

## § 76.606

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the complaint and perform test measurements on § 76.605(b)(10) containing the full number of channels as indicated in § 76.601(b)(2) at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order that the full number of channels as indicated in § 76.601(b)(2) be tested at all required locations for future proof-of-performance tests.

NOTE 5: No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.

[83 FR 7627, Feb. 22, 2018]

### § 76.606 Closed captioning.

(a) The operator of each cable television system shall not take any action to remove or alter closed captioning data contained on line 21 of the vertical blanking interval.

(b) The operator of each cable television system shall deliver intact closed captioning data contained on line 21 of the vertical blanking interval, as it arrives at the headend or from another origination source, to subscriber terminals and (when so delivered to the cable system) in a format that can be recovered and displayed by decoders meeting § 79.101 of this chapter.

[83 FR 7629, Feb. 22, 2018]

### § 76.607 Transmission of commercial advertisements.

(a) *Transmission of commercial advertisements by cable operator or other multichannel video programming distributor.*

(1) *Mandatory compliance with ATSC A/85 RP.* Effective December 13, 2012, cable operators and other multichannel video programming distributors (MVPDs), as defined in 47 U.S.C. 522, must comply with ATSC A/85 RP (incorporated by reference, see § 76.602), insofar as it concerns the transmission of commercial advertisements.

(2) *Commercials inserted by cable operator or other MVPD.* A cable operator or other multichannel video programming distributor that installs, utilizes, and maintains in a commercially reasonable manner the equipment and associated software to comply with ATSC A/85 RP shall be deemed in compliance with respect to locally inserted commercials, which for the purposes of this provision are commercial advertise-

ments added to a programming stream by a cable operator or other MVPD prior to or at the time of transmission to viewers. In order to be considered to have installed, utilized and maintained the equipment and associated software in a commercially reasonable manner, a cable operator or other MVPD must:

(i) Install, maintain and utilize equipment to properly measure the loudness of the content and to ensure that the dialnorm metadata value correctly matches the loudness of the content when encoding the audio into AC-3 for transmitting the content to the consumer;

(ii) Provide records showing the consistent and ongoing use of this equipment in the regular course of business and demonstrating that the equipment has undergone commercially reasonable periodic maintenance and testing to ensure its continued proper operation;

(iii) Certify that it either has no actual knowledge of a violation of the ATSC A/85 RP, or that any violation of which it has become aware has been corrected promptly upon becoming aware of such a violation; and

(iv) Certify that its own transmission equipment is not at fault for any pattern or trend of complaints.

(3) *Embedded commercials—safe harbor.* With respect to embedded commercials, which, for the purposes of this provision, are those commercial advertisements placed into the programming stream by a third party (i.e., programmer) and passed through by the cable operator or other MVPD to viewers, a cable operator or other MVPD must certify that its own transmission equipment is not at fault for any pattern or trend of complaints, and may demonstrate compliance with the ATSC A/85 RP through one of the following methods:

(i) Relying on a network's or other programmer's certification of compliance with the ATSC A/85 RP with respect to commercial programming, provided that:

(A) The certification is widely available by Web site or other means to any television broadcast station, cable operator, or multichannel video programming distributor that transmits that programming; and

(B) The cable operator or other MVPD has no reason to believe that the certification is false; and

(C) The cable operator or other MVPD performs a spot check, as defined in § 76.607(a)(3)(iv)(A), (B), (D), and (E), on the programming in response to an enforcement inquiry concerning a pattern or trend of complaints regarding commercials contained in that programming;

(ii) If transmitting any programming that is not certified as described in § 76.607(a)(3)(i):

(A) A cable operator or other MVPD that had 10,000,000 subscribers or more as of December 31, 2011 must perform annual spot checks, as defined in § 76.607(a)(3)(iv)(A), (B), (C), and (E), of all the non-certified commercial programming it receives from a network or other programmer that is carried by any system operated by the cable operator or other MVPD, and perform a spot check, as defined in § 76.607(a)(3)(iv)(A), (B), (D), and (E), on programming in response to an enforcement inquiry concerning a pattern or trend of complaints regarding commercials contained in that programming; and

