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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CABLE TELECOMMUNICATION ASSOCIATION

SUGGESTED NOTICE OF PROPOSED RULE MAKING

FILED MARCH 11, 1998

FOLLOWING DISCUSSIONS WITH COMMISSION STAFF AT OPEN FORUM ON RULE REFORM AND STREAMLINING

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JUL 21 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	MM Docket No. _____
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NOTICE OF PROPOSED RULEMAKING

Adopted: _____ **Released:** _____

By the Commission:

Comment Date: _____
Reply Comment Date: _____

I. INTRODUCTION

1. This *Notice of Proposed Rulemaking* (*Notice*) is being issued as part of the Commission's 1998 biennial review of its regulations. This *Notice* sets forth proposals either to eliminate or amend a number of cable television regulations which the Commission has identified as overly burdensome or no longer serving the public interest. The cable television rules the Commission proposes to eliminate or amend were selected after a broad, comprehensive internal review of all existing FCC cable regulations, and after informal input from the industry and the public through, for instance, a public forum held January 30, 1998.

2. Section 11 of the Communications Act, as amended, requires the Commission to review all of its regulations applicable to providers of telecommunications service in every even-numbered year to determine whether the regulations are no longer necessary in the public interest as a result of meaningful

competition and whether such regulations should be repealed or modified.[1] The Commission previously announced that the first biennial regulatory review presents an excellent opportunity for a serious top-to-bottom examination of all the Commission's regulations, not just those required by the statute to be reviewed.[2] To this end, the Commission released on February 5, 1998, a list of 31 proposed proceedings to be initiated as part of its 1998 biennial review.[3] Among the regulatory proposals listed by the Commission were proposals to eliminate FCC Form 325 (Annual Report of Cable Television Systems); to simplify and unify Part 76 pleading and complaint process rules; and to consider streamlining and consolidating public file requirements applicable to cable television systems.[4]

3. The Commission believes that the public interest is served by eliminating or consolidating duplicative requirements, streamlining the Rules to make them easier to understand, eliminating superfluous regulations, and eliminating unnecessary regulatory burdens on cable operators. The purpose of this *Notice* therefore is to set forth proposals for the modification or elimination of current cable rules and to seek comments from the public on these proposals.

II. NOTICE ON REFORM OF CABLE REGULATIONS

A. Consolidation of Notice, Filing and Recordkeeping Requirements

4. The Commission's Part 76 Rules contain numerous notice, filing and recordkeeping requirements applicable to cable operators. As currently written, these various notice, filing and recordkeeping requirements are scattered throughout Part 76. Representatives of the cable industry have experienced frustration and difficulty in identifying the numerous requirements and in attempting to organize them in a workable manner. The absence of any organization of these Part 76 requirements has resulted, the Commission believes, in inefficient recordkeeping, notification, and reporting practices by cable operators.

5. In order to provide a framework to enable cable operators and others to work with these requirements, the Commission proposes to amend its Part 76 Rules to create three new subparts. These new subparts will be composed of the bulk of existing notice, filing and recordkeeping requirements. New Subpart T will include the Commission's notice requirements, new Subpart U will contain recordkeeping

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[1] 47 U.S.C. § 161.

[2] See FCC General Action, "FCC Staff Proposes 31 Proceedings as Part of 1998 Biennial Regulatory Review," Report No. GN 98-1, February 5, 1998.

[3] Id.

[4] Id. A fourth regulatory proposal affecting cable is to conduct a single ownership proceeding regarding broadcast ownership rules which are not the subject of any pending proceeding. That proceeding will be conducted separately from the instant *Notice*.

requirements, and new Subpart V will contain reporting and filing requirements. These subparts are proposed to be further divided into the following subsections:

Subpart T - Notices

Notices About Rate or Service Changes
Notices About Changes in Operations
Political Cablecasting Notices
Miscellaneous Notices
Notices Required to be Given to New Subscribers
Notices that Must be Given Annually

