

# ANNOUNCEMENT

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

## FINAL REGULATIONS

### COMPULSORY LICENSE FOR CABLE SYSTEMS

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#### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 201

[Docket RM 83-3A]

#### Compulsory License for Cable Systems

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final regulations.

**SUMMARY:** The Copyright Office of the Library of Congress is issuing final regulations, amending 37 CFR 201.17. These regulations implement portions of section 111 of the Copyright Act of 1976, title 17 of the United States Code. That section prescribes conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works by filing periodic Statements of Account and by paying copyright royalties, based on rates originally established by the Copyright Act and subsequently adjusted by the Copyright Royalty Tribunal. The purpose of these final regulations is to implement the Tribunal's October 20, 1982 cable rate adjustment (47 FR 52146; November 19, 1982) by notifying cable systems of revised forms and procedures and by providing guidance to cable systems regarding payment of royalties. Interim rules published April 16, 1984 at 49 FR 14944 are hereby made final with minor changes.

**EFFECTIVE DATE:** June 29, 1984.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

**SUPPLEMENTARY INFORMATION:** Section 111(c) of the Copyright Act of 1976, title 17 of the United States Code, establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirement that cable systems deposit statutory royalties with the Copyright Office. Cable systems whose semiannual gross receipts for secondary transmissions total \$214,000 or more determine their royalty obligations by applying specified percentages of such gross receipts (royalty rates) to their number of distant signal equivalents. In Docket No. CRT 81-2, the Copyright Royalty Tribunal considered adjustments in the royalty rates for cable systems in light of the repeal by the Federal Communications Commission (FCC) of certain distant signal and syndicated exclusivity restrictions (*Report and Order in Docket Nos. 20988 and 21284, 79 FCC 2d 863 (1980)*). The FCC's Order was upheld by the U.S. Court of Appeals for the Second Circuit, *Malrite T.V. of New York v. Federal Communications Commission*, 652 F.2d 1140 (2d Cir. 1981), cert. denied, 102 S. Ct. 1002 (1982), and entered into force on June 25, 1981, when a stay pending appeal was vacated.

After consideration of the issues raised by the interested parties, at a public meeting on October 20, 1982, the Tribunal adopted its final rule in CRT Docket No. 81-2, Cable Television

Royalty Fee Adjustment Proceeding. The text of the Tribunal's amendments to 37 CFR Part 308 were published in the Federal Register of Friday, November 19, 1982 (47 FR 52146-52159).

The Tribunal made two types of royalty rate adjustments and set January 1, 1983, as the effective date for both. One adjustment may be identified as a "surcharge" on certain distant signals to compensate copyright owners for the carriage of syndicated programming formerly prohibited by the FCC's syndicated exclusivity rules in effect on June 24, 1981 (former 47 CFR 78.151 et seq.) (hereafter, "syndicated exclusivity surcharge" or "surcharge"). The second adjustment raises the royalty rate to 3.75% of gross receipts per additional distant signal equivalent resulting from carriage of distant signals not generally permitted to be carried under the FCC's distant signal rules prior to June 25, 1981 (hereafter, the "3.75% rate").<sup>1</sup>

<sup>1</sup>The Tribunal determined that the 3.75% royalty rate would be applicable in all instances of distant signal carriage except for:

"(1) Any signal which was permitted (or, in the case of cable systems commencing operations after June 24, 1981, which would have been permitted) under the rules and regulations of the Federal Communications Commission in effect on June 24, 1981, or

"(2) A signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or

"(3) A signal which was carried pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules were in effect on June 24, 1981." (37 CFR 308.2(c); 47 FR 52159).

In section 143 of House Joint Resolution 831, Pub. L. 97-377 (December 1982) Congress stayed the effective date of the 3.75% rate until March 15, 1983.

Both rate adjustments were appealed in the U.S. Court of Appeals for the District of Columbia Circuit. The Court affirmed the Tribunal's rate adjustment in all respects on December 30, 1983. *NCTA v. Copyright Royalty Tribunal*, No. 82-2389 (D.C. Court of Appeals).

