

FCC MAIL SECTION

Federal Communications Commission

FCC 99-12

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

In the Matter of:)	
)	CS Docket No. 98-132
1998 Biennial Regulatory Review --)	
Streamlining of Cable Television Services)	
Part 76 Public File and Notice Requirements)	

REPORT AND ORDER

Adopted: February 1, 1999

Released: March 26, 1999

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

I. INTRODUCTION

1. In this *Report and Order* ("Order") we revise and streamline the public file and notice requirements set forth in the Commission's Part 76 cable television rules.¹ This *Order* reduces the regulatory burden faced by cable operators with regard to public file requirements by: (1) reorganizing the public file requirements; (2) providing cable operators with an alternative to maintaining a paper public file; (3) eliminating outdated public file requirements, and (4) expanding the definition of small cable systems for purposes of the public inspection rules.

2. In the *1998 Biennial Regulatory Review -- Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, Notice of Proposed Rulemaking* ("Notice"),² we sought comment on streamlining the public file and notice requirements. We note that the Cable Telecommunications Association ("CATA") filed a suggested *Notice of Proposed Rulemaking* ("CATA Notice") in which it makes particular recommendations regarding changes to the public file requirements. We placed the *CATA Notice* in the record of this proceeding in order to solicit comment on CATA's specific recommendations.³

3. We issued the *Notice* in connection with Section 11 of the 1996 Telecommunications Act which instructs the Commission "to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest."⁴ Although Section 11 does not specifically refer to cable operators, the Commission has determined that it is in the public interest to review and streamline

¹47 C.F.R. §§76.1 - 76.1514 (1997).

²13 FCC Rcd 15219 (1998).

³We note that our *Notice* requested commenters to address only those changes related to public file requirements, as any other rule changes suggested by CATA were deemed to be outside the scope of this particular proceeding. See *Notice*, 13 FCC Rcd at 15221, n.7.

⁴Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); 47 U.S.C. § 161.

the cable television rules in the spirit of Section 11.⁵ Accordingly, in addition to the issuance of the *Notice*, we have undertaken a broad, comprehensive review of the public file and notice requirements. We conclude that it is possible to significantly streamline the existing notice and recordkeeping requirements in ways that will both reduce the administrative burden placed upon the cable industry and the Commission, and yet will permit the Commission to meet its responsibilities in serving the public interest.

II. BACKGROUND

4. The Part 76 cable television rules contain numerous public file, notice, recordkeeping, and reporting requirements. These requirements provide consumers with information about the services they receive and the rates they pay. For example, cable operators must notify subscribers before increasing rates and must maintain records demonstrating compliance with certain safety standards. These requirements also support the rights of various parties to deliver their programming over cable systems, *e.g.*, maintenance of must-carry and political cablecasting records, and they strengthen the Commission's efforts to enforce its rules and promote competition in the multichannel video industry, *e.g.*, maintenance of performance test results and leased access policies. Because they are scattered throughout Part 76, cable operators have expressed frustration and difficulty in identifying these requirements and organizing them in a workable manner. The *Notice* in this proceeding was issued to request comment on ways to reduce and/or otherwise streamline the Part 76 public file recordkeeping and reporting requirements.

III. DISCUSSION

5. In response to the *Notice*, we received 6 comments and 4 reply comments. We also received an *ex parte* letter from a consortium of public interest groups.⁶ The comments focused on the proposals contained in the *CATA Notice* and generally centered on three issues: the reorganization and indexing of Part 76 public file requirements; the modification or elimination of certain recordkeeping requirements; and, alternatives to the maintenance of paper records of public file information, such as the Internet or provision of public file information only in response to a specific request. We now address those issues.

A. Public File Reorganization

6. We believe that 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. *CATA* suggests that the public file requirements, currently contained in various sections of Part 76, should be reorganized into three subparts. All commenters, with the exception of *Morality in Media, Inc.*, ("*Morality*") support the reorganization of the public file requirements into

⁵See FCC News Release, *1998 Biennial Review Begun Early* (November 18, 1997).

