

(2) Must-carry/retransmission consent election notifications shall be sent to the open video system operator. An open video system operator shall make all must-carry/retransmission consent election notifications received available to the appropriate programming providers on its system.

(3) Television broadcast stations are required to make the same election for open video systems and cable systems serving the same geographic area, unless the overlapping open video system is unable to deliver appropriate signals in conformance with the broadcast station's elections for all cable systems serving the same geographic area.

(4) An open video system commencing new operations shall notify all local commercial and noncommercial broadcast stations as required under paragraph (1) of this section on or before the date on which it files with the Commission its Notice of Intent to establish an open video system.

(m) *Sports broadcast.* Section 76.67 shall apply to open video systems in accordance with the provisions contained in this paragraph.

(1) Any provisions of § 76.67 that refers to a "community unit" shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

(2) Notification of programming to be deleted pursuant to this section shall be served on the open video system operator. The open video system operator shall make all notifications immediately available to the appropriate video programming providers on its open video system. Operators may effect the deletion of signals for which they have received deletion notices unless they receive notice within a reasonable time from the appropriate programming provider that the rights claimed are invalid. The open video system operator shall not delete signals for which it has received notice from the programming provider that the rights claimed are invalid. An open video system operator shall be subject to sanctions for any violation of this

subpart. An open video system operator may require indemnification as a condition of carriage for any sanctions it may incur in reliance on a programmer's claim that certain exclusive or non-duplication rights are invalid.

(n) *Exemption from input selector switch rules.* Any provision of § 76.70 that refers to a "cable system" or "cable systems" shall apply to an open video system or open video systems.

(o) *Special relief and must-carry complaint procedures.* The procedures set forth in § 76.7 shall apply to special relief and must-carry complaints relating to open video systems, and not the procedures set forth in § 76.1514 (Dispute resolution). Any provision of § 76.7 that refers to a "cable television system operator" or "cable operator" shall apply to an open video system operator. Any provision of § 76.7 that refers to a "cable television system" shall apply to an open video system. Any provision of § 76.7 that refers to a "system community unit" shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

[61 FR 28708, June 5, 1996, as amended at 61 FR 43177, Aug. 21, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43177, Aug. 21, 1996, in § 76.1506, paragraphs (d), (l)(3), and (m)(2) were revised. These paragraphs contain information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

#### **§ 76.1507 Competitive access to satellite cable programming.**

(a) Any provision that applies to a cable operator under §§ 76.1000 through 76.1003 shall also apply to an operator of an open video system and its affiliate which provides video programming on its open video system, except as limited by paragraph (a) (1)–(3) of this section. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall also apply to any satellite cable programming vendor in which an open video

system operator has an attributable interest, except as limited by paragraph (a) (1)–(3) of this section.

(1) Section 76.1002(c)(1) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator or its affiliate that provides video programming on its open video system shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which an open video system operator has an attributable interest, or any satellite broadcasting vendor in which an open video system operator has an attributable interest for distribution to person in areas not served by a cable operator as of October 5, 1992.

(2) Section 76.1002(c)(2) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator or its affiliate that provides video programming on its open video system shall enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor, unless the Commission determines in accordance with § 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest.

(3) Section 76.1002(c)(3) (i) through (ii) shall only restrict the conduct of an open video system operator, its affil-

iate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows:

(i) *Unserved areas.* No open video system operator shall enter into any sub-distribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in which an open video system operator has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992.

(ii) *Served areas.* No open video system operator shall enter into any sub-distribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in which an open video system operator has an attributable interest, with respect to areas served by a cable operator, unless such agreement or arrangement complies with the limitations set forth in § 76.1002(c)(3)(iii).

(b) No open video system programming provider in which a cable operator has an attributable interest shall:

(1) Engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest, or any satellite broadcasting vendor in which a cable operator has an attributable interest for distribution to person in areas not served by a cable operator as of October 5, 1992.

(2) Enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable

programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor, unless the Commission determines in accordance with Section 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest.

**§ 76.1508 Network non-duplication.**

(a) Sections 76.92 through 76.97 shall apply to open video systems in accordance with the provisions contained in this section.

(b) Any provision of § 76.92 that refers to a “cable community unit” or “community unit” shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). Any provision of § 76.92 that refers to a “cable television community” shall apply to an open video system community. Any provision of § 76.92 that refers to a “cable television system’s mandatory signal carriage obligations” shall apply to an open video system’s mandatory signal carriage obligations.

(c) Any provision of § 76.94 that refers to a “cable system operator” or “cable television system operator” shall apply to an open video system operator. Any provision of § 76.94 that refers to a “cable system” or “cable television system” shall apply to an open video system except § 76.94 (e) and (f) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding the exercise of network non-duplication rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

(d) Any provision of § 76.95 that refers to a “cable system” or a “cable community unit” shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

**§ 76.1509 Syndicated program exclusivity.**

(a) Sections 76.151 through 76.163 shall apply to open video systems in accordance with the provisions contained in this section.

(b) Any provision of § 76.151 that refers to a “cable community unit” shall apply to an open video system.

(c) Any provision of § 76.155 that refers to a “cable system operator” or “cable television system operator” shall apply to an open video system operator. Any provision of § 76.155 that refers to a “cable system” or “cable television system” shall apply to an open video system except § 76.155(c) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding exercise of syndicated program exclusivity rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

(d) Any provision of § 76.156 that refers to a “cable community” shall apply to an open video system community. Any provision of § 76.156 that refers to a “cable community unit” or “community unit” shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). Any provision of §§ 76.156