In late 1982 and early 1983, the Copyright Office received numerous requests from representatives of cable systems for advice or interpretive rulings regarding the application of the 3.75% rate in specific instances. The Office's urgent guidance was requested before March 15, 1983, the date the legislative stay would expire. In response, the Office initiated this proceeding (Docket RM 83-3) by publishing a Notice of Inquiry (48 FR 6372; February 11, 1983), in which we summarized the issues presented to us for guidance, and requested public comment on four general issues: substitution of nonspecialty independent stations for specialty stations; carriage of the same signals carried on a part-time or substitute basis under the former FCC rules before June 25, 1981; and signals for which waivers were pending with the FCC on June 23, 1981, and later dismissed as mooted by the FCC deregulation ("ungranted waiver requests").

The Office also consulted with the Tribunal in March 1983, pursuant to 17 U.S.C. 111(d). Pending the appeal of the rate adjustment, however, the Tribunal took the position it could not comment on the issues covered by the Notice of Inquiry.

The Office concluded that only a tentative, limited response could be made to the questions posed in the Notice of Inquiry. These comments were expressed initially in a letter of opinion, dated March 11, 1983, which was mailed to all who had contacted the Office directly. Subsequently, on March 30, 1983, the Office published a Statement of Views (48 FR 13166) regarding interpretation of the Tribunal's 1982 cable rate adjustment. The Office observed that, to give the guidance requested by the cable systems, it would be necessary to interpret the rules of another governmental body at time when those rules were under appeal, and before the Office itself would take affirmative steps to collect royalties due under the 1982 rate adjustment.<sup>2</sup> The Office stated that the tentative views published in the Statement of Views

<sup>2</sup>In accordance with the usual practice, the Office stated in the Notice of Inquiry that no affirmative steps would be taken to implement the 1982 rate adjustment pending a final decision by the Court of Appeals. The Office accepted royalty payments based on the 1982 rate adjustment when proffered by cable systems during the pendency of the appeal, deferring examination of the Statements of Account until an appropriate time.

would be reexamined following the final decision by the Court of Appeals, based upon an analysis of the opinion and a reconsideration of the comments submitted in response to our Notice of Inquiry RM 83-3.

In order to implement the 1982 cable rate adjustment following the decision in *NCTA v. CRT*, *supra*, the Office consulted with the Tribunal regarding interpretation and implementation of the rate adjustment pursuant to 17 U.S.C. 111(d). The Tribunal's response by letter of March 30, 1984<sup>3</sup> was published as an Appendix to interim regulations issued April 16, 1984 by the Office [49 FR 14944]. Although these regulations are interpretive<sup>4</sup> of the Copyright Act and the Tribunal's rules and were put into effect immediately upon publication, the Office invited comment before issuing the regulations in final form.

The Office received comments from five different representatives of cable system operators. No comments were received from representatives of copyright owners. These commentators objected principally to the Office's decision to follow the Tribunal's stated intention not to allow substitution of "grandfathered" signals (those authorized by the FCC and carried by a cable system before March 31, 1972) beyond the market quota for nonspecialty independent stations. Three comments objected to the similar decision of the Office regarding substitution for specialty stations. One new issue was presented for consideration: expanded geographic carriage of a signal on a distant basis that was formerly carried only as a local signal.

For a full discussion of the issues concerning the 1982 cable rate adjustment, see the explanation accompanying the interim regulations of April 16, 1984 (49 FR 14944). As explained below, the Office has concluded that it should adhere to the interpretations of the Copyright Act and the Tribunal's regulations announced in the interim regulations for the reasons given in that announcement, subject to an adjustment regarding administrative implementation of the rate applied to substitutions for grandfathered signals

<sup>3</sup>Before responding to the Office, the Tribunal invited written comment from all parties who had participated in the Tribunal's 1982 rate adjustment proceeding.

<sup>4</sup>The functions of the Copyright Office under the compulsory license for cable are limited. The Office has no power to fix or establish substantive rights and liabilities under the compulsory license; its regulations are primarily interpretive. The Copyright Office issues such regulations on points necessary for the Office to discharge its function of collecting the royalties and preparing forms for that purpose, and in response to requests for guidance from the public.

and to clarification of two points. The Office also addresses the single new issue raised by the comments: expanded geographic carriage of a previously local-only signal into distant communities.

1. *Substitution for "grandfathered" signals.* The basic arguments of the commentators are that the application of the 3.75% rate to signals substituted for "grandfathered" signals is contrary to the plain meaning of section 801(b)(2)(B) of the Copyright Act, that it undercuts Congressional intent, and that "retroactive application" of the Office's interpretation violates principles of equity and fairness.

