

particular report and the number of pages included in the report.

Note to Paragraph (c)(2): For purposes of this section, geographic service area includes the area within the protected service contour in a particular service: Grade B contour for TV, 1 mV/m contour for all FM station classes except .7 mV/m for Class B1 stations and .5 mV/m for Class B stations, and .5 mV/m contour for AM stations.

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(e) * * *

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(4) *Ownership reports and related materials.* A copy of the most recent, complete ownership report filed with the FCC for the station, together with any subsequent statement filed with the FCC certifying that the current report is accurate, and together with all related material. * * *

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(9) *Donor lists.* The lists of donors supporting specific programs. These lists shall be retained for two years from the date of the broadcast of the specific program supported.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96-85; FCC 99-57]

Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the *Report and Order*, the Commission implemented provisions of the 1996 Telecommunications Act that reform several parts of Title VI of the Communications Act of 1934, including sections on effective competition to a cable system, small cable operator rules, uniform rate requirements, technical standards, and the sunset of the Commission's role in regulating rates on the cable service programming tier.

DATES: Effective August 31, 1999 except for sections 76.952 and 76.990 which contain information collection requirements that have not been approved by the Office of Management and Budget ("OMB"). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. Written comments by the public on the information collection requirements are due August 2, 1999.

Written comments must be submitted by OMB on the information collection requirements on or before August 31, 1999.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Peggy Greene or Nancy Stevenson, Cable Services Bureau (202) 418-7200, TTY (202) 418-7172. For additional information concerning the information collections contained in this *Report and Order*, contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in CS Docket No. 96-85, FCC 99-57, adopted March 25, 1999, and released March 29, 1999. The complete text of the *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, and may also be purchased from the Commission's copy contractor, International Transcription Service ("ITS, Inc."), (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036. In addition, the complete text of the *Report and Order* is available on the Internet at <http://www.fcc.gov/Bureaus/Cable/Orders/1999/fcc99057.txt>.

Paperwork Reduction Act

This *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose new or modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirements contained in this *Report and Order*, as required by the 1995 Act. Public comments are due August 2, 1999. Written comments must be submitted by OMB on or before August 31, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-0706.

Title: Cable Act Reform.

Type of Review: Revision of existing collection.

Respondents: Business and for-profit entities; state, local and tribal governments.

Number of Respondents: 950.

Estimated Time per Response: 1-8 hours.

Total Estimated Annual Burden to Respondents: 3,900 hours.

Total Estimated Annual Cost to Respondents: \$4,100.

Needs and Uses: The notice, filing and third-party disclosure requirements accounted for in OMB 3060-0706 serve a variety of purposes for subscribers, cable operators, franchising authorities and the Commission. For example, pursuant to section 76.952, franchising authority contact information is furnished on monthly billing statements and is used by cable subscribers when wanting to inquire about cable matters in their community. Franchising authorities have the option to not have this information furnished on billing statements if they so choose. The filing of a written request to the cable operator facilitates this option. Pursuant to section 76.990, a small cable operator may certify in writing to its franchising authority that it meets the criteria to qualify as a small operator. The information filed as part of the certification is reviewed by the franchising authority to determine whether the operator qualifies for deregulation as a small cable operator. Pursuant to section 76.1404, copies of contract information are filed with the Commission for a determination of whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration.

OMB Approval Number: 3060-0549.

Title: Cable Programming Services Complaints (FCC Form 329).

Type of Review: Revision of existing collection.

Respondents: Individuals; state, local and tribal governments.

Number of Respondents: 1,300.

Estimated Time per Response: 45 minutes.

Total Estimated Annual Burden to Respondents: 1,200 hours.

Total Estimated Annual Cost to Respondents: \$3,200

Needs and Uses: The data are used by Commission staff to examine the reasonableness of a cable operator's rates for programming service or

associated equipment prior to the March 31, 1999 sunset of CPST rate regulation. The filing of FCC Form 329 initiates an investigation of a cable system's rates for cable programming service.

Synopsis of the Report and Order

The Commission's Report and Order implements provisions of the Telecommunications Act of 1996 ("1996 Act") that reform several parts of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). These are generally known as the "Cable Reform" provisions. The *Report and Order* also includes information about the sunset of the Commission's role in regulating rates on the cable service programming tier ("CPST"). The Cable Reform provisions include sections on effective competition to a cable system, small cable operator rules, uniform rate requirements, technical standards and subscriber notice.

