

## APPENDIX B

## FINAL REGULATORY FLEXIBILITY ANALYSIS

**A. Background**

1. As required by the Regulatory Flexibility Act (RFA),<sup>98</sup> an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the Notice of Proposed Rule Making ("*Notice*") in this proceeding.<sup>99</sup> The Commission sought written public comment on the possible impact of the proposed policies and rules on small entities in the *Notice*, including comments on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") in this *Report and Order* ("*Order*") conforms to the RFA.<sup>100</sup>

**B. Need for Action and Objectives of the Rules**

2. Section 11 of the 1996 Telecommunications Act requires 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.<sup>101</sup> Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an excellent opportunity for a thorough examination of all of the Commission's regulations.

**C. Summary of Significant Issues Raised by the Public Comment in Response to the IRFA**

3. No comments were filed specifically in response to the IRFA.

**D. Description and Estimate of the Number of Small entities to Which the Rules Will Apply**

4. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules here adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>102</sup> In addition, the term "small business" has the

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<sup>98</sup>See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

<sup>99</sup>See *1998 Biennial Regulatory Review -- Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, CS Docket No. 98-132, *Notice of Proposed Rulemaking*, 13 FCC Rcd 15219 (1998) ("*Notice*").

<sup>100</sup>See 5 U.S.C. § 604.

<sup>101</sup>47 U.S.C. § 161; News Release, Nov. 18, 1997.

<sup>102</sup>5 U.S.C. § 601(6).

same meaning as the term "small business concern" under the "Small Business Act."<sup>103</sup> Under the Small Business Act, a small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration.<sup>104</sup> The Rules we adopt in this Report and Order will affect cable systems, multipoint multichannel distribution systems, direct broadcast satellites, home satellite dish manufacturers, open video systems, satellite master antenna television, local multipoint distribution systems, program producers and distributors, and television stations. Below we set forth the general SBA and Commission cable small size standards, and then address each service individually to provide a more precise estimate of small entities. We also describe program producers and distributors.

5. *SBA Definitions for Cable and Other Pay Television Services:* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts.<sup>105</sup> This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were approximately 1,758 total cable and other pay television services and 1,423 had less than \$11 million in revenue.<sup>106</sup>

6. *Additional Cable System Definitions:* In addition, the Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving no more than 400,000 subscribers nationwide.<sup>107</sup> Based on recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995.<sup>108</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules we are adopting. We conclude that only a small percentage of these entities currently provide qualifying "telecommunications services" as required by the Communications Act and, therefore, estimate that the number of such entities are significantly fewer than noted.

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<sup>103</sup> 5 U.S.C. §601(3) (1980)(incorporating by reference the definition of "small business concern" in 15 U.S.C. §632). Pursuant to 5 U.S.C. §601(3), the statutory definition of small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after an opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions in the Federal Register."

<sup>104</sup> *Small Business Act*, 15 U.S.C. §632.

<sup>105</sup> 13 C.F.R. § 121.201 (SIC 4841).

<sup>106</sup> U.S. Department of Commerce, Bureau of the Census, Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (Bureau of the Census data under contract to the Office of Advocacy of the SBA).

<sup>107</sup> 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995).

<sup>108</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>109</sup> The Commission has determined that there are 61,700,000 cable subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.<sup>110</sup> Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450.<sup>111</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Multipoint Multichannel Distribution Systems ("MMDS")*: The Commission refined its definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.<sup>112</sup> This definition of a small entity in the context of MMDS auctions has been approved by the SBA.<sup>113</sup>

9. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of \$11 million annually. We conclude that, for purposes of this FRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

10. *Direct Broadcast Satellite ("DBS")*: Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. In the *NPRM* we concluded that no DBS operator qualifies as a small entity. Since the publication of the *NPRM*, more information has become available. In light of the 1997 gross revenue figures for the various DBS operators, we restate our conclusion that no DBS operator qualifies as a small entity.

11. *Home Satellite Dish ("HSD")*: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 500 channels of programming placed on C-band satellites by programmers for receipt and distribution by

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<sup>109</sup>47 U.S.C. § 543(m)(2).

<sup>110</sup>47 C.F.R. § 76.1403(b) (SIC 4833).

<sup>111</sup>Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>112</sup>47 C.F.R. § 21.961(b)(1).

<sup>113</sup>See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, MM Docket No. 94-31 and PP Docket No. 93-253, *Report and Order*, 10 FCC Rcd 9589 (1995).

MVPDs, of which 350 channels are scrambled and approximately 150 are unscrambled.<sup>114</sup> HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing.<sup>115</sup>

12. According to the most recently available information, there are approximately 20 to 25 program packagers nationwide offering packages of scrambled programming to retail consumers.<sup>116</sup> These program packagers provide subscriptions to approximately 2,184,470 subscribers nationwide.<sup>117</sup> This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator ("MSO").

13. *Satellite Master Antenna Television ("SMATVs")*: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995.<sup>118</sup> Other estimates indicate that SMATV operators serve approximately 1.162 million residential subscribers as of June 30, 1997.<sup>119</sup> The ten largest SMATV operators together pass 848,450 units.<sup>120</sup> If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we conclude that a substantial number of SMATV operators qualify as small entities.

14. *Local Multipoint Distribution System ("LMDS")*: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA approved definition for cable and other pay services that qualify as a small business is defined

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<sup>114</sup> *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 97-141, *Fourth Annual Report ("1997 Report")*, 13 FCC Rcd 1034 at ¶ 68 (1997).

<sup>115</sup> *Id.* at ¶ 69.

<sup>116</sup> *Id.* at ¶ 68.

<sup>117</sup> *Id.* at ¶ 69.

<sup>118</sup> *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 96-133, *Third Annual Report ("1996 Report")*, 12 FCC Rcd 4358 at ¶ 81 (1996).

<sup>119</sup> *1997 Report*, 13 FCC Rcd at ¶ 84.

<sup>120</sup> *Id.* at Appendix D, Table D-1.

in paragraphs 5-6, *supra*. A small radiotelephone entity is one with 1500 employees or fewer.<sup>121</sup> However, for the purposes of this *Report and Order*, we include only an estimate of LMDS video service providers.

15. An auction for licenses to operate LMDS systems was recently completed by the Commission. The vast majority of the LMDS license auction winners were small businesses under the SBA's definition of cable and pay television (SIC 4841).<sup>122</sup> In the *Second R&O*,<sup>123</sup> we adopted a small business definition for entities bidding for LMDS licenses as an entity that, together with affiliates and controlling principles, has average gross revenues not exceeding \$40 million for each of the three preceding years. We have not yet received approval by the SBA for this definition.