(B) A cable operator or other MVPD that had fewer than 10,000,000 but more than 400,000 subscribers as of December 31, 2011, must perform annual spot checks, as defined in § 76.607(a)(3)(iv)(A), (B), (C), and (E), of a randomly chosen 50 percent of the non-certified commercial programming it receives from a network or other programmer that is carried by any system operated by the cable operator or other MVPD, and perform a spot check, as defined in § 76.607(a)(3)(iv)(A), (B), (D), and (E), on programming in response to an enforcement inquiry concerning a pattern or trend of complaints regarding commercials contained in that programming; or

(iii) A cable operator or other MVPD that had fewer than 400,000 subscribers as of December 31, 2011, need not perform annual spot checks but must perform a spot check, as defined in § 76.607(a)(3)(iv)(A), (B), (D), and (E), on programming in response to an enforcement inquiry concerning a pattern or trend of complaints regarding com-

mercials contained in that programming.

(iv) For the purposes of this section, a “spot check” of embedded commercials requires monitoring 24 uninterrupted hours of programming with an audio loudness meter compliant with the ATSC A/85 RP’s measurement technique, and reviewing the records from that monitoring to detect any commercials transmitted in violation of the ATSC A/85 RP. The cable operator or other MVPD must not inform the network or programmer of the spot check prior to performing it.

(A) Spot-checking must be conducted after the signal has passed through the cable operator or other MVPD’s processing equipment (e.g., at the output of a set-top box). If a problem is found, the cable operator or other MVPD must determine the source of the non-compliance.

(B) To be considered valid, the cable operator or other MVPD must demonstrate appropriate maintenance records for the audio loudness meter.

(C) With reference to the annual “safe harbor” spot check in § 76.607(a)(3)(ii):

(1) To be considered valid, the cable operator or other—MVPD must demonstrate, at the time of any enforcement inquiry, that appropriate spot checks had been ongoing.

(2) If there is no single 24 hour period in which all programmers of a given channel are represented, an annual spot check could consist of a series of loudness measurements over the course of a 7 day period, totaling no fewer than 24 hours, that measure at least one program, in its entirety, provided by each non-certified programmer that supplies programming for that channel.

(3) If annual spot checks are performed for two consecutive years without finding evidence of noncompliance with the ATSC A/85 RP, no further annual spot checks are required to remain in the safe harbor for existing programming.

(4) Newly-added (or newly de-certified) non-certified channels must be spot-checked annually using the approach described in this section. If annual spot checks of the channel are performed for two consecutive years

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without finding evidence of noncompliance with the ATSC A/85 RP, no further annual spot checks are required to remain in the safe harbor for that channel.

(5) Even after the two year period, if a spot check shows noncompliance on a non-certified channel, the cable operator or other MVPD must once again perform annual spot checks of that channel to be in the safe harbor for that programming. If these renewed annual spot checks are performed for two consecutive years without finding additional evidence of noncompliance with the ATSC A/85 RP, no further annual spot checks are required to remain in the safe harbor for that channel.

(D) With reference to the spot checks in response to an enforcement inquiry pursuant to § 76.607(a)(3)(i)(C), (ii), or (iii):

(1) If notified of a pattern or trend of complaints, the cable operator or other MVPD must perform the 24-hour spot check of the channel or programming at issue within 30 days or as otherwise specified by the Enforcement Bureau; and

(2) If the spot check reveals actual compliance, the cable operator or other MVPD must notify the Commission in its response to the enforcement inquiry.

(E) If any spot check shows noncompliance with the ATSC A/85 RP, the cable operator or other MVPD must notify the Commission and the network or programmer within 7 days, direct the programmer's attention to any relevant complaints, and must perform a follow-up spot check within 30 days of providing such notice. The cable operator or other MVPD must notify the Commission and the network or programmer of the results of the follow-up spot check. Notice to the Federal Communications Commission must be provided to the Chief, Investigations and Hearings Division, Enforcement Bureau, or as otherwise directed in a Letter of Inquiry to which the cable operator or other MVPD is responding.

(1) If the follow-up spot check shows compliance with the ATSC A/85 RP, the cable operator or other MVPD remains in the safe harbor for that channel or programming.

(2) If the follow-up spot check shows noncompliance with the ATSC A/85 RP, the cable operator or other MVPD will not be in the safe harbor with respect to commercials contained in programming for which the spot check showed noncompliance until a subsequent spot check shows that the programming is in compliance.

