undesired low frequency disturbances (hum or repetitive transients) generated within the system, or by inadequate low frequency response, shall not exceed 3 percent of the visual signal level. Measurements made on a single channel using a single unmodulated carrier may be used to demonstrate compliance with this parameter at each test location.

(11) As of June 30, 1995, the following requirements apply to the performance of the cable television system as measured at the output of the modulating or processing equipment (generally the headend) of the system:

(i) The chrominance-luminance delay inequality (or chroma delay), which is the change in delay time of the chrominance component of the signal relative to the luminance component, shall be within 170 nanoseconds.

(ii) The differential gain for the color subcarrier of the television signal, which is measured as the difference in amplitude between the largest and smallest segments of the chrominance signal (divided by the largest and expressed in percent), shall not exceed ±20%.

(iii) The differential phase for the color subcarrier of the television signal which is measured as the largest phase difference in degrees between each segment of the chrominance signal and reference segment (the segment at the blanking level of O IRE), shall not exceed ±10 degrees.

(12) As an exception to the general provision requiring measurements to be made at subscriber terminals, and without regard to the type of signals carried by the cable television system,

signal leakage from a cable television system shall be measured in accordance with the procedures outlined in § 76.609(h) and shall be limited as follows:

Frequencies	Signal leakage limit (micro-volt/meter)	Distance in meters (m)
Less than and including 54 MHz, and over 216 MHz	15	30
Over 54 up to and including 216 MHz	20	3

(b) Cable television systems distributing signals by using methods such as nonconventional coaxial cable techniques, noncoaxial copper cable techniques, specialized coaxial cable and fiber optical cable hybridization techniques or specialized compression techniques or specialized receiving devices, and which, because of their basic design, cannot comply with one or more of the technical standards set forth in paragraph (a) of this section, may be permitted to operate: Provided, That an adequate showing is made pursuant to § 76.7 which establishes that the public interest is benefited. In such instances, the Commission may prescribe special technical requirements to ensure that subscribers to such systems are provided with an equivalent level of good quality service.

NOTE 1: Local franchising authorities of systems serving fewer than 1000 subscribers may adopt standards less stringent than those in § 76.605(a). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

NOTE 2: For systems serving rural areas as defined in § 76.5, the system may negotiate with its local franchising authority for standards less stringent than those in §§ 76.605(a)(3), 76.605(a)(7), 76.605(a)(8), 76.605(a)(10) and 76.605(a)(11). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

NOTE 3: The requirements of this section shall not apply to devices subject to the TV interface device rules under part 15 of this chapter.

NOTE 4: Should subscriber complaints arise from a system failing to meet § 76.605(a)(6) prior to December 30, 1999, the cable operator will be required to provide a converter that will allow the system to meet the standard immediately at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order all converters on the system be changed to meet the standard.

NOTE 5: Should subscriber complaints arise from a system failing to meet § 76.605(a)(10), the cable operator will be required to remedy the complaint and perform test measurements on § 76.605(a)(10) containing the full number of channels as indicated in § 76.601(b)(2) at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order that the full number of channels as indicated in § 76.601(b)(2) be tested at all required locations for future proof-of-performance tests.

NOTE 6: No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.

[37 FR 3278, Feb. 12, 1972, as amended at 37 FR 13867, July 14, 1972; 40 FR 2690, Jan. 15, 1975; 40 FR 3296, Jan. 21, 1975; 41 FR 53028, Dec. 3, 1976; 42 FR 21782, Apr. 29, 1977; 47 FR 21503, May 18, 1982; 50 FR 52466, Dec. 24, 1985; 51 FR 1255, Jan. 10, 1986; 52 FR 22461, June 12, 1987; 57 FR 11002, Apr. 1, 1992; 57 FR 61010, Dec. 23, 1992; 58 FR 44952, Aug. 25, 1993; 59 FR 25342, May 16, 1994; 61 FR 18510, Apr. 26, 1996; 61 FR 18978, Apr. 30, 1996; 65 FR 53616, Sept. 5, 2000; 69 FR 2849, Jan. 21, 2004; 69 FR 57861, Sept. 28, 2004]

§ 76.606 Closed captioning.

(a) As of June 30, 1992, the operator of each cable television system shall not take any action to remove or alter closed captioning data contained on line 21 of the vertical blanking interval.

(b) As of July 1, 1993, the operator of each cable television system shall deliver intact closed captioning data contained on line 21 of the vertical blanking interval, as it arrives at the headend or from another origination source, to subscriber terminals and (when so delivered to the cable system) in a format that can be recovered and displayed by decoders meeting § 15.119 of this chapter.

[57 FR 11003, Apr. 1, 1992]

§ 76.609 Measurements.

(a) Measurements made to demonstrate conformity with the performance requirements set forth in §§ 76.601 and 76.605 shall be made under conditions which reflect system performance during normal operations, including the effect of any microwave relay operated in the Cable Television Relay (CARS) Service intervening between

pickup antenna and the cable distribution network. Amplifiers shall be operated at normal gains, either by the insertion of appropriate signals or by manual adjustment. Special signals inserted in a cable television channel for measurement purposes should be operated at levels approximating those used for normal operation. Pilot tones, auxiliary or substitute signals, and nontelevision signals normally carried on the cable television system should be operated at normal levels to the extent possible. Some exemplary, but not mandatory, measurement procedures are set forth in this section.

(b) When it may be necessary to remove the television signal normally carried on a cable television channel in order to facilitate a performance measurement, it will be permissible to disconnect the antenna which serves the channel under measurement and to substitute therefor a matching resistance termination. Other antennas and inputs should remain connected and normal signal levels should be maintained on other channels.

(c) As may be necessary to ensure satisfactory service to a subscriber, the Commission may require additional tests to demonstrate system performance or may specify the use of different test procedures.

(d) The frequency response of a cable television channel may be determined by one of the following methods, as appropriate:

(1) By using a swept frequency or a manually variable signal generator at the sending end and a calibrated attenuator and frequency-selective voltmeter at the subscriber terminal; or

(2) By using either a multiburst generator or vertical interval test signals and either a modulator or processor at the sending end, and by using either a demodulator and either an oscilloscope display or a waveform monitor display at the subscriber terminal.

(e) System noise may be measured using a frequency-selective voltmeter (field strength meter) which has been suitably calibrated to indicate rms noise or average power level and which has a known bandwidth. With the system operating at normal level and with a properly matched resistive termination substituted for the antenna, noise power indications at the subscriber terminal are taken in successive increments of frequency equal to the bandwidth of the frequency-selective voltmeter, summing the power indications to obtain the total noise power present over a 4 MHz band centered within the cable television channel. If it is established that the noise level is constant within this bandwidth, a single measurement may be taken which is corrected by an appropriate factor representing the ratio of 4 MHz to the noise bandwidth of the frequency-selective voltmeter. If an amplifier is inserted between the frequency-selective voltmeter and the subscriber terminal in order to facilitate this measurement, it should have a bandwidth of at least 4 MHz and appropriate corrections must be made to account for its gain and noise figure. Alternatively, measurements made in accordance with the NCTA Recommended Practices for Measurements on Cable Television Systems, 2nd edition, November 1989, on noise measurement may be employed.

(f) The amplitude of discrete frequency interfering signals within a cable television channel may be determined with either a spectrum analyzer or with a frequency-selective voltmeter (field strength meter), which instruments have been calibrated for adequate accuracy. If calibration accuracy is in doubt, measurements may be referenced to a calibrated signal generator, or a calibrated variable attenuator, substituted at the point of measurement. If an amplifier is used between the subscriber terminal and the measuring instrument, appropriate corrections must be made to account for its gain.

(g) The terminal isolation between any two terminals in the cable television system may be measured by applying a signal of known amplitude to one terminal and measuring the amplitude of that signal at the other terminal. The frequency of the signal should be close to the midfrequency of the channel being tested. Measurements of terminal isolation are not required when either:

(1) The manufacturer's specifications for subscriber tap isolation based on a

representative sample of no less than 500 subscribers taps or

(2) Laboratory tests performed by or for the operator of a cable television system on a representative sample of no less than 50 subscriber taps, indicates that the terminal isolation standard of § 76.605(a)(9) is met.

To demonstrate compliance with § 76.605(a)(9), the operator of a cable television system shall attach either such manufacturer's specifications or laboratory measurements as an exhibit to each proof-of-performance record.

(h) Measurements to determine the field strength of the signal leakage emanated by the cable television system shall be made in accordance with standard engineering procedures. Measurements made on frequencies above 25 MHz shall include the following:

(1) A field strength meter of adequate accuracy using a horizontal dipole antenna shall be employed.

(2) Field strength shall be expressed in terms of the rms value of synchronizing peak for each cable television channel for which signal leakage can be measured.

(3) The resonant half wave dipole antenna shall be placed 3 meters from and positioned directly below the system components and at 3 meters above ground. Where such placement results in a separation of less than 3 meters between the center of the dipole antenna and the system components, or less than 3 meters between the dipole and ground level, the dipole shall be repositioned to provide a separation of 3 meters from the system components at a height of 3 meters or more above ground.

(4) The horizontal dipole antenna shall be rotated about a vertical axis and the maximum meter reading shall be used.

(5) Measurements shall be made where other conductors are 3 or more meters (10 or more feet) away from the measuring antenna.

(i) For systems using cable traps and filters to control the delivery of specific channels to the subscriber terminal, measurements made to determine compliance with § 76.605(a) (5) and (6) may be performed at the location immediately prior to the trap or filter for the specific channel. The effects of these traps or filters, as certified by the system engineer or the equipment manufacturer, must be attached to each proof-of-performance record.

(j) Measurements made to determine the differential gain, differential phase and the chrominance-luminance delay inequality (chroma delay) shall be made in accordance with the NCTA Recommended Practices for Measurements on Cable Television Systems, 2nd edition, November 1989, on these parameters.

[37 FR 3278, Feb. 12, 1972, as amended at 37 FR 13867, July 14, 1972; 41 FR 10067, Mar. 9, 1976; 42 FR 21782, Apr. 29, 1977; 49 FR 45441, Nov. 16, 1984; 57 FR 11004, Apr. 1, 1992; 57 FR 61011, Dec. 23, 1992; 58 FR 44952, Aug. 25, 1993]

§ 76.610 Operation in the frequency bands 108–137 and 225–400 MHz—scope of application.

The provisions of §§ 76.605(a)(12), 76.611, 76.612, 76.613, 76.614, 76.616, 76.617, 76.1803 and 76.1804 are applicable to all MVPDs (cable and non-cable) transmitting carriers or other signal components carried at an average power level equal to or greater than 10^{-4} watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108–137 and 225–400 MHz for any purpose. Exception: Non-cable MVPDs serving less than 1000 subscribers and less than 1000 units do not have to comply with § 76.1803.

[69 FR 57862, Sept. 28, 2004]

§ 76.611 Cable television basic signal leakage performance criteria.

(a) No cable television system shall commence or provide service in the frequency bands 108–137 and 225–400 MHz unless such systems is in compliance with one of the following cable television basic signal leakage performance criteria:

(1) prior to carriage of signals in the aeronautical radio bands and at least once each calendar year, with no more than 12 months between successive tests thereafter, based on a sampling of at least 75% of the cable strand, and including any portion of the cable system which are known to have or can reasonably be expected to have less leakage integrity than the average of the

system, the cable operator demonstrates compliance with a cumulative signal leakage index by showing either that (i) 10 log I_{3000} is equal to or less than −7 or (ii) 10 log I_{00} is equal to or less than 64, using one of the following formula:

$$I_{3000} = \frac{1}{\emptyset}\sum_{i=1}^{n}\frac{E_i^2}{R_i^2},$$

$$I_{\infty} = \frac{1}{\emptyset}\sum_{i=1}^{n}E_i^2,$$

where:

$$R_i^2 = r_i^2 + (3000)^2$$

r_i is the distance (in meters) between the leakage source and the center of the cable television system;

θ is the fraction of the system cable length actually examined for leakage sources and is equal to the strand kilometers (strand miles) of plant tested divided by the total strand kilometers (strand miles) in the plant;

R_i is the slant height distance (in meters) from leakage source i to a point 3000 meters above the center of the cable television system;

E_i is the electric field strength in microvolts per meter (μV/m) measured pursuant to § 76.609(h) 3 meters from the leak i; and

n is the number of leaks found of field strength equal to or greater than 50 μV/m pursuant to Section 76.609(h).

The sum is carried over all leaks i detected in the cable examined; or

(2) prior to carriage of signals in the aeronautical radio bands and at least once each calendar year, with no more than 12 months between successive tests thereafter, the cable operator demonstrates by measurement in the airspace that at no point does the field strength generated by the cable system exceed 10 microvolts per meter (μV/m) RMS at an altitude of 450 meters above the average terrain of the cable system. The measurement system (including the receiving antenna) shall be calibrated against a known field of 10 μV/m RMS produced by a well characterized antenna consisting of orthogonal reasonant dipoles, both parallel to and one quarter wavelength above the ground plane of a diameter of two meters or more at ground level. The dipoles shall have centers collocated and be excited 90 degrees apart. The half-power bandwidth of the detector shall be 25 kHz. If an aeronautical receiver is used for this purpose it shall meet the standards of the Radio Technical Commission for Aeronautics (RCTA) for aeronautical communications receivers. The aircraft antenna shall be horizontally polarized. Calibration shall be made in the community unit or, if more than one, in any of the community units of the physical system within a reasonable time period to performing the measurements. If data is recorded digitally the 90th percentile level of points recorded over the cable system shall not exceed 10 μV/m RMS; if analog recordings is used the peak values of the curves, when smoothed according to good engineering practices, shall not exceed 10 μV/m RMS.

(b) In paragraphs (a)(1) and (a)(2) of this section the unmodulated test signal used on the cable plant shall: (1) Be within the VHF aeronautical band 108–137 MHz or any other frequency in which the results can be correlated to the VHF aeronautical band and (2) have an average power level equal to the average power level of the strongest cable television carrier on the system.

(c) In paragraph (a)(1) and (2) of this section, if a modulated test signal is used, the test signal and detector technique must, when considered together, yield the same result as though an unmodulated test signal were used in conjunction with a detection technique which would yield the RMS value of said unmodulated carrier.

(d) If a sampling of at least 75% of the cable strand (and including any portions of the cable system which are known to have or can reasonably be expected to have less leakage integrity than the average of the system) as described in paragraph (a)(1) cannot be obtained by the cable operator or is otherwise not reasonably feasible, the cable operator shall perform the airspace measurements described in paragraph (a)(2).

(e) Prior to providing service to any subscriber on a new section of cable plant, the operator shall show compliance with either: (1) The basic signal leakage criteria in accordance with

paragraph (a)(1) or (a)(2) of this section for the entire plant in operation or (2) a showing shall be made indicating that no individual leak in the new section of the plant exceeds 20 μV/m at 3 meters in accordance with § 76.609 fo the Rules.

(f) Notwithstanding paragraph (a) of this section, a cable operator shall be permitted to operate on any frequency which is offset pursuant to § 76.612 in the frequency band 108–137 MHz for the purpose of demonstrating compliance with the cable television basic signal leakage performance criteria.

[50 FR 29399, July 19, 1985, as amended at 53 FR 2499, Jan. 28, 1988; 53 FR 5684, Feb. 25, 1988; 58 FR 44952, Aug. 25, 1993]

§ 76.612 Cable television frequency separation standards.

All cable television systems which operate in the frequency bands 108–137 and 225–400 MHz shall comply with the following frequency separation standards:

(a) In the aeronautical radiocommunication bands 118–137, 225–328.6 and 335.4–400 MHz, the frequency of all carrier signals or signal components carried at an average power level equal to or greater than 10^{-4} watts in a 25 kHz bandwidth in any 160 microsecond period must operate at frequencies offset from certain frequencies which may be used by aeronautical radio services operated by Commission licensees or by the United States Government or its Agencies. The aeronautical frequencies from which offsets must be maintained are those frequencies which are within one of the aeronautical bands defined in this subparagraph, and when expressed in MHz and divided by 0.025 yield an integer. The offset must meet one of the following two criteria:

(1) All such cable carriers or signal components shall be offset by 12.5 kHz with a frequency tolerance of ±5 kHz; or

(2) The fundamental frequency from which the visual carrier frequencies are derived by multiplication by an integer number which shall be 6.0003 MHz with a tolerance of ±1 Hz (Harmonically Related Carrier (HRC) comb generators only).

(b) In the aeronautical radionavigation bands 108–118 and 328.6–335.4 MHz, the frequency of all carrier signals or signal components carrier at an average power level equal to or greater than 10^{-4} watts in a 25 kHz bandwidth in any 160 microsecond period shall be offset by 25 kHz with a tolerance of ±5 kHz. The aeronautical radionavigation frequencies from which offsets must be maintained are defined as follows:

(1) Within the aeronautical band 108–118 MHz when expressed in MHz and divided by 0.025 yield an even integer.

(2) Within the band 328.6–335.4 MHz, the radionavigation glide path channels are listed in Section 87.501 of the Rules.

NOTE: The HRC system, as described above, will meet this requirement in the 328.6–335.4 MHz navigation glide path band. Those Incrementally Related Carriers (IRC) systems, with comb generator reference frequencies set at certain odd multiples equal to or greater than 3 times the 0.0125 MHz aeronautical communications band offset, e.g. (6n + 1.250 ± 0.0375) MHz, may also meet the 25 kHz offset requirement in the navigation glide path band.

[50 FR 29400, July 19, 1985]

§ 76.613 Interference from a multichannel video programming distributor (MVPD).

(a) Harmful interference is any emission, radiation or induction which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with this chapter.

(b) An MVPD that causes harmful interference shall promptly take appropriate measures to eliminate the harmful interference.

(c) If harmful interference to radio communications involving the safety of life and protection of property cannot be promptly eliminated by the application of suitable techniques, operation of the offending MVPD or appropriate elements thereof shall immediately be suspended upon notification by the District Director and/or Resident Agent of the Commission's local field office, and shall not be resumed until the interference has been eliminated to the satisfaction of the District Director and/or Resident Agent. When

authorized by the District Director and/or Resident Agent, short test operations may be made during the period of suspended operation to check the efficacy of remedial measures.

(d) The MVPD may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

[42 FR 41296, Aug. 16, 1977, as amended at 62 FR 61031, Nov. 14, 1997]

§ 76.614 Cable television system regular monitoring.

Cable television operators transmitting carriers in the frequency bands 108–137 and 225–400 MHz shall provide for a program of regular monitoring for signal leakage by substantially covering the plant every three months. The incorporation of this monitoring program into the daily activities of existing service personnel in the discharge of their normal duties will generally cover all portions of the system and will therefore meet this requirement. Monitoring equipment and procedures utilized by a cable operator shall be adequate to detect a leakage source which produces a field strength in these bands of 20 uV/m or greater at a distance of 3 meters. During regular monitoring, any leakage source which produces a field strength of 20 uV/m or greater at a distance of 3 meters in the aeronautical radio frequency bands shall be noted and such leakage sources shall be repaired within a reasonable period of time.

NOTE 1 TO § 76.614: Section 76.1706 contains signal leakage recordkeeping requirements applicable to cable operators.

[65 FR 53616, Sept. 5, 2000]

§ 76.616 Operation near certain aeronautical and marine emergency radio frequencies.

(a) The transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10^{-5} watts at any point in a cable television system is prohibited within 100 kHz of the frequency 121.5 MHz, and is prohibited within 50 kHz of the two frequencies 156.8 MHz and 243.0 MHz.

(b) At any point on a cable system from 405.925 MHz to 406.176 MHz analog transmissions are prohibited from delivering peak power levels equal to or greater than 10^{-5} watts. The transmission of digital signals in this range is limited to power levels measured using a root-mean-square detector of less than 10^{-5} watts in any 30 kHz bandwidth over any 2.5 millisecond interval.

[69 FR 57862, Sept. 28, 2004]

§ 76.617 Responsibility for interference.

Interference resulting from the use of cable system terminal equipment (including subscriber terminal, input selector switch and any other accessories) shall be the responsibility of the cable system terminal equipment operator in accordance with the provisions of part 15 of this chapter: provided, however, that the operator of a cable system to which the cable system terminal equipment is connected shall be responsible for detecting and eliminating any signal leakage where that leakage would cause interference outside the subscriber's premises and/or would cause the cable system to exceed the Part 76 signal leakage requirements. In cases where excessive signal leakage occurs, the cable operator shall be required only to discontinue service to the subscriber until the problem is corrected.

[53 FR 46619, Nov. 18, 1989]

§§ 76.618–76.620 [Reserved]

§ 76.630 Compatibility with consumer electronics equipment.

(a) Cable system operators shall not scramble or otherwise encrypt signals carried on the basic service tier. Requests for waivers of this prohibition must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers must be mailed no later than thirty

calendar days from the date the request waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state:

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. 47 CFR 76.630(a). The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver is on file for public inspection at (the address of the cable operator's local place of business).

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Media Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business). Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed.

(b) Cable system operators that provide their subscribers with cable system terminal devices and other customer premises equipment that incorporates remote control capability shall permit the remote operation of such devices with commercially available remote control units or otherwise take no action that would prevent the devices from being operated by a commercially available remote control unit. Cable system operators are advised that this requirement obliges them to actively enable the remote control functions of customer premises equipment where those functions do not operate without a special activation procedure. Cable system operators may, however, disable the remote control functions of a subscriber's customer premises equipment where requested by the subscriber.

NOTE 1 TO § 76.630: The provisions of paragraphs (a) and (b) of this section are applicable July 31, 1994, and June 30, 1994, respectively.

NOTE 2 TO § 76.630: § 76.1621 contains certain requirements pertaining to a cable operator's offer to supply subscribers with special equipment that will enable the simultaneous reception of multiple signals.

NOTE 3 TO § 76.630: § 76.1622 contains certain requirements pertaining to the provision of a consumer education program on compatibility matters to subscribers.

NOTE 4 TO § 76.630: Cable operators must comply with the notification requirements pertaining to the waiver of the prohibition against scrambling and encryption, and comply with the public file requirement in connection with such waiver.

[59 FR 25342, May 16, 1994, as amended at 61 FR 18510, Apr. 26, 1996; 65 FR 53616, Sept. 5, 2000; 67 FR 1650, Jan. 14, 2002; 67 FR 13235, Mar. 21, 2002]

§ 76.640 Support for unidirectional digital cable products on digital cable systems.

(a) The requirements of this section shall apply to digital cable systems. For purposes of this section, digital cable systems shall be defined as a cable system with one or more channels utilizing QAM modulation for transporting programs and services from its headend to receiving devices. Cable systems that only pass through 8 VSB broadcast signals shall not be considered digital cable systems.

(b) No later than July 1, 2004, cable operators shall support unidirectional digital cable products, as defined in § 15.123 of this chapter, through the provisioning of Point of Deployment modules (PODs) and services, as follows:

(1) Digital cable systems with an activated channel capacity of 750 MHz or greater shall comply with the following technical standards and requirements:

(i) SCTE 40 2003 (formerly DVS 313): ''Digital Cable Network Interface Standard'' (incorporated by reference, *see* § 76.602), provided however that with respect to Table B.11, the Phase Noise requirement shall be −86 dB/Hz, and also provided that the ''transit delay for most distant customer'' requirement in Table B.3 is not mandatory.

(ii) ANSI/SCTE 65 2002 (formerly DVS 234): ''Service Information Delivered Out-of-Band for Digital Cable Television'' (incorporated by reference, *see* § 76.602), provided however that the referenced Source Name Subtable shall be provided for Profiles 1, 2, and 3.

(iii) ANSI/SCTE 54 2003 (formerly DVS 241): ''Digital Video Service Multiplex and Transport System Standard

for Cable Television'' (incorporated by reference, *see* § 76.602).

(iv) For each digital transport stream that includes one or more services carried in-the-clear, such transport stream shall include virtual channel data in-band in the form of ATSC A/65B: ''ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B)'' (incorporated by reference, *see* § 76.602), when available from the content provider. With respect to in-band transport:

(A) The data shall, at minimum, describe services carried within the transport stream carrying the PSIP data itself;

(B) PSIP data describing a twelve-hour time period shall be carried for each service in the transport stream. This twelve-hour period corresponds to delivery of the following event information tables: EIT–0, –1, –2 and –3;

(C) The format of event information data format shall conform to ATSC A/65B: ''ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B)'' (incorporated by reference, *see* § 76.602);

(D) Each channel shall be identified by a one- or two-part channel number and a textual channel name; and

(E) The total bandwidth for PSIP data may be limited by the cable system to 80 kbps for a 27 Mbits multiplex and 115 kbps for a 38.8 Mbits multiplex.

(v) When service information tables are transmitted out-of-band for scrambled services:

(A) The data shall, at minimum, describe services carried within the transport stream carrying the PSIP data itself;

(B) A virtual channel table shall be provided via the extended channel interface from the POD module. Tables to be included shall conform to ANSI/SCTE 65 2002 (formerly DVS 234): ''Service Information Delivered Out-of-Band for Digital Cable Television'' (incorporated by reference, *see* § 76.602).

(C) Event information data when present shall conform to ANSI/SCTE 65 2002 (formerly DVS 234): ''Service Information Delivered Out-of-Band for Digital Cable Television'' (incorporated by reference, *see* § 76.602) (profiles 4 or higher).

(D) Each channel shall be identified by a one-or two-part channel number and a textual channel name; and

(E) The channel number identified with out-of-band signaling information data should match the channel identified with in-band PSIP data for all unscrambled in-the-clear services.

(2) All digital cable systems shall comply with:

(i) SCTE 28 2003 (formerly DVS 295): ''Host-POD Interface Standard'' (incorporated by reference, *see* § 76.602).

(ii) SCTE 41 2003 (formerly DVS 301): ''POD Copy Protection System'' (incorporated by reference, *see* § 76.602).

(3) Cable operators shall ensure, as to all digital cable systems, an adequate supply of PODs that comply with the standards specified in paragraph (b)(2) of this section to ensure convenient access to such PODS by customers. Without limiting the foregoing, cable operators may provide more advanced PODs (*i.e.*, PODs that are based on successor standards to those specified in paragraph (b)(2) of this section) to customers whose unidirectional digital cable products are compatible with the more advanced PODs.

(4) Cable operators shall:

(i) Effective April 1, 2004, upon request of a customer, replace any leased high definition set-top box, which does not include a functional IEEE 1394 interface, with one that includes a functional IEEE 1394 interface or upgrade the customer's set-top box by download or other means to ensure that the IEEE 1394 interface is functional.

(ii) Effective July 1, 2005, include both a DVI or HDMI interface and an IEEE 1394 interface on all high definition set-top boxes acquired by a cable operator for distribution to customers.

(iii) Ensure that these cable operator-provided high definition set-top boxes shall comply with ANSI/SCTE 26 2001 (formerly DVS 194): ''Home Digital Network Interface Specification with Copy Protection'' (incorporated by reference, *see* § 76.602), with transmission of bit-mapped graphics optional, and shall support the CEA–931–A: ''Remote

Control Command Pass-through Standard for Home Networking'' (incorporated by reference, *see* § 76.602), pass through control commands: tune function, mute function, and restore volume function. In addition these boxes shall support the power control commands (power on, power off, and status inquiry) defined in A/VC Digital Interface Command Set General Specification Version 4.0 (as referenced in ANSI/SCTE 26 2001 (formerly DVS 194): ''Home Digital Network Interface Specification with Copy Protection'' (incorporated by reference, *see* § 76.602)).

[68 FR 66734, Nov. 28, 2003]

Subpart L—Cable Television Access

§ 76.701 Leased access channels.

(a) Notwithstanding 47 U.S.C. 532(b)(2) (Communications Act of 1934, as amended, section 612), a cable operator, in accordance with 47 U.S.C. 532(h) (Cable Consumer Protection and Competition Act of 1992, section 10(a)), may adopt and enforce prospectively a written and published policy of prohibiting programming which, it reasonably believes, describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

(b) A cable operator may refuse to transmit any leased access program or portion of a leased access program that the operator reasonably believes contains obscenity, indecency or nudity.

NOTE TO PARAGRAPH (b): ''Nudity'' in paragraph (b) is interpreted to mean nudity that is obscene or indecent.

[62 FR 28373, May 23, 1997, as amended at 64 FR 35950, July 2, 1999]

§ 76.702 Public access.

A cable operator may refuse to transmit any public access program or portion of a public access program that the operator reasonably believes contains obscenity.

[62 FR 28373, May 23, 1997]

Subpart M—Cable Inside Wiring

§ 76.800 Definitions.

(a) *MDU*. A multiple dwelling unit building (e.g., an apartment building, condominium building or cooperative).

(b) *MDU owner*. The entity that owns or controls the common areas of a multiple dwelling unit building.

(c) *MVPD*. A multichannel video programming distributor, as that term is defined in Section 602(13) of the Communications Act, 47 U.S.C. 522(13).

(d) *Home run wiring*. The wiring from the demarcation point to the point at which the MVPD's wiring becomes devoted to an individual subscriber or individual loop.

[62 FR 61031, Nov. 14, 1997]

§ 76.801 Scope.

The provisions of this subpart set forth rules and regulations for the disposition, after a subscriber voluntarily terminates cable service, of that cable home wiring installed by the cable system operator or its contractor within the premises of the subscriber. The provisions do not apply where the cable home wiring belongs to the subscriber, such as where the operator has transferred ownership to the subscriber, the operator has been treating the wiring as belonging to the subscriber for tax purposes, or the wiring is considered to be a fixture by state or local law in the subscriber's jurisdiction. Nothing in this subpart shall affect the cable system operator's rights and responsibilities under § 76.617 to prevent excessive signal leakage while providing cable service, or the cable operator's right to access the subscriber's property or premises.

[58 FR 11971, Mar. 2, 1993]

§ 76.802 Disposition of cable home wiring.

(a)(1) Upon voluntary termination of cable service by a subscriber in a single unit installation, a cable operator shall not remove the cable home wiring unless it gives the subscriber the opportunity to purchase the wiring at the replacement cost, and the subscriber declines. If the subscriber declines to purchase the cable home wiring, the cable system operator must then remove the

cable home wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(2) Upon voluntary termination of cable service by an individual subscriber in a multiple-unit installation, a cable operator shall not be entitled to remove the cable home wiring unless: it gives the subscriber the opportunity to purchase the wiring at the replacement cost; the subscriber declines, and neither the MDU owner nor an alternative MVPD, where permitted by the MDU owner, has provided reasonable advance notice to the incumbent provider that it would purchase the cable home wiring pursuant to this section if and when a subscriber declines. If the cable system operator is entitled to remove the cable home wiring, it must then remove the wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(3) The cost of the cable home wiring is to be based on the replacement cost per foot of the wiring on the subscriber's side of the demarcation point multiplied by the length in feet of such wiring, and the replacement cost of any passive splitters located on the subscriber's side of the demarcation point.

(b) During the initial telephone call in which a subscriber contacts a cable operator to voluntarily terminate cable service, the cable operator—if it owns and intends to remove the home wiring—must inform the subscriber:

(1) That the cable operator owns the home wiring;

(2) That the cable operator intends to remove the home wiring;

(3) That the subscriber has the right to purchase the home wiring; and

(4) What the per-foot replacement cost and total charge for the wiring would be (the total charge may be based on either the actual length of cable wiring and the actual number of passive splitters on the customer's side of the demarcation point, or a reasonable approximation thereof; in either event, the information necessary for calculating the total charge must be available for use during the initial phone call).

(c) If the subscriber voluntarily terminates cable service in person, the procedures set forth in paragraph (b) of this section apply.

(d) If the subscriber requests termination of cable service in writing, it is the operator's responsibility—if it wishes to remove the wiring—to make reasonable efforts to contact the subscriber prior to the date of service termination and follow the procedures set forth in paragraph (b) of this section.

(e) If the cable operator fails to adhere to the procedures described in paragraph (b) of this section, it will be deemed to have relinquished immediately any and all ownership interests in the home wiring; thus, the operator will not be entitled to compensation for the wiring and shall make no subsequent attempt to remove it or restrict its use.

(f) If the cable operator adheres to the procedures described in paragraph (b) of this section, and, at that point, the subscriber agrees to purchase the wiring, constructive ownership over the home wiring will transfer to the subscriber immediately, and the subscriber will be permitted to authorize a competing service provider to connect with and use the home wiring.

(g) If the cable operator adheres to the procedures described in paragraph (b) of this section, and the subscriber asks for more time to make a decision regarding whether to purchase the home wiring, the seven (7) day period described in paragraph (b) of this section will not begin running until the subscriber declines to purchase the wiring; in addition, the subscriber may not use the wiring to connect to an alternative service provider until the subscriber notifies the operator whether or not the subscriber wishes to purchase the wiring.

(h) If an alternative video programming service provider connects its wiring to the home wiring before the incumbent cable operator has terminated service and has capped off its line to prevent signal leakage, the alternative video programming service provider shall be responsible for ensuring that the incumbent's wiring is properly

capped off in accordance with the Commission's signal leakage requirements. See Subpart K (technical standards) of the Commission's Cable Television Service rules (47 CFR 76.605(a)(13) and 76.610 through 76.617).

(i) Where the subscriber terminates cable service but will not be using the home wiring to receive another alternative video programming service, the cable operator shall properly cap off its own line in accordance with the Commission's signal leakage requirements. See Subpart K (technical standards) of the Commission's Cable Television Service rules (47 CFR 76.605(a)(13) and 76.610 through 76.617).

(j) Cable operators are prohibited from using any ownership interests they may have in property located on the subscriber's side of the demarcation point, such as molding or conduit, to prevent, impede, or in any way interfere with, a subscriber's right to use his or her home wiring to receive an alternative service. In addition, incumbent cable operators must take reasonable steps within their control to ensure that an alternative service provider has access to the home wiring at the demarcation point. Cable operators and alternative multichannel video programming delivery service providers are required to minimize the potential for signal leakage in accordance with the guidelines set forth in 47 CFR 76.605(a)(13) and 76.610 through 76.617, theft of service and unnecessary disruption of the consumer's premises.

(k) Definitions—Normal operating conditions—The term ''normal operating conditions'' shall have the same meaning as at 47 CFR 76.309(c)(4)(ii).

(l) The provisions of § 76.802 shall apply to all MVPDs in the same manner that they apply to cable operators.

[61 FR 6137, Feb. 16, 1996, as amended at 62 FR 61031, Nov. 14, 1997; 68 FR 13855, Mar. 21, 2003]

§ 76.804 Disposition of home run wiring.

(a) *Building-by-building disposition of home run wiring.* (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the MDU owner, the MDU owner may give the MVPD a minimum of 90 days' written notice that its access to the entire building will be terminated to invoke the procedures in this section. The MVPD will then have 30 days to notify the MDU owner in writing of its election for all the home run wiring inside the MDU building: to remove the wiring and restore the MDU building consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first; to abandon and not disable the wiring at the end of the 90-day notice period; or to sell the wiring to the MDU building owner. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider shall notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the incumbent provider elects to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider that has elected to abandon its home run wiring may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the MDU owner declines to purchase the home run wiring, the MDU owner may permit an alternative provider that has been authorized to provide service to the MDU to negotiate to purchase the wiring.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (a)(1) of this section, the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. If the parties are unable to agree on a price within that 30-day time period, the incumbent must elect: to abandon

without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent provider chooses to abandon or remove its wiring, it must notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment shall become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. If the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first.

(3) If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90-day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures. If the incumbent fails to comply with any of the deadlines established herein, it shall be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period.

(4) The MDU owner shall be permitted to exercise the rights of individual subscribers under this subsection for purposes of the disposition of the cable home wiring under § 76.802. When an MDU owner notifies an incumbent provider under this section that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider shall, in accordance with our current home wiring rules: offer to sell to the MDU owner any home wiring within the individual dwelling units that the incumbent provider owns and intends to remove; and provide the MDU owner with the total per-foot replacement cost of such home wiring. This information must be provided to the MDU owner within 30 days of the initial notice that the incumbent's access to the building will be terminated. If the MDU owner declines to purchase the cable home wiring, the MDU owner may allow the alternative provider to purchase the home wiring upon service termination under the terms and conditions of § 76.802. If the MDU owner or the alternative provider elects to purchase the home wiring under these rules, it must so notify the incumbent MVPD provider not later than 30 days before the incumbent's termination of access to the building will become effective. If the MDU owner and the alternative provider fail to elect to purchase the home wiring, the incumbent provider must then remove the cable home wiring, under normal operating conditions, within 30 days of actual service termination, or make no subsequent attempt to remove it or to restrict its use.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(b) *Unit-by-unit disposition of home run wiring:*

(1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes, the MDU owner may permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit in the MDU. The MDU owner must provide at least 60 days' written notice to the incumbent MVPD of the MDU owner's intention to invoke this procedure. The incumbent MVPD will then have 30 days to provide a single written election to the MDU owner as to whether, for each and every one of its home run wires dedicated to a subscriber who chooses an alternative provider's service, the incumbent MVPD will: remove

the wiring and restore the MDU building consistent with state law; abandon the wiring without disabling it; or sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative provider to purchase it. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election within this 30-day period for each home run wire solely dedicated to a subscriber who switches back from the alternative provider to the incumbent MVPD.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (b)(1), the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. During this 30-day negotiation period, the parties may arrange for an up-front lump sum payment in lieu of a unit-by-unit payment. If the parties are unable to agree on a price during this 30-day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring within 14 days. If subscribers wish to switch service providers after the expiration of the 60-day notice period but before the expert issues its price determination, the procedures set forth in paragraph (b)(3) of this section shall be followed, subject to the price established by the arbitrator. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures.

(3) When an MVPD that is currently providing service to a subscriber is notified either orally or in writing that that subscriber wishes to terminate service and that another service provider intends to use the existing home run wire to provide service to that particular subscriber, a provider that has elected to remove its home run wiring pursuant to paragraph (b)(1) or (b)(2) of this section will have seven days to remove its home run wiring and restore the building consistent with state law. If the subscriber has requested service termination more than seven days in the future, the seven-day removal period shall begin on the date of actual service termination (and, in any event, shall end no later than seven days after the requested date of termination). If the provider has elected to abandon or sell the wiring pursuant to paragraph (b)(1) or (b)(2) of this section, the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent shall inform the party requesting service termination, at the time of such request, of the date on which service will be terminated. The incumbent provider shall make the home run wiring accessible to the alternative provider within the 24-hour period prior to actual service termination.

(4) If the incumbent provider fails to comply with any of the deadlines established herein, the home run wiring shall be considered abandoned, and the incumbent may not prevent the alternative provider from using the home run wiring immediately to provide service. The alternative provider or the MDU owner may act as the subscriber's agent in providing notice of a subscriber's desire to change services, consistent with state law. If a subscriber's

service is terminated without notification that another service provider intends to use the existing home run wiring to provide service to that particular subscriber, the incumbent provider will not be required to carry out its election to sell, remove or abandon the home run wiring; the incumbent provider will be required to carry out its election, however, if and when it receives notice that a subscriber wishes to use the home run wiring to receive an alternative service. Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will apply where a subscriber's service is terminated without notifying the incumbent provider that the subscriber wishes to use the home run wiring to receive an alternative service.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(6) Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will continue to apply to the wiring on the subscriber's side of the cable demarcation point.

(c) The procedures set forth in paragraphs (a) and (b) of this section shall apply unless and until the incumbent provider obtains a court ruling or an injunction within forty-five (45) days following the initial notice enjoining its displacement.

(d) After the effective date of this rule, MVPDs shall include a provision in all service contracts entered into with MDU owners setting forth the disposition of any home run wiring in the MDU upon the termination of the contract.

(e) Incumbents are prohibited from using any ownership interest they may have in property located on or near the home run wiring, such as molding or conduit, to prevent, impede, or in any way interfere with, the ability of an alternative MVPD to use the home run wiring pursuant to this section.