16. There is only one company, CellularVision, that is currently providing LMDS video services. In the *IRFA*, we assumed that CellularVision was a small business under both the SBA definition and our auction rules. No commenters addressed the tentative conclusions we reached in the *NPRM*. Accordingly, we affirm our tentative conclusion that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

17. *Open Video System ("OVS")*: As of the date of this Report and Order, the Commission has certified 23 OVS operators. To the best of our knowledge, there are 3 certified operators that are currently providing OVS service. On October 17, 1996, Bell Atlantic received approval for its certification to convert its Dover, New Jersey Video Dialtone ("VDT") system to OVS.<sup>124</sup> Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources.<sup>125</sup> Metropolitan Fiber Systems was granted certifications on December 9, 1996, for the operation of OVS systems in Boston and New York, both of which are being used to provide programming.<sup>126</sup> Starpower Communications, LLC ("Starpower") was granted certification to operate an OVS system on January 26, 1998.<sup>127</sup> Starpower is a joint venture between RCN Telecom Services of Washington, D.C. and Pepco Communications, LLC. Bell Atlantic, Metropolitan Fiber Systems, and Starpower have sufficient revenues to assure us that they do not qualify as small business entities. Little

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<sup>121</sup> 13 C.F.R. § 121.201.

<sup>122</sup> See Appendix B (D), *supra*, for an estimate of the number of entities under SIC 4841.

<sup>123</sup> *In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service*, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 62 FR 23148 (1997) ("*Second R&O*").

<sup>124</sup> *Bell Atlantic-New Jersey, Inc. (Certification to Operate an Open Video System)*, 11 FCC Rcd 13249 (CSB 1996) ("*Bell Atlantic OVS Certification*").

<sup>125</sup> *Bell Atlantic, Bell Atlantic Now Offering Video Services in Dover Township New Jersey* (news release), Nov. 1, 1996.

<sup>126</sup> See *Metropolitan Fiber Systems/New York, Inc. (Certification to Operate an Open Video System)*, Consolidated Order, 11 FCC Rcd 20896, DA 96-2075 (CSB Dec. 9, 1996).

<sup>127</sup> See *Starpower Communications, LLC (Certification to Operate an Open Video System)*, DA 98-138

financial information is available for the other entities authorized to provide OVS that are not yet operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

18. *Program Producers and Distributors:* The Commission has not developed a definition of small entities applicable to producers or distributors of television programs.<sup>128</sup> Therefore, we will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812),<sup>129</sup> Motion Picture and Video Tape Distribution (SIC 7822),<sup>130</sup> and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922).<sup>131</sup> These SBA definitions provide that a small entity in the television programming industry is an entity with \$21.5 million or less in annual receipts for SIC 7812 and 7822, and \$5 million or less in annual receipts for SIC 7922.<sup>132</sup> The 1992 Bureau of the Census data indicate the following: (1) there were 7265 U.S. firms classified as Motion Picture and Video Production (SIC 7812), and that 6987 of these firms had \$16,999 million or less in annual receipts and 7002 of these firms had \$24,999 million or less in annual receipts;<sup>133</sup> (2) there were 1139 U.S. firms classified as Motion Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had \$16,999 million or less in annual receipts and 1013 of these firms had \$24,999 million or less in annual receipts;<sup>134</sup> and (3) there

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<sup>128</sup>The term "television programs" is used in this context to include all video programming outlets, e.g., cable, DBS.

<sup>129</sup>"Establishments primarily engaged in the production of theatrical and nontheatrical motion pictures and video tapes for exhibition or sale, including educational, industrial, and religious films. Included in the industry are establishments engaged in both production and distribution. Producers of live radio and television programs are classified in Industry 7922." Standard Industrial Classification Manual, SIC 7812, Executive Office of the President, Office of Management and Budget (1987) (OMB SIC Manual).

<sup>130</sup>"Establishments primarily engaged in the distribution (rental or sale) of theatrical and nontheatrical motion picture films or in the distribution of video tapes and disks, except to the general public." OMB SIC Manual, SIC 7822.

<sup>131</sup>"Establishments primarily engaged in providing live theatrical presentations, such as road companies and summer theaters. . . . Also included in this industry are producers of . . . live television programs." OMB SIC Manual, SIC 7922.

<sup>132</sup>13 C.F.R. § 121.201.

<sup>133</sup>U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report. Table 2D, SIC 7812, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration) (SBA 1992 Census Report). The Census data do not include a category for \$21.5 million. Therefore, we have reported the closest increment below and above the \$21.5 million threshold. There is a difference of 15 firms between the \$16,999 and \$24,999 million annual receipt categories. It is possible that these 15 firms could have annual receipts of \$21.5 million or less and, therefore, would be classified as small businesses.

<sup>134</sup>SBA 1992 Census Report, SIC 7812. The Census data does not include a category for \$21.5 million; therefore, we have reported the closest increment below and above the \$21.5 million benchmark. There is a difference of 6 firms between the \$16,999 and \$24,999 million annual receipt categories. It is possible that these 6 firms could have annual receipts of \$21.5 million or less and, therefore, would be classified as small businesses.

were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than \$5 million in annual receipts.<sup>135</sup>

19. Each of these SIC categories is very broad and includes firms that may be engaged in various industries including television. Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, we conclude that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the rules adopted in this *Report and Order*.

20. *Television Stations*: The rules will apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.<sup>136</sup> Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.<sup>137</sup> Included in this industry are commercial, religious, educational, and other television stations.<sup>138</sup> Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.<sup>139</sup> Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.<sup>140</sup> There were 1,509 television stations operating in the nation in 1992.<sup>141</sup> That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998.<sup>142</sup> In addition, as of October 31, 1997,

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<sup>135</sup>SBA 1992 Census Report, SIC 7922.

<sup>136</sup>13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

<sup>137</sup>Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE, Series UC92-S-1, Appendix A-9 (1995).

<sup>138</sup>*Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

<sup>139</sup>Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE, Series UC92-S-1, Appendix A-9 (1995).

<sup>140</sup>*Id.* SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

<sup>141</sup>FCC News Release No. 31327, Jan. 13, 1993.

<sup>142</sup>See *Broadcast Station Totals As Of May 31, 1998*, FCC News Release, June 19, 1998.

there were 1,880 LPTV stations that may also be affected by our rules.<sup>143</sup> For 1992<sup>144</sup> the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.<sup>145</sup>

21. Thus, the rules will affect many of the approximately 1,579 television stations; approximately 1,200 of those stations are considered small businesses.<sup>146</sup> These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

22. In addition to owners of operating television stations, any entity who seeks or desires to obtain a television broadcast license may be affected by the rules contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown.

**E. *Description of Reporting, Recordkeeping and Other Compliance Requirements***

23. This analysis examines the costs and administrative burdens associated with our rules and requirements. This Report and Order eliminates certain recordkeeping requirements and provides cable operators with the alternative option to provide public file information over the Internet. Thus, the Commission has reduced administrative burdens of the public file requirements.

**F. *Steps Taken to Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered***

24. We believe that our rules, to reorganize, modify, and eliminate certain public file and notice requirements, make the amended Part 76 public file rules easier to locate. Several rules have been modified for less burdensome compliance with the public file requirements. In addition, we have provided cable operators with the option of eliminating its paper file and providing public file information over the Internet.

**G. *Report to Congress***

25. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. §801(a)(1)(A). The *Report and Order* and this FRFA (or summaries thereof) will also be published in the Federal Register, *see* 5 U.S.C. §604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

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<sup>143</sup>Given the nature of LPTV stations, we will presume that all LPTVs qualify as small entities.