⁶See Letter from Angela J. Campbell ("*Letter*"), Counsel for Center for Media Education, Alliance for Community Media, Consumer Federation of America, Consumer's Union, Media Access Project, OMB Watch, and The Civil Rights Forum ("*Public Groups*"), November 20, 1998. See Appendix A for list of commenters.

three subparts as suggested in the *CATA Notice*.⁷ Morality states that it objects to a reorganization of the public files but does not provide an explanation for its objection.⁸

7. We believe that, in order to better enable cable operators and others to comply with Part 76 public file requirements, these requirements should be reorganized into three new subparts: Subparts T; U; and V.⁹ 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 requirements, and new Subpart V will contain reporting and filing requirements. These subparts will 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

A cross-reference listing the new Subparts T, U, and V regulations and the sections from which the new regulations were taken is attached at Appendix D.

8. We believe that cable operators and others who are obligated to make reference to the Commission's Part 76 rules will benefit from this reorganization. In some cases, existing notice requirements, such as the notice requirements for cable inside wiring, need to remain in their current sections. The subparts T, U, and V will reference cable operator notice, filing and recordkeeping requirements, 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 new rules make reference to the notice requirement in every subsection of Subpart T in which the notice requirement applies.

⁷See generally, Comments of Ameritech New Media, Inc. ("Ameritech"); Belhaven Cable TV ("Belhaven"); MediaOne Group, Inc. ("MediaOne"); National Cable Television Association ("NCTA"); Small Cable Business Association ("SCBA"); Tele-Communications, Inc. ("TCI").

⁸See Comments of Morality at 1; see also Reply Comments of NCTA at 1-2.

⁹See Appendix C.

9. In addition, CATA and TCI suggest cross-referencing certain notice, filing, and recordkeeping requirements which are not contained in Part 76.¹⁰ Specifically, the semi-annual copyright filing requirement found in 17 U.S.C. §111(d)(1),¹¹ and the requirements which appear in the Communications Act but not in the Commission's cable television rules, such as the cable subscriber privacy notice requirements found in 47 U.S.C. §551(a)(1),¹² will be referenced in these new subparts as notes at the end of various rules. By referencing these additional, non-Part 76 requirements, the Commission will be able to provide more efficient notice to 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.

10. We believe that certain sections of rules which contain duplicative notice and recordkeeping requirements should be reorganized. For instance, Section 76.309(c)(3)(i)(A) of the rules¹³ requires cable operators to notify subscribers of procedures for the resolution of complaints. This requirement is repeated in Section 76.607.¹⁴ However, certain of these rules include additional requirements which are not duplicative. For example, Section 76.607, in addition to subscriber notification, requires operators to identify a responsible officer of the local franchising authority in its notice and to maintain certain records

¹⁰CATA Comments at 3; TCI Comments at 2.

¹¹17 U.S.C. §111(d)(1) provides that a cable system whose secondary transmissions are subject to compulsory licensing must, on a semiannual basis, file with the Register of Copyrights a statement of account covering the six months next preceding.

¹²47 U.S.C. §551(a)(1) provides that, at the time that an agreement is entered into for any cable service or other service to a subscriber, a cable operator must provide written notice of personally identifiable information collected or to be collected by such cable operator.

¹³ 47 C.F.R. §76.309(c)(3)(i)(A) which 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.

¹⁴47 C.F.R. §76.607.

with regard to complaint procedures.¹⁵ While we decline to combine Section 76.309(c)(3)(i)(A) with Section 76.607 as CATA proposed, we will reorganize our notification and recordkeeping requirements contained therein consistent with the establishment of the new Subparts T, U, and V. Accordingly, this *Order* relocates the notification requirements in Section 76.607 and Section 76.309(c)(3)(i)(A) into new Section 76.1602 and relocates the recordkeeping requirements in Section 76.607 to new Section 76.1715. We have determined that this action will clarify the subscriber notification requirements and recordkeeping requirements pertaining to complaint procedures, and will eliminate a redundant rule.

11. Our cable television rules contain similarly duplicative provisions governing notification of rate or service changes. 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.¹⁶ Section 76.932 requires written subscriber notification of any increases in basic service rates or equipment rates at least 30 days in advance.¹⁷ Section 76.964 requires

¹⁵ Section 76.607 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.

¹⁶ Section 76.309(c)(3)(i)(B) 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.

¹⁷ Section 76.932 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.

30-days written notice to both subscribers and local franchising authorities of any rate or service changes.¹⁸ As with our rules governing subscriber notification of complaint procedures, certain rules contain additional requirements not otherwise found in the rules. Thus, we will reorganize Sections 76.309(c)(3)(i)(B),¹⁹ 76.932,²⁰ and 76.964²¹ by relocating the notification requirements of those sections into new Section 76.1603.