Subpart U - Documents to be Maintained for Inspection

Public Inspection File Documents
Upon Request Documents

Subpart V - Reports and Filings

6. A cross-reference listing of the new Subpart T, U, and V regulations and the sections from which the new regulations were taken is attached at Appendix A. The Commission believes that cable operators and others who are obligated to make reference to the Commission's Part 76 Rules will benefit from this reorganization. Several existing requirements, however, are excessively intertwined with existing rules to allow easy movement to the new subparts. These requirements, such as the notice requirements for cable inside wiring, are proposed to remain in their current sections but are referenced in "catch-all" sections of the new subparts. In this way, the Commission proposes at least to reference all cable operator notice, filing and recordkeeping requirements in these new subparts, even if in some instances the actual rule is contained elsewhere. Where certain rules require notice to be provided at different times (e.g., annually, at the time of installation, and at any time upon request), the proposed new rules make reference to the notice requirement in every subsection of Subpart T in which the notice requirement applies. In addition, the Commission proposes to mention, in notes at the end of various sections, certain notice, filing, and recordkeeping requirements which are not contained in Part 76 of the Rules. These notes will include, for example, references to the semi-annual Copyright filing requirement, and to requirements which appear in the Communications Act but not the Commission's Rules. By mentioning these additional, non-Part 76 requirements, the Commission does not propose to mandate that cable operators comply with such requirements, but rather the Commission seeks simply to notify cable operators and others that such requirements exist. Finally, where notice, filing or recordkeeping requirements were extracted from current sections, a note has been added to that section reminding operators of their need to comply with the requirement that has been transferred to the new section.

7. The Commission believes that its proposed restructuring of the notice, filing and recordkeeping requirements will greatly assist cable operators in compliance with these requirements and will assist others in monitoring cable operator compliance. The Commission seeks comments on its proposed restructuring, including comments how its proposed restructuring might be improved.

B. Temporary Rate Freeze

8. Section 76.900 of our Rules required all cable operators whose Basic Service Tier has not yet become subject to rate regulation to freeze cable rates at the level in effect on April 5, 1993.[5] The rate freeze became effective on April 5, 1993, and through a series of orders was extended to the earlier of May 15, 1994, or the date on which an operator's Basic Service Tier became subject to regulation.[6] Thus, the rate freeze expired for all operators on May 15, 1994 and, with respect to any particular operator, on the date on which the operator's franchising authority became certified to regulate rates.

9. Since the rate freeze is no longer in effect, the Commission believes that continuing to include the rate freeze rule in current Commission regulations is confusing and unnecessary. The Commission therefore proposes to eliminate Section 76.900, and seeks comment on this proposal.

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[5] Section 76.900 of our Rules currently reads as follows:

§76.900 Temporary freeze of cable rates.

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under Section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined under rates in effect on April 5, 1993, until May 15, 1994.

(b) The average monthly subscriber bill shall be calculated by determining for a monthly billing cycle the sum of all billed monthly charges for all cable services subject to regulation under Section 623 of the Communications Act and dividing that sum by the number of subscribers receiving any of those services. The average monthly subscriber bill determined under rates in effect on April 5, 1993, shall be calculated based on customer charges for the most recent monthly billing cycle ending prior to April 5, 1993.

(c) The freeze imposed by paragraph (a) of this section will not apply where a basic tier service has become subject to regulation by a local franchising authority or the Commission.

[6] See Rate Regulation, MM Docket No. 92-266, Order, 8 FCC Rcd 2921 (1993), clarified, 8 FCC Rcd 2917 (1993), extended, FCC 93-304 (June 15, 1993), erratum, 8 FCC Rcd 4511 (1993), extended, FCC 93-494 (Nov. 10, 1993), extended, 9 FCC Rcd 1299 (1994).

C. Sunset of Going Forward Rules

10. Section 76.922(g)(8) of our Rules was promulgated in the Commission's Sixth Reconsideration Order,[7] in order to sunset the "Caps Method" per channel adjustments and license fee reserves available to cable operators who increased their Cable Programming Services Tier ("CPST") rates to account for channel additions through December 31, 1997.[8] The "Caps Method" of adjusting rates was promulgated to provide an alternative to the "Mark-Up Method" of adjusting rates for channel changes, which was in effect prior to the release of the Sixth Reconsideration Order, and which continued as a rate adjustment option after the Sixth Reconsideration. Section 76.922(g)(8), by its terms, eliminates all of Section 76.922(g) effective January 1, 1998, including not only the "Caps Method" of adjusting rates for new channels, but also the "Mark-Up Method" of adjusting rates. The Commission seeks to revise this rule to clarify that the "Mark-Up Method" of adjusting rates continues to be available to cable operators.

