

obligations or determine the open video system operator's public, educational and governmental access obligations by comparison to the franchise agreement for the nearest operating cable system that has a commitment to provide public, educational and governmental access and that serves a franchise area with a similar population size. The local franchising authority shall be permitted to make a similar election every 15 years thereafter. Absent a previous franchise agreement, the open video system operator shall be required to provide channel capacity, services, facilities and equipment relating to public, educational and governmental access equivalent to that prescribed in the franchise agreement(s) for the nearest operating cable system with a commitment to provide public, educational and governmental access and that serves a franchise area with a similar population size.

NOTE TO PARAGRAPH (d)(6): This paragraph shall apply, for example, if a cable operator converts its cable system to an open video system under § 76.1501.

(7) The open video system operator must adjust its system(s) to comply with new public, educational and governmental access obligations imposed by a cable franchise renewal; provided, however, that an open video system operator will not be required to displace other programmers using its open video system to accommodate public, educational and governmental access channels. The open video system operator shall comply with such public, educational and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or decreased demand for channel capacity.

(8) The open video system operator and/or the local franchising authority may file a complaint with the Commission, pursuant to our dispute resolution procedures set forth in § 76.1514, if the open video system operator and the local franchising authority cannot agree as to the application of the Commission's rules regarding the open video system operator's public, educational and governmental access obli-

gations under paragraph (d) of this section.

(e) If an open video system operator maintains an institutional network, as defined in Section 611(f) of the Communications Act, the local franchising authority may require that educational and governmental access channels be designated on that institutional network to the extent such channels are designated on the institutional network of the local cable operator.

(f) An open video system operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this subsection, provided, however, that any open video system operator may prohibit the use on its system of any channel capacity of any public, educational, or governmental facility for any programming which contains nudity, obscene material, indecent material as defined in § 76.701(g), or material soliciting or promoting unlawful conduct. For purposes of this section, "material soliciting or promoting unlawful conduct" shall mean material that is otherwise proscribed by law. An open video system operator may require any access user, or access manager or administrator agreeing to assume the responsibility of certifying, to certify that its programming does not contain any of the materials described above and that reasonable efforts will be used to ensure that live programming does not contain such material.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43176, Aug. 21, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43176, Aug. 21, 1996, in § 76.1505, paragraphs (d)(1), (4), (6) and (8) were revised. This amendment contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.1506 Carriage of television broadcast signals.

(a) The provisions of Subpart D shall apply to open video systems in accordance with the provisions contained in this subpart.

(b) For the purposes of this Subpart S, television stations are significantly

viewed when they are viewed in households that do not receive television signals from multichannel video programming distributors as follows:

(1) For a full or partial network station—a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent; and

(2) For an independent station—a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent. See § 76.1506(c).

NOTE TO PARAGRAPH (b): As used in this paragraph, “share of viewing hours” means the total hours that households that do not receive television signals from multichannel video programming distributors viewed the subject station during the week, expressed as a percentage of the total hours these households viewed all stations during the period, and “net weekly circulation” means the number of households that do not receive television signals from multichannel video programming distributors that viewed the station for 5 minutes or more during the entire week, expressed as a percentage of the total households that do not receive television signals from multichannel video programming distributors in the survey area.

(c) *Significantly viewed signals; method to be followed for special showings.* Any provision of § 76.54 that refers to a “cable television community” or “cable community or communities” shall apply to an open video system community or communities. Any provision of § 76.54 that refers to “non-cable television homes” shall apply to households that do not receive television signals from multichannel video programming distributors. Any provision of § 76.54 that refers to a “cable television system” shall apply to an open video system.

(d) *Definitions applicable to the must-carry rules.* Section 76.55 shall apply to all open video systems in accordance with the provisions contained in this section. Any provision of § 76.55 that refers to a “cable system” shall apply to an open video system. Any provision of § 76.55 that refers to a “cable operator” shall apply to an open video system operator. Any provision of § 76.55 that refers to the “principal headend” of a cable system as defined in § 76.5(pp) shall apply to the equivalent of the principal headend of an open video sys-

tem. Any provision of § 76.55 that refers to a “franchise area” shall apply to the service area of an open video system. The provisions of § 76.55 that permit cable operators to refuse carriage of signals considered distant signals for copyright purposes shall not apply to open video system operators. If an open video system operator cannot limit its distribution of must-carry signals to the local service area of broadcast stations as used in 17 U.S.C. 111(d), it will be liable for any increase in copyright fees assessed for distant signal carriage under 17 U.S.C. 111.

(e) *Signal carriage obligations.* Any provision of § 76.56 that refers to a “cable television system” or “cable system” shall apply to an open video system. Any provision of § 76.56 that refers to a “cable operator” shall apply to an open video system operator. Section 76.56(d)(2) shall apply to open video systems as follows: An open video system operator shall make available to every subscriber of the open video system all qualified local commercial television stations and all qualified non-commercial educational television stations carried in fulfillment of its carriage obligations under this section.

(f) *Channel positioning.* Open video system operators shall comply with the provisions of § 76.57 to the closest extent possible. Any provision of § 76.57 that refers to a “cable operator” shall apply to an open video system operator. Any provision of § 76.57 that refers to a “cable system” shall apply to an open video system, except the references to “cable system” in § 76.57(d) which shall apply to an open video system operator.