Section 801(b)(2)(B)(i) provides that the Tribunal may not adjust the cable royalty rates for any DSE's represented by carriage of a signal of the same type substituted for any signal permitted by the FCC rules in effect on April 15, 1976. The commentators argue that "grandfathered" signals were among the "FCC-permitted signals" referred to in that clause, and therefore any signal of the same type as the "grandfathered" signal can be substituted for it without triggering the 3.75% rate. The comments also contended that, in any event, cable systems were misled by the Office's remarks in the March 1983 Statement of Views, and that the Office should not adopt an interpretation of the Act based on the "conclusory views" of the Tribunal. Finally, one commentator contended that the Office should have taken account, pursuant to section 801(b)(2)(B), of the economic impact of its interpretation on copyright users.

Addressing the latter point first, the Office clearly does not have the authority to assess the economic impact of a rate adjustment duly established by the Tribunal. It is the Tribunal, not the Copyright Office, that is directed to consider "among other factors, the economic impact on copyright owners and users" when adjusting the rates. That consideration occurred during the Tribunal's proceeding that resulted in the 1982 cable rate adjustment.

With respect to the Office's reliance on the clear statement by the Tribunal of its intention in fixing the new cable rates, the Office continues to believe that, given the complexity of the cable compulsory license and of the FCC cable carriage rules over a period of 10 years, and given the enormous difficulty of the cable rate-making process, it cannot decline to accept the Tribunal's interpretation of its own rules unless the Office were certain that the Tribunal lacked authority to fix the rate in a given case. While the Office had doubts about substitution for "grandfathered" signals, we are not persuaded that the Tribunal lacked authority to establish the 3.75% rate in this case.

Our decision is based upon the fundamental principle that an administrative agency's stated interpretation of its rules is the best indicator of their meaning. *United Steelworkers of America v. Weber*, 443 U.S. 193 (1979); *United States v. American Trucking Association, Inc.* 310 U.S. 534, 543 (1940); *Rucker v. Wabash Railroad Company*, 418 F.2d 146 (7th Cir. 1969). Moreover, that Office does not<sup>1</sup> find in Section 801(b)(2)(B) any "plain meaning" contrary to the Tribunal's position. The very complexity of this section and the FCC's rules referenced therein allow few "plain meanings." Finally, on this point, if the Office had declined to accept and follow the Tribunal's interpretation, only confusion would have resulted; and litigation would be necessary to resolve the issue.<sup>5</sup>

One point about substitution for "grandfathered" signals needs clarification. The Office understands the Tribunal's position to be the same on substitution for "grandfathered" signals as on substitution for specialty stations. Substitution *may be made* within the limits of the FCC's former distant signal market quotas for nonspecialty independent stations (that is, three distant independents in the top fifty markets except if there are one or more local independents in the market the limit is two distant independents; two distant independents in the second fifty markets; and one distant independent in smaller markets, unless there is a local independent). In the final regulations, the Office has revised § 201.17(h)(9) to refer explicitly to the FCC's market quotas.

Finally, with respect to the comments about retroactive application of the interpretation concerning substitution for "grandfathered" signals, the Office has decided to modify its policy concerning implementation of the rate adjustment in this single case. The Office attempted in the Statement of Views in March 1983 both to give cable systems "some guidance" and to make clear that *any* views expressed were tentative and subject to revision after conclusion of the then pending judicial appeal. Based upon the comments, however, the Office is concerned that we may not have succeeded in expressing the very tentative nature of its views. The Office does not believe that a position was stated regarding substitution for "grandfathered" signals, but the commentators asserted that the Office's views were misunderstood by a number of cable systems.

<sup>5</sup> As entities of the United States, both the Copyright Office and the Tribunal would be represented in any litigation by the same counsel: the Department of Justice.