2. Key findings:

- *CPST rate regulation sunset:*

Pursuant to section 623 of the 1996 Act, rates for CPST services provided after March 31, 1999 will not be subject to Commission review and regulation. The Commission will continue to process complaints regarding rates for services provided prior to March 31, 1999.

- *Effective Competition:* The statute provides that a cable operator's rates are not regulated if the cable system is subject to effective competition. The 1996 Act added a new effective competition test addressing competition from local exchange carriers ("LECs"), LEC affiliates, or multichannel video programming distributors using LEC facilities. The Commission determined that effective competition will be found if a LEC's service offering substantially overlaps the incumbent cable operator's service in the same franchise area. Potential as well as actual LEC service can be considered. The 1996 Act also requires that the LEC's programming service be comparable to the incumbent cable operator's service. The Commission adopted the definition used for the competing provider test for effective competition, which specifies that comparable service must include at least 12 channels of video programming, including at least one channel of nonbroadcast service. The *Report and Order* provides that all effective competition cases, other than petitions for reconsideration of LFA certifications to regulate rates, will be resolved as petitions for determinations of effective competition under the Commission's special relief procedures. This will ensure uniform procedures, including use of the public notice provisions. The

Commission retained its rule for handling petitions for reconsideration of LFA certifications, which includes an automatic stay provision so that erroneous certifications can be addressed before the LFA starts regulating rates.

- *Small Cable Operators:* Under the statute, small cable operators meeting certain criteria are exempted from some rate regulation. In addition to cable programming services, the exemption applies to a basic service tier ("BST") that was the only service tier subject to regulation as of December 31, 1994 in any franchise area in which that operator services 50,000 or fewer subscribers. A small cable operator is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent (1%) of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission decided that the BST exemption is not lost if the operator created additional tiers of service after December 31, 1994. An affiliation exists when an entity owns an active or passive equity interest of 20% or more in the cable operator or holds de facto control over the operator. Purely passive investment, however, will not be treated as an affiliation. Implementing the Cable Reform provisions does not affect the Commission's small system cost of service rules. The *Report and Order* concludes that the Commission lacks the discretion to maintain an operator's small operator status once it no longer meets the eligibility requirements in the statute. The *Report and Order* allows operators losing their eligibility to maintain the rates prevailing prior to the loss of eligibility and to implement rate increases pursuant to the generally applicable rate regulations. To prevent cable operators from imposing large rate increases in anticipation of a change in status, the *Report and Order* requires cable operators to demonstrate that their rates were in effect for three months prior to the loss of small cable status.

- *Uniform Rate Requirement:* Under the statute, unless a cable operator is subject to effective competition, its rates must be uniform throughout the franchise area. The statute provides a limited exception for bulk discounts to multiple dwelling units ("MDUs") so that cable operators can respond to competition in individual MDUs by offering lower prices. The *Report and Order* concludes that a bulk discount is a volume discount available to all residents of the MDU. The operator can offer the discount directly to residents;

negotiation about the rate with the MDU owner or manager is not required.

- *Technical Standards:* The 1996 Act retains the requirement that the Commission establish minimum technical standards for cable systems' technical operation and signal quality and adds that no state or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology. The *Report and Order* concludes that LFA oversight and enforcement of the Commission's technical standards is permitted but that LFAs cannot impose technical standards different from the Commission's technical standards. The *Report and Order* also finds that transmission technology includes, for example, an operator's use of digital or analog transmissions and its use of coaxial cable, fiber optic cable, or microwave facilities. The *Report and Order* also acknowledges the LFA's important role in determining local needs and access channel requirements, requiring institutional networks, reviewing an operator's qualifications, and managing public rights of way.

- *Subscriber Notice:* The 1996 Act provides that a cable operator may provide notice of service and rate changes using any reasonable written means at its sole discretion. The item concludes that Congress intended to limit the Commission's discretion in this area but did not completely eliminate the role of regulatory authorities. LFAs and the Commission retain the authority to determine that a particular mechanism is not reasonable.

Ordering Clauses

3. *Accordingly*, It is ordered that, pursuant to sections 4(i), 4(j), 303(r), as amended, 47 U.S.C. 154(i), 154(j), 303(r), and the Telecommunications Act of 1996, sections 301 and 302, the requirements and policies discussed in this *Report and Order*, *Are amended* as set forth below.

