

# Law and Regulation & Government Agencies

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# Federal Communications Commission Executives and Staff

**Headquarters:** 1919 M St. N.W., Washington, DC 20554. (202) 418-0200. The Portals, 445 12th St. S.W., Washington, DC 20554.

**National Call Center:** Gettysburg, PA (888) Call FCC (888-225-5322).

## Chairman

**William E. Kennard**, (418-1000), Rm 8 B201. Kathryn C. Brown, chief of staff; Susan Fox, sr legal advisor; An Fitzgerald, legal advisor; Thomas Power, legal advisor; Drema L. Johnson, confidential asst.

## Commissioners and Assistants

**Susan Ness**, (418-2100), Rm 8 B115. James L. Casserly, sr legal advisor; Daniel Connors, legal advisor; Anita Wallgren, legal advisor; Linda Kinney, legal advisor; Janice B. Wise, confidential asst.

**Harold Furchtgott-Roth**, (418-2000), Rm 8 A302. Paul E. Misener, chief of staff & sr legal advisor; Kevin J. Martin, legal advisor; Helgi C. Walker, legal advisor; Ginger Clark, confidential asst.

**Michael K. Powell**, (418-2200), Rm 8 A204. Jane E. Mago, sr legal advisor; Peter A. Tenhula, legal advisor; Kyle D. Dixon, legal advisor; Antonia McGowan, confidential asst; Paul A. Jackson, special asst.

**Gloria Tristani**, (418-2300), Rm 8 C302. Rick Chessen, sr legal advisor; Paul Gallant, legal advisor; Karen Guillick, legal advisor; Helen Hilllegass, confidential asst.

## Administrative Departments

### Office of Plans and Policy

(418-2030), Rm 822

Robert M. Pepper, chief; Linda Sockett, deputy chief; William Rogerson, chief economist.

### Office of Public Affairs

Elizabeth Rose, dir (418-0500), Rm CY C314; Maureen P. Peratino, deputy dir; David H. Fiske, deputy dir; Linda Paris, assoc dir; Sheryl A. Segal, info tech mgr (418-0260), Rm CY C404D; Dann Oliver, TV staff (418-0461), Rm TW A206A.

News Media Staff (418-0500), Rm CY C428: Audrey J. Spivack, press sec.

Public Service Div. (418-0260), Rm CY B523: Martha Contee, chief.

Public Inquiries Branch (418-0190), Rm CY A636: Sharon Jenkins, chief.

Reference Operations Div. (418-0267), Rm 242: William Cline, chief.

Mass Media/Adjudication Branch (418-0272).

FCC Reference Center (418-0270): Ownership Reports (418-0258); Records Imaging Processing Systems (418-0029); Tariff Public Reference Room (418-1933); Call Sign Availability Information (418-0270); 2033 M St., Cable Files (418-7092), Rm 333; MDS Reference Room (418-7017), Rm 207; 2025 M St., Wireless Telecom Reference Room (418-1350), Rm 5608.

Library Branch (418-0450), Rm 639: Gloria Thomas, chief.

### Office of Legislative and Inter-Governmental Affairs

(418-1900), Rm 8 C432

Sheryl J. Wilkerson, dir; Kathryn R. Dole, deputy dir (418-1900); Stephen Klitzman, assoc dir, Rm 8 C432; Congressional correspondence staff, Rm 8 C432.

### Office of Communications Business Opportunities

(418-0990), Rm 644

Catherine Sandoval, dir; Eric L. Jensen, deputy dir.

### Office of Administrative Law Judges

(418-2265)

Joseph Chachkin, chief judge.

### Office of General Counsel

(418-1700), Rm 8 C755

Christopher J. Wright, gen counsel; David H. Solomon, deputy gen counsel; P. Michele Ellison, deputy gen counsel; Sheldon M. Guttman, assoc gen counsel (ethics); Mary Beth Murphy, Jeffrey Lanning & Sharon Franklin, special counsels; Richard Welsh, sr counsel; Char-mayne C. Keene, asst chief mgmt.

Litigation Div. (418-1740), Rm 8 A766: Daniel M. Armstrong, assoc gen counsel-litigation; John E. Ingle, deputy assoc gen counsel-litigation; Susan L. Launer, deputy assoc gen counsel-trial & enforcement.

Administrative Law Div. (418-1720): Susan H. Steiman, assoc gen counsel-admin law, Rm A666; Suzanne M. Tetreault, deputy assoc gen counsel-admin law, Rm 8 A668; Maureen Duignan, asst gen counsel-admin law, Rm 8 A665; Joel Kaufman, asst gen counsel-admin law, Rm 8 A662; John I. Riffer, asst gen counsel-admin law, Rm 8 A660.

### Office of Inspector General

(418-0470), Rm 2 C762

H. Walker Feaster, inspector gen; I. Paul Brachfeld, asst inspector gen-audits; Charles J. Willoughby, asst inspector gen-investigations.

### Office of Workplace Diversity

(418-1799), 2000 M St., Rm 250

Jack W. Gravely, dir; Harvey Lee, deputy dir; Sandra J. Canary, EEO program mgr.

### Office of Managing Director

Andrew S. Fishel, mgng dir (418-1919), Rm 1 C144; Mary Beth Richards, deputy mgng dir; Eileen Savell, asst chief mgmt (418-1927), Rm 1 C120.

The Secretary (418-0300), Rm TW B204: Magalie Roman Salas, sec; William F. Caton, deputy sec; Ruth A. Dancy, asst sec.

Agenda Branch (418-0320), Rm TW B204: LaVera Marshall, chief.

Publications Branch (418-0310), Rm TW B204: Shirley Suggs, chief.

Associate Managing Director - Human Resources Management (418-0100), Rm 1 A130: Michele Sutton, AMD-HRM; Arthur L. Curths, sr policy advisor.

Personnel Resources Div., Rm 1 A161: Carol Nichols, actg chief (418-0134); Deborah Berry, NFC liaison (418-0136).

EAP Headquarters (418-0911): Teresa Deneau, EAP counselor (301-570-7280); field office (800-222-0364); TTY number (301-774-6264).

Payroll & Benefits Service Center, (418-0150), Rm 1 A227: Pearlana Butler, supvr.

Recruitment & Staffing Service Center (418-0130), Rm 1 A227; Carolyn Lark, Team A Leader (418-0144), Rm 1 A360; Gary Pickenpaugh, Team B Leader (418-0149).

Labor Relations & Workforce Effectiveness Div.: Stephen E. Schumacher, chief (418-0113), Rm 1 B115; Thomas Green, team leader/labor & employee rel (418-0116), Rm 1 B155; Gary McLean, team leader performance mgmt & training (418-0117), Rm 1 B135; John Zentner, safety & health mgr (418-0119), Rm 1 A124.

Information Technology Center: Ronald Stone, dir (418-2022), Rm 1 C264; Wanda M. Sims, deputy dir (418-2990), Rm 1 C266.

Customer Service Representatives: Eric Kanner (418-1830), Rm 1 C263; Carl Heise (418-1814), Rm 1 C734; Mary Jane Smith (418-0593), Rm 1 C214; David Woodson (418-2666), Rm 418.

Network Development Group, Rm 424: Spencer Hyndman, chief (418-1823); Deborah Wheeler, deputy chief (418-1801).

Planning & Support Group, Rm 420: Edward J. McCarthy, chief (418-1812); Ronald E. Seliga, deputy chief (418-1809).

Applications Integration Group, 2100 M St., Rm 8000: Robert Snow, chief (418-0540); Michael Kemper, deputy chief (418-0594).

Operations Group: Carl Heise, chief (418-7505), Rm 1 C734; Charles Davis, deputy chief (418-1856), Rm 438E.

Associate Managing Director - Operations (418-1925): Mark Reger, AMD-FO & CFO (418-1925), Rm 1 A633; Thomas M. Holleran, deputy AMD-FO.

Budget Staff (418-1965), Rm 1 B521: John W. Crews, chief.

Financial Operations Div. (418-1970), Rm 1 A663: Linda King Friedman, chief.

Billings & Collections Branch (418-1995): Regina Dorsey, chief, Rm 1 A820; Linwood Jenkins, team leader; Fee Section (418-1995), Rm 1 A821: Claudette Pride, chief. International Telecommunications Settlement Center, Gettysburg, PA (717-338-2685): Edna S. Steinnour, chief.

Financial Analysis Branch (418-1985), Rm 1 A636: William Lewis, chief.

Accounts Processing Branch (418-1975), Rm 1 A637: Shirley Wood, chief.

Associate Managing Director - Administrative Operations (418-1950), Rm 1 A401: Jeffrey R. Ryan, AMD-AO; Kaye Hood, deputy AMD-AO (418-1952) Rm 1 A401; Eric Botker, security operations staff (418-7784).

Contracts & Purchasing Center (418-0992), Rm 1 A524: Sonna B. Stampone, chief.

Administrative Service & Printing Center: Ginger Weasenforth, chief (418-0340), Rm TW C201.

Administrative Service Center: (418-0330), Rm B-10 & Portals. Toby Brown, team leader (418-0350); Copy Center (418-0357), Rm TW C823.

Space & Facilities Services Center (418-1955): Christine K. Zeman, chief, Rm TW B230G; Daniel Walker, deputy chief (418-0356), Rm 404.

Associate Managing Director - Performance Evaluation & Records Management (418-0448), Rm 1 A888: Kathy Fagan, chief; Terry Johnson, team leader (418-0445).

Records Management (418-0214), Rm 1 C804: Judy Boley, team leader.

### Office of Engineering and Technology

(418-2470), 2000 M St., Rm 480

Dale Hatfield, chief; Bruce A. Franca, deputy chief; Rebecca Dorch, deputy chief; Stagg Newman, chief technologist; Michael J. Marcus, assoc chief technology; Lynn Remly, assoc chief strategic communications; Steven S. Kaminer, legal counsel; R. Alan Stillwell, economic advisor; Xenia Hajicosti, asst chief mgmt (418-2471).

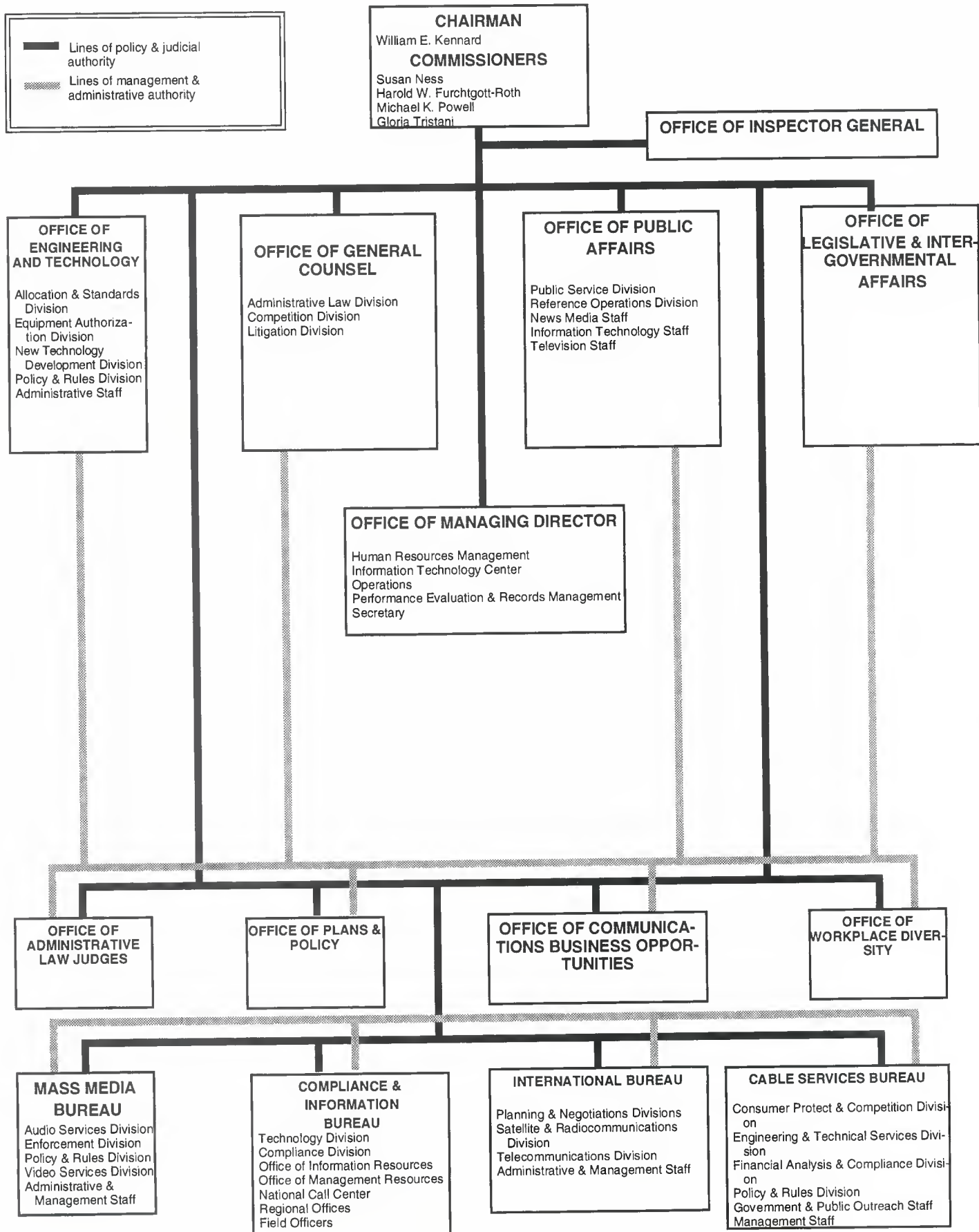
Task Force on Year 2000 Conversion (418-2475), Rm 230: Marsha MacBride; Kent Nilsson, special counsel network reliability.

Policy & Rules Div. (418-2472), Rm 480: Julius P. Knapp, chief.

Spectrum Policy Branch (418-2473): Charles J. Iseman, chief.

Technical Rules Branch (418-2474): Karen Rackley, chief.

Allocations & Standards Div. (418-2475), Rm 230: Robert M. Bromery, chief.





## Federal Communications Commission Executives and Staff

Spectrum Utilization & Economics Branch (418-2476): Fred Thomas, chief.

Standards Development Branch (418-2477): James R. Burtle, chief.

New Technology Development Div. (418-2478), Rm 230.

Experimental Licensing Branch (418-2479): Paul Marangoni, chief.

Technical Research Branch (301-725-1585), Columbia, MD: David L. Means, chief.

Equipment Authorization Div.: (301-725-1585), Columbia, MD.

Applications Processing Branch: (301-725-1585), Columbia, MD.

Customer Service Branch: (301-725-1585), Columbia, MD. L. Art Wall, chief.

### Cable Services Bureau

(418-7200), 2033 M St., Rm 918

Deborah A. Lathen, chief; William H. Johnson, deputy bureau chief; Marjorie Greene, assoc bureau chief; Meryl S. Icove, assoc bureau chief; Donnie Fowler, special advisor.

Office of Government & Public Outreach (418-7200), Rm 918: Margo Domon, asst bureau chief; Morgan Broman, dir media rel; Michael S. Perko, dir govt outreach; Deborah Wafford, asst chief mgmt (418-7085), Rm 650.

Financial Analysis & Compliance Div. (418-2296), Rm. 804: Patrick Boateng, asst chief.

Consumer Protection & Competition Div. (418-1029), Rm 700: Deborah Klein, actg chief; Ronald Parver, asst chief.

Policy & Rules Div. (418-7034), Rm 406: John Norton, actg chief.

Engineering & Technical Services Div. (418-7000), Rm 201: John Wong, chief; Michael Lance, deputy chief.

### Common Carrier Bureau

(418-1500), Rm 500

Lawrence Strickling, chief; Yog Varma, deputy chief; Robert C. Atkinson, deputy chief; Donald Stockdale, assoc bureau chief; Lisa Zania, assoc bureau chief; Ellen Blackler, special asst to bureau chief; Valarie Yates, asst bureau chief; Joseph Hall, asst bureau chief mgmt; Katherine Schroder, council to bureau chief; Jordon Goldstein, counsel to bureau chief; Richard Cameron, counsel to bureau chief.

Accounting Safeguards Div. (418-0800), 2000 L St., Rm 812: Kenneth P. Moran, chief; Clifford M. Rand, deputy chief; Timothy Peterson, deputy chief; JoAnn Lucanik, asst div chief legal; Charles Needy, asst div chief economics.

Accounting Systems Branch (418-0810), Rm 812: Jose L. Rodriguez, chief.

Audits Branch (418-0820), Rm 257: Robert Hood, deputy chief.

Reporting & Management Analysis Branch (418-0840), Rm 257: Fatina K. Franklin, chief; Gary Seigel, deputy chief.

Legal Branch (418-0850), Rm 257: Andrew Multz, chief.

Accounting Policy Div. (418-7400), 2100 M St., Rm 8601A: Irene Flannery, chief; Craig Brown, deputy chief; Melissa Waksman, deputy chief.

Network Services Div. (418-2320), 2000 M St., Rm 230: Anna Gomez, chief; Kurt Schroder, deputy chief; Blaise Scinto, deputy chief; Diane Harmon, asst div chief.

Enforcement Div. (418-0700), 2025 M St., Rm 6010; Dorothy Attwood, chief; Gregory A. Weiss, deputy chief opns; Glen Reynolds, deputy chief policy; Thomas D. Wyatt, assoc chief (418-0960); Coleen Heitkamp, asst div chief.

Formal Complaints & Investigations Branch (418-0960), Rm 6010: Alex Starr, chief.

Consumer Protection Branch (418-2800), Rm 6202: Sharon D. Lee, chief; Cynthia Brown, deputy chief.

Industry Analysis Div. (418-0940), 2033 M St., Rm 500: Peyton L. Wynns, chief; Alan Feldman, deputy chief; Thomas Beers, deputy chief.

Competitive Pricing Div. (418-1520), Rm 518: Jane Jackson, chief; Richard Lerner, deputy chief; Chris Monteith, deputy chief.

Tariff & Price Analysis Branch (418-1540): Judith A. Nitsche, chief.

Legal Branch (418-1530): Lenworth Smith, actg chief.

Policy & Program Planning Div. (418-1580), Rm 544: Carol Matthey, chief; Michelle Carey, deputy chief; Michael Pryor, deputy chief; Ann Stevens, assoc div chief; Margaret Egler, asst div chief.

### Compliance and Information Bureau

(418-1100), Rm 734

Richard Lee, chief; Arfan K. vanDoom, deputy chief; Joseph P. Casey, deputy chief; Thomas Spavins, chief economist; George R. Dillon, engrg advisor; Roy Kolly, spec asst to bureau chief.

National Call Center (717-338-2590), Gettysburg, PA: Cynthia Jeffries, dir.

North East Regional Director (847-298-5405), Park Ridge, IL: Russell D. Monie, dir.

South Central Regional Director (816-353-9035), Kansas City, MO: Dennis P. Carlton, dir.

Western Regional Director (510-732-9046), Hayward, CA: Serge Marti-Volkoff, dir.

Office of Management & Resources: Robert W. Crisman, asst bureau chief (418-1135), Rm 728; Glenna F. Werking, dir resources group (418-1133); Wayne T. Tolvanen, dir management & systems group (418-1114).

Office of Information Resources: John R. Winston, asst bureau chief info resources (418-1100), Rm 734; Frank Lucia, dir emergency communications (418-1226), Rm 736.

Training Center: (301-725-3880), Columbia, MD: Michael Anderson, dir.

Compliance Div. (418-1160), Rm 744: Pamela D. Hairston, chief; Legal Services Group (418-1160): Ricardo M. Durham, dir.

Technology Div. (418-1210), Rm 720: Kenneth R. Nichols, chief; Equipment Standards Group: Bernard L. Stuecker, dir; Equipment Development Group (404-943-6425), Powder Springs, GA: Ferrel Bentley, dir. National Operations Group (418-1175): Dan Errick, dir. Communications & Crisis Management Center (202-632-6975): David T. Prescott, dir. HFDF (High Frequency Direction Finding) Center, Columbia, MD: David Larrabee, dir (202-632-6975).

### International Bureau

(418-0420), 2000 M St., Rm 800

Regina Keeney, chief; Mindy Ginsburg, deputy chief; Roderick K. Porter, deputy chief; James L. Ball, assoc chief policy; Peter C. Pappas, asst chief; Douglas W. Webbink, chief economist; Thomas Sullivan, asst bureau chief mgmt; Rebecca A. Arbogast & Linda Haller, sr legal advisors.

Telecommunications Div. (418-1470), Rm 800: Diane J. Cornell, chief; George Li, deputy chief opns.

Policy & Facilities Branch (418-1460), Rm 800: Troy Tanner, chief.

Multilateral & Development Branch (418-1480), Rm 800: Thomas Wasilewski, chief.

Satellite & Radiocommunication Div. (418-0719), Rm 800: Thomas Tycz, chief; Cassandra Thomas, deputy chief; Cecily C. Holiday, deputy chief (418-0719), Rm 500.

Satellite Engineering Branch (418-0719): Ron Repasi, chief.

Radiocommunication Policy Branch (418-0729), Rm 800: William A. Luther, chief.

Satellite Policy Branch (418-0719), Rm 500: Fern Jarmluk, chief; Rosalee Chiara, deputy chief.

Planning & Negotiations Div. (418-2150), Rm 800: Richard B. Engelman, chief; Larry Olson, deputy chief; Damon Ladson, deputy chief.

Negotiations Branch (418-2118), Rm 800: Pamela Gerr, chief.

Notifications Branch (418-2141), Rm 800: James Ballis, chief.

International Spectrum Branch (418-2150), Rm 800: John Guisti, chief.

### Mass Media Bureau

(418-2600), Rm 2 C337

Roy J. Stewart, chief; Renee Licht, deputy chief policy; Robert H. Ratcliffe, deputy chief opns; Keith Larson, asst chief engr; Jerry Duvall, chief economist; Ray White, special asst; Janet S. Amaya, asst chief mgmt & per (418-2614), Rm 310; Thomas Wilchek, chief authorization progmg group, Rm 2 C407.

Audio Services Div. (418-2780): Linda Blair, chief, Rm 2 A320; Peter Doyle, deputy chief; Melanie Godschall, asst chief law; Dennis Williams, asst chief engr, Rm 2 A320; Brad Deutsch, special asst.

Enforcement Div. (418-1420), Rm 3 B443: Charles W. Kelley, chief; Edythe Wise, asst chief.

Complaints & Political Programming Branch: Norman Goldstein, chief (418-1430), Rm 3A406; Robert L. Baker, political progmg (418-1440), Rm 3 A406.

Equal Employment Opportunity Branch (418-1450), Rm 3 A625: Paulette Laden, chief.

Policy & Rules Div. (418-2120), Rm 2 C226: Charles W. Logan, chief; Bruce A. Romano, deputy chief; Mania K. Baghdadi, asst chief; Roger D. Holberg, legal advisor; Andrew J. Rhodes, special legal advisor.

Legal Branch (418-2130), Rm 2 C226: Victoria Phillips, chief.

Engineering Policy Branch (418-2120), Rm 2 C226: Bruce A. Romano, acting chief.

Policy & Industry Analysis Branch (418-2170), Rm 2 C226: Judith Herman, chief.

Allocations Branch (418-2180), Rm 3 A320: John A. Karousos, chief.

Video Services Div. (418-1600), Rm 2 A625: Barbara A. Kreisman, chief; James J. Brown, deputy chief; Charles Dziedzic, asst chief; H. John Morgan, asst chief engr.

Television Branch (418-1600), Rm 2 A625: Clay Pendarvis, chief; Mary M. Fitzgerald, acting supvg attorney.

Low Power Television Branch: Mary M. Fitzgerald, chief (418-1600), Rm 2 A625; Hossein Hashemzadeh, supvg engr (418-1650), Rm 2 A625.

Distribution Services Branch (418-1600), Rm 2 A625: Clay Pendarvis, acting chief.

Ownership Staff (418-1625), Rm 2 A625: LeAudrey Alexander.

MMDS Staff, Rm 2 A625: Charles Dziedzic, asst chief (418-1600); Sharon Bertelsen, supvg attorney (418-7057).

### Wireless Telecommunications Bureau

(418-0600), 2025 M St., Rm 5002

Thomas Sugrue, chief; Gerald P. Vaughan, deputy bureau chief; James D. Schlichting, deputy bureau chief; Kathleen O'Brien-Ham, deputy bureau chief; Diane J. Cornell, assoc bureau chief; Jeanine Poltronieri, assoc bureau chief; Dave Wye, technology advisor; Elizabeth Lyle, sr legal advisor; Robert Calaff & Josh Roland, legal advisors; Menbeth McCarrick, public affairs specialist.

Management & Planning Staff (418-0617), Rm 8120F: Andrew R. Cox, asst bureau chief mgmt; Yvette Barrett, deputy asst bureau chief mgmt (418-0603), Rm 8120E.

Auctions & Industry Analysis Div. (418-0660), Rm 5202A: Amy Zoslov, chief; Mark Bollinger, deputy chief legal; Louis Sigalos, deputy chief operations.

Auctions Expenditures Management Branch (418-0796), Rm 5332: Sam Francis, chief.

Legal Branch (418-0786), Rm 5604E: Margie Weiner, chief.

Auctions Finance & Market Analysis Branch (418-0651), Rm 5126J: Rachel Kazan, chief.

Auctions Operations Branch (418-0614), Rm 5610E: Brett Tamutzer, chief.

Commercial Wireless Div. (418-0620), 2100 M St., Rm 700: Steven E. Weingarten, chief; Diane Conley, deputy chief legal; Stephen Markendorf, deputy chief opns.

Policy & Rules Branch (418-0620), Rm 7130: Paul D'Ani, chief.

Licensing & Technical Analysis Branch (418-0620), Rm 8643A: Roger Noel, chief; James H. Bennett, Washington chief; Terry Fishel, Gettysburg deputy chief (717-338-2602).

Licensing Section (418-1334), Rm 8028: Pearl McGinnis, chief; Joyce Nary, deputy chief (717-338-2627).

Technical Analysis Section (418-1337), Rm 8653: Sam Gumbert, chief; Ronald Fuhrman, deputy chief (717-338-2615).

Enforcement & Consumer Information Div. (418-0569), 2025 M St., Rm 8308: Catherine W. Seidel, chief; Myron Peck, deputy chief.

Compliance & Litigation Branch (418-1795), Rm 7130: Gary Schonman, chief.

Informal Complaints & Public Inquiry Branch (717-338-2533), Gettysburg: Sharon Bowers, acting chief.

Information Technology Div., Gettysburg, PA: John Chudovan, chief (717-338-2510); Walter G. Boswell, deputy chief (717-338-2601).

Information Processing Branch (717-338-2526): Teresa Flasher, chief.

Information Development Branch (717-338-2511): Judith Dunlap, chief.

Information Maintenance Branch (418-0573), 2100 M St., Rm 8020A: Eddie Richardson, chief.

Policy Div. (418-1310), 2025 M St., Rm 7002: John Cimko, chief; Nancy Boocker, deputy chief.

Private Wireless Div. (418-0680), 2025 M St., Rm 8010: D'Wana Terry, chief; Herbert W. Zeiler, deputy chief tech; John Clark, deputy chief pub safety.

Policy & Rules Branch (418-0680), Rm 8104: John J. Borkowski, chief.

Licensing & Technical Analysis Branch (717-338-2656), Gettysburg, PA: Mary Shultz, chief; Steve Linn, deputy chief.

Personal Radio Section (717-338-2673): Darlene Reeder, chief.

Microwave Section (717-338-2648): Ruth Taylor, chief.

Mobile Radio Section (717-338-2605): Kelly Lawver, chief.

Technical Analysis Section (717-338-2647): Albert Knerr, acting chief.

### Office of Operations - Gettysburg

Anna Deatrck, spec asst (717-338-2503).

Licensing Div. (717-338-2601): Mary Schultz, chief.

Special Services Branch: Walter G. Boswell, acting chief; Aviation Ground & Marine Coast Section: Brenda G. Kessler (717-338-2669); General Radio Section: Darlene Reeder, chief (717-338-2673).

Customer Services Div. (717-338-2510): John Chudovan, chief.

Fee & Mail Branch (717-338-2524): Kathy A. Fowler, acting chief.

Support Services Branch (717-338-2560): Lisa L. Stover, chief; Applications Tracking Section: Katherine A. McClucas, chief; Database Maintenance Section: Betty J. Edwards, chief; Returns & Filing Section: Nancy Gilbert, chief.

Data Services Branch (717-338-2511): Judith Dunlap, acting chief; Systems Analysis Section: Judith Dunlap, acting chief; Data Operations Section: Kathy A. Fowler, chief.

### Field Offices and Directors

Atlanta (AT): Koger Center-Gwinnett, Rm 320, 3575 Koger Blvd., Duluth, GA 30136-4958. Fred L. Boce, district dir.

Boston (BS): One Batterymarch Park, Quincy, MA 02169-7495. Vincent F. Kajunski.

Chicago (CG): Park Ridge Office Center, Rm 306, 1550 Northwest Hwy, Park Ridge, IL 60068-1460. George M. Moffitt.

Columbia, MD 21045-9998: Box 250. Charles Magin, district dir.

Dallas (DL), TX 75243-3429: 9330 LBJ Freeway, Rm 1170. James D. Wells, district dir.

Denver (DV): 165 S. Union Blvd., Rm 860, Lakewood, CO 80228-2213. Leo Cirbo, district dir.

Detroit (DT): 24897 Hathaway St., Farmington Hills, MI 48335-1552. James A. Bridgewater, district dir.

Kansas City (KC), MO 64133-4895: 8800 E. 63rd St, Rm 320. Bob McKinney, district dir.

Los Angeles (LA): Cerritos Corporate Tower, 18000 Studebaker Rd., Rm 660, Cerritos, CA 90701-3684. James R. Zoulek, district dir.

New Orleans (OR), LA 70123-3333: 800 W. Commerce Rd., Rm 505. James C. Hawkins, district dir.

New York (NY), NY 10014-4870: 201 Varick St. Alexander J. Zimny, district dir.

Philadelphia (PA): One Oxford Valley Office Bldg., Rm 404, 2300 E. Lincoln Hwy, Langhorne, PA 19047-1859. John Rahtes, district dir.

San Diego (SD), CA 92111-2216: Interstate Office Park, 4542 Ruffner St., Rm 370. William H. Grigsby, district dir.

San Francisco (SF): 3777 Depot Rd., Rm 420, Hayward, CA 94545-2756. David Doon, district dir.

Seattle (ST), WA: 11410 N.E. 122nd Way, Rm 312, Kirkland, WA 98034-6927. Dennis Anderson, acting dir.

Tampa (TP), FL 33607-2356: 2203 N. Lois Ave., Rm 1215. Ralph M. Barlow, district dir.

## Past Membership

### Members of Former Federal Radio Commission Feb. 23, 1927 - July 10, 1934

Colonel John F. Dillon, Calif., March 15, 1927-Oct. 8, 1927 (Deceased).

Henry A. Bellows, Minn., March 15, 1927-Oct. 31, 1927 (Deceased).

Admiral W.H.C. Bullard, Pa., March 15, 1927-Nov. 24, 1927 (Deceased).

Sam Pickard, Kan., Nov. 1, 1927-Jan. 31, 1929.

Orestes H. Caldwell, N.Y., March 15, 1927-Feb. 23, 1929.

Eugene O. Sykes, Miss., March 15, 1927-July 10, 1934 (Deceased).

Harold A. Lafount, Utah, Nov. 14, 1927-July 10, 1934 (Deceased).

Ira E. Robinson, W. Va., March 29, 1928-Jan. 15, 1932 (Deceased).

General C. McK. Saltzman, Iowa, May 2, 1929-July 19, 1932 (Deceased).

Thad H. Brown, Ohio, Jan. 21, 1932-July 10, 1934 (Deceased).

James H. Hanley, Neb., April 1, 1933-July 10, 1934 (Deceased).

### Past Members of the Federal Communications Commission

Hampson Gary, Tex., July 11, 1934-Jan. 1, 1935 (Deceased).

Irvin Stewart, Tex., July 11, 1934-June 30, 1937 (Deceased).

Eugene O. Sykes, Miss., July 11, 1934-April 5, 1939 (Deceased).

Thad H. Brown, Ohio, July 11, 1934-June 30, 1940 (Deceased).

George H. Payne, N.Y., July 11, 1934-June 30, 1943 (Deceased).

Norman S. Case, R.I., July 11, 1934-June 30, 1945 (Deceased).

Paul Atlee Walker, Okla., July 11, 1934-June 30, 1953 (Deceased).

Anning S. Prall, N.Y., Jan. 17, 1935-July 23, 1937 (Deceased).

T.A.M. Craven, D.C., Aug. 25, 1937-June 30, 1944; July 2, 1956-March 25, 1963 (Deceased).

Frank R. McNinch, N.C., Oct. 1, 1937-Aug. 31, 1939 (Deceased).

Frederic I. Thompson, Ala., April 13, 1939-June 30, 1941 (Deceased).

James Lawrence Fly, Tex., Sept. 1, 1939-Nov. 13, 1944 (Deceased).

Ray C. Wakefield, Calif., March 22, 1941-June 30, 1947.

Clifford J. Durr, Ala., Nov. 1, 1941-June 30, 1948 (Deceased).

Ewell K. Jett, Md., Feb. 15, 1944-Dec. 31, 1947 (Deceased).

Paul A. Porter, Ky., Dec. 21, 1944-Feb. 25, 1946 (Deceased).

Rosel H. Hyde, Idaho, April 17, 1946-Oct. 31, 1969 (Deceased).

Charles R. Denny Jr., D.C., March 30, 1945-Oct. 31, 1947.

William H. Willis, Vt., July 23, 1945-March 6, 1946 (Deceased).

Edward Mount Webster, D.C., April 10, 1947-June 30, 1956 (Deceased).

Robert Franklin Jones, Ohio, Sept. 5, 1947-Sept. 19, 1952 (Deceased).

Wayne Coy, Ind., Dec. 29, 1947-Feb. 21, 1952 (Deceased).

George Edward Sterling, Me., Jan. 2, 1948-Sept. 30, 1954.

Frieda Barkin Hennock, N.Y., July 6, 1948-June 30, 1955 (Deceased).

Robert T. Bartley, Tex., March 6, 1952-June 30, 1972 (Deceased).

Eugene H. Merrill, Utah, Oct. 6, 1952-April 15, 1953 (Recess Appointee) (Deceased).

John C. Doerfer, Wis., April 15, 1953-March 21, 1960 (Deceased).

Robert E. Lee, Ill., Oct. 6, 1953-June 30, 1981 (Deceased).

George C. McConaughy, Ohio, Oct. 4, 1954-June 30, 1957 (Deceased).

Richard A. Mack, Fla., July 7, 1955-March 3, 1958 (Deceased).

Frederick W. Ford, W.Va., Aug. 29, 1957-Dec. 31, 1964 (Deceased).

John S. Cross, Ark., May 23, 1958-Sept. 30, 1962 (Deceased).

Charles H. King, Mich., July 19, 1960-March 2, 1961 (Recess Appointee).

Newton N. Minow, Ill., March 2, 1961-June 1, 1963.

E. William Henry, Tenn., Oct. 2, 1962-April 30, 1966.

Kenneth A. Cox, Wash., March 26, 1963-Sept. 1, 1970.

Lee Loevinger, Minn., June 11, 1963-June 30, 1968.

James J. Wadsworth, N.Y., May 5, 1965-Oct. 31, 1969 (Deceased).

Thomas J. Houser, Ill., Jan. 6, 1971-Oct. 5, 1971.

Robert Wells, Kan., Nov. 6, 1969-Nov. 1, 1971.

Nicholas Johnson, Iowa, July 1, 1966-Dec. 5, 1973.

H. Rex Lee, D.C., Oct. 28, 1968-Dec. 31, 1973.

Dean Burch, Ariz., Oct. 31, 1969-March 8, 1974 (Deceased).

Charlotte T. Reed, Ill., Oct. 8, 1971-June 30, 1976.

Richard E. Wiley, Ill., Jan. 5, 1972-Oct. 13, 1977.

Benjamin L. Hooks, Tenn., July 5, 1972-July 25, 1977.

Glenn O. Robinson, Minn., July 10, 1974-Aug. 30, 1976.

Abbott M. Washburn, Minn., July 10, 1974-Oct. 1, 1982.

Margita E. White, Va., Sept. 23, 1976-Feb. 28, 1979.

Charles D. Ferris, Mass., Oct. 17, 1977-April 10, 1981.

Tyrone Brown, Va., Nov. 15, 1977-Jan. 31, 1981.

Joseph R. Fogarty, R.I., Sept. 17, 1976-June 30, 1983.

Anne Jones, Mass., April 7, 1979-May 31, 1983.

Stephen A. Sharp, Ohio, Oct. 4, 1982-June 30, 1983.

Henry M. Rivera, N.M., Aug. 10, 1981-Sept. 15, 1985.

Mark S. Fowler, Canada, May 18, 1981-April 17, 1987.

Mimi Weyforth Dawson, Mo., July 6, 1981-Dec. 3, 1987.

Dennis R. Patrick, Calif., Dec. 2, 1983-Aug. 7, 1989.

Patricia Diaz Dennis, N.M., June 25, 1986-Sept. 29, 1989.

Alfred C. Sikes, Mo., Aug. 8, 1989-Jan. 19, 1993.

Sherrie P. Marshall, Fl., Aug. 21 1989-Apr. 30, 1993.

Ervin S. Duggan, Ga., Feb. 28, 1990-Jan. 30, 1994.



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## §73.14 AM broadcast definitions.

**AM broadcast band**—The band of frequencies extending from 535 to 1705 kHz.

**AM broadcast channel**—The band of frequencies occupied by the carrier and the upper and lower sidebands of an AM broadcast signal with the carrier frequency at the center. Channels are designated by their assigned carrier frequencies. The 117 carrier frequencies assigned to AM broadcast stations begin at 540 kHz and are in successive steps of 10 kHz to 1700 kHz. See §73.21 for the classification of AM broadcast channels.

**AM broadcast station**—A broadcast station licensed for the dissemination of radio communications intended to be received by the public and operated on a channel in the AM broadcast band.

**Amplitude modulated stage**—The radio-frequency stage to which the modulator is coupled and in which the carrier wave is modulated in accordance with the system of amplitude modulation and the characteristics of the modulating wave.

**Amplitude modulator stage**—The last amplifier stage of the modulating wave which amplitude modulates a radio-frequency stage.

**Antenna current**—The radio-frequency current in the antenna with no modulation.

**Antenna input power**—The product of the square of the antenna current and the antenna resistance at the point where the current is measured.

**Antenna resistance**—The total resistance of the transmitting antenna system at the operating frequency and at the point at which the antenna current is measured.

**Auxiliary facility**—An auxiliary facility is an AM antenna tower(s) separate from the main facility's antenna tower(s), permanently installed at the same site or at a different location, from which an AM station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (e.g., where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (See §73.1675).

**Blanketing**—The interference which is caused by the presence of an AM broadcast signal of one volt per meter (v/m) or greater intensity in the area adjacent to the antenna of the transmitting station. The 1 v/m contour is referred to as the blanket contour and the area within this contour is referred to as the blanket area.

**Carrier-amplitude regulation**—The change in amplitude of the carrier wave in an amplitude-modulated transmitter when modulation is applied under conditions of symmetrical modulation.

**Combined audio harmonics**—The arithmetical sum of the amplitudes of all the separate harmonic components. Root sum square harmonic readings may be accepted under conditions prescribed by the FCC.

**Critical directional antenna**—An AM broadcast directional antenna that is required, by the terms of a station authorization, to be operated with the relative currents and phases within the antenna elements at closer tolerances of deviation than those permitted under §73.62 and observed with a high precision monitor capable of measuring these parameters.

**Critical hours**—The two hour period immediately following local sunrise and the two hour period immediately preceding local sunset.

**Daytime**—The period of time between local sunrise and local sunset.

**Dominant station**—A Class I station, as defined in §73.21.

**Effective field; effective field strength**—The root-mean-square (RMS) value of the inverse distance fields at a distance of 1 kilometer from the antenna in all directions in the horizontal plane. The term field strength is synonymous with the term field intensity as contained elsewhere in this Part.

**Equipment performance measurements**—The measurements performed to determine the overall performance characteristics of a broadcast transmission system from point of program origination at main studio to sampling of signal as radiated.

**Experimental period**—The time between 12 midnight local time and local sunrise, used by AM stations for tests, maintenance and experimentation.

**Frequency departure**—The amount of variation of a carrier frequency or center frequency from its assigned value.

**Incidental phase modulation**—The peak phase deviation (in radians) resulting from the process of amplitude modulation.

**Input power**—Means the product of the direct voltage applied to the last radio stage and the total direct current flowing to the last radio stage, measured without modulation.

**Intermittent service area**—Means the area receiving service from the groundwave of a broadcast station but beyond the primary service area and subject to some interference and fading.

**Last radio stage**—The radio-frequency power amplifier stage which supplies power to the antenna.

**Left (or right) signal**—The electrical output of a microphone or combination of microphones placed so as to convey the intensity, time, and location of sounds originated predominantly to the listener's left (or right) of the center of the performing area.

**Left (or right) stereophonic channel**—The left (or right) signal as electrically reproduced in reception of AM stereophonic broadcasts.

**Main channel**—The band of audio frequencies from 50 to 10,000 Hz which amplitude modulates the carrier.

**Maximum percentage of modulation**—The greatest percentage of modulation that may be obtained by a transmitter without producing in its output harmonics of the modulating frequency in excess of those permitted by these regulations. (See §73.1570.)

**Maximum rated carrier power**—The maximum power at which the transmitter can be operated satisfactorily and is determined by the design of the transmitter and the type and number of vacuum tubes or other amplifier devices used in the last radio stage.

**Modal I facility**—A station operating in the 1605-1705 kHz band featuring fulltime operation with stereo, com-

petitive technical quality, 10 kW daytime power, 1 kW nighttime power, non-directional antenna (or a simple directional antenna system), and separated by 400-800 km from other co-channel stations.

**Model II facility**—A station operating in the 535-1605 kHz band featuring fulltime operation, competitive technical quality, wide area daytime coverage with nighttime coverage at least 15% of the daytime coverage.