B. Access to Records

12. CATA proposes permitting cable operators to provide information in response to a specific request rather than maintaining a public file.²² TCI supports this proposal and maintains that this change would reduce the costs and administrative burdens associated with compliance with the public file requirements while preserving the underlying goal of making information available to the public.²³ NCTA states that "maintaining rarely used public files imposes significant costs upon cable operators without achieving any corresponding benefits."²⁴ MediaOne also supports this proposal, stating that in its experience "the substantial majority of the items kept in the public files are rarely viewed (or requested) by members of the public."²⁵ The Public Groups oppose a public file information system that can be accessed by the public only by specific request. The Public Groups state that an "on request" public file

¹⁸ Section 76.964 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 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.

¹⁹47 C.F.R. §76.309(c)(3)(i)(B).

²⁰47 C.F.R. §76.932.

²¹47 C.F.R. §76.964.

²²CATA Comments at 2.

²³TCI Comments at 3.

²⁴NCTA Reply Comments at 2-3.

²⁵MediaOne Comments at 4.

information requirement would delay access to crucial public information and may cause cable operators to discontinue collecting and maintaining public file information.²⁶

13. While we currently permit some Part 76 public file information to be produced upon request,²⁷ and, in this Order, we provide that certain additional public file information may be provided upon request, we decline to adopt the proposal to require that all public file information be produced only upon request. We believe that the benefits of having public file information readily available outweigh any administrative burdens on cable operators except with respect to certain small systems, as discussed in paragraph 25. We agree with the Public Groups that requiring that all public file information be provided only upon request would delay access to the information and may cause cable operators to discontinue collecting and maintaining public file information. In addition, requiring that all public file information be provided only upon request would place too much of a burden on the public to determine, in advance, what information is potentially available. In this *Order* we provide an alternative to maintaining paper files which will provide cable operators with increased flexibility in complying with the public file maintenance requirements and responding to information requests, while ensuring that our rules continue to serve the public interest. We conclude that to permit public access to important public file information while providing cable operators with an alternative method of providing such access strikes an appropriate balance between the interests of the public and of cable operators.

14. Ameritech proposes that we make certain public file information available electronically over the Internet.²⁸ Ameritech makes reference to the Commission's amendment of the public file requirements for broadcast television stations and for radio stations in which those public broadcasters were given the option of maintaining all or part of their public file in a computer database rather than in paper files.²⁹ We also encouraged licensees to post their electronic public files on any World Wide Web sites they maintained on the Internet. Ameritech submits that a number of the Part 76 public file requirements could be made more effectively available including: those pertaining to the equal employment opportunity ("EEO") records (Sections 76.305(a),³⁰ 76.79(a) and (b)),³¹ must-carry reporting obligations including changes in principal headends (Section 76.302(b)),³² lists of must-carry signals (Sections 76.56(e)),³³

²⁶Public Groups Letter at 5.

²⁷See 47 C.F.R. §76.970(h)(5) (commercial leased access information); §76.607 (complaint resolution procedures); §§76.300(b), 76.301, and 76.67 (Commission rules and regulations); §76.307 (subscriber records); and §76.601(a) (technical compliance).

²⁸Ameritech Comments at 6.

²⁹See *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, Report and Order*, 13 FCC Rcd 15691(1998) ("*Broadcast Order*").

³⁰47 C.F.R. §76.305(a).

³¹47 C.F.R. §76.79(a) and (b).

³²47 C.F.R. §76.302(b).

³³47 C.F.R. §76.56(e).

76.302(a),³⁴ and channels delivered to subscribers (Section 76.601(b)).³⁵ Ameritech maintains that these records are more likely to be of interest to the viewing public and are compiled by cable operators from data under their direct control.³⁶

15. The Public Groups support Ameritech's proposal because it would provide the public with easier access to the public file and would be less costly for cable operators to maintain.³⁷ NCTA states that we should permit but not require cable operators to provide Part 76 public file information on a company website.³⁸ CATA opposes any obligation to provide public file information on the Internet, but supports the optional provision of public file data electronically.³⁹ MediaOne and SCBA oppose Ameritech's proposals. MediaOne maintains that such a requirement would "serve to increase the administrative burden on cable operators while limiting access to the documents by a significant portion of the general public."⁴⁰ Additionally, MediaOne states that "[p]roviding on-line access to many of the records required under the Commission's rules will be extremely difficult as they come from a variety of sources and in formats which do not lend themselves to placement directly on a web site."⁴¹ SCBA agrees with MediaOne's comments, especially as it relates to small cable operators. SCBA states that small cable operators should be exempt from any public file requirement "electronic or paper."⁴²