It is further ordered that the requirements and regulations established in this decision shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than 60 days after publication in the **Federal Register**.

5. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *Shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subject in 47 CFR Part 76

Cable Television.

Federal Communications Commission.

Shirley Suggs,*Chief, Publication Branch.***Rule Changes**

For the reasons discussed in the preamble, The Federal Communications Commission amends 47 CFR Part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.701 is amended by adding a new note to paragraph (b) to read as follows:

§ 76.701 Leased access channels.

* * * * *

Note to paragraph (b): "Nudity" in paragraph (b) is interpreted to mean nudity that is obscene or indecent.

3. Section 76.901 is amended by adding a new paragraph (f) to read as follows:

§ 76.901 Definitions.

* * * * *

(f) *Small cable operator.* A small cable operator is an operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000. For purposes of this definition, an operator shall be deemed affiliated with another entity if that entity holds a 20 percent or greater equity interest (not including truly passive investment) in the operator or exercises de jure or de facto control over the operator.

Note 1 to paragraph (f): Using the most reliable sources publicly available, the Commission periodically will determine and give public notice of the subscriber count that will serve as the 1 percent threshold until a new number is calculated.

Note 2 to paragraph (f): For a discussion of passive interests with respect to small cable operators, see Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96-85, FCC 99-57 (released March 29, 1999).

Note 3 to paragraph (f): If two or more entities unaffiliated with each other each hold an equity interest in the small cable operator, the equity interests of the unaffiliated entities will not be aggregated

with each other for the purpose of determining whether an entity meets or passes the 20 percent affiliation threshold.

4. Section 76.905 is amended by revising paragraph (g) to read as follows:

§ 76.905 Standards for identification of cable systems subject to effective competition.

* * * * *

(g) In order to offer comparable programming as that term is used in this section, a competing multichannel video programming distributor must offer at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.

5. Section 76.907 is added to read as follows:

§ 76.907 Petition for a determination of effective competition.

(a) A cable operator (or other interested party) may file a petition for a determination of effective competition with the Commission pursuant to the Commission's procedural rules in § 76.7.

(b) The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition, as defined in § 76.905, exists in the franchise area.

Note to paragraph (b): The criteria for determining effective competition pursuant to § 76.905(b)(4) are described in Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96-85, FCC 99-57 (released March 29, 1999).

(c) If the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days. Such responses may be limited to numerical totals. In addition, with respect to petitions filed seeking to demonstrate the presence of effective competition pursuant to § 76.905(b)(4), the Commission may issue an order directing one or more persons to produce information relevant to the petition's disposition.

6. Section 76.911 is amended by removing paragraph (b); redesignating paragraphs (c) through (e) as paragraphs (b) through (d); and by revising paragraphs (a) and (a)(1) to read as follows:

§ 76.911 Petition for reconsideration of certification.

(a) A cable operator (or other interested party) may challenge a

franchising authority's certification by filing a petition for reconsideration pursuant to § 1.106. The petition may allege either of the following:

(1) The cable operator is not subject to rate regulation because effective competition exists as defined in § 76.905. Sections 76.907(b) and (c) apply to petitions filed under this section.

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§ 76.915 [Removed]

7. Section 76.915 is removed.

8. Add a note to § 76.934 to read as follows:

§ 76.934 Small systems and small cable companies

* * * * *

Note to § 76.934: For rules governing small cable operators, see § 76.990 of this subpart.

9. Section 76.950 is amended by revising paragraph (b) to read as follows.

§ 76.950 Complaints regarding cable programming service rates.

* * * * *

(b) This section shall not apply to cable programming services provided after March 31, 1999.

10. Section 76.952 is amended by revising paragraph (a) to read as follows:

§ 76.952 Information to be provided by cable operator on monthly subscriber bills.

(a) The name, mailing address and phone number of the franchising authority, unless the franchising authority in writing requests the cable operator to omit such information.

* * * * *

11. Section 76.956 is amended by revising paragraph (a) to read as follows:

§ 76.956 Cable operator response.

(a) Unless otherwise directed by the local franchising authority, a cable operator must file with the local franchise authority a response to the complaint. The response shall indicate when the cable operator received notice of the complaint. Service by mail is complete upon mailing. See § 1.47(f) of this chapter. The response shall include the information required by the appropriate FCC form, including rate cards, channel line-ups, and an explanation of any discrepancy in the figures provided in these documents and the rate filing. The cable operator must file its response with the local franchise authority via first class mail.