<sup>144</sup>Census for Communications' establishments are performed every five years ending with a "2" or "7". *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

<sup>145</sup>The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

<sup>146</sup>We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1998 total of 1579 TV stations to arrive at 1,200 stations categorized as small businesses.

## APPENDIX C

45. A new Subpart T, which reorganizes and streamlines existing public file and notice requirements, will be added as follows:

**Subpart T - Notices****NOTICES ABOUT RATE OR SERVICE CHANGES****§76.1601 Deletion or repositioning of broadcast signals.**

Effective April 2, 1993, a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such notification shall also be provided to subscribers of the cable system.

NOTE: No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods -- generally including February, May, July and November -- commonly known as audience sweeps.

**§76.1602 Customer service - general information.**

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

(b) Effective July 1, 1993, The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions programming carried on the system; and,
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

**§76.1603 Customer service - rate and service changes.**

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

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by Section 1602.

(c) In addition to the requirements of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, 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.

(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable means at its sole discretion.

(f) 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.

NOTE 1: Section 624(h) of the Communications Act, 47 U.S.C. §544(h), also contains the following notification provisions:

(h) A franchising authority may require a cable operator to do any one or more of the following:

(1) Provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority.

NOTE 2: Section 624(d)(3) of the Communications Act, 47 U.S.C. §544(d)(3), contains the following notification provisions:

(A) If a cable operator provides a premium channel without charge to cable subscribers who do not subscribe to such premium channel, the cable operator shall, not later than 30 days before such premium channel is provided without charge --

(i) notify all cable subscribers that the cable operator plans to provide a premium channel without charge;

- (ii) notify all cable subscribers when the cable operator plans to offer a premium channel without charge;
- (iii) notify all cable subscribers that they have a right to request that the channel carrying the premium channel be blocked; and
- (iv) block the channel carrying the premium channel upon the request of a subscriber.

(B) For the purpose of this section, the term "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC-17, or R.

**§76.1604 Charges for customer service changes.**

If a cable operator establishes a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, as provided in Section 76.980(d), the cable system must notify all subscribers in writing that they may be subject to such a charge for changing service tiers more than the specified number of times in any twelve month period.

**76.1605 New product tier.**

Within 30 days of the offering of an NPT, operators shall file with the Commission, a copy of the new rate card that contains the following information on their BSTs, CPSTs and NPTs:

- (a) The names of the programming services contained on each tier; and
- (b) The price of each tier. Operators also must file with the Commission, copies of notifications that were sent to subscribers regarding the initial offering of NPTs. After this initial filing, cable operators must file updated rate cards and copies of customer notifications with the Commission within 30 days of rate or service changes affecting the NPT.

**§76.1606 Rate change while complaint pending.**

A regulated cable operator that proposes to change any rate while a cable service tier complaint is pending before the Commission shall provide the Commission at least 30 days notice of the proposed change.

## NOTICES ABOUT CHANGES IN OPERATIONS

**§76.1607 Principal headend.**

A cable operator shall provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend.

**§76.1608 System technical integration requiring uniform election of must-carry or retransmission consent status.**

A cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems must give 90 days notice of its intention to do so to any television broadcast stations that have elected must-carry status with respect to one system and retransmission consent status with respect to the other. If the system and the station do not agree on a uniform election 45 days prior to integration, the cable system may require the station to make such a uniform election 30 days prior to integration.

**§76.1609 Non-duplication and syndicated exclusivity.**

Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on

every television station that would be entitled to exercise network nonduplication protection or syndicated exclusivity protection against it.

**76.1610 Change of operational information.**

Within 30 days following a change of cable television system operator, and/or change of the operator's mail address, and/or change in the operational status of a cable television system, the operator shall inform the Commission in writing of the following, as appropriate:

- (a) The legal name of the operator and whether the operator is an individual, private association, partnership or corporation. See §76.5(cc). If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied;
- (b) The assumed name (if any) used for doing business in each community;
- (c) The new mail address, including zip code, to which all communications are to be directed;
- (d) The nature of the operational status change (e.g., became operational on [year] [month], exceeded 49 subscribers, exceeded 499 subscribers, operation terminated temporarily, operation terminated permanently);

- (e) The names and FCC identifiers (e.g., CA 0001) of the system communities affected.

NOTE: FCC system community identifiers are routinely assigned upon registration. They have been assigned to all reported system communities based on previous Form 325 data. If a system community in operation prior to March 31, 1972, has not previously been assigned a system community identifier, the operator shall provide the following information in lieu of the identifier: Community Name, Community Type (i.e., incorporated town, unincorporated settlement, etc.), County Name, State, Operator Legal Name, Operator Assumed Name for Doing Business in the Community, Operator Mail Address, and Year and Month service was first provided by the physical system.

### POLITICAL CABLECASTING NOTICES

**§76.1611 Political cable rates and classes of time.**

If a system permits a candidate to use its cablecast facilities, the system shall disclose to all candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers. Systems may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

- (a) a description and definition of each class of time available to commercial advertisers sufficiently complete enough to allow candidates to identify and understand what specific attributes differentiate each class;
- (b) a description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;
- (c) a description of the system's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;
- (d) an approximation of the likelihood of preemption for each kind of preemptible time; and
- (e) an explanation of the system's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

**76.1612 Personal attack.**

- (a) When, during origination cablecasting of issues of public importance, an attack is made upon the honesty, character, integrity, or like personal qualities of an identified person or group, the

cable television system operator shall, within a reasonable time and in no event later than one (1) week after the attack, transmit to the person or group attacked: (1) notification of the date, time, and identification of the cablecast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the system's facilities.

(b) The provisions of paragraph (a) of this section shall not apply to cablecast material which falls within one or more of the following categories:

- (1) Personal attacks on foreign groups or foreign public figures;
- (2) Personal attacks occurring during uses by legally qualified candidates;
- (3) Personal attacks made during cablecasts not included in paragraph (a)(2) of this section and made by legally qualified candidates, their authorized spokespersons or those associated with them in the campaign, on other such candidates, their authorized spokespersons or persons associated with the candidates in the campaign; and
- (4) Bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events (including commentary or analysis contained in the foregoing programs, but, the provisions of paragraph (a) of this section shall be applicable to editorials of the cable television system operator).

#### **§76.1613 Political editorials.**

Where a cable television system operator, in an editorial, (1) endorses or (2) opposes a legally qualified candidate or candidates, the system operator shall, within 24 hours of the editorial, transmit to respectively (i) the other qualified candidate or candidates for the same office, or (ii) the candidate opposed in the editorial, (a) notification of the date, time, and channel of the editorial; (b) a script or tape of the editorial; and (c) an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the system's facilities: provided, however, that where such editorials are cablecast within 72 hours prior to the day of the election, the system operator shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

### **MISCELLANEOUS NOTICES**

#### **76.1614 Additional miscellaneous notifications.**

In addition to the notifications required by the "MISCELLANEOUS NOTICES" section of this subpart, cable operators must provide all notifications which are required by section 76.802 (removal of cable home wiring), section 76.804 (removal of home run wiring), and section 76.630(a) (request for waiver to scramble basic signals).