11. In the Sixth Reconsideration Order, the Commission made the Caps Method available to cable operators for channel additions through December 31, 1997, unless the Commission, after reviewing the Caps Method provision, opted to extend the effectiveness of the Caps Method rate adjustment provision.[9] The Sixth Reconsideration Order, referring to the new rule which granted operators the choice of either the Caps or Mark-Up Method, provided as follows: "The new rule will expire on [December 31, 1997] and will be replaced by our existing rule unless it is reinstated by the Commission."[10] The rule in existence prior to the introduction of the Caps Method of rate adjustment was the Mark-Up Method. Since the Commission has taken no action to reinstate the Caps Method option, the Sixth Reconsideration Order provides that the existing methodology, the Mark-Up Method, should replace it. As a result, the Caps Method/Mark-Up Method choice expired on December 31, 1997, and was replaced by the Mark-Up Method.

12. In order to clarify the Rules to make clear that the Mark-Up Method continues in effect, the Commission proposes to amend Section 76.922(g) of the Rules to reflect the fact that the Mark-Up Method of rate adjustment continues to be in effect

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[7] Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, 10 FCC Rcd 1226, MM Docket No. 92-266, et al. (1994) ("Sixth Reconsideration").

[8] Section 76.922(g)(8) of our Rules currently reads as follows:

> **§76.922 Rates for the basic service tier and cable programming services tiers.**
>
> . . . .
>
> **(g) Changes in the number of channels on regulated tiers.**
>
> . . . .
>
> (8) Sunset Provisions. Paragraph (g) of this section shall cease to be effective on January 1, 1998 unless renewed by the Commission.

[9] Sixth Reconsideration, 10 FCC Rcd 1226, at ¶98.

[10] Id.

after December 31, 1997. These proposed amendments are attached at Appendix B. The Commission seeks comment on this proposed modification.

D. Commercial Limits On Children's Programming

13. Section 76.225 requires cable operators to keep records verifying compliance with the limits on the amount of commercials aired during children's programming.[11] These limits require that no more than 10.5 minutes of commercial matter per hour on weekends may be aired and no more than 12 minutes/hour on weekdays may be aired, for programming originally produced for an audience of children 12 years or younger. Under section 76.225 of the Rules, cable operators must comply with these commercial limits for children's programs carried on both local origination channels and on cable network channels. Records sufficient to verify compliance with these requirements must be retained for at least one year.[12]

14. We believe that our requirement that cable operators maintain records verifying compliance with the commercial limits on children's programming may be unduly burdensome to both cable operators and cable networks, and in certain respects may be unnecessary. We are aware of very few allegations that cable operators have violated the commercial limits on children's programming. In addition, while both broadcasters and cable operators are required under the Commission's Rules to maintain records sufficient to show compliance with the commercial limits on children's programming,[13] the recordkeeping requirement for cable operators appears to be considerably more onerous. Unlike cable operators, broadcasters have but a single channel for which compliance must be shown, and the extent of children's programming aired by the majority of broadcast stations is limited. Cable operators, on the other hand, may carry several cable networks whose programming schedules include a great number of children's programs. In addition, unlike cable operators, broadcasters very likely already maintain records of the commercials they air for their own commercial

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[11] Section 76.225 of our Rules currently reads as follows:

§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) 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 USC Sections 531(e) and 532(c)(2).

(c) Cable operators must maintain records sufficient to verify compliance with this rule and make such records available to the public. Such records must be retained for a period sufficient to cover the limitations period specified in 47 USC Section 503(b)(6)(B).

[12] Cable systems of less than 1,000 subscribers need not place this information in a public file. See 47 C.F.R. §76.305(a), (b).