(f) Section 76.804 shall apply to all MVPDs.

[62 FR 61032, Nov. 14, 1997, as amended at 68 FR 13855, Mar. 21, 2003]

§ 76.805 Access to molding.

(a) An MVPD shall be permitted to install one or more home run wires within the existing molding of an MDU where the MDU owner finds that there is sufficient space to permit the installation of the additional wiring without interfering with the ability of an existing MVPD to provide service, and gives its affirmative consent to such installation. This paragraph shall not apply where the incumbent provider has an exclusive contractual right to occupy the molding.

(b) If an MDU owner finds that there is insufficient space in existing molding to permit the installation of the new wiring without interfering with the ability of an existing MVPD to provide service, but gives its affirmative consent to the installation of larger molding and additional wiring, the MDU owner (with or without the assistance of the incumbent and/or the alternative provider) shall be permitted to remove the existing molding, return such molding to the incumbent, if appropriate, and install additional wiring and larger molding in order to contain the additional wiring. This paragraph shall not apply where the incumbent provider possesses a contractual right to maintain its molding on the premises without alteration by the MDU owner.

(c) The alternative provider shall be required to pay any and all installation costs associated with the implementation of paragraphs (a) or (b) of this section, including the costs of restoring the MDU owner's property to its original condition, and the costs of repairing any damage to the incumbent provider's wiring or other property.

[62 FR 61033, Nov. 14, 1997]

§ 76.806 Pre-termination access to cable home wiring.

(a) Prior to termination of service, a customer may: install or provide for the installation of their own cable home wiring; or connect additional home wiring, splitters or other equipment within their premises to the wiring owned by the cable operator, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact.

(b) Cable operators may require that home wiring (including passive splitters, connectors and other equipment

used in the installation of home wiring) meets reasonable technical specifications, not to exceed the technical specifications of such equipment installed by the cable operator; provided however, that if electronic or physical harm is caused to the cable system, the cable operator may impose additional technical specifications to eliminate such harm. To the extent a customer's installations or rearrangements of wiring degrade the signal quality of or interfere with other customers' signals, or cause electronic or physical harm to the cable system, the cable operator may discontinue service to that subscriber until the degradation or interference is resolved.

(c) Customers shall not physically cut, substantially alter, improperly terminate or otherwise destroy cable operator-owned home wiring.

(d) Section 76.806 shall apply to all MVPDs.

[62 FR 61034, Nov. 14, 1997, as amended at 68 FR 13855, Mar. 21, 2003]

Subpart N—Cable Rate Regulation

SOURCE: 58 FR 29753, May 21, 1993, unless otherwise noted.

EFFECTIVE DATE NOTE: The effective date of the amendments to part 76, published at 58 FR 29737 (May 21, 1993), extended to October 1, 1993, by an order published at 58 FR 33560 (June 18, 1993), and moved to September 1, 1993, by an order published at 58 FR 41042 (August 2, 1993), is temporarily stayed for those cable systems that have 1,000 or fewer subscribers. This limited, temporary stay is effective September 1, 1993, and will remain in effect until the Commission terminates the stay and establishes a new effective date in an order on reconsideration addressing the administrative burdens and costs of compliance for small cable systems. The Commission will publish in the FEDERAL REGISTER the new effective date of the rules with respect to small cable systems at that time.

§ 76.901 Definitions.

(a) *Basic service*. The basic service tier shall, at a minimum, include all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system) any public, educational, and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming signals a service added to the basic tier by the cable operator.

(b) *Cable programming service*. Cable programming service includes any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

(1) Video programming carried on the basic service tier as defined in this section;

(2) Video programming offered on a pay-per-channel or pay-per-program basis; or

(3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:

(i) Consists of commonly-identified video programming; and

(ii) Is not bundled with any regulated tier of service.

(c) *Small System*. A small system is a cable television system that serves 15,000 or fewer subscribers. The service area of a small system shall be determined by the number of subscribers that are served by the system's principal headend, including any other headends or microwave receive sites that are technically integrated to the principal headend.

(d) *New Product Tier*. A new product tier (''NPT'') is a cable programming service tier meeting the conditions set forth in § 76.987.

(e) *Small cable company*. A small cable company is a cable television operator that serves a total of 400,000 or fewer subscribers over one or more cable systems.

(f) *Small cable operator*. A small cable operator is an operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000. For purposes of this definition, an operator shall be deemed affiliated with another entity if that entity holds a 20 percent

or greater equity interest (not including truly passive investment) in the operator or exercises de jure or de facto control over the operator.

NOTE 1 TO PARAGRAPH (f): Using the most reliable sources publicly available, the Commission periodically will determine and give public notice of the subscriber count that will serve as the 1 percent threshold until a new number is calculated.

NOTE 2 TO PARAGRAPH (f): For a discussion of passive interests with respect to small cable operators, see Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96–85, FCC 99–57 (released March 29, 1999).

NOTE 3 TO PARAGRAPH (f): If two or more entities unaffiliated with each other each hold an equity interest in the small cable operator, the equity interests of the unaffiliated entities will not be aggregated with each other for the purpose of determining whether an entity meets or passes the 20 percent affiliation threshold.

[58 FR 29753, May 21, 1993, as amended at 59 FR 62623, Dec. 6, 1994; 60 FR 35864, July 12, 1995; 64 FR 35950, July 2, 1999]

§ 76.905 Standards for identification of cable systems subject to effective competition.

(a) Only the rates of cable systems that are not subject to effective competition may be regulated.

(b) A cable system is subject to effective competition when any one of the following conditions is met:

(1) Fewer than 30 percent of the households in its franchise area subscribe to the cable service of a cable system.

(2) The franchise area is:

(i) Served by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.

(3) A multichannel video programming distributor, operated by the franchising authority for that franchise area, offers video programming to at least 50 percent of the households in the franchise area.

(4) A local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

(c) For purposes of paragraphs (b)(1) through (b)(3) of this section, each separately billed or billable customer will count as a household subscribing to or being offered video programming services, with the exception of multiple dwelling buildings billed as a single customer. Individual units of multiple dwelling buildings will count as separate households. The term ''households'' shall not include those dwellings that are used solely for seasonal, occasional, or recreational use.

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

(e) Service of a multichannel video programming distributor will be deemed offered:

(1) When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and

(2) When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.

(f) For purposes of determining the number of households subscribing to the services of a multichannel video programming distributor other than the largest multichannel video programming distributor, under paragraph (b)(2)(ii) of this section, the number of subscribers of all multichannel video programming distributors that offer service in the franchise area will be aggregated.

(g) In order to offer comparable programming as that term is used in this section, a competing multichannel video programming distributor must offer at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.

(h) For purposes of paragraph (b)(2) of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities. Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501.

(i) For purposes of paragraph (b)(4) of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities. Attributable interest shall be defined as follows:

(1) A 10% partnership or voting equity interest in a corporation will be cognizable.

(2) Subject to paragraph (i)(3), a limited partnership interest of 10% or more shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies. Certifications must be made pursuant to the guidelines set forth in Note 2(f) to § 76.501.

(3) Notwithstanding paragraph (i)(2), the holder of an equity or debt interest or interests in an entity covered by this rule shall have that interest attributed if the equity (including all stockholdings, whether voting or nonvoting, common or preferred, and partnership interests) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (all equity plus all debt) of that entity.

(4) Discrete ownership interests held by the same individual or entity will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if the sum of the interests other than those held by or through ''passive investors'' is equal to or exceeds 10%.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17972, Apr. 15, 1994; 61 FR 18978, Apr. 30, 1996; 62 FR 6495, Feb. 12, 1997; 64 FR 35950, July 2, 1999; 64 FR 67196, Dec. 1, 1999; 69 FR 72046, Dec. 10, 2004]

§ 76.906 Presumption of no effective competition.

In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.

§ 76.907 Petition for a determination of effective competition.

(a) A cable operator (or other interested party) may file a petition for a determination of effective competition with the Commission pursuant to the Commission's procedural rules in § 76.7.

(b) The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition, as defined in § 76.905, exists in the franchise area.

NOTE TO PARAGRAPH (b): The criteria for determining effective competition pursuant to § 76.905(b)(4) are described in Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96–85, FCC 99–57 (released March 29, 1999).

(c) If the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days.

Such responses may be limited to numerical totals. In addition, with respect to petitions filed seeking to demonstrate the presence of effective competition pursuant to § 76.905(b)(4), the Commission may issue an order directing one or more persons to produce information relevant to the petition's disposition.

[64 FR 35950, July 2, 1999]

§ 76.910 Franchising authority certification.

(a) A franchising authority must be certified by the Commission in order to regulate the basic service tier and associated equipment of a cable system within its jurisdiction.

(b) To be certified, the franchising authority must file with the Commission a written certification that:

(1) The franchising authority will adopt and administer regulations with respect to the rates for the basic service tier that are consistent with the regulations prescribed by the Commission for regulation of the basic service tier;

(2) The franchising authority has the legal authority to adopt, and the personnel to administer, such regulations;

(3) Procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties; and

(4) The cable system in question is not subject to effective competition. Unless a franchising authority has actual knowledge to the contrary, the franchising authority may rely on the presumption in § 76.906 that the cable operator is not subject to effective competition.

(c) The written certification described in paragraph (b) of this section shall be made by filing the FCC form designated for that purpose. The form must be filed by

(1) Registered mail, return receipt requested, or

(2) Hand-delivery to the Commission and a date-stamped copy obtained. The date on the return receipt or on the date-stamped copy is the date filed.

(d) A copy of the certification form described in paragraph (c) of this section must be served on the cable operator before or on the same day it is filed with the Commission.

(e) Unless the Commission notifies the franchising authority otherwise, the certification will become effective 30 days after the date filed, *provided, however*, That the franchising authority may not regulate the rates of a cable system unless it:

(1) Adopts regulations:

(i) Consistent with the Commission's regulations governing the basic tier; and

(ii) Providing a reasonable opportunity for consideration of the views of interested parties, within 120 days of the effective date of certification; and

(2) Notifies the cable operator that the authority has been certified and has adopted the regulations required by paragraph (e)(1) of this section.

(f) If the Commission denies a franchising authority's certification, the Commission will notify the franchising authority of any revisions or modifications necessary to obtain approval.

§ 76.911 Petition for reconsideration of certification.

(a) A cable operator (or other interested party) may challenge a franchising authority's certification by filing a petition for reconsideration pursuant to § 1.106. The petition may allege either of the following:

(1) The cable operator is not subject to rate regulation because effective competition exists as defined in § 76.905. Sections 76.907(b) and (c) apply to petitions filed under this section.

(2) The franchising authority does not meet the certification standards set forth in 47 U.S.C. 543(a)(3).

(b) Stay of rate regulation. (1) The filing of a petition for reconsideration pursuant to paragraph (a)(1) of this section will automatically stay the imposition of rate regulation pending the outcome of the reconsideration proceeding.

(2) A petitioner filing pursuant to paragraph (a)(2) of this section may request a stay of rate regulation.

(3) In any case in which a stay of rate regulation has been granted, if the petition for reconsideration is denied, the cable operator may be required to refund any rates or portion of rates

above the permitted tier charge or permitted equipment charge which were collected from the date the operator implements a prospective rate reduction back in time to September 1, 1993, or one year, whichever is shorter.

(c) The filing of a petition for reconsideration alleging the presence of effective competition based on frivolous grounds is prohibited, and may be subject to forfeitures.

(d) If the Commission upholds a challenge to a certification filed pursuant to paragraph (a)(2) of this section, the Commission will notify the franchising authority of the revisions necessary to secure approval and provide the authority an opportunity to amend its certification however necessary to secure approval. *Provided, however,* That pending approval of certification, the Commission will assume jurisdiction over basic cable service rates in that franchise area.

[58 FR 29753, May 21, 1993, as amended at 58 FR 46735, Sept. 2, 1993; 64 FR 35950, July 2, 1999]

§ 76.912 Joint certification.

(a) Franchising authorities may apply for joint certification and may engage in joint regulation, including, but not limited to, joint hearings, data collection, and ratemaking. Franchising authorities jointly certified to regulate their cable system(s) may make independent rate decisions.

(b) Franchising authorities may apply for joint certification regardless of whether the authorities are served by the same cable system or by different cable systems and regardless of whether the rates in each franchising area are uniform.

§ 76.913 Assumption of jurisdiction by the Commission.

(a) Upon denial or revocation of the franchising authority's certification, the Commission will regulate rates for cable services and associated equipment of a cable system not subject to effective competition, as defined in § 76.905, in a franchise area. Such regulation by the Commission will continue until the franchising authority has obtained certification or recertification.

(b) A franchising authority unable to meet certification standards may petition the Commission to regulate the rates for basic cable service and associated equipment of its franchisee when:

(1) The franchising authority lacks the resources to administer rate regulation.

(2) The franchising authority lacks the legal authority to regulate basic service rates; *Provided, however,* That the authority must submit with its request a statement detailing the nature of the legal infirmity.

(c) The Commission will regulate basic service rates pursuant to this Section until the franchising authority qualifies to exercise jurisdiction pursuant to § 76.916.

[58 FR 29753, May 21, 1993, as amended at 62 FR 6495, Feb. 12, 1997]

EFFECTIVE DATE NOTE: At 62 FR 6495, Feb. 12, 1997, in § 76.913, paragraph (b)(1) was revised. This amendment contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.914 Revocation of certification.

(a) A franchising authority's certification shall be revoked if:

(1) After the franchising authority has been given a reasonable opportunity to comment and cure any minor nonconformance, it is determined that state and local laws and regulations are in substantial and material conflict with the Commission's regulations governing cable rates.

(2) After being given an opportunity to cure the defect, a franchising authority fails to fulfill one of the three conditions for certification, set forth in 47 U.S.C. 543(a)(3), or any of the provisions of § 76.910(b).

(b) In all cases of revocation, the Commission will assume jurisdiction over basic service rates until an authority becomes recertified. The Commission will also notify the franchising authority regarding the corrective action that may be taken.

(c) A cable operator may file a petition for special relief pursuant to § 76.7 of this part seeking revocation of a franchising authority's certification.

(d) While a petition for revocation is pending, and absent grant of a stay, the franchising authority may continue to

regulate the basic service rates of its franchisees.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17972, Apr. 15, 1994; 64 FR 6572, Feb. 10, 1999]

§ 76.916 Petition for recertification.

(a) After its request for certification has been denied or its existing certification has been revoked, a franchising authority wishing to assume jurisdiction to regulate basic service and associated equipment rates must file a ''Petition for Recertification'' accompanied by a copy of the earlier decision denying or revoking certification.

(b) The petition must:

(1) Meet the requirements set forth in 47 U.S.C. 543(a)(3);

(2) State that the cable system is not subject to effective competition; and

(3) Contain a clear showing, supported by either objectively verifiable data such as a state statute, or by affidavit, that the reasons for the earlier denial or revocation no longer pertain.

(c) The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification.

(d) Oppositions may be filed within 15 days after the petition is filed, and must be served on the petitioner. Replies may be filed within seven days of filing of oppositions, and must be served on the opposing party(ies).

§ 76.917 Notification of certification withdrawal.

A franchising authority that has been certified to regulate rates may, at any time, notify the Commission that it no longer intends to regulate basic cable rates. Such notification shall include the franchising authority's determination that rate regulation no longer serves the interests of cable subscribers served by the cable system within the franchising authority's jurisdiction, and that it has received no consideration for its withdrawal of certification. Such notification shall be served on the cable operator. The Commission retains the right to review such determinations and to request the factual finding of the franchising authority underlying its decision to withdraw certification. The franchising authority's withdrawal becomes effective upon notification to the Commission.

[59 FR 17972, Apr. 15, 1994]

§ 76.920 Composition of the basic tier.

Every subscriber of a cable system must subscribe to the basic tier in order to subscribe to any other tier of video programming or to purchase any other video programming.

§ 76.921 Buy-through of other tiers prohibited.

(a) No cable system operator, other than an operator subject to effective competition, may require the subscription to any tier other than the basic service tier as a condition of subscription to video programming offered on a per channel or per program charge basis. A cable operator may, however, require the subscription to one or more tiers of cable programming services as a condition of access to one or more tiers of cable programming services.

(b) A cable operator not subject to effective competition may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per-channel or per-program charge basis.

(c) With respect to cable systems not subject to effective competition, prior to October 5, 2002, the provisions of paragraph (a) of this section shall not apply to any cable system that lacks the capacity to offer basic service and all programming distributed on a per channel or per program basis without also providing other intermediate tiers of service:

(1) By controlling subscriber access to nonbasic channels of service through addressable equipment electronically controlled from a central control point; or

(2) Through the installation, noninstallation, or removal of frequency filters (traps) at the premises of subscribers without other alteration in system configuration or design and without causing degradation in the technical quality of service provided.

(d) With respect to cable systems not subject to effective competition, any retiering of channels or services that is not undertaken in order to accomplish

legitimate regulatory, technical, or customer service objectives and that is intended to frustrate or has the effect of frustrating compliance with paragraphs (a) through (c) of this section is prohibited.

[62 FR 6495, Feb. 12, 1997]

§ 76.922 Rates for the basic service tier and cable programming services tiers.

(a) *Basic and cable programming service tier rates.* Basic service tier and cable programming service rates shall be subject to regulation by the Commission and by state and local authorities, as is appropriate, in order to assure that they are in compliance with the requirements of 47 U.S.C. 543. Rates that are demonstrated, in accordance with this part, not to exceed the ''Initial Permitted Per Channel Charge'' or the ''Subsequent Permitted Per Channel Charge'' as described in this section, or the equipment charges as specified in § 76.923, will be accepted as in compliance. The maximum monthly charge per subscriber for a tier of regulated programming services offered by a cable system shall consist of a permitted per channel charge multiplied by the number of channels on the tier, plus a charge for franchise fees. The maximum monthly charges for regulated programming services shall not include any charges for equipment or installations. Charges for equipment and installations are to be calculated separately pursuant to § 76.923. The same rate-making methodology (either the benchmark methodology found in paragraph (b) of this section, or a cost-of-service showing) shall be used to set initial rates on all rate regulated tiers, and shall continue to provide the basis for subsequent permitted charges.

(b) *Permitted charge on May 15, 1994.* (1) The permitted charge for a tier of regulated program service shall be, at the election of the cable system, either:

(i) A rate determined pursuant to a cost-of-service showing;

(ii) The full reduction rate;

(iii) The transition rate, if the system is eligible for transition relief; or

(iv) A rate based on a streamlined rate reduction, if the system is eligible to implement such a rate reduction. Except where noted, the term ''rate'' in this subsection means a rate measured on an average regulated revenue per subscriber basis.

(2) *Full reduction rate.* The ''full reduction rate'' on May 15, 1994 is the system's September 30, 1992 rate, measured on an average regulated revenue per subscriber basis, reduced by 17 percent, and then adjusted for the following:

(i) The establishment of permitted equipment rates as required by § 76.923;

(ii) Inflation measured by the GNP-PI between October 1, 1992 and September 30, 1993;

(iii) Changes in the number of program channels subject to regulation that are offered on the system's program tiers between September 30, 1992 and the earlier of the initial date of regulation for any tier or February 28, 1994; and

(iv) Changes in external costs that have occurred between the earlier of the initial date of regulation for any tier or February 28, 1994, and March 31, 1994.

(3) *March 31, 1994 benchmark rate.* The ''March 31, 1994 benchmark rate'' is the rate so designated using the calculations in Form 1200.

(4) *Transition rates*—(i) *Termination of transition relief for systems other than low price systems.* Systems other than low-price systems that already have established a transition rate as of the effective date of this rule may maintain their current rates, as adjusted under the price cap requirements of § 76.922(d), until two years from the effective date of this rule. These systems must begin charging reasonable rates in accordance with applicable rules, other than transition relief, no later than that date.

(ii) *Low-price systems.* Low price systems shall be eligible to establish a transition rate for a tier.

(A) A low-price system is a system:

(*1*) Whose March 31, 1994 rate is below its March 31, 1994 benchmark rate, or

(*2*) Whose March 31, 1994 rate is above its March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below its March 31, 1994 benchmark rate, as defined in § 76.922(b)(2), above.

(B) The transition rate on May 15, 1994 for a system whose March 31, 1994

rate is below its March 31, 1994 benchmark rate is the system's March 31, 1994 rate. The March 31, 1994 rate is in both cases adjusted:

(*1*) To establish permitted rates for equipment as required by § 76.923 if such rates have not already been established; and

(*2*) For changes in external costs incurred between the earlier of initial date of regulation of any tier or February 28, 1994, and March 31, 1994, to the extent changes in such costs are not already reflected in the system's March 31, 1994 rate. The transition rate on May 15, 1994 for a system whose March 31, 1994 adjusted rate is above its March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below its March 31, 1994 benchmark rate, is the March 31, 1994 benchmark rate, adjusted to establish permitted rates for equipment as required by § 76.923 if such rates have not already been established.

(iii) Notwithstanding the foregoing, the transition rate for a tier shall be adjusted to reflect any determination by a local franchising authority and/or the Commission that the rate in effect on March 31, 1994 was higher (or lower) than that permitted under applicable Commission regulations. A filing reflecting the adjusted rate shall be submitted to all relevant authorities within 30 days after issuance of the local franchising authority and/or Commission determination. A system whose March 31, 1994 rate is determined by a local franchising authority or the Commission to be too high under the Commission's rate regulations in effect before May 15, 1994 will be subject to any refund liability that may accrue under those rules. In addition, the system will be liable for refund liability under the rules in effect on and after May 15, 1994. Such refund liability will be measured by the difference in the system's March 31, 1994 rate and its permitted March 31, 1994 rate as calculated under the Commission's rate regulations in effect before May 15, 1994. The refund liability will accrue according to the time periods set forth in §§ 76.942, and 76.961 of the Commission's rules.

(5) *Streamlined rate reductions.* (i) Upon becoming subject to rate regulation, a small system owned by a small cable company may make a streamlined rate reduction, subject to the following conditions, in lieu of establishing initial rates pursuant to the other methods of rate regulation set forth in this subpart:

(A) Small systems that are owned by small cable companies and that have not already restructured their rates to comply with the Commission's rules may establish rates for regulated program services and equipment by making a streamlined rate reduction. Small systems owned by small cable companies shall not be eligible for streamlined rate reductions if they are owned or controlled by, or are under common control or affiliated with, a cable operator that exceeds these subscriber limits. For purposes of this rule, a small system will be considered ''affiliated with'' such an operator if the operator has a 20 percent or greater equity interest in the small system.

(B) The streamlined rate for a tier on May 15, 1994 shall be the system's March 31, 1994 rate for the tier, reduced by 14 percent. A small system that elects to establish its rate for a tier by implementing this streamlined rate reduction must also reduce, at the same time, each billed item of regulated cable service, including equipment, by 14 percent. Regulated rates established using the streamlined rate reduction process shall remain in effect until:

(*1*) Adoption of a further order by the Commission establishing a schedule of average equipment costs;

(*2*) The system increases its rates using the calculations and time periods set forth in FCC Form 1211; or

(*3*) The system elects to establish permitted rates under another available option set forth in paragraph (b)(1) of this section.

(C) *Implementation and notification.* An eligible small system that elects to use the streamlined rate reduction process must implement the required rate reductions and provide written notice of such reductions to subscribers, the local franchising authority and the Commission according to the following schedule:

(*1*) Within 60 days from the date it receives the initial notice of regulation from the franchising authority or the Commission, the small system must

provide written notice to subscribers and the franchising authority, or to the Commission if the Commission is regulating the basic tier, that it is electing to set its regulated rates by the streamlined rate reduction process. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided to subscribers and the local franchise authority or Commission.

(*2*) If a cable programming services complaint is filed against the system, the system must provide the required written notice, described in paragraph (b)(5)(iii)(C)(*1*) of this section, to subscribers, the local franchising authority or the Commission within 60 days after the complaint is filed. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided.

(*3*) A small system is required to give written notice of, and to implement, the rates that are produced by the streamlined rate reduction process only once. If a system has already provided notice of, and implemented, the streamlined rate reductions when a given tier becomes subject to regulation, it must report to the relevant regulator (either the franchising authority or the Commission) in writing within 30 days of becoming subject to regulation that it has already provided the required notice and implemented the required rate reductions.

(ii) The stremlined rate for a tier on May 15, 1994 shall be the system's March 31, 1994 rate for the tier, reduced by 14 percent. A small system that elects to establish its rate for a tier by implementing this streamlined rate reduction must also reduce, at the same time, each billed item of regulated cable service, including equipment, by 14 percent. Regulated rates established using the streamlined rate reduction process shall remain in effect until:

(A) Adoption of a further order by the Commission establishing a schedule of average equipment costs;

(B) The system increases its rates using the calculations and time periods set forth in FCC Form 1211; or

(C) The system elects to establish permitted rates under another available option set forth in paragraph (b)(1) of this section.

(iii) *Implementation and notification*. An eligible small system that elects to use the streamlined rate reduction process must implement the required rate reductions and provide written notice of such reductions to subscribers, the local franchising authority and the Commission according to the following schedule:

(A) Where the franchising authority has been certified by the Commission to regulate the small system's basic service tier rates as of May 15, 1994, the system must notify the franchising authority and its subscribers in writing that it is electing to set its regulated rates by the streamline rate reduction process. Such notice must be given by June 15, 1994, and must also describe the new rates that will result from the streamlined rate reduction process. Those rates must then be implemented within 30 days after the written notification has been provided to subscribers and the local franchising authority.

(B) Where the franchising authority has not been certified to regulate basic service tier rates by May 15, 1994, the small system must provide the written notice to subscribers and the franchising authority, described in paragraph (b)(5)(iii)(A) of this section, within 30 days from the date it receives the initial notice of regulation from the franchising authority. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided to subscribers and the local franchise authority.

(C) Where the Commission is regulating the small system's basic service tier rates as of May 15, 1994, the system must notify the Commission and its subscribers in writing that it is electing to set its regulated rates by the streamlined rate reduction process. Such notice must be given by June 15, 1994, and must also describe the new rates that will result from the streamlined rate reduction process. Those rates must then be implemented within 30 days after the written notification has been provided to subscribers and the Commission.

(D) Where the Commission begins regulating basic service rates after

May 15, 1994, the small system must provide the written notice to subscribers and the Commission, described in paragraph (b)(5)(iii)(C) of this section, within 30 days from the date it receives an initial notice of regulation. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided to subscribers and the Commission.

(E) If a complaint about its cable programming service rates has been filed with the Commission on or before May 15, 1994, the small system must provide the written notice described in paragraph (b)(5)(iii)(A) of this section, to subscribers, the local franchising authority and the Commission by June 15, 1994. If a cable programming services complaint is filed against the system after May 15, 1994, the system must provide the required written notice to subscribers, the local franchising authority or the Commission within 30 days after the complaint is filed. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided.

(F) A small system is required to give written notice of, and to implement, the rates that are produced by the streamlined rate reduction process only once. If a system has already provided notice of, and implemented, the streamlined rate reductions when a given tier becomes subject to regulation, it must report to the relevant regulator (either the franchising authority or the Commission) in writing within 30 days of becoming subject to regulation that it has already provided the required notice and implemented the required rate reductions.

(6) *Establishment of initial regulated rates.* (i) Cable systems, other than those eligible for streamlined rate reductions, shall file FCC Forms 1200, 1205, and 1215 for a tier that is regulated on May 15, 1994 by June 15, 1994, or thirty days after the initial date of regulation for the tier. A system that becomes subject to regulation for the first time on or after July 1, 1994 shall also file FCC Form 1210 at the time it files FCC Forms 1200, 1205 and 1215.

(ii) A cable system will not incur refund liability under the Commission's rules governing regulated cable rates on and after May 15, 1994 if:

(A) Between March 31, 1994 and July 14, 1994, the system does not change the rate for, or restructure in any fashion, any program service or equipment offering that is subject to regulation under the 1992 Cable Act; and

(B) The system establishes a permitted rate defined in paragraph (b) of this section by July 14, 1994. The deferral of refund liability permitted by this subsection will terminate if, after March 31, 1994, the system changes any rate for, or restructures, any program service or equipment offering subject to regulation, and in all events will expire on July 14, 1994. Moreover, the deferral of refund liability permitted by this paragraph does not apply to refund liability that occurs because the system's March 31, 1994 rates for program services and equipment subject to regulation are higher than the levels permitted under the Commission's rules in effect before May 15, 1994.

(7) For purposes of this section, the initial date of regulation for the basic service tier shall be the date on which notice is given pursuant to § 76.910, that the provision of the basic service tier is subject to regulation. For a cable programming services tier, the initial date of regulation shall be the first date on which a complaint on the appropriate form is filed with the Commission concerning rates charged for the cable programming services tier.

(8) For purposes of this section, rates in effect on the initial date of regulation or on September 30, 1992 shall be the rates charged to subscribers for service received on that date.

(9) *Updating data calculations.*

(i) For purposes of this section, if:

(A) A cable operator, prior to becoming subject to regulation, revised its rates to comply with the Commission's rules; and

(B) The data on which the cable operator relied was current and accurate at the time of revision, and the rate is accurate and justified by the prior data; and

(C) Through no fault of the cable operator, the rates that resulted from using such data differ from the rates that would result from using data current and accurate at the time the cable

operator's system becomes subject to regulation; then the cable operator is not required to change its rates to reflect the data current at the time it becomes subject to regulation.

(ii) Notwithstanding the above, any subsequent changes in a cable operator's rates must be made from rate levels derived from data [that was current as of the date of the rate change].

(iii) For purposes of this subsection, if the rates charged by a cable operator are not justified by an analysis based on the data available at the time it initially adjusted its rates, the cable operator must adjust its rates in accordance with the most accurate data available at the time of the analysis.

(c) *Subsequent permitted charge.* (1) The permitted charge for a tier after May 15, 1994 shall be, at the election of the cable system, either:

(i) A rate determined pursuant to a cost-of-service showing,

(ii) A rate determined by application of the Commission's price cap requirements set forth in paragraph (d) of this section to a permitted rate determined in accordance with paragraph (b) of this section, or

(iii) A rate determined by application of the Commission's price cap requirements set forth in paragraph (e) of this section to a permitted rate determined in accordance with paragraph (b) of this section.

(2) The Commission's price cap requirements allow a system to adjust its permitted charges for inflation, changes in the number of regulated channels on tiers, or changes in external costs. After May 15, 1994, adjustments for changes in external costs shall be calculated by subtracting external costs from the system's permitted charge and making changes to that ''external cost component'' as necessary. The remaining charge, referred to as the ''residual component,'' will be adjusted annually for inflation. Cable systems may adjust their rates by using the price cap rules contained in either paragraph (d) or (e) of this section. In addition, cable systems may further adjust their rates using the methodologies set forth in paragraph (n) of this section.

(3) An operator may switch between the quarterly rate adjustment option contained in paragraph (d) of this section and the annual rate adjustment option contained in paragraph (e) of this section, provided that:

(i) Whenever an operator switches from the current quarterly system to the annual system, the operator may not file a Form 1240 earlier than 90 days after the operator proposed its last rate adjustment on a Form 1210; and

(ii) When an operator changes from the annual system to the quarterly system, the operator may not return to a quarterly adjustment using a Form 1210 until a full quarter after it has filed a true up of its annual rate on a Form 1240 for the preceding filing period.

(4) An operator that does not set its rates pursuant to a cost-of-service filing must use the quarterly rate adjustment methodology pursuant to paragraph (d) of this section or annual rate adjustment methodology pursuant to paragraph (e) of this section for both its basic service tier and its cable programming services tier(s).

(d) *Quarterly rate adjustment method*—(1) *Calendar year quarters.* All systems using the quarterly rate adjustment methodology must use the following calendar year quarters when adjusting rates under the price cap requirements. The first quarter shall run from January 1 through March 31 of the relevant year; the second quarter shall run from April 1 through June 30; the third quarter shall run from July 1 through September 30; and the fourth quarter shall run from October 1 through December 31.

(2) *Inflation adjustments.* The residual component of a system's permitted charge may be adjusted annually for inflation. The annual inflation adjustment shall be used on inflation occurring from June 30 of the previous year to June 30 of the year in which the inflation adjustment is made, except that the first annual inflation adjustment shall cover inflation from September 30, 1993 until June 30 of the year in which the inflation adjustment is made. The adjustment may be made after September 30, but no later than August 31, of the next calendar year. Adjustments shall be based on changes in the Gross National Product Price

Index as published by the Bureau of Economic Analysis of the United States Department of Commerce. Cable systems that establish a transition rate pursuant to paragraph (b)(4) of this section may not begin adjusting rates on account of inflation before April 1, 1995. Between April 1, 1995 and August 31, 1995 cable systems that established a transition rate may adjust their rates to reflect the net of a 5.21% inflation adjustment minus any inflation adjustments they have already received. Low price systems that had their March 31, 1994 rates above the benchmark, but their full reduction rate below the benchmark will be permitted to adjust their rates to reflect the full 5.21% inflation factor unless the rate reduction was less than the inflation adjustment received on an FCC Form 393 for rates established prior to May 15, 1994. If the rate reduction established by a low price system that reduced its rate to the benchmark was less than the inflation adjustment received on an FCC Form 393, the system will be permitted to receive the 5.21% inflation adjustment minus the difference between the rate reduction and the inflation adjustment the system made on its FCC Form 393. Cable systems that established a transition rate may make future inflation adjustments on an annual basis with all other cable operators, no earlier than October 1 of each year and no later than August 31 of the following year to reflect the final GNP-PI through June 30 of the applicable year.

(3) *External costs.* (i) Permitted charges for a tier may be adjusted up to quarterly to reflect changes in external costs experienced by the cable system as defined by paragraph (f) of this section. In all events, a system must adjust its rates annually to reflect any decreases in external costs that have not previously been accounted for in the system's rates. A system must also adjust its rates annually to reflect any changes in external costs, inflation and the number of channels on regulated tiers that occurred during the year if the system wishes to have such changes reflected in its regulated rates. A system that does not adjust its permitted rates annually to account for those changes will not be permitted to increase its rates subsequently to reflect the changes.

(ii) A system must adjust its rates in the next calendar year quarter for any decrease in programming costs that results from the deletion of a channel or channels from a regulated tier.

(iii) Any rate increase made to reflect an increase in external costs must also fully account for all other changes in external costs, inflation and the number of channels on regulated tiers that occurred during the same period. Rate adjustments made to reflect changes in external costs shall be based on any changes in those external costs that occurred from the end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable). A system may adjust its rates after the close of a quarter to reflect changes in external costs that occurred during that quarter as soon as it has sufficient information to calculate the rate change.

(e) *Annual rate adjustment method—(1) Generally.* Except as provided for in paragraphs (e)(2)(iii)(B) and (e)(2)(iii)(C) of this section and Section 76.923(o), operators that elect the annual rate adjustment method may not adjust their rates more than annually to reflect inflation, changes in external costs, changes in the number of regulated channels, and changes in equipment costs. Operators that make rate adjustments using this method must file on the same date a Form 1240 for the purpose of making rate adjustments to reflect inflation, changes in external costs and changes in the number of regulated channels and a Form 1205 for the purpose of adjusting rates for regulated equipment and installation. Operators may choose the annual filing date, but they must notify the franchising authority of their proposed filing date prior to their filing. Franchising authorities or their designees may reject the annual filing date chosen by the operator for good cause. If the franchising authority finds good cause to reject the proposed filing date, the franchising authority and the operator should work together in an effort

to reach a mutually acceptable date. If no agreement can be reached, the franchising authority may set the filing date up to 60 days later than the date chosen by the operator. An operator may change its filing date from year-to-year, but except as described in paragraphs (e)(2)(iii)(B) and (e)(2)(iii)(C) of this section, at least twelve months must pass before the operator can implement its next annual adjustment.

(2) *Projecting inflation, changes in external costs, and changes in number of regulated channels.* An operator that elects the annual rate adjustment method may adjust its rates to reflect inflation, changes in external costs and changes in the number of regulated channels that are projected for the 12 months following the date the operator is scheduled to make its rate adjustment pursuant to Section 76.933(g).

(i) *Inflation Adjustments.* The residual component of a system's permitted charge may be adjusted annually to project for the 12 months following the date the operator is scheduled to make a rate adjustment. The annual inflation adjustment shall be based on inflation that occurred in the most recently completed July 1 to June 30 period. Adjustments shall be based on changes in the Gross National Product Price Index as published by the Bureau of Economic Analysis of the United States Department of Commerce.

(ii) *External costs.* (A) Permitted charges for a tier may be adjusted annually to reflect changes in external costs experienced but not yet accounted for by the cable system, as well as for projections in these external costs for the 12-month period on which the filing is based. In order that rates be adjusted for projections in external costs, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. Projections involving copyright fees, retransmission consent fees, other programming costs, Commission regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. Operators may project for increases in franchise related costs to the extent that they are reasonably certain and reasonably quantifiable, but such changes are not presumed reasonably certain and reasonably quantifiable. Operators may pass through increases in franchise fees pursuant to Section 76.933(g).

(B) In all events, a system must adjust its rates every twelve months to reflect any net decreases in external costs that have not previously been accounted for in the system's rates.

(C) Any rate increase made to reflect increases or projected increases in external costs must also fully account for all other changes and projected changes in external costs, inflation and the number of channels on regulated tiers that occurred or will occur during the same period. Rate adjustments made to reflect changes in external costs shall be based on any changes, plus projections, in those external costs that occurred or will occur in the relevant time periods since the periods used in the operator's most recent previous FCC Form 1240.

(iii) *Channel adjustments.* (A) Permitted charges for a tier may be adjusted annually to reflect changes not yet accounted for in the number of regulated channels provided by the cable system, as well as for projected changes in the number of regulated channels for the 12-month period on which the filing is based. In order that rates be adjusted for projected changes to the number of regulated channels, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable.

(B) An operator may make rate adjustments for the addition of required channels to the basic service tier that are required under federal or local law at any time such additions occur, subject to the filing requirements of Section 76.933(g)(2), regardless of whether such additions occur outside of the annual filing cycle. Required channels may include must-carry, local origination, public, educational and governmental access and leased access channels. Should the operator elect not to pass through the costs immediately, it may accrue the costs of the additional channels plus interest, as described in paragraph (e)(3) of this section.

(C) An operator may make one additional rate adjustment during the year to reflect channel additions to the cable programming services tiers or,

where the operator offers only one regulated tier, the basic service tier. Operators may make this additional rate adjustment at any time during the year, subject to the filing requirements of Section 76.933(g)(2), regardless of whether the channel addition occurs outside of the annual filing cycle. Should the operator elect not to pass through the costs immediately, it may accrue the costs of the additional channels plus interest, as described in paragraph (e)(3) of this section.

(3) *True-up and accrual of charges not projected*. As part of the annual rate adjustment, an operator must ''true up'' its previously projected inflation, changes in external costs and changes in the number of regulated channels and adjust its rates for these actual cost changes. The operator must decrease its rates for overestimation of its projected cost changes, and may increase its rates to adjust for underestimation of its projected cost changes.

(i) Where an operator has underestimated costs, future rates may be increased to permit recovery of the accrued costs plus 11.25% interest between the date the costs are incurred and the date the operator is entitled to make its rate adjustment.

(ii) *Per channel adjustment*. Operators may increase rates by a per channel adjustment of up to 20 cents per subscriber per month, exclusive of programming costs, for each channel added to a CPST between May 15, 1994, and December 31, 1997, except that an operator may take the per channel adjustment only for channel additions that result in an increase in the highest number of channels offered on all CPSTs as compared to May 14, 1994, and each date thereafter. Any revenues received from a programmer, or shared by a programmer and an operator in connection with the addition of a channel to a CPST shall first be deducted from programming costs for that channel pursuant to paragraph (d)(3)(x) of this section and then, to the extent revenues received from the programmer are greater than the programming costs, shall be deducted from the per channel adjustment. This deduction will apply on a channel by channel basis. With respect to the per channel adjustment only, this deduction shall not apply to revenues received by an operator from a programmer as commissions on sales of products or services offered through home shopping services.

(iii) If an operator has underestimated its cost changes and elects not to recover these accrued costs with interest on the date the operator is entitled to make its annual rate adjustment, the interest will cease to accrue as of the date the operator is entitled to make the annual rate adjustment, but the operator will not lose its ability to recover such costs and interest. An operator may recover accrued costs between the date such costs are incurred and the date the operator actually implements its rate adjustment.

(iv) Operators that use the annual methodology in their next filing after the release date of this Order may accrue costs and interest incurred since July 1, 1995 in that filing. Operators that file a Form 1210 in their next filing after the release date of this Order, and elect to use Form 1240 in a subsequent filing, may accrue costs incurred since the end of the last quarter to which a Form 1210 applies.

(4) *Sunset provision*. The Commission will review paragraph (e) of this section prior to December 31, 1998 to determine whether the annual rate adjustment methodology should be kept, and whether the quarterly system should be eliminated and replaced with the annual rate adjustment method.

(f) *External costs*. (1) External costs shall consist of costs in the following categories:

(i) State and local taxes applicable to the provision of cable television service;

(ii) Franchise fees;

(iii) Costs of complying with franchise requirements, including costs of providing public, educational, and governmental access channels as required by the franchising authority;

(iv) Retransmission consent fees and copyright fees incurred for the carriage of broadcast signals;

(v) Other programming costs; and

(vi) Commission cable television system regulatory fees imposed pursuant to 47 U.S.C. § 159.

(vii) Headend equipment costs necessary for the carriage of digital broadcast signals.

(2) The permitted charge for a regulated tier shall be adjusted on account of programming costs, copyright fees and retransmission consent fees only for the program channels or broadcast signals offered on that tier.

(3) The permitted charge shall not be adjusted for costs of retransmission consent fees or changes in those fees incurred prior to October 6, 1994.

(4) The starting date for adjustments on account of external costs for a tier of regulated programming service shall be the earlier of the initial date of regulation for any basic or cable service tier or February 28, 1994. Except, for regulated FCC Form 1200 rates set on the basis of rates at September 30, 1992 (using either March 31, 1994 rates initially determined from FCC Form 393 Worksheet 2 or using Form 1200 Full Reduction Rates from Line J6), the starting date shall be September 30, 1992. Operators in this latter group may make adjustment for changes in external costs for the period between September 30, 1992, and the initial date of regulation or February 28, 1994, whichever is applicable, based either on changes in the GNP-PI over that period or on the actual change in the external costs over that period. Thereafter, adjustment for external costs may be made on the basis of actual changes in external costs only.

(5) Changes in franchise fees shall not result in an adjustment to permitted charges, but rather shall be calculated separately as part of the maximum monthly charge per subscriber for a tier of regulated programming service.

(6) Adjustments to permitted charges to reflect changes in the costs of programming purchased from affiliated programmers, as defined in § 76.901, shall be permitted as long as the price charged to the affiliated system reflects either prevailing company prices offered in the marketplace to third parties (where the affiliated program supplier has established such prices) or the fair market value of the programming.

(i) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(ii) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(A) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(B) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(7) Adjustments to permitted charges on account of increases in costs of programming shall be further adjusted to reflect any revenues received by the operator from the programmer. Such adjustments shall apply on a channel-by-channel basis.

(8) In calculating programming expense, operators may add a mark-up of 7.5% for increases in programming costs occurring after March 31, 1994, except that operators may not file for or take the 7.5% mark-up on programming costs for new channels added on or after May 15, 1994 for which the operator has used the methodology set forth in paragraph (g)(3) of this section for adjusting rates for channels added to cable programming service tiers. Operators shall reduce rates by decreases in programming expense plus an additional 7.5% for decreases occurring after May 15, 1994 except with respect to programming cost decreases on channels added after May 15, 1994 for which the rate adjustment methodology in paragraph (g)(3) of this section was used.

(g) *Changes in the number of channels on regulated tiers.* (1) *Generally.* A system may adjust the residual component of its permitted rate for a tier to reflect changes in the number of channels offered on the tier on a quarterly basis. Cable systems shall use FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240 to justify rate changes made on account of changes in the number of channels on a basic service tier (''BST'') or a cable programming service tier (''CPST''). Such rate adjustments shall be based on any changes in the number of regulated channels that occurred from the

end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240. However, when a system deletes channels in a calendar quarter, the system must adjust the residual component of the tier charge in the next calendar quarter to reflect that deletion. Operators must elect between the channel addition rules in paragraphs (g)(2) and (g)(3) of this section the first time they adjust rates after December 31, 1994, to reflect a channel addition to a CPST that occurred on or after May 15, 1994, and must use the elected methodology for all rate adjustments through December 31, 1997. A system that adjusted rates after May 15, 1994, but before January 1, 1995 on account of a change in the number of channels on a CPST that occurred after May 15, 1994, may elect to revise its rates to charge the rates permitted by paragraph (g)(3) of this section on or after January 1, 1995, but is not required to do so as a condition for using the methodology in paragraph (g)(3) of this section for rate adjustments after January 1, 1995. Rates for the BST will be governed exclusively by paragraph (g)(2) of this section, except that where a system offered only one tier on May 14, 1994, the cable operator will be allowed to elect between paragraphs (g)(2) and (g)(3) of this section as if the tier was a CPST.

(2) *Adjusting rates for increases in the number of channels offered between May 15, 1994, and December 31, 1997, on a basic service tier and at the election of the operator on a cable programming service tier.* The following table shall be used to adjust permitted rates for increases in the number of channels offered between May 15, 1994, and December 31, 1997, on a basic service tier and subject to the conditions in paragraph (g)(1) of this section at the election of the operator on a CPST. The entries in the table provide the cents per channel per subscriber per month by which cable operators will adjust the residual component using FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240.

Average No. of regulated channels	Per-channel adjustment factor
7	$0.52
7.5	0.45
8	0.40
8.5	0.36
9	0.33
9.5	0.29
10	0.27
10.5	0.24
11	0.22
11.5	0.20
12	0.19
12.5	0.17
13	0.16
13.5	0.15
14	0.14
14.5	0.13
15–15.5	0.12
16	0.11
16.5–17	0.10
17.5–18	0.09
18.5–19	0.08
19.5–21.5	0.07
22–23.5	0.06
24–26	0.05
26.5–29.5	0.04
30–35.5	0.03
36–46	0.02
46.5–99.5	0.01

In order to adjust the residual component of the tier charge when there is an increase in the number of channels on a tier, the operator shall perform the following calculations:

(i) Take the sum of the old total number of channels on tiers subject to regulation (*i.e.*, tiers that are, or could be, regulated but excluding New Product Tiers) and the new total number of channels and divide the resulting number by two;

(ii) Consult the above table to find the applicable per channel adjustment factor for the number of channels produced by the calculations in step (1). For each tier for which there has been an increase in the number of channels, multiply the per-channel adjustment factor times the change in the number of channels on that tier. The result is the total adjustment for that tier.

(3) *Alternative methodology for adjusting rates for changes in the number of channels offered on a cable programming service tier or a single tier system between May 15, 1994, and December 31, 1997.* This paragraph at the Operator's discretion as set forth in paragraph (g)(1) of this section shall be used to adjust permitted rates for a CPST after December 31, 1994, for changes in the number of channels offered on a CPST between May 15, 1994, and December 31, 1997. For

purposes of paragraph (g)(3) of this section, a single tier system may be treated as if it were a CPST.

(i) *Operators cap attributable to new channels on all CPSTs through December 31, 1997.* Operators electing to use the methodology set forth in this paragraph may increase their rates between January 1, 1995, and December 31, 1997, by up to 20 cents per channel, exclusive of programming costs, for new channels added to CPSTs on or after May 15, 1994, except that they may not make rate adjustments totalling more than $1.20 per month, per subscriber through December 31, 1996, and by more than $1.40 per month, per subscriber through December 31, 1997 (the ''Operator's Cap''). Except to the extent that the programming costs of such channels are covered by the License Fee Reserve provided for in paragraph (g)(3)(iii) of this section, programming costs associated with channels for which a rate adjustment is made pursuant to this paragraph (g)(3) of this section must fall within the Operators' Cap if the programming costs (including any increases therein) are reflected in rates before January 1, 1997. Inflation adjustments pursuant to paragraph (d)(2) or (e)(2) of this section are not counted against the Operator's Cap.

(ii) *Per channel adjustment.* Operators may increase rates by a per channel adjustment of up to 20 cents per subscriber per month, exclusive of programming costs, for each channel added to a CPST between May 15, 1994, and December 31, 1997, except that an operator may take the per channel adjustment only for channel additions that result in an increase in the highest number of channels offered on all CPSTs as compared to May 14, 1994, and each date thereafter. Any revenues received from a programmer, or shared by a programmer and an operator in connection with the addition of a channel to a CPST shall first be deducted from programming costs for that channel pursuant to paragraph (f)(7) of this section and then, to the extent revenues received from the programmer are greater than the programming costs, shall be deducted from the per channel adjustment. This deduction will apply on a channel by channel basis.

(iii) *License fee reserve.* In addition to the rate adjustments permitted in paragraphs (g)(3)(i) and (g)(3)(ii) of this section, operators that make channel additions on or after May 15, 1994 may increase their rates by a total of 30 cents per month, per subscriber between January 1, 1995, and December 31, 1996, for license fees associated with such channels (the ''License Fee Reserve''). The License Fee Reserve may be applied against the initial license fee and any increase in the license fee for such channels during this period. An operator may pass-through to subscribers more than the 30 cents between January 1, 1995, and December 31, 1996, for license fees associated with channels added after May 15, 1994, provided that the total amount recovered from subscribers for such channels, including the License Fee Reserve, does not exceed $1.50 per subscriber, per month. After December 31, 1996, license fees may be passed through to subscribers pursuant to paragraph (f) of this section, except that license fees associated with channels added pursuant to this paragraph (3) will not be eligible for the 7.5% mark-up on increases in programming costs.

(iv) *Timing.* For purposes of determining whether a rate increase counts against the maximum rate increases specified in paragraphs (g)(3)(i) through (g)(3)(ii) of this section, the relevant date shall be when rates are increased as a result of channel additions, not when the addition occurs.

(4) *Deletion of channels.* When dropping a channel from a BST or CPST, operators shall reflect the net reduction in external costs in their rates pursuant to paragraphs (d)(3)(i) and (d)(3)(ii) of this section, or paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section. With respect to channels to which the 7.5% mark-up on programming costs applied pursuant to paragraph (f)(8) of this section, the operator shall treat the mark-up as part of its programming costs and subtract the mark-up from its external costs. Operators shall also reduce the price of that tier by the ''residual'' associated with that channel. For channels that were on a BST or CPST on May 14, 1994, or channels added after that date pursuant to paragraph (g)(2) of this section,

the per channel residual is the charge for their tier, minus the external costs for the tier, and any per channel adjustments made after that date, divided by the total number of channels on the tier minus the number of channels on the tier that received the per channel adjustment specified in paragraph (g)(3) of this section. For channels added to a CPST after May 14, 1994, pursuant to paragraph (g)(3) of this section, the residuals shall be the actual per channel adjustment taken for that channel when it was added to the tier.

(5) *Movement of Channels Between Tiers*. When a channel is moved from a CPST or a BST to another CPST or BST, the price of the tier from which the channel is dropped shall be reduced to reflect the decrease in programming costs and residual as described in paragraph (g)(4) of this section. The residual associated with the shifted channel shall then be converted from per subscriber to aggregate numbers to ensure aggregate revenues from the channel remain the same when the channel is moved. The aggregate residual associated with the shifted channel may be shifted to the tier to which the channel is being moved. The residual shall then be converted to per subscriber figures on the new tier, plus any subsequent inflation adjustment. The price of the tier to which the channel is shifted may then be increased to reflect this amount. The price of that tier may also be increased to reflect any increase in programming cost. An operator may not shift a channel for which it received a per channel adjustment pursuant to paragraph (g)(3) of this section from a CPST to a BST.

(6) *Substitution of channels on a BST or CPST*. If an operator substitutes a new channel for an existing channel on a CPST or a BST, no per channel adjustment may be made. Operators substituting channels on a CPST or a BST shall be required to reflect any reduction in programming costs in their rates and may reflect any increase in programming costs pursuant to paragraphs (d)(3)(i) and (d)(3)(ii), or paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section. If the programming cost for the new channel is greater than the programming cost for the replaced channel, and the operator chooses to pass that increase through to subscribers, the excess shall count against the License Fee Reserve or the Operator Cap when the increased cost is passed through to subscribers. Where an operator substitutes a new channel for a channel on which a 7.5% mark-up on programming costs was taken pursuant to paragraph (f)(8) of this section, the operator may retain the 7.5% mark-up on the license fee of the dropped channel to the extent that it is no greater than 7.5% of programming cost of the new service.

(7) *Headend upgrades*. When adding channels to CPSTs and single-tier systems, cable systems that are owned by a small cable company and incur additional monthly per subscriber headend costs of one full cent or more for an additional channel may choose among the methodologies set forth in paragraphs (g)(2) and (g)(3) of this section. In addition, such systems may increase rates to recover the actual cost of the headend equipment required to add up to seven such channels to CPSTs and single-tier systems, not to exceed $5,000 per additional channel. Rate increases pursuant to this paragraph may occur between January 1, 1995, and December 31, 1997, as a result of additional channels offered on those tiers after May 14, 1994. Headend costs shall be depreciated over the useful life of the equipment. The rate of return on this investment shall not exceed 11.25 percent. In order to recover costs for headend equipment pursuant to this paragraph, systems must certify to the Commission their eligibility to use this paragraph, and the level of costs they have actually incurred for adding the headend equipment and the depreciation schedule for the equipment.

(8) *Sunset provision*. Paragraph (g) of this section shall cease to be effective on January 1, 1998 unless renewed by the Commission.

(h) Permitted charges for a tier shall be determined in accordance with forms and associated instructions established by the Commission.

(i) *Cost of Service Charge*. (1) For purposes of this section, a monthly cost-of-service charge for a basic service tier or a cable programming service tier is an amount equal to the annual

revenue requirement for that tier divided by a number that is equal to 12 times the average number of subscribers to that tier during the test year, except that a monthly charge for a system or tier in service less than one year shall be equal to the projected annual revenue requirement for the first 12 months of operation or service divided by a number that is equal to 12 times the projected average number of subscribers during the first 12 months of operation or service. The calculation of the average number of subscribers shall include all subscribers, regardless of whether they receive service at full rates or at discounts.

(2) A test year for an initial regulated charge is the cable operator's fiscal year preceding the initial date of regulation. A test year for a change in the basic service charge that is after the initial date of regulation is the cable operator's fiscal year preceding the mailing or other delivery of written notice pursuant to Section 76.932. A test year for a change in a cable programming service charge after the initial date of regulation is the cable operator's fiscal year preceding the filing of a complaint regarding the increase.

(3) The annual revenue requirement for a tier is the sum of the return component and the expense component for that tier.

(4) The return component for a tier is the average allowable test year ratebase allocable to the tier adjusted for known and measurable changes occurring between the end of the test year and the effective date of the rate multiplied by the rate of return specified by the Commission or franchising authority.

(5) The expense component for a tier is the sum of allowable test year expenses allocable to the tier adjusted for known and measurable changes occurring between the end of the test year and the effective date of the rate.

(6) The ratebase may include the following:

(i) Prudent investment by a cable operator in tangible plant that is used and useful in the provision of regulated cable services less accumulated depreciation. Tangible plant in service shall be valued at the actual money cost (or the money value of any consideration other than money) at the time it was first used to provide cable service, except that in the case of systems purchased before May 15, 1994 shall be presumed to equal 66% of the total purchase price allocable to assets (including tangible and intangible assets) used to provide regulated services. The 66% allowance shall not be used to justify any rate increase taken after the effective date of this rule. The actual money cost of plant may include an allowance for funds used during construction at the prime rate or the operator's actual cost of funds during construction. Cost overruns are presumed to be imprudent investment in the absence of a showing that the overrun occurred through no fault of the operator.

(ii) An allowance for start-up losses including depreciation, amortization and interest expenses related to assets that are included in the ratebase. Capitalized start-up losses, may include cumulative net losses, plus any unrecovered interest expenses connected to funding the regulated ratebase, amortized over the unexpired life of the franchise, commencing with the end of the loss accumulation phase. However, losses attributable to accelerated depreciation methodologies are not permitted.

(iii) An allowance for start-up losses, if any, that is equal to the lesser of the first two years of operating costs or accumulated losses incurred until the system reached the end of its prematurity stage as defined in Financial Accounting Standards Board Standard 51 (''FASB 51'') less straight-line amortization over a reasonable period not exceeding 15 years that commences at the end of the prematurity phase of operation.

(iv) Intangible assets less amortization that reflect the original costs prudently incurred by a cable operator in organizing and incorporating a company that provides regulated cable services, obtaining a government franchise to provide regulated cable services, or obtaining patents that are used and useful in the provision of cable services.

(v) The cost of customer lists if such costs were capitalized during the prematurity phase of operations less amortization.

(vi) An amount for working capital to the extent that an allowance or disallowance for funds needed to sustain the ongoing operations of the regulated cable service is demonstrated.

(vii) Other intangible assets to the extent the cable operator demonstrates that the asset reflects costs incurred in an activity or transaction that produced concrete benefits or savings for subscribers to regulated cable services that would not have been realized otherwise and the cable operator demonstrates that a return on such an asset does not exceed the value of such a subscriber benefit.

(viii) The portion of the capacity of plant not currently in service that will be placed in service within twelve months of the end of the test year.

(7) Deferred income taxes accrued after the date upon which the operator became subject to regulation shall be deducted from items included in the ratebase.

(8) Allowable expenses may include the following:

(i) All regular expenses normally incurred by a cable operator in the provision of regulated cable service, but not including any lobbying expense, charitable contributions, penalties and fines paid on account of violations of statutes or rules, or membership fees in social, service, recreational or athletic clubs or organizations.

(ii) Reasonable depreciation expense attributable to tangible assets allowable in the ratebase.

(iii) Reasonable amortization expense for prematurely abandoned tangible assets formerly includable in the ratebase that are amortized over the remainder of the original expected life of the asset.

(iv) Reasonable amortization expense for start-up losses and capitalized intangible assets that are includable in ratebase.

(v) Taxes other than income taxes attributable to the provision of regulated cable services.

(vi) An income tax allowance.

(j) *Network upgrade rate increase.* (1) Cable operators that undertake significant network upgrades requiring added capital investment may justify an increase in rates for regulated services by demonstrating that the capital investment will benefit subscribers, including providing television broadcast programming in a digital format.

(2) A rate increase on account of upgrades shall not be assessed on customers until the upgrade is complete and providing benefits to customers of regulated services.

(3) Cable operators seeking an upgrade rate increase have the burden of demonstrating the amount of the net increase in costs, taking into account current depreciation expense, likely changes in maintenance and other costs, changes in regulated revenues and expected economies of scale.

(4) Cable operators seeking a rate increase for network upgrades shall allocate net cost increases in conformance with the cost allocation rules as set forth in § 76.924.

(5) Cable operators that undertake significant upgrades shall be permitted to increase rates by adding the benchmark/price cap rate to the rate increment necessary to recover the net increase in cost attributable to the upgrade.

(k) *Hardship rate relief.* A cable operator may adjust charges by an amount specified by the Commission for the cable programming service tier or the franchising authority for the basic service tier if it is determined that:

(1) Total revenues from cable operations, measured at the highest level of the cable operator's cable service organization, will not be sufficient to enable the operator to attract capital or maintain credit necessary to enable the operator to continue to provide cable service;

(2) The cable operator has prudent and efficient management; and

(3) Adjusted charges on account of hardship will not result in total charges for regulated cable services that are excessive in comparison to charges of similarly situated systems.

(l) *Cost of service showing.* A cable operator that elects to establish a charge, or to justify an existing or changed charge for regulated cable service, based on a cost-of-service showing must submit data to the Commission

or the franchising authority in accordance with forms established by the Commission. The cable operator must also submit any additional information requested by franchising authorities or the Commission to resolve questions in cost-of-service proceedings.

(m) *Subsequent Cost of Service Charges.* No cable operator may use a cost-of-service showing to justify an increase in any charge established on a cost-of-service basis for a period of 2 years after that rate takes effect, except that the Commission or the franchising authority may waive this prohibition upon a showing of unusual circumstances that would create undue hardship for a cable operator.

(n) *Further rate adjustments—Uniform rates.* A cable operator that has established rates in accordance with this section may then be permitted to establish a uniform rate for uniform services offered in multiple franchise areas. This rate shall be determined in accordance with the Commission's procedures and requirements set forth in CS Docket No. 95–174.

[58 FR 29753, May 21, 1993, as amended at 58 FR 46735, Sept. 2, 1993; 59 FR 17957, 17973, 17989, Apr. 15, 1994; 59 FR 53115, Oct. 21, 1994; 59 FR 62623, Dec. 6, 1994; 60 FR 4865, Jan. 25, 1995; 60 FR 10514, Feb. 27, 1995; 60 FR 35864, July 12, 1995; 60 FR 52113, Oct. 5, 1995; 60 FR 54817, Oct. 26, 1995; 61 FR 9367, Mar. 8, 1996; 61 FR 45359, Aug. 29, 1996; 62 FR 6495, Feb. 12, 1997; 62 FR 15121, 15127, Mar. 31, 1997; 62 FR 53576, Oct. 15, 1997; 64 FR 67197, Dec. 1, 1999; 66 FR 16554, Mar. 26, 2001]

EFFECTIVE DATE NOTES: 1. At 60 FR 62633, Dec. 6, 1994, in § 76.922, paragraph (e) was revised. Paragraphs (e)(1) and (e)(2) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 60 FR 52113, Oct. 5, 1995, in § 76.922, paragraphs (e) through (k) were redesignated as (g) through (m); (c), (d), and new (g) through new (m) were revised; a new (e) and a new (f) were added. This amendment contains information collection and recordkeeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

3. At 61 FR 9367, Mar. 8, 1996, in § 76.922, paragraphs (i)(6)(i) and (i)(7) were revised; (i)(6)(ii) through (vii) were redesignated as (i)(6)(iii) through (viii); a new (i)(6)(ii) was added. This amendment contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

4. At 62 FR 6495, Feb. 12, 1997, in § 76.922, paragraph (f)(4) was revised. This amendment contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.923 Rates for equipment and installation used to receive the basic service tier.

(a) *Scope.* (1) The equipment regulated under this section consists of all equipment in a subscriber's home, provided and maintained by the operator, that is used to receive the basic service tier, regardless of whether such equipment is additionally used to receive other tiers of regulated programming service and/or unregulated service. Such equipment shall include, but is not limited to:

(i) Converter boxes;

(ii) Remote control units; and

(iii) Inside wiring.

(2) Subscriber charges for such equipment shall not exceed charges based on actual costs in accordance with the requirements set forth in this section.

Subscriber charges for such equipment shall not exceed charges based on actual costs in accordance with the requirements set forth below.

(b) *Unbundling.* A cable operator shall establish rates for remote control units, converter boxes, other customer equipment, installation, and additional connections separate from rates for basic tier service. In addition, the rates for such equipment and installations shall be unbundled one from the other.

(c) *Equipment basket.* A cable operator shall establish an Equipment Basket, which shall include all costs associated with providing customer equipment and installation under this section. Equipment Basket costs shall be limited to the direct and indirect material and labor costs of providing, leasing, installing, repairing, and servicing customer equipment, as determined in accordance with the cost accounting and cost allocation requirements of § 76.924, except that operators do not have to aggregate costs in a manner consistent with the accounting practices of the operator on April 3, 1993. The Equipment Basket shall not include general

administrative overhead including marketing expenses. The Equipment Basket shall include a reasonable profit.

(1) *Customer equipment*. Costs of customer equipment included in the Equipment Basket may be aggregated, on a franchise, system, regional, or company level, into broad categories. Except to the extent indicated in paragraph (c)(2) of this section, such categorization may be made, provided that each category includes only equipment of the same type, regardless of the levels of functionality of the equipment within each such broad category. When submitting its equipment costs based on average charges, the cable operator must provide a general description of the averaging methodology employed and a justification that its averaging methodology produces reasonable equipment rates. Equipment rates should be set at the same organizational level at which an operator aggregates its costs.

(2) *Basic service tier only equipment*. Costs of customer equipment used by basic-only subscribers may not be aggregated with the costs of equipment used by non-basic-only subscribers. Costs of customer equipment used by basic-only subscribers may, however, be aggregated, consistent with an operator's aggregation under paragraph (c)(1) of this section, on a franchise, system, regional, or company level. The prohibition against aggregation applies to subscribers, not to a particular type of equipment. Alternatively, operators may base its basic-only subscriber cost aggregation on the assumption that all basic-only subscribers use equipment that is the lowest level and least expensive model of equipment offered by the operator, even if some basic-only subscribers actually have higher level, more expensive equipment.

(3) *Installation costs*. Installation costs, consistent with an operator's aggregation under paragraph (c)(1) of this section, may be aggregated, on a franchise, system, regional, or company level. When submitting its installation costs based on average charges, the cable operator must provide a general description of the averaging methodology employed and a justification that its averaging methodology produces reasonable equipment rates. Installation rates should be set at the same organizational level at which an operator aggregates its costs.

(d) *Hourly service charge*. A cable operator shall establish charges for equipment and installation using the Hourly Service Charge (HSC) methodology. The HSC shall equal the operator's annual Equipment Basket costs, excluding the purchase cost of customer equipment, divided by the total person hours involved in installing, repairing, and servicing customer equipment during the same period. The HSC is calculated according to the following formula:

$$\mathrm{HSC} = \frac{\mathrm{EB} - \mathrm{CE}}{\mathrm{H}}$$

Where, EB=annual Equipment Basket Cost; CE=annual purchase cost of all customer equipment; and H=person hours involved in installing and repairing equipment per year. The purchase cost of customer equipment shall include the cable operator's invoice price plus all other costs incurred with respect to the equipment until the time it is provided to the customer.

(e) *Installation charges*. Installation charges shall be either:

(1) The HSC multiplied by the actual time spent on each individual installation; or

(2) The HSC multiplied by the average time spent on a specific type of installation.

(f) *Remote charges*. Monthly charges for rental of a remote control unit shall consist of the average annual unit purchase cost of remotes leased, including acquisition price and incidental costs such as sales tax, financing and storage up to the time it is provided to the customer, added to the product of the HSC times the average number of hours annually repairing or servicing a remote, divided by 12 to determine the monthly lease rate for a remote according to the following formula:

$$\text{Monthly Charge} = \frac{\mathrm{UCE} + (\mathrm{HSC} \times \mathrm{HR})}{12}$$

Where, HR = average hours repair per year; and UCE = average annual unit cost of remote.

(g) *Other equipment charges.* The monthly charge for rental of converter boxes and other customer equipment shall be calculated in the same manner as for remote control units. Separate charges may be established for each category of other customer equipment.

(h) *Additional connection charges.* The costs of installation and monthly use of additional connections shall be recovered as charges associated with the installation and equipment cost categories, and at rate levels determined by the actual cost methodology presented in the foregoing paragraphs (e), (f), and (g) of this section. An operator may recover additional programming costs and the costs of signal boosters on the customers premises, if any, associated with the additional connection as a separate monthly unbundled charge for additional connections.

(i) *Charges for equipment sold.* A cable operator may sell customer premises equipment to a subscriber. The equipment price shall recover the operator's cost of the equipment, including costs associated with storing and preparing the equipment for sale up to the time it is sold to the customer, plus a reasonable profit. An operator may sell service contracts for the maintenance and repair of equipment sold to subscribers. The charge for a service contract shall be the HSC times the estimated average number of hours for maintenance and repair over the life of the equipment.

(j) *Promotions.* A cable operator may offer equipment or installation at charges below those determined under paragraphs (e) through (g) of this section, as long as those offerings are reasonable in scope in relation to the operator's overall offerings in the Equipment Basket and not unreasonably discriminatory. Operators may not recover the cost of a promotional offering by increasing charges for other Equipment Basket elements, or by increasing programming service rates above the maximum monthly charge per subscriber prescribed by these rules. As part of a general cost-of-service showing, an operator may include the cost of promotions in its general system overhead costs.

(k) *Franchise fees.* Equipment charges may include a properly allocated portion of franchise fees.

(l) *Company-wide averaging of equipment costs.* For the purpose of developing unbundled equipment charges as required by paragraph (b) of this section, a cable operator may average the equipment costs of its small systems at any level, or several levels, within its operations. This company-wide averaging applies only to an operator's small systems as defined in § 76.901(c); is permitted only for equipment charges, not installation charges; and may be established only for similar types of equipment. When submitting its equipment costs based on average charges to the local franchising authority or the Commission, an operator that elects company-wide averaging of equipment costs must provide a general description of the averaging methodology employed and a justification that its averaging methodology produces reasonable equipment rates. The local authority or the Commission may require the operator to set equipment rates based on the operator's level of averaging in effect on April 3, 1993, as required by § 76.924(d).

(m) Cable operators shall set charges for equipment and installations to recover Equipment Basket costs. Such charges shall be set, consistent with the level at which Equipment Basket costs are aggregated as provided in § 76.923(c). Cable operators shall maintain adequate documentation to demonstrate that charges for the sale and lease of equipment and for installations have been developed in accordance with the rules set forth in this section.

(n) *Timing of Filings.* An operator shall file FCC Form 1205 in order to establish its maximum permitted rates at the following times:

(1) When the operator sets its initial rates under either the benchmark system or through a cost-of-service showing;

(2) Within 60 days of the end of its fiscal year, for an operator that adjusts its rates under the system described in Section 76.922(d) that allows it to file up to quarterly;

(3) On the same date it files its FCC Form 1240, for an operator that adjusts

its rates under the annual rate adjustment system described in Section 76.922(e). If an operator elects not to file an FCC Form 1240 for a particular year, the operator must file a Form 1205 on the anniversary date of its last Form 1205 filing; and

(4) When seeking to adjust its rates to reflect the offering of new types of customer equipment other than in conjunction with an annual filing of Form 1205, 60 days before it seeks to adjust its rates to reflect the offering of new types of customer equipment.

(o) *Introduction of new equipment*. In setting the permitted charge for a new type of equipment at a time other than at its annual filing, an operator shall only complete Schedule C and the relevant step of the Worksheet for Calculating Permitted Equipment and Installation Charges of a Form 1205. The operator shall rely on entries from its most recently filed FCC Form 1205 for information not specifically related to the new equipment, including but not limited to the Hourly Service Charge. In calculating the annual maintenance and service hours for the new equipment, the operator should base its entry on the average annual expected time required to maintain the unit, *i.e.*, expected service hours required over the life of the equipment unit being introduced divided by the equipment unit's expected life.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17960, 17973, Apr. 15, 1994; 60 FR 52118, Oct. 5, 1995; 61 FR 32709, June 25, 1996]

EFFECTIVE DATE NOTE: At 60 FR 52118, Oct. 5, 1995, in § 76.923, paragraphs (n) and (o) were added. This amendment contains information collection and recordkeeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

§ 76.924 Allocation to service cost categories.

(a) *Applicability*. The requirements of this section are applicable to cable operators for which the basic service tier is regulated by local franchising authorities or the Commission, or, with respect to a cable programming services tier, for which a complaint has been filed with the Commission. The requirements of this section are applicable for purposes of rate adjustments on account of external costs and for cost-of-service showings.

(b) *Accounting requirements*. Cable operators electing cost-of-service regulation or seeking rate adjustments due to changes in external costs shall maintain their accounts:

(1) in accordance with generally accepted accounting principles; and

(2) in a manner that will enable identification of appropriate investments, revenues, and expenses.

(c) *Accounts level*. Except to the extent indicated below, cable operators electing cost of service regulation or seeking adjustments due to changes in external costs shall identify investments, expenses and revenues at the franchise, system, regional, and/or company level(s) in a manner consistent with the accounting practices of the operator on April 3, 1993. However, in all events, cable operators shall identify at the franchise level their costs of franchise requirements, franchise fees, local taxes and local programming.

(d) *Summary accounts*. (1) Cable operators filing for cost-of-service regulation, other than small systems owned by small cable companies, shall report all investments, expenses, and revenue and income adjustments accounted for at the franchise, system, regional and/or company level(s) to the summary accounts listed below.

RATEBASE

Net Working Capital
Headend
Trunk and Distribution Facilities
Drops
Customer Premises Equipment
Construction/Maintenance Facilities and Equipment
Programming Production Facilities and Equipment
Business Offices Facilities and Equipment
Other Tangible Assets
Accumulated Depreciation
Plant Under Construction
Organization and Franchise Costs
Subscriber Lists
Capitalized Start-up Losses
Goodwill
Other Intangibles
Accumulated Amortization
Deferred Taxes

OPERATING EXPENSES

Cable Plant Employee Payroll
Cable Plant Power Expense

Pole Rental, Duct, Other Rental for Cable Plant
Cable Plant Depreciation Expense
Cable Plant Expenses—Other
Plant Support Employee Payroll Expense
Plant Support Depreciation Expense
Plant Support Expense—Other
Programming Activities Employee Payroll
Programming Acquisition Expense
Programming Activities Depreciation Expense
Programming Expense—Other
Customer Services Expense
Advertising Activities Expense
Management Fees
General and Administrative Expenses
Selling General and Administrative Depreciation Expenses
Selling General and Administrative Expenses—Other
Amortization Expense—Franchise and Organizational Costs
Amortization Expense—Customer Lists
Amortization Expense—Capitalized Start-up Loss
Amortization Expense—Goodwill
Amortization Expense—Other Intangibles
Operating Taxes
Other Expenses (Excluding Franchise Fees)
Franchise Fees
Interest on Funded Debt
Interest on Capital Leases
Other Interest Expenses

REVENUE AND INCOME ADJUSTMENTS

Advertising Revenues
Other Cable Revenue Offsets
Gains and Losses on Sale of Assets
Extraordinary Items
Other Adjustments

(2) Except as provided in § 76.934(h), small systems owned by small cable companies that file for cost-of-service regulation shall report all investments, expenses, and revenue and income adjustments accounted for at the franchise, system, regional and/or company level(s) to the following summary accounts:

RATEBASE

Net Working Capital
Headend, Trunk and Distribution System and Support Facilities and Equipment
Drops
Customer Premises Equipment
Production and Office Facilities, Furniture and Equipment
Other Tangible Assets
Accumulated Depreciation
Plant Under Construction
Goodwill
Other Intangibles
Accumulated Amortization
Deferred Taxes

OPERATING EXPENSES

Cable Plant Maintenance, Support and Operations Expense
Programming Production and Acquisition Expense
Customer Services Expense
Advertising Activities Expense
Management Fees
Selling, General and Administrative Expenses
Depreciation Expense
Amortization Expense—Goodwill
Amortization Expense—Other Intangibles
Other Operating Expense (Excluding Franchise Fees)
Franchise Fees
Interest Expense

REVENUE AND INCOME ADJUSTMENTS

Advertising Revenues
Other Cable Revenue Offsets
Gains and Losses on Sale of Assets
Extraordinary Items
Other Adjustments

(e) *Allocation to service cost categories.* (1) For cable operators electing cost-of-service regulation, investments, expenses, and revenues contained in the summary accounts identified in paragraph (d) of this section shall be allocated among the Equipment Basket, as specified in § 76.923, and the following service cost categories:

(i) Basic service cost category. The basic service category, shall include the cost of providing basic service as defined by § 76.901(a). The basic service cost category may only include allowable costs as defined by §§ 76.922(g) through 76.922(k).

(ii) Cable programming services cost category. The cable programming services category shall include the cost of providing cable programming services as defined by § 76.901(b). This service cost category shall contain subcategories that represent each programming tier that is offered as a part of the operator's cable programming services. All costs that are allocated to the cable programming service cost cateogry shall be further allocated among the programming tiers in this category. The cable programming service cost category may include only allowable costs as defined in § 76.922(g) through 76.922(k).

(iii) All other services cost category. The all other services cost category shall include the costs of providing all other services that are not included the

basic service or a cable programming services cost categories as defined in paragraphs (e)(1)(i) and (ii) of this section.

(2) Cable operators seeking an adjustment due to changes in external costs identified in FCC Form 1210 shall allocate such costs among the equipment basket, as specified in § 76.923, and the following service cost categories:

(i) The basic service category as defined by paragraph (e)(1)(i) of this section;

(ii) The cable programming services category as defined by paragraph (e)(1)(ii) of this section;

(iii) The all other services cost category as defined by paragraph (e)(1)(iii) of this section.

(f) *Cost allocation requirements.* (1) Allocations of investments, expenses and revenues among the service cost categories and the equipment basket shall be made at the organizational level in which such costs and revenues have been identified for accounting purposes pursuant to § 76.924(c).

(2) Costs of programming and retransmission consent fees shall be directly assigned or allocated only to the service cost category in which the programming or broadcast signal at issue is offered.

(3) Costs of franchise fees shall be allocated among the equipment basket and the service cost categories in a manner that is most consistent with the methodology of assessment of franchise fees by local authorities.

(4) Costs of public, educational, and governmental access channels carried on the basic tier shall be directly assigned to the basic tier where possible.

(5) Commission cable television system regulatory fees imposed pursuant to 47 U.S.C. 159 shall be directly assigned to the basic service tier.

(6) All other costs that are incurred exclusively to support the equipment basket or a specific service cost category shall be directly assigned to that service cost category or the equipment basket where possible.

(7) Costs that are not directly assigned shall be allocated to the service cost categories in accordance with the following allocation procedures:

(i) Wherever possible, common costs for which no allocator has been specified by the Commission are to be allocated among the service cost categories and the equipment basket based on direct analysis of the origin of the costs.

(ii) Where allocation based on direct analysis is not possible, common costs for which no allocator has been specified by the Commission shall, if possible, be allocated among the service costs categories and the equipment basket based on indirect, cost-causative linkage to other costs directly assigned or allocated to the service cost categories and the equipment basket.

(iii) Where neither direct nor indirect measures of cost allocation can be found, common costs shall be allocated to each service cost category based on the ratio of all other costs directly assigned and attributed to a service cost category over total costs directly or indirectly assigned and directly or indirectly attributable.

(g) *Cost identification at the franchise level.* After costs have been directly assigned to and allocated among the service cost categories and the equipment basket, cable operators that have aggregated costs at a higher level than the franchise level must identify all applicable costs at the franchise level in the following manner:

(1) Recoverable costs that have been identified at the highest organizational level at which costs have been identified shall be allocated to the next (lower) organizational level at which recoverable costs have been identified on the basis of the ratio of the total number of subscribers served at the lower level to the total number of subscribers served at the higher level.

(2) Cable operators shall repeat the procedure specified in paragraph (g)(1) of this section at every organizational level at which recoverable costs have been identified until such costs have been allocated to the franchise level.

(h) *Part-time channels.* In situations where a single channel is divided on a part-time basis and is used to deliver service associated with different tiers or with pay per channel or pay per view service, a reasonable and documented allocation of that channel between services shall be required along with the associated revenues and costs.

(i) *Transactions and affiliates.* Adjustments on account of external costs and rates set on a cost-of-service basis shall exclude any amounts not calculated in accordance with the following:

(1) Charges for assets purchased by or transferred to the regulated activity of a cable operator from affiliates shall equal the invoice price if that price is determined by a prevailing company price. The invoice price is the prevailing company price if the affiliate has sold a substantial number of like assets to nonaffiliates. If a prevailing company price for the assets received by the regulated activity is not available, the changes for such assets shall be the lower of their cost to the originating activity of the affiliated group less all applicable valuation reserves, or their fair market value.

