

duration. In making this determination, the Commission will evaluate whether the proposed joint use of cable facilities promotes competition in both services and facilities, and encourages long-term investment in telecommunications infrastructure.

[65 FR 53617, Sept. 5, 2000]

Subpart S—Open Video Systems

SOURCE: 61 FR 28708, June 5, 1996, unless otherwise noted.

§ 76.1500 Definitions.

(a) *Open video system*. A facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, provided that the Commission has certified that such system complies with this part.

(b) *Open video system operator (operator)*. Any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in such open video system, or otherwise controls or is responsible for the management and operation of such an open video system.

(c) *Video programming provider*. Any person or group of persons who has the right under the copyright laws to select and contract for carriage of specific video programming on an open video system.

(d) *Activated channels*. This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(nn).

(e) *Shared channel*. Any channel that carries video programming that is selected by more than one video programming provider and offered to subscribers.

(f) *Cable service*. This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(ff).

(g) *Affiliated*. For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(h) *Attributable Interest*. The term “attributable interest” 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.

(i) *Other terms*. Unless otherwise expressly stated, words not defined in this part shall be given their meaning as used in Title 47 of the United States Code, as amended, and, if not defined therein, their meaning as used in Part 47 of the Code of Federal Regulations.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43175, Aug. 21, 1996; 64 FR 67197, Dec. 1, 1999]

§ 76.1501 Qualifications to be an open video system operator.

Any person may obtain a certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act, 47 U.S.C. 573(a)(1), except that an operator of a cable system may not obtain such certification within its cable service area unless it is subject to “effective competition” as defined in Section 623(1)(1) of the Communications Act, 47 U.S.C. 543(1)(1). The effective competition requirement of the preceding sentence does not apply to a local exchange carrier that is also a cable operator that seeks open video system certification within its cable service area. A cable operator that is not subject to effective competition within its cable service area may file a petition with the Commission, seeking a finding that particular circumstances exist that make it consistent with the public interest, convenience, and necessity to allow the operator to convert its cable system to an open video system. Nothing herein shall be construed to affect the terms of any franchising agreement or other contractual agreement.

[65 FR 376, Jan. 5, 2000]