[13] The rule as it applies to broadcasters is 47 C.F.R. §73.670.

purposes.[14] Finally, the public already can easily monitor compliance with the commercial limits by taping any children's programs that they believe violate the Rule.[15]

15. The only practical method available to cable operators to demonstrate compliance with the children's commercial limits is for operators to obtain certified reports from each cable network of the commercials carried during children's programming. Obligating cable operators to obtain these certified reports and requiring operators to maintain a public file containing such reports is, we believe, unnecessary and a waste of resources. The burden on cable operators and cable networks, and the paperwork generated by this recordkeeping, is not insignificant. Although we do not question the need to limit the number of commercials aired during children's programming, and while we understand the need to verify compliance with the rule, we believe that a better way to verify compliance is to permit operators to request records from cable networks after an allegation is made that the cable operator has violated the rule. We propose, therefore, to eliminate the recordkeeping requirement as it pertains to children's programming on cable networks. If an operator airs children's programming on its own local origination channel, however, we believe that the recordkeeping requirement should remain in place for that channel. We therefore propose to modify Section 76.225(c) of the Rules (proposed section 76.1703) to eliminate the recordkeeping requirement with respect to children's programming aired on cable networks, but to retain the requirement with respect to local origination channels, and seek comment on this proposal.

E. FCC Form 325 (Annual Report of Cable Television Systems)

16. FCC Form 325 (Annual Report of Cable Television Systems) is designed to provide the Commission with certain background information on cable systems. A copy of Form 325 is attached at Appendix C to this *Notice*. Currently, our Rules require cable operators to complete Form 325 within 60 days after the date the form is mailed to them by the Commission.[16] The Commission, however, has not distributed Form 325 to cable operators for several years. The last time Form 325 was mailed by the Commission was in 1996, to cover calendar year 1995.

17. The Commission has determined that in the past several years the information contained in Form 325 has been of little use to the Commission. One reason for this is that the information operators are required to provide on Form 325 is information from the previous calendar year. Thus, when this information is received by

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[14] See "Policies and Rules Concerning Children's Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations," Report and Order, 6 FCC Rcd 2111, at ¶13 (1991).

[15] See id., in which the Commission found that, "[g]iven the ease with which programs may be taped, . . . public monitoring is likely to have a significant impact in deterring and detecting violations" of the limits on commercials during children's programming.

[16] 47 C.F.R. § 76.403.

the Commission, it is already somewhat dated. Continuing to require cable operators to complete and file Form 325, therefore, appears to be an unnecessary waste of both the Commission's resources and those of cable operators. The Commission therefore proposes to eliminate the Form 325 filing requirement, and seeks comment on this proposal.

18. We note, however, that even if we eliminate the Form 325 filing requirement, Section 76.615 of our Rules still requires cable operators to notify the Commission annually of each frequency carried in the aeronautical frequency bands, and to designate in this notice whether the frequency is used for a television picture, or for an aural, pilot carrier, system control, or other purpose.[17] Timely filing of FCC Form 325A would have met this requirement, but since the FCC has not required Form 325A filings in the past several years and since the Commission proposes to eliminate the Form 325 filing requirement, some other means must be used. Page one of FCC Form 320 (Basic Signal Leakage Performance Report), requires operators to identify whether the system uses aeronautical frequencies, and if so, to attach as an exhibit all precisely offsetted aeronautical frequencies used by the Community Unit. Form 320 must be filed once each year. The Commission proposes that page one of Form 320 be modified to require not only identification of aeronautical frequencies used, but also to identify the type of information carried by the signal (e.g., television picture, aural, pilot carrier, or system control, etc.). The Commission seeks comment on this proposal.

F. Sponsorship Identification

19. Section 76.221 of our Rules requires cable operators to identify the sponsors, if any, of origination cablecasts. If the origination cablecast is political in nature or if the origination cablecast is a matter of controversial public concern, section 76.221(d) requires operators to maintain a list of chief executive officers or board members. Section 76.221(d) provides:

> Where the origination cablecasting material is 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 this section, 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

[17] 47 C.F.R. § 76.615(a).

> inspection at the local office of the system. Such lists shall be kept and made available for a period of two years.[18]

20. The Commission believes that the maintenance of such a list may be unnecessary because such a list is seldom, if ever, reviewed by the general public. The Commission therefore proposes to eliminate this requirement. The Commission seeks comments addressing the extent to which such a list is reviewed by the public, whether maintaining such a list is necessary, and the burden imposed on cable operators by this requirement.

