



ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559

FINAL REGULATIONS

PART 201--GENERAL PROVISIONS

COMPULSORY LICENSE FOR CABLE SYSTEMS

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[1410-03]

Title 37—Patents, Trademarks, and Copyrights

CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

[Docket RM 77-2]

PART 201—GENERAL PROVISIONS

Compulsory License for Cable Systems

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting revised regulations to implement portions of section 111 of the Act for General Revision of the Copyright Law. That section prescribes various conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of certain notices and Statements of Account. The new regulations establish requirements governing the form, content and filing of such Notices and Statements.

EFFECTIVE DATE: June 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Susan Aramayo, Chief, Licensing Division, Copyright Office, Library of Congress, Washington, D.C. 20557, 703-557-1394.

SUPPLEMENTARY INFORMATION: Section 111(c) of the first section of Pub. L. 94-553 (90 Stat. 2541) establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to, among other conditions, requirements that the cable system comply with certain provisions regarding recordation of Notices under section 111(d)(1) and deposit of Statements of Account under section 111(d)(2).

On January 5, 1978 the Copyright Office published in the FEDERAL REGISTER (43 FR 958) new §§201.11 and 201.17 of its regulations governing the form, content, and filing of the Notices and Statements of Account required by section 111(d) (1) and (2) of the Copyright Act. As we pointed out in the preamble to the regulation: "we are dealing with an entirely new area of copyright law in which all parties concerned lack practical experience . . . [T]hese regulations must be considered experimental and subject to reconsideration as circumstances and experience develop."

Many of the parties filing comments in the proceedings that led to adoption of the regulations urged us to adopt forms for cable systems to use in complying with the requirements of the Act concerning Statements of Account. We found these requests persuasive. The information required to be furnished by cable systems in the Statements of Account is detailed and extensive; in some instances, such as computation of the copyright royalty fee by cable systems carrying two or more partially distant stations, the required information is very complicated. We have concluded that adoption of forms for use in filing Statements of Account will generally be helpful to cable systems, as well as to copyright owners, the Copyright Office, and the Copyright Royalty Tribunal. Providing standardized forms should make the information furnished more accurate, complete, and understandable, and should make access to that information much easier, than would have been the case if each cable system were to have devised its own method of presentation.

Accordingly, we have adopted forms for use by cable systems in filing the Statements of Account required by section 111(d)(2) of the Act, and are requiring that these forms be used in all cases. The forms are being made available simultaneously with the publication of these revised regulations. We are deferring the question of whether to adopt forms for use in filing Notices of Identity and Notices of Change (the information required

by section 111(d)(1) of the Act) pending further exploration of joint forms with the FCC.

Preparation of the forms for Statements of Account was an extraordinarily difficult and time-consuming process. In the course of drafting and designing the forms we found helpful the ideas contained in the form proposed by the Motion Picture Association of America and in other comments dealing with the Statement of Account. However, these suggestions and comments did not deal with several very complex and significant issues, and only partly covered a number of items of required information, leaving a number of issues unresolved. Resolution of these issues, and of others that became apparent as the forms took shape, required a great deal of time. In addition, we took particular care to design into the forms a step-by-step process which, with the accompanying instructions, should make them as useful as possible for all concerned—for the cable systems, in accuracy and optimum efficiency in presenting the information, and for copyright owners, in ease of access to, and understandability of, the information furnished. For the Copyright Office and the Copyright Royalty Tribunal, the forms should also make the information available at the least administrative cost.

As a result of the time required to resolve the issues and prepare the forms, and the necessity that the forms be completed and in the hands of cable systems in time for use in the preparation and filing of Statements of Account covering the first 6 months of 1978, we were unable to offer the parties concerned an opportunity to review the forms themselves. However, the forms as issued and the corresponding revisions in the regulations reflect our resolution of issues that for the most part were subject to full public comment during the earlier stages of this proceeding.

In the course of preparing the forms it became apparent that corresponding changes would be required in the regulations. The purpose of this notice is to issue the revised regulations. The significant changes are discussed below. There are also a number of

minor changes that are self-explanatory or were made for purposes of clarity. Copies of the forms are available upon request to the Licensing Division, Copyright Office, Library of Congress, Washington, D.C. 20557.

1. COMMUNITIES SERVED

Both the Federal Communications Commission (FCC) and the Copyright Office require cable systems to identify communities served by cable systems. For the convenience of the cable systems, and to avoid the confusion that could easily result from use of two different definitions of a "community," §§ 201.11(c)(1)(iii) and 201.17(e)(4) adopt, as the definition of a "community," the FCC definition of a "community unit" (47 CFR 76.5 (mm)). Cable operators are already familiar with this definition, which we feel will also be satisfactory for copyright purposes. If the FCC should change its definition in the future, we will, of course, review the new definition and make a determination then as to whether continued use of the FCC definition will satisfy copyright needs.

2. DEFINITION OF GROSS RECEIPTS

We inadvertently omitted a reference to converters in defining gross receipts. Converters are tuners which are typically capable of tuning to 20 or more television channels transmitted to subscribers by cable systems in the frequencies below 300 megahertz. Many cable systems make a separate charge for use of a converter; some do not.

In some cases, converters are made available to subscribers as shielded tuners designed to avoid the effects of direct reception by a subscriber's television set of signals transmitted by nearby television stations. In the usual case, however, converters are offered to subscribers when the tuners on the subscribers' television sets are not capable of tuning to all of the television stations offered by the cable system. In either case the subscriber must have a converter to receive, in usable form, the signals of all of the television stations that constitute the cable system's "basic service of providing secondary transmissions of primary broadcast transmitters." Fees paid to cable systems for converters, therefore, are clearly amounts paid for the system's secondary transmission service and are includible in that system's "gross receipts." Section 201.17(b)(1) has been revised accordingly.

There are some devices, called "converters," through which no signals of primary transmitters pass, and which are used solely for other purposes such as pay cable. Fees paid for "converters" in these special cases are obviously not amounts paid for a cable system's secondary transmission service, and would not be includible in that system's "gross receipts."

