

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:

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

(B) 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; and

(ii) The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate.

(iii) A petition may, upon request of the petitioner, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the petition. A petitioner's request for the return of a petition will be regarded as a request for dismissal.

(d) *Complaint regarding a new service not subject to petition.* In an instance in which an interested party has a substantial basis to believe and does believe in good faith that a new service within a defined business model has been launched without a petition as required by this section, such party may file a complaint pursuant to § 76.7.

**§ 76.1906 Encoding rules for undefined business models.**

(a) Upon public notice and subject to requirements as set forth herein, a covered entity may launch a program service pursuant to an undefined business model. Subject to Commission review upon complaint, the covered entity may initially encode programs pursuant to such undefined business model without regard to limitations set forth in § 76.1904(b).

(1) *Notice.* Concurrent with the launch of an undefined business model by a covered entity, the covered entity shall issue a press release to the PR Newswire so as to provide public notice of the undefined business model, and the proposed encoding terms. The notice shall provide a concise summary of the commercial audiovisual content to be provided pursuant to the undefined business model, and of the terms on

which such content is to be available to consumers. Immediately upon request from a party entitled to be a complainant, the covered entity shall make available information that indicates the proposed encoding terms, including the use of copy never or copy one generation encoding, and the encoding of content with respect to "pause" as defined in § 76.1904(b)(2).

(2) *Complaint process.* Any interested party ("complainant") may file a complaint with the Commission objecting to application of encoding as set forth in the notice.

(i) *Pre-complaint resolution.* Prior to initiating a complaint with the Commission under this section, the complainant shall notify the covered entity that it may file a complaint under this section. The notice must be sufficiently detailed so that the covered entity can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of thirty (30) days from such notice before filing such complaint with the Commission. During this period the parties shall endeavor in good faith to resolve the issue(s) in dispute. If the parties fail to reach agreement within this 30 day period, complainant may initiate a complaint in accordance with the procedures set forth herein.

(ii) *Complaint.* Within two years of publication of a notice under paragraph (a)(1) of this section, a complainant may file a complaint with the Commission objecting to application of the encoding terms to the service at issue. Such complaint shall state with particularity the basis for objection to the encoding terms.

(A) The complaint shall contain the name and address of the complainant and the name and address of the covered entity.

(B) The complaint shall be accompanied by a certification of service on the named covered entity.

(C) The complaint shall set forth with specificity all information and arguments relied upon. Specific factual allegations shall be supported by a declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.