21. Section 76.221(f) provides an exception to the rule that cable operators identify the sponsor, if any, of origination cablecasts. Section 76.221(f) provides a waiver of the requirement if the cablecast is an origination cablecast of "want ad" or classified advertisements, and the cablecast is sponsored by an individual (as opposed to a business). If the names of these individual advertisers are not announced, however, Section 76.221(f) requires operators to maintain a list of these "want ad" or classified advertisers whose names were not announced. Section 76.221(f) provides:

> (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. Whenever sponsorship announcements are omitted pursuant to this paragraph, the cable television system operator shall observe the following conditions:
>
> (1) Maintain a list showing the name, address and (where available) the telephone number of each advertiser;
>
> (2) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list.[19]

22. As with the requirement that cable operators list the sponsors of cablecasts of political or controversial issues, the Commission believes that maintaining a list of individuals placing "want ad" and classified advertisements is unnecessary and should be eliminated. The Commission believes that this list is seldom, if ever, consulted by the public. The Commission therefore tentatively concludes that the usefulness of maintaining the list required by Section 76.221(f) is outweighed by its burden on cable operators, and that this requirement to maintain such a list should be eliminated. The Commission seeks comment on this conclusion,

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[18] 47 C.F.R. §76.221(d).
[19] 47 C.F.R. §76.221(f).

and on its proposal to remove this requirement from Section 76.221(f) (proposed Section 76.1616(f)).

G. Notification of Complaint Procedures

23. Section 76.309(c)(3)(i)(A) of our Rules requires cable operators to notify subscribers of procedures for the resolution of complaints.[20] This requirement is repeated in Section 76.607, except that Section 76.607 also requires operators to identify a responsible officer of the local franchising authority in its notice. Section 76.607 also mandates certain recordkeeping requirements.[21] The Commission believes that the notification requirements shared in common by both Section 76.607 and Section 76.309(c)(3)(i)(A) can easily be combined into a new section (proposed Section 76.1602), and that the recordkeeping requirements of Section 76.607 should be placed in new Section 76.1715. The Commission believes that this action will clarify the subscriber notification requirements and recordkeeping requirements pertaining to

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[20] Section 76.309(c)(3)(i)(A) of our Rules currently reads as follows:

§76.309 Customer service obligations.

. . . .

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

. . . .

(3) Communications between cable operators and cable subscribers --

(i) Notifications to subscribers --

(A) 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.

. . . .

[21] Section 76.607 of our Rules currently reads as follows:

§76.607 Resolution of complaints. - Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. These records shall be maintained for at least a one-year period. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. Subscribers shall be advised, at least once each calendar year, of the procedures for resolution of complaints by the cable system operator, including the address of the responsible officer of the local franchising authority.

NOTE: 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.

complaint procedures, and will eliminate a redundant rule. The Commission seeks comment on this proposal.

H. Notification of Rate or Service Changes

24. Sections 76.309(c)(3)(i)(B), 76.932 and 76.964 of our Rules all require 30 days notice of any rate changes and/or service changes. Section 76.309(c)(3)(i)(B) requires written subscriber notification of any changes in rates, programming services, or channel positions "as soon as possible", and a minimum of 30 days in advance.[22] Section 76.932 requires written subscriber notification of any increases in Basic rates or equipment rates at least 30 days in advance.[23] Section 964 requires 30-days written notice to both subscribers and local franchising authorities of any rate or service changes.[24]

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[22] Section 76.309(c)(3)(i)(B) of our Rules currently reads as follows:

§76.309 Customer service obligations.

. . . .

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

. . . .

(3) Communications between cable operators and cable subscribers --

(i) Notifications to subscribers --

. . . .

(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 thirty (30) days in advance of any significant changes in the other information required by paragraph (c)(3)(i)(A) of this section. Notwithstanding any other provision of Part 76, 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.

[23] Section 76.932 of our Rules currently reads as follows:

§76.932 Notification of proposed rate increase. - 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.

[24] Section 76.964 of our Rules currently reads as follows;

§76.964 Written notification of changes in rates and services.

(a) In addition to the requirement of §76.309(c)(3)(i)(B) 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, changes 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. Notices to subscribers shall inform them of their right to file complaints about changes in cable

25. The Commission believes that combining these three sections into one rule would eliminate confusion among operators, subscribers and local franchising authorities. Therefore, the Commission proposes to eliminate Sections 76.309(c)(3)(i)(B), 76.932 and 76.964, and to restate the notification requirements of these sections in new Section 76.1603. The Commission seeks comment on this proposal.