(2) The proceeds from assets sold or transferred from the regulated activity of the cable operator to affiliates shall equal the prevailing company price if the cable operator has sold a substantial number of like assets to nonaffiliates. If a prevailing company price is not available, the proceeds from such sales shall be determined at the higher of cost less all applicable valuation reserves, or estimated fair market value of the asset.

(3) Charges for services provided to the regulated activity of a cable operator by an affiliate shall equal the invoice price if that price is determined by a prevailing company price. The invoice price is the prevailing company price if the affiliate has sold like services to a substantial number of nonaffiliates. If a prevailing company price for the services received by the regulated activity is not available, the charges of such services shall be at cost.

(4) The proceeds from services sold or transferred from the regulated activity of the cable operator to affiliates shall equal the prevailing company price if the cable operator has sold like services to a substantial number of nonaffiliates. If a prevailing company price is not available, the proceeds from such sales shall be determined at cost.

(5) For purposes of § 76.924(i)(1) through 76.924(i)(4), costs shall be determined in accordance with the standards and procedures specified in § 76.922 and paragraphs (b) and (d) of this section.

(6) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(7) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(i) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(ii) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(j) *Unrelated expenses and revenues.* Cable operators shall exclude from cost categories used to develop rates for the provision of regulated cable service, equipment, and leased commercial access, any direct or indirect expenses and revenues not related to the provision of such services. Common costs of providing regulated cable service, equipment, and leased commercial access and unrelated activities shall be allocated between them in accordance with paragraph (f) of this section.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17990, Apr. 15, 1994; 59 FR 53115, Oct. 21, 1994; 60 FR 35865, July 12, 1995; 61 FR 9367, Mar. 8, 1996; 64 FR 67197, Dec. 1, 1999]

EFFECTIVE DATE NOTE: At 61 FR 9367, Mar. 8, 1996, in § 76.924, the section heading and paragraphs (e)(1)(iii) and (2)(iii) were revised; (e)(1)(iv), (v), (2)(iv), and (v) were removed. This amendment contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.925 Costs of franchise requirements.

(a) Franchise requirement costs may include cost increases required by the franchising authority in the following categories:

(1) Costs of providing PEG access channels;

(2) Costs of PEG access programming;

(3) Costs of technical and customer service standards to the extent that they exceed federal standards;

(4) Costs of institutional networks and the provision of video services,

voice transmissions and data transmissions to or from governmental institutions and educational institutions, including private schools, to the extent such services are required by the franchise agreement; and

(5) When the operator is not already in the process of upgrading the system, costs of removing cable from utility poles and placing the same cable underground.

(b) The costs of satisfying franchise requirements to support public, educational, and governmental channels shall consist of the sum of:

(1) All per channel costs for the number of channels used to meet franchise requirements for public, educational, and governmental channels;

(2) Any direct costs of meeting such franchise requirements; and

(3) A reasonable allocation of general and administrative overhead.

(c) The costs of satisfying any requirements under the franchise other than PEG access costs shall consist of the direct and indirect costs including a reasonable allocation of general and administrative overhead.

[58 FR 29753, May 21, 1993, as amended at 60 FR 52119, Oct. 5, 1995]

EFFECTIVE DATE NOTE: At 60 FR 52119, Oct. 5, 1995, in § 76.925, paragraphs (a) and (b) were redesignated as (b) and (c); a new (a) was added; and new (c) was revised. This amendment contains information collection and recordkeeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

§ 76.930 Initiation of review of basic cable service and equipment rates.

A cable operator shall file its schedule of rates for the basic service tier and associated equipment with a franchising authority within 30 days of receiving written notification from the franchising authority that the franchising authority has been certified by the Commission to regulate rates for the basic service tier. Basic service and equipment rate schedule filings for existing rates or proposed rate increases (including increases in the baseline channel change that results from reductions in the number of channels in a tier) must use the appropriate official FCC form, a copy thereof, or a copy generated by FCC software. Failure to file on the official FCC form, a copy thereof, or a copy generated by FCC software, may result in the imposition of sanctions specified in § 76.937(d). A cable operator shall include rate cards and channel line-ups with its filing and include an explanation of any discrepancy in the figures provided in these documents and its rate filing.

[59 FR 17973, Apr. 15, 1994]

§ 76.933 Franchising authority review of basic cable rates and equipment costs.

(a) After a cable operator has submitted for review its existing rates for the basic service tier and associated equipment costs, or a proposed increase in these rates (including increases in the baseline channel change that results from reductions in the number of channels in a tier) under the quarterly rate adjustment system pursuant to Section 76.922(d), the existing rates will remain in effect or the proposed rates will become effective after 30 days from the date of submission; *Provided, however,* that the franchising authority may toll this 30-day deadline for an additional time by issuing a brief written order as described in paragraph (b) within 30 days of the rate submission explaining that it needs additional time to review the rates.

(b) If the franchising authority is unable to determine, based upon the material submitted by the cable operator, that the existing, or proposed rates under the quarterly adjustment system pursuant to Section 76.922(d), are within the Commission's permitted basic service tier charge or actual cost of equipment as defined in §§ 76.922 and 76.923, or if a cable operator has submitted a cost-of-service showing pursuant §§ 76.937(c) and 76.924, seeking to justify a rate above the Commission's basic service tier charge as defined in §§ 76.922 and 76.923, the franchising authority may toll the 30-day deadline in paragraph (a) of this section to request and/or consider additional information or to consider the comments from interested parties as follows:

(1) For an additional 90 days in cases not involving cost-of-service showings; or

(2) For an additional 150 days in cases involving cost-of-service showings.

(c) If a franchising authority has availed itself of the additional 90 or 150 days permitted in paragraph (b) of this section, and has taken no action within these additional time periods, then the proposed rates will go into effect at the end of the 90 or 150 day periods, or existing rates will remain in effect at such times, subject to refunds if the franchising authority subsequently issues a written decision disapproving any portion of such rates: *Provided, however,* That in order to order refunds, a franchising authority must have issued a brief written order to the cable operator by the end of the 90 or 150-day period permitted in paragraph (b) of this section directing the operator to keep an accurate account of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid.

(d) A franchising authority may request, pursuant to a petition for special relief under § 76.7, that the Commission examine a cable operator's cost-of-service showing, submitted to the franchising authority as justification of basic tier rates, within 30 days of receipt of a cost-of-service showing. In its petition, the franchising authority shall document its reasons for seeking Commission assistance. The franchising authority shall issue an order stating that it is seeking Commission assistance and serve a copy before the 30-day deadline on the cable operator submitting the cost showing. The cable operator shall deliver a copy of the cost showing, together with all relevant attachments, to the Commission within 15 days of receipt of the local authority's notice to seek Commission assistance. The Commission shall notify the local franchising authority and the cable operator of its ruling and of the basic tier rate, as established by the Commission. The rate shall take effect upon implementation by the franchising authority of such ruling and refund liability shall be governed thereon. The Commission's ruling shall be binding on the franchising authority and the cable operator. A cable operator or franchising authority may seek reconsideration of the ruling pursuant to § 1.106(a)(1) of this chapter or review by the Commission pursuant to § 1.115(a) of this chapter.

(e) Notwithstanding paragraphs (a) through (d) of this section, when the franchising authority is regulating basic service tier rates, a cable operator that sets its rates pursuant to the quarterly rate adjustment system pursuant to § 76.922(d) may increase its rates for basic service to reflect the imposition of, or increase in, franchise fees or Commission cable television system regulatory fees imposed pursuant to 47 U.S.C. 159. For the purposes of paragraphs (a) through (c) of this section, the increased rate attributable to Commission regulatory fees or franchise fees shall be treated as an ''existing rate'', subject to subsequent review and refund if the franchising authority determines that the increase in basic tier rates exceeds the increase in regulatory fees or in franchise fees allocable to the basic tier. This determination shall be appealable to the Commission pursuant to § 76.944. When the Commission is regulating basic service tier rates pursuant to § 76.945 or cable programming service rates pursuant to § 76.960, an increase in those rates resulting from franchise fees or Commission regulatory fees shall be reviewed by the Commission pursuant to the mechanisms set forth in § 76.945. A cable operator must adjust its rates to reflect decreases in franchise fees or Commission regulatory fees within the periods set forth in § 76.922(d)(3)(i),(iii).

(f) For an operator that sets its rates pursuant to the quarterly rate adjustment system pursuant to Section 76.922(d), cable television system regulatory fees assessed by the Commission pursuant to 47 U.S.C. § 159 shall be recovered in monthly installments during the fiscal year following the year for which the payment was imposed. Payments shall be collected in equal monthly installments, except that for so many months as may be necessary to avoid fractional payments, an additional $0.01 payment per month may be collected. All such additional payments shall be collected in the last month or months of the fiscal year, so that once collections of such payments begin there shall be no month remaining in the year in which the operator is

not entitled to such an additional payment. Operators may not assess interest. Operators may provide notice of the entire fiscal year's regulatory fee pass-through in a single notice.

(g) A cable operator that submits for review a proposed change in its existing rates for the basic service tier and associated equipment costs using the annual filing system pursuant to Section 76.922(e) shall do so no later than 90 days from the effective date of the proposed rates. The franchising authority will have 90 days from the date of the filing to review it. However, if the franchising authority or its designee concludes that the operator has submitted a facially incomplete filing, the franchising authority's deadline for issuing a decision, the date on which rates may go into effect if no decision is issued, and the period for which refunds are payable will be tolled while the franchising authority is waiting for this information, provided that, in order to toll these effective dates, the franchising authority or its designee must notify the operator of the incomplete filing within 45 days of the date the filing is made.

(1) If there is a material change in an operator's circumstances during the 90-day review period and the change affects the operator's rate change filing, the operator may file an amendment to its Form 1240 prior to the end of the 90-day review period. If the operator files such an amendment, the franchising authority will have at least 30 days to review the filing. Therefore, if the amendment is filed more than 60 days after the operator made its initial filing, the operator's proposed rate change may not go into effect any earlier than 30 days after the filing of its amendment. However, if the operator files its amended application on or prior to the sixtieth day of the 90-day review period, the operator may implement its proposed rate adjustment, as modified by the amendment, 90 days after its initial filing.

(2) If a franchising authority has taken no action within the 90-day review period, then the proposed rates may go into effect at the end of the review period, subject to a prospective rate reduction and refund if the franchising authority subsequently issues a written decision disapproving any portion of such rates, *provided, however,* that in order to order a prospective rate reduction and refund, if an operator inquires as to whether the franchising authority intends to issue a rate order after the initial review period, the franchising authority or its designee must notify the operator of its intent in this regard within 15 days of the operator's inquiry. If a proposed rate goes into effect before the franchising authority issues its rate order, the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within this 12-month period, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing.

(3) At the time an operator files its rates with the franchising authority, the operator may give customers notice of the proposed rate changes. Such notice should state that the proposed rate change is subject to approval by the franchising authority. If the operator is only permitted a smaller increase than was provided for in the notice, the operator must provide an explanation to subscribers on the bill in which the rate adjustment is implemented. If the operator is not permitted to implement any of the rate increase that was provided for in the notice, the operator must provide an explanation to subscribers within 60 days of the date of the franchising authority's decision. Additional advance notice is only required in the unlikely event that the rate exceeds the previously noticed rate.

(4) If an operator files for a rate adjustment under Section 76.922(e)(2)(iii)(B) for the addition of required channels to the basic service tier that the operator is required by federal or local law to carry, or, if a single-tier operator files for a rate adjustment based on a mid-year channel addition allowed under Section 76.922(e)(2)(iii)(C), the franchising authority has 60 days to review the requested rate. The proposed rate shall take effect at the end of this 60-day period unless the franchising authority

rejects the proposed rate as unreasonable. In order to order refunds and prospective rate reductions, the franchising authority shall be subject to the requirements described in paragraph (g)(1) of this section.

(5) Notwithstanding paragraphs (a) through (f) of this section, when the franchising authority is regulating basic service tier rates, a cable operator may increase its rates for basic service to reflect the imposition of, or increase in, franchise fees. The increased rate attributable to Commission regulatory fees or franchise fees shall be subject to subsequent review and refund if the franchising authority determines that the increase in basic tier rates exceeds the increase in regulatory fees or in franchise fees allocable to the basic tier. This determination shall be appealable to the Commission pursuant to § 76.944. When the Commission is regulating basic service tier rates pursuant to § 76.945 or cable programming service rates pursuant to § 76.960, an increase in those rates resulting from franchise fees or Commission regulatory fees shall be reviewed by the Commission pursuant to the mechanisms set forth in § 76.945.

(h) If an operator files an FCC Form 1205 for the purpose of setting the rate for a new type of equipment under Section 76.923(o), the franchising authority has 60 days to review the requested rate. The proposed rate shall take effect at the end of this 60-day period unless the franchising authority rejects the proposed rate as unreasonable.

(1) If the operator's most recent rate filing was based on the system that enables them to file up to once per quarter found at Section 76.922(d), the franchising authority must issue an accounting order before the end of the 60-day period in order to order refunds and prospective rate reductions.

(2) If the operator's most recent rate filing was based on the annual rate system at Section 76.922(e), in order to order refunds and prospective rate reductions, the franchising authority shall be subject to the requirements described in paragraph (g)(1) of this section.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17973, Apr. 15, 1994; 59 FR 53115, Oct. 21, 1994; 60 FR 52119, Oct. 5, 1995; 61 FR 18978, Apr. 30, 1996]

EFFECTIVE DATE NOTE: At 60 FR 52119, Oct. 5, 1995, in § 76.933, paragraphs (a), (b), (e), and (f) were revised; (g) and (h) were added. This amendment contains information collection and recordkeeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

§ 76.934 Small systems and small cable companies.

(a) For purposes of rules governing the reasonableness of rates charged by small systems, the size of a system or company shall be determined by reference to its size as of the date the system files with its franchising authority or the Commission the documentation necessary to qualify for the relief sought or, at the option of the company, by reference to system or company size as of the effective date of this paragraph. Where relief is dependent upon the size of both the system and the company, the operator must measure the size of both the system and the company as of the same date. A small system shall be considered affiliated with a cable company if the company holds a 20 percent or greater equity interest in the system or exercises de jure control over the system.

(b) A franchising authority that has been certified, pursuant to § 76.910, to regulate rates for basic service and associated equipment may permit a small system as defined in § 76.901 to certify that the small system's rates for basic service and associated equipment comply with § 76.922, the Commission's substantive rate regulations.

(c) Initial regulation of small systems:

(1) If certified by the Commission, a local franchising authority may provide an initial notice of regulation to a small system, as defined by § 76.901(c), on May 15, 1994. Any initial notice of regulation issued by a certified local franchising authority prior to May 15, 1994 shall be considered as having been issued on May 15, 1994.

(2) The Commission will accept complaints concerning the rates for cable

programming service tiers provided by small systems on or after May 15, 1994. Any complaints filed with the Commission about the rates for a cable programming service tier provided by a small system prior to May 15, 1994 shall be considered as having been filed on May 15, 1994.

(3) A small system that receives an initial notice of regulation from its local franchising authority, or a complaint filed with the Commission for its cable programming service tier, must respond within the time periods prescribed in §§ 76.930 and 76.956.

(d) Statutory period for filing initial complaint: A complaint concerning a rate for cable programming service or associated equipment provided by a small system that was in effect on May 15, 1994 must be filed within 180 days from May 15, 1994.

(e) Petitions for extension of time: Small systems may obtain an extension of time to establish compliance with rate regulations provided they can demonstrate that timely compliance would result in severe economic hardship. Requests for extension of time should be addressed to the local franchising authority concerning basic service and equipment rates and to the Commission concerning rates for a cable programming service tier and associated equipment. The filing of a request for an extension of time to comply with the rate regulations will not toll the effective date of rate regulation for small systems or alter refund liability for rates that exceed permitted levels after May 15, 1994.

(f) *Small Systems Owned by Small Cable Companies*. Small systems owned by small cable companies shall have 90 days from their initial date of regulation on a tier to bring their rates for that tier into compliance with the requirements of Sections 76.922 and 76.923. Such systems shall have sixty days from the initial date of regulation to file FCC Forms 1200, 1205, 1210, 1211, 1215, 1220, 1225, 1230, and 1240 and any similar forms as appropriate. Rates established during the 90-day period shall not be subject to prior approval by franchising authorities or the Commission, but shall be subject to refund pursuant to sections 76.942 and 76.961.

(g) Alternative rate regulation agreements:

(1) Local franchising authorities, certified pursuant to § 76.910, and small systems owned by small cable companies may enter into alternative rate regulation agreements affecting the basic service tier and the cable programming service tier.

(i) Small systems must file with the Commission a copy of the operative alternative rate regulation agreement within 30 days after its effective date.

(ii) [Reserved]

(2) Alternative rate regulation agreements affecting the cable programming service tier shall take into account, among other factors, the following:

(i) The rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

(ii) The rates for cable systems, if any, that are subject to effective competition;

(iii) The history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

(iv) The rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

(v) Capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

(vi) The revenues received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other considerations obtained in connection with the cable programming services concerned. The rate agreed to in such an alternative rate regulation agreement shall be deemed to be a reasonable rate.

(3) Certified local franchising authorities shall provide a reasonable opportunity for consideration of the views of interested parties prior to finally entering into an alternative rate regulation agreement.

(4) A basic service rate decision by a certified local franchising authority made pursuant to an alternative rate regulation agreement may be appealed by an interested party to the Commission pursuant to § 76.944 as if the decision were made according to §§ 76.922 and 76.923.

NOTE TO PARAGRAPH (g) OF § 76.934: Small systems owned by small cable companies must comply with the alternative rate agreement filing requirements of § 76.1805.

(h) Small system cost-of-service showings:

(1) At any time, a small system owned by a small cable company may establish new rates, or justify existing rates, for regulated program services in accordance with the small cable company cost-of-service methodology described below.

(2) The maximum annual per subscriber rate permitted initially by the small cable company cost-of-service methodology shall be calculated by adding

(i) The system's annual operating expenses to

(ii) The product of its net rate base and its rate of return, and then dividing that sum by (iii) the product of

(A) The total number of channels carried on the system's basic and cable programming service tiers and

(B) The number of subscribers. The annual rate so calculated must then be divided by 12 to arrive at a monthly rate.

(3) The system shall calculate its maximum permitted rate as described in paragraph (b) of this section by completing Form 1230. The system shall file Form 1230 as follows:

(i) Where the franchising authority has been certified by the Commission to regulate the system's basic service tier rates, the system shall file Form 1230 with the franchising authority.

(ii) Where the Commission is regulating the system's basic service tier rates, the system shall file Form 1230 with the Commission.

(iii) Where a complaint about the system's cable programming service rates is filed with the Commission, the system shall file Form 1230 with the Commission.

(4) In completing Form 1230:

(i) The annual operating expenses reported by the system shall equal the system's operating expenses allocable to its basic and cable programming service tiers for the most recent 12 month period for which the system has the relevant data readily available, adjusted for known and measurable changes occurring between the end of the 12 month period and the effective date of the rate. Expenses shall include all regular expenses normally incurred by a cable operator in the provision of regulated cable service, but shall not include any lobbying expense, charitable contributions, penalties and fines paid one account of statutes or rules, or membership fees in social service, recreational or athletic clubs or associations.

(ii) The net rate base of a system is the value of all of the system's assets, less depreciation.

(iii) The rate of return claimed by the system shall reflect the operator's actual cost of debt, its cost of equity, or an assumed cost of equity, and its capital structure, or an assumed capital structure.

(iv) The number of subscribers reported by the system shall be calculated according to the most recent reliable data maintained by the system.

(v) The number of channels reported by the system shall be the number of channels it has on its basic and cable programming service tiers on the day it files Form 1230.

(vi) In establishing its operating expenses, net rate base, and reasonable rate of return, a system may rely on previously existing information such as tax forms or company financial statements, rather than create or recreate financial calculations. To the extent existing information is incomplete or otherwise insufficient to make exact calculations, the system may establish its operating expenses, net rate base, and reasonable rate of return on the basis of reasonable, good faith estimates.

(5) After the system files Form 1230, review by the franchising authority, or the Commission when appropriate, shall be governed by § 76.933, subject to the following conditions.

(i) If the maximum rate established on Form 1230 does not exceed $1.24 per channel, the rate shall be rebuttably presumed reasonable. To disallow such a rate, the franchising authority shall bear the burden of showing that the operator did not reasonably interpret and allocate its cost and expense data in deriving its annual operating expenses, its net rate base, and a reasonable rate of return. If the maximum rate established on Form 1230 exceeds $1.24 per channel, the franchising authority shall bear such burden only if the rate that the cable operator actually seeks to charge does not exceed $1.24 per channel.

(ii) In the course of reviewing Form 1230, a franchising authority shall be permitted to obtain from the cable operator the information necessary for judging the validity of methods used for calculating its operating costs, rate base, and rate of return. If the maximum rate established in Form 1230 does not exceed $1.24 per channel, any request for information by the franchising authority shall be limited to existing relevant documents or other data compilations and should not require the operator to create documents, although the operator should replicate responsive documents that are missing or destroyed.

(iii) A system may file with the Media Bureau an interlocutory appeal from any decision by the franchising authority requesting information from the system or tolling the effective date of a system's proposed rates. The appeal may be made by an informal letter to the Chief of the Media Bureau, served on the franchising authority. The franchising authority must respond within seven days of its receipt of the appeal and shall serve the operator with its response. The operator shall have four days from its receipt of the response in which to file a reply, if desired. If the maximum rate established on Form 1230 does not exceed $1.24 per channel, the burden shall be on the franchising authority to show the reasonableness of its order. If the maximum rate established on Form 1230 exceeds $1.24 per channel, the burden shall be on the operator to show the unreasonableness of the order.

(iv) In reviewing Form 1230 and issuing a decision, the franchising authority shall determine the reasonableness of the maximum rate permitted by the form, not simply the rate which the operator intends to establish.

(v) A final decision of the franchising authority with respect to the requested rate shall be subject to appeal pursuant to § 76.944. The filing of an appeal shall stay the effectiveness of the final decision pending the disposition of the appeal by the Commission. An operator may bifurcate its appeal of a final rate decision by initially limiting the scope of the appeal to the reasonableness of any request for information made by the franchising authority. The operator may defer addressing the substantive rate-setting decision of the franchising authority until after the Commission has ruled on the reasonableness of the request for information. At its option, the operator may forego the bifurcated appeal and address both the request for documentation and the substantive rate-setting decision in a single appeal. When filing an appeal from a final rate-setting decision by the franchising authority, the operator may raise as an issue the scope of the request for information only if that request was not approved by the Commission on a previous interlocutory appeal by the operator.

(6) Complaints concerning the rates charged for a cable programming services tier by a system that has elected the small cable company cost-of-service methodology may be filed pursuant to § 76.957. Upon receipt of a complaint, the Commission shall review the system's rates in accordance with the standards set forth above with respect to basic tier rates.

(7) Unless otherwise ordered by the franchising authority or the Commission, the system may establish its per channel rate at any level that does not exceed the maximum rate permitted by Form 1230, provided that the system has given the required written notice to subscribers. If the system establishes its per channel rate at a level that is less than the maximum amount permitted by the form, it may increase rates at any time thereafter to the maximum amount upon providing the required written notice to subscribers.

(8) After determining the maximum rate permitted by Form 1230, the system may adjust that rate in accordance with this paragraph. Electing to adjust rates pursuant to one of the options set forth below shall not prohibit the system from electing a different option when adjusting rates thereafter. The system may adjust its maximum permitted rate without adjusting the actual rate it charges subscribers.

(i) The system may adjust its maximum permitted rate in accordance with the price cap requirements set forth in § 76.922(d).

(ii) The system may adjust its maximum permitted rate in accordance with the requirements set forth in § 76.922(e) for changes in the number of channels on regulated tiers. For any system that files Form 1230, no rate adjustments made prior to the effective date of this rule shall be charged against the system's Operator's Cap and License Reserve Fee described in § 76.922(e)(3).

(iii) The system may adjust its maximum permitted rate by filing a new Form 1230 that permits a higher rate.

(iv) The system may adjust its maximum permitted rate by complying with any of the options set forth in § 76.922(b)(1) for which it qualifies or under an alternative rate agreement as provided in paragraph (g) of this section.

(9) In any rate proceeding before a franchising authority in which a final decision had not been issued as of June 5, 1995, a small system owned by a small cable company may elect the form of rate regulation set forth in this section to justify the rates that are the subject of the proceeding, if the system and affiliated company were a small system and small company respectively as of the June 5, 1995 and as of the period during which the disputed rates were in effect. However, the validity of a final rate decision made by a franchising authority before June 5, 1995 is not affected.

(10) In any proceeding before the Commission involving a cable programming services tier complaint in which a final decision had not been issued as of June 5, 1995, a small system owned by a small cable company may elect the form of rate regulation set forth in this section to justify rates charged prior to the adoption of this rule and to establish new rates. For purposes of this paragraph, a decision shall not be deemed final until the operator has exhausted or is time-barred from pursuing any avenue of appeal, review, or reconsideration.

(11) A system that is eligible to establish its rates in accordance with the small system cost-of-service approach shall remain eligible for so long as the system serves no more than 15,000 subscribers. When a system that has established rates in accordance with the small system cost-of-service approach exceeds 15,000 subscribers, the system may maintain its then existing rates. After exceeding the 15,000 subscriber limit, any further rate adjustments shall not reflect increases in external costs, inflation or channel additions until the system has re-established initial permitted rates in accordance with some other method of rate regulation prescribed in this subpart.

NOTE: For rules governing small cable operators, see § 76.990 of this subpart.

[60 FR 35865, July 12, 1995, as amended at 60 FR 52120, Oct. 5, 1995; 62 FR 53576, Oct. 15, 1997; 64 FR 35950, July 2, 1999; 65 FR 53617, Sept. 5, 2000; 67 FR 13235, Mar. 21, 2002]

EFFECTIVE DATE NOTE: At 60 FR 52120, Oct. 5, 1995, in § 76.934, paragraph (f) was revised. This paragraph contains information collection and recordkeeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

§ 76.935 Participation of interested parties.

In order to regulate basic tier rates or associated equipment costs, a franchising authority must have procedural laws or regulations applicable to rate regulation proceedings that provide a reasonable opportunity for consideration of the views of interested parties. Such rules must take into account the 30, 120, or 180-day time periods that franchising authorities have to review rates under § 76.933.

§ 76.936 Written decision.

(a) A franchising authority must issue a written decision in a rate-making proceeding whenever it disapproves an initial rate for the basic

service tier or associated equipment in whole or in part, disapproves a request for a rate increase in whole or in part, or approves a request for an increase in whole or in part over the objections of interested parties. A franchising authority is not required to issue a written decision that approves an unopposed existing or proposed rate for the basic service tier or associated equipment.

(b) Public notice must be given of any written decision required in paragraph (a) of this section, including releasing the text of any written decision to the public.

§ 76.937 Burden of proof.

(a) A cable operator has the burden of proving that its existing or proposed rates for basic service and associated equipment comply with 47 U.S.C. 543, and §§ 76.922 and 76.923.

(b) For an existing or a proposed rate for basic tier service or associated equipment that is within the permitted tier charge and actual cost of equipment as set forth in §§ 76.922 and 76.923, the cable operator must submit the appropriate FCC form.

(c) For an existing or a proposed rate for basic tier service that exceeds the permitted tier charge as set forth in §§ 76.922 and 76.923, the cable operator must submit a cost-of-service showing to justify the proposed rate.

(d) A franchising authority or the Commission may find a cable operator that does not attempt to demonstrate the reasonableness of its rates in default and, using the best information available, enter an order finding the cable operator's rates unreasonable and mandating appropriate relief, as specified in §§ 76.940, 76.941, and 76.942.

(e) A franchising authority or the Commission may order a cable operator that has filed a facially incomplete form to file supplemental information, and the franchising authority's deadline to rule on the reasonableness of the proposed rates will be tolled pending the receipt of such information. A franchising authority may set reasonable deadlines for the filing of such information, and may find the cable operator in default and mandate appropriate relief, pursuant to paragraph (d) of this section, for the cable operator's failure to comply with the deadline or otherwise provide complete information in good faith.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17973, Apr. 15, 1994]

§ 76.938 Proprietary information.

A franchising authority may require the production of proprietary information to make a rate determination in those cases where cable operators have submitted initial rates, or have proposed rate increases, pursuant to an FCC Form 393 (and/or FCC Forms 1200/1205) filing or a cost-of-service showing. The franchising authority shall state a justification for each item of information requested and, where related to an FCC Form 393 (and/or FCC Forms 1200/1205) filing, indicate the question or section of the form to which the request specifically relates. Upon request to the franchising authority, the parties to a rate proceeding shall have access to such information, subject to the franchising authority's procedures governing non-disclosure by the parties. Public access to such proprietary information shall be governed by applicable state or local law.

[59 FR 17973, Apr. 15, 1994]

§ 76.939 Truthful written statements and responses to requests of franchising authority.

Cable operators shall comply with franchising authorities' and the Commission's requests for information, orders, and decisions. Any information submitted to a franchising authority or the Commission in making a rate determination pursuant to an FCC Form 393 (and/or FCC Forms 1200/1205) filing or a cost-of-service showing is subject to the provisions of § 1.17 of this chapter.

[68 FR 15098, Mar. 28, 2003]

§ 76.940 Prospective rate reduction.

A franchising authority may order a cable operator to implement a reduction in basic service tier or associated equipment rates where necessary to bring rates into compliance with the standards set forth in §§ 76.922 and 76.923

§ 76.941 Rate prescription.

A franchising authority may prescribe a reasonable rate for the basic service tier or associated equipment after it determines that a proposed rate is unreasonable.

§ 76.942 Refunds.

(a) A franchising authority (or the Commission, pursuant to § 76.945) may order a cable operator to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted tier charge or above the actual cost of equipment, unless the operator has submitted a cost-of-service showing which justifies the rate charged as reasonable. An operator's liability for refunds shall be based on the difference between the old bundled rates and the sum of the new unbundled program service charge(s) and the new unbundled equipment charge(s). Where an operator was charging separately for program services and equipment but the rates were not in compliance with the Commission's rules, the operator's refund liability shall be based on the difference between the sum of the old charges and the sum of the new, unbundled program service and equipment charges. Before ordering a cable operator to refund previously paid rates to subscribers, a franchising authority (or the Commission) must give the operator notice and opportunity to comment.

(b) An operator's liability for refunds in limited to a one-year period, *except that* an operator that fails to comply with a valid rate order issued by a franchising authority or the Commission shall be liable for refunds commencing from the effective date of such order until such time as it complies with such order.

(c) The refund period shall run as follows:

(1) From the date the operator implements a prospective rate reduction back in time to September 1, 1993, or one year, whichever is shorter.

(2) From the date a franchising authority issues an accounting order pursuant to § 76.933(c), to the date a prospective rate reduction is issued, then back in time from the date of the accounting order to the effective date of the rules; however, the total refund period shall not exceed one year from the date of the accounting order.

(3) Refund liability shall be calculated on the reasonableness of the rates as determined by the rules in effect during the period under review by the franchising authority or the Commission.

(d) The cable operator, in its discretion, may implement a refund in the following manner:

(1) By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified credit to those subscribers' bills; or

(2) By means of a prospective percentage reduction in the rates for the basic service tier or associated equipment to cover the cumulative overcharge. This shall be reflected as a specifically identified, one-time credit on prospective bills to the class of subscribers that currently subscribe to the cable system.

(e) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments.

(f) Once an operator has implemented a rate refund to subscribers in accordance with a refund order by the franchising authority (or the Commission, pursuant to paragraph (a) of this section), the franchising authority must return to the cable operator an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The franchising authority must promptly return the franchise fee overcharge either in an immediate lump sum payment, or the cable operator may deduct it from the cable system's future franchise fee payments. The franchising authority has the discretion to determine a reasonable repayment period, but interest shall accrue on any outstanding portion of the franchise fee starting on the date the operator has completed implementation of the refund order. In determining the amount of the refund, the franchise fee overcharge should be offset against franchise fees the operator holds on behalf of the franchising authority for lump sum payment. The

interest rate on any refund owed to the operator presumptively shall be 11.25%.

[58 FR 29753, May 21, 1993, as amended at 58 FR 46736, Sept. 2, 1993; 59 FR 17974, Apr. 15, 1994; 60 FR 52120, Oct. 5, 1995]

EFFECTIVE DATE NOTE: At 60 FR 52120, Oct. 5, 1995, in § 76.942, paragraph (f) was revised. This paragraph contains information collection and recordkeeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

§ 76.943 Fines.

(a) A franchising authority may impose fines or monetary forfeitures on a cable operator that does not comply with a rate decision or refund order directed specifically at the cable operator, provided the franchising authority has such power under state or local laws.

(b) If a cable operator willfully fails to comply with the terms of any franchising authority's order, decision, or request for information, as required by § 76.939, the Commission may, in addition to other remedies, impose a forfeiture pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b).

(c) A cable operator shall not be subject to forfeiture because its rate for basic service or equipment is determined to be unreasonable.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17974, Apr. 15, 1994]

§ 76.944 Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.

(a) The Commission shall be the sole forum for appeals of decisions by franchising authorities on rates for the basic service tier or associated equipment involving whether or not a franchising authority has acted consistently with the Cable Act or §§ 76.922 and 76.923. Appeals of ratemaking decisions by franchising authorities that do not depend upon determining whether a franchising authority has acted consistently with the Cable Act or §§ 76.922 and 76.923, may be heard in state or local courts.

(b) Any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with the Commission within 30 days of release of the text of the franchising authority's decision as computed under § 1.4(b) of this chapter. Appeals shall be served on the franchising authority or other authority that issued the rate decision. Where the state is the appropriate decisionmaking authority, the state shall forward a copy of the appeal to the appropriate local official(s). Oppositions may be filed within 15 days after the appeals is filed, and must be served on the party(ies) appealing the rate decision. Replies may be filed 7 days after the last day for oppositions and shall be served on the parties to the proceeding.

(c) An operator that uses the annual rate adjustment method under Section 76.922(e) may include in its next true up under Section 76.922(e)(3) any amounts to which the operator would have been entitled but for a franchising authority decision that is not upheld on appeal.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17974, Apr. 15, 1994; 60 FR 52121, Oct. 5, 1995]

EFFECTIVE DATE NOTE: At 60 FR 52121, Oct. 5, 1995, in § 76.944, paragraph (c) was added. This paragraph contains information collection and recordkeeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

§ 76.945 Procedures for Commission review of basic service rates.

(a) Upon assumption of rate regulation authority, the Commission will notify the cable operator and require the cable operator to file its basic rate schedule with the Commission within 30 days, with a copy to the local franchising authority.

(b) Basic service and equipment rate schedule filings for existing rates or proposed rate increases (including increases in the baseline channel change that results from reductions in the number of channels in a tier) must use the official FCC form, a copy thereof, or a copy generated by FCC software. Failure to file on the official FCC form or a copy may result in the imposition of sanctions specified in § 76.937(d). Cable operators seeking to justify the reasonableness of existing or proposed rates above the permitted tier rate

must submit a cost-of-service showing sufficient to support a finding that the rates are reasonable.

(c) Filings proposing annual adjustments or rates within the rates regulation standards in §§76.922 and 76.923, must be made 30 days prior to the proposed effective date and can become effective on the proposed effective date unless the Commission issues an order deferring the effective date or denying the rate proposal. Petitions opposing such filings must be filed within 15 days of public notice of the filing by the cable operator and be accompanied by a certificate that service was made on the cable operator and the local franchising authority. The cable operator may file an opposition within five days of filing of the petition, certifying to service on both the petitioner and the local franchising authority.

(d) Filings proposing a rate not within the rate regulation standards of §§76.922 and 76.923, must be made 90 days before the requested effective date. Petitions opposing such filings must be filed within 30 days of public notice of the filing, and be accompanied by a certificate that service was made on the cable operator and the local franchising authority. The cable operator may file an opposition within 10 days of the filing of the petition, and certifying that service was made on the petitioner and the local franchising authority.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17974, Apr. 15, 1994]

§ 76.946 Advertising of rates.

Cable operators that advertise rates for basic service and cable programming service tiers shall be required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a ''fee plus'' rate that indicates the core rate plus the range of possible additions, depending on the particular location of the subscriber.

[59 FR 17974, Apr. 15, 1994]

§ 76.950 Complaints regarding cable programming service rates.

(a) A franchising authority may file with the Commission a complaint challenging the reasonableness of its cable operator's rate for cable programming service, or the reasonableness of the cable operator's charges for installation or rental of equipment used for the receipt of cable programming service. The franchise authority may file a complaint with the Commission only upon receipt of more than one subscriber complaint made to the franchise authority within 90 days after the effective date of the challenged rate increase.

(b) This section shall not apply to cable programming services provided after March 31, 1999.

[61 FR 18979, Apr. 30, 1996, as amended at 64 FR 35950, July 2, 1999]

§ 76.951 Standard complaint form; other filing requirements.

(a) Any complaint regarding a cable operator's rate for cable programming service or associated equipment must be filed using standard complaint form, FCC 329.

(b) The following information must be provided on the standard complaint form:

(1) The name, mailing address and phone number of the franchising authority that is filing the complaint;

(2) The name, mailing address, and FCC community unit identifier of the relevant cable operator;

(3) A description of the cable programming service or associated equipment involved and, if applicable, how the service or associated equipment has changed;

(4) The current rate for the cable programming service or associated equipment at issue and, if the complainant is challenging the reasonableness of a rate increase, the most recent rate for the service or associated equipment immediately prior to the rate increase;

(5) If the complainant is filing a corrected complaint, an indication of the date the complainant filed the prior

complaint and the date the complainant received notification from the Commission that the prior complaint was defective;

(6) A certification that a copy of the complaint, including all attachments, is being served contemporaneously via certified mail on the cable operator;

(7) An indication that the complainant franchising authority received more than one subscriber complaint within 90 days of the operator's imposition of the rate in question; and

(8) A certification that, to the best of the complainant's knowledge, the information provided on the form is true and correct.

[61 FR 18979, Apr. 30, 1996]

§ 76.952 Information to be provided by cable operator on monthly subscriber bills.

All cable operators must provide the following information to subscribers on monthly bills:

(a) The name, mailing address and phone number of the franchising authority, unless the franchising authority in writing requests the cable operator to omit such information.

(b) The FCC community unit identifier for the cable system.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17960, Apr. 15, 1994; 64 FR 35950, July 2, 1999]

§ 76.953 Limitation on filing a complaint.

(a) *Complaint regarding a rate change.* A complaint alleging an unreasonable rate for cable programming service or associated equipment may be filed against a cable operator only in the event of a rate change, including an increase or decrease in rates, or a change in rates that results from a change in a system's service tiers. A rate change may involve an implicit rate increase (such as deleting channels from a tier without a corresponding lowering of the rate for that tier). A complaint regarding a rate change for cable programming service or associated equipment may be filed against a cable operator only in the event of a rate change.

(b) Late-filed complaints will be dismissed with prejudice.

[58 FR 29753, May 21, 1993, as amended at 58 FR 46736, Sept. 2, 1993; 59 FR 17960, 17974, Apr. 15, 1994; 60 FR 35868, July 12, 1995; 61 FR 18979, Apr. 30, 1996]

§ 76.954 Initial review of complaint; minimum showing requirement; dismissal of defective complaints.

(a) The Commission will conduct an initial review of a complaint to determine if it meets the minimum showing required to allow the complaint to go forward. The minimum showing shall be satisfied if the complaint is filed using the standard complaint form described in § 76.951 and includes all information and attachments required by that form. A complainant will not be required, as part of the minimum showing, to provide the underlying information and calculations necessary to judge the cable programming service rate in question against the Commission's rate standards.