#### **§76.1615 Identification of must-carry signals.**

A cable operator shall respond in writing within 30 days to any written request by any person for the identification of the signals carried on its system in fulfillment of the must-carry requirements of section 76.56.

**§76.1616 Sponsorship identification.**

(a) When a cable television system operator engaged in origination cablecasting presents any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such cable television system operator, the cable television system operator, at the time of the cablecast, shall announce that such matter is sponsored, paid for, or furnished, either in whole or in part, and by whom or on whose behalf such consideration was supplied: provided, however, that "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a cablecast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the cablecast. For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for." In the case of any political advertisement cablecast under this paragraph that concerns candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds.

(b) Each cable television system operator engaged in origination cablecasting shall exercise reasonable diligence to obtain from employees, and from other persons with whom the system operator deals directly in connection with any matter for cablecasting, information to enable such system operator to make the announcement required by this section.

(c) In the case of any political origination cablecast matter or any origination cablecast matter involving the discussion of public controversial issues for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a cable television system operator as a inducement for cablecasting such matter, an announcement shall be made both at the beginning and conclusion of such cablecast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such cable television system operator in connection with the transmission of such cablecast matter: provided, however, that in the case of any cablecast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the cablecast.

(d) The announcement required by this section shall, in addition to stating the fact that the origination cablecasting matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (c) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a cable television system operator on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the system operator, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent.

(e) In the case of origination cablecast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the cablecast.

(f) The announcement otherwise required by this section is waived with respect to the origination cablecast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise.

(g) The announcements required by this section are waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

NOTE: The waiver heretofore granted by the Commission in its Report and Order, adopted November 16, 1960 (FCC 60-1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when §73.654(e), the predecessor television rule, went into effect.

(h) Commission interpretations in connection with the provisions of the sponsorship identification rules for the broadcasting services are contained in the Commission's Public Notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 FCC 141), as modified by Public Notice, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports. The interpretations made for the broadcasting services are equally applicable to origination cablecasting.

#### **76.1617 Leased access rates and contract.**

(a) Cable system operators shall provide prospective leased access programmers with the following information within 15 calendar days of the date on which a request for leased access information is made:

- (1) How much of the operator's leased access set-aside capacity is available;
- (2) A complete schedule of the operator's full-time and part-time leased access rates;
- (3) Rates associated with technical and studio costs; and
- (4) If specifically requested, a sample leased access contract.

(b) Operators of systems subject to small system relief shall provide the information required in paragraph (a)(1) of this section within 30 calendar days of a bona fide request from a prospective leased access programmer. For these purposes, systems subject to small system relief are systems that either:

- (1) Qualify as small systems under §76.901(c) and are owned by a small cable company as defined under §76.901(e); or
- (2) Have been granted special relief.

(c) Bona fide requests, as used in this section, are defined as requests from potential leased access programmers that have provided the following information:

- (1) The desired length of a contract term;
- (2) The time slot desired;
- (3) The anticipated commencement date for carriage; and
- (4) The nature of the programming.

(d) All requests for leased access must be made in writing and must specify the date on which the request was sent to the operator.

#### **76.1618 Contracts with local exchange carriers.**

Within 10 days of final execution of a contract permitting a local exchange carrier to use that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end use, the parties shall submit a copy of such contract, along with an explanation of how such contract is reasonably limited in scope and duration, to the Commission for review. The parties shall serve a copy of this submission on the local franchising authority, along with a notice of the local franchising authority's right to file comments with the Commission consistent with §76.7.

#### **§76.1619 Initial must-carry notice.**

(a) Within 60 days of activation of a cable system, a cable operator must notify all qualified NCE stations of its designated principal headend by certified mail.

(b) Within 60 days of activation of a cable system, a cable operator must notify all local commercial and NCE stations that may not be entitled to carriage because they either

(1) Fail to meet the standards for delivery of a good quality signal to the cable system's principal headend or

(2) May cause an increased copyright liability to the cable system.

(c) Within 60 days of activation of a cable system, a cable operator must send by certified mail a copy of a list of all broadcast television stations carried by its system and their channel positions to all local commercial and noncommercial television stations, including those not designated as must-carry stations and those not carried on the system.

**76.1620 Basic tier availability.**

A cable operator shall provide written notification to subscribers of the availability of basic tier service by November 30, 1993, or three billing cycles from September 1, 1993, and to new subscribers at the time of installation. This notification shall include the following information:

- (a) That basic tier service is available;
- (b) The cost per month for basic tier service;
- (c) A list of all services included in the basic service tier.

**§76.1621 Information on subscriber bills.**

(a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

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

**NOTICES REQUIRED TO BE GIVEN TO NEW SUBSCRIBERS****76.1622 Additional new subscriber notifications.**

In addition to the notifications required by the "NOTICES REQUIRED TO BE GIVEN TO NEW SUBSCRIBERS" section of this subpart, cable operators must provide all notifications to new subscribers which are required by section 76.1620 (basic service tier availability), section 76.1604 (charges for customer service changes), and section 76.1602 (customer service - general information).

NOTE: In addition to the notifications required by FCC Rules, Section 631(a) of the Communications Act, 47 U.S.C. §551(a), also provides as follows:

**SEC. 631. PROTECTION OF SUBSCRIBER PRIVACY.**

(a)(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of-

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the cable operator;

(D) the times and place at which the subscriber may have access to such information in accordance with subsection (d); and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h)-

(A) the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;

(B) the term "other service" includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term "cable operator" includes, in addition to persons within the definition of cable operator in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

**76.1623 Availability of signals.**

If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers. Such notification must be provided by June 2, 1993, and annually thereafter and to each new subscriber upon initial installation. The notice, which may be included in routine billing statements, shall identify the signals that are unavailable without an

additional connection, the manner for obtaining such additional connection and instructions for installation.

**§76.1624 Equipment compatibility offer.**

Cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in §15.3(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. The equipment offered shall include a single terminal device with dual descramblers/decoders and/or timers and bypass switches. Other equipment, such as two independent set-top terminal devices may be offered at the same time that the single terminal device with dual tuners/descramblers is offered. For purposes of this rule, two set-top devices linked by a control system that provides functionality equivalent to that of a single device with dual descramblers is considered to be the same as a terminal device with dual descramblers/decoders.

(a) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year.

(b) Such special equipment shall, at a minimum, have the capability:

(1) To allow simultaneous reception of any two scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and

(2) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(c) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(d) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in §76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

**§76.1625 Consumer education program on compatibility.**

Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(a) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(b) The consumer information program shall include the following information:

(1) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted

programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(2) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: view a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as "Picture-in-Picture," channel review and other functions that necessitate channel selection by the consumer device.

(3) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

#### NOTICES THAT MUST BE GIVEN ANNUALLY

##### §76.1626 Annual notifications.

Cable operators must provide all annual notifications which are required by the following rules: section 76.1623 (availability of signals); section 76.1602 (customer service - general information); section 76.1624 (equipment compatibility offer); and section 76.1625 (consumer education program on compatibility).