I. Small System Exemptions

26. The Commission's recordkeeping rules and technical requirements are applied less stringently to cable systems of 1,000 subscribers or less. For example, the Commission's proof of performance tests are not required for systems of fewer than 1,000 subscribers (with the exception of signal leakage).[25] In addition, neither the Commission nor local franchising authorities may require systems having fewer than 1,000 subscribers to perform additional technical tests, repeat tests, or tests involving specified subscriber terminals.[26] Moreover, local franchising authorities and cable systems serving fewer than 1000 subscribers may agree on less stringent technical standards than the extensive technical standards detailed in Section 76.605(a) of the Rules.[27] In addition to these exemptions from technical requirements, systems of fewer than 1,000 subscribers need not comply with certain recordkeeping requirements. These recordkeeping requirements pertain to section 76.207 (political file); section 76.221(f) (sponsorship identifications); section 76.79 (EEO records available for public inspection); section 76.225(c) (commercial records for children's programming); section 76.601(c) (proof-of-performance test data); section 76.601(e) (signal leakage logs and repair records); and section 76.701(h) (records for leased access).[28] Finally, systems of fewer than 1,000 subscribers need not comply with the network non-duplication and syndicated exclusivity provisions of the Rules.[29]

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programming service tier rates and services, shall state that the subscriber may file the complaint within 90 days of the effective date of the rate change, and shall provide the address and phone number of the local franchising authority.

(b) 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 means at its sole discretion.

(c) Notwithstanding any other provision of Part 76, 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.

[25] See §§76.601(c), (e).
[26] See §§601(d), (e).
[27] See §76.605, Note 1.
[28] See §76.305(a).
[29] See §§76.95, 76.156.

27. In the Eleventh Reconsideration Order, the Commission expanded its definition of "small system" for purposes of cable rate regulation to include systems of 15,000 or fewer subscribers.[30] Prior to the Eleventh Reconsideration, the Commission defined a "small system" as one having fewer than 1,000 subscribers. The Commission changed the definition of "small system" from 1,000 subscribers to 15,000 subscribers after recognizing that "a large number of smaller cable operators face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition."[31] The Commission found that "these larger systems generally face many of the same challenges that systems of 1,000 or fewer subscribers do in providing cable service."[32] The Commission concluded that "[r]elaxing regulatory burdens should free up resources that affected operators currently devote to complying with existing regulations and should enhance those operators' ability to attract capital, thus enabling them to achieve the goals of Congress cited above."[33]

28. The Commission believes that many of the difficulties faced by small cable systems, as identified in the Eleventh Reconsideration Order, may also provide reasons to expand the number of smaller systems qualifying for the above-mentioned exemptions. The Commission therefore seeks comment on the extent to which the exemptions from the above-cited rules should be expanded. More specifically, commenters should address at what size a cable system should be entitled to relief from the above listed requirements because of its status as a small system.

J. Must-Carry Notifications

29. Paragraphs (b), (d), and (e) of Section 76.58 are must-carry implementation rules which require cable operators to make certain notifications to local broadcast stations by May 3, 1993, and June 2, 1993.[34] Because these notifications

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[30] Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, MM Docket No. 92-266, et al., at ¶25 (1995)("Eleventh Reconsideration").

[31] Eleventh Reconsideration, 10 FCC Rcd 7393, at ¶25.

[32] Id. at ¶26.

[33] Id. at ¶26.

[34] Section 76.58 of our Rules currently reads as follows:

§76.58 Notification.

(a) 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: 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.

(b) By May 3, 1993, a cable operator must notify all qualified NCE stations of its designated principal headend by certified mail.

were required to be made in 1993, cable operators should already have complied with this requirement. There thus appears to be no reason to continue to include these 1993 notification requirements in the Rules. The Commission believes, however, that in the future, new cable systems should be required to provide such notifications within a reasonable period of time after the system is activated. Therefore, the Commission proposes to revise this rule (proposed Section 76.1619) to eliminate the requirement that notifications be made by May 3, 1993 and June 2, 1993, and to replace those requirements with a requirement that a cable operator must make such notifications within 60 days after a new system is activated. The Commission seeks comment on this proposal.