(b) A complaint that does not meet the minimum showing requirement described in paragraph (a) of this section will be considered defective. A defective complaint will be dismissed without prejudice to filing a corrected complaint as provided by § 76.955. The Commission will notify the complainant by mail of the dismissal. The filing of a complaint on the applicable form, but which is otherwise defective, will toll the limitation period established by § 76.953.

§ 76.955 Additional opportunity to file corrected complaint.

(a) If the Commission dismisses an initial complaint without prejudice pursuant to § 76.954, the complainant shall have one additional opportunity to cure the defect and file a corrected complaint.

(b) For a complaint filed on the applicable form but is otherwise defective, the complainant must cure the defect and file a corrected complaint with the Commission within 30 days from the date of the Commission's dismissal notice. Failure to cure the defect and file a corrected complaint within this time period will result in dismissal of the complaint with prejudice.

§ 76.956 Cable operator response.

(a) Unless otherwise directed by the local franchising authority, a cable operator must file with the local franchise authority a response to the complaint. The response shall indicate when the cable operator received notice of the complaint. Service by mail is complete upon mailing. See § 1.47(f) of this chapter. The response shall include the information required by the appropriate FCC form, including rate cards, channel line-ups, and an explanation of any discrepancy in the figures provided in these documents and the rate filing. The cable operator must file its response with the local franchise authority via first class mail.

(b) The burden shall be on the cable operator to prove that the service rate or equipment charge in question is not unreasonable. The cable operator may carry its burden in the following manner:

(1) For a service rate at or below the permitted level, by providing information and calculations that demonstrate that the rate in question falls at or below the permitted level;

(2) For a service rate that exceeds the permitted level;

(i) By providing proof that the cable system has reduced the rate for the cable programming service at issue to a level at or below the permitted level; or

(ii) By providing detailed cost-based information that demonstrates that the rate in question is reasonable despite the fact that it exceeds the permitted level.

(3) For a charge for equipment installation or rental, by providing information that demonstrates that the charge is based on the cable operator's actual cost.

(c) In addition to responding to the merits of a complaint, the cable operator may also move for dismissal of the complaint for failure to meet the minimum showing requirement. Any such motion for dismissal must state with particularity the reasons the cable operator believes the complaint is defective and shall not relieve the cable operator of its obligation to respond to the merits of the complaint.

(d) A cable operator may file a consolidated response to multiple complaints regarding the identical rate or rate increase. A consolidated response must be filed within 30 days from the date of service of the first complaint received, unless the Commission notifies the cable operator to the contrary. A cable operator may amend a consolidated response to address new issues raised by complaints received after the cable operator's initial response.

(e) A cable operator that fails to file and serve a response to a valid complaint may be deemed in default. If the Commission deems a cable operator in default, the Commission may enter an order against the cable operator finding the rate to be unreasonable and mandating appropriate relief.

(f) A cable operator need not respond to any complaint that is:

(1) Not filed on the applicable form; or

(2) That the Commission determined is defective *and* has so notified the cable operator.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17975, Apr. 15, 1994; 61 FR 18979, Apr. 30, 1996; 64 FR 35950, July 2, 1999]

§ 76.957 Commission adjudication of the complaint.

The Commission will consider the complaint and the cable operator's response and then determine by written decision whether the rate for the cable programming service or associated equipment is unreasonable or not. In making its determination, the Commission will only review the amount of the rate increase subject to the complaint. If the Commission determines that the rate change in question is unreasonable, it will grant the complaint and may order appropriate relief, including, but not limited to, prospective rate reductions and refunds. If it determines that the rate in question is reasonable, the Commission will deny the complaint.

[60 FR 52121, Oct. 5, 1995]

EFFECTIVE DATE NOTE: At 60 FR 52121, Oct. 5, 1995, § 76.957 was revised. This section contains information collection and recordkeeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

§ 76.960 Prospective rate reductions.

Upon a finding that a rate for cable programming service or associated equipment is unreasonable, the Commission may order the cable operator to implement a prospective rate reduction to the class of customers subscribing to the cable programming service at issue.

(a) For an operator that adjusts its rates using the quarterly rate adjustment system pursuant to Section 76.922(d), the Commission's decision regarding a prospective rate reduction shall remain binding on the cable operator for one year unless the Commission specifies otherwise.

(b) For an operator that adjusts its rates using the annual rate adjustment system pursuant to Section 76.922(e), for one year following the Commission's decision, the operator shall provide the Commission at least 30 days' notice of any proposed change.

[60 FR 52121, Oct. 5, 1995]

EFFECTIVE DATE NOTE: At 60 FR 52121, Oct. 5, 1995, § 76.960 was revised. This section contains information collection and recordkeeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

§ 76.961 Refunds.

(a) Upon a finding that a rate for cable programming service or associated equipment is unreasonable, the Commission may order the cable operator to refund to subscribers that portion of previously paid rates which is deemed unreasonable.

(b) The cumulative refund due subscribers shall be calculated from the date of the first complaint filed with the franchising authority until the date a cable operator implements a prospective rate reduction as ordered by the Commission pursuant to § 76.960. The Commission shall calculate refund liability according to the rules in effect for determining the reasonableness of the rates for the period of time covered by the complaint.

(c) The cable operator, in its discretion, may implement a refund in the following manner:

(1) By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified, one-time credit to those subscribers' bills; or

(2) By means of a prospective percentage reduction in the unreasonable cable programming service rate or equipment charge to cover the cumulative overcharge. This shall be reflected as a specifically identified, one-time credit on prospective bills to the class of subscribers that currently subscribe to the cable programming service or associated equipment at issue.

(d) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments. Interest shall accrue from the date a valid complaint is filed until the refund issues.

(e) At the time the Commission orders a cable operator to pay refunds to subscribers, the franchising authority must return to the cable operator an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The franchising authority may return the franchise fee overcharge either in an immediate lump sum payment, or the cable operator may deduct it from the cable system's future franchise fee payments.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17975, Apr. 15, 1994; 64 FR 35950, July 2, 1999]

§ 76.962 Implementation and certification of compliance.

(a) *Implementation*. A cable operator must implement remedial requirements, including prospective rate reductions and refunds, within 60 days from the date the Commission releases an order mandating a remedy.

(b) *Certification of compliance*. A cable operator must certify to the Commission its compliance with any Commission order mandating remedial requirements. Such certification shall:

(1) Be filed with the Commission within 90 days from the date the Commission releases an order mandating a remedy;

(2) Reference the applicable Commission order;

(3) State that the cable operator has complied fully with all provisions of the Commission's order;

(4) Include a description of the precise measures the cable operator has taken to implement the remedies ordered by the Commission; and

(5) Be signed by an authorized representative of the cable operator.

§ 76.963 Forfeiture.

(a) If any cable operator willfully fails to comply with the terms of any Commission order, including an order mandating remedial requirements after a finding of unreasonable cable programming service or equipment rates, or any Commission rule, the Commission may, in addition to other remedies, impose a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b).

(b) A cable operator shall not be subject to forfeiture because its rate for cable programming service or equipment is determined to be unreasonable.

§ 76.970 Commercial leased access rates.

(a) Cable operators shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the requirement of 47 U.S.C. 532. For purposes of 47 U.S.C. 532(b)(1)(A) and (B), only those channels that must be carried pursuant to 47 U.S.C. 534 and 535 qualify as channels that are required for use by Federal law or regulation. For cable systems with 100 or fewer channels, channels that cannot be used due to technical and safety regulations of the Federal Government (e.g., aeronautical channels) shall be excluded when calculating the set-aside requirement.

(b) In determining whether an entity is an ''affiliate'' for purposes of commercial leased access, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(c) Attributable interest shall be defined by reference to the criteria set forth in Notes 1–5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(d) The maximum commercial leased access rate that a cable operator may charge for full-time channel placement on a tier exceeding a subscriber penetration of 50 percent is the average implicit fee for full-time channel placement on all such tier(s).

(e) The average implicit fee identified in paragraph (c) of this section for a full-time channel on a tier with a subscriber penetration over 50 percent shall be calculated by first calculating the total amount the operator receives in subscriber revenue per month for the programming on all such tier(s), and then subtracting the total amount it pays in programming costs per month for such tier(s) (the ''total implicit fee calculation''). A weighting scheme that accounts for differences in the number of subscribers and channels on all such tier(s) must be used to determine how much of the total implicit fee calculation will be recovered from any particular tier. The weighting scheme is determined in two steps. First, the number of subscribers is multiplied by the number of channels (the result is the number of ''subscriber-channels'') on each tier with subscriber penetration over 50 percent. For instance, a tier with 10 channels and 1,000 subscribers would have a total of 10,000 subscriber-channels. Second, the subscriber-channels on each of these tiers is divided by the total subscriber-channels on all such tiers. Given the percent of subscriber-channels for the particular tier, the implicit fee for the tier is computed by multiplying the subscriber-channel percentage for the tier by the total implicit fee calculation. Finally, to calculate the average implicit fee per channel, the implicit fee for the tier must be divided by the corresponding number of channels on the tier. The final result is the maximum rate per month that the operator may charge the leased access programmer for a full-time channel on that particular tier. The average implicit fee shall be calculated by using all channels carried on any tier exceeding 50

percent subscriber penetration (including channels devoted to affiliated programming, must-carry and public, educational and government access channels). In the event of an agreement to lease capacity on a tier with less than 50 percent penetration, the average implicit fee should be determined on the basis of subscriber revenues and programming costs for that tier alone. The license fees for affiliated channels used in determining the average implicit fee shall reflect the prevailing company prices offered in the marketplace to third parties. If a prevailing company price does not exist, the license fee for that programming shall be priced at the programmer's cost or the fair market value, whichever is lower. The average implicit fee shall be based on contracts in effect in the previous calendar year. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services).

(f) The maximum commercial leased access rate that a cable operator may charge for full-time channel placement as an a la carte service is the highest implicit fee on an aggregate basis for full-time channel placement as an a la carte service.

(g) The highest implicit fee on an aggregate basis for full-time channel placement as an a la carte service shall be calculated by first determining the total amount received by the operator in subscriber revenue per month for each non-leased access a la carte channel on its system (including affiliated a la carte channels) and deducting the total amount paid by the operator in programming costs (including license and copyright fees) per month for programming on such individual channels. This calculation will result in implicit fees determined on an aggregate basis, and the highest of these implicit fees shall be the maximum rate per month that the operator may charge the leased access programmer for placement as a full-time a la carte channel. The license fees for affiliated channels used in determining the highest implicit fee shall reflect the prevailing company prices offered in the marketplace to third parties. If a prevailing company price does not exist, the license fee for that programming shall be priced at the programmer's cost or the fair market value, whichever is lower. The highest implicit fee shall be based on contracts in effect in the previous calendar year. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services). Any subscriber revenue received by a cable operator for an a la carte leased access service shall be passed through to the leased access programmer.

(h) The maximum commercial leased access rate that a cable operator may charge for part-time channel placement shall be determined by either prorating the maximum full-time rate uniformly, or by developing a schedule of and applying different rates for different times of the day, provided that the total of the rates for a 24-hour period does not exceed the maximum daily leased access rate.

(i)(1) Cable system operators shall provide prospective leased access programmers with the following information within 15 calendar days of the date on which a request for leased access information is made:

(i) How much of the operator's leased access set-aside capacity is available;

(ii) A complete schedule of the operator's full-time and part-time leased access rates;

(iii) Rates associated with technical and studio costs; and

(iv) If specifically requested, a sample leased access contract.

(2) Operators of systems subject to small system relief shall provide the information required in paragraph (h)(1) of this section within 30 calendar days of a bona fide request from a prospective leased access programmer. For these purposes, systems subject to small system relief are systems that either:

(i) Qualify as small systems under § 76.901(c) and are owned by a small cable company as defined under § 76.901(e); or

(ii) Have been granted special relief.

(3) Bona fide requests, as used in this section, are defined as requests from potential leased access programmers

that have provided the following information:

(i) The desired length of a contract term;

(ii) The time slot desired;

(iii) The anticipated commencement date for carriage; and

(iv) The nature of the programming.

(4) All requests for leased access must be made in writing and must specify the date on which the request was sent to the operator.

(5) Operators shall maintain, for Commission inspection, sufficient supporting documentation to justify the scheduled rates, including supporting contracts, calculations of the implicit fees, and justifications for all adjustments.

(i) Cable operators are permitted to negotiate rates below the maximum rates permitted in paragraphs (c) through (g) of this section.

[58 FR 29753, May 21, 1993, as amended at 61 FR 16400, Apr. 15, 1996; 62 FR 11380, Mar. 12, 1997; 64 FR 67197, Dec. 1, 1999]

§ 76.971 Commercial leased access terms and conditions.

(a)(1) Cable operators shall place leased access programmers that request access to a tier actually used by most subscribers on any tier that has a subscriber penetration of more than 50 percent, unless there are technical or other compelling reasons for denying access to such tiers.

(2) Cable operators shall be permitted to make reasonable selections when placing leased access channels at specific channel locations. The Commission will evaluate disputes involving channel placement on a case-by-case basis and will consider any evidence that an operator has acted unreasonably in this regard.

(3) On systems with available leased access capacity sufficient to satisfy current leased access demand, cable operators shall be required to accommodate as expeditiously as possible all leased access requests for programming that is not obscene or indecent. On systems with insufficient available leased access capacity to satisfy current leased access demand, cable operators shall be permitted to select from among leased access programmers using objective, content-neutral criteria.

(4) Cable operators that have not satisfied their statutory leased access requirements shall accommodate part-time leased access requests as set forth in this paragraph. Cable operators shall not be required to accept leases for less than one half-hour of programming. Cable operators may accommodate part-time leased access requests by opening additional channels for part-time use or providing comparable time slots on channels currently carrying leased or non-leased access programming. The comparability of time slots shall be determined by objective factors such as day of the week, time of day, and audience share. A cable operator that is unable to provide a comparable time slot to accommodate a part-time programming request shall be required to open an additional channel for part-time use unless such operator has at least one channel designated for part-time leased access use that is programmed with less than 18 hours of part-time leased access programming every day. However, regardless of the availability of partially programmed part-time leased access channels, a cable operator shall be required to open an additional channel to accommodate any request for part-time leased access for at least eight contiguous hours, for the same time period every day, for at least a year. Once an operator has opened a vacant channel to accommodate such a request, our other leased access rules apply. If, however, the operator has accommodated such a request on a channel already carrying an existing full-time non-leased access programmer, the operator does not have to accommodate other part-time requests of less than eight hours on that channel until all other existing part-time leased access channels are substantially filled with leased access programming.

(b) Cable operators may not apply programming production standards to leased access that are any higher than those applied to public, educational and governmental access channels.

(c) Cable operators are required to provide unaffiliated leased access users the minimal level of technical support necessary for users to present their

material on the air, and may not unreasonably refuse to cooperate with a leased access user in order to prevent that user from obtaining channel capacity. Leased access users must reimburse operators for the reasonable cost of any technical support actually provided by the operator that is beyond that provided for non-leased access programmers on the system. A cable operator may charge leased access programmers for the use of technical equipment that is provided at no charge for public, educational and governmental access programming, provided that the operator's franchise agreement requires it to provide the equipment and does not preclude such use, and the equipment is not being used for any other non-leased access programming. Cable operators that are required to purchase technical equipment in order to accommodate a leased access programmer shall have the option of either requiring the leased access programmer to pay the full purchase price of the equipment, or purchasing the equipment and leasing it to the leased access programmer at a reasonable rate. Leased access programmers that are required to pay the full purchase price of additional equipment shall have all rights of ownership associated with the equipment under applicable state and local law.

(d) Cable operators may require reasonable security deposits or other assurances from users who are unable to prepay in full for access to leased commercial channels. Cable operators may impose reasonable insurance requirements on leased access programmers. Cable operators shall bear the burden of proof in establishing reasonableness.

(e) Cable operators may not set terms and conditions for commercial leased access use based on content, *except:*

(1) To the limited extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person; or

(2) To comply with 47 U.S.C. 532 (h), (j) and § 76.701.

(f)(1) A cable operator shall provide billing and collection services for commercial leased access cable programmers, unless the operator demonstrates the existence of third party billing and collection services which in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers.

(2) If an operator can make the showing required in paragraph (f)(1) of this section, it must, to the extent technically feasible make available data necessary to enable a third party to bill and collect for the leased access user.

(g) Cable operators shall not unreasonably limit the length of leased access contracts. The termination provisions of leased access contracts shall be commercially reasonable and may not allow operators to terminate leased access contracts without a reasonable basis.

(h) Cable operators may not prohibit the resale of leased access capacity to persons unaffiliated with the operator, but may provide in their leased access contracts that any sublessees will be subject to the non-price terms and conditions that apply to the initial lessee, and that, if the capacity is resold, the rate for the capacity shall be the maximum permissible rate.

[58 FR 29753, May 21, 1993, as amended at 61 FR 16401, Apr. 15, 1996; 62 FR 11381, Mar. 12, 1997]

§ 76.975 Commercial leased access dispute resolution.

(a) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communications Act may bring an action in the district court of the United States for the Judicial district in which the cable system is located to compel that such capacity be made available.

(b)(1) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the provisions of Title VI of the Communications Act, or our implementing regulations, §§ 76.970 and 76.971, may file a petition for relief with the Commission. Persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted

rate from an independent accountant prior to filing a petition for relief with the Commission.

(2) Parties to a dispute over leased access rates shall have five business days to agree on a mutually acceptable accountant from the date on which the programmer provides the cable operator with a written request for a review of its leased access rates. Parties that fail to agree on a mutually acceptable accountant within five business days of the programmer's request for a review shall each be required to select an independent accountant on the sixth business day. The two accountants selected shall have five business days to select a third independent accountant to perform the review. Operators of systems subject to small system relief shall have 14 business days to select an independent accountant when an agreement cannot be reached. For these purposes, systems subject to small system relief are systems that either:

(i) Qualify as small systems under § 76.901(c) and are owned by a small cable company as defined under § 76.901(e); or

(ii) Have been granted special relief.

(3) The final accountant's report must be completed within 60 days of the date on which the final accountant is selected to perform the review. The final accountant's report must, at a minimum, state the maximum permitted rate, and explain how it was determined without revealing proprietary information. The report must be signed, dated and certified by the accountant. The report shall be filed in the cable system's local public file.

(4) If the accountant's report indicates that the cable operator's leased access rate exceeds the maximum permitted rate by more than a *de minimis* amount, the cable operator shall be required to pay the full cost of the review. If the final accountant's report does not indicate that the cable operator's leased access rate exceeds the maximum permitted rate by more than a *de minimis* amount, each party shall be required to split the cost of the final accountant's review, and to pay its own expenses incurred in making the review.

(5) Parties may use alternative dispute resolution (ADR) processes to settle disputes that are not resolved by the final accountant's report.

(c) A petition must contain a concise statement of the facts constituting a violation of the statute or the Commission's Rules, the specific statute(s) or rule(s) violated, and certify that the petition was served on the cable operator. Where a petition is based on allegations that a cable operator's leased access rates are unreasonable, the petitioner must attach a copy of the final accountant's report. In proceedings before the Commission, there will be a rebuttable presumption that the final accountant's report is correct.

(d) Where a petition is not based on allegations that a cable operator's leased access rates are unreasonable, the petition must be filed within 60 days of the alleged violation. Where a petition is based on allegations that the cable operator's leased access rates are unreasonable, the petition must be filed within 60 days of the final accountant's report, or within 60 days of the termination of ADR proceedings. Aggrieved parties must certify that their petition was filed within 60 days of the termination of ADR proceedings in order to file a petition later than 60 days after completion of the final accountant's report. Cable operators may rebut such certifications.

(e) The cable operator or other respondent will have 30 days from the filing of the petition to file a response. If a leased access rate is disputed, the response must show that the rate charged is not higher than the maximum permitted rate for such leased access, and must be supported by the affidavit of a responsible company official. If, after a response is submitted, the staff finds a prima facie violation of our rules, the staff may require a respondent to produce additional information, or specify other procedures necessary for resolution of the proceeding.

(f) The Commission, after consideration of the pleadings, may grant the relief requested, in whole or in part, including, but not limited to ordering refunds, injunctive measures, or forfeitures pursuant 47 U.S.C. 503, denying the

petition, or issuing a ruling on the petition or dispute.

(g) To be afforded relief, the petitioner must show by clear and convincing evidence that the cable operator has violated the Commission's leased access provisions in 47 U.S.C. 532 or §§ 76.970 and 76.971, or otherwise acted unreasonably or in bad faith in failing or refusing to make capacity available or to charge lawful rates for such capacity to an unaffiliated leased access programmer.

(h) During the pendency of a dispute, a party seeking to lease channel capacity for commercial purposes, shall comply with the rates, terms and conditions prescribed by the cable operator, subject to refund or other appropriate remedy.

[58 FR 29753, May 21, 1993, as amended at 62 FR 11382, Mar. 12, 1997]

§ 76.977 Minority and educational programming used in lieu of designated commercial leased access capacity.

(a) A cable operator required by this section to designate channel capacity for commercial use pursuant to 47 U.S.C. 532, may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming sources, whether or not such source is affiliated with cable operator. The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this section may not exceed 33 percent of the channel capacity designated pursuant to 47 U.S.C. 532 and must be located on a tier with more than 50 percent subscriber penetration.

(b) For purposes of this section, a qualified minority programming source is a programming source that devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned.

(c) For purposes of this section, a qualified educational programming source is a programming source that devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, or the arts and has a documented annual expenditure on programming exceeding $15 million. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

(d) For purposes of paragraphs (b) and (c) of this section, *substantially all* means that 90% or more of the programming offered must be devoted to minority or educational purposes, as defined in paragraphs (b) and (c) of this section, respectively.

(e) For purposes of paragraph (b) of this section, ''minority'' is defined as in 47 U.S.C. 309(i)(3)(c)(ii) to include Blacks, Hispanics, American Indians, Alaska Natives, Asians and Pacific Islanders.

[58 FR 29753, May 21, 1993, as amended at 62 FR 11382, Mar. 12, 1997]

§ 76.980 Charges for customer changes.

(a) This section shall govern charges for any changes in service tiers or equipment provided to the subscriber that are initiated at the request of a subscriber after initial service installation.

(b) The charge for customer changes in service tiers effected solely by coded entry on a computer terminal or by other similarly simple methods shall be a nominal amount, not exceeding actual costs, as defined in paragraph (c) of this section.

(c) The charge for customers changes in service tiers or equipment that involve more than coded entry on a computer or other similarly simple method shall be based on actual cost. The actual cost charge shall be either the HSC, as defined in Section 76.923 of the rules, multiplied by the number of persons hours needed to implement the change, or the HSC multiplied by the average number of persons hours involved in implementing customer changes.

(d) A cable operator may establish a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, subject to approval by the franchising authority, for a subscriber changing service tiers more than two times in a twelve month period, except for such changes ordered in response to a change in price or channel line-up.

(e) Downgrade charges that are the same as, or lower than, upgrade charges are evidence of the reasonableness of such downgrade charges.

(f) For 30 days after notice of retiering or rate increases, a customer may obtain changes in service tiers at no additional charge.

NOTE 1 TO § 76.980: Cable operators must also notify subscribers of potential charges for customer service changes, as provided in § 76.1604.

[58 FR 29753, May 21, 1993, as amended at 65 FR 53617, Sept. 5, 2000]

§ 76.981 Negative option billing.

(a) A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. A subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A subscriber's affirmative request for service or equipment may be made orally or in writing.

(b) The requirements of paragraph (a) of this section shall not preclude the adjustment of rates to reflect inflation, cost of living and other external costs, the addition or deletion of a specific program from a service offering, the addition or deletion of specific channels from an existing tier or service, the restructuring or division of existing tiers of service, or the adjustment of rates as a result of the addition, deletion or substitution of channels pursuant to § 76.922, provided that such changes do not constitute a fundamental change in the nature of an existing service or tier of service and are otherwise consistent with applicable regulations.

(c) State and local governments may not enforce state and local consumer protection laws that conflict with or undermine paragraph (a) or (b) of this section or any other sections of this Subpart that were established pursuant to Section 3 of the 1992 Cable Act, 47 U.S.C. 543.

[59 FR 62625, Dec. 6, 1994]

§ 76.982 Continuation of rate agreements.

During the term of an agreement executed before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, the franchising authority may regulate basic cable rates without following section 623 of the 1992 Cable Act or §§ 76.910 through 76.942. A franchising authority regulating basic cable rates pursuant to such a rate agreement is not required to file for certification during the remaining term of the agreement but shall notify the Commission of its intent to continue regulating basic cable rates.

§ 76.983 Discrimination.

(a) No Federal agency, state, or local franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or to economically disadvantaged groups.

(1) Such discounts must be offered equally to all subscribers in the franchise area who qualify as members of these categories, or any reasonable subcategory thereof.

(2) For purposes of this section, members of economically disadvantaged groups are those individuals who receive federal, state or local welfare assistance.

(b) Nothing herein shall preclude any Federal agency, state, or local franchising authority from requiring and regulating the reception of cable service by hearing impaired individuals.

§ 76.984 Geographically uniform rate structure.

(a) The rates charged by cable operators for basic service, cable programming service, and associated equipment and installation shall be provided pursuant to a rate structure that is uniform throughout each franchise area in which cable service is provided.

(b) This section does not prohibit the establishment by cable operators of reasonable categories of service and customers with separate rates and terms and conditions of service, within a franchise area.

(c) This section does not apply to:

(1) A cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or

(2) Any video programming offered on a per channel or per program basis.

(3) Bulk discounts to multiple dwelling units shall not be subject to this section, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

NOTE 1 TO PARAGRAPH (c)(3): Discovery procedures for predatory pricing complaints. Requests for discovery will be addressed pursuant to the procedures specified in § 76.7(f).

NOTE 2 TO PARAGRAPH (c)(3): Confidential information. Parties submitting material believed to be exempt from disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552(b), and the Commission's rules, § 0.457 of this chapter, should follow the procedures in § 0.459 of this chapter and § 76.9.

[59 FR 17975, Apr. 15, 1994, as amended at 61 FR 18979, Apr. 30, 1996; 64 FR 35951, July 2, 1999]

§ 76.985 Subscriber bill itemization.

(a) Cable operators may identify as a separate line item of each regular subscriber bill the following:

(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. In order for a governmental fee or assessment to be separately identified under this section, it must be directly imposed by a governmental body on a transaction between a subscriber and an operator.

(b) The charge identified on the subscriber bill as the total charge for cable service should include all fees and costs itemized pursuant to this section.

(c) Local franchising authorities may adopt regulations consistent with this section.

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-XXXX
Expires 00/00/00

INSTRUCTIONS FOR FCC 329
CABLE PROGRAMMING SERVICE RATE COMPLAINT FORM

1. This FCC form is to be used by subscribers, franchising authorities, and other relevant state or local government entities seeking to file a complaint with the FCC challenging the reasonableness of a cable company's rates for cable programming service or for installation or rental of equipment used to receive cable programming service.

2. The term "cable programming service" includes all video programming provided by a cable company **except:** (1) programming provided on the basic service tier; or (2) programming provided on a pay-per-channel or pay-per-program basis. See Question 9.

3. The "basic service tier" is the tier that includes over-the-air television broadcast signals and public, educational and governmental access channels. Under federal law, in most instances, your local franchising authority rather than the FCC regulates rates for the basic service tier or associated equipment. Therefore, if you believe that your rate for the basic service tier or associated equipment is unreasonable, you should contact your local franchising authority to determine if it is authorized to regulate basic service tier rates.

4. Under federal law, video programming provided on a pay-per-channel or pay-per-program basis (for example, a premium movie channel such as HBO or a pay-per-view sports event) is not subject to rate regulation by either the FCC or your local franchising authority.

5. If you are concerned about your rates for cable programming service or associated equipment, then you may fill out this form and submit **an original and one copy** to the FCC. The FCC will examine the reasonableness of your cable programming service rate according to a specific formula. If the rate the cable company currently is charging you for the cable programming service is greater than the rate produced by the FCC's formula, the cable company's rate will be presumed unreasonable. In these circumstances, unless the cable company can provide cost information to justify the reasonableness of its rate, the FCC may order a refund and/or a prospective rate reduction for the cable programming service at issue.

6. Please note the following time limitations for filing a complaint:

   • If you are challenging the reasonableness of a rate increase for cable programming service or associated equipment, your complaint must be actually received by the FCC within 45 days from the date you receive a bill from your cable company reflecting the rate increase. (Note: a reduction in number of channels may constitute an effective rate increase even though the existing rate for the cable programming service remains unchanged.)

   • The only exception to the 45 day time limitation concerns cable programming service and associated equipment rates in effect when the FCC's rules become effective – that is, June 21, 1993. You may challenge the reasonableness of such rates, but you must file your complaint within 180 days from June 21, 1993 – that is, by December 18, 1993.

   • After December 18, 1993, you may only file complaints about rate increases and you must follow the general 45-day filing requirement described above.

   • Late-filed complaints will be dismissed with no opportunity to refile.

7. In addition to the cable company's name and mailing address, you should provide the cable company's "FCC Community Unit Identifier." (The FCC Community Unit Identifier is a number assigned to each cable system by the FCC for administrative purposes.) Also, you must provide the name and mailing address of the local franchising authority. (The local franchising authority is the local municipal, county or other government organization that regulates cable television in your community.) FCC rules require the cable company to furnish all this information to you on your monthly bill. If this information does not appear either on the front or back of your monthly bill, contact your cable company, your local franchising authority, or your local government to obtain the necessary information before filling out this form.

8. You must indicate whether you are challenging the reasonableness of: (1) a rate concerning cable programming service or associated equipment in effect on June 21, 1993; or (2) a rate increase. Except for a limited opportunity to challenge existing rates in effect on June 21, 1993, complaints may be filed only in the event of a rate increase.

9. If you are a subscriber, you must attach two copies of your monthly cable bill reflecting the rate or rate increase about which you are complaining. If you are challenging the reasonableness of a rate concerning cable programming service or associated equipment in effect on June 21, 1993, the bill should reflect that rate. If you are challenging the reasonableness of a rate increase, the bill should reflect the increased rate. (If you are challenging the reasonableness of a rate increase and have a previous bill which reflects the rate immediately prior to the increase, please attach two copies of the previous bill – note, however, that this is optional.)

10. You must check the box stating your belief that the cable programming service rate is unreasonable. The FCC staff will apply the formula mentioned in paragraph 5 to determine whether the cable company's rate is presumed reasonable or not – you do not need to make this calculation.

11. You must fill in all information required by this form.

12. You may contact your local franchising authority for assistance in filling out this form. In addition, you may attach two copies of a statement from your local franchising authority describing its views on the reasonableness of the cable programming service rate in question. This is not a requirement. If you do attach such a statement, you should also mail a copy of it to the cable company.

13. You must sign and date this form.

14. Once you complete the form copies must be mailed, including all attachments, to the following: Original and one copy: Federal Communications Commission, Attn: Cable Programming Service Rate Complaint, Room L-16, 1919 M Street, N.W., Washington, D.C. 20554; the cable company (at the address listed on your complaint); and the local franchising authority (at the address listed on your complaint).

    Please be sure to send all copies to the correct address. If you do not, we may not be able to process your complaint.

15. **NOTE: If you do not mail a copy of this form, including all attachments, to the cable company at the same time you mail your complaint to the FCC, the cable company will not be required to respond and your complaint may be dismissed.**

16. If your complaint meets the requirements listed above, the FCC will require the cable company to respond to your complaint within thirty days and provide a justification for the reasonableness of your rate. The cable company must provide you with a copy of its response to the FCC.

17. The FCC staff will examine your complaint and the cable company's response and then rule on the reasonableness of the cable programming service rate. This ruling will be in writing, and you will receive a copy by mail. If the FCC staff determines that the rate in question in unreasonable, it may order refunds and/or prospective rate reductions. If it determines that the rate in question is reasonable, the FCC staff will deny the complaint.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine the reasonableness of a cable company's rates. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. All information provided in this form will be available for public inspection. Your response is required to obtain the requested relief.

Public reporting burden for this collection of information is estimated to average 30 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, AMD-PRS, Washington, D. C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-XXXX), Washington, D. C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1975, 5 U.S.C. 522a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-XXXX
Expires 00/00/00

FCC 329
CABLE PROGRAMMING SERVICE RATE COMPLAINT FORM
(Carefully read instructions on reverse before filling out form)

1. Complainant's Name		
Mailing Address		
City	State	ZIP Code
Daytime Telephone No. (include area code):		

2. Local Franchising Authority's Name		
Mailing Address		
City	State	ZIP Code

3. Cable Company's Name		
Mailing Address		
City	State	ZIP Code
Cable Company's FCC Community Unit Identifier (if known):		

4. Indicate whether this is the first time you have filed a complaint with the FCC or whether you are filing a corrected complaint to cure a defect in a prior complaint. CHECK ONE.

☐ First time complaint
☐ Corrected complaint

5. If you are filing a corrected complaint to cure a defect in a prior complaint, indicate the date the prior complaint was filed with the FCC and the date you received notification from the FCC that the prior complaint was defective.

Date prior complaint filed: _____ Month | Date | Year

Date you received FCC notification that the prior complaint was defective: _____ Month | Date | Year

6. Indicate whether you are challenging the reasonableness of: (1) a rate concerning cable programming service or associated equipment in effect on June 21, 1993; or (2) a rate increase. (See the Instructions for different filing deadlines depending on which type of complaint you are filing.) CHECK ONE.

☐ Rate in effect on June 21, 1993
☐ Rate increase

7. If you are a subscriber challenging the reasonableness of a rate increase, indicate the date you first received a bill from the cable operator reflecting the rate increase about which you are complaining.

Month | Date | Year

8. Indicate the current monthly rate for the cable programming service or associated equipment and, if you are challenging the reasonableness of a rate increase, the most recent rate in effect immediately prior to the rate increase.

Current Monthly Rate: $_____ Month | Year

Previous Monthly Rate: $_____ Month | Year

9. In the tables below, describe the cable programming service to which the complaint is addressed and, if applicable, how it has changed. If this space is insufficient, include any additional comments on a separate page attached to this form.

List channels by name included in the service:

List channels by name deleted from the service (if any):

List channels by name added to the service (if any):

10. If you are a subscriber, you must attach two copies of your current bill reflecting the rate or rate increase about which you are complaining. NOTE: Failure to attach two copies of your current bill reflecting the rate or rate increase may result in dismissal of your complaint.
I have attached two copies of my current bill. _____ ☐ Yes ☐ No

11. Optional: If you are a subscriber challenging the reasonableness of a rate increase, attach two copies of a previous bill (if available) reflecting the rate immediately prior to the rate increase.
I have attached two copies of my previous bill. _____ ☐ Yes ☐ No

12. I certify that I am sending a copy of this complaint, including all attachments, to the cable company and the local franchising authority at the addresses listed above via first class mail, postage prepaid, at the same time I am sending two copies of this complaint to the FCC. NOTE: Failure to satisfy this requirement may result in dismissal of your complaint. The cable company will not be required to respond unless you send a copy of the complaint to the cable company by mail.

☐ Yes ☐ No

Date sent: Month | Date | Year

13. I believe that the cable company's rate for the cable programming service or associated equipment described above is unreasonable because it violates the FCC's rate regulations. (CHECK BOX) _____ ☐

14. I certify that, to the best of my knowledge, the information supplied on this form is true and correct.

Signature
Date

(Note to complainant: This complaint form will be maintained in the FCC's records under the cable company's community unit number. It will not be filed under your name.)

FCC 329
June 1993

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
1060-XXXX
Expires 00/00/00

INSTRUCTIONS FOR FCC 328
FRANCHISING AUTHORITY CERTIFICATION

1. The Cable Television Consumer Protection and Competition Act, enacted in October 1992, changes the manner in which cable television systems that are not subject to effective competition are regulated. In general, rates for the basic service tier (the tier required as a condition of access to all other video services and containing, among other services, local broadcast station signals and public, educational, and public access channels) and associated equipment will be subject to regulation by local or state governments ("franchising authorities"). Rates for cable programming services and associated equipment (all services except basic and pay channels) will be subject to regulation by the FCC. Rates for pay channels (channels for which there is a specific per-channel or per-program charge) are not regulated.

2. Only cable systems that are not subject to effective competition may be regulated. Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.

3. In order to regulate basic service tier rates, a franchising authority must be certified by the FCC. In order to be certified, a franchising authority must complete this form. **An original and one copy of the completed form and all attachments must be returned to the FCC by registered mail, return receipt requested, to the FCC at the address on the form.**

4. A copy of the form must be served on the cable operator by first-class mail on or before the date the form is sent or delivered to the FCC.

5. The franchising authority's certification will become effective 30 days after the date stamped on the postal return receipt unless otherwise notified by the Commission by that date. The franchising authority cannot begin to regulate rates, however, until it has actually adopted the required regulations (see below) and until it has notified the cable operator that it has been certified and that it has adopted the required regulations.

6. In order to be certified, franchising authorities must answer "yes" to Questions 3, 4, and 5, which are explained as follows:

7. Question 3: The franchising authority must adopt rate regulations consistent with the Commission's regulations for basic cable service. To fulfill this requirement for certification, the franchising authority may simply adopt a regulation indicating that it will follow the regulations established by the FCC.

   The franchising authority has 120 days to adopt these regulations after the time it is certified. The franchising authority may not, however, begin to regulate cable rates until after it has adopted these regulations and until it has notified the cable operator that it has been certified and has adopted the required regulations.

8. Question 4(a): The franchising authority's "legal authority" to regulate basic service must come from state law. In some states, only the state government may regulate cable rates. In those states, the state government should file this certification. Provisions in franchise agreements that prohibit rate regulation are void, and do not prevent a franchising authority from regulating the basic service tier and associated equipment.

   Question 4(b): The franchising authority must have a sufficient number of personnel to undertake rate regulation.

   A franchise authority unable to answer "yes" to questions 4(a) or 4(b) may wish to review the FCC's Report and Order in Docket 92-266, FCC 93-177 (released May 3, 1993) for further information on the establishment of alternative federal regulatory procedures.

9. Question 5: Franchising authorities must have procedural regulations allowing for public participation in rate regulation proceedings. If a franchising authority does not have these regulations already in place, it must adopt them within 120 days of certification and before it may undertake rate regulation.

10. Question 6: Most cable systems are not subject to effective competition, as defined by the Cable Act. (The definition is included above and on the form.) The franchising authority may presume that the cable system in its jurisdiction is not subject to effective competition.

    For purposes of applying the definition of effective competition (see Item 2 above), "multichannel video programming distributors" include a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a video dialtone service, and a satellite master antenna television system. A multichannel video programming distributor's services will be deemed "offered" when they are both technically and actually available. Service is "technically available" when the multichannel distributor is physically able to deliver the service to a household wishing to subscribe, with only minimal additional investment by the distributor. A service is "actually available" if subscribers in the franchise area are reasonably aware through marketing efforts that the service is available. Subscribership of those multichannel video programming distributors offering service to at least 50 percent of the households in a franchise area will be aggregated to determine whether at least 15 percent of the households in the franchise area are served by competitors. A multichannel video programming distributor must offer at least 12 channels of programming, at least one channel of which is nonbroadcast, to be found to offer "comparable" video programming.

11. This certification form must be signed by a government official with authority to act on behalf of the franchising authority.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine if the franchise authority should be authorized to regulate cable rates. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. All information provided in this form will be available for public inspection. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 30 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, AMD-PRS, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-XXXX), Washington, D.C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1975, 5 U.S.C. 522a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Federal Communications Commission
Washington, D. C. 20554

FCC 328

Approved by OMB
3060-XXXX
Expires 00/00/00

CERTIFICATION OF FRANCHISING AUTHORITY TO REGULATE BASIC CABLE SERVICE RATES AND INITIAL FINDING OF LACK OF EFFECTIVE COMPETITION

1 Name of Franchising Authority		
Mailing Address		
City	State	ZIP Code
Telephone No. (include area code):		
Person to contact with respect to this form:		

2. a. Name (s) and address(es) of cable system(s) and associated FCC community unit identifiers within your jurisdiction. (Attach additional sheets if necessary.)

Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

2. b. Name (s) of system(s) and associated community unit identifiers you claim are subject to regulation and with respect to which you are filing this certification. (Attach additional sheets if necessary.)

Name of System	Community Unit Identifier

Name of System	Community Unit Identifier

2. c. Have you served a copy of this form on all parties listed in 2.b.? ☐ Yes ☐ No

3. Will your franchising authority adopt (within 120 days of certification) and administer regulations with respect to basic cable service that are consistent with the regulations adopted by the FCC pursuant to 47 U.S.C. Section 543(b)? ☐ Yes ☐ No

4. With respect to the franchising authority's regulations referred to in Question 3,

a. Does your franchising authority have the legal authority to adopt them? ☐ Yes ☐ No

b. Does your franchising authority have the personnel to administer them? ☐ Yes ☐ No

5. Do the procedural laws and regulations applicable to rate regulation proceedings by your franchising authority provide a reasonable opportunity for consideration of the views of interested parties? ☐ Yes ☐ No

6. The Commission presumes that the cable system(s) listed in 2.b. is (are) not subject to effective competition. Based on the definition below, do you have reason to believe that this presumption is correct? ☐ Yes ☐ No

(Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.)

Signature
Title
Date

Return the original and one copy of this certification form (as indicated in Instructions), along with any attachments, to:
Federal Communications Commission
Attn: Cable Franchising Authority Certifi· tion
Room L-16
1919 M Street, N.W.
Washington, D. C. 20554

FCC 328
June 1993

§ 76.986 "A la carte" offerings.

(a) Collective offerings of unregulated per-channel or per-program (''a la carte'') video programming shall be regulated as CPSTs pursuant to § 76.922.

For purposes of this section, ''multiplexed'' channels shall be treated as one channel.

(b) A discounted package price offered by a cable system is not unreasonable with respect to any collective offering of channels if the component channels' collective offering also have been continuously available on the system on a per channel basis since April 1, 1993.

(c) A collective offering of per channel offerings may be treated as New Product Tier if:

(1) The collective offering meets the conditions set forth in § 76.987; or

(2) The operator had reasonable grounds to believe the collective offering involving only a small number of migrated channels complied with the Commission's requirements as of the date it was first offered.

(d) In reviewing a basic service rate filing, local franchising authorities may make an initial decision addressing whether a collective offering of ''a la carte'' channels will be treated as a cable programming service tier that is an NPT under § 76.987 or a CPST that is regulated under § 76.922. The franchising authority must make this initial decision within the 30 day period established for review of basic cable rates and equipment costs in § 76.933(a), or within the first 60 days of an extended 120 day period (if the franchise authority has requested an additional 90 days) pursuant to § 76.933(b). The franchising authority shall provide notice of its decision to the cable system and shall provide public notice of its initial decision within seven days pursuant to local procedural rules for public notice. Operators or consumers may make an interlocutory appeal of the initial decision to the Commission within 14 days of the initial decision. Operators shall provide notice to franchise authorities of their decision whether or not to appeal to the Commission within this period. Consumers shall provide notice to franchise authorities of their decision to appeal to the Commission within this period.

(e) A limited initial decision under paragraph (b) of this section shall toll the time periods under § 76.933 within which local authorities must decide local rate cases. The time period shall resume running seven days after the Commission decides the interlocutory appeal, or seven days following the expiration of the period in which an interlocutory appeal pursuant to paragraph (b) of this section may be filed.

(f) A local franchising authority alternatively may decide whether a collective offering of ''a la carte'' channels will be treated as an NPT as a part of its final decision setting rates for the basic service tier. That decision may then be appealed to the Commission as provided for under § 76.945.

[59 FR 62625, Dec. 6, 1994]

§ 76.987 New product tiers.

(a) Operators may establish a category of CPSTs, referred to as ''new product tiers'' (''NPTs''), and offer these tiers to subscribers at prices they elect.

(b) In order to be eligible to offer NPTs, cable operators must meet the following conditions:

(1) Operators offering NPTs are prohibited from making fundamental changes to what they offer on their BSTs and CPSTs offerings on September 30, 1994. Operators may drop channels or move channels between BSTs and/or CPSTs or to an a la carte offering so long as the aggregation of such changes do not constitute a fundamental change in their BST or CPSTs.

(2) Operators may not drop channels that were offered on their BSTs or CPSTs on September 30, 1994 and move them to NPTs unless they wait at least two years from the date the channels were dropped from the BSTs or CPSTs. Time shifted versions, slightly altered versions or renamed versions of channels offered on BSTs and CPSTs on September 30, 1994 shall not be exempt from this restriction.

(3) Operators must market their BSTs and CPSTs so that customers should be reasonably aware that:

(i) Those tiers are being offered to the public;

(ii) The names of the channels available on those tiers; and

(iii) The price of the tiers. A subscriber may not be charged for an NPT unless the cable operator has obtained the subscriber's affirmative consent. Changes to the fundamental nature of

an NPT must be approved by subscribers in accordance with § 76.981.

(4) Operators may not require the subscription to any tier, other than a BST, as a condition for subscribing to an NPT and operators may not require subscription to an NPT as a condition for subscribing to a CPST. These restrictions will not apply to cable operators prior to October 5, 2002, if such operators lack the capacity to offer BSTs and NPTs without also providing other intermediate tiers of service as provided in § 76.900(c).

(c) Operators may offer the same service on NPTs as are on one or more BSTs or CPSTs. A channel that occupied a CPST or BST part-time on September 30, 1994 also may be offered full-time on an NPT as long as it continues to be offered at least part-time on CPST or BST, under substantially the same conditions as before it was offered on the NPT. If a channel occupies a BST or CPST (regulated pursuant to § 76.922) full-time on September 30, 1994, and is subsequently reduced to part-time on the BST or CPST, that channel may not be offered on an NPT full-time. Operators that offer a channel both on an NPT and a BST or CPST will have a continuing obligation to ensure that subscribers are aware that the channels are available on the CPST or BST.

(d) Operators may temporarily place new channels on CPSTs for marketing purposes and then move them to NPTs. In order for an operator to move a channel from a CPST to an NPT pursuant to this paragraph, the channel must not have been offered on a BST or CPST prior to October 1, 1994.

(e) After initially electing to offer an NPT, a cable operator may cease to provide the NPT, upon proper notice to subscribers pursuant to § 76.1603. If an operator drops an NPT and subsequently determines to reestablish that tier, at the time of the reestablishment it must comply with the conditions for offering NPTs set forth in paragraph (b) of this section.

(f) If the Commission receives a complaint about an NPT, the operator need not file the rate justification provided in § 76.956, but shall within the time period provided by that rule file documentation that the NPT meets all the conditions set forth in this section.

NOTE 1 TO § 76.987: Cable operators offering a NPT must comply with the notice requirement of § 76.1605.

[59 FR 62625, Dec. 6, 1994, as amended at 65 FR 53617, Sept. 5, 2000]

§ 76.990 Small cable operators.

(a) Effective February 8, 1996, a small cable operator is exempt from rate regulation on its cable programming services tier, or on its basic service tier if that tier was the only service tier subject to rate regulation as of December 31, 1994, in any franchise area in which that operator services 50,000 or fewer subscribers.

(b) *Procedures*. (1) A small cable operator, may certify in writing to its franchise authority at any time that it meets all criteria necessary to qualify as a small operator. Upon request of the local franchising authority, the operator shall identify in writing all of its affiliates that provide cable service, the total subscriber base of itself and each affiliate, and the aggregate gross revenues of its cable and non-cable affiliates. Within 90 days of receiving the original certification, the local franchising authority shall determine whether the operator qualifies for deregulation and shall notify the operator in writing of its decision, although this 90-day period shall be tolled for so long as it takes the operator to respond to a proper request for information by the local franchising authority. An operator may appeal to the Commission a local franchise authority's information request if the operator seeks to challenge the information request as unduly or unreasonably burdensome. If the local franchising authority finds that the operator does not qualify for deregulation, its notice shall state the grounds for that decision. The operator may appeal the local franchising authority's decision to the Commission within 30 days.

(2) Once the operator has certified its eligibility for deregulation on the basic service tier, the local franchising authority shall not prohibit the operator from taking a rate increase and shall

not order the operator to make any refunds unless and until the local franchising authority has rejected the certification in a final order that is no longer subject to appeal or that the Commission has affirmed. The operator shall be liable for refunds for revenues gained (beyond revenues that could be gained under regulation) as a result of any rate increase taken during the period in which it claimed to be deregulated, plus interest, in the event the operator is later found not to be deregulated. The one-year limitation on refund liability will not be applicable during that period to ensure that the filing of an invalid small operator certification does not reduce any refund liability that the operator would otherwise incur.

(3) Within 30 days of being served with a local franchising authority's notice that the local franchising authority intends to file a cable programming services tier rate complaint, an operator may certify to the local franchising authority that it meets the criteria for qualification as a small cable operator. This certification shall be filed in accordance with the cable programming services rate complaint procedure set forth in § 76.1402. Absent a cable programming services rate complaint, the operator may request a declaration of CPST rate deregulation from the Commission pursuant to § 76.7.

(c) *Transition from small cable operator status.* If a small cable operator subsequently becomes ineligible for small operator status, the operator will become subject to regulation but may maintain the rates it charged prior to losing small cable operator status if such rates (with an allowance for minor variations) were in effect for the three months preceding the loss of small cable operator status. Subsequent rate increases following the loss of small cable operator status will be subject to generally applicable regulations governing rate increases.

NOTE TO § 76.990: For rules governing small cable systems and small cable companies, see § 76.934.

[64 FR 35951, July 2, 1999]

Subpart O—Competitive Access to Cable Programming

§ 76.1000 Definitions.

As used in this subpart:

(a) *Area served by cable system.* The term ''area served'' by a cable system means an area actually passed by a cable system and which can be connected for a standard connection fee.

(b) *Cognizable interests.* In applying the provisions of this subpart, ownership and other interests in cable operators, satellite cable programming vendors or satellite broadcast programming vendors will be attributed to their holders and subject the interest holders to the rules of this subpart. Cognizable and attributable interests shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(c) *Buying groups.* The term ''buying group'' or ''agent,'' for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(d) *Competing distributors.* The term ''competing,'' as used with respect to competing multichannel video programming distributors, means distributors whose actual or proposed service areas overlap.

(e) *Multichannel video programming distributor*. The term ''multichannel video programming distributor'' means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

NOTE TO PARAGRAPH (e): A video programming provider that provides more than one channel of video programming on an open video system is a multichannel video programming distributor for purposes of this subpart O and Section 76.1507.

(f) *Satellite broadcast programming*. The term ''satellite broadcast programming'' means broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.

(g) *Satellite broadcast programming vendor*. The term ''satellite broadcast programming vendor'' means a fixed service satellite carrier that provides service pursuant to section 119 of title 17, United States Code, with respect to satellite broadcast programming.

(h) *Satellite cable programming*. The term ''satellite cable programming'' means video programming which is transmitted via satellite and which is primarily intended for direct receipt by cable operators for their retransmission to cable subscribers, except that such term does not include satellite broadcast programming.

NOTE TO PARAGRAPH (h): Satellite programming which is primarily intended for the direct receipt by open video system operators for their retransmission to open video system subscribers shall be included within the definition of satellite cable programming.

(i) *Satellite cable programming vendor*. The term ''satellite cable programming vendor'' means a person engaged in the production, creation, or wholesale distribution for sale of satellite cable programming, but does not include a satellite broadcast programming vendor.

(j) *Similarly situated*. The term ''similarly situated'' means, for the purposes of evaluating alternative programming contracts offered by a defendant programming vendor, that an alternative multichannel video programming distributor has been identified by the defendant as being more properly compared to the complainant in order to determine whether a violation of § 76.1002(b) has occurred. The analysis of whether an alternative multichannel video programming distributor is properly comparable to the complainant includes consideration of, but is not limited to, such factors as whether the alternative multichannel video programming distributor operates within a geographic region proximate to the complainant, has roughly the same number of subscribers as the complainant, and purchases a similar service as the complainant. Such alternative multichannel video programming distributor, however, must use the same distribution technology as the ''competing'' distributor with whom the complainant seeks to compare itself.

(k) *Subdistribution agreement*. The term ''subdistribution agreement'' means an arrangement by which a local cable operator is given the right by a satellite cable programming vendor or satellite broadcast programming vendor to distribute the vendor's programming to competing multichannel video programming distributors.

[58 FR 27670, May 11, 1993, as amended at 61 FR 28708, June 5, 1996; 64 FR 67197, Dec. 1, 1999; 69 FR 72046, Dec. 10, 2004]

§ 76.1001 Unfair practices generally.

No cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor shall engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

[58 FR 27671, May 11, 1993]

§ 76.1002 Specific unfair practices prohibited.

(a) *Undue or improper influence.* No cable operator that has an attributable interest in a satellite cable programming vendor or in a satellite broadcast programming vendor shall unduly or improperly influence the decision of such vendor to sell, or unduly or improperly influence such vendor's prices, terms and conditions for the sale of, satellite cable programming or satellite broadcast programming to any unaffiliated multichannel video programming distributor.

(b) *Discrimination in prices, terms or conditions.* No satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor, shall discriminate in the prices, terms, and conditions of sale or delivery of satellite cable programming or satellite broadcast programming among or between competing cable systems, competing cable operators, or any competing multichannel video programming distributors. Nothing in this subsection, however, shall preclude:

(1) The imposition of reasonable requirements for creditworthiness, offering of service, and financial stability and standards regarding character and technical quality;

NOTE 1: Vendors are permitted to create a distinct class or classes of service in pricing based on credit considerations or financial stability, although any such distinctions must be applied for reasons for other than a multichannel video programming distributor's technology. Vendors are not permitted to manifest factors such as creditworthiness or financial stability in price differentials if such factors are already taken into account through different terms or conditions such as special credit requirements or payment guarantees.

NOTE 2: Vendors may establish price differentials based on factors related to offering of service, or difference related to the actual service exchanged between the vendor and the distributor, as manifested in standardly applied contract terms based on a distributor's particular characteristics or willingness to provide secondary services that are reflected as a discount or surcharge in the programming service's price. Such factors include, but are not limited to, penetration of programming to subscribers or to particular systems; retail price of programming to the consumer for pay services; amount and type of promotional or advertising services by a distributor; a distributor's purchase of programming in a package or a la carte; channel position; importance of location for non-volume reasons; prepayment discounts; contract duration; date of purchase, especially purchase of service at launch; meeting competition at the distributor level; and other legitimate factors as standardly applied in a technology neutral fashion.

(2) The establishment of different prices, terms, and conditions to take into account actual and reasonable differences in the cost of creation, sale, delivery, or transmission of satellite cable programming or satellite broadcast programming;

NOTE: Vendors may base price differentials, in whole or in part, on differences in the cost of delivering a programming service to particular distributors, such as differences in costs, or additional costs, incurred for advertising expenses, copyright fees, customer service, and signal security. Vendors may base price differentials on cost differences that occur within a given technology as well as between technologies. A price differential for a program service may not be based on a distributor's retail costs in delivering service to subscribers unless the program vendor can demonstrate that subscribers do not or will not benefit from the distributor's cost savings that result from a lower programming price.

(3) The establishment of different prices, terms, and conditions which take into account economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor; or

NOTE: Vendors may use volume-related justifications to establish price differentials to the extent that such justifications are made available to similarly situated distributors on a technology-neutral basis. When relying upon standardized volume-related factors that are made available to all multichannel video programming distributors using all technologies, the vendor may be required to demonstrate that such volume discounts are reasonably related to direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor if questions arise about the application of that discount. In such demonstrations, vendors will not be required to provide a strict cost justification for the structure of such standard volume-related factors, but may also identify non-cost economic benefits related to increased viewership.

(4) Entering into exclusive contracts in areas that are permitted under paragraphs (c)(2) and (c)(4) of this section.

(c) *Exclusive contracts and practices*—(1) *Unserved areas.* No cable operator shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest, or any satellite broadcast programming vendor in which a cable operator has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992.

(2) *Served areas.* No cable operator shall enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, with respect to areas served by a cable operator, unless the Commission determines in accordance with paragraph (c)(4) of this section that such contract, practice, activity or arrangement is in the public interest.

(3) *Specific arrangements: Subdistribution agreements*—(i) *Served areas.* No cable operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, with respect to areas served by a cable operator, unless such agreement or arrangement complies with the limitations set forth in paragraph (c)(3)(iii) of this section.

(ii) *Limitations on subdistribution agreements in served areas.* No cable operator engaged in subdistribution of satellite cable programming or satellite broadcast programming may require a competing multichannel video programming distributor to

(A) Purchase additional or unrelated programming as a condition of such subdistribution; or

(B) Provide access to private property in exchange for access to programming. In addition, a subdistributor may not charge a competing multichannel video programming distributor more for said programming than the satellite cable programming vendor or satellite broadcast programming vendor itself would be permitted to charge. Any cable operator acting as a subdistributor of satellite cable programming or satellite broadcast programming must respond to a request for access to such programming by a competing multichannel video programming distributor within fifteen (15) days of the request. If the request is denied, the competing multichannel video programming distributor must be permitted to negotiate directly with the satellite cable programming vendor or satellite broadcast programming vendor.

(4) *Public interest determination.* In determining whether an exclusive contract is in the public interest for purposes of paragraph (c)(2) of this section, the Commission will consider each of the following factors with respect to the effect of such contract on the distribution of video programming in areas that are served by a cable operator:

(i) The effect of such exclusive contract on the development of competition in local and national multichannel video programming distribution markets;

(ii) The effect of such exclusive contract on competition from multichannel video programming distribution technologies other than cable;

(iii) The effect of such exclusive contract on the attraction of capital investment in the production and distribution of new satellite cable programming;

(iv) The effect of such exclusive contract on diversity of programming in the multichannel video programming distribution market; and

(v) The duration of the exclusive contract.

(5) *Prior Commission approval required.* Any cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest seeking to enforce or enter into an exclusive contract in an area served by a cable operator must submit a ''Petition for Exclusivity'' to the Commission for approval.

(i) The petition for exclusivity shall contain those portions of the contract relevant to exclusivity, including:

(A) A description of the programming service;

(B) The extent and duration of exclusivity proposed; and

(C) Any other terms or provisions directly related to exclusivity or to any of the criteria set forth in paragraph (c)(4) of this section. The petition for exclusivity shall also include a statement setting forth the petitioner's reasons to support a finding that the contract is in the public interest, addressing each of the five factors set forth in paragraph (c)(4) of this section.

(ii) Any competing multichannel video programming distributor affected by the proposed exclusivity may file an opposition to the petition for exclusivity within thirty (30) days of the date on which the petition is placed on public notice, setting forth its reasons to support a finding that the contract is not in the public interest under the criteria set forth in paragraph (c)(4) of this section. Any such formal opposition must be served on petitioner on the same day on which it is filed with the Commission.

(iii) The petitioner may file a response within ten (10) days of receipt of any formal opposition. The Commission will then approve or deny the petition for exclusivity.

(6) *Sunset provision.* The prohibition of exclusive contracts set forth in paragraph (c)(2) of this section shall cease to be effective on October 5, 2007, unless the Commission finds, during a proceeding to be conducted during the year preceding such date, that said prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

(d) *Limitations*—(1) *Geographic limitations.* Nothing in this section shall require any person who is engaged in the national or regional distribution of video programming to make such programming available in any geographic area beyond which such programming has been authorized or licensed for distribution.

(2) *Applicability to satellite retransmissions.* Nothing in this section shall apply:

(i) To the signal of any broadcast affiliate of a national television network or other television signal that is retransmitted by satellite but that is not satellite broadcast programming; or

(ii) To any internal satellite communication of any broadcast network or cable network that is not satellite broadcast programming.

(e) *Exemptions for prior contracts.*—(1) *In general.* Nothing in this section shall affect any contract that grants exclusive distribution rights to any person with respect to satellite cable programming and that was entered into or before June 1, 1990, except that the provisions of paragraph (c)(1) of this section shall apply for distribution to persons in areas not served by a cable operator.

(2) *Limitation on renewals.* A contract that was entered into on or before June 1, 1990, but that was renewed or extended after October 5, 1992, shall not be exempt under paragraph (e)(1) of this section.

(f) *Application to existing contracts.* All contracts, except those specified in paragraph (e) of this section, related to the provision of satellite cable programming or satellite broadcast programming to any multichannel video programming distributor must be brought into compliance with the requirements specified in this subpart no later than November 15, 1993.

[58 FR 27671, May 11, 1993, as amended at 59 FR 66259, Dec. 23, 1994; 67 FR 42951, July 30, 2002]

§ 76.1003 Program access proceedings.

(a) *Complaints.* Any multichannel video programming distributor aggrieved by conduct that it believes constitute a violation of the regulations

set forth in this subpart may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7 of this part with the following additions or changes:

(b) *Prefiling notice required.* Any aggrieved multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant cable operator, and/or the potential defendant satellite cable programming vendor or satellite broadcast programming vendor, that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in §§ 76.1001 or 76.1002 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(c) *Contents of complaint.* In addition to the requirements of § 76.7 of this part, a program access complaint shall contain:

(1) The type of multichannel video programming distributor that describes complainant, the address and telephone number of the complainant, whether the defendant is a cable operator, satellite broadcast programming vendor or satellite cable programming vendor (describing each defendant), and the address and telephone number of each defendant;

(2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the program access requirements;

(3) Evidence that the complainant competes with the defendant cable operator, or with a multichannel video programming distributor that is a customer of the defendant satellite cable programming or satellite broadcast programming vendor;

(4) In complaints alleging discrimination, documentary evidence such as a rate card or a programming contract that demonstrates a differential in price, terms or conditions between complainant and a competing multichannel video programming distributor or, if no programming contract or rate card is submitted with the complaint, an affidavit signed by an officer of complainant alleging that a differential in price, terms or conditions exits, a description of the nature and extent (if known or reasonably estimated by the complainant) of the differential, together with a statement that defendant refused to provide any further specific comparative information;

(5) If a programming contract or a rate card is submitted with the complaint in support of the alleged violation, specific references to the relevant provisions therein;

(6) In complaints alleging exclusivity violations:

(i) The identity of both the programmer and cable operator who are parties to the alleged prohibited agreement,

(ii) Evidence that complainant can or does serve the area specified in the complaint, and

(iii) Evidence that the complainant has requested to purchase the relevant programming and has been refused or unanswered;

(7) In complaints alleging a violation of § 76.1001 of this part, evidence demonstrating that the behavior complained of has harmed complainant.

(8) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (a) of this section has been made.

(d) *Damages requests.* (1) In a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim in accordance with the requirements of paragraph (d)(3) of this section.

(2) Damages will not be awarded upon a complaint unless specifically requested. Damages may be awarded if the complaint complies fully with the requirement of paragraph (d)(3) of this section where the defendant knew, or should have known that it was engaging in conduct violative of section 628.

(3) In all cases in which recovery of damages is sought, the complainant

shall include within, or as an attachment to, the complaint, either:

(i) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; or

(ii) An explanation of:

(A) The information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;

(B) The reason such information is unavailable to the complaining party;

(C) The factual basis the complainant has for believing that such evidence of damages exists; and

(D) A detailed outline of the methodology that would be used to create a computation of damages when such evidence is available.

(e) *Answer*.

(1) Any cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a program access complaint is served under this section shall answer within twenty (20) days of service of the complaint, unless otherwise directed by the Commission.

(2) An answer to an exclusivity complaint shall provide the defendant's reasons for refusing to sell the subject programming to the complainant. In addition, the defendant may submit its programming contracts covering the area specified in the complaint with its answer to refute allegations concerning the existence of an impermissible exclusive contract. If there are no contracts governing the specified area, the defendant shall so certify in its answer. Any contracts submitted pursuant to this provision may be protected as proprietary pursuant to § 76.9 of this part.

(3) An answer to a discrimination complaint shall state the reasons for any differential in prices, terms or conditions between the complainant and its competitor, and shall specify the particular justification set forth in § 76.1002(b) of this part relied upon in support of the differential.

(i) When responding to allegations concerning price discrimination, except in cases in which the alleged price differential is *de minimis* (less than or equal to five cents per subscriber or five percent, whichever is greater), the defendant shall provide documentary evidence to support any argument that the magnitude of the differential is not discriminatory.

(ii) In cases involving a price differential of less than or equal to five cents per subscriber or five percent, whichever is greater, the answer shall identify the differential as *de minimis* and state that the defendant is therefore not required to justify the magnitude of the differential.

(iii) If the defendant believes that the complainant and its competitor are not sufficiently similar, the answer shall set forth the reasons supporting this conclusion, and the defendant may submit an alternative contract for comparison with a similarly situated multichannel video programming distributor that uses the same distribution technology as the competitor selected for comparison by the complainant. The answer shall state the defendant's reasons for any differential between the prices, terms and conditions between the complainant and such similarly situated distributor, and shall specify the particular justifications in § 76.1002(b) of this part relied upon in support of the differential. The defendant shall also provide with its answer written documentary evidence to support its justification of the magnitude of any price differential between the complainant and such similarly situated distributor that is not *de minimis*.

(4) An answer to a complaint alleging an unreasonable refusal to sell programming shall state the defendant's reasons for refusing to sell to the complainant, or for refusing to sell to the complainant on the same terms and conditions as complainant's competitor, and shall specify why the defendant's actions are not discriminatory.

(f) *Reply*. Within fifteen (15) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(g) *Time limit on filing of complaints*. Any complaint filed pursuant to this subsection must be filed within one

year of the date on which one of the following events occurs:

(1) The satellite cable programming or satellite broadcast programming vendor enters into a contract with the complainant that the complainant alleges to violate one or more of the rules contained in this subpart; or

(2) The satellite cable programming or satellite broadcast programming vendor offers to sell programming to the complainant pursuant to terms that the complainant alleges to violate one or more of the rules contained in this subpart, and such offer to sell programming is unrelated to any existing contract between the complainant and the satellite cable programming or satellite broadcast programming vendor; or

(3) The complainant has notified a cable operator, or a satellite cable programming vendor or a satellite broadcast programming vendor that it intends to file a complaint with the Commission based on a request to purchase or negotiate to purchase satellite cable programming or satellite broadcast programming, or has made a request to amend an existing contract pertaining to such programming pursuant to § 76.1002(f) of this part that has been denied or unacknowledged, allegedly in violation of one or more of the rules contained in this subpart.

(h) *Remedies for violations*—(1) *Remedies authorized*. Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, the imposition of damages, and/or the establishment of prices, terms, and conditions for the sale of programming to the aggrieved multichannel video programming distributor. Such order shall set forth a timetable for compliance, and shall become effective upon release.

(2) *Additional sanctions*. The remedies provided in paragraph (h)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

(3) *Imposition of damages*. (i) *Bifurcation*. In all cases in which damages are requested, the Commission may bifurcate the program access violation determination from any damage adjudication.

(ii) *Burden of proof*. The burden of proof regarding damages rests with the complainant, who must demonstrate with specificity the damages arising from the program access violation. Requests for damages that grossly overstate the amount of damages may result in a Commission determination that the complainant failed to satisfy its burden of proof to demonstrate with specificity the damages arising from the program access violation.

(iii) *Damages adjudication*. (A) The Commission may, in its discretion, end adjudication of damages with a written order determining the sufficiency of the damages computation submitted in accordance with paragraph (d)(3)(i) of this section or the damages computation methodology submitted in accordance with paragraph (d)(3)(ii)(D) of this section, modifying such computation or methodology, or requiring the complainant to resubmit such computation or methodology.

(*1*) Where the Commission issues a written order approving or modifying a damages computation submitted in accordance with paragraph (d)(3)(i) of this section, the defendant shall recompense the complainant as directed therein.

(*2*) Where the Commission issues a written order approving or modifying a damages computation methodology submitted in accordance with paragraph (d)(3)(ii)(D) of this section, the parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated methodology.

(B) Within thirty days of the issuance of a paragraph (d)(3)(ii)(D) of this section damages methodology order, the parties shall submit jointly to the Commission either:

(*1*) A statement detailing the parties' agreement as to the amount of damages;

(*2*) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(*3*) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

(C)(*1*) In cases in which the parties cannot resolve the amount of damages within a reasonable time period, the Commission retains the right to determine the actual amount of damages on its own, or through the procedures described in paragraph (h)(3)(iii)(C)(*2*) of this section.

(*2*) Issues concerning the amount of damages may be designated by the Chief, Media Bureau for hearing before, or, if the parties agree, submitted for mediation to, a Commission Administrative Law Judge.

(D) Interest on the amount of damages awarded will accrue from either the date indicated in the Commission's written order issued pursuant to paragraph (h)(3)(iii)(A)(*1*) of this section or the date agreed upon by the parties as a result of their negotiations pursuant to paragraph (h)(3)(iii)(A)(*2*) of this section. Interest shall be computed at applicable rates published by the Internal Revenue Service for tax refunds.

[64 FR 6572, Feb. 10, 1999, as amended at 67 FR 13235, Mar. 21, 2002]

§ 76.1004 Applicability of program access rules to common carriers and affiliates.

(a) Any provision that applies to a cable operator under §§ 76.1000 through 76.1003 shall also apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall apply to any satellite cable programming vendor in which such common carrier has an attributable interest. For the purposes of this section, two or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in a satellite cable programming vendor (or its parent company).

(b) Sections 76.1002(c)(1) through (3) shall be applied to a common carrier or its affiliate that provides video programming by any means directly to subscribers in such a way that such common carrier or its affiliate shall be generally restricted from entering into an exclusive arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a common carrier or its affiliate has an attributable interest or a satellite broadcast programming vendor in which a common carrier or its affiliate has an attributable interest, unless the arrangement pertains to an area served by a cable system as of October 5, 1992, and the Commission determines in accordance with Section § 76.1002(c)(4) that such arrangment is in the public interest.

[61 FR 18980, Apr. 30, 1996, as amended at 61 FR 28708, June 5, 1996]

§§ 76.1005–76.1010 [Reserved]

Subpart P—Competitive Availability of Navigation Devices

SOURCE: 63 FR 38094, July 15, 1998, unless otherwise noted.

EFFECTIVE DATE NOTE: At 63 FR 38094, July 15, 1998, subpart P was added. This subpart contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget, except for § 76.1204, which became effective July 1, 2000.

§ 76.1200 Definitions.

As used in this subpart:

(a) *Multichannel video programming system.* A distribution system that makes available for purchase, by customers or subscribers, multiple channels of video programming other than an open video system as defined by § 76.1500(a). Such systems include, but are not limited to, cable television systems, BRS/EBS systems, direct broadcast satellite systems, other systems for providing direct-to-home multichannel video programming via satellite, and satellite master antenna systems.

(b) *Multichannel video programming distributor.* A person such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, or a television receive-only satellite program distributor, who owns or operates a multichannel video programming system.

(c) *Navigation devices.* Devices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.

(d) *Affiliate.* A person or entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person, as defined in the notes accompanying § 76.501.

(e) *Conditional access.* The mechanisms that provide for selective access and denial of specific services and make use of signal security that can prevent a signal from being received except by authorized users.

[63 FR 38094, July 15, 1998, as amended at 69 FR 72046, Dec. 10, 2004]

§ 76.1201 Rights of subscribers to use or attach navigation devices.

No multichannel video programming distributor shall prevent the connection or use of navigation devices to or with its multichannel video programming system, except in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices may be used to assist or are intended or designed to assist in the unauthorized receipt of service.

§ 76.1202 Availability of navigation devices.

No multichannel video programming distributor shall by contract, agreement, patent right, intellectual property right or otherwise prevent navigation devices that do not perform conditional access or security functions from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated with such owner or operator, subject to § 76.1209.

§ 76.1203 Incidence of harm.

A multichannel video programming distributor may restrict the attachment or use of navigation devices with its system in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices that assist or are intended or designed to assist in the unauthorized receipt of service. Such restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. Such standards shall foreclose the attachment or use only of such devices as raise reasonable and legitimate concerns of electronic or physical harm or theft of service. In any situation where theft of service or harm occurs or is likely to occur, service may be discontinued.

§ 76.1204 Availability of equipment performing conditional access or security functions.

(a)(1) A multichannel video programming distributor that utilizes navigation devices to perform conditional access functions shall make available equipment that incorporates only the conditional access functions of such devices. Commencing on July 1, 2007, no multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.

(2) The foregoing requirement shall not apply to a multichannel video programming distributor that supports the active use by subscribers of navigation devices that: (i) operate throughout the continental United States, and (ii) are available from retail outlets and other vendors throughout the United States that are not affiliated with the owner or operator of the multichannel video programming system.

(b) Conditional access function equipment made available pursuant to paragraph (a)(1) of this section shall be designed to connect to and function with other navigation devices available through the use of a commonly used interface or an interface that conforms to appropriate technical standards promulgated by a national standards organization.

(c) No multichannel video programming distributor shall by contract, agreement, patent, intellectual property right or otherwise preclude the addition of features or functions to the equipment made available pursuant to

this section that are not designed, intended or function to defeat the conditional access controls of such devices or to provide unauthorized access to service.

(d) Notwithstanding the foregoing, navigation devices need not be made available pursuant to this section where:

(1) It is not reasonably feasible to prevent such devices from being used for the unauthorized reception of service; or

(2) It is not reasonably feasible to separate conditional access from other functions without jeopardizing security.

(e) The requirements of this section shall become applicable on July 1, 2000.

(f) Paragraphs (a)(1), (b), and (c) of this section shall not apply to the provision of any navigation device that:

(1) Employs conditional access mechanisms only to access analog video programming;

(2) Is capable only of providing access to analog video programming offered over a multichannel video programming distribution system; and

(3) Does not provide access to any digital transmission of multichannel video programming or any other digital service through any receiving, decoding, conditional access, or other function, including any conversion of digital programming or service to an analog format.

[63 FR 38095, July 15, 1998, as amended at 64 FR 29600, June 2, 1999; 68 FR 35822, June 17, 2003; 70 FR 36052, June 22, 2005]

§ 76.1205 Availability of interface information.

Technical information concerning interface parameters that are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request in a timely manner.

§ 76.1206 Equipment sale or lease charge subsidy prohibition.

Multichannel video programming distributors offering navigation devices subject to the provisions of § 76.923 for sale or lease directly to subscribers, shall adhere to the standards reflected therein relating to rates for equipment and installation and shall separately state the charges to consumers for such services and equipment.

§ 76.1207 Waivers.

The Commission may waive a regulation adopted under this subpart for a limited time, upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider that such a waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Such waiver requests should be made pursuant to § 76.7. Such a waiver shall be effective for all service providers and products in the category in which the waiver is granted.

§ 76.1208 Sunset of regulations.

The regulations adopted under this subpart shall cease to apply when the Commission determines that (1) the market for multichannel video distributors is fully competitive; (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and (3) elimination of the regulations would promote competition and the public interest. Any interested party may petition the Commission for such a determination.

§ 76.1209 Theft of service.

Nothing in this subpart shall be construed to authorize or justify any use, manufacture, or importation of equipment that would violate 47 U.S.C. 553 or any other provision of law intended to preclude the unauthorized reception of multichannel video programming service.

§ 76.1210 Effect on other rules.

Nothing in this subpart affects § 64.702(d) of the Commission's regulations or other Commission regulations governing interconnection and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

Subpart Q—Regulation of Carriage Agreements

SOURCE: 58 FR 60395, Nov. 16, 1993, unless otherwise noted.

§ 76.1300 Definitions.

As used in this subpart:

(a) *Affiliated*. For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(b) *Attributable interest*. The term ''attributable interest'' shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(c) *Buying groups*. The term ''buying group'' or ''agent,'' for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(d) *Multichannel video programming distributor*. The term ''multichannel video programming distributor'' means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

(e) *Video programming vendor*. The term ''video programming vendor'' means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

[58 FR 60395, Nov. 16, 1993, as amended at 64 FR 67197, Dec. 1, 1999; 69 FR 72046, Dec. 10, 2004]

§ 76.1301 Prohibited practices.

(a) *Financial interest*. No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or more of such operator's/provider's systems.

(b) *Exclusive rights*. No cable operator or other multichannel video programming distributor shall coerce any video programming vendor to provide, or retaliate against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(c) *Discrimination*. No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.

§ 76.1302 Carriage agreement proceedings.

(a) *Complaints*. Any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7 of this part with the following additions or changes:

(b) *Prefiling notice required*. Any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in § 76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(c) *Contents of complaint*. In addition to the requirements of § 76.7 of this part, a carriage agreement complaint shall contain:

(1) The type of multichannel video programming distributor that describes complainant, the address and telephone number of the complainant, and the address and telephone number of each defendant;

(2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations;

(3) For complaints alleging a violation of § 76.1301(c) of this part, evidence that supports complainant's claim that the effect of the conduct complained of is to unreasonably restrain the ability of the complainant to compete fairly.

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (b) of this section has been made.

(d) *Answer*. (1) Any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised.

(e) *Reply*. Within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(f) *Time limit on filing of complaints*. Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) The multichannel video programming distributor enters into a contract with a video programming distributor that a party alleges to violate one or more of the rules contained in this section; or

(2) The multichannel video programming distributor offers to carry the video programming vendor's programming pursuant to terms that a party alleges to violate one or more of the rules contained in this section, and such offer to carry programming is unrelated to any existing contract between the complainant and the multichannel video programming distributor; or

(3) A party has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on violations of one or more of the rules contained in this section.

(g) *Remedies for violations*—(1) *Remedies authorized*. Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff, or administrative law judge decision, the order for carriage of

a video programming vendor's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be required to carry the video programming vendor's programming for an additional period equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) *Additional sanctions.* The remedies provided in paragraph (g)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

[64 FR 6574, Feb. 10, 1999]

§§ 76.1303–76.1305 [Reserved]

Subpart R—Telecommunications Act Implementation

SOURCE: 61 FR 18980, Apr. 30, 1996, unless otherwise noted.

§ 76.1400 Purpose.

The rules and regulations set forth in this subpart provide procedures for administering certain aspects of cable regulation. These rules and regulations provide guidance for operators, subscribers and franchise authorities with respect to matters that are subject to immediate implementation under governing statutes but require specific regulatory procedures or definitions.

§ 76.1402 CPST rate complaints.

(a) A local franchise authority may file rate complaints with the Commission within 180 days of the effective date of a rate increase on the cable operator's cable programming services tier if within 90 days of that increase the local franchise authority receives more than one subscriber complaint concerning the increase.

(b) Before filing a rate complaint with the Commission, the local franchise authority must first give the cable operator written notice, including a draft FCC Form 329, of the local franchise authority's intent to file the complaint. The local franchise authority must give an operator a minimum of 30 days to file with the local franchise authority the relevant FCC forms that must be filed to justify a rate increase or, where appropriate, certification that the operator is not subject to rate regulation. The operator must file a complete response with the local franchise authority within the time period specified by the local franchise authority. The local franchise authority shall file with the Commission the complaint and the operator's response to the Complaint. If the operator's response to the complaint asserts that the operator is exempt from rate regulation, the operator's response can be filed with the local franchise authority without filing specific FCC Forms.

§ 76.1404 Use of cable facilities by local exchange carriers.

(a) For purposes of § 76.505(d)(2), the Commission will determine whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the procedures in paragraph (b) of this section.

(b) Based on the record created by § 76.1617 of the rules, the Commission shall determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and duration. In making this determination, the Commission will evaluate whether the proposed joint use of cable facilities promotes competition in both services and facilities, and encourages long-term investment in telecommunications infrastructure.