NOTE: In addition to the notifications required by FCC Rules, Section 631(a) of the Communications Act, 47 U.S.C. §551(a), also provides as follows:

#### SEC. 631. PROTECTION OF SUBSCRIBER PRIVACY.

(a)(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of-

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the cable operator;

(D) the times and place at which the subscriber may have access to such information in accordance with subsection (d); and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h)-

(A) the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;

(B) the term "other service" includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term "cable operator" includes, in addition to persons within the definition of cable operator in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

46. A new Subpart U, which reorganizes and streamlines existing public file and notice requirements, will be added as follows:

**Subpart U -- Documents to be Maintained for Inspection**

**PUBLIC INSPECTION FILE DOCUMENTS**

**§76.1700 Records to be maintained locally by cable system operators for public inspection.**

(a) *Recordkeeping requirements.* The operator of every cable television system having fewer than 1,000 subscribers is exempt from the recordkeeping requirements contained in §76.207 (political file); §76.221(f) (sponsorship identifications); §76.79 (EEO records available for public inspection); §76.225(c) (commercial records for children's programming); §76.601(c) (proof-of-performance test data); and §76.601(e) (signal leakage logs and repair records). The operator of every cable television system having 1000 or more subscribers but fewer than 5000 subscribers shall, upon request, provide the information required by §76.221(f) (sponsorship identifications); §76.79 (EEO records available for public inspection); §76.225(c) (commercial records for children's programming); §76.601(c) (proof-of-performance test data); and §76.601(e) (signal leakage logs and repair records) but shall maintain for public inspection a file containing a copy of all records required to be kept by §76.207 (political file). The operator of every cable television system having 5000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by §76.207 (political file); §76.221(f) (sponsorship identifications); §76.79 (EEO records available for public inspection); §76.225(c) (commercial records for children's programming); §76.601(c) (proof-of-performance test data); and §76.601(e) (signal leakage logs and repair records).

(a) Records to be maintained. The operator of every cable television system having 1,000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by §76.1701 (political file); §76.1616 (sponsorship identification); §76.1702 (EEO records available for public inspection); §76.1703 (commercial records for children's programming); §76.1704 (proof-of-performance test data); and §76.1706 (signal leakage logs and repair records).

(1) A record shall be kept of each test and activation of the Emergency Alert System (EAS) procedures pursuant to the requirement of Part 11 of this chapter and the EAS Operating Handbook. These records shall be kept for three years.

(2) [Reserved]

(b) Location of records. The public inspection file shall be maintained at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s) (such as a public registry for documents or an attorney's office). The public inspection file shall be available for public inspection at any time during regular business hours.

(c) All or part of the file may be maintained in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public who wish to review the file.

(d) The records specified in paragraph (a) of this section shall be retained for the period specified in §§76.1701, 76.1702, 76.1704(a), and 76.1706, respectively.

(e) Reproduction of records. Copies of any material in the public inspection file shall be available for machine reproduction upon request made in person, provided the requesting party shall pay the reasonable cost of reproduction. Requests for machine copies shall be fulfilled at a location specified by the system operator, within a reasonable period of time, which in no event shall be longer

than seven days. The system operator is not required to honor requests made by mail but may do so if it chooses.

**76.1701 Political file.**

(a) Every cable television system shall keep and permit public inspection of a complete and orderly record (political file) of all requests for cablecast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

**§76.1702 Equal employment opportunity.**

Every employment unit shall maintain for public inspection a file containing copies of all annual employment reports filed pursuant to Section 76.77. Each document shall be retained for a period of five years. The file shall be maintained at the central office and at every location with more than five full-time employees. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multiple cable operator shall be maintained at the central office of the headquarters employment unit. The cable entity shall provide reasonable accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

**76.1703 Commercial matter on children's programs.**

Cable operators airing children's programming on local origination channels must maintain records sufficient to verify compliance with Section 76.225 with respect to children's programming on local origination channels, and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 USC Section 503(b)(6)(B).

**§76.1704 Proof of performance test data.**

(a) The proof of performance tests required by Section 76.601 shall be maintained 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.

(b) The provisions of paragraph (a) of this section shall not apply to any cable television system having fewer than 1,000 subscribers.

NOTE: If a signal leakage log is being used to meet proof of performance test recordkeeping requirements in accordance with section 76.601, such a log must be retained for the period specified in section 76.601(d).

**§76.1705 Performance tests (channels delivered).**

The operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.

**§76.1706 Signal leakage logs and repair records.**

Cable operators shall maintain a log showing the date and location of each leakage source identified pursuant to Section 76.614, the date on which the leakage was repaired, and the probable

cause of the leakage. The log shall be kept on file for a period of two (2) years and shall be made available to authorized representatives of the Commission upon request.

NOTE: If a signal leakage log is being used to meet proof of performance test recordkeeping requirements in accordance with section 76.601, such a log must be retained for the period specified in section 76.601(d).

**76.1707 Leased access.**

If a cable operator adopts and enforces a written policy regarding indecent leased access programming pursuant to Section 76.701, such a policy will be considered published pursuant to that rule by inclusion of the written policy in the operator's public inspection file.

**§76.1708 Principal headend.**

(a) The operator of every cable television system shall maintain for public inspection the designation and location of its principal headend. If an operator changes the designation of its principal headend, that new designation must be included in its public file.

(b) Such records must be maintained in accordance with the provisions of §76.1700(b).

**§76.1709 Availability of signals.**

(a) Effective June 17, 1993, the operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to §76.56 of the rules. Such list shall include the call sign, community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990.

(b) Such records must be maintained in accordance with the provisions of §76.1700(b).

**§76.1710 Operator interests in video programming.**

(a) Cable operators are required to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they have an attributable interest. These records must be made available to local franchise authorities, the Commission, or members of the public on reasonable notice and during regular business hours.

(b) "Attributable interest" shall be defined by reference to the criteria set forth in the NOTES to §76.501 of this part.

**§76.1711 Emergency alert system (EAS) tests and activation.**

Every cable system of 1,000 or more subscribers shall keep a record of each test and activation of the Emergency Alert System (EAS) procedures pursuant to the requirement of Part 11 of this chapter and the EAS Operating Handbook. These records shall be kept for three years.

**§76.1712 Open video system (OVS) requests for carriage.**

An open video system operator shall maintain a file of qualified video programming providers who have requested carriage or additional carriage since the previous allocation of capacity. Information regarding how a video programming provider should apply for carriage must be made available upon request.

NOTE 1: An open video system operator will not be required to comply with the regulations contained in this section if there is no open capacity to be allocated at the end of the three year period described in Section 76.1503(c)(2)(ii).

**UPON REQUEST DOCUMENTS****§76.1713 Additional upon request documents.**

In addition to the documents required to be provided in the "UPON REQUEST DOCUMENTS" section of this subpart, cable operators must provide prospective leased access programmers with the materials required by section 76.1617 (leased access rates and contract).