Questions have arisen as to whether a cable system that furnishes to its subscribers, for a single monthly fee, a service that includes retransmission of radio and television signals and local origination (such as time and weather and automated news services), can allocate a portion of the monthly service

fee to the local origination services, and report only the balance as "gross receipts." We do not believe that allocation is permissible in these cases. The origination and retransmission services are clearly part of an integral package offered to subscribers. There is no statutory justification or basis for allocating the monthly fee. Accordingly, we have revised § 201.17(b)(1) to make it clear that gross receipts include "the full amount of monthly (or other periodic) service fees for television and radio retransmission service * * *."

3. TRANSLATORS

Although we affirmed in the regulations that translators are primary transmitters for all purposes, we did not specifically resolve the question of how to classify translators by type in light of the specific language used in defining types of stations in section 111(f) of the Act. Since translator stations are normally not "owned or operated by, or affiliated with" television networks, the definition of a "network station" in section 111(f) could be construed to exclude translators. The result would be to classify translators as independent stations, with a distant signal equivalent ("DSE") of one, even in cases where the translator's "parent" station is a network station.

The clear intent of the Act is to require each cable system to pay for the nonnetwork programming of television stations carried by it, and to require no payment for network programming. The Act adopts a general assumption that substantially all of the programming of an independent station is nonnetwork, and that one-quarter of the programming of a network station is nonnetwork. On this assumption, the Act assigns to independent stations a DSE value of one, and to network stations and noncommercial educational stations, a DSE value of one-quarter. The purpose of the section 111(f) definition of a "network station" is to establish a single standard to be used in identifying stations which can generally be assumed to have program schedules that are approximately 75 percent network, and which therefore should be given a DSE of one-quarter instead of a DSE of one. Rigid application of this definition to translators could result in the assignment of full value (i.e., a DSE of one) to a station which, while not satisfying the technical definition of a "network station," is in fact a "network station" in all respects that are relevant to the DSE concept. This would be a distortion of the intent of the Act.

Accordingly, under § 201.17(b)(7) of our revised regulations, a translator station that retransmits the programs of an independent station is considered an independent station; a translator station that retransmits the programs of a noncommercial educational station is considered a noncommercial educational station, and a translator station that retransmits the programs of a network station is considered a network station. In all cases, however, it is the translator station that must be identified as a "primary transmit-

ter," and whether the translation should be considered a "distant station depends on the local area of that translator station. The cable system carries the signal both a translator station a "parent," two "primary transmitters are involved.)"

4. ERRORS AND OMISSIONS

As part of its responsibilities under section 111 of the Act, the Copyright Office will examine each Statement Account received by it. If any errors or omissions are noted on the face of the document, the Office will call attention to the errors or omissions to the cable system that submitted the Statement, and will require the cable system to correct the errors or omissions before the Statement is accepted. However, we are making clear in § 201.17(c)(2)—and in § 201.11(f)(1)—of the regulations that acceptance and filing of any document is not to be considered a determination that the document was in fact prepared or that all of the requirements to qualify for a compulsory license have been satisfied. It remains the full responsibility of the cable system.

5. CASH OR ACCRUAL ACCOUNT

One comment requested us to clarify that, in reporting gross receipts, cable systems whose revenue is reported on a cash basis can report "gross receipts" on that basis, while cable systems whose revenue is reported on an accrual basis can report "gross receipts" on an accrual basis. This is a reasonable request, and we have amended § 201.17(c) of the regulations to permit reporting gross receipts on a cash or accrual basis, subject to adjustment for off and recovery of bad debt with special provisions governing payments or accruals made January 1, 1978, for secondary mission service furnished after that date, and (ii) payments made January 1, 1978, for secondary mission service furnished before that date.

6. INFORMATION REQUIRED FROM SYSTEMS WITH "GROSS RECEIPTS" OF \$41,500 OR LESS

The regulations excused cable systems with gross receipts of less than \$40,000 from furnishing certain information required of systems with gross receipts of \$40,000 or more. Our revised regulations will require that cable systems that, under the provisions of section 111(d)(2)(C) of the Act, pay a royalty fee computed on the basis of the statutory minimum gross receipts of \$3000; that is, a royalty fee of \$15. Upon reviewing the regulations, we recognized that cable systems with gross receipts of between \$40,000 and \$41,500 also pay the minimum royalty fee of \$15. In order to clarify our original purpose, we have revised § 201.17(e)(9)(vi)

* Error; line should read: "community unit" (47 CFR §76.5

cable systems with gross receipts of \$41,500 or less are excused from furnishing the information specified in that paragraph.

7. CARRIAGE OF SPECIFIC NETWORK PROGRAMS

FCC rules permit a cable system, in certain circumstances, to carry specific network programs on a part-time basis (47 CFR § 76.59(d) (2) and (4); 76.61(e) (2) and (4); and 76.63 (referring to § 76.61(e) (2) and (4))). As noted above, the DSE of one-quarter given to network stations carried by a cable system is intended to cover non-network programming broadcast by the stations. For copyright royalty fee purposes, no DSE value is assigned to carriage of network programs because the Act does not contemplate any payment for that carriage.

Where a cable system carries a station under the specific network program rules cited above, the question of payment of a proportionate royalty fee for carriage of nonnetwork programs does not arise, since by definition no nonnetwork programs were carried. It follows that, to assign a DSE to a station based only on carriage of specific network programs under the rules cited above would be contrary to the intent of the Act.

Accordingly, we have provided in § 201.17(e)(9)(vii) that carriage of a network station under these FCC rules is to be excluded from computation of that station's DSE. In addition, since carriage on this basis has no effect on either computation of a cable system's copyright royalty fee or on distribution of cable system royalty fees to copyright owners, it would be an unjustifiable hardship to require cable systems to report that carriage. We are therefore providing that cable systems need not report carriage of television stations under these particular FCC rules (cited above), in Initial Notices of Identity, Notices of Change, or Statements of Account.