(g) *Notification.* Any provision of § 76.58 that refers to a “cable operator” shall apply to an open video system operator. Any provision of § 76.58 that refers to a “cable system” shall apply to an open video system. Any provision of § 76.58 that refers to a “principal headend” shall apply to the equivalent of the principal headend for an open video system.

(h) *Modification of television markets.* Any provision of § 76.59 that refers to a “cable system” shall apply to an open video system. Any provision of § 76.59 that refers to a “cable operator” shall

apply to an open video system operator.

(i) *Compensation for carriage.* Any provision of § 76.60 that refers to a “cable operator” shall apply to an open video system operator. Any provision of § 76.60 that refers to a “cable system” shall apply to an open video system. Any provision of § 76.60 that refers to a “principal headend” shall apply to the equivalent of the principal headend for an open video system.

(j) *Disputes concerning carriage.* Any provision of § 76.61 that refers to a “cable operator” shall apply to an open video system operator. Any provision of § 76.61 that refers to a “cable system” shall apply to an open video system. Any provision of § 76.61 that refers to a “principal headend” shall apply to the equivalent of the principal headend for an open video system.

(k) *Manner of carriage.* Any provision of § 76.62 that refers to a “cable operator” shall apply to an open video system operator.

(l) *Retransmission consent.* Section 76.64 shall apply to open video systems in accordance with the provisions contained in this paragraph.

(1) Any provision of § 76.64 that refers to a “cable system” shall apply to an open video system. Any provision of § 76.64 that refers to a “cable operator” shall apply to an open video system operator.

(2) Must-carry/retransmission consent election notifications shall be sent to the open video system operator. An open video system operator shall make all must-carry/retransmission consent election notifications received available to the appropriate programming providers on its system.

(3) Television broadcast stations are required to make the same election for open video systems and cable systems serving the same geographic area, unless the overlapping open video system is unable to deliver appropriate signals in conformance with the broadcast station’s elections for all cable systems serving the same geographic area.

(4) An open video system commencing new operations shall notify all local commercial and noncommercial broadcast stations as required under paragraph (l) of this section on or before the date on which it files with the

Commission its Notice of Intent to establish an open video system.

(m) *Sports broadcast.* Section 76.67 shall apply to open video systems in accordance with the provisions contained in this paragraph.

(1) Any provisions of § 76.67 that refers to a “community unit” shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

(2) Notification of programming to be deleted pursuant to this section shall be served on the open video system operator. The open video system operator shall make all notifications immediately available to the appropriate video programming providers on its open video system. Operators may effect the deletion of signals for which they have received deletion notices unless they receive notice within a reasonable time from the appropriate programming provider that the rights claimed are invalid. The open video system operator shall not delete signals for which it has received notice from the programming provider that the rights claimed are invalid. An open video system operator shall be subject to sanctions for any violation of this subpart. An open video system operator may require indemnification as a condition of carriage for any sanctions it may incur in reliance on a programmer’s claim that certain exclusive or non-duplication rights are invalid.

(n) *Exemption from input selector switch rules.* Any provision of § 76.70 that refers to a “cable system” or “cable systems” shall apply to an open video system or open video systems.

(o) *Special relief and must-carry complaint procedures.* The procedures set forth in § 76.7 shall apply to special relief and must-carry complaints relating to open video systems, and not the procedures set forth in § 76.1514 (Dispute resolution). Any provision of § 76.7 that refers to a “cable television system operator” or “cable operator” shall apply to an open video system operator. Any provision of § 76.7 that refers to a “cable television system”

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shall apply to an open video system. Any provision of § 76.7 that refers to a "system community unit" shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

[61 FR 28708, June 5, 1996, as amended at 61 FR 43177, Aug. 21, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43177, Aug. 21, 1996, in § 76.1506, paragraphs (d), (l)(3) and (m)(2) were revised. This amendment contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.1507 Competitive access to satellite cable programming.

(a) Any provision that applies to a cable operator under §§ 76.1000 through 76.1003 shall also apply to an operator of an open video system and its affiliate which provides video programming on its open video system, except as limited by paragraph (a) (1)-(3) of this section. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall also apply to any satellite cable programming vendor in which an open video system operator has an attributable interest, except as limited by paragraph (a) (1)-(3) of this section.

(1) Section 76.1002(c)(1) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator or its affiliate that provides video programming on its open video system shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such program-

ming from any satellite cable programming vendor in which an open video system operator has an attributable interest, or any satellite broadcasting vendor in which an open video system operator has an attributable interest for distribution to person in areas not served by a cable operator as of October 5, 1992.

(2) Section 76.1002(c)(2) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator or its affiliate that provides video programming on its open video system shall enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor, unless the Commission determines in accordance with § 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest.

(3) Section 76.1002(c)(3) (i) through (ii) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows:

(i) *Unserved areas.* No open video system operator shall enter into any sub-distribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in which an open video system operator has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992.

(ii) *Served areas.* No open video system operator shall enter into any sub-distribution agreement or arrangement