NOTE: Section 631 of the Communications Act, 47 U.S.C. §551, also contains the following restrictions pertaining to subscriber privacy documents:

**SEC. 631. PROTECTION OF SUBSCRIBER PRIVACY.**

(a)(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of-

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the cable operator;

(D) the times and place at which the subscriber may have access to such information in accordance with subsection (d); and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h)-

(A) the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;

(B) the term "other service" includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term "cable operator" includes, in addition to persons within the definition of cable operator in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

(b)(1) Except as provided in paragraph (2), a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(2) A cable operator may use the cable system to collect such information in order to-

(A) obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

(B) detect unauthorized reception of cable communications.

(c)(1) Except as provided in paragraph (2), a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

(2) A cable operator may disclose such information if the disclosure is-

(A) necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the subscriber;

(B) subject to subsection (h), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed; or

(C) a disclosure of the names and addresses of subscribers to any cable service or other service, if-

(i) the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the-

(I) extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or

(II) the nature of any transaction made by the subscriber over the cable system of the cable operator.

(d) A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

(e) A cable operator shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) or pursuant to a court order.

(f)(1) Any person aggrieved by an act of a cable operator in violation of this section may bring a civil action in a United States district court.

(2) The court may award-

(A) actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

(3) The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.

(g) Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(h) A governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order-

- (1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and
- (2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

**§76.1714 Commercial leased access rate justification.**

Operators shall maintain, for Commission inspection, sufficient supporting documentation to justify their scheduled leased access rates, including supporting contracts, calculations of the implicit fees, and justifications for all adjustments.

**§76.1715 Complaint resolution.**

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.

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.

**§76.1716 FCC rules and regulations.**

(a) The operator of a cable television system shall have a current copy of Part 76 and, if subject to the Emergency Alert System (EAS) rules contained in Part 11 of this chapter, an EAS Operating Handbook, and is expected to be familiar with the rules governing cable television systems and the EAS. Copies of the Commission's Rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at nominal cost. Copies of the EAS Operating Handbook may be obtained from the Commission's EAS staff, in Washington, DC.

(b) The provisions of paragraph (a) are not applicable to any cable television system serving fewer than 1000 subscribers.

(c) The licensee of a cable television relay station (CARS) shall have a current copy of Part 78, and, in cases where aeronautical obstruction markings of antennas is required, Part 17 of this chapter shall be available for use by the operator in charge. Both the licensee and the operator or operators responsible for the proper operation of the station are expected to be familiar with the rules governing cable television relay stations. Copies of the Commission's Rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at nominal cost.

**§76.1717 Subscriber records and public inspection file.**

The operator of a cable television system shall make the system, its public inspection file (if required by §76.1700), and its records of subscribers available for inspection upon request by an authorized representative of the Commission at any reasonable hour.

**§76.1718 Compliance with technical standards.**

Each system operator shall be prepared to show, on request by an authorized representative of the Commission or the local franchiser, that the system does, in fact, comply with the technical standards rules in part 76, subpart K.

47. A new Subpart V will be added as follows:

### Subpart V -- Reports and Filings

A new Subpart V, which reorganizes and streamlines existing public file and notice requirements, will be added as follows:

#### **§76.1800 Additional reports and filings.**

In addition to the reports and filings required by this subpart, cable operators must provide all notifications which are required by section 1.1155 (annual regulatory user fees). In addition, all cable systems subject to rate regulation must file FCC rate forms pursuant to the Commission's rate rules contained in subparts N and R of this part.

NOTE 1: Cable operators are required by the Copyright Act to make semi-annual filings of Statements of Account with the Licensing Division of the Copyright Office, Library of Congress, Washington, D.C. 20557.

NOTE 2: The Commission may require certain financial information to be submitted pursuant to section 623(g) of the Communications Act, 47 U.S.C. §543(g). Section 623(g) states as follows:

(g) COLLECTION OF INFORMATION.--The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

#### **§76.1801 Registration statement.**

A system community unit shall be authorized to commence operation only after filing with the Commission the following information:

(a) The legal name of the operator, Entity Identification or Social Security number, and whether the operator is an individual, private association, partnership, or corporation. If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied;

(b) The assumed name (if any) used for doing business in the community;

(c) The mail address, including zip code, and the telephone number to which all communications are to be directed;

(d) The date the system provided service to 50 subscribers;

(e) The name of the community or area served and the county in which it is located;

(f) The television broadcast signals to be carried which previously have not been certified or registered.

#### **§76.1802 Equal employment opportunity.**

Each employment unit with six or more full-time employees shall file an annual employment report (FCC Form 395A) with the Commission on or before May 1 of each year, in accordance with Section 76.77.

#### **§76.1803 Aeronautical frequencies: signal list.**

The operator of a cable system shall notify the Commission annually of all signals carried in the aeronautical radio frequency bands (108-137 and 225-400 MHz), noting the type of information carried by the signal (television picture, aural, pilot carrier, or system control, tc.). The timely filing of FCC Form 320 will meet this requirement.

**§76.1804 Aeronautical frequencies: leakage monitoring (CLI).**

The operator of a cable system shall notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10<sup>-4</sup> watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands (108-137 and 225-400 MHz). Such notification shall include:

- (a) legal name and local address of the cable television operator;
- (b) the names and FCC identifiers (e.g., CA0001) of the system communities affected;
- (c) the names and telephone numbers of local system officials who are responsible for compliance with §§76.610 through 76.616 of the rules;
- (d) carrier and subcarrier frequencies and tolerance, types of modulation and the maximum average power levels of all carriers and subcarriers occurring at any location in the cable distribution system.
- (e) the geographical coordinates of a point near the center of the cable system, together with the distance (in kilometers) from the designated point to the most remote point of the cable plant, existing or planned, which defines a circle enclosing the entire cable plant;
- (f) a description of the routine monitoring procedure to be used; and
- (g) for cable operators subject to §76.611, the cumulative signal leakage index derived under §76.611(a)(1) or the results of airspace measurements derived under §76.611(a)(2), including a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. The information described in paragraph (g) shall be provided to the Commission prior to July 1, 1990 and each calendar year thereafter.

NOTE: Timely filing of FCC Form 320, "Basic Signal Leakage Performance Report," will satisfy the annual filing requirement of paragraph (g).

**§76.1805 Alternative rate regulation agreements.**

Small systems owned by small cable companies must file with the Commission a copy of any operative alternative rate regulation agreement entered into with a local franchising authority pursuant to Section 76.934(g), within 30 days after its effective date.

## APPENDIX D

**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**

- §76.1614 Additional miscellaneous notifications.
- §76.1615 Identification of must-carry signals.
- §76.1616 Sponsorship identification.
- §76.1617 Leased access rates and contract.
- §76.1618 Contracts with local exchange carriers.
- §76.1619 Initial must-carry notice.
- §76.1620 Basic tier availability.
- §76.1621 Information on subscriber bills.

**Previous Section**

- None
- 76.56(e)
- 76.221
- 76.970(h)
- 76.1404(a)
- 76.58(b), (d) and (e)
- 76.931
- 76.309(c)(3)(ii)

**NOTICES REQUIRED TO BE GIVEN TO NEW SUBSCRIBERS****New Section**

- §76.1622 Additional new subscriber notifications.
- §76.1623 Availability of signals.
- §76.1624 Equipment compatibility offer.
- §76.1625 Consumer education program on compatibility.