**Modulated stage**—The radio frequency stage to which the modulator is coupled and in which the continuous wave (carrier wave) is modulated in accordance with the system of modulation and the characteristics of the modulating wave.

**Modulator stage**—The last amplifier stage of the modulating wave which modulates in a radio-frequency stage.

**Nighttime**—The period of time between local sunset and local sunrise.

**Nominal power**—The antenna input power less any power loss through a dissipative network and, for directional antennas, without consideration of adjustments specified in subparagraphs (b)(1) and (b)(2) of §73.51 of the rules. However, for AM broadcast applications granted or filed before June 3, 1985, nominal power is specified in a system of classifications which include the following values: 50 kW, 25 kW, 10kW, 5kW, 2.5 kW, 1 kW, 0.5 kW and 0.25 kW. The specified nominal power for any station in this group of stations will be retained until action is taken on or after June 3, 1985, which involves a change in the technical facilities of the station.

**Plate modulation**—The modulation produced by introduction of the modulating wave into the plate circuit of any tube in which the carrier frequency wave is present.

**Primary service area**—Means the service area of a broadcast station in which the groundwave is not subject to objectionable interference or objectionable fading.

**Proof of performance measurements or antenna proof of performance measurements**—The measurements of field strengths made to determine the radiation pattern or characteristics of an AM directional antenna system.

**Secondary service area**—Means the service area of a broadcast station served by the skywave and not subject to objectionable interference and in which the signal is subject to intermittent variations in strength.

**Secondary AM station**—Any AM station, except a Class I station, operating on a Class I frequency.

**Stereophonic channel**—The band of audio frequencies from 50 to 10,000 Hz containing the stereophonic information which modulates the radio frequency carrier.

**Stereophonic crosstalk**—An undesired signal occurring in the main channel from modulation of the stereophonic channel or that occurring in the stereophonic channel from modulation of the main channel.

**Stereophonic pilot tone**—An audio tone of fixed or variable frequency modulating the carrier during the transmission of stereophonic programs.

**Stereophonic separation**—The ratio of the electrical signal caused in the right (or left) stereophonic channel to the electrical signal caused in the left (or right) stereophonic channel by the transmission of only a right (or left) signal.

**Sunrise and sunset**—For each particular location and during any particular month, the time of sunrise and sunset as specified in the instrument of authorization (see §73.1209).

**White area**—The area or population which does not receive interference-free primary service from an authorized AM station or does not receive a signal strength of at least 1 mV/m from an authorized FM station.

## In AM, FM, TV rules ...

**§73.1530 Portable test stations.** A portable test station is one that is moved from place to place for making field strength and ground conductivity measurements, for selecting station transmitter sites, and conducting other specialized propagation tests. Portable test stations are not normally used while in motion, and may not be used for the transmission of programs intended to be received by the public.



**§73.1700 Broadcast day.** The term broadcast day means that period of time between the station's sign-on and its sign-off.

**§73.1720 Daytime.** Operation is permitted during the hours between average monthly local sunrise and average monthly local sunset.

(a) The controlling times for each month of the year are stated in the station's instrument of authorization. Uniform sunrise and sunset times are specified for all of the days of each month, based upon the actual times of sunrise and sunset for the fifteenth day of the month adjusted to the nearest quarter hour. Sunrise and sunset times are derived by using the standardized procedure and the tables in the 1946 American Nautical Almanac issued by the United States Naval Observatory.

## Allocations

### In AM rules ...

#### §73.21 Classes of AM broadcast channels and stations.

(a) Clear channel. A clear channel is one on which stations are permitted to serve wide areas. These stations are protected from objectionable interference within their primary service areas and, depending on the class of station, their secondary service areas. Stations operating on these channels are classified as follows:

(1) Class A station. A Class A station is an unlimited time station that operates on a clear channel and is designed to render primary and secondary service over an extended area and at relatively long distances from its transmitter. Its primary service area is protected from objectionable interference from other stations on the same and adjacent channels, and its secondary service area is protected from interference from other stations on the same channel. (See §73.182). The operating power shall not be less than 10 kW nor more than 50 kW. (Also see §73.25(a)).

(2) Class B station. A Class B station is an unlimited time station which is designed to render service only over a primary service area. Class B stations are authorized to operate with a minimum power of 0.25 kW (or, if less than 0.25 kW, an equivalent RMS antenna field of at least 141 mV/m at 1 km) and a maximum power of 50 kW, or 10 kW for stations that are authorized to operate in the 1605-1705 kHz band.

(3) Class D station. A Class D station operates either daytime, limited time or unlimited time with nighttime power less than 0.25 kW and an equivalent RMS antenna field of less than 141 mV/m at one km. Class D stations shall operate with daytime powers not less than 0.25 kW nor more than 50 kW. Nighttime operations of Class D stations are not afforded protection and must protect all Class A and Class B operations during nighttime hours. New Class D stations that had not been previously licensed as Class B will not be authorized.

(b) Regional Channel. A regional channel is one on which Class B and Class D stations may operate and serve primarily a principal center of population and the rural area contiguous thereto.

NOTE: Until the North American Regional Broadcasting Agreement (NARBA) is terminated with respect to the Bahama Islands and the Dominican Republic, radiation toward those countries from a Class B station may not exceed the level that would be produced by an omnidirectional antenna with a transmitted power of 5 kW, or such lower level as will comply with NARBA requirements for protection of stations in the Bahama Islands and the Dominican Republic against objectionable interference.

(c) Local channel. A local channel is one on which stations operate unlimited time and serve primarily a community and the suburban and rural areas immediately contiguous thereto.

(1) Class C station. A Class C station is a station operating on a local channel and is designed to render service only over a primary service area that may be reduced as a consequence of interference in accordance with §73.182. The power shall not be less than 0.25 kW, nor more than 1 kW. Class C stations that are licensed to operate with 0.1 kW may continue to do so.

**§73.24 Broadcast facilities; showing required.** An authorization for a new standard broadcast station or increase in facilities of an existing station will be issued only after a satisfactory showing has been made in regard to the following, among others:

(a) That the proposed assignment will tend to effect a fair, efficient and equitable distribution of radio service among the several states and communities.

(b) That a proposed new station (or a proposed change in the facilities of an authorized station) complies with the pertinent requirements of §73.37.

(c) That the applicant is financially qualified to construct and operate the proposed station.

(d) That the applicant is legally qualified. That the applicant (or the person or persons in control of an applicant corporation or other organization) is of good character and possesses other qualifications sufficient to provide a satisfactory public service.

(e) That the technical equipment proposed, the location of the transmitter, and other technical phases of operation comply with the regulations governing the same, and the requirements of good engineering practice.

(f) That the facilities sought are subject to assignment as requested under existing international agreements and the rules and regulations of the Commission.

(g) That the population within the 1 mV contour does not exceed 1.0 percent of the population within the 25 mV contour: Provided, however, that where the number of persons within the 1 mV contour is 300 or less the provisions of this subparagraph are not applicable.

(h) That, in the case of an application for a Class B or Class D station on a clear channel, the proposed station would radiate, during two hours following local sunrise and two hours preceding local sunset, in any direction toward the 0.1 mV/m groundwave contour of a co-channel United States Class A station, no more than the maximum radiation values permitted under the provisions of §73.187.

(i) That, for all stations, the daytime 5 mV/m contour encompasses the entire principal community to be served. That, for stations in the 535-1605 kHz band, 80% of the principal community is encompassed by the nighttime 5 mV/m contour or the nighttime interference-free contour, whichever value is higher. That, for stations in the 1605-1705 kHz band, 50% of the principal community is encompassed by the 5 mV/m contour or the nighttime interference-free contour, whichever value is higher. That, Class D stations with nighttime authorizations need not demonstrate such coverage during nighttime operation.

(j) That the public interest, convenience and necessity will be served through the operation under the proposed assignment.

**§73.25 Clear channels: Class A, Class B and Class D stations.** The frequencies in the following tabulations are designated as clear channels and assigned for use by the classes of stations given:

(a) On each of the following channels, one Class A station may be assigned, operating with power of 50 kW: 640, 650, 660, 670, 700, 720, 750, 760, 770, 780, 820, 830, 840, 870, 880, 890, 1020, 1030, 1040, 1100, 1120, 1160, 1180, 1200 and 1210 kHz. In Alaska, these frequencies can be used by Class A stations subject to the conditions set forth in §73.182(a)(1)(ii). On the channels listed in this paragraph, Class B and Class D stations may be assigned.

(b) To each of the following channels there may be assigned Class A, Class B and Class D stations: 680, 710, 810, 850, 940, 1000, 1060, 1070, 1080, 1090, 1110, 1130, 1140, 1170, 1190, 1500, 1510, 1520, 1530, 1540, 1550 and 1560 kHz.

NOTE: Until superseded by a new agreement, protection of the Bahama Islands shall be in accordance with NARBA. Accordingly, a Class A, Class B or Class D station on 1540 kHz shall restrict its signal to a value no greater than 4 uV/m groundwave or 25 uV/m-10% skywave at any point of land in the Bahama Islands, and such stations operating nighttime (i.e., sunset to sunrise at the location of the U.S. station) shall be located not less than 650 miles from the nearest point of land in the Bahama Islands.

(c) Class A, Class B and Class D stations may be assigned on 540, 690, 730, 740, 800, 860, 900, 990, 1010, 1050, 1220, 1540, 1570, and 1580 kHz.

**§73.26 Regional channels: Class B and Class D stations.**

(a) The following frequencies are designated as regional channels and are assigned for use by Class B and Class D stations: 550, 560, 570, 580, 590, 600, 610, 620, 630, 790, 910, 920, 930, 950, 960, 970, 980, 1150, 1250, 1260, 1270, 1280, 1290, 1300, 1310, 1320, 1330, 1350, 1360, 1370, 1380, 1390, 1410, 1420, 1430, 1440, 1460, 1470, 1480, 1590, 1600, 1610, 1620, 1630, 1640, 1650, 1660, 1670, 1680, 1690, and 1700 kHz.

(b) Additionally, in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands the frequencies 1230, 1240, 1340, 1400, 1450 and 1490 kHz are designated as Regional channels, and are assigned for use by Class B stations. Stations formerly licensed to these channels in those locations as Class C stations are redesignated as Class B stations.

**§73.27 Local Channels: Class C stations.** Within the determinative 48 states, the following frequencies are designated as local channels, and are assigned for use

by Class C stations: 1230, 1240, 1340, 1400, 1450, and 1490 kHz.

#### §73.28 Assignments of stations to channels.

(a) The Commission will not make an AM station assignment that does not conform with international requirements and restrictions on spectrum use that the United States has accepted as a signatory to treaties, conventions, and other international agreements. See §73.1650 for a list of pertinent treaties, conventions and agreements, and §73.23 for procedural provisions relating to compliance with them.

(c) Engineering standards now in force domestically differ in some respects from those specified for international purposes. The engineering standards specified for international purposes (see §73.1650, International Agreements) will be used to determine: (1) The extent to which interference might be caused by a proposed station in the United States to a station in another country; and (2) whether the United States should register an objection to any new or changed assignment notified by another country. The domestic standards in effect in the United States will be used to determine the extent to which interference exists or would exist from a foreign station where the value of such interference enters into a calculation of: (1) the service to be rendered by a proposed operation in the United States; or (2) the permissible interfering signal from one station in the United States to another United States station.

**§73.29 Class C stations on regional channels.** No license will be granted for the operation of a Class C station on a regional channel.

#### §73.30 Petition for authorization of an allotment in the 1605-1705 kHz band.

(a) Any party interested in operating an AM broadcast station on one of the ten channels in the 1605-1705 kHz band must file a petition for the establishment of an allotment to its community of license. Each petition must include the following information:

(1) name of community for which allotment is sought; (2) frequency and call letters of the petitioner's existing AM operation; and (3) statement as to whether or not AM stereo operation is proposed for the operation in the 1605-1705 kHz band.

(b) Petitions are to be filed during a filing period to be determined by the Commission. For each filing period, eligible stations will be allotted channels based on the following steps:

(1) Stations are ranked in descending order according to the calculated improvement factor.

(2) The station with the highest improvement factor is initially allotted the lowest available channel.

(3) Successively, each station with the next lowest improvement factor is allotted an available channel taking into account the possible frequency and location combinations and relationship to previously selected allotments. If a channel is not available for the subject station, previous allotments are examined with respect to an alternate channel, the use of which would make a channel available for the subject station.

(4) When it has been determined that, in accordance with the above steps, no channel is available for the subject station, that station is no longer considered and the process continues to the station with the next lowest improvement factor.

(c) If awarded an allotment, a petitioner will have sixty (60) days from the date of public notice of selection to file an application for construction permit FCC Form 301. (See —§73.24 and §73.37(e) for filing requirements.) Unless instructed by the Commission to do otherwise, the application shall specify Model I facilities. (See §73.14.) Upon grant of the application and subsequent construction of the authorized facility, the applicant must file a license application on FCC Form 302.

NOTE 1: Until further notice by the Commission, the filing of these petitions is limited to licensees of existing AM stations (excluding Class C stations) operating in the 535-1605 kHz band. First priority will be assigned to Class D stations located within the primary service contours of U.S. Class A stations that are licensed to serve communities of 100,000 or more for which there exists no local fulltime aural service.

NOTE 2: Selection among competing petitions will be based on interference reduction. Notwithstanding the exception contained in NOTE 5, within each operational category, the station demonstrating the highest value of improvement factor will be afforded the highest priority for an allotment, with the next priority assigned to the station with next lowest value, and so on, until available allotments are filled.

NOTE 3: The Commission will periodically evaluate the progress of the movement of stations from the 535-1605 kHz band to the 1605-1705 kHz band to determine



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whether the 1605-1705 kHz band should continue to be administered on an allotment basis or modified to an assignment method. If appropriate, the Commission will later develop further procedures for use of the 1605-1705 kHz band by existing station licensees and others.

**NOTE 4:** Other than the exception specified in NOTE 1, existing fulltime stations are considered first for selection as described in NOTE 2. In the event that an allotment availability exists for which no fulltime station has filed a relevant petition, such allotment may be awarded to a licensed Class D station. If more than one Class D station applies for this migration opportunity, the following priorities will be used in the selection process: First priority - A Class D station located within the 0.5 mV/m-50% contour of a U.S. Class A station and licensed to serve a community of 100,000 or more, for which there exists no local fulltime aural service; Second priority - Class D stations ranked in order of improvement factor, from highest to lowest, considering only those stations with improvement factors greater than zero.

**NOTE 5:** The preference for AM stereo in the expanded band will be administered as follows: when an allotment under consideration (candidate allotment) conflicts with one or more previously selected allotments (established allotments) and cannot be accommodated in the expanded band, the candidate allotment will be substituted for the previously established allotment provided that: the petitioner for the candidate allotment has made a written commitment to the use of AM stereo and the petitioner for the established allotment has not; the difference between the ranking factors associated with the candidate and established allotments does not exceed 10% of the ranking factor of the candidate allotment; the substitution will not require the displacement of more than one established allotment; and both the candidate allotment and the established allotment are within the same priority group.

### In FM rules ...

#### §73.35 Calculation of Improvement factors.

(a) A petition for an allotment (see §73.30) in the 1605-1705 kHz band filed by an existing fulltime AM station licensed in the 535-1605 kHz band will be ranked according to the station's calculated improvement factor. (See §73.30.) Improvement factors relate to both nighttime and daytime interference conditions and are based on two distinct considerations: (1) service area lost by other stations due to interference caused by the subject station, and (2) service area of the subject station. These considerations are represented by a ratio. The ratio consists, where applicable, of two separate additive components, one for nighttime and one for daytime. For the nighttime component, to determine the numerator of the ratio (first consideration), calculate the RSS and associated service area of the stations (co- and adjacent channel) to which the subject station causes nighttime interference. Next, repeat the RSS and service area calculations excluding the subject station. The cumulative gain in the above service areas is the numerator of the ratio. The denominator (second consideration) is the subject station's interference-free service area. For the daytime component, the composite amount of service lost by co-channel and adjacent channel stations, each taken individually, that are affected by the subject station, excluding the effects of other assignments during each study, will be used as the numerator of the daytime improvement factor. The denominator will consist of the actual daytime service area (0.5 mV/m contour) less any area lost to interference from other assignments. The value of this combined ratio will constitute the petitioner's improvement factor. Notwithstanding the requirements of §73.153, for uniform comparisons and simplicity, measurement data will not be used for determining improvement factors and FCC Figure M-3 ground conductivity values are to be used exclusively in accordance with the pertinent provisions of §73.183(c)(1).

#### §73.201 Numerical designation of FM broadcast channels.

The FM broadcast band consists of that portion of the radio frequency spectrum between 88 MHz and 108 MHz. It is divided into 100 channels of 200 kHz each. For convenience, the frequencies available for FM broadcasting (including those assigned to noncommercial educational broadcasting) are given numerical designations which are shown in the table below:

Freq	Ch. No	Freq	Ch No
88.1 mhz	201	98.1 mhz	251
88.3 mhz	202	98.3 mhz	252
88.5 mhz	203	98.5 mhz	253
88.7 mhz	204	98.7 mhz	254
88.9 mhz	205	98.9 mhz	255
89.1 mhz	206	99.1 mhz	256
89.3 mhz	207	99.3 mhz	257
89.5 mhz	208	99.5 mhz	258
89.7 mhz	209	99.7 mhz	259
89.9 mhz	210	99.9 mhz	260
90.1 mhz	211	100.1 mhz	261
90.3 mhz	212	100.3 mhz	262
90.5 mhz	213	100.5 mhz	263
90.7 mhz	214	100.7 mhz	264
90.9 mhz	215	100.9 mhz	265
91.1 mhz	216	101.1 mhz	266
91.3 mhz	217	101.3 mhz	267
91.5 mhz	218	101.5 mhz	268
91.7 mhz	219	101.7 mhz	269
91.9 mhz	220	101.9 mhz	270
92.1 mhz	221	102.1 mhz	271
92.3 mhz	222	102.3 mhz	272
92.5 mhz	223	102.5 mhz	273
92.7 mhz	224	102.7 mhz	274
92.9 mhz	225	102.9 mhz	275
93.1 mhz	226	103.1 mhz	276
93.3 mhz	227	103.3 mhz	277
93.5 mhz	228	103.5 mhz	278
93.7 mhz	229	103.7 mhz	279
93.9 mhz	230	103.9 mhz	280
94.1 mhz	231	104.1 mhz	281
94.3 mhz	232	104.3 mhz	282
94.5 mhz	233	104.5 mhz	283
94.7 mhz	234	104.7 mhz	284
94.9 mhz	235	104.9 mhz	285
95.1 mhz	236	105.1 mhz	286
95.3 mhz	237	105.3 mhz	287
95.5 mhz	238	105.5 mhz	288
95.7 mhz	239	105.7 mhz	289
95.9 mhz	240	105.9 mhz	290
96.1 mhz	241	106.1 mhz	291
96.3 mhz	242	106.3 mhz	292
96.5 mhz	243	106.5 mhz	293
96.7 mhz	244	106.7 mhz	294
96.9 mhz	245	106.9 mhz	295
97.1 mhz	246	107.1 mhz	296
97.3 mhz	247	107.3 mhz	297
97.5 mhz	248	107.5 mhz	298
97.7 mhz	249	107.7 mhz	299
97.9 mhz	250	107.9 mhz	300

**NOTE:** The frequency 108.0 MHz may be assigned to VOR test stations subject to the condition that interference is not caused to the reception of FM broadcast stations, present or future.

#### §73.202 Table of Allotments.

(a) General. The following Table of Allotments contains the channels (other than noncommercial educational Channels 201-220) designated for use in communities in the United States, its territories, and possessions. All listed channels are for Class B stations in Zones I and I-A and for Class C stations in Zone II unless otherwise specifically designated.

(1) Channels designated with an asterisk may only be used by noncommercial educational broadcast stations. Noncommercial educational FM allotments (Channels 201-220) available for use in various communities in Arizona, California, New Mexico, and Texas are listed in §73.504. The rules governing the use of noncommercial educational channels in other communities are contained in §73.501.

(2) Each channel listed in the Table of Allotments reflects the class of station that is authorized, or has an application filed, to use it based on the minimum and maximum facility requirements for each class contained in §73.211.

**NOTE:** The provisions of this subparagraph [(a)(2)] become effective March 1, 1987.

(b) Table of FM Allotments. [EDITOR'S NOTE: Channel assignments by cities are reprinted in the AM-FM directory and are not repeated here.]

#### §73.203 Availability of channels.

(a) Except as provided for in paragraph (b) of this section, applications may be filed to construct FM broadcast stations only at the communities and on the channels and classes contained in the FM Table of Allotments (§73.202(b)). Applications that fail to comply with this requirement, whether or not accompanied by a petition to amend the Table, will not be accepted for tender.

(b) Applications filed on a first come, first served basis may propose a lower or higher class adjacent, intermediate frequency or co-channel. Applications for the modification of an existing FM broadcast station may propose a lower or higher class adjacent, intermediate frequency or co-channel, or a same class adjacent channel. In these cases, the applicant need not file a petition for rulemaking to amend the Table of Allotments (§73.202(b)) to specify the modified channel class.

**NOTE:** Changes in channel and/or class by application are limited to modifications on first, second and third adjacent channels, intermediate frequency (IF) channels, and co-channels which require no other changes to the FM Table of Allotments. Applications requesting such modifications must meet either the minimum spacing requirements of §73.207 at the site specified in the application, without resort to the provisions of the Commission's Rules permitting short spaced stations as set forth in §§73.213-73.215 or demonstrate by a separate exhibit attached to the application the existence of a suitable allotment site that fully complies with §§73.207 and 73.315, without resort to §§73.213-73.215.

#### §73.205 Zones.

For the purpose of allotments and assignments, the United States is divided into three zones as follows:

(a) Zone I consists of that portion of the United States located within the confines of the following lines drawn on the United States Albers Equal Area Projection Map (based on standard parallels 29 1/2 and 45 1/2; North American datum); Beginning at the most easterly point on the State boundary line between North Carolina and Virginia; thence in a straight line to a point on the Virginia, West Virginia boundary line located at North Latitude 37°49' and West Longitude 80°12' 30"; thence westerly along the southern boundary lines of the States of West Virginia, Ohio, Indiana, and Illinois to a point at the junction of the Illinois, Kentucky, and Missouri state boundary lines; thence northerly along the western boundary line of the State of Illinois to a point at the junction of the Illinois, Iowa, and Wisconsin state boundary lines; thence, easterly along the northern state boundary line of Illinois to the 90th meridian; thence north along this meridian to the 43.5-degree parallel; thence east along the parallel to the United States-Canada border; thence southerly and following that border until it again intersects the 43.5-degree parallel; thence east along this parallel to the 71st meridian; thence in a straight line to the intersection of the 69th meridian and the 45th parallel; thence east along the 45th parallel to the Atlantic Ocean. When any of the above lines pass through a city, the city shall be considered to be located in Zone I. (See Figure I of §73.699 [in complete copy of Rules].)

(b) Zone IA consists of Puerto Rico, the Virgin Islands, and that portion of the State of California which is located south of the 40th parallel.

(c) Zone II consists of Alaska, Hawaii and the rest of the United States which is not located in either Zone I or Zone IA.

#### §73.207 Minimum distance separations between stations.

(a) Except for assignments made pursuant to §73.213 or §73.215, FM allotments and assignments must be separated from other allotments and assignments on the same channel (co-channel) and five pairs of adjacent channels by not less than the minimum distances specified in paragraphs (b) and (c) of this section. The Commission will not accept petitions to amend the Table of Allotments unless the reference points meet all of the minimum distance separation requirements of this section. The Commission will not accept applications for new stations, or applications to change the channel or location of existing assignments, unless transmitter sites meet the minimum distance separation requirements of this section, or such applications conform to the requirements of §73.213 or §73.215. However, applications to modify the facilities of stations with short-spaced antenna locations authorized pursuant to prior waivers of the distance separation requirements may be accepted, provided that such applications propose to maintain or improve that particular spacing deficiency. Class D (secondary) assignments are subject only to the distance separation requirements contained in paragraph (b)(3) of this section. (See §73.512 for rules governing the channel and location of Class D (secondary) assignments.)

(b) The distances listed in Tables A, B and C apply to allotments and assignments on the same channel and each of five pairs of adjacent channels. The five pairs of adjacent channels are the first (200 kHz above and 200 kHz below the channel under consideration), the second (400 kHz above and below), the third (600 kHz above and below), the fifty-third (10.6 MHz above and below), and the fifty-fourth (10.8 MHz above and below). The distances in the Tables apply regardless of whether the proposed station class appears first or second in the "Relation" column of the table.

(1) Domestic allotments and assignments must be separated from each other by not less than the distances in Table A which follows:

(2) Under the Canada-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border



must be separated from Canadian allotments and assignments by not less than the distances given in Table B, which follows. When applying Table B, U.S. Class C2 allotments and assignments are considered to be Class B; also, U.S. Class C3 allotments and assignments and U.S. Class A assignments operating with more than 3 kW ERP and 100 meters antenna HAAT (or equivalent lower ERP and higher antenna HAAT based on a class contour distance of 24 km) are considered to be Class B1.

(3) Under the 1992 Mexico-United States FM Broadcasting Agreement, domestic U.S. assignments or allotments within 320 kilometers (199 miles) of the common border must be separated from Mexican assignments or allotments by not less than the distances given in Table C in this paragraph (b)(3). When applying Table C—

(i) U.S. or Mexican assignments or allotments which have been notified internationally as Class A are limited to a maximum of 3.0 kW ERP at 100 meters HAAT, or the equivalent;

(ii) U.S. or Mexican assignments or allotments which have been notified internationally as Class AA are limited to a maximum of 6.0 kW ERP at 100 meters HAAT, or the equivalent;

(iii) U.S. Class C3 assignments or allotments are considered Class B1;

(iv) U.S. Class C2 assignments or allotments are considered Class B; and

(v) Class C1 assignments or allotments assume maximum facilities of 100 kW ERP at 300 meters HAAT. However, U.S. Class C1 stations may not, in any event, exceed the domestic U.S. limit of 100 kW ERP at 299 meters HAAT, or the equivalent.

(c) The distances listed below apply only to allotments and assignments on Channel 253 (98.5 MHz). The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any TV Channel 6 allotment or assignment are not met:

**Minimum Distance Separation from TV Channel 6 (82-88 mhz)**

FM Class	TV Zone I	TV Zones II & III
A	17	22
B1	19	23
B	22	26
C3	19	23
C2	22	26
C1	29	33
C	36	41

**§73.210 Station classes.**

(a) The rules applicable to a particular station, including minimum and maximum facilities requirements, are determined by its class. Possible class designations depend upon the zone in which the station's transmitter is located. The zones are defined in §73.205. Allotted station classes are indicated in the Table of Allotments, §73.202. Class A, B1 and B stations may be authorized in Zones I and I-A. Class A, C3, C2, C1 and C stations may be authorized in Zone II.

(b) The power and antenna height requirements for each class are set forth in §73.211. If a station has an ERP and an antenna HAAT such that it cannot be classified using the maximum limits and minimum requirements in §73.211, its class shall be determined using the following procedure:

(1) Determine the reference distance of the station using the procedure in paragraph (b)(1)(i) of §73.211. If this distance is less than or equal to 28 km, the station is Class A; otherwise,

(2) For a station in Zone I or Zone I-A, except for Puerto Rico and the Virgin Islands:

(i) If this distance is greater than 28 km and less than or equal to 39 km, the station is Class B1.

(ii) If this distance is greater than 39 km and less than or equal to 52 km, the station is Class B.

(3) For a station in Zone II:

(i) If this distance is greater than 28 km and less than or equal to 39 km, the station is Class C3.

(ii) If this distance is greater than 39 km and less than or equal to 52 km, the station is Class C2.

(iii) If this distance is greater than 52 km and less than or equal to 72 km, the station is Class C1.

(iv) If this distance is greater than 72 km and less than or equal to 92 km, the station is Class C.

(4) For a station in Puerto Rico or the Virgin Islands:

(i) If this distance is less than or equal to 42 km, the station is Class A.

(ii) If this distance is greater than 42 km and less than or equal to 46 km, the station is Class B1.

(iii) If this distance is greater than 46 km and less than or equal to 78 km, the station is Class B.

**§73.211 Power and antenna height requirements.**

(a) Minimum requirements.  
(1) Except as provided in paragraphs (a)(3) and (b)(2) of this section, FM stations must operate with a minimum effective radiated power (ERP) as follows:

(i) The minimum ERP for Class A stations is 0.1 kW.

(ii) The ERP for Class B1 stations must exceed 6 kW.

(iii) The ERP for Class B stations must exceed 25 kW.

(iv) The ERP for Class C3 stations must exceed 6 kW.

(v) The ERP for Class C2 stations must exceed 25 kW.

(vi) The ERP for Class C1 stations must exceed 50 kW.

(vii) The minimum ERP for Class C stations is 100 kW.

(2) Class C stations must have an antenna height above average terrain (HAAT) of at least 300 meters (984 feet). No minimum HAAT is specified for Classes A, B1, B, C3, C2, or C1 stations.

(3) Stations of any class except Class A may have an ERP less than that specified in paragraph (a)(1) of this section, provided that the reference distance, determined in accordance with paragraph (b)(1)(i) of this section, exceeds the distance to the class contour for the next lower class. Class A stations may have an ERP less than 100 watts provided that the reference distance, determined in accordance with paragraph (b)(1)(i) of this section, equals or exceeds 6 kilometers.

(b) Maximum limits.

(1) Except for stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT and distance to the class contour for each FM station class are listed below:

Station Class	Maximum ERP	Reference HAAT in meters (ft.)	Class contour distance in kilometers
A	6 kw (7.8 dBk)	100 (328)	28
B1	25 kw (14.0 dBk)	100 (328)	39
B	50 kw (17.0 dBk)	150 (492)	52
C3	25 kw (14.0 dBk)	100 (328)	39
C2	50 kw (17.0 dBk)	150 (492)	52
C1	100 kw (20.0 dBk)	299 (981)	72
C	100 kw (20.0 dBk)	600 (1968)	92

(i) The reference distance of a station is obtained by finding the predicted distance to the 1 mV/m contour using Figure 1 of §73.333 and then rounding to the nearest kilometer. Antenna HAAT is determined using the procedure in §73.313. If the HAAT so determined is less than 30 meters (100 feet), a HAAT of 30 meters must be used when finding the predicted distance to the 1 mV/m contour.

(ii) If a station's ERP is equal to the maximum for its class, its antenna HAAT must not exceed the reference HAAT, regardless of the reference distance. For example, a Class A station operating with 6 kW ERP may have an antenna HAAT of 100 meters, but not 101 meters, even though the reference distance is 28 km in both cases.

(iii) Except as provided in paragraph (b)(3) of this section, no station will be authorized in Zone I or I-A with an ERP equal to 50 kW and a HAAT exceeding 150 meters. No station will be authorized in Zone II with an ERP equal to 100 kW and a HAAT exceeding 600 meters.

(2) If a station has an antenna HAAT greater than the reference HAAT for its class, its ERP must be lower than the class maximum such that the reference distance does not exceed the class contour distance. If the antenna HAAT is so great that the station's ERP must be lower than the minimum ERP for its class (specified in paragraphs (a)(1) and (a)(3) of this section), that lower ERP will become the minimum for that station.

(3) For stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT, and distance to the class contour for each FM station class are listed below:

Station Class	Maximum ERP	Reference HAAT in meters (ft.)	Class contour distance in kilometers
A	6 kw (7.8 dBk)	240 (787)	42
B1	25 kw (14.0 dBk)	150 (492)	46
B	50 kw (17.0 dBk)	472 (1549)	78

(c) Existing stations. Stations authorized prior to March 1, 1984 that do not conform to the requirements of this section, may continue to operate as authorized. Stations operating with facilities in excess of those speci-

fied in paragraph (b) of this section may not increase their effective radiated powers or extend their 1 mV/m field strength contour beyond the location permitted by their present authorizations. The provisions of this section will not apply to applications to increase facilities for those stations operating with less than the minimum power specified in paragraph (a) of this section.

**§73.213 Grandfathered short-spaced stations.**

(a) Stations at locations authorized prior to November 16, 1964, that did not meet the separation distances required by §73.207 and have remained continuously short-spaced since that time may be modified or relocated with respect to such short-spaced stations, provided that (i) any area predicted to receive interference lies completely within any area currently predicted to receive co-channel or first-adjacent channel interference as calculated in accordance with paragraph (a)(1) of this section, or that (ii) a showing is provided pursuant to paragraph (a)(2) of this section that demonstrates that the public interest would be served by the proposed changes.

(1) The F(50,50) curves in Figure 1 of §73.333 are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to §73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the desired (service) field strength. The F(50,10) curves in Figure 1a of §73.333 are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to §73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the undesired (interfering) field strength. Predicted interference is defined to exist only for locations where the desired (service) field strength exceeds 0.5 mV/m (54 dBu) for a Class B station, 0.7 mV/m (57 dBu) for a Class B1 station, and 1 mV/m (60 dBu) for any other class of station.

(i) Co-channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 20 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 40 dBu or more for predicted interference to exist).

(ii) First-adjacent channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 6 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 54 dBu or more for predicted interference to exist).

(2) For co-channel and first-adjacent channel stations, a showing that the public interest would be served by the changes proposed in an application must include exhibits demonstrating that the total area and population subject to co-channel or first-adjacent channel interference, caused and received, would be maintained or decreased. In addition, the showing must include exhibits demonstrating that the area and the population subject to co-channel or first-adjacent channel interference caused by the proposed facility to each short-spaced station individually is not increased. In all cases, the applicant must also show that any area predicted to lose service as a result of new co-channel or first-adjacent channel interference has adequate aural service remaining. For the purpose of this section, adequate service is defined as 5 or more aural services (AM or FM).

(3) For co-channel and first-adjacent channel stations, a copy of any application proposing interference caused in any areas where interference is not currently caused must be served upon the licensee(s) of the affected short-spaced station(s).

(4) For stations covered by this paragraph (a), there are no distance separation or interference protection requirements with respect to second-adjacent and third-adjacent channel short-spacings that have existed continuously since November 16, 1964.

(b) Stations at locations authorized prior to May 17, 1989 that did not meet the IF separation distances required by §73.207 and have remained short-spaced since that time may be modified or relocated provided that the overlap area of the two stations' 36 mV/m field strength contours is not increased.

(c) Short spacings involving at least one Class A allotment or authorization. Stations that became short-spaced on or after November 16, 1964 (including stations that do not meet the minimum distance separation requirements of paragraph (c)(1) of this section and that propose to maintain or increase their existing distance separations) may be modified or relocated in accordance with paragraph (c)(1) or (c)(2) of this section,

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except that this provision does not apply to stations that became short spaced by grant of applications filed after October 1, 1989, or filed pursuant to §73.215. If the reference coordinates of an allotment are short spaced to an authorized facility or another allotment (as a result of the revision of §73.207 in the Second Report and Order in MM Docket No. 88-375), an application for the allotment may be authorized, and subsequently modified after grant, in accordance with paragraph (c)(1) or (c)(2) of this section only with respect to such short spacing. No other stations will be authorized pursuant to these paragraphs.

(1) Applications for authorization under requirements equivalent to those of prior rules. Each application for authority to operate a Class A station with no more than 3000 watts ERP and 100 meters antenna HAAT (or equivalent lower ERP and higher antenna HAAT based

on a class contour distance of 24 km) must specify a transmitter site that meets the minimum distance separation requirements in this paragraph. Each application for authority to operate a Class A station with more than 3000 watts ERP (up to a maximum of 5800 watts) but with an antenna HAAT lower than 100 meters such that the distance to the predicted 0.05 mV/m (34 dB uV/m) F(50,10) field strength contour does not exceed 98 km must specify a transmitter site that meets the minimum distance separation requirements in this paragraph. Each application for authority to operate an FM station of any class other than Class A must specify a transmitter site that meets the minimum distance separation requirements in this paragraph with respect to Class A stations operating pursuant to this paragraph or paragraph (c)(2) of this section, and that meets the minimum distance separation requirements of §73.207 with respect to all other stations.

(2) Applications for authorization of Class A facilities greater than 3000 watts ERP and 100 meters HAAT. Each application to operate a Class A station with an ERP and HAAT such that the reference distance would exceed 24 kilometers must contain an exhibit demonstrating the consent of the licensee of each co-channel, first, second, or third adjacent channel station (for which the requirements of §73.207 are not met) to a grant of that application. Each such application must specify a transmitter site that meets the applicable IF-related channel distance separation requirements of §73.207. Applications that specify a new transmitter site which is short-spaced to an FM station other than another Class A station which is seeking a mutual increase in facilities may be granted only if no alternative fully-spaced site or less short-spaced site is available. Licensees of Class A stations seeking mutual increases in facilities need not show that a fully-spaced site or less short-spaced site is available. Applications submitted pursuant to the provisions of this paragraph may be granted only if such action is consistent with the public interest.

### MINIMUM DISTANCE SEPARATION REQUIREMENTS—U.S. STATIONS in Kilometers (miles)

Relation	Co-channel	200 khz	400/600 khz	10.6/10.8 mhz
A to A	115 (71)	72 (45)	31 (19)	10 (6)
A to B1	143 (89)	96 (60)	48 (30)	12 (7)
A to B	178 (111)	113 (70)	69 (43)	15 (9)
A to C3	142 (88)	89 (55)	42 (26)	12 (7)
A to C2	166 (103)	106 (66)	55 (34)	15 (9)
A to C1	200 (124)	133 (83)	75 (47)	22 (14)
A to C	226 (140)	165 (103)	95 (59)	29 (18)
B1 to B1	175 (109)	114 (71)	50 (31)	14 (9)
B1 to B	211 (131)	145 (90)	71 (44)	17 (11)
B1 to C3	175 (109)	114 (71)	50 (31)	14 (9)
B1 to C2	200 (124)	134 (83)	56 (35)	17 (11)
B1 to C1	233 (145)	161 (100)	77 (48)	24 (15)
B1 to C	259 (161)	193 (120)	105 (65)	31 (19)
B to B	241 (150)	169 (105)	74 (46)	20 (12)
B to C3	211 (131)	145 (90)	74 (44)	17 (11)
B to C2	241 (150)	169 (105)	74 (46)	20 (12)
B to C1	270 (168)	195 (121)	79 (49)	27 (17)
B to C	274 (170)	217 (135)	105 (65)	35 (22)
C3 to C3	153 (95)	99 (62)	43 (27)	14 (9)
C3 to C2	177 (110)	117 (73)	56 (35)	17 (11)
C3 to C1	211 (131)	144 (90)	76 (47)	24 (15)
C3 to C	237 (147)	176 (109)	96 (60)	31 (19)
C2 to C2	190 (118)	130 (81)	58 (36)	20 (12)
C2 to C1	224 (139)	158 (98)	79 (49)	27 (17)
C2 to C	249 (155)	188 (117)	105 (65)	35 (22)
C1 to C1	290 (182)	209 (130)	105 (65)	41 (25)
C1 to C	270 (168)	209 (130)	105 (65)	41 (25)
C to C	290 (180)	241 (150)	105 (65)	48 (30)

### §73.215 Contour protection for short-spaced assignments.

The Commission will accept applications that specify short-spaced antenna locations (locations that do not meet the domestic co-channel and adjacent channel minimum distance separation requirements of §73.207); provided that, such applications propose contour protection, as defined in paragraph (a) of this section, with all short-spaced assignments, applications and allotments, and meet the other applicable requirements of this section. Each application to be processed pursuant to this section must specifically request such processing on its face, and must include the necessary exhibit to demonstrate that the requisite contour protection will be provided. Such applications may be granted when the commission determines that such action would serve the public interest, convenience, and necessity.

(a) Contour protection. Contour protection, for the purpose of this section, means that on the same channel and on the first, second and third adjacent channels, the predicted interfering contours of the proposed station do not overlap the predicted protected contours of other short-spaced assignments, applications and allotments, and the predicted interfering contours of other short-spaced assignments, applications and allotments do not overlap the predicted protected contour of the proposed station.

(1) The protected contours, for the purpose of this section, are defined as follows: For all Class B and B1 stations on Channels 221 through 300 inclusive, the F(50,50) field strengths along the protected contours are 0.5 mV/m (54 dBu) and 0.7 mV/m (57 dBu), respectively. For all other stations, the F(50,50) field strength along the protected contour is 1.0 mV/m (60 dBu).

(2) The interfering contours, for the purpose of this section, are defined as follows. For co-channel stations, the F(50,10) field strength along the interfering contour is 20 dB lower than the F(50,50) field strength along the protected contour for which overlap is prohibited. For first adjacent channel stations (+/-200 kHz), the F(50,10) field strength along the interfering contour is 6 dB lower than the F(50,50) field strength along the protected contour for which overlap is prohibited. For both second and third adjacent channel stations (+/-400 kHz and +/-600 kHz), the F(50,10) field strength along the interfering contour is 40 dB higher than the F(50,50) field strength along the protected contour for which overlap is prohibited.

(3) The locations of the protected and interfering contours of the proposed station and the other short-spaced assignments, applications and allotments must be determined in accordance with the procedures of paragraphs (c), (d)(2) and (d)(3) of §73.313, using data for as many radials as necessary to accurately locate the contours.

(4) Stations in Puerto Rico and the Virgin Islands may submit application for short spaced locations provided the predicted distance to their 1 mV/m field strength contour is not extended toward the 1 mV/m contour of any short-spaced station.

(b) Applicants requesting short-spaced assignments pursuant to this section must take into account the following factors in demonstrating that contour protection is achieved:

(1) The ERP and antenna HAAT of the proposed station in the direction of the contours of other short-spaced assignments, applications and allotments. If a directional antenna is proposed, the pattern of that antenna must be used to calculate the ERP in particular directions. See §73.316 for additional requirements for directional antennas.