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12. Section 76.961 is amended by revising paragraph (b) to read as follows:

§ 76.961 Refunds.

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(b) The cumulative refund due subscribers shall be calculated from the date of the first complaint filed with the franchising authority until the date a cable operator implements a prospective rate reduction as ordered by the Commission pursuant to § 76.960. The Commission shall calculate refund liability according to the rules in effect for determining the reasonableness of the rates for the period of time covered by the complaint.

* * * * *

13. Section 76.984 is amended by removing the last sentence of paragraph (b); revising paragraph (c)(2), adding paragraph (c)(3) and adding notes 1 and 2 to paragraph (c)(3) to read as follows:

§ 76.984 Geographically uniform rate structure.

* * * * *

(c)(2) Any video programming offered on a per channel or per program basis.

(c)(3) Bulk discounts to multiple dwelling units shall not be subject to this section, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

Note 1 to paragraph (c)(3): Discovery procedures for predatory pricing complaints. Requests for discovery will be addressed pursuant to the procedures specified in § 76.7(f).

Note 2 to paragraph (c)(3): Confidential information. Parties submitting material believed to be exempt from disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552(b), and the Commission's rules, § 0.457 of this chapter, should follow the procedures in § 0.459 of this chapter and § 76.9.

14. Section 76.990 is added to read as follows:

§ 76.990 Small cable operators.

(a) Effective February 8, 1996, a small cable operator is exempt from rate regulation on its cable programming services tier, or on its basic service tier if that tier was the only service tier subject to rate regulation as of December 31, 1994, in any franchise area in which

that operator services 50,000 or fewer subscribers.

(b) *Procedures.* (1) A small cable operator, may certify in writing to its franchise authority at any time that it meets all criteria necessary to qualify as a small operator. Upon request of the local franchising authority, the operator shall identify in writing all of its affiliates that provide cable service, the total subscriber base of itself and each affiliate, and the aggregate gross revenues of its cable and non-cable affiliates. Within 90 days of receiving the original certification, the local franchising authority shall determine whether the operator qualifies for deregulation and shall notify the operator in writing of its decision, although this 90-day period shall be tolled for so long as it takes the operator to respond to a proper request for information by the local franchising authority. An operator may appeal to the Commission a local franchise authority's information request if the operator seeks to challenge the information request as unduly or unreasonably burdensome. If the local franchising authority finds that the operator does not qualify for deregulation, its notice shall state the grounds for that decision. The operator may appeal the local franchising authority's decision to the Commission within 30 days.

(2) Once the operator has certified its eligibility for deregulation on the basic service tier, the local franchising authority shall not prohibit the operator from taking a rate increase and shall not order the operator to make any refunds unless and until the local franchising authority has rejected the certification in a final order that is no longer subject to appeal or that the Commission has affirmed. The operator shall be liable for refunds for revenues gained (beyond revenues that could be gained under regulation) as a result of any rate increase taken during the period in which it claimed to be deregulated, plus interest, in the event the operator is later found not to be deregulated. The one-year limitation on refund liability will not be applicable during that period to ensure that the filing of an invalid small operator certification does not reduce any refund liability that the operator would otherwise incur.

(3) Within 30 days of being served with a local franchising authority's notice that the local franchising authority intends to file a cable programming services tier rate complaint, an operator may certify to the local franchising authority that it meets the criteria for qualification as a small cable operator. This certification shall be filed in accordance with the cable programming services rate complaint procedure set forth in § 76.1402. Absent a cable programming services rate complaint, the operator may request a declaration of CPST rate deregulation from the Commission pursuant to § 76.7.

(c) *Transition from small cable operator status.* If a small cable operator subsequently becomes ineligible for small operator status, the operator will become subject to regulation but may maintain the rates it charged prior to losing small cable operator status if such rates (with an allowance for minor variations) were in effect for the three months preceding the loss of small cable operator status. Subsequent rate increases following the loss of small cable operator status will be subject to generally applicable regulations governing rate increases.

Note to § 76.990: For rules governing small cable systems and small cable companies, see § 76.934.

15. Section 76.1401 is amended by removing paragraphs (a), (c), and (d) and by removing the designation from paragraph (b).

§ 76.1403 [Removed]

16. Section 76.1403 is removed.

17. Section 76.1603 is amended by revising paragraph (e) to read as follows:

§ 76.1603 Written notification of changes in rates and services.

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

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