**Previous Section**

- None
- 76.56(d)(3)
- 76.630(c)
- 76.630(d)

**NOTICES THAT MUST BE GIVEN ANNUALLY****New Section**

- §76.1626 Annual notifications.

**Previous Section**

- None

**Subpart U -- Documents to be Maintained for Inspection  
PUBLIC INSPECTION FILE  
DOCUMENTS****New Section**

- §76.1700 Records to be maintained locally by cable system operators for public inspection.

**Previous Section**

- 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

§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)

##### New Section

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

##### Previous Section

None
76.970(h)(5)
76.607
76.300(b), 76.301, 78.67
76.307
76.601(a)

**Subpart V -- Reports and Filings**

##### Previous Section

None
76.12
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 E****Rule Changes**

Part 76 of Title 47 of the Code of Federal Regulations will be amended as follows:

**PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

1. Section 76.3 will 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
- Part 79 - Closed Captioning of Video Programming
- Part 91 - Industrial Radio Services

2. Section 76.5 will 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 will be eliminated.
4. Section 76.56 will 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 76.1623.

NOTE 2: A cable operator receiving a written request to identify its must-carry signals must provide a response as 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 will be eliminated.

6. Section 76.64 will 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 will 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 will 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 will 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 will 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 will 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 includes an affirmative duty to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers, as provided in Section 76.1611.

\* \* \* \* \*

12. Section 76.207 will be eliminated.

13. Section 76.209 will be amended by eliminating paragraphs (b)-(d), by adding two Notes to the end of the section, and by revising the remainder of the section to read as follows:

**§76.209 Fairness doctrine; personal attacks; political editorials.**

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

NOTE 1: See Public Notice, Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 29 FR 10415 [2 RR 2d 1901].

NOTE 2: When, during origination cablecasting of issues of public importance, an attack is made upon the honesty, character, integrity, or like personal qualities of an identified person or group, the cable television system operator must perform the notice and other requirements of section 76.1612.

NOTE 3: Where a cable television system operator, in an editorial, (1) endorses or (2) opposes a legally qualified candidate or candidates, the system operator must perform the notice and other requirements of section 76.1613.

14. Section 76.221 will be eliminated.

15. Section 76.225 will be amended by eliminating paragraph (c) and adding a new NOTE 3 to read as follows:

**§76.225 Commercial limits in children's programs.**

\* \* \* \* \*

NOTE 3: Cable operators must also comply with the recordkeeping requirements contained in section 76.1703.

16. Section 76.302 will be amended by eliminating the references to sections 76.301, 76.302, 76.305, and 76.307, to read as follows:

**§76.300 Scope of application.**

The provisions of §76.306 are applicable to all cable television systems.

17. Section 76.301 will be eliminated.

18. Section 76.302 will be eliminated.

19. Section 76.305 will be eliminated.

20. Section 76.307 will be eliminated.

21. Section 76.309 will be amended by eliminating paragraphs (c)(3)(i) and (c)(3)(ii), and by renumbering the remainder of the section 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) Refunds -- Refund checks will be issued promptly, but no later than either

--

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

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

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

## (4) Definitions --

\* \* \* \* \*

22. Section 76.400 will be eliminated.

23. Section 76.403 will be eliminated.

24. Section 76.504 will be amended by eliminating paragraph (e), by renumbering subsequent paragraphs, and by adding a NOTE to the end of the section, to read as follows:

**§76.504 Limits on carriage of vertically integrated programming.**

\* \* \* \* \*

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

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

(g) "Attributable interest" shall be defined by reference to the criteria set forth in the NOTES to §76.501 of this part.

NOTE: Cable operators must also comply with the attributable interest recordkeeping requirements of section 76.1710.

25. Section 76.601 will be amended by revising paragraphs (a), (c) and (e) and the NOTE at the end of the section, by eliminating paragraph (b), and by adding two more Notes to the end of the section, to read as follows:

**§76.601 Performance tests.**

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

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

(1) \* \* \* \* \*

\* \* \* \* \*

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

(d) The provisions of paragraphs (b) and (c) of this section shall not apply to any cable television system having fewer than 1,000 subscribers: provided, however, that any cable television system using any frequency spectrum other than that allocated to over-the-air television and FM broadcasting (as described in §§73.603 and 73.210) 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.

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

NOTE 2: Each system operator must be prepared to show compliance with the technical rules of this subpart in accordance with section 76.1718.

NOTE 3: Cable operators must comply with the proof of performance test recordkeeping requirements contained in section 76.1704.

26. Section 76.605 will be amended by revising NOTE 5 to replace the reference to section 76.601(c)(2) with a reference to section 76.601(b)(2).

27. Section 76.607 will be eliminated.

28. Section 76.610 will be amended by replacing the reference to section 76.615 with references to sections 76.1803 and 76.1804.

29. Section 76.614 will be amended by revising the text and by adding a NOTE to the end of the section, to read as follows:

**§76.614 Cable Television System Regular Monitoring.**

Cable television operators transmitting carriers in the frequency band 108-137 and 225-400 MHz shall provide for a program of regular monitoring for signal leakage by substantially covering the plant every three months. The incorporation of this monitoring program into the daily activities of existing service personnel in the discharge of their normal duties will generally cover all portions of the system and will therefore meet this requirement. Monitoring equipment and procedures utilized by a cable operator shall be adequate to detect a leakage source which produces a field strength in these bands of 20 uV/m or greater at a distance of 3 meters. During regular monitoring, any leakage source which produces a field strength of 20 uV/m or greater at a distance of 3 meters in the aeronautical radio frequency bands shall be noted and such leakage sources shall be repaired within a reasonable period of time.

NOTE: The operator must also comply with the signal leakage recordkeeping requirements of section 76.1706.

30. Section 76.615 will be eliminated.

31. Section 76.620 will be amended by revising paragraph (a) to replace the reference to section 76.615(b)(1)-(6) with a reference to section 76.1804(a)-(f), and by replacing the reference to section 76.615(b)(7) with a reference to section 76.1804(g), and by revising paragraph (b) to replace the reference to section 76.615(b)(2) with a reference to section 76.1804(b).

32. Section 76.630 will be amended by eliminating paragraphs (c) and (d) and by adding two Notes to the NOTE at the end of the section, to read as follows:

**§76.630 Compatibility with consumer electronics equipment.**

\* \* \* \* \*

NOTE 1: The provisions of paragraphs (a) and (b) of this section are applicable July 31, 1994, and June 30, 1994, respectively. The provisions of paragraphs (c) and (d) of this section are applicable October 31, 1994, except for the requirement under paragraph (c) of this section for cable system operators to supply cable system terminal devices with dual tuners (as needed), which is applicable October 31, 1995. The initial offer of special equipment to all subscribers, as required under paragraph (c) of this section, shall be made by October 31, 1994.

NOTE 2: Certain cable operators must offer to supply subscribers with special equipment that will enable the simultaneous reception of multiple signals, in accordance with section 76.1624.

NOTE 3: Cable operators must provide a consumer education program on compatibility matters to their subscribers, in accordance with section 76.1625.

