

individual program is generally uninterrupted by commercial advertising messages and for which service or schedule of programs subscribing viewers are charged a periodic subscription fee, such as on a monthly basis, for the reception of such programming delivered by such service whether separately or together with other services or programming, during the specified viewing period covered by such fee. If a given delivery qualifies both as a pay television transmission and pay-per-view, video-on-demand, or subscription-on-demand then, for purposes of this subpart, such delivery shall be deemed pay-per-view, video-on-demand or subscription-on-demand rather than a pay television transmission.

(p) *Program* shall mean any work of commercial audiovisual content.

(q) *Subscription-on-demand* shall mean the delivery of a single program or a specified group of programs for which:

(1) A subscriber is able, at his or her discretion, to select the time for commencement of exhibition thereof,

(2) Where each such single program is generally uninterrupted by commercial advertising messages; and

(3) For which program or specified group of programs subscribing viewers are charged a periodic subscription fee for the reception of programming delivered by such service during the specified viewing period covered by the fee. In the event a given delivery of a program qualifies both as a pay television transmission and subscription-on-demand, then for purposes of this subpart, such delivery shall be deemed subscription-on-demand rather than a pay television transmission.

(r) *Undefined business model* shall mean a business model that does not fall within the definition of a defined business model.

(s) *Unencrypted broadcast television* means the retransmission by a covered entity of any service, program, or schedule or group of programs originally broadcast in the clear without use of a commercially-adopted access control method by a terrestrial television broadcast station regardless of whether such covered entity employs an access control method as a part of its retransmission.

(t) *Video-on-demand* shall mean a delivery of a single program or a specified group of programs for which:

(1) Each such individual program is generally uninterrupted by commercial advertising messages;

(2) Recipients are charged a separate fee for each such single program or specified group of programs; and

(3) A recipient is able, at his or her discretion, to select the time for commencement of exhibition of such individual program or specified group of programs. In the event a delivery qualifies as both video-on-demand and a pay television transmission, then for purposes of this subpart, such delivery shall be deemed video-on-demand.

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§ 76.1903 Interfaces.

A covered entity shall not attach or embed data or information with commercial audiovisual content, or otherwise apply to, associate with, or allow such data to persist in or remain associated with such content, so as to prevent its output through any analog or digital output authorized or permitted under license, law or regulation governing such covered product.

§ 76.1904 Encoding rules for defined business models.

(a) Commercial audiovisual content delivered as unencrypted broadcast television shall not be encoded so as to prevent or limit copying thereof by covered products or, to constrain the resolution of the image when output from a covered product.

(b) Except for a specific determination made by the Commission pursuant to a petition with respect to a defined business model other than unencrypted broadcast television, or an undefined business model subject to the procedures set forth in § 76.1906:

(1) Commercial audiovisual content shall not be encoded so as to prevent or limit copying thereof except as follows:

(i) To prevent or limit copying of video-on-demand or pay-per-view transmissions, subject to the requirements of paragraph (b)(2) of this section; and

(ii) To prevent or limit copying, other than first generation of copies, of

pay television transmissions, non-premium subscription television, and free conditional access delivery transmissions; and

(2) With respect to any commercial audiovisual content delivered or transmitted in form of a video-on-demand or pay-per-view transmission, a covered entity shall not encode such content so as to prevent a covered product, without further authorization, from pausing such content up to 90 minutes from initial transmission by the covered entity (e.g., frame-by-frame, minute-by-minute, megabyte by megabyte).

§ 76.1905 Petitions to modify encoding rules for new services within defined business models.

(a) The encoding rules for defined business models in § 76.1904 reflect the conventional methods for packaging programs in the MVPD market as of December 31, 2002, and are presumed to be the appropriate rules for defined business models. A covered entity may petition the Commission for approval to allow within a defined business model, other than unencrypted broadcast television, the encoding of a new service in a manner different from the encoding rules set forth in § 76.1904(b)(1) and (2). No such petition will be approved under the public interest test set forth in paragraph (c)(4) of this section unless the new service differs from existing services provided by any covered entity under the applicable defined business model prior to December 31, 2002.

(b) *Petitions.* A petition to encode a new service within a defined business model other than as permitted by the encoding rules set forth in § 76.1904(b)(1) and (2) shall describe:

(1) The defined business model, the new service, and the proposed encoding terms, including the use of copy never and copy one generation encoding, and the encoding of content with respect to "pause" set forth in § 76.1904(b)(2).

(2) Whether the claimed benefit to consumers of the new service, including, but not limited to, the availability of content in earlier release windows, more favorable terms, innovation or original programming, outweighs the limitation on the consumers' control over the new service;

(3) The ways in which the new service differs from existing services offered by any covered entity within the applicable defined business model prior to December 31, 2002;

(4) All other pertinent facts and considerations relied on to support a determination that grant of the petition would serve the public interest.

(5) Factual allegations shall be supported by affidavit or declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(c) *Petition process*—(1) *Public notice.* The Commission shall give public notice of any such petition.

(2) *Comments.* Interested persons may submit comments or oppositions to the petition within thirty (30) days after the date of public notice of the filing of such petition. Comments or oppositions shall be served on the petitioner and on all persons listed in petitioner's certificate of service, and shall contain a detailed full statement of any facts or considerations relied on. Factual allegations shall be supported by affidavit or declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(3) *Replies.* The petitioner may file a reply to the comments or oppositions within ten (10) days after their submission, which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit or declaration, of any additional facts or considerations relied on. There shall be no further pleadings filed after petitioner's reply, unless authorized by the Commission.

(4) *Commission determination as to encoding rules for a new service within a defined business model.* (i) Proceedings initiated by petitions pursuant to this section shall be permit-but-disclose proceedings, unless otherwise specified by the Commission. The covered entity shall have the burden of proof to establish that the proposed change in encoding rules for a new service is in the public interest. In making its determination, the Commission shall take into account the following factors: