§ 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.

§ 76.912 Joint certification.

(a) Franchising authorities may apply for joint certification and may engage in joint regulation, including,
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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 basic service rates of its franchisees 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.

(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.


§ 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).