

Federal Communications Commission

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designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, provided that the Commission has certified that such system complies with this part.

(b) *Open video system operator (operator)*. Any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in such open video system, or otherwise controls or is responsible for the management and operation of such an open video system.

(c) *Video programming provider*. Any person or group of persons who has the right under the copyright laws to select and contract for carriage of specific video programming on an open video system.

(d) *Activated channels*. This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(nn).

(e) *Shared channel*. Any channel that carries video programming that is selected by more than one video programming provider and offered to subscribers.

(f) *Cable service*. This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(ff).

(g) *Affiliated*. For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(h) *Attributable Interest*. The term "attributable interest" shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(i) *Other terms*. Unless otherwise expressly stated, words not defined in this part shall be given their meaning as used in Title 47 of the United States Code, as amended, and, if not defined

therein, their meaning as used in Part 47 of the Code of Federal Regulations.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43175, Aug. 21, 1996; 64 FR 67197, Dec. 1, 1999]

§ 76.1501 Qualifications to be an open video system operator.

Any person may obtain a certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act, 47 U.S.C. 573(a)(1), except that an operator of a cable system may not obtain such certification within its cable service area unless it is subject to "effective competition" as defined in Section 623(l)(1) of the Communications Act, 47 U.S.C. 543(l)(1). The effective competition requirement of the preceding sentence does not apply to a local exchange carrier that is also a cable operator that seeks open video system certification within its cable service area. A cable operator that is not subject to effective competition within its cable service area may file a petition with the Commission, seeking a finding that particular circumstances exist that make it consistent with the public interest, convenience, and necessity to allow the operator to convert its cable system to an open video system. Nothing herein shall be construed to affect the terms of any franchising agreement or other contractual agreement.

[65 FR 376, Jan. 5, 2000]

§ 76.1502 Certification.

(a) An operator of an open video system must certify to the Commission that it will comply with the Commission's regulations in 47 CFR 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513. The Commission must approve such certification prior to the commencement of service at such a point in time that would allow the applicant sufficient time to comply with the Commission's notification requirements.

(b) Certifications must be verified by an officer or director of the applicant, stating that, to the best of his or her information and belief, the representations made therein are accurate.

(c) Certifications must be filed on FCC Form 1275 and must include:

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(1) The applicant's name, address and telephone number;

(2) A statement of ownership, including all affiliated entities;

(3) If the applicant is a cable operator applying for certification in its cable franchise area, a statement that the applicant is qualified to operate an open video system under Section 76.1501.

(4) A statement that the applicant agrees to comply and to remain in compliance with each of the Commission's regulations in §§ 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513;

(5) If the applicant is required under 47 CFR 64.903(a) of this chapter to file a cost allocation manual, a statement that the applicant will file changes to its manual at least 60 days before the commencement of service;

(6) A list of the names of the anticipated local communities to be served upon completion of the system;

(7) The anticipated amount and type (i.e., analog or digital) of capacity (for switched digital systems, the anticipated number of available channel input ports); and

(8) A statement that the applicant will comply with the Commission's notice and enrollment requirements for unaffiliated video programming providers.

(d)(1) On or before the date an FCC Form 1275 is filed with the Commission, the applicant must serve a copy of its filing on all local communities identified pursuant to paragraph (c)(6) of this section and must include a statement informing the local communities of the Commission's requirements in paragraph (e) of this section for filing oppositions and comments. Service by mail is complete upon mailing, but if mailed, the served documents must be postmarked at least 3 days prior to the filing of the FCC Form 1275 with the Commission.

(2) Parties are required to attach a cover sheet to the filing indicating that the submission is an open video system certification application. The only wording on this cover sheet shall be "Open Video System Certification Application" and "Attention: Media Bureau." This wording shall be located in the center of the page and should be in letters at least 1/2 inch in size. Par-

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ties shall also include the words "open video systems" on their mailing envelope.

(e)(1) Comments or oppositions to a certification must be filed within five calendar days of the Commission's receipt of the certification and must be served on the party that filed the certification. If, after making the necessary calculations, the due date for filing comments falls on a holiday, comments shall be filed on the next business day before noon, unless the nearest business day precedes the fifth calendar day following a filing, in which case the comments will be due on the preceding business day. For example, if the fifth day falls on a Saturday, then the filing would be due on that preceding Friday. However, if the fifth day falls on Sunday, then the filing will be due on the next day, Monday, before noon (or Tuesday, before noon if the Monday is a holiday).