8. SUBSTITUTE PROGRAMS: REASON FOR DELETION OF OMITTED PROGRAM

The regulations adopted on January 5, 1978, required cable systems filing Statements of Account to indicate whether a deleted program for which another program was substituted was omitted (i) under FCC rules or regulations which permitted its deletion, or (ii) because its deletion was required by FCC rules or regulations. These regulations also required cable systems to describe the legal basis for the deletion. The Statement of Account forms which we are now issuing make the requirement of a description of the legal basis for deletion superfluous. Accordingly, the regulations have been revised (§ 201.17(e)(9)(i)(F)) to require only that the cable system indicate whether omission of the deleted program was required or permitted.

9. COMPUTATION OF DISTANT SIGNAL EQUIVALENTS

Section 111(f) of the Act provides that, in computing the DSE of a primary transmitter that broadcasts a program carried by a cable system in substitution for another program,

"where the rules, regulations, or authorizations of the Federal Communications Commission . . . permit a cable system . . . to omit the further transmission of a particular program and . . . also permit the substitution of another program . . . in place of the omitted transmission, the value assigned for the substituted . . . program shall be . . . the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the number of days in the year in which such substitution occurs and as its denominator the number of days in the year."

We requested comments as to whether, in computing the DSE of a primary transmitter carried by a cable system on a substitute program basis, the numerator thus described should consist of the number of programs carried by the cable system or the number of days on which that primary transmitter's programs were carried. Comments received from cable systems emphasized days, and those from copyright owners emphasized programs, but neither offered much in the way of rationale beyond the emphasis.

We have concluded that the numerator should consist of the number of programs rather than the number of days. Section 111(d)(2)(A) of the Act requires cable systems to provide, with the Statement of Account, a special statement covering programs carried on a substitute basis, "showing . . . the . . . programs involved in such substituted carriage." Moreover, section 111(f) assigns to "the substituted . . . program . . . the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the number of days in the year in which such substitution occurs." (Emphasis added.) This language, and legislative history (H.R. Rep. No. 94-1476, at 97-98), indicate a concern with individual programs. For that reason we have concluded that the numerator of the fraction used in computing the DSE of a station carried on a substitute program basis should consist of the number of substitute programs carried, not merely the number of days in which such carriage occurred.

A cable system may carry a primary transmitter on a substitute program basis and also on some other basis. The Act makes no provision for determining that station's DSE in a single computation. We have concluded that, in this case, the cable system computes a DSE based on the substitute program carriage, and also computes a DSE based on carriage on the other basis. The station's DSE would then be the total of the DSE's thus computed.

The DSE computation formulas specified in the Act could, in some cases, result in DSE's with infinite decimals. It is obviously necessary to round off the decimals at some point. We believe that the third decimal point is a reasonable place at which to round off, and have so provided. Fairness to both cable systems and copyright owners, however, requires consistency in rounding off, and we have therefore provided in § 201.17(f)(3)

that if a DSE is rounded off in a case, it must be rounded off through out the Statement.

10. ROYALTY FEE PAYMENT

Copyright royalty fees are due on the dates specified in the regulation and, after deducting administrative costs of the Copyright Office, are to be invested by the Department of the Treasury in "interest-bearing United States securities for later distribution with interest" to copyright owner. Copyright owners are thus entitled to interest earned on royalty fees from the earliest date on which purchase of the securities can be accomplished. In order to assure that none of this interest is lost to copyright owners because of payment by a check drawn on an account with insufficient funds, an also to assure that no administrative costs are incurred in handling checks, we are requiring in § 201.17(i) that all copyright royalty fee payments be made by certified check, cashier's check, or money order.

11. PARTIALLY DISTANT STATIONS: COMPUTATION OF COPYRIGHT ROYALTY FEE

The Act provides that, in computing amounts payable under the DSE royalty fee formula (section 111(d)(2)(i) (ii), (iii), and (iv)), the gross receipt for "any cable system located partly within and partly without the local service area of a primary transmitter . . . shall be limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter." We requested comments on the question of computation of the copyright royalty fee in these cases. Few comments were received on the point, and those received either did not reflect the intent of the Act or did not fully address all aspects of the issue.

Where all of a cable system's distant stations are partially distant, and where the local service areas of all these stations exactly coincide, computation of the system's copyright royalty fee is a fairly simple matter. Gross receipts from subscribers located outside the distant stations' local service area are first determined, and then the DSE royalty fee formula is applied to those gross receipts only. The system's copyright royalty fee is either the DSE royalty fee thus computed or the minimum fee computed under section 111(d)(2)(B)(i), whichever is greater.

However, this approach cannot be used where the local service areas of cable system's distant stations do not exactly coincide and one or more of the distant stations is partially distant. DSEs applicable to gross receipts from individual subscribers will vary from subscriber to subscriber, depending upon where each subscriber is located (that is, depending upon which stations are "distant" as to each subscriber). A subscriber located outside of a station's local service area is "distant" as to that station; by the same token, the station is "distant" as to that subscriber.

We carefully reviewed various formulas and approaches that might

* Error; line should read: (47 CFR §§ 76.59(d) (2) and (4); 76-61(e)

applied to this situation. We concluded (§ 201.17(g)) that gross receipts from each subscriber must be considered separately from gross receipts from other subscribers, and a copyright royalty fee must be computed for each subscriber's gross receipts, using the DSE royalty fee formula, based on total DSEs of all stations as to which that subscriber is "distant." The cable system's copyright royalty fee would either be the minimum fee computed under section 111(d)(2)(B)(i), or would be the total of all individually computed royalty fees computed as described above, whichever is the greater. For ease of computation, we have provided in the Statement of Account form that gross receipts from subscribers who are distant as to exactly the same complement of stations are to be added together and royalty fees for those subscribers are to be computed as a group; that is, a royalty fee is to be computed for each group of subscribers who are distant as to exactly the same complement of stations, based on (1) total gross receipts from subscribers in that group, and (2) total DSEs of that complement of stations.