16. We amend Section 76.305 of our rules⁴³ by relocating its recordkeeping provisions to new Section 76.1700 and by adding language which gives cable operators the voluntary option of maintaining all or part of their public inspection file in a computer database rather than in paper files consistent with our decision regarding the public file requirements pertaining to broadcast stations. In the *Broadcast Order*, we stated that many broadcast stations are "equipped with computers and make information available to the public on their own World Wide Web home pages on the Internet. Stations that post their "electronic" public files on the World Wide Web increase the number of locations from which these files may be accessed. Such measures can facilitate communication between licensees and their communities that can lead to better service to the public."⁴⁴ Similarly, many cable operators have computer terminals and their own World Wide Web home pages on the Internet. Commenters generally supported giving

³⁴47 C.F.R. §76.302(a).

³⁵47 C.F.R. §76.601(b).

³⁶Ameritech Comments at 7.

³⁷Public Groups' Letter at 6.

³⁸NCTA Reply Comments at 4.

³⁹CATA Comments at 2.

⁴⁰MediaOne Comments at 2.

⁴¹*Id.* at 9.

⁴²SCBA Comments at 3.

⁴³47 C.F.R. §76.305.

⁴⁴*Broadcast Order*, 13 FCC Rcd at 15715.

stations the option to use computer technology to maintain and to improve access to their public file. As we stated in the *Broadcast Order*, "[p]ublic files available over the Internet can be viewed from homes, schools, and libraries with Internet connections, thereby greatly increasing the number of sites where such files can be accessed."⁴⁵

17. Ameritech proposes that cable operators who choose to maintain computer database of public file information also make available a computer terminal for public inspection of those files.⁴⁶ The *Broadcast Order* required a station that chooses the option of maintaining an "electronic" public file to make a computer terminal available to members of the public interested in reviewing the station's public file and to make available paper copies of such records upon request.⁴⁷ We adopt the *Broadcast Order* model as well, and will therefore require cable operators who choose the option of providing a computer database of public file records to provide a computer terminal for public use and to make paper copies available upon request.

B Recordkeeping Requirements

18. CATA proposes eliminating Section 76.225 of the Commission's rules⁴⁸ which requires cable operators to maintain records verifying compliance with the limits on the amount of commercials aired during children's programming for all cable networks except for local origination channels.⁴⁹ CATA states that "[t]he 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."⁵⁰ CATA would require a cable operator to request records from cable networks only if it is alleged that the rule governing commercial limits has been violated. Other commenters state that Section 76.225 presents a significant burden⁵¹ and that maintaining the file is a waste of time.⁵²

⁴⁵*Id.*

⁴⁶Letter from Christopher M. Heimann, Counsel for Ameritech New Media, July 21, 1998., July, 21, 1998.

⁴⁷*Broadcast Order*, 13 FCC Rcd at 15715.

⁴⁸47 C.F.R. §76.225 provides:

§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 U.S.C. § 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 U.S.C. 503(b)(6)(B).

⁴⁹*CATA Notice* at 7.

⁵⁰*Id.*

⁵¹Ameritech Comments at 5.

19. The Public Groups oppose eliminating Section 76.225. They argue that the Commission has found that Section 76.225 provides a method of verifying whether cable operators are in compliance with the requirements of the Children's Television Act of 1990 ("CTA") and that the Commission specifically rejected relying on the public's ability to monitor children's programming solely by watching.⁵³ Because Section 76.225 requires cable operators to maintain information necessary to those who may be interested in filing a children's programming complaint, it serves the underlying goals of the CTA. We agree with the Public Groups that Section 76.225 provides for a recordkeeping requirement which clearly protects the public interest and therefore needs to be maintained. Accordingly, we decline to eliminate Section 76.225.⁵⁴

20. CATA suggests that we eliminate Section 76.221 of its rules⁵⁵ which requires cable operators to identify the sponsors, if any, of origination cablecasts.⁵⁶ Section 76.221(f)⁵⁷ contains a waiver to this rule for origination cablecasts of classified or "want ads" which are sponsored by an individual. While individual sponsors need not be announced, cable operators are required to maintain a list of such sponsors and make the list available to the public who have a "legitimate interest" in the information. CATA believes that the list requirement of Section 76.221(f) is burdensome and should be eliminated. The Public Groups oppose eliminating Section 76.221 arguing that that rule supports the public's basic right

⁵²Belhaven at 1.