In the Statement of Views, in the interim regulations, and in these final regulations, the Office has attempted to give guidance regarding interpretation of the Copyright Act. The Office cannot alter the copyright liabilities of cable systems by any interpretation of the Act. It is the Act, complemented by the Tribunal's rate adjustment, that controls whatever royalties are owing under the compulsory license. Nevertheless, since cable systems may have been misled by the Office's expression of tentative views on substitution of "grandfathered" signals, the Office has decided not to take affirmative steps to collect royalties based on the Tribunal's interpretation on this point before the accounting period beginning July 1, 1984, unless it is ordered to do so by a court of competent jurisdiction. The CS/SA-3 Statement of Account forms reflect this modification of the implementation of the rate adjustment. The Office has not changed its position regarding interpretation of the Act and the Tribunal's regulations. We have taken cognizance of the arguments regarding fairness and equity, and will not retroactively seek to collect at the 3.75% rate for substitution of grandfathered signals in excess of the quota for nonspecialty independents until ordered to do so by a court. Cable system operators must take full responsibility for any decision not to pay royalties in accordance with the stated intention of the Tribunal.

2. *Substitution for specialty stations.* Three commentators objected to the conclusion in the interim regulations that cable systems may not substitute a nonspecialty independent station for a specialty station in excess of the FCC's former market quotas for nonspecialty independents. The comments contend that specialty stations have the same DSE value as nonspecialty independents and should be freely substitutable if actually carried before June 25, 1981. Again, the interim regulations are criticized for following the Tribunal's position, which the commentators argue violates the plain meaning of the Act. Cable systems, however, were apparently not misled by our tentative Statement of Views and understood that the Office did not say that substitution of a nonspecialty independent for a specialty station would be permitted on any basis without incurring the 3.75% rate.

For reasons given in the interim regulations and in point one above, the Office continues to believe that it should follow the Tribunal's clear statement of its intention in setting the 3.75% rate and issuing its regulations. Under that position, substitution of a nonspecialty independent station for a specialty station is permitted but only within the limits of the FCC's former market quotas

for distant nonspecialty independents. This limited substitution gives meaning to the critical language of the Copyright Act regarding substitution of a signal of the "same type" and avoids untrammelled substitutions that would or could nullify the 3.75% adjustment.

3. *Application of the surcharge rate to "grandfathered" signals.* The interim regulations provide that the surcharge rate does not apply to "carriage of a particular signal first carried prior to March 31, 1972." See, for example, § 201.17(h)(3)(ii)(A). One comment suggested that the language of the interim regulations should parallel the language of the FCC's grandfather clause in its exclusivity rules. 47 CFR 76.159 (1980). That provision exempts from the exclusivity rules signals carried in a community prior to March 31, 1972 by a particular cable system or any cable system in that community. The commentator was concerned that the Office's regulation might be read to exempt a system from the surcharge rate only if the signal was carried by *that* system before March 31, 1972.

The Office interprets the Copyright Act and the Tribunal's rules to mean that the surcharge rate would not apply to "grandfathered" signals whether carried by a particular cable system or by any cable system in the community. The Office confirms that interpretation of the interim regulations and sees no need to revise the language since the phrase "carriage of a particular signal first carried prior to March 31, 1972" covers carriage by a particular cable system and the possibility of carriage by any other cable system within community.

4. *Expanded distant carriage of formerly local-only stations.* The comments presented one new issue, not considered in the interim regulations: Carriage after June 24, 1981 on a distant signal basis of a signal carried before June 25, 1981 *only* as a local signal. The expanded carriage after June 24, 1981 would mean that the signal is partly within and partly without the local service area of the retransmitted station. Clearly, allocation of the gross receipts would be permitted by section 111(d)(2)(B). The larger question, however, is whether the 3.75% rate applies to the first-time carriage on a distant signal basis.

In considering this issue, the Office notes that in a very few cases we had expressed the view in correspondence that where the only carriage was as a local signal within part of a cable system, the "partly within-partly without" allocation of gross receipts was nevertheless required as though *some* carriage on a distant basis had occurred in fact. The Office rejects this interpretation of the Act since it is clear from the definition of "distant signal equivalent value" in section 111(f) that

<sup>1</sup> Error; line should read: "1969). Moreover, the Office does not"

no DSE value can be assigned for secondary transmission of local signals.<sup>6</sup>

The Office will upon request refund any overpayments of copyright royalties that may have resulted from a request to apply the "partly within-partly without" allocation in cases of local-only carriage, where more than the minimum royalty is due. The Office, as stated, believes this occurred in only two or three cases. One has been brought to our attention; and similar cases should be presented to the Office promptly.

