

Federal Communications Commission

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that the cable operator is subject to effective competition pursuant to section 76.905(b)(2). Unless a franchising authority has actual knowledge to the contrary, the franchising authority may rely on the presumption in § 76.906 that the cable operator is not subject to effective competition pursuant to section 76.905(b)(1), (3), or (4). The franchising authority bears the burden of submitting evidence rebutting the presumption that competing provider effective competition, as defined in § 76.905(b)(2), exists in the franchise area. If the evidence establishing the lack of effective competition is not otherwise available, franchising authorities may request from a multichannel video programming distributor information regarding the multichannel video programming distributor's reach and number of subscribers. A multichannel video programming distributor must respond to such request within 15 days. Such responses may be limited to numerical totals.

(c) The written certification described in paragraph (b) of this section shall be made by filing the FCC form designated for that purpose. The form must be filed by

(1) Registered mail, return receipt requested, or

(2) Hand-delivery to the Commission and a date-stamped copy obtained. The date on the return receipt or on the date-stamped copy is the date filed.

(d) A copy of the certification form described in paragraph (c) of this section must be served on the cable operator before or on the same day it is filed with the Commission.

(e) Unless the Commission notifies the franchising authority otherwise, the certification will become effective 30 days after the date filed, *provided, however*, That the franchising authority may not regulate the rates of a cable system unless it:

(1) Adopts regulations:

(i) Consistent with the Commission's regulations governing the basic tier; and

(ii) Providing a reasonable opportunity for consideration of the views of interested parties, within 120 days of the effective date of certification; and

(2) Notifies the cable operator that the authority has been certified and

has adopted the regulations required by paragraph (e)(1) of this section.

(f) If the Commission denies a franchising authority's certification, the Commission will notify the franchising authority of any revisions or modifications necessary to obtain approval.

[58 FR 29753, May 21, 1993, as amended at 80 FR 38013, July 2, 2015]

§ 76.911 Petition for reconsideration of certification.

(a) A cable operator (or other interested party) may challenge a franchising authority's certification by filing a petition for reconsideration pursuant to § 1.106. The petition may allege either of the following:

(1) The cable operator is not subject to rate regulation because effective competition exists as defined in § 76.905. Sections 76.907(b) and (c) apply to petitions filed under this section.

(2) The franchising authority does not meet the certification standards set forth in 47 U.S.C. 543(a)(3).

(b) Stay of rate regulation. (1) The filing of a petition for reconsideration pursuant to paragraph (a)(1) of this section will automatically stay the imposition of rate regulation pending the outcome of the reconsideration proceeding.

(2) A petitioner filing pursuant to paragraph (a)(2) of this section may request a stay of rate regulation.

(3) In any case in which a stay of rate regulation has been granted, if the petition for reconsideration is denied, the cable operator may be required to refund any rates or portion of rates above the permitted tier charge or permitted equipment charge which were collected from the date the operator implements a prospective rate reduction back in time to September 1, 1993, or one year, whichever is shorter.

(c) The filing of a petition for reconsideration alleging the presence of effective competition based on frivolous grounds is prohibited, and may be subject to forfeitures.

(d) If the Commission upholds a challenge to a certification filed pursuant to paragraph (a)(2) of this section, the Commission will notify the franchising authority of the revisions necessary to secure approval and provide the authority an opportunity to amend its

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certification however necessary to secure approval. *Provided, however,* That pending approval of certification, the Commission will assume jurisdiction over basic cable service rates in that franchise area.

[58 FR 29753, May 21, 1993, as amended at 58 FR 46735, Sept. 2, 1993; 64 FR 35950, July 2, 1999]

§ 76.912 Joint certification.

(a) Franchising authorities may apply for joint certification and may engage in joint regulation, including, but not limited to, joint hearings, data collection, and ratemaking. Franchising authorities jointly certified to regulate their cable system(s) may make independent rate decisions.

(b) Franchising authorities may apply for joint certification regardless of whether the authorities are served by the same cable system or by different cable systems and regardless of whether the rates in each franchising area are uniform.

§ 76.913 Assumption of jurisdiction by the Commission.

(a) Upon denial or revocation of the franchising authority's certification, the Commission will regulate rates for cable services and associated equipment of a cable system not subject to effective competition, as defined in § 76.905, in a franchise area. Such regulation by the Commission will continue until the franchising authority has obtained certification or recertification.

(b) A franchising authority unable to meet certification standards may petition the Commission to regulate the rates for basic cable service and associated equipment of its franchisee when:

(1) The franchising authority lacks the resources to administer rate regulation.

(2) The franchising authority lacks the legal authority to regulate basic service rates; *Provided, however,* That the authority must submit with its request a statement detailing the nature of the legal infirmity.

(c) The Commission will regulate basic service rates pursuant to this Section until the franchising authority

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qualifies to exercise jurisdiction pursuant to § 76.916.

[58 FR 29753, May 21, 1993, as amended at 62 FR 6495, Feb. 12, 1997]

§ 76.914 Revocation of certification.

(a) A franchising authority's certification shall be revoked if:

(1) After the franchising authority has been given a reasonable opportunity to comment and cure any minor nonconformance, it is determined that state and local laws and regulations are in substantial and material conflict with the Commission's regulations governing cable rates.

(2) After being given an opportunity to cure the defect, a franchising authority fails to fulfill one of the three conditions for certification, set forth in 47 U.S.C. 543(a)(3), or any of the provisions of § 76.910(b).

(b) In all cases of revocation, the Commission will assume jurisdiction over basic service rates until an authority becomes recertified. The Commission will also notify the franchising authority regarding the corrective action that may be taken.

(c) A cable operator may file a petition for special relief pursuant to § 76.7 of this part seeking revocation of a franchising authority's certification.

(d) While a petition for revocation is pending, and absent grant of a stay, the franchising authority may continue to regulate the basic service rates of its franchisees.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17972, Apr. 15, 1994; 64 FR 6572, Feb. 10, 1999]

§ 76.916 Petition for recertification.

(a) After its request for certification has been denied or its existing certification has been revoked, a franchising authority wishing to assume jurisdiction to regulate basic service and associated equipment rates must file a "Petition for Recertification" accompanied by a copy of the earlier decision denying or revoking certification.

(b) The petition must:

(1) Meet the requirements set forth in 47 U.S.C. 543(a)(3);

(2) State that the cable system is not subject to effective competition; and

(3) Contain a clear showing, supported by either objectively verifiable