

## § 76.907

## 47 CFR Ch. I (10–1–20 Edition)

effective competition pursuant to section 76.905(b)(1), (3) or (4).

[80 FR 38012, July 2, 2015]

### § 76.907 Petition for a determination of effective competition.

(a) A cable operator (or other interested party) may file a petition for a determination of effective competition with the Commission pursuant to the Commission's procedural rules in § 76.7.

(b) If the cable operator seeks to demonstrate that effective competition as defined in § 76.905(b)(1), (3), or (4) exists in the franchise area, it bears the burden of demonstrating the presence of such effective competition. Effective competition as defined in § 76.905(b)(2) is governed by the presumption in § 76.906, except that where a franchising authority has rebutted the presumption of competing provider effective competition as defined in § 76.905(b)(2) and is certified, the cable operator must demonstrate that circumstances have changed and effective competition is present in the franchise area.

NOTE TO PARAGRAPH (b): The criteria for determining effective competition pursuant to § 76.905(b)(4) are described in Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96–85, FCC 99–57 (released March 29, 1999).

(c) If the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days. Such responses may be limited to numerical totals. In addition, with respect to petitions filed seeking to demonstrate the presence of effective competition pursuant to § 76.905(b)(4), the Commission may issue an order directing one or more persons to produce information relevant to the petition's disposition.

[64 FR 35950, July 2, 1999, as amended at 80 FR 38013, July 2, 2015]

### § 76.910 Franchising authority certification.

(a) A franchising authority must be certified by the Commission in order to regulate the basic service tier and asso-

ciated equipment of a cable system within its jurisdiction.

(b) To be certified, the franchising authority must file with the Commission a written certification that:

(1) The franchising authority will adopt and administer regulations with respect to the rates for the basic service tier that are consistent with the regulations prescribed by the Commission for regulation of the basic service tier;

(2) The franchising authority has the legal authority to adopt, and the personnel to administer, such regulations;

(3) Procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties; and

(4) The cable system in question is not subject to effective competition. The franchising authority must submit specific evidence demonstrating its rebuttal of the presumption in § 76.906 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 completing and filing FCC Form 328. FCC Form 328 can be obtained from the internet at <http://www.fcc.gov/Forms/Form328/328.pdf> or by calling the FCC Forms Distribution