### MINIMUM DISTANCE SEPARATION REQUIREMENTS—U.S. TO CANADIAN STATIONS in Kilometers

Relation	Co-channel 0 khz	Adjacent Channels		I.F. 600 khz	10.6/10.8 mhz
		200 khz	400 khz		
A to A	132	85	45	37	8
A to B1	180	113	62	54	16
A to B	206	132	76	69	16
A to C1	239	164	98	90	32
A to C	242	177	108	100	32
B1 to B1	197	131	70	57	24
B1 to B	223	149	84	71	24
B1 to C1	256	181	106	92	40
B1 to C	259	195	116	103	40
B to B	237	164	94	74	24
B to C1	271	195	115	95	40
B to C	274	209	125	106	40
C1 to C1	292	217	134	101	48
C1 to C	302	230	144	111	48
C to C	306	241	153	113	48

### MINIMUM DISTANCE SEPARATION REQUIREMENTS—U.S. TO MEXICAN STATIONS in Kilometers (miles)

Relation	Co-channel	200 khz	400/600 khz	10.6/10.8 mhz
A to A	105 (65)	65 (40)	25 (15)	8 (5)
A to B	175 (110)	105 (65)	65 (40)	16 (10)
A to C	210 (130)	170 (105)	105 (65)	8 (5)
A to D	95 (60)	50 (30)	25 (15)	8 (5)
B to B	240 (150)	170 (105)	65 (40)	25 (15)
B to C	270 (170)	215 (135)	105 (65)	40 (25)
B to D	170 (105)	95 (60)	65 (40)	16 (10)
C to C	290 (180)	240 (150)	105 (65)	48 (30)
C to D	200 (125)	155 (95)	105 (65)	25 (15)
D to D	18 (11)	10 (6)	5 (3)	3 (2)



(2) The ERP and antenna HAAT of other short-spaced assignments, applications and allotments in the direction of the contours of the proposed station. The ERP and antenna HAATs in the directions of concern must be determined as follows:

(i) For vacant allotments, contours are based on the presumed use, at the allotment's reference point, of the maximum ERP that could be authorized for the station class of the allotment, and antenna HAATs in the directions of concern that would result from a nondirectional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the station class of the allotment.

(ii) For existing stations that were not authorized pursuant to this section, including stations with authorized ERP that exceeds the maximum ERP permitted by §73.211 for the standard eight-radial antenna HAAT employed, and for applications not requesting authorization pursuant to this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in §73.211), and the antenna HAATs in the directions of concern that would result from a nondirectional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply (e.g., zoning laws, FAA constraints, application of §73.213).

(iii) For stations authorized pursuant to this section, except stations with authorized ERP that exceeds the maximum ERP permitted by §73.211 for the standard eight-radial antenna HAAT employed, contours are based on the use of the authorized ERP in the directions of concern, and HAATs in the directions of concern derived from the authorized standard eight-radial antenna HAAT. For stations with authorized ERP that exceeds the maximum ERP permitted by §73.211 for the standard eight-radial antenna HAAT employed, authorized under this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in §73.211), and antenna HAATs in the directions of concern that would result from a nondirectional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply.

(iv) For applications containing a request for authorization pursuant to this section, except for applications to continue operation with authorized ERP that exceeds the maximum ERP permitted by §73.211 for the standard eight-radial antenna HAAT employed, contours are based on the use of the proposed ERP in the directions of concern, and antenna HAATs in the directions of concern derived from the proposed standard eight-radial antenna HAAT. For applications to continue operation with an ERP that exceeds the maximum ERP permitted by §73.211 for the standard eight-radial HAAT employed, if processing is requested under this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in §73.211), and antenna HAATs in the directions of concern that would result from a nondirectional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply.

NOTE: Applicants are cautioned that the antenna HAAT in any particular direction of concern will not usually be the same as the standard eight-radial antenna HAAT or the reference HAAT for the station class.

(c) Applications submitted for processing pursuant to this section are not required to propose contour protection of any assignment, application or allotment for which

the minimum distance separation requirements of §73.207 are met, and may, in the directions of those assignments, applications and allotments, employ the maximum ERP permitted by §73.211 for the standard eight-radial antenna HAAT employed.

(d) Stations authorized pursuant to this section may be subsequently authorized on the basis of compliance with the domestic minimum separation distance requirements of §73.207, upon filing of an FCC Form 301 or FCC Form 340 (as appropriate) requesting a modification of authorization.

(e) The Commission will not accept applications that specify a short-spaced antenna location for which the following minimum distance separation requirements, in kilometers (miles), are not met:

Relation	Co-channel	200 kHz	400/600 kHz
A to A	92 (57)	49 (30)	29 (18)
A to B1	119 (74)	72 (45)	46 (29)
A to B	143 (89)	96 (60)	67 (42)
A to C3	119 (74)	72 (45)	40 (25)
A to C2	143 (89)	89 (55)	53 (33)
A to C1	178 (111)	111 (69)	73 (45)
A to C	203 (126)	142 (88)	93 (58)
B1 to B1	143 (89)	96 (60)	48 (30)
B1 to B	178 (111)	114 (71)	69 (43)
B1 to C3	143 (89)	96 (60)	48 (30)
B1 to C2	175 (109)	114 (71)	55 (34)
B1 to C1	200 (124)	134 (83)	75 (47)
B1 to C	233 (145)	165 (103)	95 (59)
B to B	211 (131)	145 (90)	71 (44)
B to C3	178 (111)	114 (70)	69 (43)
B to C2	211 (131)	145 (90)	71 (44)
B to C1	241 (150)	169 (105)	77 (48)
B to C	270 (168)	195 (121)	105 (65)
C3 to C3	142 (88)	89 (55)	42 (26)
C3 to C2	166 (103)	106 (66)	55 (34)
C3 to C1	200 (124)	133 (83)	75 (47)
C3 to C	226 (140)	165 (103)	95 (59)
C2 to C2	177 (110)	117 (73)	56 (35)
C2 to C1	211 (131)	144 (90)	76 (47)
C2 to C	237 (147)	176 (109)	96 (60)
C1 to C1	224 (139)	158 (98)	79 (49)
C1 to C	249 (155)	188 (117)	105 (65)
C to C	270 (168)	209 (130)	105 (65)

**§73.220 Restrictions on use of channels.** The Frequency 89.1 mhz (Channel 206) is reserved in the New York City metropolitan area for the use of the United Nations with the equivalent of an antenna height of 150 meters (492 feet) above average terrain and effective radiated power of 20 kilowatts, and the FCC will make no assignments which would cause objectionable interference with such use.

(b) In Alaska, FM broadcast stations operating on Channels 221-300 (92.1-107.9 mhz) shall not cause harmful interference to and must accept interference from non-Government fixed operations authorized prior to January 1, 1982.

**§73.23 AM broadcast station applications affected by international agreements.**

(a) Except as provided in paragraph (b) of this section, no application for an AM station will be accepted for filing if authorization of the facilities requested would be inconsistent with international commitments of the United States under treaties and other international agreements, arrangements and understandings. (See list of such international instruments in §73.1650(b).) Any such

application that is inadvertently accepted for filing will be dismissed.

(b) AM applications that involve conflicts only with the North American Regional Broadcasting Agreement (NARBA), but that are in conformity with the remaining treaties and other international agreements listed in §73.1650(b) and with the other requirements of Part 73, will be granted subject to such modifications as the FCC may subsequently find appropriate, taking international considerations into account.

(c) In the case of any application designated for hearing on issues other than those related to consistency with international relationships and as to which no final decision has been rendered, whenever action under this section becomes appropriate because of inconsistency with international relationships, the applicant involved shall, notwithstanding the provisions of §73.3522 and §73.3571, be permitted to amend its application to achieve consistency with such relationships. In such cases the provisions of §73.3605(c) will apply.

(d) In some circumstances, special international considerations may require that the FCC, in acting on applications, follow procedures different from those established for general use. In such cases, affected applicants will be informed of the procedures to be followed.

*In Noncommercial FM rules ...*

**§73.506 Classes of noncommercial educational FM stations and channels.**

(a) Noncommercial educational stations operating on the channels specified in §73.501 are divided into the following classes:

(1) A Class D educational station is one operating with no more than 10 watts transmitter power output.

(2) A Class D educational (secondary) station is one operating with no more than 10 watts transmitter power output in accordance with the terms of §73.512 or which has elected to follow these requirements before they become applicable under the terms of §73.512.

(3) Noncommercial educational FM (NCE-FM) stations with more than 10 watts transmitter power output are classified as Class A, B1, B, C3, C2, C1, or C depending on the station's effective radiated power and antenna height above average terrain, and on the zone in which the station's transmitter is located, on the same basis as set forth in —§73.210 and §73.211 for commercial stations.

(b) Any noncommercial educational station except Class D may be assigned to any of the channels listed in §73.501. Class D noncommercial educational FM stations applied for or authorized prior to June 1, 1980, may continue to operate on their authorized channels subject to the provisions of §73.512.

**§73.507 Minimum distance separations between stations.**

(a) Minimum distance separations. No application for a new station, or change in channel or transmitter site or increase in facilities of an existing station, will be granted unless the proposed facilities will be located so as to meet the adjacent channel distance separations specified in §73.207(a) for the class of station involved with respect to assignment on Channels 221, 222, and 223 listed in §73.201 (except where in the case of an existing station the proposed facilities fall within the provisions of §73.207(b)), or where a Class D station is changing frequency to comply with the requirements of §73.512.

(b) Stations authorized as of September 10, 1962, which do not meet the requirements of paragraph (a) of this section and §73.511, may continue to operate as authorized; but any application to change facilities will be subject to the provision of this section.

(c)(1) Stations separated in frequency by 10.6 or 10.8 MHz (53 or 54 channels) from allotments or assignments on non-reserved channels will not be authorized unless they conform to the separations in Table A given in §73.207.

(2) Under the United States-Mexican FM Broadcasting Agreement, for stations and assignments differing in frequency by 10.6 to 10.8 MHz (53 or 54 channels), U.S. noncommercial educational FM allotments and assignments must meet the separations given in Table C of §73.207 to Mexican allotments or assignments in the border area.

Minimum Distance Separation Requirements in kilometers (miles)

Relation	Co-channel	200 kHz	400/600 kHz	10.6/10.8 mhz
A to A	105 (65)	64 (40)	27 (17)	8 (5)
A to B1	138 (86)	88 (55)	48 (30)	11 (6)
A to B	163 (101)	105 (65)	69 (43)	14 (9)
A to C3	138 (86)	84 (52)	42 (26)	11 (6)
A to C2	163 (101)	105 (65)	55 (34)	14 (9)
A to C1	960 (122)	129 (80)	74 (46)	21 (13)
A to C	222 (138)	161 (100)	94 (58)	28 (17)

# Federal Communications Commission Rules and Regulations

## In TV rules ...

### §73.603. Numerical designation of television channels. (a)

Chan. No.	Freq. Band (Megacycles)	Chan. No.	Freq. Band (Megacycles)
2	54-60	43	644-650
3	60-66	44	650-656
4	66-72	45	656-662
5	76-82	46	662-668
6	82-88	47	668-674
7	174-180	48	674-680
8	180-186	49	680-686
9	186-192	50	686-692
10	192-198	51	692-698
11	198-204	52	698-704
12	204-210	53	704-710
13	210-216	54	710-716
14	470-476	55	716-722
15	476-482	56	722-728
16	482-488	57	728-734
17	488-494	58	734-740
18	494-500	59	740-746
19	500-506	60	746-752
20	506-512	61	752-758
21	512-518	62	758-764
22	518-524	63	764-770
23	524-530	64	770-776
24	530-536	65	776-782
25	536-542	66	782-788
26	542-548	67	788-794
27	548-554	68	794-800
28	554-560	69	800-806
29	560-566	70	806-812
30	566-572	71	812-818
31	572-578	72	818-824
32	578-584	73	824-830
33	584-590	74	830-836
34	590-596	75	836-842
35	596-602	76	842-848
36	602-608	77	848-854
37	608-614	78	854-860
38	614-620	79	860-866
39	620-626	80	866-872
40	626-632	81	872-878
41	632-638	82	878-884
42	638-644	83	884-890

(b) In Alaska, television broadcast stations operating on Channel 5 (76-82 mhz) and on Channel 6 (82-88 mhz) shall not cause harmful interference and must accept interference from non-Government fixed operations authorized prior to January 1, 1982.

(c) Channel 37, 608-614 mhz, is reserved exclusively for the radio astronomy service.

(d) In Hawaii, the frequency band 488-494 mhz is allocated for non-broadcast use. This frequency band (Channel 17) will not be assigned in Hawaii for use by television broadcast stations.

### §73.606. Table of Assignments.

(a) The following Table of Assignments contains the channels assigned to the listed communities in the United States, its territories, and possessions. Channels designated with an asterisk are assigned for use by non-commercial educational broadcast stations only. A station on a channel identified by a plus or a minus mark is required to operate with its carrier frequencies offset 10 khz above or below, respectively, the normal carrier frequencies.

(b) Table of Allotments. [EDITOR'S NOTE: Channel assignments by cities are reprinted in the TV directory and are not repeated here.]

### §73.607. Availability of channels.

(a) Applications may be filed to construct television broadcast stations only on the channels assigned in the Table of Allotments (§73.606(b)) and only in the communities listed therein. Applications which fail to comply with this requirement, whether or not accompanied by a petition to amend the Table, will not be accepted for filing. However, applications specifying channels which accord with publicly announced FCC orders changing the Table of Allotments will be accepted for filing even though such applications are tendered before the effective dates of such channel changes.

(b) [Deleted; see note below.] A channel assigned to a community listed in the Table of Assignments is available upon application in any unlisted community which is located within 15 miles of the listed community. In addition, a channel assigned to a community listed in the Table of Assignments and not designated for use by non-commercial educational stations only, is available upon application in any other community within 15 miles thereof which, although listed in the table, is assigned only a channel designated for use only by noncommercial

educational stations. Where channels are assigned to two or more communities listed in combination in the Table of Assignments the provisions of this paragraph shall apply separately to each community so listed. The distance between communities shall be determined by the distance between the respective coordinates thereof as set forth in the publication of the United States Department of Commerce entitled Air Line Distances Between Cities in the United States. (This publication may be purchased from the Government Printing Office, Washington, D.C.) If said publication does not contain the coordinates of either or both communities the coordinates of the main post office in either or both of such communities shall be used. The method to be followed in making the measurements is set forth in §73.611(d).

[EDITOR'S NOTE: Subsection (b) was deleted by order adopted 2-17-83 (Docket No. 82-320). Applications on file on the date of adoption will be processed under the former rule; all applications filed after that date will be accepted only if tendered as valid competing applications to applications already found acceptable by the staff under the rule.]

### §73.609 Zones.

(a) For the purpose of allotment and assignment, the United States is divided into three zones as follows:

(1) Zone I consists of that portion of the United States located within the confines of the following lines drawn on the United States Albers Equal Area Projection Map (based on standard parallels 29 1/2 and 45 1/2; North American datum); Beginning at the most easterly point

Table IV of Sec. 73.698—UHF Mileage Separations

(1)	(2) 20 miles (I.F beat)	(3) 20 miles (Intermod- ulation)-	(4) 55 miles (Adjacent channel)	(5) 60 miles (Oscil- lator)	(6) 60 miles (Sound image)	(7) 75 miles (Picture image)
14	22	16-19	15	21	29	30
15	23	17-20	14, 16	22	29	30
16	24	14, 18-21	15, 17	23	30	31
17	25	14-15, 19-22	16, 18	24	31	32
18	26	14-16, 20-23	17, 19	25	32	33
19	27	14-17, 21-24	18, 20	26	33	34
20	28	15-18, 22-25	19, 21	27	34	35
21	29	16-19, 23-26	20, 22	28, 14	35	36
22	30, 14	17-20, 24-27	21, 23	29, 15	36	37
23	31, 15	18-21, 25-28	22, 24	30, 16	37	38
24	32, 16	19-22, 26-29	23, 25	31, 17	38	39
25	33, 17	20-23, 27-30	24, 26	32, 18	39	40
26	34, 18	21-24, 28-31	25, 27	33, 19	40	41
27	35, 19	22-25, 29-32	26, 28	34, 20	41	42
28	36, 20	23-26, 30-33	27, 29	35, 21	42, 14	43
29	37, 21	24-27, 31-34	28, 30	36, 22	43, 15	44, 14
30	38, 22	25-28, 32-35	29, 31	37, 23	44, 16	45, 15
31	39, 23	26-29, 33-36	30, 32	38, 24	45, 17	46, 16
32	40, 24	27-30, 34-37	31, 33	39, 25	46, 18	47, 17
33	41, 25	28-31, 35-38	32, 34	40, 26	47, 19	48, 18
34	42, 26	29-32, 36-39	33, 35	41, 27	48, 20	49, 19
35	43, 27	30-33, 37-40	34, 36	42, 28	49, 21	50, 20
36	44, 28	31-34, 38-41	35, 37	43, 29	50, 22	51, 21
37	45, 29	32-35, 39-42	36, 38	44, 30	51, 23	52, 22
38	46, 30	33-36, 40-43	37, 39	45, 31	52, 24	53, 23
39	47, 31	34-37, 41-44	38, 40	46, 32	53, 25	54, 24
40	48, 32	35-38, 42-45	39, 41	47, 33	54, 26	55, 25
41	49, 33	36-39, 43-46	40, 42	48, 34	55, 27	56, 26
42	50, 34	37-40, 44-47	41, 43	49, 35	56, 28	57, 27
43	51, 35	38-41, 45-48	42, 44	50, 36	57, 29	58, 28
44	52, 36	39-42, 46-49	43, 45	51, 37	58, 30	59, 29
45	53, 37	40-43, 47-50	44, 46	52, 38	59, 31	60, 30
46	54, 38	41-44, 48-51	45, 47	53, 39	60, 32	61, 31
47	55, 39	42-45, 49-52	46, 48	54, 40	61, 33	62, 32
48	56, 40	43-46, 50-53	47, 49	55, 41	62, 34	63, 33
49	57, 41	44-47, 51-54	48, 50	56, 42	63, 35	64, 34
50	58, 42	45-48, 52-55	49, 51	57, 43	64, 36	65, 35
51	59, 43	46-49, 53-56	50, 52	58, 44	65, 37	66, 36
52	60, 44	47-50, 54-57	51, 53	59, 45	66, 38	67, 37
53	61, 45	48-51, 55-58	52, 54	60, 46	67, 39	68, 38
54	62, 46	49-52, 56-59	53, 55	61, 47	68, 40	69, 39
55	63, 47	50-53, 57-60	54, 56	62, 48	69, 41	70, 40
56	64, 48	51-54, 58-61	55, 57	63, 49	70, 42	71, 41
57	65, 49	52-55, 59-62	56, 58	64, 50	71, 43	72, 42
58	66, 50	53-56, 60-63	57, 59	65, 51	72, 44	73, 43
59	67, 51	54-57, 61-64	58, 60	66, 52	73, 45	74, 44
60	68, 52	55-58, 62-65	59, 61	67, 53	74, 46	75, 45
61	69, 53	56-59, 63-66	60, 62	68, 54	75, 47	76, 46
62	70, 54	57-60, 64-67	61, 63	69, 55	76, 48	77, 47
63	71, 55	58-61, 65-68	62, 64	70, 56	77, 49	78, 48
64	72, 56	59-62, 66-69	63, 65	71, 57	78, 50	79, 49
65	73, 57	60-63, 67-70	64, 66	72, 58	79, 51	80, 50
66	74, 58	61-64, 68-71	65, 67	73, 59	80, 52	81, 51
67	75, 59	62-65, 69-72	66, 68	74, 60	81, 53	82, 52
68	76, 60	63-66, 70-73	67, 69	75, 61	82, 54	83, 53
69	77, 61	64-67, 71-74	68, 70	76, 62	83, 55	54
70	78, 62	65-68, 72-75	69, 71	77, 63	56	55
71	79, 63	66-69, 73-76	70, 72	78, 64	57	56
72	80, 64	67-70, 74-77	71, 73	79, 65	58	57
73	81, 65	68-71, 75-78	72, 74	80, 66	59	58
74	82, 66	69-72, 76-79	73, 75	81, 67	60	59
75	83, 67	70-73, 77-80	74, 76	82, 68	61	60
76	68	71-74, 78-81	75, 77	83, 69	62	61
77	69	72-75, 79-82	76, 78		63	62
78	70	73-76, 80-83	77, 79		64	63
79	71	74-77, 81-83	78, 80		65	64
80	72	75-78, 82-83	79, 81		66	65
81	73	76-79, 83	80, 82		67	66
82	74	77-80	81, 83		68	67
83	75	78-81	82		69	68



on the state boundary line between North Carolina and Virginia; thence a straight line to a point on the Virginia-West Virginia boundary line located at North Latitude 37° 49' and West Longitude 80° 12' 30"; thence westerly along the southern boundary lines of the states of West Virginia, Ohio, Indiana and Illinois to a point at the junction of the Illinois, Kentucky, and Missouri state boundary lines; thence northerly along the western boundary line of the state of Illinois to a point at the junction of the Illinois, Iowa, and Wisconsin state boundary lines; thence easterly along the northern state boundary line of Illinois to the 90th meridian; thence north along this meridian to the 43.5 parallel; thence east along this parallel to the United States-Canada border; thence southerly and following that border until it again intersects the 43.5 parallel; thence east along this parallel to the 71st meridian; thence in a straight line to the intersection of the 69th meridian and the 45th parallel; thence east along the 45th parallel; to the Atlantic Ocean. When any of the above lines pass through a city, the city shall be considered to be located in Zone I. (See Figure 1 of §73.699).

(2) Zone II consists of that portion of the United States which is not located in either Zone I or Zone III, and Puerto Rico, Alaska, Hawaiian Islands and the Virgin Islands.

(3) Zone III consists of that portion of the United States located south of a line, drawn on the United States Albers Equal Area Projection Map (based on standard parallels 29 1/2 and 45 1/2; North American datum), beginning at a point on the east coast of Georgia and the 31st parallel and ending at the United States-Mexican border, consisting of arcs drawn with a 241.4 kilometer (150 mile) radius to the north from the following specified points:

North Latitude	West Longitude
a) 29° 40' 00"	83° 24' 00"
b) 30° 07' 00"	84° 12' 00"
c) 30° 31' 00"	86° 30' 00"
d) 30° 48' 00"	87° 58' 30"
e) 30° 00' 00"	90° 38' 30"
f) 30° 04' 30"	93° 19' 00"
g) 29° 46' 00"	95° 05' 00"
h) 28° 43' 00"	96° 30' 30"
i) 27° 52' 30"	97° 32' 00"

When any of the above arcs pass through a city, the city shall be considered to be located in Zone II. (See Figure 2 of §73.699.)

**§73.610. Minimum distance separations between stations.**

(a) The provisions of this section relate to allotment separations and station separations. Petitions to amend the Table of Allotments (§73.606(b)) other than those also expressly requesting amendment of this section or §73.609 will be dismissed and all applications for new television broadcast stations or for changes in the transmitter sites of existing stations will not be accepted for filing if they fail to comply with the requirements specified in paragraphs (b), (c) and (d) of this section.

NOTE: Licensees and permittees of television broadcast stations which were operating on April 14, 1952 pursuant to one or more separations below those set forth in §73.610 may continue to so operate, but in no event may they further reduce the separations below the minimum. As the existing separations of such stations are increased, the new separations will become the required minimum separations until separations are reached which comply with the requirements of §73.610. Thereafter the provisions of said section shall be applicable.

(b) Minimum co-channel allotment and station separations:

(1) Zone	Channels 2-13 Kilometers (Miles)	Channels 14-28 Kilometers (Miles)
I	272.7 (169.5 mi.)	248.6 (154.5 mi.)
II	304.9 (189.5 mi.)	280.8 (174.5 mi.)
III	353.2 (219.5 mi.)	329.0 (204.5 mi.)

(2) The minimum co-channel distance separation between a station in one zone and a station in another zone shall be that of the zone requiring the lower separation.

(c) Minimum allotment and station adjacent channel

(1) Channels 2-13	95.7 km (59.5 mi.)
Channels 14-69	87.7 km (54.5 mi.)

separations applicable to all zones:

(2) Due to the frequency spacing which exists between channels 4 and 5, between channels 6 and 7, and between channels 13 and 14, the minimum adjacent channel separations specified above shall not be applicable to these pairs of channels (see §73.603(a)).

(d) In addition to the requirements of paragraphs (a), (b) and (c) of this section, the minimum assignment and station separations between stations on channels 14-69, inclusive, as set forth in Table II of §73.698 must be met in either rule making proceedings looking towards the amendment of the Table of Assignments (§73.606 (b)) or in licensing proceedings. No channel listed in column (1) of Table II of §73.698 [see box] will be assigned to any city, and no application for an authorization to operate on such a channel will be granted unless the mileage separations indicated at the top of columns (2)-(7), inclusive, are met with respect to each of the channels listed in those columns and parallel with the channel in column (1).

(e) The zone in which the transmitter of a television station is located or proposed to be located determines the applicable rules with respect to co-channel mileage separations where the transmitter is located in a different zone from that in which the channel to be employed is located.

(f) The distances listed below apply only to allotments and assignments on Channel 6 (82-88 MHz). The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any FM Channel 253 allotment or assignment are not met:

FM Class	TV Zone I	TV Zones II & III
A	17	22
B1	19	23
B	22	26
C3	19	23
C2	22	26
C1	29	33
C	36	41

**73.614. Power and antenna height requirements.**

(a) Minimum requirements. Applications will not be accepted for filing if less than 10 dbk (100 watts) horizontally polarized visual effective radiated power in any horizontal direction. No minimum antenna height above average terrain is specified.

(b) Maximum power. Applications will not be accepted for filing if they specify a power which exceeds the maximum permitted boundaries specified in the following formulas:

Channel Nos.	Maximum visual effective radiated power in db above one kilowatt (dBK)
2-6	20 dBK (100 kw)
7-13	25 dBK (316 kw)
14-83	37 dBK (5000 kw)

(6) The effective radiated power in any horizontal or vertical direction may not exceed the maximum values permitted by this section and Figure 3 and 4 of §73.1700.

(7) The effective radiated power at any angle above the horizontal shall be as low as the state of the art permits, and in the same vertical plane may not exceed the effective radiated power in either the horizontal direction or below the horizontal, whichever is greater.

(c) The zone in which the transmitter of a television station is located or proposed to be located determines the applicable rules with respect to maximum antenna heights and powers for VHF stations when the transmitter is located in Zone I and the channel to be employed is located in Zone II, or the transmitter is located in Zone II and the channel to be employed is located in Zone I.

**In AM, FM, TV rules ...**

**§73.1635 Special temporary authorizations (STA).**

(a) A special temporary authorization (STA) is the authority granted to a permittee or licensee to permit the operation of a broadcast facility for a limited period at a specified variance from the terms of the station authorization or requirements of the FCC Rules applicable to the particular class of station.

(1) A request for an STA should be filed with the FCC in Washington, D.C. at least 10 days prior to the date of the proposed operation.

(2) The request is to be made by letter and shall fully describe the proposed operation and the necessity for the requested STA. Such letter requests shall be signed by the licensee or the licensee's representative.

(3) A request for an STA necessitated by unforeseen equipment damage or failure may be made without regard to the procedural requirements of this section (e.g., via telegram or telephone). Any request made pursuant to this paragraph shall be followed by a written confirmation request conforming to the requirements of para-

graph (a)(2) above. Confirmation requests shall be submitted within 24 hours. (See also §73.1680 Emergency antennas.)

(4) An STA may be granted for an initial period not to exceed 180 days. A limited number of extensions of such authorizations may be granted for additional periods not exceeding 180 days per extension. An STA necessitated by technical or equipment problems, however, may, in practice, be granted for an initial period not to exceed 90 days with a limited number of extensions not to exceed 90 days per extension. The permittee or licensee must demonstrate that any further extensions requested are necessary and that all steps to resume normal operation are being undertaken in an expeditious and timely fashion. The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any STA or provision, term, or condition of the license to the contrary.

(5) Certain rules specify special considerations and procedures in situations requiring an STA or permit temporary operation at variance without prior authorization from the FCC when notification is filed as prescribed in the particular rules. See §73.62, Directional antenna system tolerances; §73.157, Antenna testing during daytime; §73.158, Directional antenna monitoring points; §73.691, Visual modulation monitoring; §73.1250, Broadcasting emergency information; §73.1350, Transmission system operation; §73.1560, Operating power and mode tolerances; §73.1570, Modulation levels: AM, FM, and TV aural; §73.1615, Operation during modification of facilities; §73.1680, Emergency antennas; and §73.1740, Minimum operating schedule.

(b) An STA may be modified or cancelled by the FCC without prior notice or right to hearing.

(c) No request by an AM station for temporary authority to extend its hours of operation beyond those authorized by its regular authorization will be accepted or granted by the FCC except in emergency situations conforming with the requirements of §73.3542, Application for emergency authorization. See also §73.1250, Broadcasting emergency information.

**§73.1650 International agreements.**

(a) The Rules in this Part 73, and authorizations for which they provide, are subject to compliance with the international obligations and undertakings of the United States. Accordingly, all provisions in this Part 73 are subject to compliance with applicable requirements, restrictions and procedures accepted by the United States that have been established by or pursuant to treaties or other international agreements, arrangements or understandings to which the United States is a signatory, including applicable annexes, protocols, resolutions, recommendations and other supplementing documents associated with such international instruments.

(b) The United States is a signatory to the following treaties and other international agreements that relate, in whole or in part, to AM, FM or TV broadcasting:

(1) The following instruments of the International Telecommunication Union:

- (i) Constitution;
- (ii) Convention;
- (iii) Radio Regulations.

(2) Regional Agreements for the Broadcasting Service in Region 2

(i) MF Broadcasting 535-1605 kHz, Rio de Janeiro, 1981.

(ii) MF Broadcasting 1605-1705 kHz, Rio de Janeiro, 1988.

(3) Bi-lateral Agreements between the United States and Canada relating to: (i) AM Broadcasting; (ii) FM Broadcasting; (iii) TV Broadcasting.

(4) Bi-lateral Agreements between the United States and Mexico relating to: (i) AM Broadcasting; (ii) FM Broadcasting; (iii) TV Broadcasting.

(5) Bi-lateral Agreement between the United States and the Bahama Islands relating to presunrise operations by AM stations.

(6) North American Regional Broadcasting Agreement (NARBA), which, for the United States, remains in effect with respect to the Dominican Republic and the Bahama Islands.

The documents listed in this paragraph are available for inspection in the Office of the Chief, Planning and Negotiations Division, International Bureau, FCC, Washington, D.C. Copies may be purchased from the FCC Copy Contractor, whose name may be obtained from the FCC Consumer Assistance Office.

**In FCC Policies ...**

**§73.4107 FM broadcast assignments, increasing availability of.**

(a) See First Report and Order, MM Docket No. 84-231, FCC 84-640 [57 RR 2d 863], adopted December



19, 1984. 100 FCC 2d 1332; 50 FR 3514, January 25, 1985.

(b) See Second Report and Order, MM Docket No. 84-231, FCC 85-124 [57 FR 2d 1607], adopted March 14, 1985. 101 FCC 2d 630; 50 FR 15558, April 19, 1985.

(c) See Memorandum Opinion and Order, MM Docket No. 84-231, FCC 86-76, adopted February 10, 1986. 51 FR 9210, March 18, 1986.

(d) See Public Notice, 51 FR 26009, July 18, 1986.

## Multiple Ownership

### §73.3555 Multiple Ownership.

(a)(1) Radio contour overlap rule. No license for an AM or FM broadcasting station shall be granted to any party (including all parties under common control) if the grant of such license will result in overlap of the principal community contour of that station and the principal community contour of any other broadcasting station directly or indirectly owned, operated, or controlled by the same party, except that such license may be granted in connection with a transfer or assignment from an existing party with such interests, or in the following circumstances:

(i) In a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM);

(ii) In a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(iii) In a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM); and

(iv) In a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.

(2) Overlap between two stations in different services is permissible if neither of those two stations overlaps a third station in the same service.

(3)(i) Where the principal community contours of two radio stations overlap and a party (including all parties under common control) with an attributable ownership interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraph (a)(1) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(ii) Every time brokerage agreement of the type described in paragraph (a)(3)(i) of this section shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including specifically control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraph (a) of this section.

(4) For purposes of this paragraph (a):

(i) The "principal community contour" for AM stations is the predicted or measured 5 mV/m groundwave contour computed in accordance with §73.183 or §73.186 and for FM stations is the predicted 3.16 mV/m contour computed in accordance with §73.313.

(ii) The number of stations in a radio market is the number of commercial stations whose principal community contours overlap, in whole or in part, with the principal community contours of the stations in question (i.e., the station for which an authorization is sought and any station in the same service that would be commonly owned whose principal community contour overlaps the principal community contour of that station). In addition, if the area of overlap between the stations in question is overlapped by the principal community contour of a commonly owned station or stations in a different service (AM or FM), the number of stations in the market includes stations whose principal community contours overlap the principal community contours of such commonly owned station or stations in a different service.

(iii) "Time brokerage" is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it.

(b) Television Contour Overlap (Duopoly) Rule. No license for a TV broadcast station shall be granted to any

party (including all parties under common control) if the grant of such license will result in overlap of the Grade B contour of that station (computed in accordance with §73.684) and the Grade B contour of any other TV broadcast station directly or indirectly owned, operated, or controlled by the same party.

(c) One-to-a-Market Ownership Rule. No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls one or more such broadcast stations and the grant of such license will result in:

(1) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station, computed in accordance with §73.183 or §73.186, encompassing the entire community of license of an existing or proposed TV broadcast station(s) or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with §73.684, encompassing the entire community of license of the AM station; or

(2) The predicted 1 mV/m contour of an existing or proposed FM station, computed in accordance with §73.313, encompassing the entire community of license of an existing or proposed TV broadcast station(s) or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with §73.684, encompassing the entire community of license of the FM station.

(d) Daily Newspaper Cross-Ownership Rule. No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in:

(1) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with §73.183 or §73.186, encompassing the entire community in which such newspaper is published; or

(2) The predicted 1 mV/m contour for an FM station, computed in accordance with §73.313, encompassing the entire community in which such newspaper is published; or

(3) The Grade A contour for a TV station, computed in accordance with §73.684, encompassing the entire community in which such newspaper is published.

(e)(1) National television multiple ownership rule. No license for a commercial TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in TV stations which have an aggregate national audience reach exceeding thirty-five (35) percent.

(2) For purposes of this paragraph (e):

(i) National audience reach means the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI data at the time of a grant, transfer or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their ADI market. Where the relevant application forms require a showing with respect to audience reach and the application relates to an area where Arbitron ADI market data are unavailable, then the applicant shall make a showing as to the number of television households in its market. Upon such a showing, the Commission shall make a determination as to the appropriate audience reach to be attributed to the applicant.

(ii) TV broadcast station or TV station excludes stations which are primarily satellite operations.

(f) This section is not applicable to noncommercial educational FM and noncommercial educational TV stations.

NOTE 1: The word control as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

NOTE 2: In applying the provisions of this section, ownership and other interests in broadcast licensees, cable television systems and daily newspapers will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper will be cognizable;

(b) No minority voting stock interest will be cognizable if there is a single holder of more than 50% of the outstanding voting stock of the corporate broadcast licensee, cable television system or daily newspaper in which the minority interest is held;

(c) Investment companies, as defined in 15 USC — 80a-3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 10% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper, or if any of the officers or directors of the broadcast licensee, cable television system or daily newspaper are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(d) Attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of Licensee, then X's interest in Licensee would be 25% (the same as Y's interest since X's interest in Y exceeds 50%), and A's interest in Licensee would be 2.5% (0.1 x 0.25). Under the 5% attribution benchmark, X's interest in Licensee would be cognizable, while A's interest would not be cognizable.]

(e) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant broadcast licensee, cable television system or daily newspaper are subject to said trust.

(f) Holders of non-voting stock shall not be attributed an interest in the issuing entity. Holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system to make the certification set forth in paragraph (a)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assure adequate insulation for purposes of this certification are described in the Memorandum Opinion and Order in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985) as modified on reconsideration in Memorandum Opinion and Order in MM Docket No. 83-46, FCC 86-410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certificate shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related business of the partnership.

(h) Officers and directors of a broadcast licensee, cable television system or daily newspaper are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of broadcasting, cable television service or newspaper publication, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a broadcast licensee, cable television system or daily newspaper, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the broadcast licensee, cable television system or daily newspaper subsidiary, and a statement properly documenting this



fact is submitted to the Commission. [This statement may be included on the appropriate Ownership Report]. The officers and directors of a sister corporation of a broadcast licensee, cable television system or daily newspaper shall not be attributed with ownership of these entities by virtue of such status.

(i) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) the sum of the interests held by or through passive investors is equal to or exceeds 10 percent; or

(2) the sum of the interests other than those held by or through passive investors is equal to or exceeds 5 percent; or

(3) the sum of the interests computed under paragraph (i)(1) of this section plus the sum of the interests computed under paragraph (i)(2) of this section is equal to or exceeds 10 percent.

NOTE 3: In cases where record and beneficial ownership of voting stock is not identical (e.g., bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street names for the benefit of customers, investment advisors holding stock in their own names for the benefit of clients, and insurance companies holding stock), the party having the right to determine how the stock will be voted will be considered to own it for purposes of these rules.

NOTE 4: Paragraphs (a) through (e) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for increased power for Class C stations, to applications for assignment of license or transfer of control filed in accordance with §73.3540(f) or §73.3541(b), or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if no new or increased overlap would be created between commonly owned, operated or controlled broadcast stations in the same service and if no new encompassment of communities proscribed in paragraphs (c) and (d) of this section as to commonly owned, operated, or controlled broadcast stations or daily newspapers would result. Said paragraphs will apply to all applications for new stations, to all other applications for assignment or transfer, and to all applications for major changes in existing stations except major changes that will result in overlap of contours of broadcast stations in the same service with each other no greater than already existing. (The resulting areas of overlap of contours of such broadcast stations with each other in such major change cases may consist partly or entirely of new terrain. However, if the population in the resulting areas substantially exceeds that in the previously existing overlap areas, the Commission will not grant the application if it finds that to do so would be against the public interest, convenience, or necessity.) Commonly owned, operated, or controlled broadcast stations with overlapping contours or with community-encompassing contours prohibited by this section may not be assigned or transferred to a single person, group, or entity, except as provided above in this note and by §73.3555(a). If a commonly owned, operated, or controlled broadcast station and daily newspaper fall within the encompassing proscription of this section, the station may not be assigned to a single person, group or entity if the newspaper is being simultaneously sold to such single person, group or entity.

NOTE 5: Paragraphs (a)-(e) of this section will not be applied to cases involving television stations which are "satellite" operations. Such cases will be considered in accordance with the analysis set forth in the Report and Order in MM Docket No. 87-8, FCC 91-182 (released July 8, 1991) in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest. An authorized and operating "satellite" television station the Grade B contour of which overlaps that of a commonly owned, operated, or controlled "non-satellite" parent television broadcast station, or the Grade A contour of which completely encompasses the community of publication of a commonly owned, operated, or controlled daily newspaper, or the community of license of a commonly owned, operated, or controlled AM or FM broadcast station, or the community of license of which is completely encompassed by the 2 mV/m contour of such AM broadcast station or the 1 mV/m contour of such FM broadcast station, may subsequently become a "non-satellite" station under the circumstances described in the aforementioned Report and Order in MM Docket No. 87-8. However, such commonly owned, operated, or controlled "non-satellite" television stations and AM or FM stations with the aforementioned community encompassment, may not be transferred or assigned to a single person, group, or entity except as provided in NOTE 4. Nor shall any application for assignment or

transfer concerning such "non-satellite" stations be granted if the assignment or transfer would be to the same person, group or entity to which the commonly owned, operated, or controlled newspaper is proposed to be transferred, except as provided in NOTE 4 of this section.

NOTE 6: For the purposes of this section a daily newspaper is one which is published four or more days per week, which is in the English language and which is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally.

NOTE 7: The Commission will entertain requests to waive the restrictions of paragraph (c) of this section on a case-by-case basis. The Commission will look favorably upon waiver applications that meet either of the following two standards: (1) those involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees after the proposed combination, as determined by counting television licensees in the relevant ADI television market and radio licensees in the relevant television metropolitan market; or (2) those involving "failed" broadcast stations that have not been operated for a substantial period of time, e.g., four months, or that are involved in bankruptcy proceedings. For the purposes of determining the top 25 ADI television markets, the relevant ADI television market and the relevant television metropolitan market for each prospective combination, we will use the most recent Arbitron Ratings Television ADI Market Guide. We will determine the number of radio stations in the relevant television metropolitan market and the number of television licensees within the relevant ADI television market based on the most recent Commission ownership records. Other waiver requests will be evaluated on a more rigorous case-by-case basis, as set forth in the Second Report and Order in MM Docket No. 87-7, FCC 88-407, released February 23, 1989, and Memorandum Opinion and Order in MM Docket No. 87-7, FCC 89-256, released August 4, 1989.

NOTE 8: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 535-1605 kHz band where grant of such application will result in the overlap of 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled if the applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany such common ownership. Such AM overlap cases will be considered on a case-by-case basis to determine whether common ownership, operation or control of the stations in question would be in the public interest. Applicants in such cases must submit a contingent application for the major or minor facilities change needed to achieve the interference reduction along with the application which seeks to create the 5 mV/m overlap situation.

NOTE 9: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled. Paragraphs (d)(1)(i) and (d)(1)(ii) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band by an entity that owns, operates, controls or has a cognizable interest in AM radio stations in the 535-1605 kHz band.

NOTE 10: Authority for joint ownership granted pursuant to NOTE 9 will expire at 3:00 a.m. local time on the fifth anniversary of the date of issuance of a construction permit for an AM radio station in the 1605-1705 kHz band.

#### §73.3556 Duplication of programming on commonly owned or time brokered stations.

(a) No commercial AM or FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.

(b) For purposes of this section, duplication means the broadcasting of identical programs within any 24-hour period.

(c) Any party engaged in a time brokerage arrangement which conflicts with the requirements of paragraph (a) of this section on the effective date of this rule shall

bring that arrangement into compliance within one year thereafter.

## Studio Location, Program Originations

### In AM, FM and TV rules...

§73.1120 Station location. Each AM, FM and TV broadcast station will be licensed to the principal community or other political subdivision which it primarily serves. This principal community (city, town or other political subdivision) will be considered to be the geographical station location.

#### §73.1125 Station main studio location.

(a) Except for those stations described in paragraph (b) of this section, each AM, FM, and TV broadcast station shall maintain a main studio at one of the following locations:

(1) within the station's community of license;

(2) at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or

(3) within twenty-five miles from the reference coordinates of the center of its community of license as described in §73.208(a)(1).

