

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 sec-

tion 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 that the complainant has not carried this burden.

(iii) A complainant alleging that a terrestrial cable programming vendor has engaged in conduct described in paragraph (b)(1)(ii) of this section shall have the burden of proof that the terrestrial cable programming vendor 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. An answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden.

[75 FR 9723, Mar. 3, 2010]

§ 76.1002 Specific unfair practices prohibited.

(a) *Undue or improper influence.* No cable operator that has an attributable interest in a satellite cable programming vendor or in a satellite broadcast programming vendor shall 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, satellite cable programming or satellite broadcast programming to any