12. BROADCAST HOURS OF PART-TIME STATIONS

Computation of the DSE of a station carried on a part-time basis requires knowledge of the hours during which the station broadcast over the air during the accounting period. Questions have been raised as to sources for obtaining this information, and specifically whether or not it will be furnished by the Copyright Office. The Copyright Office does not have the facilities to collect, maintain, and supply this information about the hundreds of television stations carried by cable systems, and it will therefore be necessary for cable systems to obtain that information from other sources.

FINAL REGULATIONS

The final regulations, as revised, are set forth below.

Dated: June 20, 1978.

BARBARA RINGER,
Register of Copyrights.

Approved:
DANIEL J. BOORSTIN,
Librarian of Congress.

FINAL REGULATIONS

Part 201 of 37 CFR Chapter II (as amended on January 5, 1978) is amended by revising §§ 201.11 and 201.17 to read as follows:

§ 201.11 Notices of identity and signal carriage complement of cable systems.

(a) *Definitions.* (1) An "Initial Notice of Identity and Signal Carriage Complement" or "Initial Notice" is a notice under section 111(d)(1) of title 17 of the United States Code as amended by Pub. L. 94-553 and required by that section to be recorded in the Copyright Office "at least one month before the date of commencement of operations of the cable system or within one hundred and eighty days

after (October 19, 1976), whichever is later", for any secondary transmission by the cable system to be subject to compulsory licensing.

(2) A "Notice of Change of Identity or Signal Carriage Complement" or "Notice of Change" is a notice under section 111(d)(1) of title 17 of the United States Code as amended by Pub. L. 94-553 and required by that section to be recorded in the Copyright Office "within thirty days after each occasion on which the ownership or control or signal carriage complement of the cable system changes" for any secondary transmission by the cable system to be subject to compulsory licensing.

(3) A "cable system" is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, or other communications channels to subscribing members of the public who pay for such service. A system that meets this definition is considered a "cable system" for copyright purposes, even if the FCC excludes it from being considered a "cable system" because of the number or nature of its subscribers or the nature of its secondary transmissions. The Notices required to be recorded by this section, and the statements of account and royalty fees to be deposited under § 201.17 of these regulations, shall be recorded and deposited by each individual cable system desiring its secondary transmissions to be subject to compulsory licensing. For these purposes, and the purpose of § 201.17 of these regulations, an "individual" cable system is each cable system recognized as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission in effect (i) on the date of recordation with the Copyright Office, in the case of the preparation and filing of an Initial Notice of Identity and Signal Carriage Complement or Notice of Change of Identity or Signal Carriage Complement; or (ii) on the last day of the accounting period covered by a Statement of Account, in the case of the preparation and deposit of a Statement of Account and copyright royalty fee. For these purposes, two or more cable facilities are considered as one individual cable system if the facilities are either (A) in contiguous communities under common ownership or control or (B) operating from one headend.

(4) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, an FM radio signal is "generally receivable" if (i) it is usually carried by the system whenever it is received at the system's headend, and (ii) as a result of monitoring at reasonable times and intervals, it can be expected to be received at the system's headend, with the system's FM antenna, at least three consecutive

hours each day at the same time day, five or more days a week, for or more weeks during any calendar quarter, with a strength of not less than fifty microvolts per meter measured at the foot of the tower or pole to which the antenna is attached.

(5) The signals of a primary transmitter are "regularly carried" if they are carried by the cable system at least one hour each week for three or more consecutive weeks, or if, in cases described in paragraph (a) of this section, they comprise generally receivable FM radio signals.

(b) *Forms.* The Copyright Office does not provide printed forms for use of persons recording Initial Notices or Notices of Change.

(c) *Initial Notices.* (1) An Initial Notice of Identity and Signal Carriage Complement shall be identified by prominent caption or heading and shall include the following:

(i) The designation "Owner" followed by: (A) The full legal name of the owner of the cable system, if the owner is a partnership, the name of the partnership is to be followed by the name of at least one individual partner; (B) any other name or designation under which the owner conducts the business of the cable system; and (C) the mailing address of the owner. If the owner conducts the business of the cable system, and the owner's mailing address shall reflect facts existing on the day the Notice is signed.

(ii) The designation "System" followed by: (A) Any business or other name used to identify the business and operation of the cable system, unless these names have already been given under the designation "Owner" and (B) the full mailing address of the system, unless such address is the same as the address given under the designation "Owner". Business trade names used to identify the business and operation of the system shall be given, and the system's mailing address shall reflect the facts existing on the day the Notice is signed.

(iii) The designation "Area Served" followed by the name of the county or counties served by the system. For this purpose a "county" is the same as a "community" as defined in FCC rules and regulations.

(iv) The designation "Signal Carriage Complement", followed by the name and location of the primary transmitter or primary transmitters whose signals are, or are expected to be, regularly carried by the system. Carriage of a primary transmitter under FCC rules and regulations which permit carriage of secondary network programs on a part-time basis in certain circumstances (47 CFR 76.59(d) (2) and (4); 76.61(e) (2) and (4); and 76.63 [referring to 76.61 and (4)]) need not be reported.

(A) The "name" of the primary transmitter(s) shall be given by the call sign, accompanied by a brief description of the type of signal carriage, for example, "TV", "FM", or "AM". The "location" of the primary transmitter(s) shall be given:

* Error; line should read: §§ 76.59(d) and (4); 76.61(e) (2) and (4)

name of the community to which the transmitter is licensed by the Federal Communications Commission (in the case of domestic signals) or with which the transmitter is identified (in the case of foreign signals).

(B) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, the Notice shall identify that portion of its signal carriage as "all-band FM" or the like, and shall separately identify the name and location of each primary transmitter of such signals whose signals are generally receivable by the system. In any case where such generally receivable FM signals cannot be determined at the time of recording of the initial Notice, they shall be subsequently identified in a Special Amendment recorded in compliance with paragraph (e)(3) of this section.

