

(C) The anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; and

(ii) The local franchising authority approves of such waiver.

(e) For purposes of this section, the term "telephone service area" when used in connection with a common carrier subject in whole or in part to title II of the Communications Act means the area within which such carrier provided telephone exchange service as of January 1, 1993, but if any common carrier after such date transfers its telephone exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier.

(f) For purposes of this section, 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.

(g) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501.

[61 FR 18977, Apr. 30, 1996, as amended at 64 FR 67196, Dec. 1, 1999]

Subpart K—Technical Standards

§ 76.601 Performance tests.

(a) The operator of each cable television system shall be responsible for insuring that each such system is designed, installed, and operated in a manner that fully complies with the provisions of this subpart.

(b) The operator of each cable television system that operates NTSC or similar channels shall conduct performance tests of the analog channels on that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605 and shall be as follows:

(1) For cable television systems with 1,000 or more subscribers but with 12,500 or fewer subscribers, proof-of-per-

formance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (e.g., 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, etc.). In addition, for technically integrated portions of cable systems that are not mechanically continuous (e.g., employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network provided that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(b)(3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise noted, proof-of-performance tests for all other standards in § 76.605(b) shall be made on a minimum of five (5) channels for systems operating a total activated channel capacity of less than 550 MHz, and ten (10) channels for systems operating a total activated channel capacity of 550 MHz or greater. The channels selected for testing must be representative of all the channels within the cable television system.

(i) The operator of each cable television system that operates NTSC or

similar channels shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in § 76.605(b)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(ii) The operator of each cable television system that operates NTSC or similar channels shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(b)(11).

(c) Successful completion of the performance tests required by paragraph (b) of this section does not relieve the system of the obligation to comply with all pertinent technical standards at all subscriber terminals. Additional tests, repeat tests, or tests involving specified subscriber terminals may be required by the Commission or the local franchiser to secure compliance with the technical standards.

(d) The provisions of paragraphs (b) and (c) of this section shall not apply to any cable television system having fewer than 1,000 subscribers: *Provided, however*, that any cable television system using any frequency spectrum other than that allocated to over-the-air television and FM broadcasting (as described in §§ 73.603 and 73.210 of this chapter) is required to conduct all tests, measurements and monitoring of signal leakage that are required by this subpart. A cable television system operator complying with the monitoring, logging and the leakage repair requirements of § 76.614, shall be considered to have met the requirements of this paragraph. However, the leakage log shall be retained for five years rather than the two years prescribed in § 76.1706.

NOTE 1 TO § 76.601: Prior to requiring any additional testing pursuant to § 76.601(c), the local franchising authority shall notify the

cable operator who will be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected. The Commission may request cable operators to test their systems at any time.

NOTE 2 TO § 76.601: Section 76.1717 contains recordkeeping requirements for each system operator in order to show compliance with the technical rules of this subpart.

NOTE 3 TO § 76.601: Section 76.1704 contains recordkeeping requirements for proof of performance tests.

[65 FR 53615, Sept. 5, 2000, as amended at 83 FR 7627, Feb. 22, 2018]

§ 76.602 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the FEDERAL REGISTER. The materials are available for inspection at the Federal Communications Commission, 445 12th St. SW., Reference Information Center, Room CY-A257, Washington, DC 20554 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal-register/code_of_federal_regulations/ibr_locations.html.

(b) The following materials are available from Advanced Television Systems Committee (ATSC), 1776 K Street NW., 8th Floor, Washington, DC 20006; phone: 202-872-9160; or online at <http://www.atsc.org/standards.html>.

(1) ATSC A/65B: "ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B)," March 18, 2003, IBR approved for § 76.640.

(2) ATSC A/85:2013 "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television," (March 12, 2013) ("ATSC A/85 RP"), IBR approved for § 76.607.

(c) The following materials are available from the Consumer Technology Association (formerly the Consumer