NOTE to paragraph (a): The principal community contour of AM stations that simulcast on a frequency in the 535-1605 kHz band and on a frequency in the 1605-1705 kHz band shall be the 5 mV/m contour of the lower band operation during the term of the simultaneous operating authority. Upon termination of the 535-1605 kHz band portion of the dual frequency operation, the principal community contour shall become the 5 mV/m of the remaining operation in the 1605-1705 kHz band.

(b) The following stations are not required to maintain their main studio at the locations described in paragraph (a) of this section.

(1) AM stations licensed as synchronous amplifier transmitters ("AM boosters") or,

(2) AM, FM, or TV stations, when good cause exists for locating the main studio at a location other than that described in paragraph (a) of this section, and when so doing would be consistent with the operation of the station in the public interest.

(c) Relocation of the main studio may be made:

(1) From one point to another within the locations described in paragraph (a) of this section or from a point outside the locations specified in paragraph (a) to one within those locations, without specific FCC authority, but notification to the FCC in Washington shall be made promptly.

(2) Written authority to locate a main studio outside the locations specified in paragraph (a) of this section for the first time must be obtained from the Audio Services Division, Mass Media Bureau for AM and FM stations, or the Television Branch, Video Services Division, Mass Media Bureau for television stations before the studio may be moved to that location. Where the main studio is already authorized at a location outside those specified in paragraph (a), and the licensee or permittee desires to specify a new location also located outside those locations, written authority must also be received from the Commission prior to the relocation of the main studio. Authority for these changes may be requested by filing a letter with an explanation of the proposed changes with the appropriate division. Licensees or permittees should be aware that the filing of such a letter request does not imply approval of the relocation request, because each request is addressed on a case-by-case basis. A filing fee is required for commercial AM, FM, or TV licensees or permittees filing a letter request under this section (see §1.1104).

(d) Each AM, FM, and TV broadcast station shall maintain a local telephone number in its community of license or a toll-free number.

## Operating Schedules

### For AM stations ...

#### §73.72 Operation during the experimental period.

(a) An AM station may operate during the experimental period (the time between midnight and sunrise, local time) on its assigned frequency and with its authorized power for the routine testing and maintenance of its transmitting system, and for conducting experimentation under an experimental authorization; provided no interference is caused to other stations maintaining a regular operating schedule within such period.

(b) No station licensed for daytime or specified hours of operation may broadcast any regular or scheduled program during this period.

(c) The licensee of an AM station shall operate or refrain from operating its station during the experimental



period as directed by the FCC to facilitate frequency measurements or for the determination of interference.

**§73.99 Pre-sunrise service authorization (PSRA) and post-sunset service authorization (PSSA).**

(a) To provide maximum uniformity in early morning operation compatible with interference considerations, and to provide for additional service during early evening hours for Class D stations, provisions are made for pre-sunrise service and postsunset service. The permissible power for presunrise or postsunset service authorizations shall not exceed 500 watts, or the authorized daytime or critical hours power (whichever is less). Calculation of the permissible power shall consider only co-channel stations for interference protection purposes.

(b) Pre-sunrise service authorizations (PSRA) permit: (1) Class D stations operating on Mexican, Bahamian, and Canadian priority Class A clear channels to commence PSRA operation at 6:00 a.m. local time and to continue such operation until the sunrise times specified in their basic instruments of authorization.

(2) Class D stations situated outside 0.5 mV/m 50% skywave contours of co-channel U.S. Class A stations to commence PSRA operation at 6:00 a.m. local time and to continue such operation until sunrise times specified in their basic instruments of authorization.

(3) Class D stations located within co-channel 0.5 mV/m 50% skywave contours of U.S. Class A stations, to commence PSRA operation either at 6:00 a.m. local time, or at sunrise at the nearest Class A station located east of the Class D station (whichever is later), and to continue such operation until the sunrise times specified in their basic instruments of authorization.

(4) Class B and Class D stations on regional channels to commence PSRA operation at 6:00 a.m. local time and to continue such operation until local sunrise times specified in their basic instruments of authorization.

(c) Extended Daylight Saving Time Pre-Sunrise Authorizations: (1) Between the first Sunday in April and the end of the month of April, Class D stations will be permitted to conduct pre-sunrise operation beginning at 6:00 a.m. local time with a maximum power of 500 watts (not to exceed the station's regular daytime or critical hours power), reduced as necessary to comply with the following requirements:

(i) Full protection is to be provided as specified in applicable international agreements.

(ii) Protection is to be provided to the 0.5 mV/m groundwave signals of co-channel U.S. Class A stations; protection to the 0.5 mV/m 50% skywave signals of these stations is not required.

(iii) In determining the protection to be provided, the effect of each interfering signal will be evaluated separately. The presence of interference from other stations will not reduce or eliminate the required protection.

(iv) Notwithstanding the requirements of paragraph (c)(1)(ii) and (iii) of this section, the stations will be permitted to operate with a minimum power of 10 watts unless a lower power is required by international agreement.

(2) The Commission will issue appropriate authorizations to Class D stations not previously eligible to operate during this period. Class D stations authorized to operate during this pre-sunrise period may continue to operate under their current authorization.

(d) Postsunset service authorizations (PSSA) permit:

(1) Class D stations located on Mexican, Bahamian, and Canadian priority Class A clear channels to commence PSSA operation at sunset times specified in their basic instruments of authorization and to continue for two hours after such specified times.

(2) Class D stations situated outside 0.5 mV/m 50% skywave contours of co-channel U.S. Class A stations to commence PSSA operations at sunset times specified in their basic instruments of authorization and to continue for two hours after such specified times.

(3) Class D stations located within co-channel 0.5 mV/m 50% skywave contours of U.S. Class A stations to commence PSSA operation at sunset times specified in their basic instruments of authorization and to continue such operation until two hours past such specified times, or until sunset at the nearest Class A station located west of the Class D station, whichever is earlier. Class D stations located west of the Class A station do not qualify for PSSA operation.

(4) Class III daytime only stations to commence PSSA operation at sunset times specified on their basic instruments of authorization and to continue such operation until two hours past such specified times.

(e) Procedural Matters. (1) Applications for PSRA and PSSA operation are not required. Instead, the FCC will calculate the periods of such operation and the power to

be used pursuant to the provisions of this Section and the protection requirements contained in applicable international agreements. Licensees will be duly notified of permissible power and times of operation. Presunrise and Postsunset service authority permits operation on a secondary basis and does not confer license rights. No request for such authority need be filed. However, stations intending to operate PSRA or PSSA shall submit by letter, signed as specified in §73.3513, the following information:

(i) Licensee name, station call letters and station location,

(ii) Indication as to whether PSRA operation, PSSA operation, or both, is intended by the station,

(iii) A description of the method whereby any necessary power reduction will be achieved.

(2) Upon submission of the required information, such operation may begin without further authority.

(f) Technical criteria. Calculations to determine whether there is objectionable interference will be determined in accordance with the AM Broadcast Technical Standards, §73.182 through §73.190, and applicable international agreements. Calculations will be performed using daytime antenna systems, or critical hours antenna systems when specified on the license. In performing calculations to determine assigned power and times for commencement of PSRA and PSSA operation, the following standards and criteria will be used:

(1) Class D stations operating in accordance with paragraphs (b)(1), (b)(2), (d)(1) and (d)(2) of this section are required to protect the nighttime 0.5 mV/m 50% skywave contours of co-channel Class A stations. Where a 0.5 mV/m 50% skywave signal from the Class A station is not produced, the 0.5 mV/m groundwave contour shall be protected.

(2) Class D stations are required to fully protect foreign Class B and Class C stations when operating PSRA and PSSA; Class D stations operating PSSA are required to fully protect U.S. Class B stations. For purposes of determining protection, the nighttime RSS limit will be used in the determination of maximum permissible power.

(3) Class D stations operating in accordance with paragraphs (d)(2) and (d)(3) of this section are required to restrict maximum 10% skywave radiation at any point on the daytime 0.1 mV/m groundwave contour of a co-channel Class A station to 25 uV/m. The location of the 0.1 mV/m contour will be determined by use of Figure M3, Estimated Ground Conductivity in the United States. When the 0.1 mV/m contour extends beyond the national boundary, the international boundary shall be considered the 0.1 mV/m contour.

(4) Class B and Class D stations on regional channels operating PSRA and PSSA (Class D only) are required to provide full protection to co-channel foreign Class B and Class C stations.

(5) Class D stations on regional channels operating PSSA beyond 6:00 p.m. local time are required to fully protect U.S. Class B stations.

(6) The protection that Class D stations on regional channels are required to provide when operating PSSA until 6:00 p.m. local time is as follows:

Calculated Power	Adjusted Minimum Power
From 1 to 45 watt	50 watts
Above 45 watts to 70 watts	75 watts
Above 70 watts to 100 watts	100 watts

(i) For the first half-hour of PSSA operation, protection will be calculated at sunset plus 30 minutes at the site of the Class D station;

(ii) For the second half-hour of PSSA operation, protection will be calculated at sunset plus one hour at the site of the Class D station;

(iii) For the second hour of PSSA operation, protection will be calculated at sunset plus two hours at the site of the Class D station;

(iv) Minimum powers during the period until 6:00 p.m. local time shall be permitted as follows:

(7) For protection purposes, the nighttime RSS limit will be used in the determination of maximum permissible power.

(g) Calculations made under paragraph (d) of this section may not take outstanding PSRA or PSSA operations into account, nor will the grant of a PSRA or PSSA confer any degree of interference protection on the holder thereof.

(h) Operation under a PSRA or PSSA is not mandatory, and will not be included in determining compliance with the requirements of §73.1740. To the extent actually undertaken, however, pre-sunrise operation will be considered by the FCC in determining overall compliance with the past

programming representations and station policy concerning commercial matter.

(i) The PSRA or PSSA is secondary to the basic instrument of authorization with which it is to be associated. The PSRA or PSSA may be suspended, modified, or withdrawn by the FCC without prior notice or right to hearing, if necessary to resolve interference conflicts, to implement agreements with foreign governments, or in other circumstances warranting such action. Moreover, the PSRA or PSSA does not extend beyond the term of the basic authorization.

(j) The Commission will periodically recalculate maximum permissible power and times for commencing PSRA and PSSA for each Class D station operating in accordance with paragraph (c) of this section. The Commission will calculate the maximum power at which each individual station may conduct presunrise operations during extended daylight saving time and shall issue conforming authorizations. These original notifications and subsequent notifications should be associated with the station's authorization. Upon notification of new power and time of commencing operation, affected stations shall make necessary adjustments within 30 days.

(k) A PSRA and PSSA does not require compliance with §73.45, §73.182, and §73.1560 where the operation might otherwise be considered as technically substandard. Further, the requirements of paragraphs (a)(5), (b)(2), (c)(2), and (d)(2) of §73.1215 concerning the scale ranges of transmission system indicating instruments are waived for PSRA and PSSA operation except for the radio frequency ammeters used in determining antenna input power.

(l) A station having an antenna monitor incapable of functioning at the authorized PSRA and PSSA power when using a directional antenna shall take the monitor reading using unmodulated carrier at the authorized daytime power immediately prior to commencing PSRA or PSSA operations. Special conditions as the FCC may deem appropriate may be included for PSRA or PSSA to insure operation of the transmitter and associated equipment in accordance with all phases of good engineering practice.

*For TV stations...*

**§73.653 Operation of TV aural and visual transmitters.** The aural and visual transmitters may be operated independently of each other or, if operated simultaneously, may be used with different and unrelated program material.

*For AM, FM and TV stations ...*

**§73.1250 Broadcasting emergency information.**

(a) Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to the following: Tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gasses, widespread power failures, industrial explosions, civil disorders and school closings and changes in school bus schedules resulting from such conditions. See also §73.3542, Application for Emergency Authorization, for requirements involving emergency situations not covered by this section for which prior operating authority must be requested.

(b) If requested by responsible public officials, a station may, at its discretion, and without further FCC authority, transmit emergency point-to-point messages for the purpose of requesting or dispatching aid and assisting in rescue operations.

(c) If the Emergency Alert System (EAS) is activated for a national emergency while a Local Area or State emergency operation is in progress, the national level EAS operation must take precedence. If, during the broadcasting of Local Area or State emergency information, the EAS codes or Attention Signal described in §11.12 of this chapter are used, the broadcasts are considered as being carried out under a Local Area or State EAS plan.

(d) Any emergency operation undertaken in accordance with this section may be terminated by the FCC if required in the public interest.

(e) Immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages under paragraph (b) of this section, or when daytime facilities were used during nighttime hours by an AM station in accordance with paragraph (f) of this section, a report in letter form shall be forwarded to the FCC in Washington, D.C., setting forth the nature of the emergency, the dates and hours of the broadcasting of emergency information, and a brief description of the material carried during the emergency. Certification of compliance with the noncommercialization provision of paragraph (f) of this section must accompany the report where daytime facilities are used



during nighttime hours by an AM station, together with a detailed showing, under the provisions of that paragraph, that no other broadcast service existed or was adequate.

(f) AM stations may, without further FCC authority, use their full daytime facilities during nighttime hours to broadcast emergency information (examples listed in paragraph (a) of this section), when necessary to the safety of life and property, in dangerous conditions of a general nature and when adequate advance warning cannot be given with the facilities authorized, because of skywave interference impact on other stations assigned to the same channel, such operation may be undertaken only if regular, unlimited-time service, is non-existent, inadequate from the standpoint of coverage, or not serving the public need. All operation under this paragraph must be conducted on a noncommercial basis. Recorded music may be used to the extent necessary to provide program continuity.

(g) Broadcasting of emergency information shall be confined to the hours, frequencies, powers and modes of operation specified in the station license, except as otherwise provided for AM stations in paragraph (f) of this section.

(h) Any emergency information transmitted by a TV station in accordance with this section shall be transmitted both aurally and visually or only visually. TV stations may use any method of visual presentation which results in a legible message conveying the essential emergency information. Methods which may be used include, but are not necessarily limited to, slides, electronic captioning, manual methods (e.g., hand printing) or mechanical printing processes. However, when an emergency operation is being conducted under a national, State or Local Area Emergency Alert System (EAS) plan, emergency information shall be transmitted both aurally and visually unless only the EAS codes are transmitted as specified in §11.51(b) of this chapter.

#### §73.1510 Experimental authorizations.

(a) Licensees of broadcast stations may obtain experimental authorizations to conduct technical experimentation directed toward improvement of the technical phases of operation and service, and for such purposes may use a signal other than the normal broadcast program signal.

(b) Experimental authorizations may be requested by filing an informal application with the FCC in Washington, D.C., describing the nature and purpose of the experimentation to be conducted, the nature of the experimental signal to be transmitted, and the proposed schedule of hours and duration of the experimentation. Experimental authorizations shall be posted with the station license.

(c) Experimental operations are subject to the following conditions:

(1) The authorized power of the station may not be exceeded, except as specifically authorized for the experimental operations.

(2) Emissions outside the authorized bandwidth must be attenuated to the degree required for the particular type of station.

(3) The experimental operations may be conducted at any time the station is authorized to operate, but the minimum required schedule of programming for the class and type of station must be met. AM stations also may conduct experimental operations during the experimental period (12 midnight local time to local sunrise) and at additional hours if permitted by the experimental authorization provided no interference is caused to other stations maintaining a regular operating schedule within such period(s).

(4) If an experimental authorization permits the use of additional facilities or hours of operation for experimental purposes, no sponsored programs or commercial announcements may be transmitted during such experimentation.

(5) The licensee may transmit regularly scheduled programming concurrently with the experimental transmissions if there is no significant impairment of service.

(6) No charges may be made, either directly or indirectly, for the experimentation; however, normal charges may be made for regularly scheduled programming transmitted concurrently with the experimental transmissions.

(d) The FCC may request a report of the research, experimentation and results at the conclusion of the experimental operations.

#### §73.1515 Special field test authorizations.

(a) A special field test authorization may be issued to conduct field strength surveys to aid in the selection of suitable sites for broadcast transmission facilities, determine coverage areas, or to study other factors influencing broadcast signal propagation. The applicant for the

authorization must be qualified to hold a license under Section 303(l)(1) of the Communications Act.

(b) Requests for authorizations to operate a transmitter under a special field test authorization must be in writing using an informal application in letter form, signed by the applicant and including the following information:

(1) Purpose, duration and need for the survey.

(2) Frequency, transmitter output powers and time of operation.

(3) A brief description of the test antenna system, its estimated effective radiated field and height above ground or average terrain, and the geographic coordinates of its proposed location(s).

(c) Operation under a special field test authorization is subject to the following conditions:

(1) No objectionable interference will result to the operation of other authorized radio services; in this connection, the power requested shall not exceed that necessary for the purposes of the test.

(2) The carriers will be unmodulated except for the transmission of a test pattern on a visual TV transmitter, and for hourly voice station identification on aural AM, FM and TV transmitters.

(3) The transmitter output power or antenna input power may not exceed those specified in the test authorization and the operating power must be maintained at a constant value for each phase of the tests.

(4) The input power to the final amplifier stage, and the AM antenna current or the FM or TV transmitter output power must be observed and recorded at half hour intervals and at any time that the power is adjusted or changed. Copies of these records must be submitted to the FCC with the required report.

(5) The test equipment may not be permanently installed, unless such installation has been separately authorized. Mobile units are not deemed permanent installations.

(6) Test transmitters must be operated by or under the immediate direction of an operator holding a commercial radio operator license (any class, unless otherwise endorsed).

(7) A report, containing the measurements, the analysis and other results of the survey shall be filed with the FCC in Washington, D.C. within sixty (60) days following the termination of the test authorization.

(8) The test transmission equipment, installation and operation thereof need not comply with the requirements of FCC Rules and Standards except as specified in this section if the equipment, installation and operation are consistent with good engineering principles and practices.

(d) A special field test authorization may be modified or terminated by notification from the FCC if in its judgment such action will promote the public interest, convenience and necessity.

#### §73.1520 Operation for tests and maintenance.

(a) Broadcast stations may be operated for tests and maintenance of their transmitting systems on their assigned frequencies using their licensed operating power and antennas during their authorized hours of operation without specific authorization from the FCC.

(b) Licensees of AM stations may operate for tests and maintenance during the hours from 12 midnight local time to local sunrise, if no interference is caused to other stations maintaining a regular operating schedule within such period. No AM station licensed for daytime or "specified hours" of operation may broadcast any regular or scheduled programs during this period of test and maintenance operation.

(c) Licensees of AM stations may obtain special antenna test authorizations, and operate under the provisions described in §73.157, to operate with nighttime facilities during daytime hours in conducting directional antenna field strength and antenna proof of performance measurements.

#### §73.1705 Time of operation.

(a) Commercial and noncommercial educational TV and commercial FM stations will be licensed for unlimited time operation. Application may be made for voluntary share-time operation.

(b) Noncommercial educational FM stations will be licensed for unlimited and share time operation according to the provisions of §73.561.

(c) AM stations in the 535-1705 kHz band will be licensed for unlimited time. In the 535-1605 kHz band, stations that apply for share time and specified hours operation may also be licensed. AM stations licensed to operate daytime-only and limited-time may continue to do so; however, no new such stations will be authorized, except for fulltime stations that reduce operating hours to daytime-only for interference reduction purposes.

§73.1715 Share time. Operation is permitted by two or more broadcast stations using the same channel in ac-

cordance with a division of hours mutually agreed upon and considered part of their licenses.

(a) If the licenses of stations authorized to share time do not specify hours of operation, the licensees shall endeavor to reach an agreement for a definite schedule of periods of time to be used by each. Such agreement shall be in writing and each licensee shall file it in triplicate original with each application to the FCC in Washington, D.C. for renewal of license. If and when such written agreements are properly filed in conformity with this section, the file mark of the FCC will be affixed thereto, one copy will be retained by the FCC, and one copy returned to the licensee to be posted with the station license and considered as a part thereof. If the license specifies a proportionate time division, the agreement shall maintain this proportion. If no proportionate time division is specified in the license, the licensees shall agree upon a division of time. Such division of time shall not include simultaneous operation of the stations unless specifically authorized by the terms of the license.

(b) If the licensees of stations authorized to share time are unable to agree on a division of time, the FCC in Washington, D.C. shall be so notified by a statement filed with the applications for renewal of licenses. Upon receipt of such statement, the FCC will designate the applications for a hearing and, pending such hearing, the operating schedule previously adhered to shall remain in full force and effect.

(c) A departure from the regular schedule in a time-sharing agreement will be permitted only in cases where an agreement to that effect is put in writing, is signed by the licensees of the stations affected thereby and filed in triplicate by each licensee with the FCC in Washington, D.C. prior to the time of the proposed change. If time is of the essence, the actual departure in operating schedule may precede the actual filing of written agreement; provided appropriate notice is sent to the FCC.

(d) If the license of an AM station authorized to share time does not specify the hours of operation, the station may be operated for the transmission of regular programs during the experimental period provided an agreement thereto is reached with the other stations with which the broadcast day is shared; and further provided, such operation is not in conflict with §73.72 (Operating during the experimental period). Time-sharing agreements for operation during the experimental period need not be submitted to the FCC.

(e) Noncommercial educational FM stations are authorized for share-time operation according to the provisions of §73.561.

§73.1720 Daytime. Operation is permitted during the hours between average monthly local sunrise and average monthly local sunset.

(a) The controlling times for each month of the year are stated in the station's instrument of authorization. Uniform sunrise and sunset times are specified for all of the days of each month, based upon the actual times of sunrise and sunset for the fifteenth day of the month adjusted to the nearest quarter hour. Sunrise and sunset times are derived by using the standardized procedure and the table in the 1946 American Nautical Almanac issued by the United States Naval Observatory.

#### §73.1725 Limited time.

(a) Operation is applicable only to Class B (secondary) AM stations on a clear channel with facilities authorized before November 30, 1959. Operation of the secondary station is permitted during daytime and until local sunset if located west of the Class A station on the channel, or until local sunset at the Class A station if located east of that station. Operation is also permitted during nighttime hours not used by the Class A station or stations on the channel.

(b) No authorization will be granted for: (1) A new limited time station; (2) A limited time station operating on a changed frequency; (3) A limited time station with a new transmitter site materially closer to the 0.1 mV/m contour of a co-channel U.S. Class A station during the hours after local sunset in which the limited station is permitted to operate by reason of location east of the Class A station; or (4) Modification of the operating facilities of a limited time station resulting in increased radiation toward any point on the 0.1 mV/m contour of a co-channel U.S. Class A station during the hours after local sunset in which the limited time station is permitted to operate by reason of location east of the Class A station.

(c) The licensee of a secondary station which is authorized to operate limited time and which may resume operation at the time the Class A station (or stations) on the same channel ceases operation shall, with each application for renewal of license, file in triplicate a copy of its regular operating schedule. It shall bear a signed notation by the licensee of the Class A station of its objection or lack of objection thereto. Upon approval of such operating schedule, the FCC will affix its file mark and return



one copy to the licensee authorized to operate limited time. This shall be posted with the station license and considered as a part thereof. Departure from said operating schedule will be permitted only pursuant to §73.1715 (Share time).

**§73.1730 Specified hours.**

(a) Specified hours stations must operate in accordance with the exact hours specified in their license. However, such stations, operating on local channels, unless sharing time with other stations, may operate at hours beyond those specified in their licenses to carry special events programming. When such programs are carried during nighttime hours, the station's authorized nighttime facilities must be used.

(b) Other exceptions to the adherence to the schedule of specified hours of operation are provided in §73.72 (Operating during the experimental period), §73.1250 (Broadcasting emergency information) and §73.1740 (Minimum operating schedule).

**§73.1735 AM station operating pre-sunrise and post-sunset.** Certain classes of AM stations are eligible to operate pre-sunrise and/or post-sunset for specified periods with facilities other than those specified on their basic instruments of authorization. Such pre-sunrise and post-sunset operation is authorized pursuant to the provisions of §73.99 of the rules.

**§73.1740 Minimum operating schedule.**

(a) All commercial broadcast stations are required to operate not less than the following minimum hours:

(1) AM and FM stations. Two-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. local time and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, local time, each day of the week except Sunday.

(f) Class D stations which have been authorized nighttime operations need comply only with the minimum requirements for operation between 6 a.m. and 6 p.m., local time.

(2) TV stations. (i) During the first 36 months of operation, not less than 2 hours daily in any 5 broadcast days per calendar week and not less than a total of: (A) 12 hours per week during the first 18 months. (B) 16 hours per week during the 19th through 24th months. (C) 20 hours per week during the 25th through 30th months. (D) 24 hours per week during the 31st through 36th months.

(ii) After 36 months of operation, not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week.

(iii) Visual transmissions of test patterns, slides, or still pictures accompanied by unrelated aural transmissions may not be counted in computing program service (see §73.653).

(3) Operation includes the period during which the station is operated pursuant to temporary authorization or program tests, as well as during the license period.

(4) In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30-day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

(b) Noncommercial educational AM and TV stations are not required to operate on a regular schedule and no minimum hours of operation are specified; but the hours of actual operation during a license period shall be taken into consideration in the renewal of noncommercial educational AM and TV broadcast licenses. Noncommercial educational FM stations are subject to the operating schedule requirements according to the provisions of §73.561.

(c) The license of any broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

**Operator Requirements**

*In AM rules ...*

**§73.61 AM directional antenna field strength measurements.**

(a) Each AM station using a directional antenna system must make field strength measurements at the moni-

toring point locations specified in the instrument of authorization, as often as necessary to ensure that the field at those points does not exceed the values specified in the station authorization. Additionally, stations not having an approved sampling system must make the measurements once each calendar quarter at intervals not exceeding 120 days. The provision of this paragraph supersedes any schedule specified on a station license issued prior to January 1, 1986. The results of the measurements are to be entered into the station log pursuant to the provisions of §73.1820.

(b) Partial proof of performance measurements using the procedures described in §73.154 must be made whenever the licensee has reason to believe that the radiated field may be exceeding the limits for which the station was most recently authorized to operate.

(c) A station may be directed to make a partial proof of performance by the FCC whenever there is an indication that the antenna is not operating as authorized.

*In AM, FM and TV rules ...*

**§73.1580 Transmission system inspections.**

(a) Each AM, FM and TV station licensee or permittee must conduct a complete inspection of the transmitting system and all required monitors as often as necessary to ensure proper station operation.

(b) The results of the inspections required by subsection (a) of this section are to be entered in the station maintenance log as specified in §73.1830(a)(1)(ix).

**§73.1860 Transmitter duty operators.**

(a) Each AM, FM or TV broadcast station must have at least one person holding a commercial radio operator license or permit (any class, unless otherwise endorsed) on duty in charge of the transmitter during all periods of broadcast operation. The operator must be on duty at the transmitter location, a remote control point, an ATIS monitor and alarm point, or a position where extension meters are installed under the provisions of §73.1550.

(b) The transmitter operator must be able to observe the required transmitter and monitor metering to determine deviations from normal indications. The operator must also be able to make the necessary adjustments from the normal operator duty position, except as provided for in §73.1550.

(c) It is the responsibility of the station licensee to ensure that each transmitter operator is fully instructed and capable to perform all necessary observations and adjustments of the transmitting system and other associated operating duties to ensure compliance with the rules and station authorization.

(d) The transmitter duty operator may, at the discretion of the licensee and chief operator, be employed for other duties or operation of other transmitting stations if such other duties will not interfere with the proper operation of the broadcast transmission system.

**§73.1870 Chief operators.**

(a) The licensee of each AM, FM or TV broadcast station must designate a person holding a commercial radio operator license or permit (any class, unless otherwise endorsed) to serve as the station's chief operator. At times when the chief operator is unavailable or unable to act (e.g., vacations, sickness), the licensee shall designate another licensed operator as the acting chief operator on a temporary basis.

(b) Chief operators shall be employed or serve on the following basis:

(1) The chief operator for an AM station using a directional antenna or operating with greater than 10 kw authorized power, or of a TV station is to be an employee of the station on duty for whatever number of hours each week the station licensee determines is necessary to keep the station's technical operation in compliance with FCC rules and the terms of the station authorization.

(2) Chief operators for non-directional AM stations operating with authorized powers not exceeding 10 kw and FM stations may be either an employee of the station or engaged to serve on a contract basis for whatever number of hours each week the licensee determines is necessary to keep the station's technical operation in compliance with the FCC rules and terms of the station authorization.

(3) The designation of the chief operator must be in writing with a copy of the designation posted with the operator license. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in station files.

(c) The chief operator is responsible for completion of the following duties specified in this paragraph below. When these duties are delegated to other persons, the chief operator shall maintain supervisory oversight sufficient to know that each requirement has been fulfilled in a timely and correct manner.

(1) Weekly (or monthly for stations using automatic transmission systems) inspections and calibrations of

the transmission system, required monitors, metering, and control systems; and any necessary repairs or adjustments where indicated.

(2) Periodic AM field monitoring point measurements, equipment performance measurements, or other tests as specified in the rules or terms of the station license.

(3) Review of the station operating system inspections to determine if the entries are being made correctly or if the station authorization. Upon completion of the review, the chief operator or his designee is to make a notation of any discrepancies observed and date and sign the log; initiate necessary corrective action, and advise the station licensee of any condition which is a repetitive problem.

**Personal Attacks and Political Broadcasts**

*In AM, FM, TV rules ...*

**§73.1910 Fairness Doctrine.** The Fairness Doctrine is contained in Section 315(a) of the Communications Act of 1934, as amended, which provides that broadcasters have certain obligations to afford reasonable opportunity for the discussion of conflicting views on issues of public importance. See FCC public notice Fairness Doctrine and the Public Interest Standards, 39 FR 26372. Copies may be obtained from the FCC upon request.

**§73.1920 Personal attacks.**

(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the persons or group attacked: (1) Notification of the date, time and identification of the broadcast; (2) A script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) An offer of a reasonable opportunity to respond over the licensee's facilities.

(b) The provisions of paragraph (a) of this Section shall not apply to broadcast material which falls within one or more of the following categories: (1) Personal attacks on foreign groups or foreign public figures; (2) Personal attacks occurring during uses by legally qualified candidates; (3) Personal attacks made during broadcasts not included in (b)(2) and made by legally qualified candidates, their authorized spokespersons, or those associated with them in the campaign, on other such candidates, their authorized spokespersons or persons associated with the candidates in the campaign; and (4) Bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events, including commentary or analysis contained in the foregoing programs.

(c) The provisions of paragraph (a) of this section shall be applicable to editorials of the licensee, except in the case of noncommercial educational stations since they are precluded from editorializing (Section 399(a), Communications Act).

**§73.1930 Political editorials.**

(a) Where a licensee, in an editorial, (1) endorses or (2) opposes a legally qualified candidate or candidates, the licensee shall, within 24 hours after the editorial, transmit to, respectively, (i) the other qualified candidate or candidates for the same office or (ii) the candidate opposed in the editorial, (A) notification of the date and the time of the editorial, (B) a script or tape of the editorial and (C) an offer of a reasonable opportunity for the candidate or a spokesman of the candidate to respond over the licensee's facilities. Where such editorials are broadcast on the day of the election or within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

(b) In as much as noncommercial educational stations may not engage in editorializing nor may support nor oppose any candidate for political office (Section 399, Communications Act), the provisions of paragraph (a) of this section do not apply to such stations.

**§73.1940 Legally qualified candidates for public office.**

(a) A legally qualified candidate for public office is any person who:

(1) Has publicly announced his or her intention to run for nomination or office;

(2) Is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and

(3) Has met the qualifications set forth in either paragraphs (b), (c), (d) or (e) of this section.

(b) A person seeking election to any public office including that of President or Vice President of the United



States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (a) of this section, that person:

(1) Has qualified for a place on the ballot, or  
 (2) Has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

(c) A person seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those States or territories (or the District of Columbia) in which they have met the requirements set forth in paragraphs (a) and (b) of this section: except, that any such person who has met the requirements set forth in paragraphs (a) and (b) of this section in at least 10 States (or 9 and the District of Columbia) shall be considered a legally qualified candidate for election in all States, territories and the District of Columbia for purposes of this Act.

(d) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (a) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(e) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (a) of this section:

(1) He or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that State, territory or the District of Columbia, or

(2) He or she has made a substantial showing of a bona fide candidacy for such nomination in that State, territory or the District of Columbia: except, that any such person meeting the requirements set forth in paragraphs (a)(1) and (2) of this section in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all States, territories and the District of Columbia for purposes of this act.

(f) The term "substantial showing" of a bona fide candidacy as used in paragraphs (b), (d) and (e) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

#### **§73.1941 Equal opportunities.**

(a) General requirements. Except as otherwise indicated in §73.1944, no station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such licensee shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any: (1) bona fide newscast; (2) bona fide news interview; (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or (4) on-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of a broadcasting station. (Section 315(a) of the Communications Act.)

(b) Uses. As used in this section and §73.1942, the term "use" means a candidate appearance (including by

voice or picture) or political advertisement that is not exempt under §73.1941(a)(1)-(4).

(c) Timing of request. A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use giving rise to the right of equal opportunities occurred; provided, however, that where the person was not a candidate at the time of such first prior use, he or she shall submit his or her request within 1 week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

(d) Burden of proof. A candidate requesting equal opportunities of the licensee or complaining of noncompliance to the Commission shall have the burden of proving that he or she and his or her opponent are legally qualified candidates for the same public office.

(e) Discrimination between candidates. In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

#### **§73.1942 Candidate rates.**

(a) Charges for use of stations. The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his or her campaign for nomination for election, or election, to such office shall not exceed:

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period.

(i) A candidate shall be charged no more per unit than the station charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any station practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates on equal terms. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

(ii) The Commission recognizes non-preemptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time.

(iii) Stations may establish and define their own reasonable classes of immediately preemptible time so long as the differences between such classes are based on one or more demonstrable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstrable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time-sensitive make goods. Stations may not use class distinctions to defeat the purpose of the lowest unit charge requirement. All classes must be fully disclosed and made available to candidates.

(iv) Stations may establish reasonable classes of preemptible with notice time so long as they clearly define all such classes, fully disclose them and make them available to candidates.

(v) Stations may treat non-preemptible and fixed position as distinct classes of time provided that stations articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Stations shall not establish a separate, premium-priced class of time sold only to candidates. Stations may sell higher-priced non-preemptible or fixed time to candidates if such a class of time is made available on a bona fide basis to both candidates and commercial advertisers, and provided such class is not functionally equivalent to any lower-priced class of time sold to commercial advertisers.

(vii) [Reserved]

(viii) Lowest unit charge may be calculated on a weekly basis with respect to time that is sold on a weekly basis, such as rotations through particular programs or dayparts. Stations electing to calculate the lowest unit charge by such a method must include in that calculation all rates for all announcements scheduled in the rotation, including announcements aired under long-term advertising contracts. Stations may implement rate increases

during election periods only to the extent that such increases constitute "ordinary business practices," such as seasonal program changes or changes in audience ratings.

(ix) Stations shall review their advertising records periodically throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. Where necessary, stations shall issue rebates or credits promptly.

(x) Unit rates charged as part of any package, whether individually negotiated or generally available to all advertisers, must be included in the lowest unit charge calculation for the same class and length of time in the same time period. A candidate cannot be required to purchase advertising in every program or daypart in a package as a condition for obtaining package unit rates.

(xi) Stations are not required to include non-cash promotional merchandising incentives in lowest unit charge calculations; provided, however, that all such incentives must be offered to candidates as part of any purchases permitted by the licensee. Bonus spots, however, must be included in the calculation of the lowest unit charge calculation.

(xii) Make goods, defined as the rescheduling of preempted advertising, shall be provided to candidates prior to election day if a station has provided a time-sensitive make good during the year preceding the pre-election periods, respectively set forth in paragraph (a)(1) of this section to any commercial advertiser who purchased time in the same class.

(xiii) Stations must disclose and make available to candidates any make good policies provided to commercial advertisers. If a station places a make good for any commercial advertiser or other candidate in a more valuable program or daypart, the value of such make good must be included in the calculation of the lowest unit charge for that program or daypart.

(2) At any time other than the respective periods set forth in paragraph (a)(1) of this section, stations may charge legally qualified candidates for public office no more than the charges made for comparable use of the station by commercial advertisers. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, direct or indirect. A candidate shall be charged no more than the rate the station would charge for comparable commercial advertising. All discount privileges otherwise offered by a station to commercial advertisers must be disclosed and made available upon equal terms to all candidates for public office.

(b) If a station permits a candidate to use its facilities, the station shall make all discount privileges offered to commercial advertisers, including the lowest unit charges for each class and length of time in the same time period and all corresponding discount privileges, available upon equal terms to all candidates. This duty includes an affirmative duty to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers. Stations may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(1) a description and definition of each class of time available to commercial advertisers sufficiently complete to allow candidates to identify and understand what specific attributes differentiate each class;

(2) a description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(3) a description of the station's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(4) an approximation of the likelihood of preemption for each kind of preemptible time; and

(5) an explanation of the station's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

(c) Once disclosure is made, stations shall negotiate in good faith to actually sell time to candidates in accordance with the disclosure.

(d) This rule (§73.1942) shall not apply to any station licensed for noncommercial operation.

#### **§73.1943 Political file.**

(a) Every licensee shall keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee



of such requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

**§73.1944 Reasonable access.**

(a) Section 312(a)(7) of the Communications Act provides that the Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to, or to permit purchase of, reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(b) Weekend access. For purposes of providing reasonable access, a licensee shall make its facilities available for use by federal candidates on the weekend before the election if the licensee has provided similar access to commercial advertisers during the year preceding the relevant election period. Licensees shall not discriminate between candidates with regard to weekend access.

**Equal Employment Opportunities**

*In AM, FM, TV rules ...*

**§73.2080 Equal employment opportunities.**

(a) General EEO policy. Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin or sex.

(b) EEO program. Each broadcast station shall establish, maintain, and carry out, a positive continuing program of specific practices designed to assure equal opportunity in every aspect of station employment policy and practice. Under the terms of its programs, a station shall:

(1) Define the responsibility of each level of management to ensure a positive application and vigorous enforcement of the policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance.

(2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation.

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin or sex, and solicit their recruitment assistance on a continuing basis.

(4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin or sex, from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed in order to ensure genuine equality of opportunity to participate fully in all organizational units, occupations and levels of responsibility.

(c) EEO program requirements. A broadcast station's equal employment opportunity program should reasonably address itself to the specific areas set forth below, to the extent possible, and to the extent that they are appropriate in terms of the station's size, location, etc.:

(1) Disseminate its equal opportunity program to job applicants and employees. For example, this requirement may be met by:

(i) Posting notices in the station's office and other places of employment, informing employees, and applicants for employment, of their equal employment opportunity rights. Where it is appropriate, such equal employment opportunity notices should be posted in languages other than English;

(ii) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited;

(iii) Seeking the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and the inclusion of nondiscrimination provisions in union contracts;

(iv) Utilizing media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one sex over another and that

can be reasonably expected to reach minorities and women.

(2) Use minority organizations, organizations for women, media, educational institutions and other potential sources of minority and female applicants, to supply referrals whenever job vacancies are available in its operation. For example, this requirement may be met by:

(i) Placing employment advertisements in media that have significant circulation among minorities residing and/or working in the recruiting area;

(ii) Recruiting through schools and colleges, including those located in the station's local area, with significant minority-group enrollments;

(iii) Contacting, both orally and in writing, minority and human relations organizations, leaders and spokesmen to encourage referral of qualified minority or female applicants;

(iv) Encouraging current employees to refer minority or female applicants;

(v) Making known to recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever you hire and that all candidates will be considered on a nondiscriminatory basis.

(3) Evaluate its employment profile and job turnover against the availability of minorities and women in its recruitment area. For example, this requirement may be met by:

(i) Comparing the composition of the relevant labor area with composition of the station's workforce;

(ii) Where there is underrepresentation of either minorities and/or women, examining the company's personnel policies and practices to assure that they do not inadvertently screen out any group and take appropriate action where necessary. Data on representation of minorities and women in the available labor force are generally available on a metropolitan statistical area (MSA) or county basis.

(4) Undertake to offer promotions of qualified minorities and women in a nondiscriminatory fashion to positions of greater responsibility. For example, this requirement may be met by:

(i) Instructing those who make decisions on placement and promotion that qualified minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed;

(ii) Giving qualified minority and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower paid employees with respect to any of the higher paid positions.

(5) Analyze its efforts to recruit, hire and promote minorities and women and address any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(i) Avoiding use of selection techniques or tests that have the effect of discriminating against qualified minority groups or females;

(ii) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(iii) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race or sex discrimination.

(d) Mid-term review for television broadcast stations. The Commission will conduct a mid-term review of the employment practices of each broadcast television station at two and one-half years following the station's most recent license expiration date as specified in §73.1020 of these rules. The Commission will use the employment profile information provided on the first two Form 395-B reports submitted following such license expiration date to determine whether the television station's employment profiles as compared to the applicable labor force data are in compliance with the Commission's processing criteria. Television broadcast stations whose employment profiles fall below the processing criteria will receive a letter noting any necessary improvements identified as a result of the review.

**Network Affiliation**

*In AM rules ...*

**§73.132. Territorial exclusivity.** No licensee of an AM broadcast station shall have any arrangement with a network organization which prevents or hinders another station serving substantially the same area from broadcasting the network's programs not taken by the former station, or which prevents or hinders another station serving a substantially different area from broadcasting any program of the network organization; provided, however, that this section does not prohibit arrangements under which the station is granted first call within its primary service area upon the network's programs. The term network organization means any organization

originating program material, with or without commercial messages, and furnishing the same to stations interconnected so as to permit simultaneous broadcast by all or some of them. However, arrangements involving only stations under common ownership, or only the rebroadcast by one station of programming from another with no compensation other than a lump-sum payment by the station rebroadcasting, are not considered arrangements with a network organization. The term arrangement means any contract arrangement or understanding, express or implied.

*In FM rules ...*

**§73.232.**

EDITOR'S NOTE: Same as §73.132.

*In TV rules ...*

**§73.658. Affiliation agreements.**

(a) Exclusive affiliation of station. No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization under which the station is prevented or hindered from, or penalized for, broadcasting the programs of any other network organization. (The term network organization as used herein includes national and regional network organizations. See chapter VII, J. of Report on Chain Broadcasting.)