(v) The individual signature of: (A) The owner of the cable system or of a duly authorized agent of the owner, if the owner is not a partnership or a corporation; or (B) a partner, if the owner is a partnership; or (C) an officer of the corporation, if the owner is a corporation. The signature shall be accompanied by the printed or typewritten name of the person signing the Notice, by the date of signature and, if the owner of the cable system is a partnership or corporation, by the title or official position held in the partnership or corporation by the person signing the Notice.

(2) The requirements of paragraph (c)(1) of this section shall apply only to Initial Notices of Identity and Signal Carriage Complement recorded on or after July 31, 1978. Initial Notices recorded before July 31, 1978 shall be governed by the applicable Copyright Office regulations in effect before June 27, 1978.

(d) *Notices of change.* (1) A Notice of Change of Identity or Signal Carriage Complement shall be identified as such by prominent caption or heading, and shall include the following:

(i) In the case of a change of ownership: (A) The designation "Former Owner", followed by the full legal name of the owner of the cable system as given in the Initial Notice recorded by the cable system, or, if an earlier Notice of Change affecting ownership has been recorded by the cable system, as given in the last such Notice; (B) the designation "New Owner", followed by: (1) The full legal name of the person who, or partnership or corporation which, now owns the cable system. If the new owner is a partnership, the name of the partnership is to be followed by the name of at least

one individual partner; (2) any other name or names under which the new owner conducts, or proposes to conduct, the business of the cable system; and (3) the full mailing address of the new owner; (C) the designation "System", followed by the information required by paragraph (c)(1)(ii) of this section; and (D) the effective date of the change of ownership.

(ii) In the case of a change of signal carriage complement: (A) The designation "Owner", followed by the information called for by paragraph (c)(1)(i) or (d)(1)(i)(B) of this section, as given in the Initial Notice recorded by the cable system or, if an earlier Notice of Change affecting ownership has been recorded by the cable system, as given in the last such Notice; (B) the designation "System", followed by the information required by paragraph (c)(1)(ii) of this section; (C) the names and locations of the primary transmitter or primary transmitters whose signals have been added to or deleted (as shall be stated in the Notice) from the system's signal carriage complement, given as set forth in paragraphs (c)(1)(iv) (A) and (B) of this section; and (D) the approximate date of each such addition or deletion.

(iii) In the case of either a change in ownership or in signal carriage complement, the Notice of Change shall be signed and dated in accordance with paragraph (c)(1)(v) of this section.

(2) Unless accompanying a change in ownership and required to be given by paragraph (d)(1)(i) of this section, a Notice of Change is not required to be recorded to reflect changes occurring on or after February 10, 1978, in: (i) Fictitious or assumed names used by the owner of a cable system for the purpose of conducting the business of the cable system; (ii) trade or business names or styles used to identify the business and operation of the cable system; (iii) mailing addresses of the owner of the cable system or of the system; (iv) the name of the operator of the cable system; or (v) the name of the person or entity exercising primary control over the system. A Notice of Change is not required to be recorded to reflect changes in, or in the names of, the community or communities served by the cable system.

(3) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, and which have not recorded an Initial Notice identifying the primary transmitters of FM signals generally receivable by the system, a Notice of Change shall not

be required to be recorded to reflect changes in the complement of such signals until the expiration of one hundred and twenty days from the date of recordation of a Special Amendment under paragraph (e)(2) (e)(3) of this section.

(4) The provisions of paragraph (d)(1) and (d)(2) of this section shall apply only to Notices of Change recorded on or after July 31, 1978. Notices of Change recorded before July 31, 1978 shall be governed by the applicable Copyright Office regulations in effect before June 27, 1978.

(5) Notice of change in ownership and in signal carriage complement may be combined in one Notice of Change, if the information required under paragraph (d)(1) of this section is given for each change.

(e) *Amendment of Notices*—(1) *General (Permissive) Amendments to Correct Errors or Omissions.* The Copyright Office will record amendments to Initial Notices or Notices of Change submitted to correct an error or omission in the information given in the earlier document. An amendment not appropriate to reflect developments or changes in facts occurring after the date of signature of an Initial Notice or Notice of Change, an amendment shall (i) be clearly and prominently identified as an "Amendment to Initial Notice of Identity or Signal Carriage Complement"; (ii) identify the specific Notice intended to be amended so that it may be readily located in the records of the Copyright Office; (iii) clearly specify the nature of the amendment to be made; and (iv) be signed and dated in accordance with paragraph (c)(1)(v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended. The recordation of an amendment under this paragraph shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(2) *Special (Required) Amendment for Certain Systems which Record Initial Notices before February 10, 1978.* Any cable system which before February 10, 1978, recorded an Initial Notice of Identity and Signal Carriage Complement which identified all or a portion of its signal carriage complement as "all-band FM", "broad-band FM" or the like, or which otherwise did not identify individual primary transmitters of FM signals generally receivable by the system, shall, on or after June 30, 1978, record an amendment to that Notice identifying primary transmitter or primary transmitters of FM signals generally receivable by the system as of the date of the amendment in accordance with paragraphs (c)(1)(iv) (A) and (B) of this section. Such amendment shall (i) be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement"; (ii) specifically identify the Initial Notice intended to be amended so that it may be readily located in the records of the Copyright Office; and (iii) be signed and dated

** *In the case of a change of signal carriage complement (i) for which a Notice of Change was not recorded before February 10, 1978 and (ii) which involves a cable system that recorded an Initial Notice or Notice of Change before February 10, 1978 without identifying the owner of the system, the designation "Former Owner" shall be followed by the name of the person who, or entity which, was given as the operator or person or entity exercising primary control in the Initial Notice or last Notice of Change.