The question remains: which rate applies to expanded carriage after June 24, 1981 that constitutes distant signal carriage of the signal for the first time. This is a new issue, and the Statement of Account form does not specifically make provision for application of the 3.75% rate in cases of "partly within-partly without" carriage. At this point the Office assumes that the case will seldom arise, and we decline to provide any specific guidance. Cable system operators should consider the Tribunal's letter to this Office of March 30, 1984, published as an Appendix to the interim regulations on April 16, 1984, and the general comments of the Office in the interim regulations concerning application of the 3.75% rate. The Office will not question application of the non-3.75% rate on this narrow point until review of the Statement of Account forms for the second half of 1984.

For the foregoing reasons, the Copyright Office is issuing in final form the interim regulations amending 37 CFR 201.17 as published on April 16, 1984 [49 FR 14944], with one minor change in the last paragraph (h)(9).

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress in the legislative branch. Neither the Library of Congress nor the Copyright Office is an agency within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the federal government that are agencies as defined in the

Administrative Procedure Act.<sup>7</sup> In addition, since these final regulations are interpretive, moreover, they are not subject to the Regulatory Flexibility Act, in any event.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an agency subject to the Regulatory Flexibility Act, and that the final rules are not solely interpretive, the Register of Copyrights has determined that the regulations will have no significant impact on small businesses. The Tribunal's rate adjustment and these final regulations affect only large cable systems whose gross receipts total \$214,000 or more semiannually.

#### List of Subjects in 37 CFR Part 201

Cable television, Copyright.

#### Final Regulations

#### PART 201—[AMENDED]

In consideration of the foregoing, Part 201 of 37 CFR Chapter II is amended in the manner set forth below.

Section 201.17 is amended as follows:

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

1. Paragraphs "(h)" and "(i)" are redesignated paragraphs "(i)" and "(j)," respectively, and any references to paragraph "(j)" in the text of the redesignated paragraph (j) are redesignated paragraph "(i)."

2. A new paragraph (h) is added to read as follows:

(h) *Computation of the copyright royalty fee pursuant to the 1982 cable rate adjustment.* (1) For the purposes of this paragraph, in addition to the definitions of paragraph (b) of this section, the following definitions shall also apply:

(i) "Current base rate" means the applicable royalty rates in effect on December 31, 1982, as reflected in 37 CFR 308.2(a).

(ii) "Surcharge" means the applicable syndicated exclusivity surcharge established by 37 CFR 308.2(d), in effect on January 1, 1983.

(iii) The "3.75% rate" means the rate established by 37 CFR 308.2(c), in effect on March 15, 1983.

(iv) "Top 100 television market" means a television market defined or interpreted as being within either the "top 50 television markets" or "second 50 television markets" in accordance with 47 CFR 76.51, in effect on June 24, 1981.

(v) The "1982 cable rate adjustment" means the rate adjustment adopted by the Copyright Royalty Tribunal on October 20, 1982 (CRT Docket No. 81-2, 47 FR 52146, November 19, 1982).

(vi) The terms "DSE" or "DSE's" mean "distant signal equivalent(s)" as defined in 17 U.S.C. 111(f) and any fraction thereof.

(2) A cable system whose semiannual gross receipts for secondary transmissions total \$214,000 or more shall compute its royalty fee for carriage after June 30, 1983, in the following manner:

(i) The cable system shall first determine those DSE's to which the 3.75% rate established by 37 CFR 308.2(c) applies.

(ii) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972.

(iii) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(3) A cable system whose semiannual gross receipts for secondary transmissions total \$214,000 or more shall compute its royalty fee for carriage during the period January 1, 1983, through June 30, 1983, in the following manner:

(i) Copyright royalty fees must be paid on the basis of carriage for the entire accounting period except where proration of the DSE is permitted as described in paragraph (f)(3) of this section.

(ii) Where a distant signal was carried at any time only between January 1, 1983, and March 14, 1983;

(A) In the case of a cable system located wholly or in part within a top 100 television market, the current base rate, together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972.

(B) In case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(iii) Where a distant signal was

<sup>6</sup> The fact that section 111(d)(2)(B)(i) establishes a minimum royalty for large systems even if there is no distant signal carriage should not confuse the point that beyond this minimum royalty, only distant signal carriage triggers a DSE value.

<sup>7</sup> The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17], except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

carried at any time after March 14, 1983;

(A) The cable system shall first determine those DSE's to which the 3.75% rate established by 37 CFR 308.2(c) applies.