(b) Territorial exclusivity. No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders another broadcast station in the same community from broadcasting the network's programs not taken by the former stations, or which prevents or hinders another broadcast station located in a different community from broadcasting any program of the network organization. This regulation shall not be construed to prohibit any contract, arrangement, or understanding between a station and a network organization pursuant to which the station is granted the first call in its community upon the program of the network organization. As employed in this paragraph the term community is defined as the community specified in the instrument of authorization as the location of the station.

(c) [Reserved]

(d) Station commitment of broadcast time. No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with any network organization, which provides for optioning of the station's time to the network organization, or which has the same restraining effect as time optioning. As used in this section, time optioning is any contract, arrangement, or understanding, express or implied, between a station and a network organization which prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time.

(e) Right to reject programs. No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which, with respect to programs offered or already contracted for pursuant to an affiliation contract, prevents or hinders the station from (1) rejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest, or (2) substituting a program which in the station's opinion, is of greater local or national importance.

(f) [Reserved]

(g) Dual network operation. A television broadcast station may affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such dual or multiple networks are composed of:

(1) Two or more persons or entities that, on February 8, 1996, were "networks." For the purposes of this paragraph, the term network means any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity, or corporation; or

(2) Any network described in paragraph (g)(1) of this section and an English-language program distribution service that, on February 8, 1996, provided four or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television homes (as measured by a national ratings service).

(h) Control by networks of station rates. No license shall be granted to a television broadcast station having



any contract, arrangement, or understanding, express or implied, with a network organization under which the station is prevented or hindered from, or penalized for, fixing or altering its rates for the sale of broadcast time for other than the network's programs.

(l) No license shall be granted to a television broadcast station which is represented for the sale of non-network time by a network organization or by an organization directly or indirectly controlled by or under common control with a network organization, if the station has any contract, arrangement, or understanding, express or implied, which provides for the affiliation of the station with such network organization; provided, however, that this rule shall not be applicable to stations licensed to a network organization or to a subsidiary of a network organization.

(j) [Deleted]

(k) **Prime time access rule.** Effective September 8, 1975, commercial television stations owned by or affiliated with a national television network in the 50 largest television markets (see Note 1 to this paragraph) shall devote, during the four hours of prime time (7-11 p.m. E.T. and P.T., 6-10 p.m. C.T. and M.T.), no more than three hours to the presentation of programs from a national network, programs formerly on a national network (off-network programs) other than feature films, or, on Saturdays, feature films; provided, however, that the following categories of programs need not be counted toward the three-hour limitation:

(1) On nights other than Saturdays, network or off-network programs designed for children, public affairs programs or documentary programs (see Note 2 to this paragraph for definitions).

(2) Special news programs dealing with fast-breaking news events, on-the-spot coverage of news events or other material related to such coverage, and political broadcasts by or on behalf of legally qualified candidates for public office.

(3) Regular network news broadcasts up to half hour, when immediately adjacent to a full hour of continuous locally produced news or locally produced public affairs programming.

(4) Runovers of live network broadcast of sporting events, where the event has been reasonably scheduled to conclude before prime time or occupy only a certain amount of prime time, but the event has gone beyond its expected duration due to circumstances not reasonably foreseeable by the networks or under their control. This exemption does not apply to post-game material.

(5) In the case of stations in the Mountain and Pacific time zones, on evenings when network prime time programming consists of a sports event or other program broadcast live and simultaneously throughout the contiguous 48 states, such stations may assume that the network's schedule that evening occupies no more of prime time in these time zones than it does in the Eastern and Central time zones.

(6) Network broadcasts of an international sports event (such as the Olympic Games), New Year's Day college football games, or any other network programming of a special nature other than motion pictures or other sports events, when the network devotes all of its time on the same evening to the same programming, except brief incidental fill material.

**NOTE 1:** The top 50 markets to which this paragraph applies are the 50 largest markets in terms of average prime time audience for all stations in the market. For broadcast years before fall 1980, the 50 markets are the largest 50 as listed in the Arbitron publication *Television Markets and Rankings Guide*, generally published in November, which will apply for the broadcast year starting the following fall, except that, for 1978-79, Syracuse-Elmira will not be included and the Salt Lake City market will be included. For broadcast years starting in the fall of 1980 and thereafter, the 50 largest markets to which this paragraph applies will be determined at three-year intervals, on the basis of the average of two Arbitron February/March audience surveys occurring roughly 2-1/2 years and roughly 3-1/2 years before the start of the three-year period. The 50 markets to which this paragraph will apply for three years from fall 1980 to fall 1983 will be determined by an average of the prime time audience figures (all market stations combined) contained in the reports of Arbitron February/March 1977 and February/March 1978 audience surveys. Shortly after the results of the 1978 survey are available the Commission will issue a list of the 50 largest markets to which this paragraph will apply from fall 1980 to fall 1983. The same procedure will take place, on the basis of February/March 1980 and 1981 surveys, for the three-year period from fall 1983 to fall 1986.

**NOTE 2:** As used in this paragraph, the term programs designed for children means programs primarily designed for children aged 2 through 12. The term documentary programs means programs which are nonfictional and educational or informational, but not including programs where the information is used as part of a contest among participants in the program, and not including programs relating to the visual entertainment arts (stage, motion pictures or television) where more than 50% of the program is devoted to the presentation of entertainment material itself. The term public affairs programs means talks, commentaries, discussions, speeches, editorials, political programs, documentaries, forums, panels, roundtables, and similar programs primarily concerning local, national, and international public affairs.

**NOTE 3:** The provisions of this paragraph apply only to U.S. commercial television broadcast stations in the 50 states, and not to stations in Puerto Rico or the Virgin Islands, foreign stations or noncommercial educational television or "public" television stations (either by way of restrictions on their exclusivity or on exclusivity against them).

**NOTE 4:** New stations authorized in any community of a hyphenated market listed in §76.51 of this chapter or in any community of a hyphenated market listed in the ARB Television Market Analysis (for markets below the top-100 markets) are subject to the same rules as previously existing stations therein. New stations authorized in other communities are considered stations in separate markets unless and until §76.51 is amended by Commission action, or the ARB listing is changed.

(l) [Reserved]

(1) Definitions. As used in this paragraph, the following terms have the meaning given:

(i) Station means a commercial television station in the 50 States of the United States.

(ii) Operational station means a station authorized and operating as of June 10 (with respect to programs beginning October 1) or as of December 10 (with respect to programs beginning April 1), or as a station authorized and which gives notice to the Commission by such June 10 or December 10 date that it will be on the air by such October 1 or April 1 date (including request for program test authority if none has previously been given), and commit itself to remain on the air for six months after such October 1 or April 1 date. Such notice shall be received at the Commission by the June 10 or December 10 date mentioned, and shall show that copies thereof have been sent to the three national networks and to the licensees of all operating television stations in the market.

(iii) Affiliated station means a station having a regular affiliation with one of the three national television networks, under which it serves as that network's primary outlet for the presentation of its programs in a market. It includes any arrangement under which the network looks primarily to this station rather than other stations for the presentation of its programs and the station chiefly presents the programs of this network rather than another network.

(iv) Unaffiliated station means a station not having an affiliation arrangement as defined in this subparagraph with a national television network, even though it may have other types of agreements or pre-program arrangements with it.

(v) Network means a national organization distributing programs for a substantial part interconnection facilities.

(vi) Unaffiliated network means a network not having an affiliated station (as defined in this paragraph) in a particular market, even though it may have other types of agreements or pre-program arrangements.

(vii) Market means the television markets of the United States, and the stations in them, as identified in the latest publication of American Research Bureau (ARB), together with any stations which have since become operational in the same communities.

(viii) Evening programming means programming (regular programs or specials) starting and concluding on a network between the hours of 7:30 p.m. and 11 p.m. local time (except 6:30 p.m. and 10 p.m. in the Central time zone), plus all programs other than regular newscasts starting on the network between 7 and 7:30 p.m. local time (6 and 6:30 p.m. local time in the Central time zone). It does not include portions broadcast after 7 p.m. of programs starting earlier, or portions broadcast after 11 p.m. of programs starting earlier.

(ix) Specials means programs not carried on the network at least as often as once a week. It includes both programs scheduled very well in advance and those scheduled very shortly before broadcast on the network.

(x) Reasonably comparable facilities means station transmitting facilities (effective radiated power and effective antenna height above average terrain) such that the station's Grade B coverage area is at least two-thirds as large (in square kilometers) as the smallest of the market affiliated stations' Grade B coverage areas. Where one or both of the affiliates is licensed to a city different from that of the unaffiliated station, the term reasonably comparable facilities also includes the requirement that the unaffiliated station must put a predicted Grade A or better signal over all of the city of license of the other regular (non-satellite) station(s), except that where one of the affiliated stations is licensed to the same city as the unaffiliated station, and puts a Grade B but not a Grade A signal over the other city of license, the unaffiliated station will be considered as having reasonably comparable facilities if it too puts a predicted Grade B signal over all of the other city of license.

(2) Taking programs from unaffiliated networks. No affiliated station, in a market covered by this paragraph, shall take and broadcast, from an unaffiliated network, any programming of the times and types specified in this subparagraph, unless the conditions specified have first been met:

(i) Any evening programming (as defined in this paragraph), unless and until the entire schedule of such programs has been offered by the unaffiliated network to the unaffiliated station as provided in subparagraph (4) of this paragraph, and the unaffiliated station has either accepted 15 hours per week of such programs, plus additional special hours when part of the "special" is included in the 15 hours, or has accepted a lesser amount and indicated that it does not wish to carry any more. Such acceptance shall be governed by the provisions of subparagraph (4) of this paragraph.

(ii) Any programming beginning on the network between 12 noon and 7 p.m. on Saturdays, Sundays and holidays, and consisting of sports events (without limitation, college football and basketball, professional football, baseball, ice hockey, golf, tennis, horse racing and auto racing), unless and until the program has first been offered to the unaffiliated station and that station has indicated that it does not wish to accept it.

(iii) Any programming broadcast after 11 p.m. local time (except 10 p.m. local time in the Central time zone) which is a continuation of programs starting earlier and carried by the unaffiliated station; or any material broadcast after 7 p.m. (6 p.m. in the Central time zone) which is a continuation of sports programs beginning earlier and carried by the unaffiliated station.

(iv) Any program presented in the same week by the unaffiliated station.

(3) Carriage of programs of a network which has an affiliate. No affiliated station in a market covered by this paragraph shall broadcast, from another network which has an affiliated station in the market, any evening programming on Saturday, Sunday or holiday sports programming, unless such programming has been offered to the unaffiliated station in the market and the latter has indicated that it does not wish to carry it.

(4) Offer and acceptance (i) the offer by a network referred to in this paragraph means an offer to the unaffiliated station of the programs for broadcast. Programs so offered cannot be withdrawn by the network until the following April 1 or October 1, unless the station does not in fact broadcast the program as accepted, in which case the provisions of paragraph (1) (4) (ii) shall apply, or unless the program is cancelled on the network, in which case the replacement or substitute program shall be offered to the station as a new program under paragraph (1) (2) or (1) (3). If a program accepted by the unaffiliated station is shifted in time, the station may exercise its right of first call either with respect to the program at its new time, or the previous time segment, at its option.

(ii) The acceptance referred to in paragraphs (1) (2) and (3) means that the unaffiliated station agrees to broadcast the program accepted, at its live network time or a delayed time acceptable to the network, unless in its judgment the program is not in the public interest or it wishes to substitute a local, or other live, program for it. The provisions of §73.658(a), prohibiting agreements which hinder the presentation of the programs of other networks, shall not apply to material covered by this paragraph. If a program is not presented in a particular week or at a delayed time acceptable to the network, the network may place this particular broadcast of the program on another station; and if this occurs more than 4 times in any 13-week period the network may withdraw the program from the station without obligation to offer it any additional programming. The unaffiliated station is free to seek and obtain other terms of acceptance from



the network; but the offer of programming by the network on the foregoing terms satisfies its obligations under this paragraph.

(iii) The offer by the network shall, to the extent possible, be on or before July 15 with respect to programs beginning in the fall season, and by January 15 with respect to programs presented after April 1, or otherwise as soon as possible. The unaffiliated station's acceptance or indication of non-acceptance shall be within two weeks after the date of the offer; where any negotiations between the network and the station concerning particular programs are involved, programs not accepted within 30 days of the date of the offer shall be deemed not accepted.

NOTE 1: If there are in a particular market two affiliated stations and two (or more) operational unaffiliated stations with reasonably comparable facilities, the provisions of paragraph (l) shall require an offer of programming to each; but the 15-hour-per-week first call provision applies to the total programming taken by all such stations.

NOTE 2: The provisions of paragraph (l) do not apply to a market in which there are two VHF affiliated U.S. stations, and a foreign VHF station to which a national U.S. television network transmits programs pursuant to authority granted under Section 325 of the Communications Act of 1934, as amended, and which serves as that network's primary affiliate in the market.

(m)(1) **Territorial exclusivity in non-network arrangements.** No television station shall enter into any contract, arrangement or understanding, expressed or implied, with a non-network program producer, distributor, or supplier, or other person which prevents or hinders another television station located in a community over 56.3 kilometers (35 miles) away, as determined by the reference points contained in §76.53 of this chapter, (if reference points for a community are not listed in §76.53, the location of the main post office will be used) from broadcasting any program purchased by the former station from such non-network program-producer, distributor, supplier or any other person except that a TV station may secure exclusivity against a television station licensed to another designated community in a hyphenated market specified in the market listing as contained in §76.51 of this chapter for those 100 markets listed, and for markets not listed in §76.51 of this chapter, the listing as contained in the ARB Television Market Analysis for the most recent year at the time that the exclusivity contract, arrangement, or understanding is complete under practices of the industry. As used in this subsection, the term community as defined as the community specified in the instrument of authorization as the location of the station.

(2) Notwithstanding paragraph (m)(1), a television station may enter into a contract, arrangement, or understanding with a producer, supplier, or distributor of a non-network program if that contract, arrangement, or understanding provides that the broadcast station has exclusive national rights such that no other television station in the United States may broadcast the program.

NOTE 1: Contracts, arrangements, or understandings that are complete under the practices of the industry prior to August 7, 1973, will not be disturbed. Extensions or renewals of such agreements are not permitted because they would in effect be new agreements without competitive bidding. However, such agreements that were based on the broadcaster's advancing "seed money" for the production of a specific program or series that specify two time periods — a tryout period and period thereafter for general exhibition — may be extended or renewed as contemplated in the basic agreement.

NOTE 2: It is intended that the top 100 major television markets listed in §76.51 of this chapter shall be used for the purposes of this rule and that the listing of the top 100 television markets appearing in the ARB Television Market Analysis shall not be used. The reference in this rule to the listing of markets in the ARB Television Market Analysis refers to hyphenated markets below the top-100 markets contained in the ARB Television Market Analysis. If a community is listed in a hyphenated market in §76.51 and is also listed in one of the Markets in the ARB listing, the listing in §76.51 shall govern.

NOTE 3: The provisions of this paragraph apply only to U.S. commercial television broadcast stations in the 50 states, and not to stations in Puerto Rico or the Virgin Islands, foreign stations or noncommercial educational television or "public" television stations (either by way of restrictions on their exclusivity or on exclusivity against them).

NOTE 4: New stations authorized in any community of a hyphenated market listed in §76.51 of this chapter or in any community of a hyphenated market listed in the ARB Television Market Analysis (for markets below the top-100 markets) are subject to the same rules as previously existing stations therein. New stations author-

ized in other communities are considered stations in separate markets unless and until §76.51 is amended by Commission action, or the ARB listing is changed.

## Network Financial Interests and Syndication

### In TV rules ...

§73.662 [Reserved]

## Common Antenna Site

**§73.635. Use of common antenna site.** No television license or renewal of a television license will be granted to any person who owns, leases, or controls a particular site which is peculiarly suitable for television broadcasting in a particular area and (a) which is not available for use by other television licensees; and (b) no other comparable site is available in the area; and (c) where the exclusive use of such site by the applicant or licensee would unduly limit the number of television stations that can be authorized in a particular area or would unduly restrict competition among television stations.

**§73.1692 Broadcast station construction near or installation on an AM broadcast tower.** Where a broadcast licensee or permittee proposes to mount a broadcast antenna on an AM station tower, or where construction is proposed within 0.8 km of an AM nondirectional tower or within 3.2 km of an AM directional station, the broadcast licensee or permittee is responsible for ensuring that the construction does not adversely affect the AM station, as follows:

(a) Installations on an AM nondirectional tower. During installation of the broadcast antenna and related equipment, the AM station shall determine operating power by the indirect method (see §73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made, and, prior to or simultaneously with the filing of the license application covering the broadcast station installation, an application on FCC Form 302-AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement.

(b) Installations on an AM directional array. Prior to commencing construction, the broadcast permittee or licensee shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see §73.51) and request special temporary authority pursuant to §73.1635 to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Both prior to the commencement of construction and upon completion of construction, a partial proof of performance (as defined by §73.154) shall be conducted to establish that the AM array has not been adversely affected. Prior to or simultaneously with filing of the license application to cover the broadcast station construction, the results of the partial proof of performance shall be filed with the Commission on Form 302-AM.

(c) Tower erections or modifications within 0.8 km of an AM nondirectional tower. Prior to commencing the construction of tower modifications, or the erection of a new tower, within 0.8 km of an AM nondirectional tower, the broadcast permittee or licensee is required to notify the AM station so that the AM station may commence determining operating power by the indirect method (see §73.51). The broadcast licensee or permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects on the radiation pattern of the AM station. Both prior to construction of the tower modifications and upon completion of construction, antenna impedance measurements of the AM station shall be made. In addition, sufficient field strength measurements taken at a minimum of 10 locations along each of 8 equally spaced radials, shall be made to establish that the AM radiation pattern is essentially omnidirectional. Prior or simultaneously with the filing of the application for license to cover this permit, the results of the impedance measurements and the field strength measurements shall be filed with the Commission on FCC Form 302-AM for the AM station to return to the direct method of power determination.

(d) Tower erections or modifications within 3.2 km of an AM directional station. Prior to commencing construction of tower modifications, or the erection of a new tower structure, within 3.2 km of an AM directional array, the broadcast permittee or licensee shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see §73.51) and

request special temporary authority pursuant to §73.1635 to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. The broadcast licensee or permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to the commencement of construction and upon completion of construction, a partial proof of performance (as defined by §73.154) shall be conducted to establish that the AM array has not been adversely affected. Prior to or simultaneously with filing of the license application to cover the broadcast station construction, the results of the partial proof of performance shall be filed with the Commission on Form 302-AM.

## Reports to be Filed

### All broadcast stations ...

#### §73.3526 Local public inaction file of commercial stations.

(a) Responsibility to maintain a file. The following shall maintain for public inspection a file containing the material set forth in this section.

(1) Applicants for a construction permit for a new station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(2) and (e)(10) of this section. A separate file shall be maintained for each station for which an application is pending. If the application is granted, paragraph (a)(2) of this section shall apply.

(2) Every permittee or licensee of an AM, FM, or TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. In addition, every permittee or licensee of a commercial TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11) and (e)(15) of this section, and every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14) of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

(b) Location of the file. The public inspection file shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(c) Access to material in the file. (1) The file shall be available for public inspection at any time during regular business hours. All or part of the file may be maintained in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public who wish to review the file. Material in the public inspection file shall be made available for printing or machine reproduction upon request made in person. The applicant, permittee, or licensee may specify the location for printing or reproduction, require the requesting party to pay the reasonable cost thereof, and may require guarantee of payment in advance (e.g., by requiring a deposit, obtaining credit card information, or any other reasonable method). Requests for copies shall be fulfilled within a reasonable period of time, which generally should not exceed 7 days.

(2) The applicant, permittee, or licensee shall make available, by mail upon telephone request, photocopies of documents in the file, and the station shall pay postage. Licensees shall mail the most recent version of "The Public and Broadcasting" to any member of the public that requests a copy. Licensees shall be prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail, for example, by describing to the caller, if asked, the period covered by a particular report and the number of pages included in the report.

(d) Responsibility in case of assignment or transfer. (1) In cases involving applications for consent to assignment of broadcast station construction permits or licenses, with respect to which public notice is required to be given under the provisions of §73.3580 or §73.3594, the file mentioned in paragraph (a) of this section shall be maintained by the assignor. If the assignment is consented to by the FCC and consummated, the assignee shall maintain the file commencing with the date on which notice of the consummation of the assignment is filed with the FCC. The assignee shall retain public file documents obtained from the assignor for the period required under these rules.



(2) In cases involving applications for consent to transfer of control of a permittee or licensee of a broadcast station, the file mentioned in paragraph (a) of this section shall be maintained by the permittee or licensee.

(e) Contents of the file. The material to be retained in the public inspection file is as follows:

(1) Authorization. A copy of the current FCC authorization to construct or operate the station, as well as any other documents necessary to reflect any modifications thereto or any conditions that the FCC has placed on the authorization. These materials shall be retained until replaced by a new authorization, at which time a copy of the new authorization and any related materials shall be placed in the file.

(2) Applications and related materials. A copy of any application tendered for filing with the FCC, together with all related material, and copies of Initial Decisions and Final Decisions in hearing cases pertaining thereto. If petitions to deny are filed against the application and have been served on the applicant, a statement that such a petition has been filed shall be maintained in the file together with the name and address of the party filing the petition. Applications shall be retained in the public inspection file until final action has been taken on the application, except that applications for a new construction permit granted pursuant to a waiver showing and applications for assignment or transfer of license granted pursuant to a waiver showing shall be retained for as long as the waiver is in effect. In addition, license renewal applications granted on a short-term basis shall be retained until final action has been taken on the license renewal application filed immediately following the shortened license term.

(3) Citizen agreements. A copy of every written citizen agreement. These agreements shall be retained for the term of the agreement, including any renewal or extension thereof.

NOTE to paragraph (e)(3): For purposes of this section, a citizen agreement is a written agreement between a broadcast applicant, permittee, or licensee, and one or more citizens or citizen groups, entered for primarily non-commercial purposes. This definition includes those agreements that deal with goals or proposed practices directly or indirectly affecting station operations in the public interest, in areas such as—but not limited to—programming and employment. It excludes common commercial agreements such as advertising contracts; union, employment, and personal services contracts; network affiliation, syndication, program supply contracts, etc. However, the mere inclusion of commercial terms in a primarily noncommercial agreement—such as a provision for payment of fees for future services of the citizen-parties (see "Report and Order," Docket 19518, 57 FCC 2d 494 (1976))—would not cause the agreement to be considered commercial for purposes of this section.

(4) Contour maps. A copy of any service contour maps, submitted with any application tendered for filing with the FCC, together with any other information in the application showing service contours and/or main studio and transmitter location (State, county, city, street address, or other identifying information). These documents shall be retained for as long as they reflect current, accurate information regarding the station.

(5) Ownership reports and related materials. A copy of the most recent, complete ownership report filed with the FCC for the station, together with any statements filed with the FCC certifying that the current report is accurate, and together with all related material. These materials shall be retained until a new, complete ownership report is filed with the FCC, at which time a copy of the new report and any related materials shall be placed in the file. The permittee or licensee must retain in the public file either a copy of the contracts listed in such reports in accordance with §73.3615(a)(4)(i), or an up-to-date list of such contracts. Licensees or permittees who choose to retain a list of contracts must provide a copy of any contracts to requesting parties within 7 days.

(6) Political file. Such records as are required by §73.1943 to be kept concerning broadcasts by candidates for public office. These records shall be retained for the period specified in §73.1943 (2 years).

(7) Annual employment reports. A copy of every annual employment report filed by the licensee or permittee for the station, together with all related material (Form 395-B). These materials shall be retained until final action has been taken on the station's next license renewal application.

(8) The public and broadcasting. At all times, a copy of the most recent version of the manual entitled "The Public and Broadcasting."

(9) Letters and e-mail from public. All written comments and suggestions received from the public regarding operation of the station, unless the letter writer has requested that the letter not be made public or when the

licensee feels that it should be excluded from public inspection because of the nature of its content, such as a defamatory or obscene letter. Letters and electronic mail messages shall be retained for a period of three years from the date on which they are received by the licensee. For purposes of this section, written comments and suggestions received from the public include electronic mail messages transmitted via the internet. Licensees may retain e-mails either on paper or in a computer file. Licensees who choose to maintain a computer file of e-mails may make the file available to the public either by providing the public with access to a computer terminal at the location of the public file, or providing the public with a copy of such e-mails on computer diskette, upon request. In the case of identical communications, licensees and permittees may retain one sample copy of the letter or electronic mail message together with a list identifying other parties who sent identical communications.

(10) Material relating to FCC investigation or complaint. Material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC of which the applicant, permittee, or licensee has been advised. This material shall be retained until the applicant, permittee, or licensee is notified in writing that the material may be discarded.

(11)(i) TV issues/programs lists. For commercial TV broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December, April 10 for the quarter January—March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

(ii) Records concerning commercial limits. For commercial TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's programming established in 47 USC 303a and 47 CFR §73.670. The records for each calendar quarter must be filed in the public inspection file by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December, April 10 for the quarter January—March, etc.). These records shall be retained until final action has been taken on the station's next license renewal application.

(iii) Children's television programming reports. For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be filed by the tenth day of the succeeding calendar quarter. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in §73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, i.e. four quarterly reports filed jointly each year, preferably in electronic form. These Reports shall be filed with the Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

(12) Radio issues/programs lists. For commercial AM and FM broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December, April 10 for the quarter January—March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the

programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

(13) Local public notice announcements. Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to §73.3580(h), place in the station's local public inspection file a statement certifying compliance with this requirement. The dates and times that the pre-filing and post-filing notices were broadcast and the text thereof shall be made part of the certifying statement. The certifying statement shall be retained in the public file for the period specified in §73.3580 (for as long as the application to which it refers).

(14) Radio time brokerage agreements. For commercial radio stations, a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee, with confidential or proprietary information redacted where appropriate. These records shall be retained as long as the contract or agreement is in force.

(15) Must-carry or retransmission consent election. Statements of a commercial television station's election with respect to either must-carry or retransmission consent as defined in §76.64 of this chapter. These records shall be retained for the duration of the three year election period to which the statement applies.

NOTE 1 to paragraph (e): For purposes of this section, action taken on an application tendered with the FCC becomes final when that action is no longer subject to reconsideration, review, or appeal either at the FCC or in the courts.

NOTE 2 to paragraph (e): For purposes of this section, the term "all related material" includes all exhibits, letters, and other documents tendered for filing with the FCC as part of an application, report, or other document, all amendments to the application, report, or other document, copies of all documents incorporated therein by reference and not already maintained in the public inspection file, and all correspondence between the FCC and the applicant pertaining to the application, report, or other document, which according to the provisions of §§0.451 through 0.461 of this part are open for public inspection at the offices of the FCC.

**§73.3612 Annual employment report.** Each licensee or permittee of a commercially or noncommercially operated AM, FM, TV or International broadcast station with five or more full-time employees shall file an annual employment report with the FCC on or before September 30 of each year on FCC Form 395.

**§73.3613 Filing of contracts.** Each licensee or permittee of a commercial or noncommercial AM, FM, TV or International broadcast station shall file with the FCC copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations (with the substance of oral contracts reported in writing), within 30 days of execution thereof:

(a) Network service: Network affiliation contracts between stations and networks will be reduced to writing and filed as follows:

(1) All network affiliation contracts, agreements or understandings between a TV broadcast or low power TV station and a national network. For the purposes of this paragraph the term network means any person, entity or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; and/or any person, entity or corporation controlling, controlled by, or under common control with such person, entity or corporation.

(2) Each such filing on or after May 1, 1969, initially shall consist of a written instrument containing all of the terms and conditions of such contract, agreement or understanding without reference to any other paper or document by incorporation or otherwise. Subsequent filings may simply set forth renewal, amendment or change, as the case may be, of a particular contract previously filed in accordance herewith.

(3) The FCC shall also be notified of the cancellation or termination of network affiliations, contracts for which are required to be filed by this section.

(b) Ownership or control: Contracts, instruments or documents relating to the present or future ownership or control of the licensee or permittee or of the licensee's or permittee's stock, rights or interests therein, or relating to changes in such ownership or control shall include but are not limited to the following:

(1) Articles of partnership, association, and incorporation, and changes in such instruments;



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(2) Bylaws, and any instruments effecting changes in such bylaws:

(3) Any agreement, document or instrument providing for the assignment of a license or permit, or affecting, directly or indirectly, the ownership or voting rights of the licensee's or permittee's stock (common or preferred, voting or nonvoting), such as:

(i) Agreements for transfer of stock;

(ii) Instruments for the issuance of new stock; or

(iii) Agreements for the acquisition of licensee's or permittee's stock by the issuing licensee or permittee corporation. Pledges, trust agreements, options to purchase stock and other executory agreements are required to be filed. However, trust agreements or abstracts thereof are not required to be filed, unless requested specifically by the FCC. Should the FCC request an abstract of the trust agreement in lieu of the trust agreement, the licensee or permittee will submit the following information concerning the trust:

(A) Name of trust;

(B) Duration of trust;

(C) Number of shares of stock owned;

(D) Name of beneficial owner of stock;

(E) Name of the party or parties who have the power to vote or control the vote or control the vote of the shares; and

(G) Any conditions on the powers of voting the stock or any unusual characteristics of the trust.

(4) Proxies with respect to the licensee's or permittee's stock running for a period in excess of 1 year, and all proxies, whether or not running for a period of 1 year, given without full and detailed instructions binding the nominee to act in a specified manner. With respect to proxies given without full and detailed instructions, a statement showing the number of such proxies, by whom given and received, and the percentage of outstanding stock represented by each proxy shall be submitted by the licensee or permittee within 30 days after the stockholders' meeting in which the stock covered by such proxies has been voted. However, when the licensee or permittee is a corporation having more than 50 stockholders, such complete information need be filed only with respect to proxies given by stockholders who are officers or directors, or who have 1% or more of the corporation's voting stock. When the licensee or permittee is a corporation having more than 50 stockholders and the stockholders giving the proxies are not officers or directors or do not hold 1% or more of the corporation's stock, the only information required to be filed is the name of any person voting 1% or more of the stock by proxy, the number of shares voted by proxy by such person, and the total number of shares voted at the particular stockholders' meeting in which the shares were voted by proxy.

(5) Mortgage or loan agreements containing provisions restricting the licensee's or permittee's freedom of operation, such as those affecting voting rights, specifying or limiting the amount of dividends payable, the purchase of new equipment, or the maintenance of current assets.

(6) Any agreement reflecting a change in the officers, directors or stockholders of a corporation, other than the licensee or permittee, having an interest, direct or indirect, in the licensee or permittee as specified by §73.3615.

(c) Personnel:

(1) Management consultant agreements with independent contractors; contracts relating to the utilization in a management capacity of any person other than an officer, director, or regular employee of the licensee or permittee; station management contracts with any persons, whether or not officers, directors, or regular employees, which provide for both a percentage of profits and a sharing in losses; or any similar agreements.

(2) The following contracts, agreements, or understandings need not be filed: Agreements with persons regularly employed as general or station managers or salesmen; contracts with program managers or program personnel; contracts with attorneys, accountants or consulting radio engineers; contracts with performers; contracts with station representatives; contracts with labor unions; or any similar agreements.

(d) Time brokerage agreements: Time brokerage agreements involving radio stations, where the licensee (including all parties under common control) is the brokering entity, there is a principal community contour (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) overlap with the brokered station, and more than 15 percent of the time of the brokered station, on a weekly basis, is brok-

ered by that licensee. Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: contracts relating to the sale of television broadcast time to "time brokers" for resale; subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

### §73.3615 Ownership reports.

(a) With the exception of sole proprietorships and partnerships composed entirely of natural persons, each licensee of a commercial AM, FM, or TV broadcast station shall file an Ownership Report on FCC Form 323 once a year, on the anniversary of the date that its renewal application is required to be filed. Licensees owning multiple stations with different anniversary dates need file only one Report per year on the anniversary of their choice, provided that their Reports are not more than one year apart. A licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership Reports shall provide the following information as of a date not more than 60 days prior to the filing of the Report:

(1) In the case of an individual, the name of such individual;

(2) In the case of a partnership, the name of each partner and the interest of each partner. Except as specifically noted below, the names of limited partners shall be reported. A limited partner need not be reported, regardless of the extent of its ownership, if the limited partner is not materially involved, directly or indirectly, in the management or operation of the licensee and the licensee so certifies.

(i) Any change in partners or in their rights will require prior consent of the FCC upon an application for consent to assignment of license or permit. If such change involves less than a controlling interest, the application for FCC consent to such changes may be made upon FCC Form 316.

(3) In the case of a corporation, association, trust, estate, or receivership, the data applicable to each:

(i)(A) The name, residence, citizenship, and stockholding of every officer, director, trustee, executor, administrator, receiver, partner, member of an association, and any stockholder which holds stock accounting for 5% or more of the votes of the corporation, except that an investment company, insurance company, or bank trust department need be reported only if it holds stock amounting to 10% or more of the votes, provided that the licensee certifies that such entity has made no attempt to influence, directly or indirectly, the management or operations of the licensee, and that there is no representation on the licensee's board or among its officers by any person professionally or otherwise associated with the entity.

(B) A licensee shall report any separate interests known to the licensee to be held ultimately by the same individual or entity, whether those interests are held in custodial accounts, by individual holding corporations or otherwise, if, when aggregated:

(1) the sum of all interests except those held by or through "passive investors" is equal to or exceeds 5 percent; or

(2) the sum of all interests held by or through passive investors is equal to or exceeds 10 percent; or

(3) the sum of the interests computed under (1) plus the sum of the interests computed under (2) is equal to or exceeds 10 percent.

(c) If the majority of the voting stock of a corporate licensee is held by a single individual or entity, no other stockholding need be reported for that licensee;

(ii) Full information as to family relationship or business association between two or more officials and/or stockholders, trustees, executors, administrators, receivers, and members of any association;

(iii) Capitalization with a description of the classes and voting power of stock authorized by the corporate charter or other appropriate legal instrument and the number of shares of each class issued and outstanding; and

(iv) Full information with respect to the interest and identity of any person having any direct, indirect, fiduciary, or beneficial interest in the licensee or in its stock accounting for 5% or more of its votes. For example:

(A) Where A is the trustee of stock held for beneficiary B, A shall be reported if A votes the stock or has the sole or shared power to dispose of the stock; B or any other party shall be reported if B or such party votes the stock or has sole power to dispose of the stock or has the power to revoke the trust or replace the trustee at will;

(B) Where X is not a natural person and has attributable ownership interests in the licensee under §73.3555 of the rules, regardless of its position in the vertical ownership chain, an Ownership Report shall be filed for X which, except as specifically noted below, must contain the same information as required of a licensee. If X has a voting stockholder interest in the licensee, only those voting interests of X that are cognizable after application of the multiplier described in NOTE 2(d) of §73.3555 of the rules, if applicable, shall be reported. If X is a corporation, whether or not its interest in the licensee is by virtue of its ownership of voting stock, the officers and directors shall be reported. With respect to those officers and directors shall be reported. With respect to those officers and directors whose duties and responsibilities are wholly unrelated to the licensee, and who wish to be relieved of attribution in the licensee, the name, title and duties of these officers and directors, with statements properly documenting that their duties do not involve the licensee, shall be reported.

(4) In the case of all licensees:

(i) A list of contracts will in effect be required to be filed with the FCC §73.3613 showing the date of execution and expiration of each contract; and

(ii) Any interest which the licensee may have in any other broadcast station.

(b) Except as specifically noted below, each permittee of a commercial AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323 (1) within 30 days of the date of grant by the FCC of an application for construction permit and (2) on the date that it applies for a station license. The Ownership Report of the permittee shall give the information required by the applicable portions of paragraph (a) of this section. A permittee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and it is accurate, in lieu of filing a new Report.

(c) Before any change is made in the organization, capitalization, officers, directors, or stockholders of a corporation other than licensee or permittee, which results in a change in the control of the licensee or permittee, prior FCC consent must be received under §73.3540. A transfer of control takes place when an individual or group in privacy, gains or loses affirmative or negative (50%) control. See instructions on FCC Form 323 (Ownership Report).

(d) Each licensee of a noncommercial educational AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323-E at the time the application for renewal of station license is required to be filed. Licensees owning more than one noncommercial educational AM, FM or TV broadcast station need file only one Ownership report at 5 year intervals for TV stations and 7 year intervals for AM and FM stations. Ownership Reports shall give the following information as of a date not more than 30 days prior to the filing of the Ownership Report:

(1) The following information as to all officers, members of governing board, and holders of 1% or more ownership interest (if any): Name, residence, office held, citizenship, principal profession or occupation, and by whom appointed or elected.

(2) Full information with respect to the interest and identity of any individual, organization, corporation, association, or any other entity which has direct or indirect control over the licensee or permittee.

(3) A list of all contracts still in effect required by §73.3613 to be filed with the FCC, showing the date of execution and expiration of each contract. (4) Any interest which the licensee or permittee or any of its officers, members of the governing board, and holders of 1% or more ownership interest (if any) held in any other broadcast station.

(e) Each permittee of a noncommercial educational AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323-E within 30 days of the date of grant by the FCC of an application for original construction permit. The Ownership Report of the permittee shall give the information required by the applicable form.

(f) A supplemental Ownership Report on FCC Form 323-E shall be filed by each licensee or permittee within



30 days after any change occurs in the information required by the Ownership Report from that previously reported. Such report should include, without limitation: (1) An change in organization; or

- (2) Any change in officers or directors;
- (3) Any transaction affecting the ownership (direct or indirect) or voting rights with respect to the licensee or permittee (or with respect to any stock interest therein).
- (g) A copy of all Ownership and supplemental Ownership Reports and related material filed pursuant to this section shall be maintained and made available for public inspection locally as required by §73.3526 and §73.3527.

**License Renewals**

*General ...*

**§73.3523 Dismissal of applications in renewal proceedings.**

(a) An applicant for construction permit, that has filed an application that is mutually exclusive with an application for renewal of a license of an AM, FM or television station (hereinafter "competing applicant") filed on or before May 1, 1995, and seeks to dismiss or withdraw its application and thereby remove a conflict between applications pending before the Commission, must obtain the approval of the Commission.

(b) If a competing applicant seeks to dismiss or withdraw its application prior to the Initial Decision stage of the hearing on its application, it must submit to the Commission a request for approval of the dismissal or withdrawal of its application, a copy of any written agreement related to the dismissal or withdrawal of its application, and an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has received or will receive any money or other consideration in exchange for dismissing or withdrawing its application;

(2) A statement that its application was not filed for the purpose of reaching or carrying out an agreement with any other applicant regarding the dismissal or withdrawal of its application; and

(3) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

In addition, within 5 days of the applicant's request for approval, each remaining competing applicant and the renewal applicant must submit an affidavit setting forth:

(4) A certification that neither the applicant nor its principals has paid or will pay any money or other consideration in exchange for the dismissal or withdrawal of the application; and

(5) The terms of any oral agreement relating to the dismissal or withdrawal of the application.

(c) If a competing applicant seeks to dismiss or withdraw its application after the Initial Decision stage of the hearing on its application, it must submit to the Commission a request for approval of the dismissal or withdrawal of its application, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses of the applicant;

(2) The exact nature and amount of any consideration paid or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement;

(4) A statement that its application was not filed for the purpose of reaching or carrying out an agreement with any other applicant regarding the dismissal or withdrawal of its application; and

(5) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

In addition, within 5 days of the applicant's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(6) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the withdrawing applicant in exchange for the dismissal or withdrawal of the application; and

(7) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

(d) For the purposes of this section:

(1) Affidavits filed pursuant to this section shall be executed by the applicant, permittee, or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) An application shall be deemed to be pending before the Commission from the time an application is filed with the Commission until an order of the Commission granting or denying the application is no longer subject

to reconsideration by the Commission or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by an applicant in preparing, filing, and prosecuting its application.

(4) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

**§73.3584 Procedures for filing petitions to deny.**

(a) Except in the case of applications for new low power TV, TV translator or TV booster stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV and TV translator stations pursuant to §73.3572(a)(1), any party in interest may file with the Commission a Petition to Deny any application (whether as originally filed or amended so as to require a new file number pursuant to §§73.3571(j), 73.3572(b), 73.3573(b), 73.3574(b) or 73.3578) for which local notice pursuant to §73.3580 is required, provided such petitions are filed prior to the day such applications are granted or designated for hearing; but where the FCC issues a public notice pursuant to the provisions of §§73.3571(c), 73.3572(c) or 73.3573(d), establishing a "cutoff" date, such petitions must be filed by the date specified. In the case of applications for transfers and assignments of construction permits or station licenses, Petitions to Deny must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the applications. In the case of applications for renewal of license, Petitions to Deny may be filed at any time up to the deadline established in §73.3516(e). Requests for extension of time to file Petitions to Deny applications for new broadcast stations or major changes in the facilities of existing stations or applications for renewal of license will not be granted unless all parties concerned, including the applicant, consent to such requests, or unless a compelling showing can be made that unusual circumstances make the filing of a timely petition impossible and the granting of an extension warranted.

(b) Except in the case of applications for new low power TV or TV translator stations, for major changes in the existing facilities of such stations, the applicant may file an opposition to any Petition to Deny, and the petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such oppositions and replies shall be those provided in §1.45 except that as to a Petition to Deny an application for renewal of license, an opposition thereto may be filed within 30 days after the Petition to Deny is filed, and the party that filed the Petition to Deny may reply to the opposition within 20 days after the opposition is due or within 20 days after opposition is filed, whichever is longer. The failure to file an opposition or reply will not necessarily be construed as an admission of fact or argument contained in a pleading.