** *In the case of a change of ownership (i) for which a Notice of Change was not recorded before February 10, 1978 and (ii) which involves a cable system that recorded an Initial Notice or Notice of Change before February 10, 1978 without identifying the owner of the system, the designation "Former Owner" shall be followed by the name of the person who, or entity which, was given as the operator or person or entity exercising primary control in the Initial Notice or last Notice of Change.

* Error; line should read: as given in the last such Notice; ¹(B)

* Error; line should read: as given in the last such Notice; ²(B)

* Error; line should read: amended. ³T
recordation of an

** Error; line should read: ¹In the case of a change of ownership (i)

** Error; line should read: ²In the case of a change of signal carriage

accordance with paragraph (c)(1)(v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.¹

(3) *Special (Required) Amendments for Certain Cable Systems which Record Initial Notices on or after February 10, 1978.* Any cable system which records an Initial Notice of Identity and Signal Carriage Complement on or after February 10, 1978 and is required by the last sentence of paragraph (c)(1)(iv)(B) of this section to record a special amendment shall, no later than one hundred and twenty days after recordation of the Initial Notice, record an amendment to that Notice identifying the primary transmitter or primary transmitters of FM signals generally receivable by the system as of the date of the amendment in accordance with paragraphs (c)(1)(iv)(A) and (B) of this section. Such amendment shall: (i) Be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement"; (ii) specifically identify the Initial Notice intended to be amended so that it may be readily located in the records of the Copyright Office; and (iii) be signed and dated in accordance with paragraph (c)(1)(v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.

(f) *Recordation.* (1) The Copyright Office will record the Notices and amendments described in this section by placing them in the appropriate public files of the Office. The Copyright Office will advise cable systems of errors or omissions appearing on the face of documents submitted to it, and will require that any such obvious errors or omissions be corrected before the documents will be recorded. However, recordation by the Copyright Office shall establish only the fact and date thereof; such recordation shall in no case be considered a determination that the document was, in fact, properly prepared or that all of the requirements to qualify for a compulsory license have been satisfied.

(2) No fee shall be required for the recording of Initial Notices, Notices of Change, or the Special Amendments identified in paragraphs (e)(2) and (e)(3) of this section. A fee of \$10 shall accompany any General Amendment permitted by paragraph (e)(1) of this section.

(3) Upon request and payment of a fee of \$3, the Copyright Office will furnish a certified receipt for any Notice or amendment recorded under this section.

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

(a) *General.* This section prescribes rules pertaining to the deposit of Statements of Account and royalty fees in the Copyright Office as required by section 111(d)(2) of title 17 of the United States Code, as amended by Pub. L. 94-553, in order for secondary transmissions of cable systems to be subject to compulsory licensing.

(b) *Definitions.* (1) Gross receipts for the "basic service of providing secondary transmissions of primary broadcast transmitters" include the full amount of monthly (or other periodic) service fees for television and radio retransmission service, additional set fees, and converter fees. They do not include installation (including connection, relocation, disconnection, or reconnection) fees, charges for payable, security, alarm or facsimile services, or charges for late payments.

(2) A "cable system" and "individual cable system" have the meanings set forth in § 201.11(a)(3) of these regulations.

(3) "FCC" means the Federal Communications Commission.

(4) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, an FM radio signal is "generally receivable" under the conditions set forth in § 201.11(a)(4) of these regulations.

(5) The terms "primary transmission," "secondary transmission," "local service area of a primary transmitter," "distant signal equivalent," "network station," "independent station," and "noncommercial educational station" have the meanings set forth in section 111(f) of title 17 of the United States Code, as amended by Pub. L. 94-553.

(6) A primary transmitter is a "distant" station, for purposes of this section, if the programming of such transmitter is carried by the cable system in whole or in part beyond the local service area of such primary transmitter.

(7) A translator station is, with respect to programs both originally transmitted and retransmitted by it, a primary transmitter for the purposes of this section and § 201.11 of these regulations. A translator station which retransmits the programs of a network station will be considered a network station; a translator station which retransmits the programs of an independent station shall be considered an independent station; and a translator station which retransmits the programs of a noncommercial educational station shall be considered a noncommercial educational station. The determination of whether a translator station should be identified as a "distant" station depends on the local service area of the translator station.

(c) *Accounting Periods and Deposit.*

(1) Statements of Account shall cover semiannual accounting periods of (i) January 1 through June 30, and (ii) July 1 through December 31, and shall be deposited in the Copyright Office, together with the total royalty fee for

such accounting periods as prescribed by section 111(d)(2) (B), (C), or (D) of title 17, by not later than the immediately following August 29, if the Statement of Account covers the January 1 through June 30 accounting period, and by not later than the immediately following March 1, if the Statement of Account covers the July 1 through December 31 accounting period.

(2) The date of acceptance by the Copyright Office will be the date when both a proper Statement of Account and appropriate royalty fee are received in the Copyright Office. The Copyright Office will advise cable systems of errors or omissions appearing on the face of documents submitted to it, and will require that any such obvious errors or omissions be corrected before the documents will be accepted. However, acceptance and filing of any document by the Copyright Office shall establish only the fact and date thereof; such acceptance and filing shall in no case be considered a determination that the document was, in fact, properly prepared or that all of the requirements to qualify for a compulsory license have been satisfied.

(d) *Forms.* (1) Each Statement of Account shall be furnished on an appropriate form prescribed by the Copyright Office, and shall contain the information required by that form and its accompanying instructions. Computation of distant signal equivalents and the copyright royalty fee shall be in accordance with the procedures set forth in the forms. Copies of Statement of Account forms are available free upon request to the Licensing Division, United States Copyright Office, Library of Congress, Washington, D.C. 20557.

(2) The forms prescribed by the Copyright Office are designated "Statement of Account for Secondary Transmissions By Cable Systems":

(i) Form CS/SA-1—"Short Form" for use by cable systems whose semiannual gross receipts for secondary transmissions total \$41,500 or less;

(ii) Form CS/SA-2—"Intermediate Form" for use by cable systems whose semiannual gross receipts for secondary transmissions total between \$41,500 and \$160,000; and

(iii) Form CS/SA-3—"Long Form" for use by cable systems whose semiannual gross receipts for secondary transmissions total \$160,000 or more.