[65 FR 53617, Sept. 5, 2000]

Subpart S—Open Video Systems

SOURCE: 61 FR 28708, June 5, 1996, unless otherwise noted.

§ 76.1500 Definitions.

(a) *Open video system.* A facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is

designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, provided that the Commission has certified that such system complies with this part.

(b) *Open video system operator* (*operator*). Any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in such open video system, or otherwise controls or is responsible for the management and operation of such an open video system.

(c) *Video programming provider*. Any person or group of persons who has the right under the copyright laws to select and contract for carriage of specific video programming on an open video system.

(d) *Activated channels*. This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(nn).

(e) *Shared channel*. Any channel that carries video programming that is selected by more than one video programming provider and offered to subscribers.

(f) *Cable service*. This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(ff).

(g) *Affiliated*. For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(h) *Attributable Interest*. The term ''attributable interest'' shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(i) *Other terms*. Unless otherwise expressly stated, words not defined in this part shall be given their meaning as used in Title 47 of the United States Code, as amended, and, if not defined therein, their meaning as used in Part 47 of the Code of Federal Regulations.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43175, Aug. 21, 1996; 64 FR 67197, Dec. 1, 1999]

§ 76.1501 Qualifications to be an open video system operator.

Any person may obtain a certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act, 47 U.S.C. 573(a)(1), except that an operator of a cable system may not obtain such certification within its cable service area unless it is subject to ''effective competition'' as defined in Section 623(l)(1) of the Communications Act, 47 U.S.C. 543(l)(1). The effective competition requirement of the preceding sentence does not apply to a local exchange carrier that is also a cable operator that seeks open video system certification within its cable service area. A cable operator that is not subject to effective competition within its cable service area may file a petition with the Commission, seeking a finding that particular circumstances exist that make it consistent with the public interest, convenience, and necessity to allow the operator to convert its cable system to an open video system. Nothing herein shall be construed to affect the terms of any franchising agreement or other contractual agreement.

[65 FR 376, Jan. 5, 2000]

§ 76.1502 Certification.

(a) An operator of an open video system must certify to the Commission that it will comply with the Commission's regulations in 47 CFR 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513. The Commission must approve such certification prior to the commencement of service at such a point in time that would allow the applicant sufficient time to comply with the Commission's notification requirements.

(b) Certifications must be verified by an officer or director of the applicant, stating that, to the best of his or her information and belief, the representations made therein are accurate.

(c) Certifications must be filed on FCC Form 1275 and must include:

(1) The applicant's name, address and telephone number;

(2) A statement of ownership, including all affiliated entities;

(3) If the applicant is a cable operator applying for certification in its cable franchise area, a statement that the applicant is qualified to operate an open video system under Section 76.1501.

(4) A statement that the applicant agrees to comply and to remain in compliance with each of the Commission's regulations in §§ 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513;

(5) If the applicant is required under 47 CFR 64.903(a) of this chapter to file a cost allocation manual, a statement that the applicant will file changes to its manual at least 60 days before the commencement of service;

(6) A list of the names of the anticipated local communities to be served upon completion of the system;

(7) The anticipated amount and type (*i.e.*, analog or digital) of capacity (for switched digital systems, the anticipated number of available channel input ports); and

(8) A statement that the applicant will comply with the Commission's notice and enrollment requirements for unaffiliated video programming providers.

(d)(1) On or before the date an FCC Form 1275 is filed with the Commission, the applicant must serve a copy of its filing on all local communities identified pursuant to paragraph (c)(6) of this section and must include a statement informing the local communities of the Commission's requirements in paragraph (e) of this section for filing oppositions and comments. Service by mail is complete upon mailing, but if mailed, the served documents must be postmarked at least 3 days prior to the filing of the FCC Form 1275 with the Commission.

(2) Parties are required to attach a cover sheet to the filing indicating that the submission is an open video system certification application. The only wording on this cover sheet shall be ''Open Video System Certification Application'' and ''Attention: Media Bureau.'' This wording shall be located in the center of the page and should be in letters at least ½ inch in size. Parties shall also include the words ''open video systems'' on their mailing envelope.

(e)(1) Comments or oppositions to a certification must be filed within five calendar days of the Commission's receipt of the certification and must be served on the party that filed the certification. If, after making the necessary calculations, the due date for filing comments falls on a holiday, comments shall be filed on the next business day before noon, unless the nearest business day precedes the fifth calendar day following a filing, in which case the comments will be due on the preceding business day. For example, if the fifth day falls on a Saturday, then the filing would be due on that preceding Friday. However, if the fifth day falls on Sunday, then the filing will be due on the next day, Monday, before noon (or Tuesday, before noon if the Monday is a holiday).

(2) Parties wishing to respond to a FCC Form 1275 filing must submit comments or oppositions with the Office of the Secretary and the Bureau Chief, Media Bureau. Comments will not be considered properly filed unless filed with both of these Offices. Parties are required to attach a cover sheet to the filing indicating that the submission is a pleading related to an open video system application, the only wording on this cover sheet shall be ''Open Video System Certification Application Comments.'' This wording shall be located in the center of the page and should be in letters at least 1/2 inch in size. Parties shall also include the words ''open video systems'' on their mailing envelopes.

(f) If the Commission does not disapprove the certification application within ten days after receipt of an applicant's request, the certification application will be deemed approved. If disapproved, the applicant may file a revised certification or refile its original submission with a statement addressing the issues in dispute. Such refilings must be served on any objecting party or parties and on all local communities in which the applicant intends to operate. The Commission will consider any revised or refiled FCC Form 1275 to be a new proceeding and

any party who filed comments regarding the original FCC Form 1275 will have to refile their original comments if they think such comments should be considered in the subsequent proceeding.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43175, Aug. 21, 1996; 62 FR 26238, May 13, 1997; 63 FR 31934, June 11, 1998; 65 FR 377, Jan. 5, 2000; 67 FR 13235, Mar. 21, 2002]

§ 76.1503 Carriage of video programming providers on open video systems.

(a) *Non-discrimination principle.* Except as otherwise permitted in applicable law or in this part, an operator of an open video system shall not discriminate among video programming providers with regard to carriage on its open video system, and its rates, terms and conditions for such carriage shall be just and reasonable and not unjustly or unreasonably discriminatory.

(b) *Demand for carriage.* An operator of an open video system shall solicit and determine the level of demand for carriage on the system among potential video programming providers in a non-discriminatory manner.

(1) *Notification.* An open video system operator shall file with the Secretary of the Federal Communications Commission a ''Notice of Intent'' to establish an open video system, which the Commission will release in a Public Notice. Parties are required to attach a cover sheet to the filing indicating that the submission is an Open Video System Notice of Intent. The only wording on this cover sheet shall be ''Open Video System Notice of Intent'' and ''Attention: Media Bureau.'' This wording shall be located in the center of the page and should be in letters at least ½ inch in size. Parties shall also include the words ''open video systems'' on their mailing envelopes. Parties must submit copies of the Notice of Intent with the Office of the Secretary and the Bureau Chief, Media Bureau. The Notice of Intent shall include the following information:

(i) A heading clearly indicating that the document is a Notice of Intent to establish an open video system;

(ii) The name, address and telephone number of the open video system operator;

(iii) A description of the system's projected service area;

(iv) A description of the system's projected channel capacity, in terms of analog, digital and other type(s) of capacity upon activation of the system;

(v) A description of the steps a potential video programming provider must follow to seek carriage on the open video system, including the name, address and telephone number of a person to contact for further information;

(vi) The starting and ending dates of the initial enrollment period for video programming providers;

(vii) The process for allocating the system's channel capacity, in the event that demand for carriage on the system exceeds the system's capacity; and

(viii) A certification that the operator has complied with all relevant notification requirements under the Commission's open video system regulations concerning must-carry and retransmission consent (§ 76.1506), including a list of all local commercial and non-commercial television stations served, and a certificate of service showing that the Notice of Intent has been served on all local cable franchising authorities entitled to establish requirements concerning the designation of channels for public, educational and governmental use.

(2) *Information.* An open video system operator shall provide the following information to a video programming provider within five business days of receiving a written request from the provider, unless otherwise included in the Notice of Intent:

(i) The projected activation date of the open video system. If a system is to be activated in stages, the operator should describe the respective stages and the projected dates on which each stage will be activated;

(ii) A preliminary carriage rate estimate;

(iii) The information a video programming provider will be required to provide to qualify as a video programming provider, e.g., creditworthiness;

(iv) Technical information that is reasonably necessary for potential video programming providers to assess whether to seek capacity on the open video system, including what type of

customer premises equipment subscribers will need to receive service;

(v) Any transmission or reception equipment needed by a video programming provider to interface successfully with the open video system; and

(vi) The equipment available to facilitate the carriage of unaffiliated video programming and the electronic form(s) that will be accepted for processing and subsequent transmission through the system.

(3) *Qualifications of video programming providers.* An open video system operator may impose reasonable, non-discriminatory requirements to assure that a potential video programming provider is qualified to obtain capacity on the open video system.

(c) *One-third limit.* If carriage demand by video programming providers exceeds the activated channel capacity of the open video system, the operator of the open video system and its affiliated video programming providers may not select the video programming services for carriage on more than one-third of the activated channel capacity on such system.

(1) *Measuring capacity.* For purposes of this section:

(i) If an open video system carries both analog and digital signals, an open video system operator shall measure analog and digital activated channel capacity independently;

(ii) Channels that an open video system is required to carry pursuant to the Commission's regulations concerning public, educational and governmental channels and must-carry channels shall be included in ''activated channel capacity'' for purposes of calculating the one-third of such capacity on which the open video system operator and its affiliates are allowed to select the video programming for carriage. Such channels shall not be included in the one-third of capacity on which the open video system operator is permitted to select programming where demand for carriage exceeds system capacity;

(iii) Channels that an open video system operator carries pursuant to the Commission's regulations concerning retransmission consent shall be included in ''activated channel capacity'' for purposes of calculating the one-third of such capacity on which the open video system operator and its affiliates are allowed to select the video programming for carriage. Such channels shall be included in the one-third of capacity on which the open video system operator is permitted to select programming, where demand for carriage exceeds system capacity, to the extent that the channels are carried as part of the programming service of the operator or its affiliate, subject to paragraph (c)(1)(iv); and

(iv) Any channel on which shared programming is carried shall be included in ''activated channel capacity'' for purposes of calculating the one-third of such capacity on which the open video system operator and its affiliates are allowed to select the video programming for carriage. Such channels shall be included in the one-third of capacity on which the open video system operator is permitted to select programming, where demand for carriage exceeds system capacity, to the extent the open video system operator or its affiliate is one of the video programming providers sharing such channel.

NOTE TO PARAGRAPH (c)(1)(iv): For example, if the open video system operator and two unaffiliated video programming providers each carry a programming service that is placed on a shared channel, the shared channel shall count as 0.33 channels against the one-third amount of capacity allocable to the open video system operator, where demand for carriage exceeds system capacity.

(2) *Allocating capacity.* An operator of an open video system shall allocate activated channel capacity through a fair, open and non-discriminatory process; the process must be insulated from any bias of the open video system operator and verifiable.

(i) If an open video system carries both analog and digital signals, an open video system operator shall treat analog and digital capacity separately in allocating system capacity.

(ii) *Subsequent changes in capacity or demand.* An open video system operator must allocate open capacity, if any, at least once every three years, beginning three years from the date of service commencement. Open capacity shall be allocated in accordance with this section. Open capacity shall include all

capacity that becomes available during the course of the three-year period, as well as capacity in excess of one-third of the system's activated channel capacity on which the operator of the open video system or its affiliate selects programming.

NOTE 1 TO PARAGRAPH (c)(2)(ii): An open video system operator will not be required to comply with the regulations contained in this section if there is no open capacity to be allocated at the end of the three year period.

NOTE 2 TO PARAGRAPH (c)(2)(ii): An open video system operator shall be required to accommodate changes in obligations concerning public, educational or governmental channels or must-carry channels in accordance with Sections 611, 614 and 615 of the Communications Act and the regulations contained in this part.

NOTE 3 TO PARAGRAPH (c)(2)(ii): An open video system operator shall be required to comply with the recordkeeping requirements of § 76.1712.

(iii) *Channel sharing*. An open video system operator may carry on only one channel any video programming service that is offered by more than one video programming provider (including the operator's video programming affiliate), provided that subscribers have ready and immediate access to any such programming service. Nothing in this section shall be construed to impair the rights of programming services.

NOTE 1 TO PARAGRAPH (c)(2)(iii): An open video system operator may implement channel sharing only after it becomes apparent that one or more video programming services will be offered by multiple video programming providers. An open video system operator may not select, in advance of any duplication among video programming providers, which programming services shall be placed on shared channels.

NOTE 2 TO PARAGRAPH (c)(2)(iii): Each video programming provider offering a programming service that is carried on a shared channel must have the contractual permission of the video programming service to offer the service to subscribers. The placement of a programming service on a shared channel, however, is not subject to the approval of the video programming service or vendor.

NOTE 3 TO PARAGRAPH (c)(2)(iii): Ready and immediate access in this context means that the channel sharing is ''transparent'' to subscribers.

(iv) *Open video system operator discretion*. Notwithstanding the foregoing, an operator of an open video system may:

(A) Require video programming providers to request and obtain system capacity in increments of no less than one full-time channel; however, an operator of an open video system may not require video programming providers to obtain capacity in increments of more than one full-time channel;

(B) Limit video programming providers from selecting the programming on more capacity than the amount of capacity on which the system operator and its affiliates are selecting the programming for carriage; and

(v) Notwithstanding the general prohibition on an open video system operator's discrimination among video programming providers contained in paragraph (a) of this section, a competing, in-region cable operator or its affiliate(s) that offer cable service to subscribers located in the service area of an open video system shall not be entitled to obtain capacity on such open video system, except where a showing is made that facilities-based competition will not be significantly impeded.

(3) Nothing in this paragraph shall be construed to limit the number of channels that the open video system operator and its affiliates, or another video programming provider, may offer to provide directly to subscribers. Co-packaging is permissible among video programming providers, but may not be a condition of carriage. Video programming providers may freely elect whether to enter into co-packaging arrangements.

NOTE TO PARAGRAPH (c)(3): Any video programming provider on an open video system may co-package video programming that is selected by itself, an affiliated video programming provider and/or unaffiliated video programming providers on the system.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43176, Aug. 21, 1996; 62 FR 26239, May 13, 1997; 65 FR 377, Jan. 5, 2000; 65 FR 53617, Sept. 5, 2000; 67 FR 13235, Mar. 21, 2002]

§ 76.1504 Rates, terms and conditions for carriage on open video systems.

(a) *Reasonable rate principle*. An open video system operator shall set rates, terms, and conditions for carriage that are just and reasonable, and are not

unjustly or unreasonably discriminatory.

(b) *Differences in rates.* (1) An open video system operator may charge different rates to different classes of video programming providers, provided that the bases for such differences are not unjust or unreasonably discriminatory.

(2) An open video system operator shall not impose different rates, terms, or conditions based on the content of the programming to be offered by any unaffiliated video programming provider.

(c) *Just and reasonable rate presumption.* A strong presumption will apply that carriage rates are just and reasonable for open video system operators where at least one unaffiliated video programming provider, or unaffiliated programming providers as a group, occupy capacity equal to the lesser of one-third of the system capacity or that occupied by the open video system operator and its affiliates, and where any rate complained of is no higher than the average of the rates paid by unaffiliated programmers receiving carriage from the open video system operator.

(d) *Examination of rates.* Complaints regarding rates shall be limited to video programming providers that have sought carriage on the open video system. If a video programming provider files a complaint against an open video system operator meeting the above just and reasonable rate presumption, the burden of proof will rest with the complainant. If a complaint is filed against an open video system operator that does not meet the just and reasonable rate presumption, the open video system operator will bear the burden of proof to demonstrate, using the principles set forth below, that the carriage rates subject to the complaint are just and reasonable.

(e) *Determining just and reasonable rates subject to complaints pursuant to the imputed rate approach or other market based approach.* Carriage rates subject to complaint shall be found just and reasonable if one of the two following tests are met:

(1) The imputed rate will reflect what the open video system operator, or its affiliate, ''pays'' for carriage of its own programming. Use of this approach is appropriate in circumstances where the pricing is applicable to a new market entrant (the open video system operator) that will face competition from an existing incumbent provider (the incumbent cable operator), as opposed to circumstances where the pricing is used to establish a rate for an essential input service that is charged to a competing new entrant by an incumbent provider. With respect to new market entrants, an efficient component pricing model will produce rates that encourage market entry. If the carriage rate to an unaffiliated program provider surpasses what an operator earns from carrying its own programming, the rate can be presumed to exceed a just and reasonable level. An open video system operator's price to its subscribers will be determined by several separate costs components. One general category are those costs related to the creative development and production of programming. A second category are costs associated with packaging various programs for the open video system operator's offering. A third category related to the infrastructure or engineering costs identified with building and maintaining the open video system. Contained in each is a profit allowance attributed to the economic value of each component. When an open video system operator provides only carriage through its infrastructure, however, the programming and packaging flows from the independent program provider, who bears the cost. The open video system operator avoids programming and packaging costs, including profits. These avoided costs should not be reflected in the price charged an independent program provider for carriage. The imputed rate also seeks to recognize the loss of subscribers to the open video system operator's programming package resulting from carrying competing programming.

NOTE TO PARAGRAPH (e)(1): Examples of specific ''avoided costs'' include:

(1) All amounts paid to studios, syndicators, networks or others, including but not limited to payments for programming and all related rights;

(2) Packaging, including marketing and other fees;

(3) Talent fees; and

(4) A reasonable overhead allowance for affiliated video service support.

(2) An open video system operator can demonstrate that its carriage service rates are just and reasonable through other market based approaches.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43176, Aug. 21, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43176, Aug. 21, 1996, in § 76.1504, paragraph (e) was revised. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.1505 Public, educational and governmental access.

(a) An open video system operator shall be subject to public, educational and governmental access requirements for every cable franchise area with which its system overlaps.

(b) An open video system operator must ensure that all subscribers receive any public, educational and governmental access channels within the subscribers' franchise area.

(c) An open video system operator may negotiate with the local cable franchising authority of the jurisdiction(s) which the open video system serves to establish the open video system operator's obligations with respect to public, educational and governmental access channel capacity, services, facilities and equipment. These negotiations may include the local cable operator if the local franchising authority, the open video system operator and the cable operator so desire.

(d) If an open video system operator and a local franchising authority are unable to reach an agreement regarding the open video system operator's obligations with respect to public, educational and governmental access channel capacity, services, facilities and equipment within the local franchising authority's jurisdiction:

(1) The open video system operator must satisfy the same public, educational and governmental access obligations as the local cable operator by providing the same amount of channel capacity for public, educational and governmental access and by matching the local cable operator's annual financial contributions towards public, educational and governmental access services, facilities and equipment that are actually used for public, educational and governmental access services, facilities and equipment. For in-kind contributions (e.g., cameras, production studios), the open video system operator may satisfy its statutory obligation by negotiating mutually agreeable terms with the local cable operator, so that public, educational and governmental access services to the community is improved or increased. If such terms cannot be agreed upon, the open video system operator must pay the local franchising authority the monetary equivalent of the local cable operator's depreciated in-kind contribution, or, in the case of facilities, the annual amortization value. Any matching contributions provided by the open video system operator must be used to fund activities arising under Section 611 of the Communications Act.

(2) The local franchising authority shall impose the same rules and procedures on an open video system operator as it imposes on the local cable operator with regard to the open video system operator's use of channel capacity designated for public, educational and governmental access use when such capacity is not being used for such purposes.

(3) The local cable operator is required to permit the open video system operator to connect with its public, educational and governmental access channel feeds. The open video system operator and the cable operator may decide how to accomplish this connection, taking into consideration the exact physical and technical circumstances of the cable and open video systems involved. If the cable and open video system operator cannot agree on how to accomplish the connection, the local franchising authority may decide. The local franchising authority may require that the connection occur on government property or on public rights of way.

(4) The costs of connection to the cable operator's public, educational and governmental access channel feed shall be borne by the open video system operator. Such costs shall be

counted towards the open video system operator's matching financial contributions set forth in paragraph (d)(4) of this section.

(5) The local franchising authority may not impose public, educational and governmental access obligations on the open video system operator that would exceed those imposed on the local cable operator.

(6) Where there is no existing local cable operator, the open video system operator must make a reasonable amount of channel capacity available for public, educational and governmental use, as well as provide reasonable support for services, facilities and equipment relating to such public, educational and governmental use. If a franchise agreement previously existed in that franchise area, the local franchising authority may elect either to impose the previously existing public, educational and governmental access obligations or determine the open video system operator's public, educational and governmental access obligations by comparison to the franchise agreement for the nearest operating cable system that has a commitment to provide public, educational and governmental access and that serves a franchise area with a similar population size. The local franchising authority shall be permitted to make a similar election every 15 years thereafter. Absent a previous franchise agreement, the open video system operator shall be required to provide channel capacity, services, facilities and equipment relating to public, educational and governmental access equivalent to that prescribed in the franchise agreement(s) for the nearest operating cable system with a commitment to provide public, educational and governmental access and that serves a franchise area with a similar population size.

NOTE TO PARAGRAPH (d)(6): This paragraph shall apply, for example, if a cable operator converts its cable system to an open video system under § 76.1501.

(7) The open video system operator must adjust its system(s) to comply with new public, educational and governmental access obligations imposed by a cable franchise renewal; provided, however, that an open video system operator will not be required to displace other programmers using its open video system to accommodate public, educational and governmental access channels. The open video system operator shall comply with such public, educational and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or decreased demand for channel capacity.

(8) The open video system operator and/or the local franchising authority may file a complaint with the Commission, pursuant to our dispute resolution procedures set forth in § 76.1514, if the open video system operator and the local franchising authority cannot agree as to the application of the Commission's rules regarding the open video system operator's public, educational and governmental access obligations under paragraph (d) of this section.

(e) If an open video system operator maintains an institutional network, as defined in Section 611(f) of the Communications Act, the local franchising authority may require that educational and governmental access channels be designated on that institutional network to the extent such channels are designated on the institutional network of the local cable operator.

(f) An open video system operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this subsection, provided, however, that any open video system operator may prohibit the use on its system of any channel capacity of any public, educational, or governmental facility for any programming which contains nudity, obscene material, indecent material as defined in § 76.701(g), or material soliciting or promoting unlawful conduct. For purposes of this section, ''material soliciting or promoting unlawful conduct'' shall mean material that is otherwise proscribed by law. An open video system operator may require any access user, or access manager or administrator agreeing to assume the responsibility of certifying, to certify that its programming does not contain any of the

materials described above and that reasonable efforts will be used to ensure that live programming does not contain such material.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43176, Aug. 21, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43176, Aug. 21, 1996, in § 76.1505, paragraphs (d)(1), (4), (6), and (8) were revised. These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.1506 Carriage of television broadcast signals.

(a) The provisions of Subpart D shall apply to open video systems in accordance with the provisions contained in this subpart.

(b) For the purposes of this Subpart S, television stations are significantly viewed when they are viewed in households that do not receive television signals from multichannel video programming distributors as follows:

(1) For a full or partial network station—a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent; and

(2) For an independent station—a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent. See § 76.1506(c).

NOTE TO PARAGRAPH (b): As used in this paragraph, ''share of viewing hours'' means the total hours that households that do not receive television signals from multichannel video programming distributors viewed the subject station during the week, expressed as a percentage of the total hours these households viewed all stations during the period, and ''net weekly circulation'' means the number of households that do not receive television signals from multichannel video programming distributors that viewed the station for 5 minutes or more during the entire week, expressed as a percentage of the total households that do not receive television signals from multichannel video programming distributors in the survey area.

(c) *Significantly viewed signals; method to be followed for special showings.* Any provision of § 76.54 that refers to a ''cable television community'' or ''cable community or communities'' shall apply to an open video system community or communities. Any provision of § 76.54 that refers to ''noncable television homes'' shall apply to households that do not receive television signals from multichannel video programming distributors. Any provision of § 76.54 that refers to a ''cable television system'' shall apply to an open video system.

(d) *Definitions applicable to the must-carry rules.* Section 76.55 shall apply to all open video systems in accordance with the provisions contained in this section. Any provision of § 76.55 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.55 that refers to a ''cable operator'' shall apply to an open video system operator. Any provision of § 76.55 that refers to the ''principal headend'' of a cable system as defined in § 76.5(pp) shall apply to the equivalent of the principal headend of an open video system. Any provision of § 76.55 that refers to a ''franchise area'' shall apply to the service area of an open video system. The provisions of § 76.55 that permit cable operators to refuse carriage of signals considered distant signals for copyright purposes shall not apply to open video system operators. If an open video system operator cannot limit its distribution of must-carry signals to the local service area of broadcast stations as used in 17 U.S.C. 111(d), it will be liable for any increase in copyright fees assessed for distant signal carriage under 17 U.S.C. 111.

(e) *Signal carriage obligations.* Any provision of § 76.56 that refers to a ''cable television system'' or ''cable system'' shall apply to an open video system. Any provision of § 76.56 that refers to a ''cable operator'' shall apply to an open video system operator. Section 76.56(d)(2) shall apply to open video systems as follows: An open video system operator shall make available to every subscriber of the open video system all qualified local commercial television stations and all qualified non-commercial educational television stations carried in fulfillment of its carriage obligations under this section.

(f) *Channel positioning.* Open video system operators shall comply with the provisions of § 76.57 to the closest extent possible. Any provision of § 76.57 that refers to a ''cable operator'' shall

apply to an open video system operator. Any provision of § 76.57 that refers to a ''cable system'' shall apply to an open video system, except the references to ''cable system'' in § 76.57(d) which shall apply to an open video system operator.

(g) *Notification.* Any provision of § 76.58 that refers to a ''cable operator'' shall apply to an open video system operator. Any provision of § 76.58 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.58 that refers to a ''principal headend'' shall apply to the equivalent of the principal headend for an open video system.

(h) *Modification of television markets.* Any provision of § 76.59 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.59 that refers to a ''cable operator'' shall apply to an open video system operator.

(i) *Compensation for carriage.* Any provision of § 76.60 that refers to a ''cable operator'' shall apply to an open video system operator. Any provision of § 76.60 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.60 that refers to a ''principal headend'' shall apply to the equivalent of the principal headend for an open video system.

(j) *Disputes concerning carriage.* Any provision of § 76.61 that refers to a ''cable operator'' shall apply to an open video system operator. Any provision of § 76.61 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.61 that refers to a ''principal headend'' shall apply to the equivalent of the principal headend for an open video system.

(k) *Manner of carriage.* Any provision of § 76.62 that refers to a ''cable operator'' shall apply to an open video system operator.

(l) *Retransmission consent.* Section 76.64 shall apply to open video systems in accordance with the provisions contained in this paragraph.

(1) Any provision of § 76.64 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.64 that refers to a ''cable operator'' shall apply to an open video system operator.

(2) Must-carry/retransmission consent election notifications shall be sent to the open video system operator. An open video system operator shall make all must-carry/retransmission consent election notifications received available to the appropriate programming providers on its system.

(3) Television broadcast stations are required to make the same election for open video systems and cable systems serving the same geographic area, unless the overlapping open video system is unable to deliver appropriate signals in conformance with the broadcast station's elections for all cable systems serving the same geographic area.

(4) An open video system commencing new operations shall notify all local commercial and noncommercial broadcast stations as required under paragraph (l) of this section on or before the date on which it files with the Commission its Notice of Intent to establish an open video system.

(m) *Sports broadcast.* Section 76.67 shall apply to open video systems in accordance with the provisions contained in this paragraph.

(1) Any provisions of § 76.67 that refers to a ''community unit'' shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

(2) Notification of programming to be deleted pursuant to this section shall be served on the open video system operator. The open video system operator shall make all notifications immediately available to the appropriate video programming providers on its open video system. Operators may effect the deletion of signals for which they have received deletion notices unless they receive notice within a reasonable time from the appropriate programming provider that the rights claimed are invalid. The open video system operator shall not delete signals for which it has received notice from the programming provider that the rights claimed are invalid. An open video system operator shall be subject to sanctions for any violation of this

subpart. An open video system operator may require indemnification as a condition of carriage for any sanctions it may incur in reliance on a programmer's claim that certain exclusive or non-duplication rights are invalid.

(n) *Exemption from input selector switch rules.* Any provision of § 76.70 that refers to a ''cable system'' or ''cable systems'' shall apply to an open video system or open video systems.

(o) *Special relief and must-carry complaint procedures.* The procedures set forth in § 76.7 shall apply to special relief and must-carry complaints relating to open video systems, and not the procedures set forth in § 76.1514 (Dispute resolution). Any provision of § 76.7 that refers to a ''cable television system operator'' or ''cable operator'' shall apply to an open video system operator. Any provision of § 76.7 that refers to a ''cable television system'' shall apply to an open video system. Any provision of § 76.7 that refers to a ''system community unit'' shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

[61 FR 28708, June 5, 1996, as amended at 61 FR 43177, Aug. 21, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43177, Aug. 21, 1996, in § 76.1506, paragraphs (d), (l)(3), and (m)(2) were revised. These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.1507 Competitive access to satellite cable programming.

(a) Any provision that applies to a cable operator under §§ 76.1000 through 76.1003 shall also apply to an operator of an open video system and its affiliate which provides video programming on its open video system, except as limited by paragraph (a) (1)–(3) of this section. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall also apply to any satellite cable programming vendor in which an open video system operator has an attributable interest, except as limited by paragraph (a) (1)–(3) of this section.

(1) Section 76.1002(c)(1) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator or its affiliate that provides video programming on its open video system shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which an open video system operator has an attributable interest, or any satellite broadcasting vendor in which an open video system operator has an attributable interest for distribution to person in areas not served by a cable operator as of October 5, 1992.

(2) Section 76.1002(c)(2) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator or its affiliate that provides video programming on its open video system shall enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor, unless the Commission determines in accordance with § 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest.

(3) Section 76.1002(c)(3) (i) through (ii) shall only restrict the conduct of an

open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows:

(i) *Unserved areas*. No open video system operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in which an open video system operator has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992.

(ii) *Served areas*. No open video system operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in which an open video system operator has an attributable interest, with respect to areas served by a cable operator, unless such agreement or arrangement complies with the limitations set forth in § 76.1002(c)(3)(iii).

(b) No open video system programming provider in which a cable operator has an attributable interest shall:

(1) Engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest, or any satellite broadcasting vendor in which a cable operator has an attributable interest for distribution to person in areas not served by a cable operator as of October 5, 1992.

(2) Enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor, unless the Commission determines in accordance with Section 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest.

§ 76.1508 Network non-duplication.

(a) Sections 76.92 through 76.97 shall apply to open video systems in accordance with the provisions contained in this section.

(b) Any provision of § 76.92 that refers to a ''cable community unit'' or ''community unit'' shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). Any provision of § 76.92 that refers to a ''cable television community'' shall apply to an open video system community. Any provision of § 76.92 that refers to a ''cable television system's mandatory signal carriage obligations'' shall apply to an open video system's mandatory signal carriage obligations.

(c) Any provision of § 76.94 that refers to a ''cable system operator'' or ''cable television system operator'' shall apply to an open video system operator. Any provision of § 76.94 that refers to a ''cable system'' or ''cable television system'' shall apply to an open video system except § 76.94 (e) and (f) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding the exercise of network non-duplication rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of

the infringing program once it was notified of a violation.

(d) Any provision of § 76.95 that refers to a ''cable system'' or a ''cable community unit'' shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

§ 76.1509 Syndicated program exclusivity.

(a) Sections 76.151 through 76.163 shall apply to open video systems in accordance with the provisions contained in this section.

(b) Any provision of § 76.151 that refers to a ''cable community unit'' shall apply to an open video system.

(c) Any provision of § 76.155 that refers to a ''cable system operator'' or ''cable television system operator'' shall apply to an open video system operator. Any provision of § 76.155 that refers to a ''cable system'' or ''cable television system'' shall apply to an open video system except § 76.155(c) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding exercise of syndicated program exclusivity rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

(d) Any provision of § 76.156 that refers to a ''cable community'' shall apply to an open video system community. Any provision of § 76.156 that refers to a ''cable community unit'' or ''community unit'' shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). Any provision of §§ 76.156 through 76.158, and 76.163 that refers to a ''cable system'' shall apply to an open video system.

(e) Any provision of § 76.159 that refers to ''cable television'' or a ''cable system'' shall apply to an open video system.

(f) Any provision of § 76.161 that refers to a ''community unit'' shall apply to an open video system or that portion of an open video system that is affected by this rule.

§ 76.1510 Application of certain Title VI provisions.

The following sections within part 76 shall also apply to open video systems: §§ 76.71, 76.73, 76.75, 76.77, 76.79, 76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302 (regulation of carriage agreements); § 76.611 (signal leakage restrictions); § 76.1803 and 76.1804 (signal leakage monitoring and aeronautical frequency notifications); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

[69 FR 57862, Sept. 28, 2004]

§ 76.1511 Fees.

An open video system operator may be subject to the payment of fees on the gross revenues of the operator for the provision of cable service imposed by a local franchising authority or other governmental entity, in lieu of the franchise fees permitted under Section 622 of the Communications Act. Local governments shall have the authority to assess and receive the gross revenue fee. Gross revenues under this paragraph means all gross revenues received by an open video system operator or its affiliates, including all revenues received from subscribers and all carriage revenues received from unaffiliated video programming providers. In addition gross revenues under this paragraph includes any advertising

revenues received by an open video system operator or its affiliates in connection with the provision of video programming, where such revenues are included in the calculation of the incumbent cable operator's cable franchise fee. Gross revenues does not include revenues collected by unaffiliated video programming providers, such as subscriber or advertising revenues. Any gross revenues fee that the open video system operator or its affiliate collects from subscribers or video programming providers shall be excluded from gross revenues. An operator of an open video system or any programming provider may designate that portion of a subscriber's bill attributable to the fee as a separate item on the bill. An operator of an open video system may recover the gross revenue fee from programming providers on a proportional basis as an element of the carriage rate.

[61 FR 43177, Aug. 21, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43177, Aug. 21, 1996, § 76.1511 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.1512 Programming information.

(a) An open video system operator shall not unreasonably discriminate in favor of itself or its affiliates with regard to material or information (including advertising) provided by the operator to subscribers for the purpose of selecting programming on the open video system, or in the way such material or information is provided to subscribers.

NOTE TO PARAGRAPH (a): ''Material or information'' as used in paragraph (a) of this section means material or information that a subscriber uses to actively select programming at the point of program selection.

(b) In accordance with paragraph (a) of this section:

(1) An open video system operator shall not discriminate in favor of itself or its affiliate on any navigational device, guide or menu;

(2) An open video system operator shall not omit television broadcast stations or other unaffiliated video programming services carried on the open video system from any navigational device, guide (electronic or paper) or menu;

(3) An open video system operator shall not restrict a video programming provider's ability to use part of the provider's channel capacity to provide an individualized guide or menu to the provider's subscribers;

(4) Where an open video system operator provides no navigational device, guide or menu, its affiliate's navigational device, guide or menu shall be subject to the requirements of Section 653(b)(1)(E) of the Communications Act;

(5) An open video system operator may permit video programming providers, including its affiliate, to develop and use their own navigational devices. If an open video system operator permits video programming providers, including its affiliate, to develop and use their own navigational devices, the operator must create an electronic menu or guide that all video programming providers must carry containing a non-discriminatory listing of programming providers or programming services available on the system and informing the viewer how to obtain additional information on each of the services listed;

(6) An open video system operator must grant access, for programming providers that do not wish to use their own navigational device, to the navigational device used by the open video system operator or its affiliate; and

(7) If an operator provides an electronic guide or menu that complies with paragraph (b)(5) of this section, its programming affiliate may create its own menu or guide without being subject to the requirements of Section 653(b)(1)(E) of the Communications Act.

(c) An open video system operator shall ensure that video programming providers or copyright holders (or both) are able to suitably and uniquely identify their programming services to subscribers.

(d) An open video system operator shall transmit programming identification without change or alteration if

such identification is transmitted as part of the programming signal.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43177, Aug. 21, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43177, Aug. 21, 1996, in § 76.1512, paragraphs (b), (c), and (d) were revised. These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.1513 Open video dispute resolution.

(a) *Complaints*. Any party aggrieved by conduct that it believes constitute a violation of the regulations set forth in this part or in section 653 of the Communications Act (47 U.S.C. 573) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The Commission shall resolve any such dispute within 180 days after the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7 of this part with the following additions or changes.

(b) *Alternate dispute resolution*. An open video system operator may not provide in its carriage contracts with programming providers that any dispute must be submitted to arbitration, mediation, or any other alternative method for dispute resolution prior to submission of a complaint to the Commission.

(c) *Notice required prior to filing of complaint*. Any aggrieved party intending to file a complaint under this section must first notify the potential defendant open video system operator that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in this part or in Section 653 of the Communications Act. The notice must be in writing and must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(d) *Contents of complaint*. In addition to the requirements of § 76.7 of this part, an open video system complaint shall contain:

(1) The type of entity that describes complainant (e.g., individual, private association, partnership, or corporation), the address and telephone number of the complainant, and the address and telephone number of each defendant;

(2) If discrimination in rates, terms, and conditions of carriage is alleged, documentary evidence shall be submitted such as a preliminary carriage rate estimate or a programming contract that demonstrates a differential in price, terms or conditions between complainant and a competing video programming provider or, if no programming contract or preliminary carriage rate estimate is submitted with the complaint, an affidavit signed by an officer of complainant alleging that a differential in price, terms or conditions exists, a description of the nature and extent (if known or reasonably estimated by the complainant) of the differential, together with a statement that defendant refused to provide any further specific comparative information;

NOTE TO PARAGRAPH (d)(2): Upon request by a complainant, the preliminary carriage rate estimate shall include a calculation of the average of the carriage rates paid by the unaffiliated video programming providers receiving carriage from the open video system operator, including the information needed for any weighting of the individual carriage rates that the operator has included in the average rate.

(3) If a programming contract or a preliminary carriage rate estimate is submitted with the complaint in support of the alleged violation, specific references to the relevant provisions therein.

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (c) of this section has been made.

(e) *Answer*. (1) Any open video system operator upon which a complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) An answer to a discrimination complaint shall state the reasons for

any differential in prices, terms or conditions between the complainant and its competitor, and shall specify the particular justification relied upon in support of the differential. Any documents or contracts submitted pursuant to this paragraph may be protected as proprietary pursuant to §76.9 of this part.

(f) *Reply*. Within twenty (20) days after service of an answer, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(g) *Time limit on filing of complaints*. Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs

(1) The open video system operator enters into a contract with the complainant that the complainant alleges to violate one or more of the rules contained in this part; or

(2) The open video system operator offers to carry programming for the complainant pursuant to terms that the complainant alleges to violate one or more of the rules contained in this part, and such offer to carry programming is unrelated to any existing contract between the complainant and the open video system operator; or

(3) The complainant has notified an open video system operator that it intends to file a complaint with the Commission based on a request for such operator to carry the complainant's programming on its open video system that has been denied or unacknowledged, allegedly in violation of one or more of the rules contained in this part.

(h) *Remedies for violations*—(1) *Remedies authorized*. Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, the requiring carriage, awarding damages to any person denied carriage, or any combination of such sanctions. Such order shall set forth a timetable for compliance, and shall become effective upon release.

(2) *Additional sanctions*. The remedies provided in paragraph (h)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43178, Aug. 21, 1996; 62 FR 26239, May 13, 1997; 64 FR 6575, Feb. 10, 1999]

§76.1514 Bundling of video and local exchange services.

