

## APPENDIX 1 - REVISED SECTION 76.1505

§ 76.1505 Public, educational, ~~and governmental access and institutional networks.~~

(a) An open video system operator shall be subject to public, educational, ~~and governmental access requirements and institutional network 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 ~~and that institutional network requirements within the franchise area are met.~~

(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 ~~both public, educational and governmental access channel and institutional network~~ 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 ~~both public, educational and governmental access channel and institutional network~~ 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 ~~and institutional network obligations~~ as the local cable operator by connecting with the cable operator's public, educational and governmental access channel feeds ~~and with the cable operator's institutional network~~ and by sharing the costs directly related to supporting public, educational, ~~and governmental access and institutional network~~ services, facilities and equipment necessary to achieve the interconnections. The open video system operator must provide the same amount of public, educational and governmental ~~access and institutional network channels, capacity, services, facilities and equipment as are required of the local cable operator is required to carry.~~

(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 and with its institutional network. The open video system operator and the cable operator may decide how to accomplish these connections, 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 connections, the local franchising authority may decide. The local franchising authority may require that the connections occur on government property or on public rights of way.

(4) The costs of connection and maintaining public, educational and governmental access channel and institutional network capacity, services, facilities and equipment shall be divided equitably between the cable operator and the open video system operator. Shared costs shall include capital contributions and any other costs or investments directly relating to or supporting institutional networks and public, educational and governmental access and required by the cable operator's franchise agreement and which have not been passed through to subscribers, such as under external cost treatment. Capital expenses incurred prior to the open video system operator's connection shall be subject to cost sharing on a pro-rata basis to the extent such investments have not been fully amortized by the cable operator or recovered from subscribers, such as by external cost passthroughs.

(5) The local franchising authority may not impose public, educational and governmental access obligations or institutional network obligations on the open video system operator which in combination exceed the combined public, educational and governmental access obligations and institutional network obligations 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 and for institutional network services, as well as provide reasonable support for services, facilities and equipment relating to such public, educational and governmental use and institutional network services. If a franchise agreement previously existed in that franchise area, the open video system operator shall be required to maintain the previously existing public, educational and governmental access terms and institutional network terms of that franchise agreement. Absent a previous cable 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 and institutional network services 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 institutional network services.

Note to paragraph (d)(6): If a cable system converts to an open video system, the operator will be required to maintain the previously existing terms of its public, educational and governmental access and institutional network obligations.

(7) The open video system operator must adjust its system(s) to comply with new public, educational and governmental access obligations and institutional network 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 Section 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 connection and/or cost sharing obligations under 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.~~

(ef) 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.

**CERTIFICATE OF SERVICE**

I, Nikki L. Klungle, hereby certify that on this 3rd day of July, 1996, I caused copies of the foregoing "Petition for Reconsideration of Michigan, Illinois, Texas Communities" to be sent by first-class mail, postage prepaid to the following:

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