(e) *Contents.* Each Statement of Account shall contain the following information:

(1) A clear designation of the accounting period covered by the Statement.

(2) The designation "Owner," followed by: (A) The full legal name of the owner of the cable system. If the owner is a partnership, the name of the partnership is to be followed by the name of at least one individual partner; (B) any other name or names under which the owner conducts the business of the cable system; and (C) the full mailing address of the owner. Ownership, other names under which the owner conducts the business of the cable system, and the owner's mailing address shall reflect facts existing on the last day of the account-

** ¹In the case of an amendment to an Initial Notice or Notice of Change recorded before February 10, 1978 which did not identify the owner of the system, the signature shall be accompanied by the printed or typewritten name of the operator, or person or entity exercising primary control over the system, as given in the Notice sought to be amended.

* Error; line should read: amended.³

** Error; line should read: ³In the case of an amendment to an Ini-

cessed by the system as separate and discrete signals; and

(C) FM primary transmitter carried on an all-band retransmission basis, the signals of which were generally receivable by the system.

(iii) A designation as to whether the primary transmitter is AM or FM.

(iv) The name of the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(v) If the cable system carried FM primary transmitters on an all-band retransmission basis, a clear description of the nature and frequency of the monitoring activities and equipment used during the period covered by the Statement of Account to determine the identity of such transmitters.

(11) A special statement and program log, which shall consist of the information indicated below for all non-network television programming that, during the period covered by the Statement, was carried in whole or in part beyond the local service area of the primary transmitter of such programming under (i) rules or regulations of the FCC requiring a cable system to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission; or (ii) rules, regulations, or authorizations of the FCC in effect on October 19, 1976, permitting a cable system, at its election, to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission:

(A) The name or title of the substitute program.

(B) Whether the substitute program was transmitted live by its primary transmitter.

(C) The station call sign of the primary transmitter of the substitute program.

(D) The name of the community to which the primary transmitter of the substitute program is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(E) The date when the secondary transmission of the substitute program occurred, and the hours during which such secondary transmission occurred on that date accurate to the nearest 5 minutes.

(F) A designation as to whether deletion of the omitted program was permitted by the rules, regulations, or authorizations of the FCC in effect on October 19, 1976, or was required by the rules, regulations, or authorizations of the FCC.

(12) A statement of the total royalty

fee payable for the period covered by the Statement of Account, together with a royalty fee analysis which gives a clear, complete, and detailed presentation of the determination of such fee. This analysis shall present in appropriate sequence all facts, figures, and mathematical processes used in determining such fee, and shall do so in such manner as required in the appropriate form so as to permit the Copyright Office to verify readily, from the face of the Statement of Account, the accuracy of such determination and fee. The royalty fee analysis is not required to be given by any cable system whose gross receipts from subscribers for the period covered by the Statement of Account, for the basic service of providing secondary transmissions of primary broadcast transmissions, total \$41,500 or less.

(13) The name, address, and telephone number of an individual who may be contacted by the Copyright Office for further information about the Statement of Account.

(14) The handwritten signature of: (i) The owner of the cable system or a duly authorized agent of the owner, if the owner is not a partnership or a corporation; or (ii) a partner, if the owner is a partnership; or (iii) an officer of the corporation, if the owner is a corporation. The signature shall be accompanied by: (A) The printed or typewritten name of the person signing the Statement of Account; (B) the date of signature; (C) if the owner of the cable system is a partnership or a corporation, by the title or official position held in the partnership or corporation by the person signing the Statement of Account; (D) a certification of the capacity of the person signing; and (E) the following statement:

I certify that I have examined this Statement of Account and that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(f) *Computation of Distant Signal Equivalents.* (1) A cable system that elects to delete a particular television program and substitute for that program another television program ("substitute program") under rules, regulations, or authorizations of the FCC in effect on October 19, 1976, which permit a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place shall compute the distant signal equivalent ("DSE") of each primary transmitter that broadcasts one or more substitute programs by dividing: (i) The number of the primary transmitter's live, non-network, substitute programs that were carried by the cable system, during the period covered by the Statement of Account, in substitution

for programs deleted at the option of the system; by (ii) the number of days in the year in which the substitution occurred.

(2) Where a cable system carries a primary transmitter on a substitute basis, and also on some other basis, the system shall compute a DSE for that primary transmitter based on its carriage on a substitute basis, and shall also compute a DSE for that primary transmitter based on its carriage on the other basis. The DSE for that primary transmitter shall be the total of the DSE's thus computed.

(3) In computing DSE's, a cable system may round off to the third decimal point. If a DSE is rounded off in any case in a Statement of Account, it must be rounded off throughout the Statement.

(g) *Computation of the Copyright Royalty Fee: Partially Distant Stations.* A cable system located partly within and partly without the local service area of a primary television transmitter ("partially distant station") computes the royalty fee specified in section 111(d)(2)(B) (ii), (iii), and (iv) of the Copyright Act ("DSE fee") by excluding gross receipts from subscribers located within that station's local service area from total gross receipts. A cable system which carries two or more partially distant stations with local service areas that do not exactly coincide shall compute a separate DSE fee for each group of subscribers who are located outside of the local service areas of exactly the same complement of distant stations. Computation of the DSE fee for each subscriber group is to be based on: (1) The total distant signal equivalents of that group's complement of distant stations, and (2) the total gross receipts from that group of subscribers. The copyright royalty fee for that cable system is (i) the total of the subscriber group royalty fees thus computed, or (ii) 0.675 of 1 percent of the system's gross receipts from all subscribers, whichever is larger.

(h) *Royalty Fee Payment.* The royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account, and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or money order, payable to: Register of Copyrights.

(17 U.S.C. 111, 702.)