An open video system operator may offer video and local exchange services for sale in a single package at a single price, *provided that:*

(a) The open video system operator, where it is the incumbent local exchange carrier, may not require that a subscriber purchase its video service in order to receive local exchange service; and

(b) Any local exchange carrier offering such a package must impute the unbundled tariff rate for the regulated service.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43178, Aug. 21, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43178, Aug. 21, 1996, in §76.1514, paragraph (b) was revised. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart T—Notices

SOURCE: 65 FR 53617, Sept. 5, 2000, unless otherwise noted.

§76.1601 Deletion or repositioning of broadcast signals.

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 1 TO §76.1601: 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.

§ 76.1602 Customer service—general information.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services;

(3) Installation and service maintenance policies;

(4) Instructions on how to use the cable service;

(5) Channel positions of programming carried on the system; and

(6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

§ 76.1603 Customer service—rate and service changes.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by § 76.1602.

(c) In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

(f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

NOTE 1 TO § 76.1603: Section 624(h) of the Communications Act, 47 U.S.C. 544(h), contains additional notification requirements which a franchising authority may enforce.

NOTE 2 TO § 76.1603: Section 624(d)(3) of the Communications Act, 47 U.S.C. 544(d)(3), contains additional notification provisions pertaining to cable operators who offer a premium channel without charge to cable subscribers who do not subscribe to such premium channel.

NOTE 3 TO § 76.1603: Section 631 of the Communications Act, 47 U.S.C. 551, contains additional notification requirements pertaining to the protection of subscriber privacy.

[65 FR 53617, Sept. 5, 2000, as amended at 66 FR 16554, Mar. 26, 2001]

§ 76.1604 Charges for customer service changes.

If a cable operator establishes a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, as provided in § 76.980(d), the cable system must notify all subscribers in writing that they may be subject to such a charge for changing service tiers more than the specified number of times in any 12 month period.

§ 76.1605 New product tier.

(a) Within 30 days of the offering of an NPT, operators shall file with the Commission a copy of the new rate card that contains the following information on their BSTs, CPSTs and NPTs:

(1) The names of the programming services contained on each tier; and

(2) The price of each tier.

(b) Operators also must file with the Commission, copies of notifications that were sent to subscribers regarding the initial offering of NPTs. After this initial filing, cable operators must file updated rate cards and copies of customer notifications with the Commission within 30 days of rate or service changes affecting the NPT.

§ 76.1606 Rate change while complaint pending.

A regulated cable operator that proposes to change any rate while a cable service tier complaint is pending before the Commission shall provide the Commission at least 30 days notice of the proposed change.

§ 76.1607 Principal headend.

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.

§ 76.1608 System technical integration requiring uniform election of must-carry or retransmission consent status.

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.

§ 76.1609 Non-duplication and syndicated exclusivity.

Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection or syndicated exclusivity protection against it.

§ 76.1610 Change of operational information.

The Operator shall inform the Commission on FCC Form 324 whenever there is a change of cable television system operator; change of legal name, change of the operator's mailing address or FCC Registration Number (FRN); or change in the operational status of a cable television system. Notification must be done within 30 days from the date the change occurs and must include the following information, as appropriate:

(a) The legal name of the operator and whether the operator is an individual, private association, partnership, corporation, or government entity. See § 76.5(cc). If the operator is a

partnership, the legal name of the partner responsible for communications with the Commission shall be supplied;

(b) The assumed name (if any) used for doing business in each community;

(c) The physical address, including zip code, and e-mail address, if applicable, to which all communications are to be directed;

(d) The nature of the operational status change (e.g., operation terminated, merged with another system, inactive, deleted, etc.);

(e) The names and FCC identifiers (e.g., CA 0001) of the system communities affected.

(f) The operator's FCC Registration Number (FRN) as required under part 1, subpart W of this chapter.

(g) The FCC Registration Number (FRN).

NOTE 1 TO § 76.1610: FCC system community identifiers are routinely assigned upon registration. They have been assigned to all reported system communities based on previous Form 325 data. If a system community in operation prior to March 31, 1972, has not previously been assigned a system community identifier, the operator shall provide the following information in lieu of the identifier: Community Name, Community Type (*i.e.*, incorporated town, unincorporated settlement, etc.), County Name, State, Operator Legal Name, Operator Assumed Name for Doing Business in the Community, Operator Mail Address, and Year and Month service was first provided by the physical system.

[65 FR 53617, Sept. 5, 2000, as amended at 66 FR 47897, Sept. 14, 2001; 68 FR 27003, May 19, 2003]

§ 76.1611 Political cable rates and classes of time.

If a system permits a candidate to use its cablecast facilities, the system shall disclose to all candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers. Systems may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(a) A description and definition of each class of time available to commercial advertisers sufficiently complete enough to allow candidates to identify and understand what specific attributes differentiate each class;

(b) A description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(c) A description of the system's method of selling preemptible time based upon advertiser demand, commonly known as the ''current selling level,'' with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(d) An approximation of the likelihood of preemption for each kind of preemptible time; and

(e) An explanation of the system's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

§ 76.1612 Personal attack.

(a) When, during origination cablecasting of issues of public importance, an attack is made upon the honesty, character, integrity, or like personal qualities of an identified person or group, the cable television system operator shall, within a reasonable time and in no event later than one (1) week after the attack, transmit to the person or group attacked:

(1) Notification of the date, time, and identification of the cablecast;

(2) A script or tape (or an accurate summary if a script or tape is not available) of the attack; and

(3) An offer of a reasonable opportunity to respond over the system's facilities.

(b) The provisions of paragraph (a) of this section shall not apply to cablecast material which falls within one or more of the following categories:

(1) Personal attacks on foreign groups or foreign public figures;

(2) Personal attacks occurring during uses by legally qualified candidates;

(3) Personal attacks made during cablecasts not included in paragraph (a)(2) of this section and made by legally qualified candidates, their authorized spokespersons or those associated with them in the campaign, on other such candidates, their authorized

spokespersons or persons associated with the candidates in the campaign; and

(4) Bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events (including commentary or analysis contained in the foregoing programs, but, the provisions of paragraph (a) of this section shall be applicable to editorials of the cable television system operator).

§ 76.1613 Political editorials.

Where a cable television system operator, in an editorial endorses or opposes a legally qualified candidate or candidates, the system operator shall, within 24 hours of the editorial, transmit the following to the other qualified candidate or candidates for the same office or the candidate opposed in the editorial:

(a) Notification of the date, time, and channel of the editorial;

(b) A script or tape of the editorial; and

(c) An offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the system's facilities: *Provided, however,* that where such editorials are cablecast within 72 hours prior to the day of the election, the system operator shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

§ 76.1614 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 must-carry requirements of § 76.56.

§ 76.1615 Sponsorship identification.

(a) When a cable television system operator engaged in origination cablecasting presents any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such cable television system operator, the cable television system operator, at the time of the cablecast, shall announce that such matter is sponsored, paid for, or furnished, either in whole or in part, and by whom or on whose behalf such consideration was supplied: *Provided, however,* that ''service or other valuable consideration'' shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a cablecast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the cablecast. For the purposes of this section, the term ''sponsored'' shall be deemed to have the same meaning as ''paid for.'' In the case of any political advertisement cablecast under this paragraph that concerns candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds.

(b) Each cable television system operator engaged in origination cablecasting shall exercise reasonable diligence to obtain from employees, and from other persons with whom the system operator deals directly in connection with any matter for cablecasting, information to enable such system operator to make the announcement required by this section.

(c) In the case of any political origination cablecast matter or any origination cablecast matter involving the discussion of public controversial issues for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a cable television system operator as an inducement for cablecasting such matter, an announcement shall be made both at the beginning and conclusion of such cablecast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such cable television system operator in connection with the transmission of such cablecast matter: *Provided, however,* that in the case of any cablecast of 5 minutes' duration or less, only one such announcement need

be made either at the beginning or conclusion of the cablecast.

(d) The announcement required by this section shall, in addition to stating the fact that the origination cablecasting matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (c) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a cable television system operator on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the system operator, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent.

(e) In the case of an origination cablecast advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the cablecast.

(f) The announcement otherwise required by this section is waived with respect to the origination cablecast of ''want ad'' or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise.

(g) The announcements required by this section are waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

NOTE TO § 76.1615(g): The waiver heretofore granted by the Commission in its Report and Order, adopted November 16, 1960 (FCC 60–1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when § 73.654(e) of this chapter, the predecessor television rule, went into effect.

(h) Commission interpretations in connection with the provisions of the sponsorship identification rules for the broadcasting services are contained in the Commission's Public Notice, entitled ''Applicability of Sponsorship Identification Rules,'' dated May 6, 1963 (40 FCC 141), as modified by Public Notice, dated April 21, 1975 (FCC 75–418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports. The interpretations made for the broadcasting services are equally applicable to origination cablecasting.

§ 76.1616 Contracts with local exchange carriers.

Within 10 days of final execution of a contract permitting a local exchange carrier to use that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end use, the parties shall submit a copy of such contract, along with an explanation of how such contract is reasonably limited in scope and duration, to the Commission for review. The parties shall serve a copy of this submission on the local franchising authority, along with a notice of the local franchising authority's right to file comments with the Commission consistent with § 76.7.

§ 76.1617 Initial must-carry notice.

(a) Within 60 days of activation of a cable system, a cable operator must notify all qualified NCE stations of its designated principal headend by certified mail.

(b) Within 60 days of activation of a cable system, 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.

(c) Within 60 days of activation of a cable system, 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.

§ 76.1618 Basic tier availability.

A cable operator shall provide written notification to subscribers of the availability of basic tier service to new subscribers at the time of installation. This notification shall include the following information:

(a) That basic tier service is available;

(b) The cost per month for basic tier service;

(c) A list of all services included in the basic service tier.

§ 76.1619 Information on subscriber bills.

(a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(c) A cable franchise authority may enforce the customer service standards set forth in this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

§ 76.1620 Availability of signals.

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.

§ 76.1621 Equipment compatibility offer.

Cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in § 15.3(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. The equipment offered shall include a single terminal device with dual descramblers/decoders and/or timers and bypass switches. Other equipment, such as two independent set-top terminal devices may be offered at the same time that the single terminal device with dual tuners/descramblers is offered. For purposes of this rule, two set-top devices linked by a control system that provides functionality equivalent to that of a single device with dual descramblers is considered to be the same as a terminal device with dual descramblers/decoders.

(a) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year.

(b) Such special equipment shall, at a minimum, have the capability:

(1) To allow simultaneous reception of any two scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and

(2) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(c) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the

subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(d) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in § 76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

§ 76.1622 Consumer education program on compatibility.

Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(a) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(b) The consumer information program shall include the following information:

(1) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(2) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: view a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as ''Picture-in-Picture,'' channel review and other functions that necessitate channel selection by the consumer device.

(3) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

Subpart U—Documents to be Maintained for Inspection

SOURCE: 65 FR 53621, Sept. 5, 2000, unless otherwise noted.

§ 76.1700 Records to be maintained by cable system operators.

(a) *Recordkeeping requirements.* The operator of every cable television system having fewer than 1,000 subscribers is exempt from the public inspection requirements contained in § 76.1701 (political file); § 76.1715 (sponsorship identification); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); and § 76.1706 (signal leakage logs and repair records). The operator of every cable television system having 1000 or more subscribers but fewer than 5000 subscribers shall, upon request, provide the information required by § 76.1715 (sponsorship identification); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); and § 76.1706 (signal leakage logs and repair records) but shall maintain for public inspection a file containing a copy of all records required to be kept by § 76.1701 (political file). The operator of every cable television system having 5000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by § 76.1701 (political file); § 76.1715 (sponsorship identification); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); and § 76.1706 (signal leakage logs and repair records).

(1)–(2) [Reserved]

(b) *Location of records.* The public inspection file shall be maintained at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s) (such as a public registry for documents or an attorney's office). The public inspection file shall be available for public inspection at any time during regular business hours.

(c) All or part of the public inspection file may be maintained in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public who wish to review the file.

(d) The records specified in paragraph (a) of this section shall be retained for the period specified in §§ 76.1701, 76.1702, 76.1704(a), and 76.1706, respectively.

(e) *Reproduction of records.* Copies of any material in the public inspection file shall be available for machine reproduction upon request made in person, provided the requesting party shall pay the reasonable cost of reproduction. Requests for machine copies shall be fulfilled at a location specified by the system operator, within a reasonable period of time, which in no event shall be longer than seven days. The system operator is not required to honor requests made by mail but may do so if it chooses.

[65 FR 53621, Sept. 5, 2000, as amended at 66 FR 67117, Dec. 28, 2001; 67 FR 1650, Jan. 14, 2002]

§ 76.1701 Political file.

(a) Every cable television system shall keep and permit public inspection of a complete and orderly record (political file) of all requests for cablecast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The ''disposition'' includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

(d) Where origination cablecasting material is a political matter or matter involving the discussion of a controversial issue of public importance

and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the matter, the system operator shall, in addition to making the announcement required by § 76.1616(a), require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the local office of the system. Such lists shall be kept and made available for a period of two years.

§ 76.1702 Equal employment opportunity.

(a) Every employment unit with six or more full-time employees shall maintain for public inspection a file containing copies of all EEO program annual reports filed with the Commission pursuant to § 76.77 and the equal employment opportunity program information described in paragraph (b) of this section. These materials shall be placed in the unit's public inspection file annually by the date that the unit's EEO program annual report is due to be filed and shall be retained for a period of five years. The file shall be maintained at the central office and at every location with six or more full-time employees. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multichannel video programming distributor that operates multiple units shall be maintained at the central office of the headquarters employment unit. The multichannel video programming distributor shall provide reasonable accommodation at these locations for undisturbed inspection of its equal employment opportunity records by members of the public during regular business hours.

(b) The following equal employment opportunity program information shall be included annually in the unit's public file, and on the unit's web site, if it has one, at the time of the filing of its FCC Form 396–C:

(1) A list of all full-time vacancies filled by the multichannel video programming distributor employment unit during the preceding year, identified by job title;

(2) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to § 76.75(b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(3) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(4) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(5) A list and brief description of the initiatives undertaken pursuant to § 76.75(b)(2) during the preceding year, if applicable.

[68 FR 693, Jan. 7, 2003]

§ 76.1703 Commercial records on children's programs.

Cable operators airing children's programming must maintain records sufficient to verify compliance with § 76.225 and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

§ 76.1704 Proof-of-performance test data.

(a) The proof of performance tests required by § 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request.

(b) The provisions of paragraph (a) of this section shall not apply to any cable television system having fewer than 1,000 subscribers, subject to the requirements of § 76.601(d).

NOTE TO § 76.1704: If a signal leakage log is being used to meet proof of performance test recordkeeping requirements in accordance with § 76.601, such a log must be retained for the period specified in § 76.601(d).

§ 76.1705 Performance tests (channels delivered).

The operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.

§ 76.1706 Signal leakage logs and repair records.

Cable operators shall maintain a log showing the date and location of each leakage source identified pursuant to § 76.614, the date on which the leakage was repaired, and the probable cause of the leakage. The log shall be kept on file for a period of two years and shall be made available to authorized representatives of the Commission upon request.

NOTE TO § 76.1705: If a signal leakage log is being used to meet proof of performance test recordkeeping requirements in accordance with § 76.601, such a log must be retained for the period specified in § 76.601(d).

§ 76.1707 Leased access.

If a cable operator adopts and enforces a written policy regarding indecent leased access programming pursuant to § 76.701, such a policy will be considered published pursuant to that rule by inclusion of the written policy in the operator's public inspection file.

§ 76.1708 Principal headend.

(a) The operator of every cable television system shall maintain for public inspection the designation and location of its principal headend. If an operator changes the designation of its principal headend, that new designation must be included in its public file.

(b) Such records must be maintained in accordance with the provisions of § 76.1700(b).

§ 76.1709 Availability of signals.

(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) Such records must be maintained in accordance with the provisions of § 76.1700(b).

(c) 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 § 76.56.

§ 76.1710 Operator interests in video programming.

(a) Cable operators are required to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they have an attributable interest. These records must be made available to local franchise authorities, the Commission, or members of the public on reasonable notice and during regular business hours.

(b) ''Attributable interest'' shall be defined by reference to the criteria set forth in the Notes to § 76.501.

§ 76.1711 Emergency alert system (EAS) tests and activation.

Every cable system of 1,000 or more subscribers shall keep a record of each test and activation of the Emergency Alert System (EAS) procedures pursuant to the requirement of part 11 of this chapter and the EAS Operating Handbook. These records shall be kept for three years.

§ 76.1712 Open video system (OVS) requests for carriage.

An open video system operator shall maintain a file of qualified video programming providers who have requested carriage or additional carriage since the previous allocation of capacity. Information regarding how a video programming provider should apply for carriage must be made available upon request.

NOTE 1 TO § 76.1712: An open video system operator will not be required to comply with the regulations contained in this section if

there is no open capacity to be allocated at the end of the three year period described in § 76.1503(c)(2)(ii).

§ 76.1713 Complaint resolution.

Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. These records shall be maintained for at least a one-year period.

NOTE 1 TO § 76.1713: Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

§ 76.1714 FCC rules and regulations.

(a) The operator of a cable television system shall have a current copy of part 76 and, if subject to the Emergency Alert System (EAS) rules contained in part 11 of this chapter, an EAS Operating Handbook, and is expected to be familiar with the rules governing cable television systems and the EAS. Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at nominal cost. Copies of the EAS Operating Handbook may be obtained from the Commission's EAS staff, in Washington, DC.

(b) The provisions of paragraph (a) of this section are not applicable to any cable television system serving fewer than 1000 subscribers.

(c) The licensee of a cable television relay station (CARS) shall have a current copy of part 78 of this chapter, and, in cases where aeronautical obstruction markings of antennas is required, part 17 of this chapter shall be available for use by the operator in charge. Both the licensee and the operator or operators responsible for the proper operation of the station are expected to be familiar with the rules governing cable television relay stations. Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at nominal cost.

§ 76.1715 Sponsorship identification.

Whenever sponsorship announcements are omitted pursuant to § 76.1615(f) of subpart T, the cable television system operator shall observe the following conditions:

(a) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(b) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list.

§ 76.1716 Subscriber records and public inspection file.

The operator of a cable television system shall make the system, its public inspection file, and its records of subscribers available for inspection upon request by an authorized representative of the Commission at any reasonable hour.

§ 76.1717 Compliance with technical standards.

Each system operator shall be prepared to show, on request by an authorized representative of the Commission or the local franchising authority, that the system does, in fact, comply with the technical standards rules in part 76, subpart K.

Subpart V—Reports and Filings

SOURCE: 65 FR 53623, Sept. 5, 2000, unless otherwise noted.

§ 76.1800 Additional reports and filings.

In addition to the reports and filings required by this subpart, cable operators must provide all notifications which are required by § 1.1155 of this chapter (annual regulatory user fees). In addition, all cable systems subject to rate regulation must file FCC rate forms pursuant to the Commission's rate rules contained in subparts N and R of this part.

NOTE 1 TO § 76.1800: Cable operators are required by the Copyright Act to make semi-annual filings of Statements of Account with

the Licensing Division of the Copyright Office, Library of Congress, Washington, DC 20557.

NOTE 2 TO § 76.1800: The Commission may require certain financial information to be submitted pursuant to Section 623(g) of the Communications Act, 47 U.S.C. 543(g).

§ 76.1801 Registration statement.

(a) A system community unit shall be authorized to commence operation only after filing with the Commission the following information on FCC Form 322.

(1) The legal name of the operator, entity identification or social security number, and whether the operator is an individual, private association, partnership, or corporation. If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied;

(2) The assumed name (if any) used for doing business in the community;

(3) The mailing address, including zip code; e-mail address, if applicable; and telephone number to which communications are to be directed;

(4) The month and year the system began service to subscribers;

(5) The name of the community or area served and the county in which it is located;

(6) The television broadcast signals to be carried which previously have not been certified or registered; and

(7) The FCC Registration Number (FRN).

(b) Registration statements, FCC Form 322, shall be signed by the operator; by one of the partners, if the operator is a partnership; by an officer, if the operator is a corporation; by a member who is an officer, if the operator is an unincorporated association; or by any duly authorized employee of the operator.

(c) Registration statements, FCC Form 322, may be signed by the operator's attorney in case of the operator's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reasons why the registration statement was not signed by the operator. In addition, if any matter is stated on the basis of the attorney's belief only (rather than the attorney's knowledge), the attorney shall separately set forth the reasons for believing that such statements are true.

[68 FR 27003, May 19, 2003]

§ 76.1802 Annual employment report.

Each employment unit with six or more full-time employees shall file an annual employment report on FCC Form 395–A with the Commission on or before September 30 of each year.

NOTE TO § 76.1802: Data concerning the gender, race and ethnicity of an employment unit's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual employment unit's compliance with our EEO rules for multichannel video program distributors.

[69 FR 34954, June 23, 2004]

EFFECTIVE DATE NOTE: At 69 FR 34954, June 23, 2004, § 76.1802 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.1803 Signal leakage monitoring.

MVPDs subject to § 76.611 must submit the results of ground based measurements derived in accordance with § 76.611(a)(1) or airspace measurements derived in accordance with § 76.611(a)(2), including a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This information shall be provided to the Commission each calendar year via FCC Form 320.

[68 FR 27003, May 19, 2003]

§ 76.1804 Aeronautical frequencies: leakage monitoring (CLI).

An MVPD shall notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10^{-4} watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands (108–137 and 225–400 MHz). The notification shall be made on FCC Form 321. Such notification shall include:

(a) Legal name and local address of the MVPD;

(b) The names and FCC identifiers (e.g., CA0001) of the system communities affected, for a cable system, and the name and FCC identifier (e.g., CAB901), for other MVPDs;

(c) The names and telephone numbers of local system officials who are responsible for compliance with §§ 76.610 through 76.616 and § 76.1803;

(d) Carrier frequency, tolerance, and type of modulation of all carriers in the aeronautical bands at any location in the cable distribution system and the maximum of those average powers measured over a 2.5 kHz bandwidth as described in the introductory paragraph to this rule section;

(e) The geographical coordinates (in NAD83) of a point near the center of the system, together with the distance (in kilometers) from the designated point to the most remote point of the plant, existing or planned, that defines a circle enclosing the entire plant;

(f) Certification that the monitoring procedure used is in compliance with § 76.614 or description of the routine monitoring procedure to be used; and

(g) For MVPDs subject to § 76.611, the cumulative signal leakage index derived under § 76.611(a)(1) or the results of airspace measurements derived under § 76.611(a)(2), including a description of the method by which compliance with the basic signal leakage criteria is achieved and the method of calibrating the measurement equipment.

(h) Aeronautical Frequency Notifications, FCC Form 321, shall be personally signed either electronically or manually by the operator; by one of the partners, if the operator is a partnership; by an officer, if the operator is a corporation; by a member who is an officer, if the operator is an unincorporated association; or by any duly authorized employee of the operator.

(i) Aeronautical Frequency Notifications, FCC Form 321, may be signed by the operator's attorney in case of the operator's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reasons why the FCC Form 321 was not signed by the operator. In addition, if any matter is stated on the basis of the attorney's belief only (rather than the attorney's knowledge), the attorney shall separately set forth the reasons for believing that such statements are true.

(j) The FCC Registration Number (FRN).

[68 FR 27003, May 19, 2003]

§ 76.1805 Alternative rate regulation agreements.

Small systems owned by small cable companies must file with the Commission a copy of any operative alternative rate regulation agreement entered into with a local franchising authority pursuant to § 76.934(g), within 30 days after its effective date.

Subpart W—Encoding Rules

SOURCE: 68 FR 66735, Nov. 28, 2003, unless otherwise noted.

§ 76.1901 Applicability.

(a) Each multi-channel video programming distributor shall comply with the requirements of this subpart.

(b) This subpart shall not apply to distribution of any content over the Internet, nor to a multichannel video programming distributor's operations via cable modem or DSL.

(c) With respect to cable system operators, this subpart shall apply only to cable services. This subpart shall not apply to cable modem services, whether or not provided by a cable system operator or affiliate.

§ 76.1902 Definitions.

(a) *Commercial advertising messages* shall mean, with respect to any service, program, or schedule or group of programs, commercial advertising messages other than:

(1) Advertising relating to such service itself or the programming contained therein,

(2) Interstitial programming relating to such service itself or the programming contained therein, or

(3) Any advertising which is displayed concurrently with the display of any part of such program(s), including but not limited to ''bugs,'' ''frames'' and ''banners.''

(b) *Commercial audiovisual content* shall mean works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied, transmitted by a covered entity and that are:

(1) Not created by the user of a covered product, and

(2) Offered for transmission, either generally or on demand, to subscribers or purchasers or the public at large or otherwise for commercial purposes, not uniquely to an individual or a small, private group.

(c) *Commercially adopted access control method* shall mean any commercially adopted access control method including digitally controlled analog scrambling systems, whether now or hereafter in commercial use.

(d) *Copy never* shall mean, with respect to commercial audiovisual content, the encoding of such content so as to signal that such content may not to be copied by a covered product.

(e) *Copy one generation* shall mean, with respect to commercial audiovisual content, the encoding of such content so as to permit a first generation of copies to be made by a covered product but not copies of such first generation of copies.

(f) *Copy no more* shall mean, with respect to commercial audiovisual content, the encoding of such content so as to reflect that such content is a first generation copy of content encoded as copy one generation and no further copies are permitted.

(g) *Covered product* shall mean a device used by consumers to access commercial audiovisual content offered by a covered entity (excluding delivery via cable modem or the Internet); and any device to which commercial audiovisual content so delivered from such covered product may be passed, directly or indirectly.

(h) *Covered entity* shall mean any entity that is subject to this subpart.

(i) *Defined business model* shall mean video-on-demand, pay-per view, pay television transmission, non-premium subscription television, free conditional access delivery and unencrypted broadcast television.

(j) *Encode* shall mean, in the transmission of commercial audiovisual content, to pass, attach, embed, or otherwise apply to, associate with, or allow to persist in or remain associated with such content, data or information which when read or responded to in a covered device has the effect of preventing, pausing, or limiting copying, or constraining the resolution of a program when output from the covered device.

(k) *Encoding rules* shall mean the requirements or prohibitions describing or limiting encoding of audiovisual content as set forth in this subpart.

(l) *Free conditional access delivery* shall mean a delivery of a service, program, or schedule or group of programs via a commercially-adopted access control method, where viewers are not charged any fee (other than government-mandated fees) for the reception or viewing of the programming contained therein, other than unencrypted broadcast television.

(m) *Non-premium subscription television* shall mean a service, or schedule or group of programs (which may be offered for sale together with other services, or schedule or group of programs), for which subscribers are charged a subscription fee for the reception or viewing of the programming contained therein, other than pay television, subscription-on-demand and unencrypted broadcast television. By way of example, ''basic cable service'' and ''extended basic cable service'' (other than unencrypted broadcast television) are ''non-premium subscription television.''

(n) *Pay-per-view shall* mean a delivery of a single program or a specified group of programs, as to which each such single program is generally uninterrupted by commercial advertising messages and for which recipients are charged a separate fee for each program or specified group of programs. The term pay-per-view shall also include delivery of a single program for which multiple start times are made available at time intervals which are less than the running time of such program as a whole. If a given delivery qualifies both as

pay-per-view and a pay television transmission, then, for purposes of this subpart, such delivery shall be deemed pay-per-view rather than a pay television transmission.

(o) *Pay television transmission* shall mean a transmission of a service or schedule of programs, as to which each individual program is generally uninterrupted by commercial advertising messages and for which service or schedule of programs subscribing viewers are charged a periodic subscription fee, such as on a monthly basis, for the reception of such programming delivered by such service whether separately or together with other services or programming, during the specified viewing period covered by such fee. If a given delivery qualifies both as a pay television transmission and pay-per-view, video-on-demand, or subscription-on-demand then, for purposes of this subpart, such delivery shall be deemed pay-per-view, video-on-demand or subscription-on-demand rather than a pay television transmission.

(p) *Program* shall mean any work of commercial audiovisual content.

(q) *Subscription-on-demand* shall mean the delivery of a single program or a specified group of programs for which:

(1) A subscriber is able, at his or her discretion, to select the time for commencement of exhibition thereof,

(2) Where each such single program is generally uninterrupted by commercial advertising messages; and

(3) For which program or specified group of programs subscribing viewers are charged a periodic subscription fee for the reception of programming delivered by such service during the specified viewing period covered by the fee. In the event a given delivery of a program qualifies both as a pay television transmission and subscription-on-demand, then for purposes of this subpart, such delivery shall be deemed subscription-on-demand rather than a pay television transmission.

(r) *Undefined business model* shall mean a business model that does not fall within the definition of a defined business model.

(s) *Unencrypted broadcast television* means the retransmission by a covered entity of any service, program, or schedule or group of programs originally broadcast in the clear without use of a commercially-adopted access control method by a terrestrial television broadcast station regardless of whether such covered entity employs an access control method as a part of its retransmission.

(t) *Video-on-demand* shall mean a delivery of a single program or a specified group of programs for which:

(1) Each such individual program is generally uninterrupted by commercial advertising messages;

(2) Recipients are charged a separate fee for each such single program or specified group of programs; and

(3) A recipient is able, at his or her discretion, to select the time for commencement of exhibition of such individual program or specified group of programs. In the event a delivery qualifies as both video-on-demand and a pay television transmission, then for purposes of this subpart, such delivery shall be deemed video-on-demand.

[68 FR 66735, Nov. 28, 2003, as amended at 69 FR 4082, Jan. 28, 2004]

§ 76.1903 Interfaces.

A covered entity shall not attach or embed data or information with commercial audiovisual content, or otherwise apply to, associate with, or allow such data to persist in or remain associated with such content, so as to prevent its output through any analog or digital output authorized or permitted under license, law or regulation governing such covered product.

§ 76.1904 Encoding rules for defined business models.

(a) Commercial audiovisual content delivered as unencrypted broadcast television shall not be encoded so as to prevent or limit copying thereof by covered products or, to constrain the resolution of the image when output from a covered product.

(b) Except for a specific determination made by the Commission pursuant to a petition with respect to a defined business model other than unencrypted broadcast television, or an undefined business model subject to the procedures set forth in § 76.1906:

(1) Commercial audiovisual content shall not be encoded so as to prevent or limit copying thereof except as follows:

(i) To prevent or limit copying of video-on-demand or pay-per-view transmissions, subject to the requirements of paragraph (b)(2) of this section; and

(ii) To prevent or limit copying, other than first generation of copies, of pay television transmissions, non-premium subscription television, and free conditional access delivery transmissions; and

(2) With respect to any commercial audiovisual content delivered or transmitted in form of a video-on-demand or pay-per-view transmission, a covered entity shall not encode such content so as to prevent a covered product, without further authorization, from pausing such content up to 90 minutes from initial transmission by the covered entity (e.g., frame-by-frame, minute-by-minute, megabyte by megabyte).

§ 76.1905 Petitions to modify encoding rules for new services within defined business models.

(a) The encoding rules for defined business models in § 76.1904 reflect the conventional methods for packaging programs in the MVPD market as of December 31, 2002, and are presumed to be the appropriate rules for defined business models. A covered entity may petition the Commission for approval to allow within a defined business model, other than unencrypted broadcast television, the encoding of a new service in a manner different from the encoding rules set forth in § 76.1904(b)(1) and (2). No such petition will be approved under the public interest test set forth in paragraph (c)(4) of this section unless the new service differs from existing services provided by any covered entity under the applicable defined business model prior to December 31, 2002.

(b) *Petitions.* A petition to encode a new service within a defined business model other than as permitted by the encoding rules set forth in § 76.1904(b)(1) and (2) shall describe:

(1) The defined business model, the new service, and the proposed encoding terms, including the use of copy never and copy one generation encoding, and the encoding of content with respect to ''pause'' set forth in § 76.1904(b)(2).

(2) Whether the claimed benefit to consumers of the new service, including, but not limited to, the availability of content in earlier release windows, more favorable terms, innovation or original programming, outweighs the limitation on the consumers' control over the new service;

(3) The ways in which the new service differs from existing services offered by any covered entity within the applicable defined business model prior to December 31, 2002;

(4) All other pertinent facts and considerations relied on to support a determination that grant of the petition would serve the public interest.

(5) Factual allegations shall be supported by affidavit or declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(c) *Petition process*—(1) *Public notice.* The Commission shall give public notice of any such petition.

(2) *Comments.* Interested persons may submit comments or oppositions to the petition within thirty (30) days after the date of public notice of the filing of such petition. Comments or oppositions shall be served on the petitioner and on all persons listed in petitioner's certificate of service, and shall contain a detailed full statement of any facts or considerations relied on. Factual allegations shall be supported by affidavit or declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(3) *Replies.* The petitioner 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 or declaration, of any additional facts or considerations relied on. There shall be no further pleadings filed after petitioner's reply, unless authorized by the Commission.

(4) *Commission determination as to encoding rules for a new service within a defined business model.* (i) Proceedings initiated by petitions pursuant to this section shall be permit-but-disclose proceedings, unless otherwise specified

by the Commission. The covered entity shall have the burden of proof to establish that the proposed change in encoding rules for a new service is in the public interest. In making its determination, the Commission shall take into account the following factors:

(A) Whether the benefit to consumers of the new service, including but not limited to earlier release windows, more favorable terms, innovation or original programming, outweighs the limitation on the consumers' control over the new service;

(B) Ways in which the new service differs from existing services offered by any covered entity within the applicable defined business model prior to December 31, 2002; and

(ii) The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate.

(iii) A petition may, upon request of the petitioner, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the petition. A petitioner's request for the return of a petition will be regarded as a request for dismissal.

(d) *Complaint regarding a new service not subject to petition.* In an instance in which an interested party has a substantial basis to believe and does believe in good faith that a new service within a defined business model has been launched without a petition as required by this section, such party may file a complaint pursuant to § 76.7.

§ 76.1906 Encoding rules for undefined business models.

(a) Upon public notice and subject to requirements as set forth herein, a covered entity may launch a program service pursuant to an undefined business model. Subject to Commission review upon complaint, the covered entity may initially encode programs pursuant to such undefined business model without regard to limitations set forth in § 76.1904(b).

(1) *Notice.* Concurrent with the launch of an undefined business model by a covered entity, the covered entity shall issue a press release to the PR Newswire so as to provide public notice of the undefined business model, and the proposed encoding terms. The notice shall provide a concise summary of the commercial audiovisual content to be provided pursuant to the undefined business model, and of the terms on which such content is to be available to consumers. Immediately upon request from a party entitled to be a complainant, the covered entity shall make available information that indicates the proposed encoding terms, including the use of copy never or copy one generation encoding, and the encoding of content with respect to ''pause'' as defined in § 76.1904(b)(2).

(2) *Complaint process.* Any interested party (''complainant'') may file a complaint with the Commission objecting to application of encoding as set forth in the notice.

(i) *Pre-complaint resolution.* Prior to initiating a complaint with the Commission under this section, the complainant shall notify the covered entity that it may file a complaint under this section. The notice must be sufficiently detailed so that the covered entity can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of thirty (30) days from such notice before filing such complaint with the Commission. During this period the parties shall endeavor in good faith to resolve the issue(s) in dispute. If the parties fail to reach agreement within this 30 day period, complainant may initiate a complaint in accordance with the procedures set forth herein.

(ii) *Complaint.* Within two years of publication of a notice under paragraph (a)(1) of this section, a complainant may file a complaint with the Commission objecting to application of the encoding terms to the service at issue. Such complaint shall state with particularity the basis for objection to the encoding terms.

(A) The complaint shall contain the name and address of the complainant and the name and address of the covered entity.

(B) The complaint shall be accompanied by a certification of service on the named covered entity.

(C) The complaint shall set forth with specificity all information and arguments relied upon. Specific factual allegations shall be supported by a declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(D) The complaint shall set forth attempts made by the complainant to resolve its complaint pursuant to paragraph (a)(2)(i) of this section.

(iii) *Public notice*. The Commission shall give public notice of the filing of the complaint. Once the Commission has issued such public notice, any person otherwise entitled to be a complainant shall instead have the status of a person submitting comments under paragraph (a)(2)(iv) of this section rather than a complainant.

(iv) *Comments and reply*. (A) Any person may submit comments regarding the complaint within thirty (30) days after the date of public notice by the Commission. Comments shall be served on the complainant and the covered entity and on any persons listed in relevant certificates of service, and shall contain a detailed full statement of any facts or considerations relied on. Specific factual allegations shall be supported by a declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(B) The covered entity may file a response to the complaint and comments within twenty (20) days after the date that comments are due. Such response shall be served on all persons who have filed complaints or comments and shall also contain a detailed full showing, supported by affidavit or declaration, of any additional facts or considerations relied on. Replies shall be due ten (10) days from the date for filing a response.

(v) *Basis for Commission determination as to encoding terms for an undefined business model*. In a permit-but-disclose proceeding, unless otherwise specified by the Commission, to determine whether encoding terms as noticed may be applied to an undefined business model, the covered entity shall have the burden of proof to establish that application of the encoding terms in the undefined business model is in the public interest. In making any such determination, the Commission shall take into account the following factors:

(A) Whether the benefit to consumers of the new service, including but not limited to earlier release windows, more favorable terms, innovation or original programming, outweighs the limitation on the consumers' control over the new service;

(B) Ways in which the new service differs from services offered by any covered entity prior to December 31, 2002;

(vi) *Determination procedures*. The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate.

(b) *Complaint regarding a service not subject to notice*. In an instance in which an interested party has a substantial basis to believe and believes in good faith that a service pursuant to an undefined business model has been launched without requisite notice, such party may file a complaint pursuant to § 76.7.

§ 76.1907 Temporary bona fide trials.

The obligations and procedures as to encoding rules set forth in §§ 76.1904(b) and (c) and 76.1905(a) and (b) do not apply in the case of a temporary bona fide trial of a service.

§ 76.1908 Certain practices not prohibited.

Nothing in this subpart shall be construed as prohibiting a covered entity from:

(a) Encoding, storing or managing commercial audiovisual content within its distribution system or within a covered product under the control of a covered entity's commercially adopted access control method, provided that the outcome for the consumer from the application of the encoding rules set out in § 76.1904(a) and (b) is unchanged thereby when such commercial audiovisual content is released to consumer control, or

(b) Causing, with respect to a specific covered product, the output of content from such product in a format as necessary to match the display format of

another device connected to such product, including but not limited to providing for content conversion between widely-used formats for the transport, processing and display of audiovisual signals or data, such as between analog and digital formats and between PAL and NTSC or RGB and Y,Pb,Pr.

§ 76.1909 Redistribution control of unencrypted digital terrestrial broadcast content.

(a) For the purposes of this section, the terms unencrypted digital terrestrial broadcast content, EIT, PMT, broadcast flag, covered demodulator product, and marked content shall have the same meaning as set forth in § 73.9000 of this chapter.

(b) *Encrypted retransmission*. Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content in encrypted form, such distributor shall, upon demodulation of the 8–VSB, 16–VSB, 64–QAM or 256–QAM signal, inspect either the EIT or PMT for the broadcast flag, and if the broadcast flag is present:

(1) Securely and robustly convey that information to the consumer product used to decrypt the distributor's signal information, and

(2) Require that such consumer product, following such decryption, protect the content of such signal as if it were a covered demodulator product receiving marked content.

(c) *Unencrypted retransmission*. Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content in unencrypted form, such distributor shall, upon demodulation:

(1) Preserve the broadcast flag, if present, in both the EIT and PMT; and

(2) Use 8–VSB, 16–VSB, 64–QAM, or 256–QAM signal modulation for the retransmission.

(d) *Unmarked content*. Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content that is not marked with the broadcast flag, the multichannel video programming distributor shall not encode such content to restrict its redistribution.

[68 FR 67607, Dec. 3, 2003]

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