(2) Parties wishing to respond to a FCC Form 1275 filing must submit comments or oppositions with the Office of the Secretary and the Bureau Chief, Media Bureau. Comments will not be considered properly filed unless filed with both of these Offices. Parties are required to attach a cover sheet to the filing indicating that the submission is a pleading related to an open video system application, the only wording on this cover sheet shall be "Open Video System Certification Application Comments." This wording shall be located in the center of the page and should be in letters at least 1/2 inch in size. Parties shall also include the words "open video systems" on their mailing envelopes.

(f) If the Commission does not disapprove the certification application within ten days after receipt of an applicant's request, the certification application will be deemed approved. If disapproved, the applicant may file a revised certification or refile its original submission with a statement addressing the issues in dispute. Such re-filings must be served on any objecting party or parties and on all local communities in which the applicant intends to operate. The Commission will consider any revised or refiled FCC Form 1275 to be a new proceeding and

any party who filed comments regarding the original FCC Form 1275 will have to refile their original comments if they think such comments should be considered in the subsequent proceeding.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43175, Aug. 21, 1996; 62 FR 26238, May 13, 1997; 63 FR 31934, June 11, 1998; 65 FR 377, Jan. 5, 2000; 67 FR 13235, Mar. 21, 2002]

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

(a) *Non-discrimination principle.* Except as otherwise permitted in applicable law or in this part, an operator of an open video system shall not discriminate among video programming providers with regard to carriage on its open video system, and its rates, terms and conditions for such carriage shall be just and reasonable and not unjustly or unreasonably discriminatory.

(b) *Demand for carriage.* An operator of an open video system shall solicit and determine the level of demand for carriage on the system among potential video programming providers in a non-discriminatory manner.

(1) *Notification.* An open video system operator shall file with the Secretary of the Federal Communications Commission a "Notice of Intent" to establish an open video system, which the Commission will release in a Public Notice. Parties are required to attach a cover sheet to the filing indicating that the submission is an Open Video System Notice of Intent. The only wording on this cover sheet shall be "Open Video System Notice of Intent" and "Attention: Media Bureau." This wording shall be located in the center of the page and should be in letters at least ½ inch in size. Parties shall also include the words "open video systems" on their mailing envelopes. Parties must submit copies of the Notice of Intent with the Office of the Secretary and the Bureau Chief, Media Bureau. The Notice of Intent shall include the following information:

(i) A heading clearly indicating that the document is a Notice of Intent to establish an open video system;

(ii) The name, address and telephone number of the open video system operator;

(iii) A description of the system's projected service area;

(iv) A description of the system's projected channel capacity, in terms of analog, digital and other type(s) of capacity upon activation of the system;

(v) A description of the steps a potential video programming provider must follow to seek carriage on the open video system, including the name, address and telephone number of a person to contact for further information;

(vi) The starting and ending dates of the initial enrollment period for video programming providers;

(vii) The process for allocating the system's channel capacity, in the event that demand for carriage on the system exceeds the system's capacity; and

(viii) A certification that the operator has complied with all relevant notification requirements under the Commission's open video system regulations concerning must-carry and retransmission consent (§ 76.1506), including a list of all local commercial and non-commercial television stations served, and a certificate of service showing that the Notice of Intent has been served on all local cable franchising authorities entitled to establish requirements concerning the designation of channels for public, educational and governmental use.

(2) *Information.* An open video system operator shall provide the following information to a video programming provider within five business days of receiving a written request from the provider, unless otherwise included in the Notice of Intent:

(i) The projected activation date of the open video system. If a system is to be activated in stages, the operator should describe the respective stages and the projected dates on which each stage will be activated;

(ii) A preliminary carriage rate estimate;

(iii) The information a video programming provider will be required to provide to qualify as a video programming provider, e.g., creditworthiness;

(iv) Technical information that is reasonably necessary for potential video programming providers to assess whether to seek capacity on the open video system, including what type of