

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.

[64 FR 35951, July 2, 1999]

## Subpart O—Competitive Access to Cable Programming

### § 76.1000 Definitions.

As used in this subpart:

(a) *Area served by cable system.* The term “area served” by a cable system means an area actually passed by a cable system and which can be connected for a standard connection fee.

(b) *Cognizable interests.* In applying the provisions of this subpart, ownership and other interests in cable operators, satellite cable programming vendors, satellite broadcast programming vendors, or terrestrial cable programming vendors will be attributed to their holders and may subject the interest holders to the rules of this subpart. Cognizable and attributable interests shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(c) *Buying groups.* The term “buying group” or “agent,” for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, satellite broadcast programming, or terrestrial cable programming contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(d) *Competing distributors.* The term “competing,” as used with respect to

competing multichannel video programming distributors, means distributors whose actual or proposed service areas overlap.

(e) *Multichannel video programming distributor.* The term “multichannel video programming distributor” means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

NOTE TO PARAGRAPH (e): A video programming provider that provides more than one channel of video programming on an open video system is a multichannel video programming distributor for purposes of this subpart O and Section 76.1507.

(f) *Satellite broadcast programming.* The term “satellite broadcast programming” means broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.

(g) *Satellite broadcast programming vendor.* The term “satellite broadcast programming vendor” means a fixed service satellite carrier that provides service pursuant to section 119 of title 17, United States Code, with respect to satellite broadcast programming.

(h) *Satellite cable programming.* The term “satellite cable programming” means video programming which is transmitted via satellite and which is primarily intended for direct receipt by cable operators for their retransmission to cable subscribers, except that such term does not include satellite broadcast programming.

NOTE TO PARAGRAPH (h): Satellite programming which is primarily intended for the direct receipt by open video system operators for their retransmission to open video system subscribers shall be included within the definition of satellite cable programming.

(i) *Satellite cable programming vendor.* The term “satellite cable programming

vendor” means a person engaged in the production, creation, or wholesale distribution for sale of satellite cable programming, but does not include a satellite broadcast programming vendor.

(j) *Similarly situated.* The term “similarly situated” means, for the purposes of evaluating alternative programming contracts offered by a defendant programming vendor or by a terrestrial cable programming vendor alleged to have engaged in conduct described in § 76.1001(b)(1)(ii), that an alternative multichannel video programming distributor has been identified by the defendant as being more properly compared to the complainant in order to determine whether a violation of § 76.1001(a) or § 76.1002(b) has occurred. The analysis of whether an alternative multichannel video programming distributor is properly comparable to the complainant includes consideration of, but is not limited to, such factors as whether the alternative multichannel video programming distributor operates within a geographic region proximate to the complainant, has roughly the same number of subscribers as the complainant, and purchases a similar service as the complainant. Such alternative multichannel video programming distributor, however, must use the same distribution technology as the “competing” distributor with whom the complainant seeks to compare itself.

(k) *Subdistribution agreement.* The term “subdistribution agreement” means an arrangement by which a local cable operator is given the right by a satellite cable programming vendor or satellite broadcast programming vendor to distribute the vendor’s programming to competing multichannel video programming distributors.

(l) *Terrestrial cable programming.* The term “terrestrial cable programming” means video programming which is transmitted terrestrially or by any means other than satellite and which is primarily intended for direct receipt by cable operators for their retransmission to cable subscribers, except that such term does not include satellite broadcast programming or satellite cable programming.

(m) *Terrestrial cable programming vendor.* The term “terrestrial cable programming vendor” means a person engaged in the production, creation, or wholesale distribution for sale of terrestrial cable programming, but does not include a satellite broadcast programming vendor or a satellite cable programming vendor.

[58 FR 27670, May 11, 1993, as amended at 61 FR 28708, June 5, 1996; 64 FR 67197, Dec. 1, 1999; 69 FR 72046, Dec. 10, 2004; 75 FR 9723, Mar. 3, 2010]

**§ 76.1001 Unfair practices generally.**

(a) *Unfair practices generally.* No cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor shall engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

(b) *Unfair practices involving terrestrial cable programming and terrestrial cable programming vendors.* (1) The phrase “unfair methods of competition or unfair or deceptive acts or practices” as used in paragraph (a) of this section includes, but is not limited to, the following:

(i) Any effort or action by a cable operator that has an attributable interest in a terrestrial cable programming vendor to unduly or improperly influence the decision of such vendor to sell, or unduly or improperly influence such vendor’s prices, terms, and conditions for the sale of, terrestrial cable programming to any unaffiliated multichannel video programming distributor.

(ii) Discrimination in the prices, terms, or conditions of sale or delivery of terrestrial cable programming among or between competing cable systems, competing cable operators, or any competing multichannel video programming distributors, or their agents or buying groups, by a terrestrial cable programming vendor that is wholly owned by, controlled by, or under common control with a cable operator or

cable operators, satellite cable programming vendor or vendors in which a cable operator has an attributable interest, or satellite broadcast programming vendor or vendors; except that the phrase does not include the practices set forth in § 76.1002(b)(1) through (3). The cable operator or cable operators, satellite cable programming vendor or vendors in which a cable operator has an attributable interest, or satellite broadcast programming vendor or vendors that wholly own or control, or are under common control with, such terrestrial cable programming vendor shall be deemed responsible for such discrimination and any complaint based on such discrimination shall be filed against such cable operator, satellite cable programming vendor, or satellite broadcast programming vendor.

(iii) Exclusive contracts, or any practice, activity, or arrangement tantamount to an exclusive contract, for terrestrial cable programming between a cable operator and a terrestrial cable programming vendor in which a cable operator has an attributable interest.

(2) Any multichannel video programming distributor aggrieved by conduct described in paragraph (b)(1) of this section that it believes constitutes a violation of paragraph (a) of this section may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7, as modified by § 76.1003, with the following additions or changes:

(i) The defendant shall answer the complaint within forty-five (45) days of service of the complaint, unless otherwise directed by the Commission.

(ii) The complainant shall have the burden of proof that the defendant’s alleged conduct described in paragraph (b)(1) of this section has the purpose or effect of hindering significantly or preventing the complainant from providing satellite cable programming or satellite broadcast programming to subscribers or consumers. An answer to such a complaint shall set forth the defendant’s reasons to support a finding