(B) If the 3.75% rate is applicable to a particular DSE, it shall be applied against the per centum .5967 (representing the number of days from March 15, 1983, through June 30, 1983, inclusive, in relation to the entire accounting period); and either

(1) In the case of cable system located wholly or in part within a top 100 television market, the current base rate, together with the surcharge, applied against the per centum .4033 (representing the number of days from January 1, 1983, through March 14, 1983, inclusive, in relation to the entire accounting period); however, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972; or

(2) In the case of a cable system located wholly outside a top 100 television market, the current base rate applied against the per centum .4033.

(C) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972.

(D) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(4)(i) Separate Supplemental DSE Schedules as prescribed by the Copyright Office shall be completed and filed by a cable system affected by the 1982 cable rate adjustment for the accounting periods January 1, 1983, through June 30, 1983 (83-1), and July 1, 1983, through December 31, 1983 (83-2). Each Supplemental DSE schedule shall contain the information required by that form and its accompanying instructions.

(ii) The Supplemental DSE Schedule

will be mailed to all cable systems whose gross receipts for secondary transmissions total \$214,000 or more either for accounting period 83-1 or for 83-2, and shall be completed and returned to the Copyright Office with the supplemental royalty fee due, if any, within sixty-five (65) days from the date of mailing by the Copyright Office.

(iii) Cable systems located wholly outside all major and smaller television markets as defined by the FCC are not affected by the 1982 cable rate adjustment. Such systems shall complete a certifying statement provided in the Supplemental DSE Schedule and return in within sixty-five days from the date of mailing by the Copyright Office.

(iv) Revised Statement of Account form CS/SA-3 shall be completed and filed for the accounting periods January 1, 1984, through June 30, 1984, *et seq.*, by a cable system whose semiannual gross receipts for secondary transmissions total \$214,000 or more in accordance with paragraph (c) of this section. The Statement shall contain the information required by that form and its accompanying instructions.

(5)(i) It shall be presumed that the 3.75% rate of 37 CFR 308.2(c) applies to DSE's accruing from newly added distant signals, carried for the first time by a cable system after June 24, 1981.

(ii) The presumption of paragraph (h)(5)(i) of this section can be rebutted in whole or in part:

(A) By actual carriage of a particular distant signal prior to June 25, 1981, as reported in Statements of Account duly filed with the Copyright Office ("actual carriage"), unless the prior carriage was not permitted by the FCC; or

(B) By carriage of no more than the number of distant signals which was or would have been allotted to the cable system under the FCC's quota for importation of network and nonspecialty independent stations [47 CFR 76.59(b), 76.61 (b) and (c) and 76.63, referring to 76.61 (b) and (c), in effect on June 24, 1981].

(6) To qualify as an FCC-permitted

signal on the ground of individual waiver of the FCC rules (47 CFR 76.7 in effect on June 24, 1981), the waiver must have actually been granted by the FCC, and the signal must have been first carried by the cable system after April 15, 1976.

(7) Expanded geographic carriage after June 24, 1981, of a signal previously carried within only certain parts of a cable system is governed by the current base rate and the surcharge, if applicable.

(8) In cases of expended temporal carriage of the same signal, previously carried pursuant to the FCC's former part-time or substitute carriage rules [47 CFR 76.61(b)(2), 76.61 (e)(1) and (e)(3), and 76.63, referring to 76.61 (e)(1) and (e)(3), in effect on June 24, 1981], the 3.75% rate shall be applied to any additional fraction of a DSE accruing from the expanded temporal carriage of that signal. To identify such additional DSE's, a comparison shall be made of DSE's reported for that signal in any single accounting period prior to the July 1, 1981, to December 31, 1981, period (81-2), as designated by the cable system, with the DSE's for that same signal reported in the current relevant accounting period.

(9) Substitution of like signals pursuant to 37 CFR 308(c)(2) is possible at the relevant non-3.75% rate (the surcharge together with the current base rate, or the current base rate alone) only if the substitution does not exceed the number of distant signals which was or would have been allotted to the cable system under the FCC's television market quota for importation of network and nonspecialty independent stations [47 CFR 76.59(b), 76.61 (b) and (c), and 76.63, referring to 76.61 (b) and (c), in effect on June 24, 1981].

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

Dated: June 26, 1984.

David Ladd,  
Register of Copyrights.

[FR Doc. 84-17453 Filed 6-28-84; 8:45 am]  
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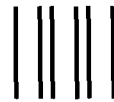
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