30 to 60 days

K. Miscellaneous Provisions

30. Section 76.3 of the Rules is a provision which directs readers to other pertinent sections of the Commission's Rules pertaining to cable television. Absent from this list is a reference to "Part 79 - Closed Captioning of Video Programming." The Commission proposes to add this reference.

31. Section 76.701(h) (records for leased access) has been repealed and is no longer a recordkeeping requirement under the Rules. The Commission therefore proposes to amend section 76.305(a) (proposed Section 76.1700(a)) to remove the reference to Section 76.701(h).

(c) 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, and shall include the new designation in its public file.

(d) By May 3, 1993, 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.

(e) By June 2, 1993, 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.

III. ORDERING CLAUSES

32. IT IS ORDERED that, pursuant to Sections 4(i), 4(j), 11, 303(r), 614, 615, 623, 624 and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 161, 302(r), 534, 535, 543, 544, and 552, NOTICE IS HEREBY GIVEN of the proposals contained in this Notice of Proposed Rulemaking.

33. IT IS FURTHER ORDERED that the Secretary shall send a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

Cross-Reference Listing of New Subpart T, U and V Sections with Previous Sections of Part 76

Subpart T - Notices

NOTICES ABOUT RATE OR SERVICE CHANGES

New Section	Previous Section
§76.1601 Deletion or repositioning of broadcast signals.	76.58(a)
§76.1602 Customer service - general information.	76.309(c)(3)(i)(A), 76.607
§76.1603 Customer service - rate and service changes.	76.309(c)(3)(i)(B), 76.932, 76.964
§76.1604 Charges for customer service changes.	76.980(d)
§76.1605 New product tier.	76.987(g)
§76.1606 Rate change while complaint pending.	76.958

NOTICES ABOUT CHANGES IN OPERATIONS

New Section	Previous Section
§76.1607 Principal headend.	76.58(c)
§76.1608 System technical integration requiring uniform election of must-carry or retransmission consent status.	76.64(j)
§76.1609 Non-duplication and syndicated exclusivity.	76.95, 76.156
§76.1610 Change of operational information.	76.400

POLITICAL CABLECASTING NOTICES

New Section	Previous Section
§76.1611 Political cable rates and classes of time.	76.206(b)
§76.1612 Personal attack.	76.209(b)
§76.1613 Political editorials.	76.209(d)

MISCELLANEOUS NOTICES

New Section	Previous Section
§76.1614 Additional miscellaneous notifications.	None
§76.1615 Identification of must-carry signals.	76.56(e)
§76.1616 Sponsorship identification.	76.221
§76.1617 Leased access rates and contract.	76.970(h)
§76.1618 Contracts with local exchange carriers.	76.1404(a)
§76.1619 Initial must-carry notice.	76.58(b), (d) and (e)
§76.1620 Basic tier availability.	76.931
§76.1621 Information on subscriber bills.	76.309(c)(3)(ii)

NOTICES REQUIRED TO BE GIVEN TO NEW SUBSCRIBERS

New Section	Previous Section
§76.1622 Additional new subscriber notifications.	None

§76.1623 Availability of signals.	76.56(d)(3)
§76.1624 Equipment compatibility offer.	76.630(c)
§76.1625 Consumer education program on compatibility.	76.630(d)

NOTICES THAT MUST BE GIVEN ANNUALLY

New Section	Previous Section
§76.1626 Annual notifications.	None

Subpart U -- Documents to be Maintained for Inspection

PUBLIC INSPECTION FILE DOCUMENTS

New Section	Previous Section
§76.1700 Records to be maintained locally by cable system operators for public inspection.	76.305
§76.1701 Political file.	76.207
§76.1702 Equal employment opportunity.	76.79(b)
§76.1703 Commercial matter on children's programs.	76.225(c)
§76.1704 Proof of performance test data.	76.601(c), (e)
§76.1705 Performance tests (channels delivered).	76.601(b)
§76.1706 Signal leakage logs and repair records.	76.614
§76.1707 Leased access.	76.701

§76.1708 Principal headend.	76.302(b), 76.305(b), 76.58(c)
§76.1709 Availability of signals.	76.302, 76.56(e)
§76.1710 Operator interests in video programming.	76.504(e)
§76.1711 Emergency alert system (EAS) tests and activation.	76.300, 76.305(a)(1)
§76.1712 Open video system (OVS) requests for carriage.	76.1503(c)(2)(ii)