⁵³Public Groups Letter at 3 citing *Children's Television Act of 1990*, 47 U.S.C. §303a and *Policy and Rules Concerning Children's Television Programming*, 11 FCC Rcd 10660, 10682-10695 (1996).

⁵⁴NCTA further suggests that the Commission eliminate Section 76.403 of its rules and the requirement that cable operators register with the Commission on FCC Form 325. The Commission is addressing this issue in a separate proceeding. See *1998 Biennial Regulatory Review -- Annual Report of Cable Television Systems, Form 325, filed pursuant to Section 76.403 of the Commission's Rules*, CS Docket No. 98-61, FCC 98-XX. Accordingly, we do not address the issue here.

⁵⁵47 C.F.R. §76.221.

⁵⁶Specifically, Section 76.221(d) requires:

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

⁵⁷47 C.F.R. §76.221(f) provides:

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.

to know who is sponsoring the information being provided.⁵⁸ The Public Groups argue that the public's right to know is particularly critical with regard to political advertisements.

21. We find that Section 76.221 of the cable television rules is comparable to Section 73.1212 of the broadcast television rules⁵⁹ which contain the sponsorship identification and list requirements applicable to broadcast television stations. As noted by the Public Groups, these requirements provide the public with important information about cablecasts for which the cable operator has received money, service, or other valuable consideration. Given these important public interest considerations, we decline to eliminate Section 76.221.

22. Ameritech proposes that we eliminate several recordkeeping rules regarding the technical operation of cable systems and the Emergency Alert System ("EAS").⁶⁰ CATA strongly supports consideration of Ameritech's proposals.⁶¹ Specifically, Ameritech proposes that Sections 76.601(c) and (e) of the Commission's rules⁶² pertaining to the technical operation of cable systems be eliminated. Section 76.601(c) governs the performance test data that cable operators must compile twice annually and make available for inspection by the Commission or the local franchising authority. Section 76.601(e) requires the cable operator to compile signal leakage logs for five years which must be made available to the Commission upon request.⁶³ These reports are required to be maintained in the public inspection file.⁶⁴ Ameritech states that these are highly technical reports containing raw data which has never been

⁵⁸Public Groups Letter at 4.

⁵⁹47 C.F.R. §73.1212.

⁶⁰Ameritech Comments at 3-4.

⁶¹CATA Reply Comments at 2.

⁶²47 C.F.R. §76.601(c), (e) provide, in pertinent part:
§76.601 Performance tests.

.....
(c) 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, and shall maintain the resulting test data on file at the operator's local business office for at least five (5) years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in Section §76.605(a) ...

(e) The provisions of paragraphs (c) and (d) 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 §76.603 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 §76.614.

⁶³See 47 C.F.R. §76.614.

⁶⁴See 47 C.F.R. §76.305(a).

the subject of a request for inspection from the public.⁶⁵ Similarly, Ameritech states that it is "highly unlikely" that the general public will request inspection of its EAS reports which contain "raw technical data."⁶⁶ We find that, while certain information may not be subject to frequent requests for inspection, the information pertains to important technical and safety requirements applicable to the operation of cable television systems. We decline to eliminate the recordkeeping requirements as proposed for these important public interest reasons.

23. To reduce regulatory burdens on cable systems serving fewer than 1000 subscribers, the Commission's rules exempt these systems from certain public file requirements.⁶⁷ The rules, however, do not exempt cable systems serving 1,000 or fewer subscribers from other public file requirements.⁶⁸ CATA⁶⁹ and SCBA⁷⁰ propose that the exemption be expanded to apply to systems serving 15,000 or fewer subscribers. These commenters cite the Commission's decision in its *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Sixth Report and Order and Eleventh Reconsideration Order ("Eleventh Reconsideration Order")*⁷¹ in which the Commission expanded its definition of "small system" for purposes of cable rate regulation to include systems serving 15,000 or fewer subscribers.⁷²

24. In the rate regulation context, we gave some regulatory relief to cable system operators serving 15,000 or fewer subscribers that were owned by cable companies with 400,000 or fewer subscribers over all of its systems.⁷³ There we determined that special rules should be applied to this class

⁶⁵Ameritech Comments at 4.