(4) *Use of a real-time processor.* A cable operator or other MVPD that installs, maintains and utilizes a real-time processor in a commercially reasonable manner will be deemed in compliance with the ATSC A/85 RP with regard to any commercial advertisements on which it uses such a processor, so long as it also:

(i) Provides records showing the consistent and ongoing use of this equipment in the regular course of business and demonstrating that the equipment has undergone commercially reasonable periodic maintenance and testing to ensure its continued proper operation;

(ii) Certifies that it either has no actual knowledge of a violation of the ATSC A/85 RP, or that any violation of which it has become aware has been corrected promptly upon becoming aware of such a violation; and

(iii) Certifies that its own transmission equipment is not at fault for any pattern or trend of complaints.

(5) *Commercials locally inserted by a cable operator or other MVPD's agent—safe harbor.* With respect to commercials locally inserted, which for the purposes of this provision are commercial advertisements added to a programming stream for the cable operator or other MVPD by a third party after it has been received from the programmer but prior to or at the time of transmission to viewers, a cable operator or other MVPD may demonstrate compliance with the ATSC A/85 RP by relying on the third party local inserter's certification of compliance with the ATSC A/85 RP, provided that:

(i) The cable operator or other MVPD has no reason to believe that the certification is false;

(ii) The cable operator or other MVPD certifies that its own transmission equipment is not at fault for any pattern or trend of complaints; and

(iii) The cable operator or other MVPD performs a spot check, as defined in § 76.607(a)(3)(iv)(A), (B), (D), and (E), on the programming at issue in response to an enforcement inquiry concerning a pattern or trend of complaints regarding commercials inserted by that third party.

(6) Instead of demonstrating compliance pursuant to paragraphs (a)(2) through (5) of this section, a cable operator or other MVPD may demonstrate compliance with paragraph (a)(1) of this section in response to an enforcement inquiry prompted by a pattern or trend of complaints by demonstrating actual compliance with ATSC A/85 RP with regard to the commercial advertisements that are the subject of the inquiry, and certifying that its own transmission equipment is not at fault for any such pattern or trend of complaints.

NOTE TO § 76.607(a): For additional information regarding this requirement, see Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, FCC 11-182.

(b) [Reserved]

[77 FR 40300, July 9, 2012]

#### § 76.609 Measurements.

(a) Measurements made to demonstrate conformity with the performance requirements set forth in §§ 76.601 and 76.605 shall be made under conditions which reflect system performance during normal operations, including the effect of any microwave relay operated in the Cable Television Relay (CARS) Service intervening between pickup antenna and the cable distribution network. Amplifiers shall be operated at normal gains, either by the insertion of appropriate signals or by manual adjustment. Special signals inserted in a cable television channel for measurement purposes should be operated at levels approximating those used for normal operation. Pilot tones, auxiliary or substitute signals, and nontelevision signals normally carried on the cable television system should be operated at normal levels to the extent possible. Some exemplary, but not mandatory, measurement procedures are set forth in this section.

(b) When it may be necessary to remove the television signal normally carried on a cable television channel in order to facilitate a performance measurement, it will be permissible to disconnect the antenna which serves the channel under measurement and to substitute therefor a matching resistance termination. Other antennas and inputs should remain connected and normal signal levels should be maintained on other channels.

(c) As may be necessary to ensure satisfactory service to a subscriber, the Commission may require additional tests to demonstrate system performance or may specify the use of different test procedures.

(d) The frequency response of a cable television channel may be determined by one of the following methods, as appropriate:

(1) By using a swept frequency or a manually variable signal generator at the sending end and a calibrated attenuator and frequency-selective voltmeter at the subscriber terminal; or

(2) By using either a multiburst generator or vertical interval test signals and either a modulator or processor at the sending end, and by using either a demodulator and either an oscilloscope display or a waveform monitor display at the subscriber terminal.

(e) System noise may be measured using a frequency-selective voltmeter (field strength meter) which has been suitably calibrated to indicate rms noise or average power level and which has a known bandwidth. With the system operating at normal level and with a properly matched resistive termination substituted for the antenna, noise power indications at the subscriber terminal are taken in successive increments of frequency equal to the bandwidth of the frequency-selective voltmeter, summing the power indications to obtain the total noise power present over a 4 MHz band centered within the cable television channel. If it is established that the noise level is constant within this bandwidth, a single measurement may be taken which is corrected by an appropriate factor representing the ratio of 4