33. Section 76.900 will be eliminated.

34. Section 76.922 will be amended by revising paragraph (i)(2) to replace the reference to section 76.932 with a reference to section 76.1603, and by revising paragraphs (g)(1) and (g)(8) to read 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.

(1) Generally. A system may adjust the residual component of its permitted rate for a tier to reflect changes in the number of channels offered on the tier on a quarterly basis. Cable systems shall use FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240 to justify rate changes made on account of changes in the number of channels on a basic service tier ("BST") or a cable programming service tier ("CPST"). Such rate adjustments shall be based on any changes in the number of regulated channels that occurred from the end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240. However, when a system deletes channels in a calendar quarter, the system must adjust the residual component of the tier charge in the next calendar quarter to reflect that deletion. Operators must elect between the channel addition rules in paragraphs (g)(2) and (g)(3) of this section the first time they adjust rates after December 31, 1994, to reflect a channel addition to a CPST that occurred on or after May 15, 1994, and must use the elected methodology for all rate adjustments through December 31, 1997. Rate adjustments occurring after December 31, 1997 must use the channel addition rules in paragraph (g)(2). A system that adjusted rates after May 15, 1994, but before January 1, 1995 on account of a change in the number of channels on a CPST that occurred after May 15, 1994, may elect to revise its rates to charge the rates permitted by paragraph (g)(3) of this section on or after January 1, 1995, but is not required to do so as a condition for using the methodology in paragraph (g)(3) of this section for rate adjustments after January 1, 1995. Rates for the BST will be governed exclusively by paragraph (g)(2) of this section, except that where a system offered only one tier on May 14, 1994, the cable operator will be allowed to elect between paragraphs (g)(2) and (g)(3) of this section as if the tier was a CPST.

\* \* \* \* \*

(8) Sunset Provision. Subsections (g)(3) and (g)(7) shall cease to be effective on January 1, 1998 unless renewed by the Commission.

\* \* \* \* \*

35. Section 76.931 will be eliminated.

36. Section 76.932 will be eliminated.

37. Section 76.934 will be amended by eliminating paragraph (g)(2), by renumbering subsequent paragraphs, and by adding a NOTE to the end of paragraph (g), to read as follows:

**§76.934 Small systems and small cable companies.**

\* \* \* \* \*

(g) Alternative rate regulation agreements.

\* \* \* \* \*

(2) Alternative rate regulation agreements affecting the basic service tier shall take into account the following:

\* \* \* \* \*

(3) Alternative rate regulation agreements affecting the cable programming service tier shall take into account, among other factors, the following:

\* \* \* \* \*

(4) Certified local franchising authorities shall provide a reasonable opportunity for consideration of the views of interested parties prior to finally entering into an alternative rate regulation agreement.

(5) A basic service rate decision by a certified local franchising authority made pursuant to an alternative rate regulation agreement may be appealed by an interested party to the Commission pursuant to §76.944 as if the decision were made according to §76.922 and §76.923.

NOTE to paragraph (g): Small systems owned by small cable companies must comply with the alternative rate agreement filing requirements of section 76.1805.

(h) Small system cost-of-service showings.

\* \* \* \* \*

38. Section 76.958 will be eliminated.

39. Section 76.964 will be eliminated.

40. Section 76.970 will be amended by eliminating paragraph (h), by renumbering the subsequent paragraph, and by adding two Notes to the end of the section, to read as follows:

**§76.970 Commercial leased access rates.**

\* \* \* \* \*

(h) Cable operators are permitted to negotiate rates below the maximum rates permitted in paragraphs (c) through (g) of this section.

NOTE 1: Cable operators must respond to requests for leased access in accordance with section 76.1617.

NOTE 2: Cable operators must also comply with the recordkeeping requirements of section 76.1714.

41. Section 76.980 will be amended by revising paragraph (d) and by adding a NOTE at the end of the section, to read as follows:

**§76.980 Charges for customer changes.**

\* \* \* \* \*

(d) A cable operator may establish a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, subject to approval by the franchising authority, for a subscriber changing service tiers more than two times in a twelve month period, except for such changes ordered in response to a change in price or channel line-up.

NOTE: Cable operators must also notify subscribers of potential charges for customer service changes, as provided in section 76.1604.

42. Section 76.987 will be amended by revising paragraph (e) to replace the reference to section 76.964 with a reference to section 76.1603, by eliminating paragraph (g), and by adding a NOTE at the end of the section to read as follows:

**§76.987 New product tiers.**

\* \* \* \* \*

NOTE: Cable operators offering a NPT must comply with the notice requirement of section 76.1605.

43. Section 76.1404 will be amended by eliminating paragraph (b) and revising the remainder of the section to read as follows:

**§76.1404 Use of cable facilities by local exchange carriers.**

(a) For purposes of §76.505(d)(2), the Commission will determine whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the procedures in paragraph (b).

(b) Based on the record created by section 76.1618 of the Rules, the Commission shall determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and duration. In making this determination, the Commission will evaluate whether the proposed joint use of cable facilities promotes competition in both services and facilities, and encourages long-term investment in telecommunications infrastructure.

44. Section 76.1503 will be amended by revising paragraph (c)(2)(ii), and by adding a NOTE 3 at the end of that paragraph, to read as follows:

**§76.1503 Carriage of video programming providers on open video systems.**

\* \* \* \* \*

(c) \* \* \* \* \*

(2) \* \* \* \* \*

(ii) Subsequent changes in capacity or demand. An open video system operator must allocate open capacity, if any, at least once every three years, beginning three years from the date of service commencement. Open capacity shall be allocated in accordance with this section. Open capacity shall include all capacity that becomes available during the course of the three-year period, as well as capacity in excess of one-third of the system's activated channel capacity on which the operator of the open video system or its affiliate selects programming.

NOTE 1 to paragraph (c)(2)(ii): An open video system operator will not be required to comply with the regulations contained in this section if there is no open capacity to be allocated at the end of the three year period.

NOTE 2 to paragraph (c)(2)(ii): An open video system operator shall be required to accommodate changes in obligations concerning public, educational or governmental channels or must-carry channels in accordance with Sections 611, 614 and 615 of the Communications Act and the regulations contained in this part.

**Dissenting Statement of Commissioner Harold Furchtgott-Roth**  
**1998 Biennial Regulatory Review: Part 76 Cable Television Service**  
**Public File and Notice Requirements, CS Docket No. 98-132**

For the following reasons, I would have eliminated the regulations in Part 76 requiring cable operators to maintain public files.

These public file requirements are not required by statute. By regulation, they impose significant costs on cable operators before any member of the public has even asked for any of the information that would be contained in a file. I have no reason to believe that cable operators would not comply with any *bona fide* requests for information that are actually received. I would thus have adopted the suggestion that cable operators simply respond to individual requests, once made.

Moreover, even if the public file and notice requirements were retained, the definition of "small system" for purposes of the public file exemption ought to comport with the definition the Commission recently adopted in the rate regulation context. To the extent possible, we should use uniform definitions across our rules, so that regulated entities can easily understand what federal regulation requires of them. It makes little sense to me, at least, that an operator could be "small" enough to have their rates deregulated but not "small" enough to be relieved of public file requirements.