⁶⁶*Id.* at 4-5.

⁶⁷See 47 C.F.R. §§76.305(a), 76.601(e). The current rules exempt cable systems fewer than 1,000 subscribers from the Commission's recordkeeping requirements regarding the political file, sponsorship identification, equal employment opportunity records, commercial records for children's programming, proof-of-performance tests data, signal leakage logs, repair records and other technical information, and records for leased access. In addition, neither the Commission nor local franchising authorities may require systems serving fewer than 1,000 subscribers to perform additional technical tests, repeat tests, or tests involving specified subscriber terminals and local franchising authorities and cable systems serving fewer than 1,000 subscribers may agree on less stringent technical standards than the extensive technical standards detailed in Section 76.605 of the Commission's rules.

⁶⁸The rules do not exempt cable systems serving 1,000 or fewer subscribers from the Commission's requirements to maintain records regarding the cable television channels which are delivered to subscribers, the designation and location of the cable system's principal headend, the broadcast television stations carried in fulfillment of mandatory carriage requirements, the nature and extent of any attributable interests the cable operator has in video programming services and, for open video system operators, the list of qualified video programming providers who have requested carriage. See 47 C.F.R. §§76.56(d)(3), 76.302(b), 76.504(e), 76.1506(e).

⁶⁹CATA Notice at 12.

⁷⁰SCBA Comments 3-6; SCBA Reply Comments at 3.

⁷¹10 FCC Rcd 7393, 7406 (1995).

⁷²*Id.*

⁷³47 C.F.R. §76.901(c), (e).

of cable systems because they have limited access to "financial resources, purchasing discounts, and other efficiencies of larger companies."⁷⁴ In light of our decisions in other contexts, we believe that it is appropriate to review our decision to ease administrative burdens on systems serving fewer than 1,000 subscribers in the context of the public file requirements. In this case, however, application of the special rules with regard to rate regulation which were used to expand the definition of small systems to systems serving 15,000 or fewer subscribers is not warranted by the record. The Public Groups oppose expanding the definition of small systems to 15,000 for public file purposes. They argue that such an expanded definition would exempt too high a proportion of the industry from the public file requirements.⁷⁵

25. Although several parties urge the adoption of a 15,000 subscriber regulatory relief cutoff citing our earlier decision in the rate context, in fact that relief was not a complete exemption and was only for systems of 15,000 or fewer subscribers that were owned by cable companies with 400,000 or fewer subscribers over all their systems (operators with less than \$100 million in annual revenues). Here we believe that the likely usefulness of the public file process and the costs that systems (and hence subscribers) must bear to support such a process are more appropriately evaluated based on the number of subscribers in the particular community involved regardless of whether the same operator owns systems elsewhere. The Commission has taken action to expand the definition of small systems in another context. With regard to the EAS, which provides cable subscribers with emergency information, the Commission has modified its requirements for cable systems serving fewer than 5000 subscribers.⁷⁶ Similarly, we believe in the instant case that we should provide regulatory relief to cable systems serving 1000 or more subscribers but fewer than 5000 subscribers, except that the political file requirements will remain in place for systems serving more than 1000 subscribers. We believe that it is crucial that information from the political file be immediately available to the public. For cable systems serving 1000 or more subscribers but fewer than 5000 subscribers, the recordkeeping requirements currently contained in Section 76.305(a) of our rules⁷⁷ will be amended to state that the public file information must be provided only upon request. We find that providing regulatory relief to small systems serving 1,000 or more subscribers but fewer than 5000 subscribers strikes an appropriate balance between our current exemption and the exemption proposed by CATA and SCBA. This action will exempt from the public inspection rules (but not the political file requirements) approximately 79 percent of cable systems serving 12 percent of subscribers.⁷⁸ We will maintain the exemption for small systems serving fewer than 1000 subscribers from the recordkeeping and technical requirements contained in Sections 76.305(a) and 76.601(e) of the

⁷⁴*Eleventh Reconsideration Order*, 10 FCC Rcd at 7407.

⁷⁵Public Groups Letter at 5.

