

(g) *Remedies for violations*—(1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff, or administrative law judge decision, the order for carriage of a video programming vendor's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be required to carry the video programming vendor's programming for an additional period equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) *Additional sanctions.* The remedies provided in paragraph (g)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

[64 FR 6574, Feb. 10, 1999]

§§ 76.1303—76.1305 [Reserved]

Subpart R—Telecommunications Act Implementation

SOURCE: 61 FR 18980, Apr. 30, 1996, unless otherwise noted.

§ 76.1400 Purpose.

The rules and regulations set forth in this subpart provide procedures for administering certain aspects of cable

regulation. These rules and regulations provide guidance for operators, subscribers and franchise authorities with respect to matters that are subject to immediate implementation under governing statutes but require specific regulatory procedures or definitions.

§ 76.1402 CPST rate complaints.

(a) A local franchise authority may file rate complaints with the Commission within 180 days of the effective date of a rate increase on the cable operator's cable programming services tier if within 90 days of that increase the local franchise authority receives more than one subscriber complaint concerning the increase.

(b) Before filing a rate complaint with the Commission, the local franchise authority must first give the cable operator written notice, including a draft FCC Form 329, of the local franchise authority's intent to file the complaint. The local franchise authority must give an operator a minimum of 30 days to file with the local franchise authority the relevant FCC forms that must be filed to justify a rate increase or, where appropriate, certification that the operator is not subject to rate regulation. The operator must file a complete response with the local franchise authority within the time period specified by the local franchise authority. The local franchise authority shall file with the Commission the complaint and the operator's response to the Complaint. If the operator's response to the complaint asserts that the operator is exempt from rate regulation, the operator's response can be filed with the local franchise authority without filing specific FCC Forms.

§ 76.1404 Use of cable facilities by local exchange carriers.

(a) For purposes of § 76.505(d)(2), the Commission will determine whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the procedures in paragraph (b) of this section.

(b) Based on the record created by § 76.1617 of the rules, the Commission shall determine whether the local exchange carrier's use of that part of the

transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and 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]

EFFECTIVE DATE NOTE: At 65 FR 53617, Sept. 5, 2000, § 76.1404 was revised, effective Oct. 5, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 76.1404 Use of cable facilities by local exchange carriers.

For purposes of § 76.505(d)(2), the Commission will determine whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the following procedures:

(a) Within 10 days of final execution of a contract permitting a local exchange carrier to use that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end use, the parties shall submit a copy of such contract, along with an explanation of how such contract is reasonably limited in scope and duration, to the Commission for review. The parties shall serve a copy of this submission on the local franchising authority, along with a notice of the local franchising authority's right to file comments with the Commission consistent with § 76.7.

(b) Based on the record before it, the Commission shall determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and 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.

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