(c) In the case of applications for new low power TV, TV translator or TV booster stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV and TV translator stations pursuant to §73.3572(a)(1), any party in interest may file with the FCC a Petition to Deny any application (whether as originally filed or amended so as to require a new file number pursuant to §73.3572(b)) for which local notice pursuant to §73.3580 is required, provided such petitions are filed within 30 days of the FCC Public Notice proposing the application for grant (applicants may file oppositions within 15 days after the Petition to Deny is filed); but where the FCC selects a tentative permittee pursuant to §1.1601 et seq., Petitions to Deny shall be accepted only if directed against the tentative selectee and filed after issuance of and within 15 days of FCC Public Notice announcing the tentative selectee. The applicant may file an opposition within 15 days after the Petition to Deny is filed. In cases in which the minimum diversity preference provided for in §1.1623(f)(1) has been applied, an "objection to diversity claim," and opposition thereto may be filed against any applicant receiving a diversity preference, within the same time period provided herein for Petitions and Oppositions. In all pleadings, allegations of fact or denials thereof shall be supported by appropriate certification. However, the FCC may announce, by the Public Notice announcing the acceptance of the last-filed mutually exclusive application, that a notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

(1) If so announced, a Petition to Deny filed against an applicant will not be accepted if filed by a party which failed to timely file a notice of petition, and make service of the notice of petition pursuant to §1.47, un-

less good cause is shown for the failure to file the notice. Good cause includes allegations based on facts that could not previously be discovered with diligence, and fraud or suppression of evidence by the tentative selectee.

(2) The notice of Petition to Deny shall be limited to two pages. The notice shall include specific allegations that concisely state the reasons why the applicant lacks the qualifications to be a licensee or why a grant of the application would be inconsistent with the public interest. The notice shall be supported by certification made by a person or persons having personal knowledge thereof.

(d) Untimely Petitions to Deny, as well as other pleadings in the nature of a Petition to Deny, and any other pleadings or supplements which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by the FCC's staff without consideration.

**§73.3588 Dismissal of petitions to deny or withdrawal of informal objections.**

(a) Whenever a petition to deny or an informal objection has been filed against any application, and the filing party seeks to dismiss or withdraw the petition to deny or the informal objection, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) A certification that neither the petitioner nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the petition to deny;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the dismissal or withdrawal of the petition to deny.

In addition, within 5 days of petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(5) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for dismissing or withdrawing the petition to deny; and

(6) The terms of any oral agreement relating to the dismissal or withdrawal of the petition to deny.

(b) Citizens' agreements. For purposes of this section, citizens agreements include agreements arising whenever a petition to deny or informal objection has been filed against any application and the filing party seeks to dismiss or withdraw the petition or objection in exchange for non-financial consideration (e.g., programming, ascertainment or employment initiatives). The parties to such an agreement must file with the Commission a joint request for approval of the agreement, a copy of any written agreement, and an affidavit executed by each party setting forth:

(1) Certification that neither the petitioner, nor any person or organization related to the petitioner, has received or will receive any money or other consideration in connection with the citizens' agreement other than legitimate and prudent expenses incurred in prosecuting the petition to deny;

(2) Certification that neither the petitioner, nor any person or organization related to the petitioner is or will be involved in carrying out, for a fee, any programming, ascertainment, employment or other non-financial initiative referred to in the citizens' agreement; and

(3) The terms of any oral agreement.

(c) For the purposes of this section:

(1) Affidavits filed pursuant to this section shall be executed by the applicant, permittee, or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) A petition shall be deemed to be pending before the Commission from the time a petition is filed with the Commission until an order of the Commission granting or denying the petition is no longer subject to reconsideration by the Commission or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by a petitioner in preparing, filing, and prosecuting its petition for which reimbursement is being sought.

(4) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

**§73.3589 Threats to file petitions to deny or informal objections.**



(a) No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny or an informal objection. For purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector incurred reasonably and directly in preparing to file a petition to deny will not be considered to be payment for refraining from filing a petition to deny or informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the Commission.

(b) Whenever any payment is made in exchange for withdrawing a threat to file or refraining from filing a petition to deny or informal objection, the licensee must file with the Commission a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) Certification that neither the would-be petitioner, nor any person or organization related to the would-be petitioner, has received or will receive any money or other consideration in connection with the citizens' agreement other than legitimate and prudent expenses reasonably incurred in preparing to file the petition to deny;

(2) Certification that unless such arrangement has been specifically approved by the Commission, neither the would-be petitioner, nor any person or organization related to the would-be petitioner, is or will be involved in carrying out, for a fee, any programming ascertainment, employment or other non-financial initiative referred to in the citizens' agreement; and

(3) The terms of any oral agreement.

(c) For purposes of this section:

(1) Affidavits filed pursuant to this section shall be executed by the licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) "Legitimate and prudent expenses" are those expenses reasonably incurred by a would-be petitioner in preparing to file its petition for which reimbursement is being sought.

(3) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

**§73.3601 Simultaneous modification and renewal of license.** When an application is granted by the FCC necessitating the issuance of a modified license less than 60 days prior to the expiration date of the license sought to be modified, and an application for renewal of the license is granted subsequent or prior thereto (but within 30 days of expiration of the present license), the modified license as well as the renewal license shall be issued to conform to the combined action of the FCC.

**§73.1020 Station license period.**

(a) Initial licenses for broadcast stations will ordinarily be issued for a period running until the date specified in this section for the State or Territory in which the station is located. If issued after such date, it will run to the next renewal date determined in accordance with this section. Both radio and TV broadcasting stations will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term. The time of expiration of normally issued initial and renewal licenses will be 3 a.m., local time, on the following dates and thereafter at 8-year intervals for radio and TV broadcast stations located in:

(1) Maryland, District of Columbia, Virginia and West Virginia: (i) Radio stations, October 1, 1995; (ii) Television stations, October 1, 1996.

(2) North Carolina and South Carolina: (i) Radio stations, December 1, 1995; (ii) Television stations, December 1, 1996.

(3) Florida, Puerto Rico and the Virgin Islands: (i) Radio stations, February 1, 1996; (ii) Television stations, February 1, 1997.

(4) Alabama and Georgia: (i) Radio stations, April 1, 1996; (ii) Television stations, April 1, 1997.

(5) Arkansas, Louisiana and Mississippi: (i) Radio stations, June 1, 1996; (ii) Television stations, June 1, 1997.

(6) Tennessee, Kentucky and Indiana: (i) Radio stations, August 1, 1996; (ii) Television stations, August 1, 1997.

(7) Ohio and Michigan: (i) Radio stations, October 1, 1996; (ii) Television stations, October 1, 1997.

(8) Illinois and Wisconsin: (i) Radio stations, December 1, 1996; (ii) Television stations, December 1, 1997.

(9) Iowa and Missouri: (i) Radio stations, February 1, 1997; (ii) Television stations, February 1, 1998.

(10) Minnesota, North Dakota, South Dakota, Montana and Colorado: (i) Radio stations, April 1, 1997; (ii) Television stations, April 1, 1998.

(11) Kansas, Oklahoma and Nebraska: (i) Radio stations, June 1, 1997; (ii) Television stations, June 1, 1998.

(12) Texas: (i) Radio stations, August 1, 1997; (ii) Television stations, August 1, 1998.

(13) Wyoming, Nevada, Arizona, Utah, New Mexico and Idaho: (i) Radio stations, October 1, 1997; (ii) Television stations, October 1, 1998.

(14) California: (i) Radio stations, December 1, 1997; (ii) Television stations, December 1, 1998.

(15) Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon and Washington: (i) Radio stations, February 1, 1998; (ii) Television stations, February 1, 1999.

(16) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont: (i) Radio stations, April 1, 1998; (ii) Television stations, April 1, 1999.

(17) New Jersey and New York: (i) Radio stations, June 1, 1998; (ii) Television stations, June 1, 1999.

(18) Delaware and Pennsylvania: (i) Radio stations, August 1, 1998; (ii) Television stations, August 1, 1999.

(b) For the cutoff date for the filing of applications mutually exclusive with renewal applications that are filed on or before May 1, 1995 and for the deadline for filing petitions to deny renewal applications, see §73.3516(e).

(c) The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

**Modification of Unbuilt Facilities**

**§73.3535 Application to modify authorized but unbuilt facilities, or to assign transfer control of an unbuilt facility.**

(a) If a permittee finds it necessary to file either an application to modify its authorized, but unbuilt facilities, or an assignment/transfer application, such application shall be filed within the first nine months of the issuance of the original construction permit for radio and other broadcast and auxiliary stations, or within twelve months of the issuance of the original construction permit for television facilities. Before such application can be granted, the permittee or assignee must certify that it will immediately begin building after the modification is granted or the assignment is consummated.

(b) Modification and assignment applications filed after the time periods stated in paragraph (a) will not be granted absent a showing that one of the following three criteria applies: (1) construction is complete and testing is underway looking toward prompt filing of a license application; (2) substantial progress has been made i.e., demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion; or (3) no progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary processes and zoning problems) but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction. A certification by the permittee or the assignee that it immediately will begin building after the modification is granted or the assignment is consummated is also necessary. A seller must make the "one of three criteria" showing in an assignment application.

(c) If the modification is granted, the time period allowed for construction will be six months from the issuance of the authorization to modify or the remainder of the construction period, whichever is longer. Also, in the case of an assignment the time period allowed for construction will be twelve months from the consummation of the assignment or the remainder of the construction period, whichever is longer. The extension will be given subject to the condition that the modification is completed or the assignment consummated. Failure to modify or consummate within the time allowed will result in cancellation of the construction permit.

(d) We will not entertain an application for modification of an authorized but unbuilt facility or an application for assignment or transfer of control of an unbuilt facility if filed after the expiration of the initial construction period.

**Station Identification**

*All broadcast stations ...*

**§73.1201 Station identification.**

(a) When regularly required, broadcast station identification announcements shall be made: (1) at the beginning and ending of each time of operation, and (2) hourly, as close to the hour as feasible, at a natural break in

program offerings. Television broadcast stations may make these announcements visually or aurally.

(b) Content. (1) Official station identification shall consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location: provided, that the name of the licensee or the station's frequency or channel number, or both, as stated on the station's license may be inserted between the call letters and station location. No other insertion is permissible.

(2) A station may include in its official station identification the name of any additional community or communities, but the community to which the station is licensed must be named first.

(c) Channel. (1) General. Except as otherwise provided in this paragraph, in making the identification announcement the call letters shall be given only on the channel identified thereby.

(2) Simultaneous AM (535-1605 kHz) and AM (1605-1705 kHz) broadcasts. If the same licensee operates an AM broadcast station in the 535-1605 kHz band and an AM broadcast station in the 1605-1705 kHz band with both stations licensed to the same community and simultaneously broadcasts the same programs over the facilities of both such stations, station identification announcements may be made jointly for both stations for periods of such simultaneous operation.

(3) Satellite operation. When programming of a broadcast station is rebroadcast simultaneously over the facilities of a satellite station, the originating station may make identification announcements for the satellite station for periods of such simultaneous operation.

(i) In the case of a television broadcast station, such announcements, in addition to the information required by paragraph (b)(1) of this section, shall include the number of the channel on which each station is operating.

(ii) In the case of aural broadcast stations, such announcements, in addition to the information required by paragraph (b)(1) of this section, shall include the frequency on which each station is operating.

(d) Subscription television stations (STV). The requirements for official station identification applicable to TV stations will apply to Subscription TV stations, except during STV-encoded programming such station identification is not required. However, a station identification announcement will be made immediately prior to and following the encoded-Subscription TV program period.

**Announcement of Sponsored Programs**

**§73.1212 Sponsorship identification; list retention; related requirements.**

(a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce:

(1) that such matter is sponsored, paid for, or furnished, either in whole or in part, and

(2) by whom or on whose behalf such consideration was supplied; provided, however, that "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

(i) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(ii) In the case of any television political advertisement concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds.

(b) The licensee of each standard broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report has been made to a broadcast station, as required by Section 507 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an appropriate announcement shall be made by such station.

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a



station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter; provided, however, that in the case of any broadcast of 5 minutes duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee as of the board of directors of the corporation, committee, association or other unincorporated group, or other entity, shall be made available for public inspection at the location specified by the licensee under §73.3526 of this chapter. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under §73.3526 of this chapter. Such lists shall be kept and made available for a period of two years.

(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the broadcast.

(g) The announcement otherwise required by Section 317(a) of the Communications Act of 1934, as amended, is waived with respect to the broadcast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsored by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are omitted pursuant to this paragraph the licensee shall observe the following conditions:

(1) Maintain a list showing the name, address and (where available) the telephone number of each advertiser;

(2) [Reserved]

(3) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list. Such list must be maintained for a period of two years after broadcast.

(h) Any announcement required by Section 317(b) of the Communications Act of 1934, as amended, is waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

NOTE: The waiver heretofore granted by the commission in its report and order adopted November 16, 1960 (FCC 60-1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when §73.654, the predecessor television rule, went into effect.

(i) Commission interpretations in connection with the provisions of the sponsorship identification rules are contained in the commission's public notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 FCC 141), as modified by public notice, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission reports.

[EDITOR'S NOTE: In a statement issued in 1950, the FCC wamed that the sponsor or his product must be identified by a distinctive name and not by one merely descriptive of the type of business or product. The following are acceptable, the Commission said: "Henry Smith offers you ...," or "Smith Stove Co. offers you ...," or "Ajax Pens brings you ...." The following are not acceptable: "Write to the Comb Man ...," or "Send your money to Nylons, Box ..." or "This program is sponsored by your Sink man ..."]

## Public Notice

*In AM, FM and TV ...*

## Rebroadcasts

### §73.1207 Rebroadcasts.

(a) The term "rebroadcast" means reception by radio of the programs or other transmissions of a broadcast or any other type of radio station, and the simultaneous or subsequent retransmission of such programs or transmissions by a broadcast station.

(1) As used in this section, "program" includes any complete program or part thereof.

(2) The transmission of a program from its point of origin to a broadcast station entirely by common carrier facilities, whether by wire line or radio, is not considered a rebroadcast.

(3) The broadcasting of a program relayed by a remote pickup broadcast station is not considered a rebroadcast.

(b) No broadcast station may retransmit the program, or any part thereof, of another U.S. broadcast station without the express authority of the originating station. A copy of the written consent of the licensee originating the program must be kept by the licensee of the station retransmitting such program and made available to the FCC upon request.

(1) Stations originating emergency communications under a State EAS plan are considered to have conferred rebroadcast authority to other participating stations.

(2) Permission must be obtained from the originating station to rebroadcast any subsidiary communications transmitted by means of a multiplex subcarrier or telecommunications service on the vertical blanking interval or in the visual signal of a television signal.

(3) Programs originated by the Voice of America (VOA) and the Armed Forces Radio and Television Services (AFRTS) cannot, in general, be cleared for domestic rebroadcast, and may therefore be retransmitted only by special arrangements among the parties concerned.

(4) Except as otherwise provided by international agreement, programs originated by foreign broadcast stations may be retransmitted without the consent of the originating station.

(c) The transmission of messages of nonbroadcast stations may be rebroadcast under the following conditions:

(1) Messages originated by privately-owned non-broadcast stations other than those in the Amateur and Citizens Band (CP) Radio Services may be broadcast only upon receipt of prior permission from the non-broadcast licensee. Additionally, messages transmitted by common carrier stations may be rebroadcast only upon prior permission of the originator of the message as well as the station licensee.

(2) Except as provided in paragraph (d) of this section, messages originated entirely by non-broadcast stations owned and operated by the Federal Government may be rebroadcast only upon receipt of prior permission from the government agency originating the messages.

(3) Messages originated by stations in the Amateur and Citizens Band (CB) radio services may be rebroadcast at the discretion of broadcast station licensees.

(4) Emergency communications originated under a State EAS plan.

(d) The rebroadcasting of time signals originated by the Naval Observatory and the National Bureau of Standards and messages from the National Weather Service stations is permitted without specific authorization under the following procedures:

(1) Naval Observatory Time Signals. (i) The time signals rebroadcast must be obtained by direct radio reception from a naval radio station, or by land line circuits. (ii) Announcement of the time signal must be made without reference to any commercial activity. (iii) Identification of the Naval Observatory as the source of the time signal must be made by an announcement, substantially as follows: "With the signal, the time will be ... courtesy of

the U.S. Naval Observatory." (iv) Schedules of time signal broadcasts may be obtained upon request from the Superintendent, U.S. Naval Observatory, Washington, D.C. 20390.

(2) National Bureau of Standards Time Signals. (i) Time signals for rebroadcast must be obtained by direct radio reception from a National Bureau of Standards (NBS) station. (ii) Use of receiving and rebroadcasting equipment must not delay the signals by more than 0.05 second. (iii) Signals must be rebroadcast live, not from tape or other recording. (iv) Voice or code announcements of the call signs of NBS stations are not to be rebroadcast. (v) Identification of the origin of the service and the source of the signals must be made by an announcement substantially as follows: "At the tone, 11 hours 25 minutes Coordinated Universal Time. This is a rebroadcast of a continuous service furnished by the National Bureau of Standards, Ft. Collins, Colo." No commercial sponsorship of this announcement is permitted and none may be implied. (vi) Schedules of time signal broadcasts may be obtained from, and notice of use of NBS time signals for rebroadcast must be forwarded semiannually to: National Bureau of Standards, WWW/WWVB, 2000 East County Road 58, Ft. Collins, Colo 80524. (vii) In the rebroadcasting of NBS time signals, announcements will not state that they are standard frequency transmissions. Voice announcements of Coordinated Universal Time are given in voice every minute. Each minute, except the first of the hour, begins with an 0.8 second long tone of 1000 hertz at WWW and 1200 hertz tone at WWVH. The first minute of every hour begins with an 0.8 second long tone of 1500 hertz at both stations. This tone is followed by a 3-second pause, then the announcement, "National Bureau of Standards Time." This is followed by another 3-second pause before station identification. This arrangement allows broadcast stations sufficient time to retransmit the hour time tone and the words "National Bureau of Standards Time" either by manual or automatic switching. (viii) Time signals or scales made up from integration of standard frequency signals broadcast from NBS stations may not be designated as national standard scales of time or attributed to the NBS as originator. For example, if a broadcasting station transmits time signals obtained from a studio clock which is periodically calibrated against the NBS time signals from WWW or WWVH, such signals may not be announced as NBS standard time or as having been originated by the NBS.

(3) National Weather Service Messages. (i) Messages of the National Weather Service must be rebroadcast within 1 hour of receipt. (ii) If advertisements are given in connection with weather rebroadcast, these advertisements must not directly or indirectly convey an endorsement by the U.S. Government of the products or services so advertised. (iii) Credit must be given to indicate that the rebroadcast message originates with the National Weather Service.

## Recordings, Tapes and Films

§73.1206 Broadcast of telephone conversations. Before recording a telephone conversation for broadcast, or broadcasting such a conversation simultaneously with its occurrence, a licensee shall inform any party to the call of the licensee's intention to broadcast the conversation, except where such party is aware, or may be presumed to be aware from the circumstances of the conversation, that it is being or likely will be broadcast. Such awareness is presumed to exist only when the other party to the call is associated with the station (such as an employe or part-time reporter), or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.

§73.1208 Broadcast of taped, filmed, or recorded material.

(a) Any taped, filmed or recorded program material in which time is of special significance, or by which an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast, shall be announced at the beginning as taped, filmed or recorded. The language of the announcement shall be clear and in terms commonly understood by the public. For television stations, the announcement may be made visually or aurally.



(b) Taped, filmed or recorded announcements which are of a commercial, promotional or public service nature need not be identified as taped, filmed, or recorded.

**Time**

*For AM, FM and TV ...*

**§73.1209 Reference to time.** Unless specifically designated as "standard (non-advanced)" or "advanced," all references to time contained in this part, and in license documents and other authorizations issued thereunder, shall be understood to mean local time; i.e., the time legally observed in the community.

**Children's Programs**

*In TV Rules ...*

**§73.670 Commercial limits in children's program.** No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

NOTE 1: Commercial matter means air time sold for purposes of selling a product or service.

NOTE 2: For purposes of this section, children's programming refers to programs originally produced and broadcast primarily for an audience of children 12 years old and younger.

**§73.671 Educational and informational programming for children.**

(a) Each commercial and noncommercial educational television broadcast station licensee has an obligation to serve, over the term of its license, the educational and informational needs of children through both the licensee's overall programming and programming specifically designed to serve such needs.

(b) Any special nonbroadcast efforts which enhance the value of children's educational and informational television programming, and any special effort to produce or support educational and informational television programming by another station in the licensee's marketplace, may also contribute to meeting the licensee's obligation to serve, over the term of its license, the educational and informational needs of children.

(c) For purposes of this section, educational and informational television programming is any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs. Programming specifically designed to serve the educational and informational needs of children ("Core Programming") is educational and informational programming that satisfies the following additional criteria:

(1) It has serving the educational and informational needs of children ages 16 and under as a significant purpose;

(2) It is aired between the hours of 7:00 a.m. and 10:00 p.m.;

(3) It is a regularly scheduled weekly program;

(4) It is at least 30 minutes in length;

(5) The educational and informational objective and the target child audience are specified in writing in the licensee's Children's Television Programming Report, as described in §73.3526(a)(8)(iii); and

(6) Instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides, as described in §73.673(b).

**§73.673 Public information initiatives regarding educational and informational programming for children.**

(a) Each commercial television broadcast licensee shall identify programs specifically designed to educate and inform children at the beginning of the program, in a form that is in the discretion of the licensee.

(b) Each commercial television broadcast station licensee shall provide information identifying programming specifically designed to educate and inform children to publishers of program guides. Such information shall include an indication of the age group for which the program is intended.

**Political Broadcasts**

*For AM, FM and TV ...*

**§73.1940 Broadcasts by candidate for public office.**

(a) Definitions. (1) A legally qualified candidate for public office is any person who: (a) has publicly announced

his or her intention to run for nomination or office; (b) is qualified under the applicable local, state or federal law to hold the office for which he or she is a candidate; and, (c) has met the qualifications set forth in either subparagraphs (2), (3), or (4), below.

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in subparagraph (1) above, that person: (a) has qualified for a place on the ballot, or (b) has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other methods, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

Persons seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those states or territories (or the District of Columbia) in which they have met the requirements set forth in paragraph (a)(1) and (2) of this rule: Except, that any such person who has met the requirements set forth in paragraph (a)(1) and (2) in at least 10 states (or nine and the District of Columbia) shall be considered a legally qualified candidate for election in all states, territories and the District of Columbia for purposes of this Act.

(3) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (a)(1) above, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: Except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those states or territories or the District of Columbia in which, in addition to meeting the requirements set forth in paragraph (a)(1) above, (a) he or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that state, territory or the District of Columbia, or (b) he or she has made a substantial showing of bona fide candidacy for such nomination in that state, territory or the District of Columbia; Except, that any such person meeting the requirements set forth in paragraph (a)(1) and (4) in at least ten states (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all states, territories and the District of Columbia for purposes of this Act.

(5) The term "substantial showing" of bona fide candidacy as used in paragraphs (a)(2), (3) and (4) above means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

(b) Charges for use of stations. The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or reelection, to such office shall not exceed (1) during the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period, and (2) at any other time, the charges made for comparable use of such station by other users thereof. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within

the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office. (3) This paragraph shall not apply to any station which is not licensed for commercial operation.

(c) Discrimination between candidates. In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

(d) See §73.3526 and §73.3527.

(e) Time of request. A request for equal opportunities must be submitted to the licensee within one week of the day on which the first prior use, giving rise to the right of equal opportunities, occurred: provided, however, that where the person was not a candidate at the time of such first prior use, he shall submit this request within one week of the first subsequent use after he has become a legally qualified candidate for the office in question.

(f) Burden of proof. A candidate requesting equal opportunities of the licensee, or complaining of noncompliance to the Commission shall have the burden of proving that he and his opponent are legally qualified candidates for the same public office.

(g) General requirements. (1) Except as otherwise indicated in paragraph (g)(2) of this section, no station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such licensee shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any (i) bona fide newscast, (ii) bona fide news interview, (iii) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject covered by the news documentary), or (iv) on-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of a broadcasting station. (Section 315(a) of the Communications Act.)

(2) Section 312(a)(7) of the Communications Act provides that the Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to, or to permit purchase of, reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for federal elective office on behalf of his candidacy.

(h) Political broadcasting primer. A detailed study of these rules regarding broadcasts by candidates for federal and non-federal public office is available in the FCC public notice of July 20, 1978, "The Law of Political Broadcasting and Cablecasting". Copies may be obtained from the FCC upon request.

**Candor; Truthful Responses to FCC**

**§73.1015 Truthful written statements and responses to Commission inquiries and correspondence.** The Commission or its representatives may, in writing, require from any applicant, permittee or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to some other matter within the jurisdiction of the Commission, or, in the case of a proceeding to amend the FM or Television Table of Allotments, require from any person filing an expression of interest, written statements of fact relevant to that allotment proceeding. No applicant, permittee or licensee, or person who files an expression of interest shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.

NOTE: Section §73.1015 is limited in application to written matter. It implies no change in the Commission's existing policies respecting the obligation of applicants, permittees and licensees in all instances to respond truthfully to requests for information deemed necessary to the proper execution of the Commission's functions.



## Broadcast Information on the Internet

**§73.3617 Broadcast information available on the Internet.** The Mass Media Bureau and each of its Divisions provide information on the Internet regarding broadcast rules and policies, pending and completed rulemakings, and pending applications. These sites also include copies of public notices and texts of recent decisions. The Mass Media Bureau Internet address is <http://www.fcc.gov/mmb/>; the Audio Services Division address is <http://www.fcc.gov/mmb/asd/>; the Video Services Division address is <http://www.fcc.gov/mmb/vsd/>; the Policy and Rules Division address is <http://www.fcc.gov/mmb/prd/>; and the Enforcement Division address is <http://www.fcc.gov/mmb/enf/>.

## Competitive Bidding Procedures

### §73.5000 Servicea subject to competitive bidding.

(a) Mutually exclusive applications for new facilities and for major changes to existing facilities in the following broadcast services are subject to competitive bidding: AM; FM; FM translator; analog television; low power television; and television translator. Mutually exclusive applications for new facilities and for major changes to existing facilities in the Instructional Television Fixed Service (ITFS) are also subject to competitive bidding. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q will apply unless otherwise provided in 47 CFR Part 73 and Part 74.

(b) Mutually exclusive applications for broadcast channels in the reserved portion of the FM band (Channels 200-220) and for television broadcast channels reserved for noncommercial educational use are not subject to competitive bidding procedures.

### §73.5001 Competitive bidding procedures.

(a) Specific competitive bidding procedures for broadcast service and ITFS auctions will be set forth by public notice prior to any auction. The Commission may also design and test alternative procedures, including combinatorial bidding and real time bidding. See 47 CFR §1.2103 and §1.2104.

(b) The Commission may utilize the following competitive bidding mechanisms in broadcast service and ITFS auctions:

(1) Sequencing. The Commission will establish and may vary the sequence in which broadcast service construction permits and ITFS licenses will be auctioned.

(2) Grouping. In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding in broadcast service or ITFS auctions, the Commission will determine which construction permits or licenses will be auctioned simultaneously or in combination.

(3) Reservation price. The Commission may establish a reservation price, either disclosed or undisclosed, below which a broadcast construction permit or ITFS license subject to auction will be not awarded.

(4) Minimum and maximum bid increments. The Commission may, by announcement before or during broadcast service or ITFS auctions, require minimum bid increments in dollar or percentage terms. The Commission may, by announcement before or during broadcast service or ITFS auctions, establish maximum bid increments in dollar or percentage terms.

(5) Minimum opening bids. The Commission may establish a minimum opening bid for each broadcast construction permit or ITFS license subject to auction.

(6) Stopping rules. The Commission will establish stopping rules before or during multiple round broadcast service or ITFS auctions in order to terminate the auction within a reasonable time.

(7) Activity rules. The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted a certain number of waivers of such rule during the auction.

### §73.5002 Bidding application and certification procedures; prohibition of collusion.

(a) Prior to any broadcast service or ITFS auction, the Commission will issue a public notice announcing the upcoming auction and specifying the period during which all applicants seeking to participate in an auction must file their applications for new broadcast or ITFS facilities or for major changes to existing facilities. Broadcast service or ITFS applications for new facilities or for major modifications will be accepted only during these specified periods. This initial and other public notices will contain information about the completion and submission of applications to participate in the broadcast or ITFS auction, any materials that must accompany the applica-

tions, and any filing fee that must accompany the applications or any upfront payments that will need to be submitted. Such public notices will also, in the event mutually exclusive applications are filed for broadcast construction permits or ITFS licenses, contain information about the method of competitive bidding to be used and more detailed instructions on submitting bids and otherwise participating in the auction. In the event applications are submitted that are not mutually exclusive with any other application in the same service, such applications will be identified by public notice and will not be subjected to auction.

(b) To participate in broadcast service or ITFS auctions, all applicants must timely submit short-form applications (FCC Form 175), along with all required certifications, information and exhibits, pursuant to the provisions of 47 CFR §1.2105(a) and any Commission public notices. So determinations of mutual exclusivity for auction purposes can be made, applicants for non-table broadcast services or for ITFS must also submit the engineering data contained in the appropriate FCC form (FCC Form 301, FCC Form 346, FCC Form 349 or FCC Form 330). Beginning January 1, 1999, all short-form applications must be filed electronically.

(c) Applicants in all broadcast service or ITFS auctions will be subject to the provisions of 47 CFR §1.2105(b) regarding the modification and dismissal of their short-form applications. Notwithstanding the general applicability of §1.2105(b) to broadcast and ITFS auctions, applicants who file mutually exclusive major modification applications, or mutually exclusive major modification and new station applications, will be permitted to make amendments to their engineering submissions following the filing of their short-form applications so as to resolve their mutual exclusivity.

(d) The prohibition of collusion set forth in 47 CFR §1.2105(c), which becomes effective upon the filing of short-form applications, shall apply to all broadcast service or ITFS auctions. Notwithstanding the general applicability of §1.2105(c) to broadcast and ITFS auctions, applicants who file mutually exclusive major modification applications, or mutually exclusive major modifications and new station applications, will be permitted to resolve their mutual exclusivities by means of engineering solutions or settlements during a limited period after the filing of short-form applications. Such period will be further specified by Commission public notices.

### §73.5003 Submission of upfront payments, down payments and full payments.

(a) To be eligible to bid, each bidder in every broadcast service or ITFS auction shall submit an upfront payment prior to the commencement of bidding, as set forth in any public notices and in accordance with 47 CFR §1.2106.

(b) Within ten (10) business days following the close of bidding and notification to the winning bidders, each winning bidder in every broadcast service or ITFS auction shall make a down payment in an amount sufficient to bring its total deposits up to twenty (20) percent of its high bid(s), as set forth in 47 CFR §1.2107(b).

(c) Each winning bidder in every broadcast service or ITFS auction shall pay the balance of its winning bid(s) in a lump sum within ten (10) business days after release of a public notice announcing that the Commission is prepared to award the construction permit(s) or license(s), as set forth in 47 CFR §1.2109(a). If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due. Broadcast construction permits and ITFS licenses will be granted by the Commission following the receipt of full payment.

### §73.5004 Bid withdrawal, default and disqualification.

(a) The Commission shall impose the bid withdrawal, default and disqualification payments set forth in 47 CFR §1.2104(g) upon bidders who withdraw high bids during the course, or after the close, of any broadcast service or ITFS auction, who default on payments due after an auction closes, or who are disqualified. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may also be subject to the remedies set forth in 47 CFR §1.2109(d).

(b) In the event of a default by or the disqualification of a winning bidder in any broadcast service or ITFS auction, the Commission will follow the procedures set forth in 47 CFR §1.2109(b)-(c) regarding the reauction of the construction permit(s) or license(s) at issue.

### §73.5005 Filing of long-form applications.

(a) Within thirty (30) days following the close of bidding and notification to the winning bidders, each winning bidder must submit an appropriate long-form application

(FCC Form 301, FCC Form 346, FCC Form 349 or FCC Form 330) for each construction permit or license for which it was the high bidder. Long-form applications filed by winning bidders shall include the exhibits required by 47 CFR §1.2107(d) (concerning any bidding consortia or joint bidding arrangements); §1.2110(i) (concerning designated entity status, if applicable); and §1.2112 (a) and (b) (concerning disclosure of ownership and real party in interest information, and, if applicable, disclosure of gross revenue information for small business applicants).

(b) The long-form application should be submitted pursuant to the rules governing the service in which the applicant is a high bidder and according to the procedures for filing such applications set out by public notice. When electronic procedures become available for the submission of long-form applications, the Commission may require all winning bidders to file their long-form applications electronically.

(c) An applicant that fails to submit the required long-form application under this section, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and shall be subject to the payments set forth in 47 CFR §1.2104(g).

(d) An applicant whose short-form application, submitted pursuant to 47 CFR §73.5002(b), was not mutually exclusive with any other short-form application in the same service and was therefore not subject to auction, shall submit an appropriate long-form application within thirty (30) days following release of a public notice identifying any such non-mutually exclusive applicants. The long-form application should be submitted pursuant to the rules governing the relevant service and according to any procedures for filing such applications set out by public notice. The long-form application filed by a non-mutually exclusive applicant need not contain the additional exhibits, identified in §73.5005(a), required to be submitted with the long-form applications filed by winning bidders. When electronic procedures become available, the Commission may require any non-mutually exclusive applicants to file their long-form applications electronically.

### §73.5006 Filing of petitions to deny against long-form applications.

(a) As set forth in 47 CFR §1.2108, petitions to deny may be filed against the long-form applications filed by winning bidders in broadcast service or ITFS auctions and against the long-form applications filed by applicants whose short-form applications to participate in a broadcast or ITFS auction were not mutually exclusive with any other applicant.

(b) Within ten (10) days following the issuance of a public notice announcing that a long-form application has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The time for filing such oppositions shall be five (5) days from the filing date for petitions to deny, and the time for filing replies shall be five (5) days from the filing date for oppositions.

(d) If the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, a public notice will be issued announcing that the broadcast construction permit(s) or ITFS license(s) is ready to be granted, upon full payment of the balance of the winning bid(s). See 47 CFR §73.5003(c). Construction of broadcast stations or ITFS facilities shall not commence until the grant of such permit or license to the winning bidder.

**§73.5007 Designated entity provisions.** New entrant bidding credit. A winning bidder that qualifies as a "new entrant" may use a bidding credit to lower the cost of its winning bid on any broadcast construction permit. A thirty-five (35) percent bidding credit will be given to a winning bidder if it and/or its owners have no recognizable interest (more than fifty (50) percent or de facto control) in the aggregate, in any other media of mass communications. A twenty-five (25) percent bidding credit will be given to a winning bidder if it and/or its owners, in the aggregate, have a recognizable interest in no more than three mass media facilities. No bidding credit will be given if any of the commonly owned mass media facilities serves the same area as the proposed broadcast station, or if the winning bidder and/or its owners have recognizable interests in more than three mass media facilities.

(a) The new entrant bidding credit is not available to applicants that control, or whose owners control, in the aggregate, more than fifty (50) percent of any other me-



dia of mass communications in the same area as the proposed broadcast facility. The facilities will be considered in the "same area" if the following defined areas wholly encompass, or are encompassed by, the proposed broadcast or secondary broadcast facility's relevant contour:

(1) AM broadcast station—predicted or measured 2mV/m groundwave contour (see 47 CFR §73.183 or §73.186);

(2) FM broadcast or FM translator station—predicted 1.0 mV/m contour (see 47 CFR §73.313);

(3) Television broadcast station—Grade A contour (see 47 CFR §73.684);

(4) Low power television or television translator station—the predicted, protected contour (see 47 CFR §74.707(a));

(5) Cable television system—the franchised community of a cable system;

(6) Daily newspaper—community of publication; and

(7) Multipoint Distribution Service station—protected service area (see 47 CFR §21.902(d) or §21.933).

(b) Unjust enrichment. If a licensee or permittee that utilizes a new entrant bidding credit under this subsection seeks to assign or transfer control of its license or construction permit to an entity not meeting the eligibility criteria for the bidding credit, the licensee or permittee must reimburse the U.S. Government for the amount of the bidding credit, plus interest based on the rate for ten-year U.S. Treasury obligations applicable on the date the construction permit was originally granted, as a condition of Commission approval of the assignment or transfer. If a licensee or permittee that utilizes a new entrant bidding credit seeks to assign or transfer control of a license or construction permit to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest based on the rate for ten-year U.S. Treasury obligations applicable on the date the construction permit was originally granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer. The amount of the reimbursement payments will be reduced over time. An assignment or transfer in the first two years after issuance of the construction permit to the winning bidder will result in a forfeiture of one hundred (100) percent of the value of the bidding credit; during year three, of seventy-five (75) percent of the value of the bidding credit; in year four, of fifty (50) percent; in year five, twenty-five (25) percent; and thereafter, no payment. If a licensee or permittee who utilized a new entrant bidding credit in obtaining a broadcast license or construction permit acquires within this five-year reimbursement period an additional broadcast facility or facilities, such that the licensee or permittee would not have been eligible for the new entrant credit, the licensee or permittee will not be required to reimburse the U.S. Government for the amount of the bidding credit.

**§73.5008 Definitions applicable for designated entity provisions.**

(a) Scope. The definitions in this section apply to 47 CFR §73.5007, unless otherwise specified in that section.

(b) A medium of mass communications means a daily newspaper; a cable television system; or a license or construction permit for a television station, a low power television or television translator station, an AM, FM or FM translator broadcast station, a direct broadcast satellite transponder, or a Multipoint Distribution Service station.

(c) The owners of a winning bidder shall include the winning bidder, in the case of a sole proprietor; partner, including limited or silent partners, in the case of a partnership; the beneficiaries, in the case of a trust; any member, in the case of a nonstock corporation or unincorporated association with members; any member of the governing board (including executive boards, boards of regents, commissions, or similar governmental bodies where each member has one vote), in the case of nonstock corporation or unincorporated association without members; and owners of voting shares, in the case of stock corporations.

**§73.5009 Assignment or transfer of control.**

(a) The reporting requirement contained in 47 CFR §1.2111(a) shall apply to an applicant seeking approval for a transfer of control or assignment of a broadcast construction permit or license within three years of receiving such permit or license by means of competitive bidding.

(b) The ownership disclosure requirements contained in 47 CFR §1.2112(a) shall apply to an applicant seeking

consent to assign or transfer control of a broadcast construction permit or license awarded by competitive bidding.

**Revocations, Modifications, Suspensions**

*All Classes of Station Licenses ...*

**§1.87 Modification of license or construction permit on motion of the Commission.**

(a) Whenever it appears that a station license or construction permit should be modified, the Commission will notify the licensee or permittee in writing of the proposed action and reasons therefor and afford the licensee or permittee at least thirty days to protest such order of modification, except that, where safety of life or property is involved, the Commission may by order provide a shorter period of time.

(b) The notification required in paragraph (a) of this section may be effectuated by a notice of proposed rulemaking in regard to a modification or addition of an FM or television channel to the Table of Allotments (§73.202 and §73.504) or Table of Assignments (§73.606). The Commission shall send a copy of any such notice of proposed rulemaking to the affected licensee or permittee by certified mail, return receipt requested.

(c) Any other licensee or permittee who believes that its license or permit would be modified by the proposed action may also protest the proposed action before its effective date.

(d) Any protest filed pursuant to this section shall be subject to the requirements of Section 309 of the Communications Act of 1934, as amended, for petitions to deny.

(e) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission except that, with respect to any issue that pertains to the question of whether the proposed action would modify the license or permit of a person filing a protest pursuant to paragraph (c) of this section, such burdens shall be as prescribed by the Commission.

(f) In order to utilize the right to a hearing and the opportunity to appear and give evidence upon the issues specified in any hearing order, the licensee or permittee, in person or by his attorney, shall, within the period of time as may be specified in the hearing order, file with the Commission a written statement stating that he or she will appear at the hearing and present evidence on the matters specified in the hearing order.

(g) The right to file a protest or have a hearing shall, unless good cause is shown in a petition to be filed not later than five days before the lapse of time specified in paragraphs (a) or (f) of this section, be deemed waived:

(1) In case of failure to timely file the protest as required by paragraph (a) of this section or a written statement as required by paragraph (f) of this section.

(2) In case of filing a written statement provided for in paragraph (f) of this section but failing to appear at the hearing, either in person or by counsel.

(h) Where the right to file a protest or have a hearing is waived, the licensee or permittee will be deemed to have consented to the modification as proposed and a final decision may be issued by the Commission accordingly. Irrespective of any waiver as provided for in paragraph (g) of this section or failure by the licensee or permittee to raise a substantial and material question of fact concerning the proposed modification in his protest, the Commission may, on its own motion, designate the proposed modification for hearing in accordance with this section.

(i) Any order of modification issued pursuant to this section shall include a statement of the findings and grounds and reasons therefor, shall specify the effective date of the modification, and shall be served on the licensee or permittee.

**§1.89 Notice of violations.**

(a) Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, any person who holds a license, permit or other authorization appearing to have violated any provision of the Communications Act or any provision of this chapter will, before revocation, suspension, or cease and desist proceedings are instituted, be served with a written notice calling these facts to his or her attention and requesting a statement concerning the matter. FCC Form 793 may be used for this purpose. The Notice of Violation may be combined with a Notice of Apparent Liability to Monetary Forfeiture. In such event, notwithstanding the Notice of Violation, the provisions of §1.80 apply and not those of §1.89.

(b) Within 10 days from receipt of notice or such other period as may be specified, the recipient shall send a written answer, in duplicate, directly to the Commission office originating the official notice. If an answer cannot be sent or an acknowledgment cannot be made within such 10-day period by reason of illness or other unavoidable circumstance, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay.

(c) The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. In every instance the answer shall contain a statement of action taken to correct the condition or omission complained of and to preclude its recurrence. In addition:

(1) If the notice related to violations that may be due to the physical or electrical characteristics of transmitting apparatus and any new apparatus is to be installed, the answer shall state the date such apparatus was ordered, the name of the manufacturer, and the promised date of delivery. If the installation of such apparatus requires a construction permit, the file number of the application shall be given, or if a file number has not been assigned by the Commission, such identification shall be given as will permit ready identification of the application.

(2) If the notice of violation relates to lack of attention to or improper operation of the transmitter, the name and license number of the operator in charge (where applicable) shall be given.

**§1.91 Revocation and/or cease and desist proceedings: hearings.**

(a) If it appears that a station license or construction permit should be revoked and/or that a cease and desist order should be issued, the Commission will issue an order directing the person to show cause why an order of revocation and/or a cease and desist order, as the facts may warrant, should not be issued.

(b) An order to show cause why an order of revocation and/or a cease and desist order should not be issued will contain a statement of the matters with respect to which the Commission is inquiring and will call upon the person to whom it is directed (the respondent) to appear before the Commission at a hearing, at a time and place stated in the order, but not less than thirty days after the receipt of such order, and give evidence upon the matters specified in the order to show cause. However, if safety of life or property is involved, the order to show cause may specify a hearing date less than thirty days from the receipt of such order.

(c) To avail himself of such opportunity for hearing, the respondent, personally or by his attorney, shall file with the Commission, within thirty days of the service of the order or such shorter period as may be specified therein, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the order. The Commission in its discretion may accept a late appearance. However, an appearance tendered after the specific time has expired will not be accepted unless accompanied by a petition stating with particularity the facts and reasons relied on to justify such late filing. Such petition for acceptance of late appearance will be granted only if the Commission determines that the facts and reasons stated therein constitute good cause for failure to file on time.

(d) Hearings on the matters specified in such orders to show cause shall accord with the practice and procedure prescribed in this subpart and Subpart B of this part, with the following exception: (1) In all such revocation and/or cease and desist hearings, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission; and (2) the Commission may specify in a show cause order, when the circumstances of the proceeding require expedition, a time less than that prescribed in §1.276 and §1.277 within which the initial decision in the proceeding shall become effective, exceptions to such initial decision must be filed, parties must file request for oral argument, and parties must file notice of intention to participate in oral argument.

(e) Correction or promise to correct the conditions or matters complained of in a show cause order shall not preclude the issuance of a cease and desist order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or cease and desist order should be issued.

(f) Any order of revocation and/or cease and desist order issued after hearing pursuant to this section shall include a statement of findings and the grounds therefor, shall specify the effective date of the order, and shall be served on the person to whom such order is directed.

§1.92 Revocation and/or cease and desist proceedings: after waiver of hearing.



(a) After the issuance of an order to show cause, pursuant to §1.91, calling upon a person to appear at a hearing before the Commission, the occurrence of any one of the following events or circumstances will constitute a waiver of such hearing and the proceeding thereafter will be conducted in accordance with the provisions of this section.

(1) The respondent fails to file a timely written appearance as prescribed in §1.91(c) indicating that he will appear at a hearing and present evidence on the matters specified in the order.

(2) The respondent, having filed a timely written appearance as prescribed in 191(c), fails in fact to appear in person or by his attorney at the time and place of the duly scheduled hearing.

(3) The respondent files with the Commission, within the time specified for a written appearance in 191(c), a written statement expressly waiving his rights to a hearing.

(b) When a hearing is waived under the provisions of paragraph (a) (1) or (3) of this section, a written statement signed by the respondent denying or seeking to mitigate or justify the circumstances or conduct complained of in the order to show cause may be submitted within the time specified in §1.91(c). The Commission in its discretion may accept a late statement. However, a statement tendered after the specified time has expired will not be accepted unless accompanied by a petition stating with particularity the facts and reasons relied on to justify such late filing. Such petitions for acceptance of a late statement will be granted only if the Commission determines that the facts and reasons stated therein constitute good cause for failure to file on time.

(c) Whenever a hearing is waived by the occurrence of any of the events or circumstances listed in paragraph (a) of this section, the Chief Hearing Examiner (or the presiding officer if one has been designated) shall, at the earliest practicable date, issue an order reciting the events or circumstances constituting a waiver of hearing, terminating the hearing proceeding, and certifying the case to the Commission. Such order shall be served upon the respondent.

(d) After a hearing has been terminated pursuant to paragraph (c) of this section, the Commission will act upon the matters specified in the order to show cause in the regular course of business. The Commission will determine on the basis of all the information available to it from any source, including such further proceedings as may be warranted, if a revocation order and/or a cease and desist order should issue, and if so, will issue such order. Otherwise, the Commission will issue an order dismissing the proceeding. All orders specified in this paragraph will include a statement of the findings of the Commission and the grounds and reasons therefor, will specify the effective date thereof, and will be served upon the respondent.

(e) Corrections or promise to correct the conditions or matters complained of in a show cause order shall not preclude the issuance of a cease and desist order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or cease and desist order should be issued.

## Suspension of Operator Licenses

**§1.85 Suspension of operator license.** Whenever grounds exist for suspension of an operator license, as provided in Section 303(m) of the Communications Act, the Chief of the Safety and Special Radio Services Bureau, with respect to amateur operator licenses, or the Chief of the Field Engineering and Monitoring Bureau, with respect to commercial operator licenses, may issue an order suspending the operator license. No order of suspension in any operators' license shall take effect until 15 days' notice in writing of the cause for the proposed suspension has been given to the operator licensee, who may make written application to the Commission at any time within said 15 days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have 15 days in which to mail the said application. In the event that physical conditions prevent mailing of the application before the expiration of the 15-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be designated for hearing by the Chief, Safety and Special Radio Services Radio Bureau or the Chief, Field Engineering Bureau, as the case may be, and said order of suspension shall be held in abeyance until the conclusion of the hearing. Upon the conclusion of said hearing, the Commission may affirm, modify or revoke said order of suspension. If the license is ordered

suspended, the operator shall send his operator license to the office of the Commission in Washington, D.C., on or before the effective date of the order, or, if the effective date has passed at the time notice is received, the license shall be sent to the Commission forthwith.

## Logs and Records

### §1.6 Availability of station logs and records for Commission inspection.

(a) Station records and logs shall be made available for inspection or duplication at the request of the Commission or its representative. Such logs or records may be removed from the licensee's possession by a Commission representative or, upon request, shall be mailed by the licensee to the Commission by either registered mail, return receipt requested, or certified mail, return receipt requested. The return receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. A receipt shall be furnished when the logs or records are removed from the licensee's possession by a Commission representative and this receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. When the Commission has no further need for such records or logs, they shall be returned to the licensee. The provisions of this rule shall apply solely to those station logs and records which are required to be maintained by the provisions of this chapter.

(b) Where records or logs are maintained as the official records of a recognized law enforcement agency and the removal of the records from the possession of the law enforcement agency will hinder its law enforcement activities, such records will not be removed pursuant to this section if the chief of the law enforcement agency promptly certifies in writing to the Federal Communications Commission that removal of the logs or records will hinder law enforcement activities of the agency, stating insofar as feasible the basis for his decision and the date when it can reasonably be expected that such records will be released to the Federal Communications Commission.

## Lotteries

### §73.1211 Broadcast of lottery information.

(a) No licensee of an AM, FM or television broadcast station, except as in paragraph (c) of this section, shall broadcast any advertisement or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise or scheme, whether said list contains any part or all of such prizes. (18 USC 1304, 62 Stat 763).

(b) The determination whether a particular program comes within the provisions of paragraph (a) of this section depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of paragraph (a) of this section to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize, such winner or winners, are required to furnish any money, or thing of value or are required to have in their possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast on the station in question.

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to an advertisement, list of prizes or other information concerning:

(1) A lottery conducted by a State acting under authority of State law which is broadcast by a radio or television station licensed to a location in that State or any other State which conducts such a lottery. (18 USC 1307; 88 Stat 1916).

(2) Fishing contests exempted under 18 USC 1305 (not conducted for profit, i.e., all receipts fully consumed in defraying the actual costs of operation).

(3) Any gaming conducted by an Indian Tribe pursuant to the Indian Gaming Regulatory Act (25 USC 2701 et seq.).

(4) A lottery, gift enterprise or similar scheme, other than one described in paragraph (c)(1) of this section, that is authorized or not otherwise prohibited by the State in which it is conducted and which is:

(i) conducted by a not-for-profit organization or a governmental organization (18 USC 1307; 102 Stat 3205); or

(ii) conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization. (18 USC 1307(a); 102 Stat 3205.)

(d) For the purposes of paragraph (c) of this section, "Lottery" means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds

or parts thereof by chance to one or more chance takers or ticket purchasers. It does not include the placing or accepting of bets or wagers on sporting events or contests.

(2) For purposes of paragraph (c)(4)(i) of this section, the term "not-for-profit organization" means any organization that would qualify as tax exempt under Section 502 of the Internal Revenue Code of 1986.

1304 (Of U.S. Criminal Code) Broadcasting Lottery Information. Whoever broadcasts by means of any radio or television station for which a license is required by any law of the U.S., or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined under this title or imprisoned not more than one year, or both.

Each day's broadcasting shall constitute a separate offense.

## Hoaxes

**§73.1217 Broadcast hoaxes.** No licensee or permittee of any broadcast station shall broadcast false information concerning a crime or catastrophe if (a) the licensee knows this information is false, (b) it is foreseeable that broadcast of the information will cause substantial public harm, and (c) broadcast of the information does in fact directly cause substantial public harm. Any programming accompanied by a disclaimer will be presumed not to pose foreseeable harm if the disclaimer clearly characterizes the program as a fiction and is presented in a way that is reasonable under the circumstances.

NOTE 1: For purposes of this rule, "public harm" must begin immediately, and cause direct and actual damage to property or to the health or safety of the general public, or diversion of law enforcement or other public health and safety authorities from their duties. The public harm will be deemed foreseeable if the licensee could expect with a significant degree of certainty that public harm would occur. A "crime" is any act or omission that makes the offender subject to criminal punishment by law. A "catastrophe" is a disaster or imminent disaster involving violent or sudden events affecting the public.

## Tender Offers and Proxy Statements

**§73.4266 Tender offers and proxy statements.** See Policy Statement, MM Docket No. 85-218, FCC 86-67 [59 RR 2d 1536], adopted January 30, 1986, 51 FR 9794, March 21, 1986.

## Censorship

**325 (of Communications Act)** Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.

**§73.3999 Enforcement of 18 USC 1464 (Restrictions on the transmission of obscene and indecent material).**

(a) No licensee of a radio or television broadcast station shall broadcast any material which is obscene.

(b) No licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent.

## Forfeitures

**503 (of Communications Act) Forfeitures in Cases of Rebates and Offsets**

(a) Any person who shall deliver messages for interstate or foreign transmission to any carrier, or for whom as sender or receiver, any such carrier shall transmit any interstate or foreign wire or radio communication, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transmission of such messages as fixed by the schedules of charges provided for in this Act, shall in addition to any other penalty provided by this Act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years



prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

(b)(1) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

(A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

(B) willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding upon the United States;

(C) violated any provision of Section 317(c) or 508(a) of this Act; or

(D) violated any provision of Sections 1304; 1343, or 1464 of Title 18, United States Code;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this Act; except that this subsection shall not apply to any conduct which is subject to forfeiture under Title II, Part II or III of Title III, or Section 506 of this Act.

(2)(A) If the violator is (i) a broadcast station licensee or permittee, (ii) a cable television operator, or (iii) an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument or authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed \$25,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$250,000 for any single act or failure to act described in paragraph (1) of this subsection.

(B) If the violator is a common carrier subject to the provisions of this Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this subsection shall not exceed \$100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act described in paragraph (1) of this subsection.

(C) In any case not covered in subparagraph (A) or (B), the amount of any forfeiture penalty determined under this subsection shall not exceed \$10,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$75,000 for any single act or failure to act described in paragraph (1) of this subsection.

(D) The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(3)(A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof in accordance with Section 554 of Title 5, United States Code. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review thereof pursuant to Section 402(a).

(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.

(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;

(B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and

(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the

Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to Section 504(a) of this Act.

(5) No forfeiture liability shall be determined under this subsection against any person, is such person does not hold a license, permit, certificate, or other authorization issued by the Commission and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the notice required by paragraph (3) of this subsection or the notice of apparent liability required by paragraph (4) of this subsection, such person (A) is sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence; and (C) subsequently engages in conduct of the type described in such citation. The provisions of this paragraph shall not apply, however, if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required, or is a cable television system operator, if the person involved is transmitting on frequencies assigned for use in a service in which individual station operation is authorized by rule pursuant to Section 307(e) or in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. Whenever the requirements of this paragraph are satisfied with respect to a particular person, such person shall not be entitled to receive any additional citation of the violation charged, with respect to any conduct of the type described in the citation sent under this paragraph.

(6) No forfeiture penalty shall be determined or imposed against any person under this subsection if—

(A) such person holds a broadcast station license issued under Title III of this Act and if the violation charged occurred—

(i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability, or  
(ii) prior to the date of commencement of the current term of such license, whichever is earlier; or

(B) such person does not hold a broadcast station license issued under Title III of this Act and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.

For purposes of this paragraph, "date of commencement of the current term of such license" means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license.

## Station Application Procedure

### General Information

Any qualified citizen, company, or group may apply to the Federal Communications Commission (FCC) for authority to construct a standard (AM), frequency modulation (FM), or television (TV) broadcast station. Licensing of these facilities is prescribed by the Communications Act of 1934, as amended, which sets up certain basic requirements. In general, applicants must satisfy the Commission that they are legally, technically, and financially qualified, and that operation of the proposed station would be in the public interest.

Full details of the licensing procedure and station operation are in Part 1 of the Commission's Rules, "Practice and Procedure," and Part 73, "Radio Broadcast Services." This includes technical standards for AM, FM, and TV stations, and TV and FM channels (frequency) assignments by states and communities. These rules are summarized in this publication. Copies of the complete rules may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402; (202) 512-1800.

Most applicants retain engineering and legal services in preparing their applications. The Commission does not perform technical or other special studies for prospective

applicants nor does it recommend individual lawyers or engineers. Names of firms and individuals practicing before the Commission are listed in various trade publications.

The following is a summary of the consecutive steps to be followed in applying for the authorization to build and operate a broadcast station. The application procedure is substantially the same whether the facility sought is AM, FM, or TV.

### AM Stations

An applicant must make his/her own search for an AM frequency on which they can operate without causing or receiving interference from existing stations and stations proposed in pending applications. At present, AM stations operate in the existing band from 540 kHz to 1600 kHz. The Commission is in the process of authorizing certain existing licensees to operate in the expanded band from 1610 kHz to 1700 kHz, however, this band is not presently available to applicants for new broadcast stations. In the United States and in Region 2, the channels are spaced at 10 kHz intervals. Stations are designated channel by channel to serve various size areas and operate on "clear," "regional" and "local" channels. Dominant clear channel stations (Class A) operate at a maximum power of 50,000 watts; secondary clear channel stations (Class B) operate at a power between 250 watts and 50,000 watts. Many stations (Class D) operate as daytime only stations. (Applications are no longer being accepted for daytime only stations). Class B stations operating on regional channels may now operate at power levels between 250 watts and 50,000 watts. Class C stations operate on local channels serving limited areas and operating with no more than 1,000 watts day and night.

Please be aware that the submission of an application for an AM station requires the payment of an application filing fee.

*Special Note* (added Nov. 26, 1997)—For conflicting applications, the comparative hearing process is in the process of being replaced by an auction process. See Competitive Bidding Procedures.

### FM Stations

The FM service includes the frequencies from 88.1 MHz through 107.9 MHz. These frequencies are also known as FM broadcast channels (See 47 C.F.R. Section 73.201). The FM channels run from Channel 201 (88.1 MHz) through Channel 300 (107.9 MHz).

**Channels 221 through 300 (92.1 MHz through 107.9 MHz)** are generally used for commercial FM stations. Any applicant wishing to apply for a commercial FM station (or a noncommercial educational station on Channels 221 to 300) must first determine if there are any unused frequencies ("allotments") assigned to the community to be served. The FCC maintains a Table of Allotments (47 C.F.R. Section 73.202) that is helpful in identifying any available channels. These tables are available from the FCC's Copy Contractor. If an applicant identifies an unused channel that is listed as a first come/first served allotment, then the applicant may file an application (FCC Form 301) for the vacant allotment. If the applicant identifies an unused channel that has a window filing period for the allotment, the applicant may file an application for that channel before the end of the window filing period. If the current FM Table of Allotments indicates that there are no unused channels allotted to the community, the applicant may have a private consulting engineer, of their choice, perform an engineering study to identify a channel that may be allotted to the desired community. If the applicant identifies a channel that could be allotted to serve the community, the applicant may submit a petition for rulemaking to the FCC's Allocations Branch (Policy and Rules Division, Mass Media Bureau) requesting allotment of the channel to serve the desired community. If the FCC approves the petition, the channel will be added to the FM Table of Allotments and applications may be filed during a "window" filing period (usually a 30 day period) specified by the FCC. If there are conflicting or "mutually exclusive" applications filed in the window period, the applications will be designated for a comparative hearing before an administrative law judge.

Applicants filing for a commercial FM station during a window filing period, or filing for a first come/first served vacant allotment, must include the application filing fee with the construction permit application.

**Channels 201-220 (88.1 MHz to 91.9 MHz)** are reserved for noncommercial educational operation. Applicants for noncommercial FM radio stations must first conduct an engineering study for a suitable channel



within the reserved band to serve the desired community. Once the engineering study has been completed and a suitable channel within the reserved band is identified to serve the desired community, an application (FCC Form 340) may be filed for that channel. The application is then placed on an "A" cutoff list, which defines a date by which any competing applications or petition to deny must be filed. If no competing applications are filed, legal review and further technical review is performed on the application, with that application being granted if it is acceptable. If there are conflicting or "mutually exclusive" applications filed on or before the "A" cutoff date, the applications will be designated for a comparative hearing before an administrative law judge.

*Special Note* (added Nov. 26, 1997)—For conflicting commercial FM applications, the comparative hearing process is in the process of being replaced by an auction process. See Competitive Bidding Procedures.

**Channels in the unreserved portion of the FM band (Channel 221 through Channel 300 or 92.1 MHz-107.9 MHz)** may be used for noncommercial programming. However, procedures governing commercial FM channels will apply (i.e., window filing periods, technical requirements). No application filing fee is required for applicants seeking authorization for a noncommercial educational station. The Commission authorizes seven classes of FM stations: A, B1, B, C3, C2, C1, and C. The maximum power for a Class A station is 6,000 watts; Class B1 is 25,000 watts; Class B 50,000 watts; Class C3 is 25,000 watts; Class C2 is 50,000 watts; Class C1 is 100,000 watts; and Class C is 100,000 watts but at a higher (300 to 600 meter) antenna height above average terrain (HAAT). The minimum power authorized for any FM station is 100 watts.

**FM Translator Stations** FM Translators comprise a low power service on the FM broadcast band (88 to 108 MHz) which complements the primary FM service. This service was first created in 1970 to allow FM stations to provide supplementary service to areas in which direct reception of radio service is unsatisfactory due to distance or intervening terrain barriers (e.g., a mountain). Translators may not originate programming, except for very limited fundraising efforts. Translator stations rebroadcasting commercial FM stations may be authorized on Channel 221 through 300 (92 MHz to 108 MHz), while translators rebroadcasting a noncommercial educational FM station may be authorized on any FM channel (201 to 300). The maximum effective radiated power permitted for any translator station is 250 watts. The maximum power permitted for a particular transmitter station may be further limited by the location of that station.

Applications for a construction permit for an FM translator station must be filed on FCC Form 349. Once construction is completed in accordance with the construction permit granted by the FCC, a license application on FCC Form 350 is then necessary. An application filing fee is required for FM translator stations which rebroadcast a commercial FM primary station.

*Special Note* (added Nov. 26, 1997)—For conflicting translator applications, the comparative hearing process is in the process of being replaced by an auction process. See Competitive Bidding Procedures.

### TV Stations

As is the case in applying for a commercial FM station, an applicant for a TV station must request an unused channel listed in the Commission's Table of Allotments. Television channels are designated commercial or non-commercial. If there are no channels assigned to the city where an applicant proposes to construct the new station, the applicant may have a private engineer do a channel search. Once a channel is identified, a petition for rulemaking to add the channel to the Table of Allotments may be filed with the Allocations Branch. See How to Participate in the Rule Making Process. If the FCC approves the petition, the channel will be added to the Table of Allotments and will become available for application. Television stations operate on a Very High Frequency (VHF) Channels 2 through 13, or Channels 14 through 69, Ultra High Frequency (UHF) with power depending on channels used (VHF or UHF), and station separations are determined by three zones.

Note: At this time, in order to reserve spectrum for advanced or high definition or digital television, there is a freeze on filing applications or TV channel rulemaking petitions for substantial areas surrounding major television markets. The television procedures described in this paragraph are currently limited to small communities far removed from major markets.

*Special Note* (added Nov. 26, 1997)—For conflicting TV applications, the comparative hearing process is in the process of being replaced by an auction process. See Competitive Bidding Procedures.

### TV Translators / Low Power TV (LPTV) Stations

There are two secondary television stations called television translators and Low Power Television (LPTV) stations. A TV translator is a station that rebroadcasts signals from full service television stations. LPTV stations may rebroadcast a full service station television signal and may also originate their own programming. LPTV stations may also operate as a subscription service. These two secondary television services may operate on any available VHF or UHF channel, provided they do not cause objectionable interference to full service stations or other authorized translator or LPTV stations.

*Special Note* (added Nov. 26, 1997)—For conflicting applications, the comparative hearing process is in the process of being replaced by an auction process. See Competitive Bidding Procedures.

### How Can I Get an AM, FM or TV Broadcast Station?

To apply for a new AM station, or a commercial FM station or a commercial TV broadcast station for which a vacant allotment is available, the applicant must submit FCC Form 301 (Application for Construction Permit for Commercial Broadcast Station), with the applicable application filing fee. Noncommercial educational television applicants, and noncommercial educational FM station applicants filing for operation on Channels 201 through 220, must submit FCC Form 340 (Application for Construction Permit for Noncommercial Educational Broadcast Station); no application filing fee is required for noncommercial educational applicants. These forms are also used to make modifications in an existing facility. FM Translator, TV Translator and LPTV applicants must submit FCC Form 346 (Application for Authority to Construct or Make Changes in an LPTV, TV Translator, or FM Translator Station). These forms require information about the citizenship, legal and financial qualifications of the applicant, as well as engineering and technical specifications of the proposed or modified transmitter site.

Another way to obtain a broadcast station is to purchase an existing station that the owner is willing to sell. The FCC does not maintain a list of stations for sale and does not participate in the negotiations of the sales contract. Station brokers and communications attorneys can assist you in identifying stations that are for sale. You may also contact individual station owners directly to see if they are interested in selling their station. After you have found a station for sale, and have signed a contract to purchase the station, FCC Form 314 (Application for Consent to Assignment of Broadcast Construction Permit or License) must be submitted within 30 days accompanied by appropriate filing fees. Applicants who apply to purchase a station may not take over operation until the FCC approves the application to purchase the station. Once the application is approved, the buyer must submit a letter of consummation within 90 days of the grant. FCC Form 323 (Ownership Report for commercial stations) or FCC Form 323-E (Ownership Report for Noncommercial Educational stations) must also be submitted within 90 days of the grant. FCC Form 315 (Application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License) must be submitted when a controlling block of shares of a broadcasting company is transferred to a new entity or an individual. There is also a FCC Form 316 (Application for Consent to Assignment or Transfer of Control) which is used when a station is involuntarily transferred, such as to a trustee in bankruptcy. FCC Form 316 is also used for Pro Forma (changes in form, not substance) assignments and transfers, such as a sale from a person to a corporation controlled by that person. Broadcast applications must be submitted in triplicate, with the appropriate application filing fee attached. Applications for noncommercial educational stations do not require a filing fee.

### Applicants Must Give Local Notice

All applicants must give local notice in a newspaper of general circulation in the community in which the station is licensed or proposed to be licensed. They must also afford an opportunity for the public to file comments on these applications with the Commission. Copies of the application must be maintained in the station's public files or at a location accessible to the public in the community where the station is proposed, i.e., public library, post office. Licensees who submit a license renewal ap-

plication must give local public notice of the filing by broadcasting announcements over their stations. Any application that is designated for hearing must again give local public notice indicating such action by the Commission. (See 47 CFR Section 73.3580.)

### What Happens Once an Application is Filed with the FCC?

Applicants for new and major modifications in existing facilities of commercial and noncommercial AM, FM and TV broadcast stations are tendered for filing and then placed on a cutoff list once the application is accepted for filing. The cut-off Public Notice of Acceptance triggers a 30 day filing period for any competing applicants interested in filing an opposition or petition to deny any of the applications listed on the public notice. For the AM expanded band, the Commission issued a public notice in 1992 a filing window for existing AM stations to file a petition to migrate. The Commission has ranked all the petitions to migrate in accordance with the station's priority group and the interference improvement factor. Based on the overall ranking of the petitions, the Commission has produced an Allotment Plan, and has issued a public notice identifying the stations receiving an allotment authorization. Once petitions for reconsideration of the plan have been processed and the plan becomes final, the Commission will issue a public notice with the final allotment plan. Stations receiving allotment authorizations will have 60 days from the final allotment notice to file an application for a construction permit (FCC Form 301) for the allotment facility. Applications will then be put on a cut-off list and will be subject to petitions to deny, but not competing applications or applications for new AM stations in the expanded band.

Applications generally are processed in the order in which they are filed. They are reviewed for engineering, legal and financial data by the Mass Media Bureau, which under delegated authority acts on routine applications. If an application is defective, the applicant will be afforded one opportunity to amend their application. Thereafter, if all defects have not been corrected, the application will be returned. In most instances all filing fees are retained by the Commission regardless of final disposition of the application. If an application is complete and has no defects, petitions to deny or competing applications, the application may be granted without hearing and a Construction Permit will be issued. All dispositions of applications are announced by the Commission. Petitions for Reconsideration of grants made without hearing can be filed within 30 days of the release date of the public notice of such grant. However, when an objection is filed, the petitioner must show good cause why the objection was not raised before the grant.

### Hearing Procedure

In instances where it appears that an application does not conform to Commission Rules and Regulations, and petitions to deny or competing applications are filed, the Commission may designate the application for hearing. The Commission will issue a public notice listing the applications that are designated for hearing. The hearing fee must be paid within 60 days of the release of that Public Notice. The hearing notice generally allows the applicant 20 days to file a "Notice of Appearance". The Administrative Law Judge (ALJ) hearing the case is also assigned at this time. Amendments to the application may be filed as a matter of right within 30 days, with a showing of good cause, if the amendment relates to issues first raised in the Hearing Designation Order. Amendments that improve an applicant's comparative position will not be accepted in hearing.

After the hearing procedure and review of evidence and statements, the ALJ issues an Initial Decision. Initial Decisions may be contested within specified time limits. In all cases heard by an ALJ, the Commission or its Review Board may hear oral arguments and may adopt, modify or reverse the ALJ's Initial Decision. Any action taken by the Commission may be appealed to the District of Columbia Appellate Courts.

### Construction Permits

When an application is granted, either by Bureau staff or as a result of a comparative hearing, there is a specified period of time given the grantee for completing the construction of the station. Construction permits for radio are issued for 18 months; for television, 24 months. Grantees must request call sign assignment when the construction permit has been granted. If no request is received from the grantee for a specific call sign, the Commission will automatically assign one.



## Federal Communications Commission Rules and Regulations

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If for whatever reason a grantee of a construction permit cannot complete the construction of his station within the specified months, the grantee may request an extension of time on FCC Form 307 (Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit) provided the grantee justifies the request showing the amount of completion and estimated amount of time needed to complete construction. Upon completion of construction the grantee may begin program test. However, for AM, FCC Form 302-AM (Application for New Broadcast Station License); for FM, FCC Form 302-FM (Application for FM Broadcast Station License); or for TV, FCC Form 302-TV (Application for TV Broadcast Station License); must be on file within 10 days of commencement of program test operations. This procedure for program test applies only to non-directional stations. AM Directional stations must receive ap-

proval from the Commission prior to commencing program test. FM directional stations with a construction permit are permitted to commence operation at one-half the authorized power while the request for program test authority is being reviewed by the staff.

### *Licenses*

All radio stations are licensed for 8 years, and television stations are also licensed for 8 years.

### *Rules & Regulations*

FCC Rules may be obtained by writing or calling the Government Printing Office, Washington, DC 20402; (202) 512-1800. The Rules on FCC Practice and Procedures are contained in the Code of Federal Regulations

(CFR), Title 47, Parts 0-19. Broadcast rules are found in Title 47 of the CFR Parts 70-79.

### *Application Forms*

Application forms may be obtained by calling the automated forms request line at 1-800-418-3676 or 1-202-418-3676 (recording machine available 24 hours a day, seven days a week) or by writing to the Federal Communications Commission, Forms Distribution Center, 2803 52nd Ave., Hyattsville, MD 20781. Questions concerning filing procedures should be directed to the Public Service Division, Consumer Assistance Branch, 1919 M St., N.W., Washington, DC 20554; (202) 418-0200. Alternatively, questions may be referred to the Audio Services Division for the radio services [(202)-418-2720 for technical questions, (202)-418-2710 for legal questions] or the Video Services Division at (202)-418-1600.



# Cable Regulations

Cable television is regulated primarily by the FCC and by state and local governments. The federal Cable Communications Policy Act of 1984 imposed additional regulations on cable systems, but more importantly, it set limits on state and local regulation. Significant modifications to the Cable Act were made by the Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, approved October 5, 1992.

The following contains selected and edited rules of the FCC and provisions of the Cable Communications Act, current through December 31, 1998.

## Definitions (§76.5).

**(a) Cable system or cable television system.** A facility consisting of a set of closed 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, but such term does not include:

(1) A facility that services only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves subscribers without using any public right-of-way;

(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with Section 653 of the Communications Act; or

(5) Any facilities of any electric utility used solely for operating its electric utility systems.

NOTE to paragraph (a): The provisions of Subparts D and F of this part shall also apply to all facilities defined previously as cable systems on or before April 28, 1985, except those that serve subscribers without using any public right-of-way.

**(b) Television station; television broadcast station.** Any television broadcast station operating on a channel regularly assigned to its community by §73.606 of this chapter, and any television broadcast station licensed by a foreign government; provided, however, that a television broadcast station licensed by a foreign government shall not be entitled to assert a claim to carriage, program exclusivity, or retransmission consent authorization pursuant to Subpart D or F of this part, but may otherwise be carried if consistent with the rules on any service tier.

**(c) Television translator station.** A television broadcast translator station as defined in §74.701 of this chapter.

**(d) Grade A and Grade B contours.** The field intensity contours defined in §73.683(a) of this chapter.

**(e) Specified zone of a television broadcast station.** The area extending 56.3 air km (35 air miles) from the reference point in the community to which that station is licensed or authorized by the Commission. A list of reference points is contained in §76.53. A television broadcast station that is authorized but not operating has a specified zone that terminates eighteen (18) months after the initial grant of its construction permit.

**(f) Major television market.** The specified zone of a commercial television station licensed to a community listed in §76.51, or a combination of such specified zones where more than one community is listed.

**(g) Designated community in a major television market.** A community listed in §76.51.

**(h) Smaller television market.** The specified zone of a commercial television station licensed to a community that is not listed in §76.51.

**(i) Significantly viewed.** Viewed in other than cable television households 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 §76.54. NOTE: As used in this paragraph, "share of viewing hours" means the total hours that non-cable television households 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 non-cable television households that viewed the station for 5 minutes or more during the entire week, expressed as a percentage of the total non-cable television households in the survey area.

**(j) Full network station.** A commercial television broadcast station that generally carries in weekly prime time hours 85 percent of the hours of programming offered by one of the three major national television networks with which it has a primary affiliation (i.e., right of first refusal or first call).

**(k) Partial network station.** A commercial television broadcast station that generally carries in prime time more than 10 hours of programming per week offered by the three major national television networks, but less than the amount specified in paragraph (j) above.

**(l) Independent station.** A commercial television broadcast station that generally carries in prime time not more than 10 hours of programming per week offered by the three major national television networks.

**(m) A "network program"** is any program delivered simultaneously to more than one broadcast station, regional or national, commercial or noncommercial.

**(n) Prime time.** The five-hour period from 6 to 11 p.m., local time, except that in the Central Time Zone the relevant period shall be between the hours of 5 and 10 p.m., and in the Mountain Time Zone each station shall elect whether the period shall be 6 to 11 p.m. or 5 to 10 p.m. NOTE: Unless the Commission is notified to the contrary, a station in the Mountain Time Zone shall be presumed to have elected the 6 to 11 p.m. period.

**(o) Cablecasting.** Programming (exclusive of broadcast signals) carried on a cable television system. See paragraphs (y), (z), and (aa) (Classes II, III and IV cable television channels) of this section.

**(p) Origination cablecasting.** Programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator.

**(q) Legally qualified candidate.** (1) Any person who:

(i) has publicly announced his or her intention to run for nomination or office;

(ii) is qualified under the applicable local, state, or federal law to hold the office for which he or she is a candidate; and,

(iii) has met the qualifications set forth in either paragraphs (q)(2), (3) or (4) of this section.

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (q)(1) of this section, that person:

(i) has qualified for a place on the ballot, or

(ii) has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

Persons seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those states or territories (or the District of Columbia) in which they have met the requirements set forth in paragraphs (q)(1) and (2) of this rule; except, that any such person who has met the requirements set forth in paragraphs (q)(1) and (2) in at least 10 states (or nine and the District of Columbia) shall be considered a legally qualified candidate for election in all states, territories and the District of Columbia for purposes of this Act.

(3) A person seeking nomination to any public office except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (q)(1) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination; except that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days

before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the Office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those states or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (q)(1) of this section:

(i) he or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that state, territory or the District of Columbia, or

(ii) he or she has made a substantial showing of bona fide candidacy for such nomination in that state, territory or the District of Columbia; except that such person meeting the requirements set forth in paragraphs (q)(1) and (4) in at least 10 states (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all states, territories and the District of Columbia for purposes of this Act.

(5) The term "substantial showing" of bona fide candidacy as used in paragraphs (q)(2), (3) and (4) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

**(r) Class I cable television channel.** A signaling path provided by a cable television system to relay to subscriber terminals television broadcast programs that are received off-the-air or are obtained by microwave or by direct connection to a television broadcast station.

**(a) Class II cable television channel.** A signaling path provided by a cable television system to deliver to subscriber terminals television signals that are intended for reception by a television broadcast receiver without the use of an auxiliary decoding device and which signals are not involved in a broadcast transmission path.

**(t) Class III cable television channel.** A signaling path provided by a cable television system to deliver to subscriber terminals signals that are intended for reception by equipment other than a television broadcast receiver or by a television broadcast receiver only when used with auxiliary decoding equipment.

**(u) Class IV cable television channel.** A signaling path provided by a cable television system to transmit signals of any type from a subscriber terminal to another point in the cable television system.

**(v) Subscriber terminal.** The cable television system terminal to which a subscriber's equipment is connected. Separate terminals may be provided for delivery of signals of various classes. NOTE: Terminal devices interconnected to subscriber terminals of a cable system shall comply with Subpart H of Part 15.

**(w) System noise.** That combination of undesired and fluctuating disturbances within a cable television channel that degrades the transmission of the desired signal and that is due to modulation processes or thermal or other noise-producing effects, but does not include hum and other undesired signals of discrete frequency. System noise is specified in terms of its rms voltage or its mean power level as measured in the 4 MHz bandwidth between 1.25 and 5.25 MHz above the lower channel boundary of a cable television channel.

**(x) Terminal isolation.** The attenuation, at any subscriber terminal, between that terminal and any other subscriber terminal in the cable television system.

**(y) Visual signal level.** The rms voltage produced by the visual signal during the transmission of synchronizing pulses.

**(z) Affiliate.** When used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.



**(ea) Person.** An individual, partnership, association, joint stock company, trust, corporation or governmental entity.

**(bb) Significant interest.** A cognizable interest for attributing interests in broadcast, cable, and newspaper properties pursuant to §§73.3555, 73.3615 and 76.501.

**(cc) Cable system operator.** Any person or group of persons (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

**(dd) System community unit; community unit.** A cable television system, or portion of a cable television 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).

**(ee) Subscriber.** A member of the general public who receives broadcast programming distributed by a cable television system and does not further distribute it.

**(ff) Cable service.** The one-way, transmission to subscribers of video programming, or other programming service; and, subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and, "other programming service" is information that a cable operator makes available to all subscribers generally.

**(gg) [Deleted]**

**(hh) Input selector switch.** Any device that enables a viewer to select between cable service and off-the-air television signals. Such a device may be more sophisticated than a mere two-sided switch, may utilize other cable interface equipment, and may be built into consumer television receivers.

**(ii) A "syndicated program"** is any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming as defined in §76.5(m).

**(jj) Rural area.** A community unit with a density of less than 19 households per route kilometer or thirty households per route mile of coaxial and/or fiber optic cable trunk and feeder line.

**(kk) Technically integrated.** Having 75% or more of the video channels received from a common headend.

**(ll) Cable home wiring.** The internal wiring contained within the premises of a subscriber which begins at the demarcation point. Cable home wiring does not include any active elements such as amplifiers, converter or decoder boxes, or remote control units.

**(mm) Demarcation point.** (1) For new and existing single unit installations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's premises. (2) For new and existing multiple dwelling unit installations with non-loop-through wiring configurations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit, or, where the wire is physically inaccessible at such point, the closest practicable point thereto that does not require access to the individual subscriber's dwelling unit. (3) For new and existing multiple dwelling unit installations with loop-through wiring configurations, the demarcation points shall be at (or about) twelve inches outside of where the cable wire enters or exits the first and last individual dwelling units on the loop, or, where the wire is physically inaccessible at such point(s), the closest practicable point thereto that does not require access to an individual subscriber's dwelling unit. (4) As used in this paragraph (mm)(3), the term "physically inaccessible" describes a location that: (i) Would require significant modification of, or significant damage to, preexisting structural elements, and (ii) Would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring.

NOTE to paragraph (mm)(4): For example, wiring embedded in brick, metal conduit or cinder blocks with limited or without access openings would likely be physically inaccessible; wiring enclosed within hallway molding would not.

**(nn) Activated channels.** Those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational or governmental use.

**(oo) Useable activated channels.** Those activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations. See Part 76, Subpart K.

**(pp) Principal headend.** (1) The headend, in the case of a cable system with a single headend or,

(2) In the case of a cable system with more than one headend, the principal headend designated by the cable operator, except that such designation shall not undermine or evade the requirements of Subpart D of this Part. The designation of a principal headend shall be made by May 3, 1993, and each cable system shall place in its public file the location of its designated principal headend by June 17, 1993, as provided in §76.302. Except for good cause, an operator may not change its choice of principal headend.

**(qq) Emergency Alert System (EAS).** The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; cable systems and wireless cable systems; and other entities and industries operating on an organized basis during emergencies at the National, State, or local levels.

**Special relief and must-carry complaint procedure (§76.7).**

(a)(1) Petitions for special relief. On petition by a cable television system operator, a franchising authority, an applicant, permittee, or licensee of a television broadcast or translator station, or by any other interested person, the Commission may waive any provision of the rules relating to cable television systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question.

(2) Complaints filed pursuant to §76.61. In response to a complaint filed by a television broadcast station under §76.61 (must-carry complaint), the Commission may order a cable television system operator to commence or resume carriage of the complaining station, or position or reposition the complaining station's channel on the cable television system, pursuant to Subpart D of this Part.

(b) The petition for special relief or must-carry complaint may be submitted informally, by letter, but shall be accompanied by a certificate of service on any cable television system operator, franchising authority, station licensee, permittee, or applicant, or other interested person who may be directly affected if the relief requested is granted.

(c)(1) The petition for special relief or must-carry complaint shall state the relief requested. It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(2) A petition for special relief or must-carry complaint shall set forth all steps taken by the parties to resolve the problem, except where the only relief sought is a clarification or interpretation of the rules.

(3) An original and two (2) copies of the petition for special relief or must-carry complaint, and all subsequent pleadings shall be filed in accordance with 0.401(a) of this chapter, except that petitions for special relief requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with 0.401(b) of this chapter. Must-carry complaints filed pursuant to §76.61 are not covered by Part 1, Subpart G of this chapter and do not require fees.

(4)(i) Must-carry complaints filed pursuant to §76.61(a) (Complaints regarding carriage of local commercial television stations) shall be accompanied by the notice from the complainant to the cable television system operator (§76.61(a)(1)), and the cable television system operator's response (§76.61(a)(2)), if any. If no timely response was received, the complaint should so state.

(ii) Must-carry complaints filed pursuant to §76.61(b) (Complaints regarding carriage of qualified local NCE television stations) should be accompanied by any relevant correspondence between the complainant and the cable television system operator.

(iii) No must-carry complaint filed pursuant to §76.61(a) (complaints regarding local commercial television stations) will be accepted by the Commission if filed more than sixty (60) days after the date of the specific event described in this paragraph. Must-carry complaints filed pursuant to §76.61(a) should affirmatively state the specific event upon which the complaint is based, and shall establish that the complaint is being filed within sixty (60) days of such specific event. With respect to such must-carry complaints, the specific event shall be

(A) The denial by a cable television system operator of a request for carriage or channel position contained in the notice required by §76.61(a)(1), or

(B) The failure to respond to such notice within the time period allowed by §76.61(a)(2).

(iv) With respect to must-carry complaints filed pursuant to §76.61(b), such complaints may be filed at any time the complainant believes that the cable television system operator has failed to comply with the applicable provisions of Subpart D of this Part.

(d) Interested persons may submit comments or oppositions to a petition for special relief or a must-carry complaint within twenty (20) days after the date of public notice of the filing of such petition or complaint. For good cause shown in the petition for special relief or must-carry complaint, the Commission may, by letter or telegram to known interested persons, specify an altered time for such submissions. Comments or oppositions shall be served on the petitioner or complainant and on all persons listed in petitioner's or complainant's certificate of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on.

(e) The petitioner or complainant may file a reply to the comments or oppositions within ten (10) days after their submission, which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. For good cause shown, the Commission may specify a shorter time for the filing of reply comments.

(f) The Commission, after consideration of a petition for special relief and the responsive pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on the complaint or dispute. The Commission will resolve must-carry complaints pursuant to paragraphs (a)(4) and (b)(2) of §76.61. The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings and such other procedures as it may specify, whether temporary relief should be afforded any party pending the hearing and the nature of any such temporary relief.

(g) On a finding that the public interest so requires, the Commission may determine that a system community unit operating or proposing to operate in a community located outside of the 48 contiguous states shall comply with provisions of Subparts D, F, and G of this part in addition to the provisions thereof otherwise applicable.

NOTE: Each party filing a petition, comments, opposition or other pleading pursuant to §76.7 is responsible for the continuing accuracy and completeness of all information in such document. The provisions of 1.65 of this chapter are wholly applicable to pleadings involving §76.7, except that where specific provisions of the latter conflict with the former, the specific provisions of §76.7 are controlling, e.g., where requirements for service on specified parties of certain information may vary.