⁷⁶*See Second Report and Order*, 13 FCC Rcd 6353 (1997) ("EAS Order"). In the EAS Order, the Commission declined to exempt small cable television systems from EAS requirements but modified the EAS rules for small systems by delaying the effective date of compliance for systems serving fewer than 5000 subscribers until October 1, 2002. The EAS Order also established deadlines for the installation of necessary EAS equipment of October 1, 2002 for cable systems serving 5000 or more subscribers but fewer than 10000 subscribers and December 31, 1998 for systems serving 10,000 or more subscribers.

⁷⁷*See currently*, 47 C.F.R. §76.305 which has been redesignated by this Order as 47 C.F.R. §76.1700.

⁷⁸*See Warren Publishing, Inc. Television & Cable Factbook*, Cable Services Volume No. 53, 1985, p.1385; Services Volume No. 65, 1997, p.1-81.

Commission's rules.⁷⁹ Systems serving 1000 subscribers or more will continue to be subject to the political file rules. The amendment to the small system exemption will provide regulatory relief to a greater number of small cable systems while ensuring that the public continues to have access to important public file information.

26. CATA points out that Section 76.701(h),⁸⁰ which pertains to leased access records, has been repealed and is no longer a valid recordkeeping requirement. We agree. We therefore delete the reference to Section 76.701(h) that is included in Section 76.305(a). The remainder of Section 305(a) will be relocated to new Section 76.1700(a).

D. Other Issues

27. In the *CATA Notice*, CATA suggested that Section 76.900 of the Commission's rules⁸¹ be eliminated because it is no longer valid.⁸² Section 76.900 required all cable operators whose basic service tier ("BST") had not yet become subject to rate regulation to freeze cable rates at the level in effect on April 5, 1993.⁸³ 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 BST became subject to regulation.⁸⁴ 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. Ameritech,⁸⁵ Belhaven,⁸⁶ CATA,⁸⁷ and SCBA⁸⁸ support the elimination of outdated regulations. We

⁷⁹47 C.F.R. §§76.305(a) and 76.601(e). *See also* n. 68, *supra*.

⁸⁰47 C.F.R. §76.701(h).

⁸¹47 C.F.R. §76.900.

⁸²*CATA Notice* at 4.

⁸³ Section 76.900 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.

⁸⁴*See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation 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).

⁸⁵Ameritech Comments at 3.

⁸⁶Belhaven at 1.

conclude that, since the rate freeze is no longer in effect, continuing to include the rate freeze rule in current Commission regulations is confusing and unnecessary. We therefore eliminate Section 76.900 of our rules.

28. CATA further suggests that we eliminate certain requirements in Section 76.58 of the Commission's rules⁸⁹ which require certain notifications to local broadcast stations by May 3, 1993, and June 2, 1993. These notifications were required to be made in 1993 and thus cable operators should have already complied. The Commission agrees that these rules no longer have any operational consequence, thus, there is no reason to continue to include these 1993 notification requirements in its rules. Accordingly, we eliminate the 1993 notification requirements contained in Sections 76.58(b), (d), and (e) of the Commission's rules.

29. CATA maintains that new cable systems should be required to provide notifications to local broadcast stations and proposes that we revise Section 76.58 to eliminate references to the 1993 notification requirements and to replace those references with a requirement that a cable operator must make local broadcast station notifications within 60 days after a new system is activated.⁹⁰ We agree with CATA's proposal with regard to the 60-day notification requirements for newly activated cable systems. Accordingly, we adopt the notification requirements contained in new Section 76.1619. The 60-day notification requirements will be contained in a new Section 76.1619.

⁸⁷CATA Comments at 1,3.

⁸⁸ SCBA Comments at 8.

⁸⁹47 C.F.R. §76.58 provides:

(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.

(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.

⁹⁰CATA Notice at 13.

30. Section 76.3 of the Commission's rules⁹¹ is a provision which directs readers to other pertinent sections of the cable television rules. Absent from this list is a reference to "Part 79 - Closed Captioning of Video Programming." CATA proposes that Section 76.3 be revised to add this reference. We agree and therefore adopt this proposal.