UPON REQUEST DOCUMENTS

New Section	Previous Section
§76.1713 Additional upon request documents.	None
§76.1714 Commercial leased access rate justification.	76.970(h)(5)
§76.1715 Complaint resolution.	76.607
§76.1716 FCC rules and regulations.	76.300(b), 76.301, 78.67
§76.1717 Subscriber records and public inspection file.	76.307
§76.1718 Compliance with technical standards.	76.601(a)

Subpart V -- Reports and Filings

New Section	Previous Section
§76.1800 Additional reports and filings.	None
§76.1801 Registration statement.	76.12
§76.1802 Equal employment opportunity.	76.77

§76.1803 Aeronautical frequencies: signal list.	76.615(a)
§76.1804 Aeronautical frequencies: leakage monitoring (CLI).	76.615(b)
§76.1805 Alternative rate regulation agreements.	76.934(g)(2)

APPENDIX B

Proposed Rules

Part 76 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 76 -- CABLE TELEVISION SERVICE

1. Section 76.3 is proposed to be amended to read as follows:

§76.3 Other pertinent rules. -- Other pertinent provisions of the Commission's Rules and Regulations relating to the Cable Television Service are included in the following parts of this chapter:

Part 0 - Commission Organization
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
NEW → Part 79 - Closed Captioning of Video Programming
Part 91 - Industrial Radio Services

2. Section 76.5 is proposed to be amended by revising paragraph (pp) to replace the reference to section 76.302 with a reference to section 76.1709.

3. Section 76.12 is proposed to be eliminated.

4. Section 76.56 is proposed to be amended by eliminating paragraphs (d)(3) and (e), by renumbering the subsequent paragraph, and by adding three Notes to the end of the section, to read as follows:

§76.56 Signal carriage obligations.

* * * * *

(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 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.

NOTE 1: 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 must comply with the notification provisions of section 7 6.1623.

NOTE 2: A cable operator receiving a written request to identify its must-carry signals must provide a response a provided by section 76.1615.

NOTE 3: A cable operator must place a list of its must-carry signals in its public file, in accordance with section 76.1709.

5. Section 76.58 is proposed to be eliminated.

6. Section 76.64 is proposed to be amended by replacing the reference made in paragraph (i) to section 76.56(f) with a reference to section 76.56(e), by eliminating paragraph (j), by renumbering the subsequent paragraphs, and by adding a NOTE to the end of the section, to read as follows:

§76.64 Retransmission consent.

* * * * *

(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.

(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 an agreement with one multichannel distributor for carriage, to the exclusion of other multichannel distributors.

(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 mile) 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: A cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems must provide the notice required by section 76.1608.

7. Section 76.77 is proposed to be amended by revising paragraph (a) to read as follows:

§76.77 Reporting requirements.

(a) Annual employment report. Employment data on the annual employment report (FCC Form 395A) required by section 76.1802 shall reflect the figures from any one payroll period in January, February, or March of the year during which the report is filed. Unless instructed otherwise by the FCC, the same payroll period shall be used for each successive annual employment report.

* * * * *

8. Section 76.79 is proposed to be amended by eliminating paragraph (b), by renumbering the remaining paragraph, and by adding a NOTE to the end of the section, to read as follows:

§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, D.C.

NOTE: Cable operators must also comply with the recordkeeping requirements of section 76.1702.

9. Section 76.95 is proposed to be amended by revising paragraph (a) and by adding a NOTE to the end of the section, to read as follows:

§76.95 Exceptions.

(a) The provisions of §§76.92-76.94 shall not apply to a cable system serving fewer than 1,000 subscribers.

* * * * *

NOTE: A cable system that meets the 1,000 subscriber threshold of this section must comply with the notification requirements of section 76.1609.

10. Section 76.156 is proposed to be amended by revising paragraph (b) and by adding a NOTE to the end of the section, to read as follows:

§76.156 Exceptions.

* * * * *

(b) The provisions of §§76.151-76.155 shall not apply to a cable system serving fewer than 1,000 subscribers.

NOTE: A cable system that meets the 1,000 subscriber threshold of this section must comply with the notification requirements of section 76.1609.

11. Section 76.206 is proposed to be amended by revising paragraph (b) to read as follows:

§76.206 Candidate rates.

* * * * *

(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