

§ 76.955

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mail of the dismissal. The filing of a complaint on the applicable form, but which is otherwise defective, will toll the limitation period established by § 76.953.

§ 76.955 Additional opportunity to file corrected complaint.

(a) If the Commission dismisses an initial complaint without prejudice pursuant to § 76.954, the complainant shall have one additional opportunity to cure the defect and file a corrected complaint.

(b) For a complaint filed on the applicable form but is otherwise defective, the complainant must cure the defect and file a corrected complaint with the Commission within 30 days from the date of the Commission's dismissal notice. Failure to cure the defect and file a corrected complaint within this time period will result in dismissal of the complaint with prejudice.

§ 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.

(b) The burden shall be on the cable operator to prove that the service rate or equipment charge in question is not unreasonable. The cable operator may carry its burden in the following manner:

(1) For a service rate at or below the permitted level, by providing information and calculations that demonstrate that the rate in question falls at or below the permitted level;

(2) For a service rate that exceeds the permitted level;

(i) By providing proof that the cable system has reduced the rate for the

cable programming service at issue to a level at or below the permitted level; or

(ii) By providing detailed cost-based information that demonstrates that the rate in question is reasonable despite the fact that it exceeds the permitted level.

(3) For a charge for equipment installation or rental, by providing information that demonstrates that the charge is based on the cable operator's actual cost.

(c) In addition to responding to the merits of a complaint, the cable operator may also move for dismissal of the complaint for failure to meet the minimum showing requirement. Any such motion for dismissal must state with particularity the reasons the cable operator believes the complaint is defective and shall not relieve the cable operator of its obligation to respond to the merits of the complaint.

(d) A cable operator may file a consolidated response to multiple complaints regarding the identical rate or rate increase. A consolidated response must be filed within 30 days from the date of service of the first complaint received, unless the Commission notifies the cable operator to the contrary. A cable operator may amend a consolidated response to address new issues raised by complaints received after the cable operator's initial response.

(e) A cable operator that fails to file and serve a response to a valid complaint may be deemed in default. If the Commission deems a cable operator in default, the Commission may enter an order against the cable operator finding the rate to be unreasonable and mandating appropriate relief.

(f) A cable operator need not respond to any complaint that is:

(1) Not filed on the applicable form; or

(2) That the Commission determined is defective *and* has so notified the cable operator.

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