31. CATA proposes that we clarify the method of adjusting channel fees and license fee reserves available to cable operators who increase their cable programming services tier ("CPST") rates to account for channel additions after December 31, 1997.⁹² Section 76.922(g)(8) of the Commission's rules⁹³ was promulgated in the Commission's *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Sixth Order on Reconsideration, Fifth Report and Order, Seventh Notice of Proposed Rulemaking ("Going Forward Order")*⁹⁴ in order to sunset the "Caps Method"⁹⁵ per channel adjustments and license fee reserves available to cable operators who increased their CPST rates to account for channel additions through December 31, 1997.⁹⁶ The "Caps Method" of adjusting rates was promulgated to provide an alternative to the "Mark-Up Method"⁹⁷ of adjusting rates for channel changes, which was in effect prior to the release of the *Going Forward Order* and which continued as a rate adjustment option after the *Going Forward Order*. 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. CATA proposes to revise this rule to clarify that the "Mark-Up Method" of adjusting rates continues to be available to cable operators. We find that the reinstatement of the "Mark-up Method" of adjusting cable rates is an issue involving rate regulatory matters and therefore is beyond the scope of this streamlining proceeding.

⁹¹47 C.F.R. §76.3.

⁹²CATA Notice at 5.

⁹³47 C.F.R. §76.922(g)(8).

⁹⁴10 FCC Rcd 1226 (1994).

⁹⁵Under the "Caps Method," cable operators were given the option of adjusting their per channel rates by up to 20 cents, exclusive of license fees, for each new channel added to the CPST on or after May 15, 1994. *Going Forward Order*, 10 FCC Rcd at 1253.

⁹⁶ Section 76.922(g)(8) 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.

⁹⁷Under the "Mark-up Method," cable operators were permitted to adjust rates based a sliding scale of 52 cents to ten cents, depending upon the total number of regulated channel changes. Operators could also add a 7.5 percent mark-up on all programming cost increases occurring after March 31, 1994. See *Going Forward Order*, 10 FCC Rcd at 1255.

IV. CONCLUSION

32. The reorganization of Part 76 public file requirements, the elimination of outdated regulations, the expansion of the definition of small cable systems for purposes of the public inspection rules, and the provision of the option to cable operators to maintain public file records in a computer database will accomplish the goals of reducing regulatory inefficiency and administrative burdens while improving compliance and flexibility. We believe that our decisions herein strike the appropriate balance between the needs of the cable industry and the interests of the public they serve and further the goals of Section 11 of the 1996 Telecommunications Act directing a biennial review of the regulations to determine whether they continue to serve the public interest.

V. REGULATORY FLEXIBILITY ACT ANALYSIS AND PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

33. The regulatory flexibility analysis is attached to this order as Appendix B. The requirements adopted in this Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose new or modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirements contained in this Order, as required by the 1995 Act. Public comments are due 60 days from date of publication of this Order in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

34. Written comments by the public on the new or modified information collection requirements are due 60 days from date of publication of this Order in the Federal Register. Comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov. For additional information on the information collection requirements, contact Judy Boley at 202-418-0214 or via the Internet at the above address.

VI. PROCEDURAL PROVISIONS

35. Effective Date. The rules adopted in this *Report and Order* shall become effective 30 days after publication in the Federal Register. The new information collection requirements contained in these rules shall become effective 150 days after publication in the Federal Register, following approval by the Office of Management and Budget ("OMB"), unless a notice is published in the Federal Register stating otherwise.

VII. ORDERING CLAUSES

36. **IT IS ORDERED** that, pursuant to authority found in Sections 4(i), 303(r) and 628 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 548, the public file requirements contained in Part 76 of the Commission's rules, 47 C.F.R. §§ 76.1-76.1514, are reorganized as set forth in the attached Appendix C.

37. **IT IS FURTHER ORDERED** that the Part 76 public file regulations are revised as set forth in Appendix E.

38. **IT IS FURTHER ORDERED** that the Commission's Office on Public Affairs, reference Operations Division, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

TABLE OF APPENDICES

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Appendix B	Regulatory Flexibility Analysis
Appendix C	New Subparts T, U, and V
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APPENDIX A

COMMENTS

- 1) Ameritech New Media, Inc.
- 2) Belhaven Cable TV
- 3) Cable Telecommunications Association
- 4) MediaOne Group, Inc.
- 5) Morality in Media, Inc.
- 6) National Cable Television Association
- 7) Small Cable Business Association
- 8) Tele-Communications, Inc.

REPLY COMMENTS

- 1) Ameritech New Media, Inc.
- 2) Cable Telecommunications Association
- 3) National Cable Television Association
- 4) Small Cable Business Association

EX PARTE

- 1) Institute For Public Representation