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ing period covered by the Statement of Account.*

(3) The designation "System," followed by: (A) Any business or trade names used to identify the business and operation of the system, unless these names have already been given under the designation "Owner"; and (B) the full mailing address of the system, unless such address is the same as the address given under the designation "Owner". Business or trade names used to identify the business and operation of the system, and the system's mailing address, shall reflect the facts existing on the last day of the accounting period covered by the Statement of Account.

(4) The designation "Area Served", followed by the name of the community or communities served by the system. For this purpose a "community" is the same as a "community unit" as defined in FCC rules and regulations.

(5) The designation "Channels", followed by the number of channels on which the cable system made secondary transmissions to its subscribers during the period covered by the Statement.

(6) The designation "Secondary Transmission Service: Subscribers and Rates", followed by: (i) A brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters; (ii) the number of subscribers to the cable system in each such subscriber category; and (iii) the charge or charges made per subscriber to each such subscriber category for the basic service of providing such secondary transmissions. Standard rate variations within a particular category should be summarized; discounts allowed for advance payment should not be included. For these purposes (A) the description, the number of subscribers, and the charge or charges made shall reflect the facts existing on the last day of the period covered by the Statement; and (B) each entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) which is charged by the cable system for the basic service of providing secondary transmissions shall be considered one subscriber.

(7) The designation "Gross Receipts", followed by the gross amount paid to the cable system by subscribers for the basic service of providing secondary transmissions of primary broadcast transmitters during the period covered by the Statement of Account. If the cable system maintains its revenue accounts on an accrual basis, gross receipts for any accounting

period includes all such amounts accrued for secondary transmission service furnished during that period, regardless of when accrued: (i) Less the amount of any bad debts actually written-off during that accounting period, excluding bad debts for secondary transmission service furnished before January 1, 1978; (ii) plus the amount of any previously written-off bad debts for secondary transmission service which were actually recovered during that accounting period, excluding bad debt recoveries for secondary transmission service furnished before January 1, 1978. If the cable system maintains its revenue accounts on a cash basis, gross receipts for any accounting period includes all such amounts actually received by the cable system during that accounting period, excluding amounts paid for secondary transmission service furnished before January 1, 1978; however, amounts received before January 1, 1978, for secondary transmission service furnished after that date, are to be considered as if they had been received during the accounting period in which the service covered by such payments was furnished.

(8) The designation "Services Other Than Secondary Transmissions: Rates", followed by a description of each service for which a separate charge was made or established, other than secondary transmission service, which the cable system furnished or made available to subscribers during the period covered by the Statement of Account, together with the amount of such charge. However, no information need be given concerning services furnished at cost. Specific amounts charged for pay cable programming need not be given if the rates are on a variable, per-program basis. (The fact of such variable charge shall be indicated.)

(9) The designation "Primary Transmitters: Television", followed by an identification of all primary television transmitters whose signals were carried by the cable system during the period covered by the Statement of Account, other than primary transmitters of programs carried by the cable system exclusively pursuant to rules, regulations, or authorizations of the FCC permitting the substitution of signals under certain circumstances, and required to be specially identified by paragraph (e)(11) of this section, together with the information listed below:

(i) The station call sign of the primary transmitter.

(ii) The name of the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(iii) The number of the channel upon which that primary transmitter broadcasts in the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(iv) A designation as to whether that primary transmitter is a "network sta-

tion", an "independent station", or a "noncommercial educational station".

(v) A designation as to whether that primary transmitter is a "distant" station.

(vi) If that primary transmitter is a "distant" station a specification of whether the signals of that primary transmitter are carried: (a) pursuant to the part-time specialty programming rules of the FCC; or (b) pursuant to the late-night programming rules of the FCC; or (c) on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; or (d) on any basis other than those listed in (a), (b), and (c). If the signals of that primary transmitter are carried on a part-time specialty programming basis, or pursuant to the late-night programming rules of the FCC, or on a part-time basis because of lack of activated channel capacity, the Statement shall also include a log showing the dates or which such carriage occurred, and the hours during which such carriage occurred on those dates. Hours of carriage shall be accurate to the nearest quarter-hour, except that, in any case where such part-time carriage extends to the end of the broadcast day of the primary transmitter an approximate ending hour may be given if it is indicated as an estimate.*

(vii) The information indicated by paragraphs (e)(9) (v) and (vi) of this section is not required to be given by any cable system whose gross receipts from subscribers for the period covered by the Statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, total \$41,500 or less.

(viii) Notwithstanding the requirements of this section, where a cable system carried a distant primary transmitter under FCC rules and regulations which permit carriage of specific network programs on a part-time basis in certain circumstances (47 C.F.R. 76.59(d) (2) and (4); 76.61(e) (2) and (4); and 76.63 (referring to 76.61(e) (2) and (4))), carriage of that primary transmitter on that basis need not be reported, and that carriage is to be excluded in computing the distant signals equivalent of that primary transmitter.

(10) The designation "Primary Transmitters: Radio", followed by an identification of primary radio transmitters whose signals were carried by the cable system during the period covered by the Statement of Account together with the information listed below:

(i) A statement as to whether the cable system carried FM signals which were not electronically processed by the system as separate and discrete signals ("all-band retransmission").

(ii) The station call sign of each:

(A) AM primary transmitter;

(B) FM primary transmitter, the signals of which were electronically processed.

*The requirement of this §201.1 (e)(9)(i)(F) that the Statement include dates and hours of carriage applies only to carriage on and after February 10, 1978.

* Error; line should read: cited as an estimate.

** Error; line should read: §§ 76.59(d) (2) 76.61(e) (2), and

*** Error; line should read: The requirement of t

** In the case of the first Statement of Account deposited by a cable system which has not earlier filed an Initial Notice or Notice of Change under §201.11 of these regulations identifying the owner of the system, that Statement of Account shall also give the name of the person who, or entity which, was given as the operator or person or entity exercising primary control in the Initial Notice or last Notice of Change.

* Error; line should read: of Account.*

** Error; line should read: "In the case of the first Statement of Ac-