**Network nonduplication; extent of protection (§76.92).**

(a) Upon receiving notification pursuant to §76.94, a cable community unit located in whole or in part within the geographic zone for a network program, the network nonduplication rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

(b) For purposes of this section, the order of nonduplication priority of television signals carried by a community unit is as follows:

(1) First, all television broadcast stations within whose specified zone the community of the community unit is located, in whole or in part;

(2) Second, all smaller market television broadcast stations within whose secondary zone the community of the community unit is located, in whole or in part.

(c) For purposes of this section, all noncommercial educational television broadcast stations licensed to a community located in whole or in part within a major



television market as specified in §76.51 shall be treated in the same manner as a major market commercial television broadcast station, and all noncommercial educational television broadcast stations not licensed to a community located in whole or in part within a major television market shall be treated in the same manner as a smaller market television broadcast station.

(d) Any community unit operating in a community to which a 100-watt or higher power translator is located within the predicted Grade B signal contour of the television broadcast station that the translator station retransmits, and which translator is carried by the community unit shall, upon request of such translator station licensee or permittee, delete the duplicating network programming of any television broadcast station whose reference point (see §76.53) is more than 88.5 km (55 miles) from the community of the community unit. [§76.53, "Reference points," omitted. - Ed.]

(e) Any community unit which operates in a community located in whole or in part within the secondary zone of a smaller market television broadcast station is not required to delete the duplicating network programming of any major market television broadcast station whose reference point (see §76.53) is also within 88.5 km (55 miles) of the community of the community unit. [§76.53, "Reference points," omitted. - Ed.]

(f) A community unit is not required to delete the duplicating network programming of any television broadcast station which is significantly viewed in the cable television community pursuant to §76.54.

NOTE: With respect to network programming, the geographic zone within which the television station is entitled to enforce network nonduplication protection and priority of shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in §73.658(m), except that small market television stations shall be entitled to a secondary protection zone of 32.2 additional kilometers (20 additional miles).

(g) A community unit is not required to delete the duplicating network programming of any qualified NCE television broadcast station that is carried in fulfillment of the cable television system's mandatory signal carriage obligations, pursuant to §76.56.

Parties entitled to network nonduplication protection. (§76.93).

Television broadcast station licensees shall be entitled to exercise nonduplication rights pursuant to §76.92 in accordance with the contractual provisions of the network-affiliate agreement.

#### Notification (§76.94).

(a) In order to exercise nonduplication rights pursuant to §76.92, television stations shall notify each cable television system operator of the nonduplication sought in accordance with the requirements of this section. Except as otherwise provided in paragraph (b) of this section, nonduplication protection notices shall include the following information:

(1) The name and address of the party requesting nonduplication protection and the television broadcast station holding the nonduplication right;

(2) The name of the program or series (including specific episodes where necessary) for which protection is sought; and

(3) The dates on which protection is to begin and end.

(b) Broadcasters entering into contracts providing for network nonduplication protection shall notify affected cable systems within 60 calendar days of the signing of such a contract; provided, however, that for such contracts signed before May 5, 1989, a broadcaster may provide notice on or before June 19, 1989. In the event the broadcaster is unable based on the information contained in the contract, to furnish all the information required by paragraph (a) of this section at that time, the broadcaster must provide modified notices that contain the following information:

(1) The name of the network (or networks) which has (or have) extended nonduplication protection to the broadcaster;

(2) The time periods by time of day (local time) and by network (if more than one) for each day of the week that the broadcaster will be broadcasting programs from that network (or networks) and for which nonduplication protection is requested; and

(3) The duration and extent (e.g., simultaneous, same-day, seven-day, etc.) of the nonduplication protection which has been agreed upon by the network (or networks) and the broadcaster.

(c) Except as otherwise provided in paragraph (d) of this section, a broadcaster shall be entitled to nonduplication protection beginning on the later of:

(1) The date specified in its notice (as described in paragraphs (a) or (b) of this section, whichever is applicable) to the cable television system; or

(2) The first day of the calendar week (Sunday-Saturday) that begins 60 days after the cable television system receives notice from the broadcaster.

(d) A broadcaster shall provide the following information to the cable television system under the following circumstances:

(1) In the event the protection specified in the notices described in paragraphs (a) or (b) of this section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the cable system in a notice pursuant to paragraph (b) of this section, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

(2) In the event the protection specified in the modified notices described in paragraph (b) of this section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each cable system operator that has previously received notice of all changes from the original notice.

(e) In determining which programs must be deleted from a television signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available:

(1) Newspapers or magazines of general circulation.

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The broadcaster requesting exclusivity.

(f) A broadcaster exercising exclusivity pursuant to §76.92 shall provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the nonduplication terms concerning broadcast signal exhibition to which the parties have agreed.

#### Exceptions (§76.95).

(a) The provisions of sections §76.92-§76.94 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network nonduplication protection against it.

(b) Network nonduplication protection need not be extended to a higher priority station for one hour following the scheduled time of completion of the broadcast of a live sports event by that station or by a lower priority station against which a cable community unit would otherwise be required to provide nonduplication protection following the scheduled time of completion.

#### Effective dates (§76.97).

The network nonduplication protection and exceptions thereto outlined in sections §76.92-§76.95 shall become enforceable on January 1, 1990. The rules in effect on May 18, 1988 will remain operative until January 1, 1990.

#### Syndicated program exclusivity: extent of protection (§76.151).

Upon receiving notification pursuant to §76.155, a cable community unit located in whole or in part within the geographic zone for a syndicated program, the syndicated exclusivity rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

NOTE: With respect to each syndicated program, the geographic zone within which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-net-

work program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial exclusivity rights as defined in §73.658(m). To the extent rights are obtained for any hyphenated market named in §76.51, such rights shall not exceed those permitted under §73.658(m) for each named community in that market.

#### Parties entitled to syndicated exclusivity (§76.153).

(a) Television broadcast station licensees shall be entitled to exercise exclusive rights pursuant to §76.151 in accordance with the contractual provisions of their syndicated program license agreements, consistent with §76.159.

(b) Distributors of syndicated programming shall be entitled to exercise exclusive rights pursuant to §76.151 for a period of one year from the initial broadcast syndication licensing of such programming anywhere in the United States; provided, however, that distributors shall not be entitled to exercise such rights in areas in which the programming has already been licensed.

#### Notification (§76.155).

(a) In order to exercise exclusivity rights pursuant to §76.151, distributors or television stations shall notify each cable television system operator of the exclusivity sought in accordance with the requirements of this section. Syndicated program exclusivity notices shall include the following information:

(1) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;

(2) The name of the program or series (including specific episodes where necessary) for which exclusivity is sought;

(3) The dates on which exclusivity is to begin and end.

(b) Broadcasters entering into contracts on or after August 18, 1988, which contain syndicated exclusivity protection shall notify affected cable systems within sixty calendar days of the signing of such a contract. Broadcasters who have entered into contracts prior to August 18, 1988, and who comply with the requirements specified in §76.159 shall notify affected cable systems on or before June 19, 1989; provided, however, that with respect to such pre-August 18, 1988, contracts that require amendment in order to invoke the provisions of these rules, notification may be given within sixty calendar days of the signing of such amendment. A broadcaster shall be entitled to exclusivity protection beginning on the later of:

(1) The date specified in its notice to the cable television system; or

(2) The first day of the calendar week (Sunday-Saturday) that begins 60 days after the cable television system receives notice from the broadcaster.

(c) In determining which programs must be deleted from a television broadcast signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available:

(1) Newspapers or magazines of general circulation;

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within 10 business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The distributor or television station requesting exclusivity.

(d) In the event the exclusivity specified in paragraph (a) of this section has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the cable television system operator of the occurrence of the relevant contingency. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

#### Exceptions (§76.156).

(a) Notwithstanding the requirements of sections §76.151-§76.155, a broadcast signal is not required to be deleted from a cable community when that cable community unit falls, in whole or in part, within that signal's



## Cable Regulations

Grade B contour, or when the signal is significantly viewed pursuant to §76.54 in the cable community.

(b) The provisions of sections §76.151-§76.155 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

### Exclusivity contracts (§76.157).

A distributor or television station exercising exclusivity pursuant to §76.151 shall provide to the cable system, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.

### Indemnification contracts (§76.158).

No licensee shall enter into any contract to indemnify a cable system for liability resulting from failure to delete programming in accordance with the provisions of this subpart unless the licensee has a reasonable basis for concluding that such program deletion is not required by this subpart.

### Requirements for invocation of protection (§76.159).

For a station licensee to be eligible to invoke the provisions of this subpart, it must have a contract or other written indicia that it holds syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after August 18, 1988, must contain the following words: "the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Compulsory Copyright License, as provided in §76.151 of the FCC Rules [or 'as provided in the FCC's syndicated exclusivity rules']." Contracts entered into prior to August 18, 1988, must contain either the foregoing language or a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against cable television broadcast signal carriage by the cable system in question upon the contingency that the government reimposed syndicated exclusivity protection. In the absence of such a specific reference in contracts entered into prior to August 18, 1988, the provisions of these rules may be invoked only if (a) the contract is amended to include the specific language referenced above or (b) a specific written acknowledgement is obtained, from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgement by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this section shall be construed as a grant of exclusive rights to a broadcaster where such rights are not agreed to by the parties.

### Substitutions (§76.161).

Whenever, pursuant to the requirements of the syndicated exclusivity rules, a community unit is required to delete a television program on a broadcast signal that is permitted to be carried under the Commission's Rules, such community unit may, consistent with these rules and the sports blackout rules at 47 CFR §76.67, substitute a program from any other television broadcast station. Programs substituted pursuant to this section may be carried to their completion.

### Effective dates (§76.163).

No cable system shall be required to delete programming pursuant to the provisions of sections §76.151-§76.159 prior to January 1, 1990.

### Notification (§76.58).

(a) Effective April 2, 1993, a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such notification shall also be provided to subscribers of the cable system.

NOTE: No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods—generally including February, May, July and November—commonly known as audience sweeps.

(b) By May 3, 1993, a cable operator must notify all qualified NCE stations of its designated principal headend by certified mail.

(c) A cable operator shall provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend, and shall include the new designation in its public file.

(d) By May 3, 1993, a cable operator must notify all local commercial and NCE stations that may not be entitled to carriage because they either

(1) Fail to meet the standards for delivery of a good quality signal to the cable system's principal headend or

(2) May cause an increased copyright liability to the cable system.

(e) By June 2, 1993, a cable operator must send by certified mail a copy of a list of all broadcast television stations carried by its system and their channel positions to all local commercial and noncommercial television stations, including those not designated as must-carry stations and those not carried on the system.

### Carriage of other television signals (§76.60).

A cable operator is prohibited from accepting or requesting monetary payment or other valuable consideration in exchange either for carriage or channel positioning of any broadcast television station carried in fulfillment of the must-carry requirements, except that

(a) Any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system; or

(b) A cable operator may accept payments from stations which would be considered distant signals under the cable compulsory copyright license, 17 USC 111, as indemnification for any increased copyright liability resulting from carriage of such signal.

NOTE: A cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the must-carry requirements, through, but not beyond, the date of expiration of an agreement between a cable operator and a local commercial television station entered into prior to June 26, 1990.

(c) A cable operator may accept payments from stations pursuant to a retransmission consent agreement, even if such station will be counted towards the must-carry complement, as long as all other applicable rules are adhered to.

### Manner of carriage (§76.62).

(a) Cable operators shall carry the entirety of the program schedule of any television station (including low power television stations) carried by the system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under §76.67 or Subpart F of Part 76, or unless carriage is pursuant to a valid retransmission consent agreement for the entire signal or any portion thereof as provided in §76.64.

(b) Each such television broadcast signal carried shall be carried without material degradation in compliance with technical standards set forth in Subpart K of this Part.

(c) Each local commercial television station whose signal is carried shall, to the extent technically feasible and consistent with good engineering practice, be provided no less than the same quality of signal processing and carriage provided for carriage of any other type of standard television signal.

(d) Each qualified local noncommercial educational television station whose signal is carried shall be provided with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried.

(e) Each commercial broadcast television station carried pursuant to §76.56 shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-cancelling, from the broadcast signal and employ such enhancements at the system headend or headends.

(f) Each qualified local NCE television station carried pursuant to §76.56 shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes.

### Sports broadcasts (§76.67).

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live on a television broadcast signal carried by the community unit meeting the criteria specified in sections §76.5(gg)(1)-(gg)(3) of this part. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or local team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this section shall include the following information:

(1) As to programming to be deleted from television broadcast signals regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;

(iii) The call letters of the television broadcast station(s) from which the deletion is to be made.

(2) As to programming to be deleted from television broadcast signals not regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted.

(c) Notifications given pursuant to this section must be received, as to regularly scheduled events, not later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) Whenever, pursuant to this section, a community unit is required to delete a television program on a signal regularly carried by the community unit, such community unit may, consistent with the rules contained in Subpart F of this part, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the community unit need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

(e) The provisions of this section shall not be deemed to require the deletion of any portion of a television signal which a community unit was lawfully carrying prior to March 31, 1972.

(f) The provisions of this section shall not apply to any cable television system having fewer than 1000 subscribers.

### Exemption from input selector switch rules (§76.70).

(a) In any case of cable systems serving communities where no portion of the community is covered by the predicted Grade B contour of at least one full service broadcast television station or noncommercial educational television translator station operating with 5 or more watts output power and where the signals of no such broadcast stations are "significantly viewed" in the county where such a cable system is located, the cable system shall be exempt from the provisions of §76.66 of this chapter. Cable systems may be eligible for this exemption where they demonstrate with engineering studies prepared in accordance with §73.686 of this chapter or other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

(b) Where a new full service broadcast television station, or noncommercial educational television translator station with 5 or more watts, or an existing such station of either type with newly upgraded facilities provides predicted Grade B service to a community served by a cable system previously exempt under paragraph (a) of this section, or the signal of any such broadcast station is newly determined to be "significantly viewed" in the county where such a cable system is located, the cable system at that time is required to comply fully with the provisions of §76.66 of this chapter. Cable systems may retain their exemption under paragraph (a) of this section where they demonstrate with engineering studies prepared in accordance with §73.686 of this chapter



or other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

#### Origination cablecasts by legally qualified candidates for public office; equal opportunities (§76.205).

(a) General requirements. No cable television system is required to permit the use of its facilities by any legally qualified candidate for public office, but if any system shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such system shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any: (1) bona fide newscast; (2) bona fide news interview; (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a system. (Section 315(a) of the Communications Act.)

(b) Uses. As used in this section and §76.206, the term "use" means candidate appearance (including by voice or picture) that is not exempt under §76.205(a)(1)-(4) and that is controlled, approved or sponsored by the candidate or the candidate's authorized Committee after the candidate becomes legally qualified.

(c) Timing of request. A request for equal opportunities must be submitted to the system within 1 week of the day on which the first prior use giving rise to the right of equal opportunities occurred; provided, however, that where the person was not a candidate at the time of such first prior use, he or she shall submit his or her request within 1 week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

(d) Burden of proof. A candidate requesting equal opportunities of the system or complaining of noncompliance to the Commission shall have the burden of proving that he or she and his or her opponent are legally qualified candidates for the same public office.

(e) Discrimination between candidates. In making time available to candidates for public office, no system shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any system make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to cablecast to the exclusion of other legally qualified candidates for the same public office.

#### Candidate rates (§76.206).

(a) Charges for use of cable television systems. The charges, if any, made for the use of any system by any person who is a legally qualified candidate for any public office in connection with his or her campaign for nomination for election, or election, to such office shall not exceed:

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the system for the same class and amount of time for the same period.

(f) A candidate shall be charged no more per unit than the system charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any system practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates upon equal terms. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

(ii) The Commission recognizes non-preemptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time.

(iii) Systems may establish and define their own reasonable classes of immediately preemptible time so long as the differences between such classes are based on one or more demonstrable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstrable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time-sensitive make goods. Systems may not use class distinctions to defeat the purpose of the lowest unit charge requirement. All classes must be fully disclosed and made available to candidates.

(iv) Systems may establish reasonable classes of preemptible with notice time so long as they clearly define all such classes, fully disclose them and make them available to candidates.

(v) Systems may treat non-preemptible and fixed position as distinct classes of time provided that systems articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Systems shall not establish a separate, premium-priced class of time sold only to candidates. Systems may sell higher-priced non-preemptible or fixed time to candidates if such a class of time is made available on a bona fide basis to both candidates and commercial advertisers, and provided such class is not functionally equivalent to any lower-priced class of time sold to commercial advertisers.

(vii) [Reserved]

(viii) Lowest unit charge may be calculated on a weekly basis with respect to time that is sold on a weekly basis, such as rotations through particular programs or dayparts. Systems electing to calculate the lowest unit charge by such a method must include in that calculation all rates for all announcements scheduled in the rotation, including announcements aired under long-term advertising contracts. Systems may implement rate increases during election periods only to the extent that such increases constitute "ordinary business practices," such as seasonal program changes or changes in audience ratings.

(ix) Systems shall review their advertising records periodically throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. Where necessary, systems shall issue such rebates or credits promptly.

(x) Unit rates charged as part of any package, whether individually negotiated or generally available to all advertisers, must be included in the lowest unit charge calculation for the same class and length of time in the same time period. A candidate cannot be required to purchase advertising in every program or daypart in a package as a condition for obtaining package unit rates.

(xi) Systems are not required to include non-cash promotional merchandising incentives in lowest unit charge calculations; provided, however, that all such incentives must be offered to candidates as part of any purchases permitted by the system. Bonus spots, however, must be included in the calculation of the lowest unit charge calculation.

(xii) Make goods, defined as the rescheduling of preempted advertising, shall be provided to candidates prior to election day if a system has provided a time-sensitive make good during the year preceding the pre-election periods, respectively set forth in paragraph (a)(1) of this section to any commercial advertiser who purchases time in the same class.

(xiii) Systems must disclose and make available to candidates any make good policies provided to commercial advertisers. If a system places a make good for any commercial advertiser or other candidate in a more valuable program or daypart, the value of such make good must be included in the calculation of the lowest unit charge for that program or daypart.

(2) At any time other than the respective periods set forth in paragraph (a)(1) of this section, systems may charge legally qualified candidates for public office no more than the charges made for comparable use of the system by commercial advertisers. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, direct or indirect. A candidate shall be charged no more than the rate the system would charge for comparable commercial advertising. All discount privileges otherwise offered by a system to commercial advertisers must be disclosed and made available upon equal terms to all candidates for public office.

(b) If a system permits a candidate to use its cablecast facilities, the system shall make all discount privileges offered to commercial advertisers, including the lowest unit charges for each class and length of time in the same time period and all corresponding discount privileges, available on equal terms to all candidates. This duty includes an affirmative duty to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers. Systems may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(1) a description and definition of each class of time available to commercial advertisers sufficiently complete enough to allow candidates to identify and understand what specific attributes differentiate each class;

(2) a description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(3) a description of the system's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(4) an approximation of the likelihood of preemption for each kind of preemptible time; and

(5) an explanation of the system's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

(c) Once disclosure is made, systems shall negotiate in good faith to actually sell time to candidates in accordance with the disclosure.

#### Political file (§76.207).

(a) Every cable television system shall keep and permit public inspection of a complete and orderly record (political file) of all requests for cablecast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

#### Fairness Doctrine; personal attacks; political editorials (§76.209).

(a) A cable television system operator engaging in origination cablecasting shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) When, during such origination cablecasting, an attack is made upon the honesty, character, integrity, or like personal qualities of an identified person or group, the cable television system operator shall, within a reasonable time and in no event later than one (1) week after the attack, transmit to the person or group attacked: (1) notification of the date, time, and identification of the cablecast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the system's facilities.

(c) The provisions of paragraph (b) of this section shall not apply to cablecast material which falls within one or more of the following categories:

(1) Personal attacks on foreign groups or foreign public figures;

(2) Personal attacks occurring during uses by legally qualified candidates.

(3) Personal attacks made during cablecasts not included in paragraph (b)(2) of this section and made by legally qualified candidates, their authorized spokespersons or persons associated with the candidates in the campaign; and

(4) Bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events (including commentary or analysis contained in the foregoing programs, but, the provisions of paragraph (b) of this section shall be applicable to editorials of the cable television system operator).

(d) Where a cable television system operator, in an editorial, (1) endorses or (2) opposes a legally qualified candidate or candidates, the system operator shall, within 24 hours of the editorial, transmit to respectively (i) the other qualified candidate or candidates for the same office, or (ii) the candidate opposed in the editorial, (a) notification of the date, time, and channel of the editorial; (b) a script or tape of the editorial; and (c) an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the system's facilities; provided, however, that where such editorials are cablecast within 72 hours prior to the day of the election, the system operator shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.



**Lotteries (§76.213).**

(a) No cable television system operator, except as in paragraph (c), when engaged in origination cablecasting shall transmit or permit to be transmitted on the origination cablecasting channel or channels any advertisement or information concerning any lottery, gift, enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.

(b) The determination whether a particular program comes within the provisions of paragraph (a) of this section depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of paragraph (a) of this section if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize, such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished, or distributed by a sponsor of a program cablecast on the system in question.

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to advertisements or lists of prizes or information concerning:

(1) A lottery conducted by a State acting under authority of State law which is transmitted:

- (i) by a cable system located in that State,
- (ii) by a cable system located in another State which conducts such a lottery, or
- (iii) by a cable system located in another State which is integrated with a cable system described in paragraphs (c)(1)(i) or (ii) of this section, if termination of the receipt of such transmission by the cable systems in such other State would be technically infeasible.

(2) Any gaming conducted by an Indian Tribe pursuant to the Indian Gaming Regulatory Act (25 USC section 2701 et seq.).

(d) For the purposes of paragraph (c) lottery means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. It does not include the placing or accepting of bets or wagers on sporting events or contests.

(e) For purposes of paragraph (c)(3)(i) of this section, the term "not for profit organization" means any organization that would qualify as tax exempt under Section 501 of the Internal Revenue Code of 1986.

**Sponsorship identification; list retention; related requirements (§76.221).**

(a) When a cable television system operator engaged in origination cablecasting presents any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such cable television system operator, the cable television system operator, at the time of the cablecast, shall announce (i) that such matter is sponsored, paid for, or furnished, either in whole and or in part, and (ii) by whom or on whose behalf such consideration was supplied: provided, however, that "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a cablecast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the cablecast. In the case of any political advertisement cablecast under this subsection that concerns candidates for public office, the sponsor shall be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.

(b) Each cable television system operator engaged in origination cablecasting shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for cablecasting, information to enable such system operator to make the announcement required by this section.

(c) In the case of any political origination cablecast or any origination cablecast matter involving the discussion of public controversial issues for which any film, record, transcription, talent, script or other material or service of any kind is furnished, either directly or indirectly, to a cable television system operator as an inducement for cablecasting such matter, an announcement shall be made both at the beginning and conclusion of such cablecast on which such material or service is used that such film record, transcription, talent, script or other material or service has been furnished to such cable televi-

sion system operator in connection with the transmission of such cablecast matter: provided, however, that in the case of any cablecast of five minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the cablecast.

(d) The announcement required by this section shall, in addition to stating the fact that the origination cablecasting matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (c) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a cable television system operator on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the system operator, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the origination cablecasting material is political matter or matter involving the discussion of controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the matter, the system operator shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the local office of the system. Such lists shall be kept and made available for a period of two years.

(e) In the case of origination cablecast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the cablecast.

(f) The announcement otherwise required by this section is waived with respect to the origination cablecast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are omitted pursuant to this paragraph, the cable television system operator shall observe the following conditions:

- (1) Maintain a list showing name, address and (where available) the telephone number of each advertiser;
- (2) Make this list available to the members of the public who have a legitimate interest in obtaining the information contained in the list.

(g) The announcements required by this section are waived with respect to feature motion picture films produced initially and primarily for theater exhibition.

**Commercial limits in children's programs (§76.225).**

(a) No cable operator shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

(b) This rule shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 USC 531(e) and 532(c)(2).

(c) Cable operators must maintain records sufficient to verify compliance with this rule and make such records available to the public. Such records must be retained for a period sufficient to cover the limitations period specified in 47 USC 503(b)(6)(B).

NOTE 1: Commercial matter means air time sold for purposes of selling a product or service.

NOTE 2: For purposes of this section, children's programming refers to programs originally produced and broadcast primarily for an audience of children 12 years old and younger.

**Cross-ownership (§76.501).**

(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in a TV broadcast station whose predicted Grade B contour, computed in accordance with §73.684 of Part 73 of this chapter, overlaps in whole or in part the service area of

such system (i.e., the area within which the system is serving subscribers).

(b) [Reserved]

(c) Effective date. The provisions of paragraph (a) of this section are not effective until November 8, 1987, as to ownership interests proscribed herein if such interests were in existence on or before July 1, 1970, (e.g., if franchise were in existence on or before July 1970), and will be applied to cause divestiture as to ownership interests proscribed herein only where the cable system is directly or indirectly owned, operated, controlled by, or has an interest in a non-satellite television broadcast station which places a principal community contour encompassing the entire community and there is no other commercial non-satellite television broadcast station placing a principal community contour encompassing the entire community.

(d) No cable operator shall offer satellite master antenna television service ("SMATV"), as that service is defined in §76.5(a)(2), separate and apart from any franchised cable service in any portion of the franchise area served by that cable operator's cable system, either directly or indirectly through an affiliate owned, operated, controlled, or under common control with the cable operator.

(e) (1) A cable operator may directly or indirectly, through an affiliate owned, operated, controlled by, or under common control with the cable operator, offer SMATV service within its franchise area if the cable operator's SMATV system was owned, operated, controlled by or under common control with the cable operator as of October 5, 1992.

(2) A cable operator may directly or indirectly, through an affiliate owned, operated, controlled by, or under common control with the cable operator, offer service within its franchise area through SMATV facilities provided such service is offered in accordance with the terms and conditions of a cable franchise agreement.

(f) The restrictions in paragraphs (d) and (e) of this section shall not apply to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under Section 623(l) of the Communications Act.

NOTE 1: The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

NOTE 2: In applying the provisions of this section, ownership and other interests will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interest and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee or cable television system will be cognizable;

(b) No minority voting stock interest will be cognizable if there is a single holder of more than 50% of the outstanding voting stock of the corporate broadcast licensee or cable television system in which the minority interest is held;

(c) Investment companies, as defined in 15 USC 80a-3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 10% or more of the outstanding voting stock of a corporate broadcast licensee or cable television system, or if any of the officers or directors of the broadcast licensee or cable television system are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management;

(d) Attribution of ownership interests in a broadcast licensee or cable television system that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest since X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.1 x 0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable.]

(e) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote



such stock, to any person who has the power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant broadcast licensee or cable television system are subject to said trust.

(f) Holders of non-voting stock shall not be attributed an interest in the issuing entity. Holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system to make the certification set forth in paragraph (g)(1) of this NOTE, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assure adequate insulation for purposes of this certification are described in the Memorandum Opinion and Order in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985) as modified on reconsideration in MM Docket No. 83-46, FCC 86-410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related businesses of the partnership.

(h) Officers and directors of a broadcast licensee or cable television system are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of broadcasting or cable television service, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a broadcast licensee or a cable television system, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the broadcast licensee or cable television system subsidiary, and a statement properly documenting this fact is submitted to the Commission. (This statement may be included on appropriate Ownership Report.) The officers and directors of a sister corporation of a broadcast licensee or cable television system shall not be attributed with ownership of these entities by virtue of such status.

(i) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through "passive investors" is equal to or exceeds 10 percent; or

(2) The sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (i)(1) of this NOTE plus the sum of the interests computed under paragraph (i)(2) of this NOTE is equal to or exceeds 10 percent.

NOTE 3: In cases where record and beneficial ownership of voting stock is not identical (e.g., bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street names for benefit of customers, investment advisors holding stock in their own names for the benefit of clients, and insurance companies holding stock), the party having the right to determine how the stock will be voted will be considered to own it for purposes of this subpart.

NOTE 4: Paragraph (a) of this section will not be applied so as to require the divestiture of ownership interests proscribed herein solely because of the transfer of such interests to heirs or legatees by will or intestacy, provided that the degree or extent of the proscribed cross-ownership is not increased by such transfer.

NOTE 5: In applying the provisions of paragraphs (d) and (e) of this section, control and an attributable own-

ership interest shall be defined by reference to the definitions contained in NOTES 1-4 of this section, provided however, that:

(a) The single majority shareholder provisions of NOTE 2(b) and the limited partner insulation provisions of NOTE 2(g) shall not apply; and

(b) 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.

#### Cable television system reports (§76.403).

The operator of every operational cable television system shall correct and/or furnish information in response to forms, encompassing each community unit, mailed to said operator by the Commission. These include:

Community unit data; "Annual Report of Cable Television System," Form 325, Schedule 1.

Physical system data; "Annual Report of Cable Television System," Form 325, Schedule 2.

Operator ownership data; "Annual Report of Cable Television System," Form 325, Schedules 3 and 4.

These forms shall be completed and returned to the Commission within 60 days after the date of mailing by the Commission.

NOTE: The operator of a cable television system having fewer than 1000 subscribers shall only be required to file Schedules 1 and 2 of Form 325 for each community unit.

#### Lockbox enforcement (§76.11).

Any party aggrieved by the failure or refusal of a cable operator to provide a lockbox as provided for in title VI of the Communications Act may petition the Commission for relief in accordance with the provisions and procedures set forth in §76.7 for petitions for special relief.

#### Registration statement required (§76.12).

A separate unit shall be authorized to commence operation only after filing with the Commission the following information:

(a) The legal name of the operator, Entity Identification or Social Security number, and whether the operator is an individual, private association, partnership, or corporation. If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied;

(b) The assumed name (if any) used for doing business in the community;

(c) The mail address, including zip code, and the telephone number to which all communications are to be directed;

(d) The date the system provided service to 50 subscribers;

(e) The name of the community area served and the county in which it is located;

(f) The television broadcast signals to be carried which previously have not been certified or registered.

#### Scope of application (§76.300).

(a) The provisions of §76.302, §76.306, and §76.307 are applicable to all cable television systems.

(b) The provisions of §76.301 and §76.305 are not applicable to any cable television system serving fewer than 1,000 subscribers.

#### Copies of rules (§76.301).

The operator of a cable television system shall have a current copy of Part 76 and, if subject to the Emergency Alert System (EAS) rules contained in Part 11 of this chapter, an EAS Operating Handbook, and is expected to be familiar with the rules governing cable television systems and the EAS. Copies of the Commission's Rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at nominal cost. Copies of the EAS Operating Handbook may be obtained from the Commission's EAS staff, in Washington, DC.

#### Required record keeping for must-carry purposes (§76.302).

(a) Effective June 17, 1993, the operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to §76.56 of the rules. Such list shall include the call sign, community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990.

(b) The operator of every cable television system shall maintain for public inspection the designation and location of its principal headend.

(c) Such records must be maintained in accordance with the provisions of §76.305(b).

(d) Upon written request from any person, a cable operator is required to provide the list of signals specified in paragraph (a) of this section in writing within 30 days of receipt of such request.

#### Records to be maintained locally by cable television system operators for public inspection (§76.305).

(a) Records to be maintained. The operator of every cable television system having 1000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by §76.207 (political file); §76.221(f) (sponsorship identifications); §76.79 (EEO records available for public inspection); §76.225(c) (commercial records for children's programming); §76.601(c) (proof-of-performance test data); §76.601(e) (signal leakage logs and repair records); and §76.701(h) (records for leased access).

(b) Location of records. The public inspection file shall be maintained at the office which the system operator maintains for ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s) (such as a public registry for documents or an attorney's office). The public inspection file shall be available for public inspection at any time during regular business hours.

(c) Period of retention. The records specified in paragraph (a) of this section shall be retained for the period specified in §76.205(d), §76.221(f), §76.79, §76.601(c), and §76.601(e), respectively.

(d) Reproduction of records. Copies of any material in the public inspection file shall be available for machine reproduction upon request made in person, provided the requesting party shall pay the reasonable cost for reproduction. Request for machine copies shall be fulfilled at a location specified by the system operator, within a reasonable period of time, which in no event shall be longer than seven days. The system operator is not required to honor requests made by mail but may do so if it so chooses.

#### System inspection (§76.307).

The operator of a cable television system shall make the system, its public inspection file (if required by §76.305), and its records of subscribers available for inspection upon request by an authorized representative of the Commission at any reasonable hour.

#### Customer service obligations (§76.309).

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce standards.

(b) Nothing in this section should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability—

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, trans-



fer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls—Under normal operating conditions, each of the following four standards will be met no less than ninety-five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers—

(i) Notifications to subscribers—

(A) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system; and

(6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph (c)(3)(i)(A) of this section. Notwithstanding any other provision of Part 76, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

(ii) Billing—

(A) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(B) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

(iii) Refunds—Refund checks will be issued promptly, but no later than either—

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(iv) Credits—Credits for service will be issued no later than the customer's next billing cycle following the termination that a credit is warranted.

(4) Definitions—

(i) Normal Business Hours—The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(ii) Normal Operating Conditions—The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) Service Interruption—The term "service interruption" means the loss of picture or sound on one or more cable channels.

**Equal Employment Opportunity Requirements**

**Scope of application (§76.71).**

(a) The provisions of the subpart shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system. Cable entities subject to these provisions include those systems defined in §76.5(a) of the rules and all satellite master antenna systems serving 50 or more subscribers.

(b) Employment units. The provisions of this subpart shall apply to cable entities as employment units. Each cable entity may be considered a separate employment unit; however where two or more cable entities are under common ownership or control and are interrelated in their local management, operation and utilization of employees, they shall constitute a single employment unit.

(c) Headquarters office. A multiple cable operator shall treat as a separate unit each headquarters office to the extent the work of that office is primarily related to the operation of more than one employment unit as described in paragraph (b) of this section.

**General EEO policy (§76.73).**

(a) Equal opportunity in employment shall be afforded by each cable entity to all qualified persons, and no person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age or sex.

(b) Each employment unit shall establish, maintain and carry out a positive program of specific practices designed to assure equal opportunity to every aspect of cable system employment policy and practice. Under the terms of its program, an employment unit shall:

(1) Define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, age or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age or sex, and solicit their recruitment assistance on a continuing basis;

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations and levels of responsibility.

**EEO program requirements (§76.75).**

An employment unit's equal employment opportunity program should reasonably address itself to the specific areas set forth below, to the extent possible and to the

extent that they are appropriate in terms of employment unit size, location, etc.:

(a) Disseminate its equal employment opportunity program to job applicants, employees and those with whom it regularly does business. For example, this requirement may be met by:

(1) Posting notices in the employment unit's office and places of employment informing employees and applicants for employment of their equal employment opportunity rights, and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission or other appropriate agency, if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants or residents of the community of a cable television system or the relevant labor area are Hispanic, such notices should be posted in Spanish and English. Similar use should be made of other languages in such posted equal opportunity notices, where appropriate;

(2) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of race, color, religion, national origin, age or sex is prohibited and that they may notify the Equal Employment Commission, the Federal Communications Commission or other appropriate agency if they believe they have been discriminated against.

(b) Use minority organizations, organizations for women, media, educational institutions and other potential sources of minority and female applicants, to supply referrals whenever job vacancies are available in its operation. For example, this requirement may be met by:

(1) Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

(2) Recruiting through schools and colleges with significant minority-group enrollments;

(3) Maintaining systematic contacts with minority and human relations organizations, leaders and spokesmen to encourage referral of qualified minority or female applicants;

(4) Encouraging current employees to refer minority or female applicants;

(5) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever the employment unit hires.

(c) Evaluate its employment profile and job turnover against the availability of minorities and women in its franchise area. For example, this requirement may be met by:

(1) Comparing composition of relevant labor area with the composition of the entity's employees;

(2) Comparing its employees, within each job category, with the people available for such positions;

(3) Where there is underrepresentation of either minorities and/or women, examining the company's personnel policies and practices to assure that they do not inadvertently screen out any protected group and take appropriate action where necessary.

NOTE: These data are generally available on a metropolitan statistical area (MSA), primary metropolitan statistical area (PMSA) or county basis.

(d) Undertake to offer promotions of minorities and women in a non-discriminatory fashion to positions of greater responsibility. For example, this requirement may be met by:

(1) Instructing those who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that the job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(2) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower paid employees with respect to any of the higher paid position, followed by assistance, counseling and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(3) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority group or female employees.

(e) Encourage minority and female entrepreneurs to conduct business with all parts of its operation. For example, this requirement may be met by:

(1) Recruiting as wide as possible a pool of qualified entrepreneurs from sources such as employee referrals, community groups, contractors, associations and other sources likely to be representative of minority and female interests.



(f) Analyze the results of its efforts to recruit, hire, promote and use the services of minorities and women and explain any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(1) Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority persons or females of equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(2) Avoiding use of selection techniques or tests that have the effect of discriminating against qualified minority groups or females;

(3) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(4) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race or sex discrimination.

#### Reporting requirements (§76.77).

(a) Annual employment report. Each employment unit with six or more full-time employees shall file an annual employment report (FCC Form 395-A) with the Commission on or before September 30 of each year. Employment data on the annual employment report shall reflect the figures for any one payroll period in July, August, or September of the year during which the report is filed. Unless instructed otherwise by the FCC, the same payroll period shall be used for each successive annual employment report.

(b) Certification of Compliance. The Commission will use the information submitted on Form 395A to determine whether cable systems are in compliance with the provisions of this subpart. Cable systems found to be in compliance with these rules will receive a Certificate of Compliance.

(c) Investigations. The Commission will investigate each cable system at least once every five years. Cable systems are required to submit supplemental investigation information with their regular Form 395A reports in the years they are investigated.

#### Records available for public inspection (§76.79).

(a) Copy of every annual employment report, and any other employment report filed with the Commission, and complaint report that has been filed with the Commission, and copies of all exhibits, letters and other documents filed as part thereof, all amendments thereto, all correspondence between the cable entity and the Commission pertaining to the reports after they have been filed in all documents incorporated therein by reference, unless specifically exempted from the requirement, are open for public inspection at the offices of the Commission in Washington, D.C.

(b) Every employment unit shall maintain for public inspection a file containing copies of all annual reports. Each document shall be retained for a period of five years. The file shall be maintained at the central office and at every location with more than five full-time employees. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multiple cable operator shall be maintained at the central office of the headquarters employment unit. The cable entity shall provide reasonable accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

#### Closed captioning (§76.606).

(a) The requirements for closed captioning are as follows:

(1) As of June 30, 1992, 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; and

(2) As of July 1, 1993, 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 15.119 of the Rules.

#### Resolution of complaints (§76.607).

Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. These records shall be maintained for at least a one-year period. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. Subscribers shall be advised, at least once each calendar year, of the procedures for resolution of complaints by the cable system operator,

including the address of the responsible officer of the local franchising authority.

NOTE: Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

#### 76.1200 Definitions. As used in this subpart:

(a) Multichannel video programming system. A distribution system that makes available for purchase, by customers or subscribers, multiple channels of video programming other than an open video system as defined by §76.1500(a). Such systems include, but are not limited to, cable television systems, multichannel multipoint distribution systems, direct broadcast satellite systems, other systems for providing direct-to-home multichannel video programming via satellite, and satellite master antenna systems.

(b) Multichannel video programming distributor. A person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who owns or operates a multichannel video programming system.

(c) Navigation devices. Devices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.

(d) Affiliate. A person or entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person, as defined in the notes accompanying §76.501.

(e) Conditional access. The mechanisms that provide for selective access and denial of specific services and make use of signal security that can prevent a signal from being received except by authorized users.

76.1201 Rights of subscribers to use or attach navigation devices. No multichannel video programming distributor shall prevent the connection or use of navigation devices to or with its multichannel video programming system, except in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices may be used to assist or are intended or designed to assist in the unauthorized receipt of service.

76.1202 Availability of navigation devices. No multichannel video programming distributor shall by contract, agreement, patent right, intellectual property right or otherwise prevent navigation devices that do not perform conditional access or security functions from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated with such owner or operator, subject to §76.1209.

76.1203 Incidence of harm. A multichannel video programming distributor may restrict the attachment or use of navigation devices with its system in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices that assist or are intended or designed to assist in the unauthorized receipt of service. Such restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. Such standards shall foreclose the attachment or use only of such devices as raise reasonable and legitimate concerns of electronic or physical harm or theft of service. In any situation where theft of service or harm occurs or is likely to occur, service may be discontinued.

#### 76.1204 Availability of equipment performing conditional access or security functions.

(a)(1) A multichannel video programming distributor that utilizes navigation devices to perform conditional access functions shall make available equipment that incorporates only the conditional access functions of such devices. Commencing on January 1, 2005, no multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.

(2) The foregoing requirement shall not apply to a multichannel video programming distributor that supports the active use by subscribers of navigation devices that: (i) operate throughout the continental United States, and (ii) are available from retail outlets and other vendors throughout the United States that are not affiliated with the owner or operator of the multichannel video programming system.

(b) Conditional access function equipment made available pursuant to paragraph (a)(1) of this section shall be designed to connect to and function with other navigation devices available through the use of a commonly used interface or an interface that conforms to appropriate technical standards promulgated by a national standards organization.

(c) No multichannel video programming distributor shall by contract, agreement, patent, intellectual property right or otherwise preclude the addition of features or functions to the equipment made available pursuant to this section that are not designed, intended or function to defeat the conditional access controls of such devices or to provide unauthorized access to service.

(d) Notwithstanding the foregoing, navigation devices need not be made available pursuant to this section where:

(1) It is not reasonably feasible to prevent such devices from being used for the unauthorized reception of service; or

(2) It is not reasonably feasible to separate conditional access from other functions without jeopardizing security.

(e) The requirements of this section shall become applicable on July 1, 2000.

76.1205 Availability of interface information. Technical information concerning interface parameters that are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request in a timely manner.

76.1206 Equipment sale or lease charge subsidy prohibition. Multichannel video programming distributors offering navigation devices subject to the provisions of §76.923 for sale or lease directly to subscribers, shall adhere to the standards reflected therein relating to rates for equipment and installation and shall separately state the charges to consumers for such services and equipment.

76.1207 Waiver. The Commission may waive a regulation adopted under this subpart for a limited time, upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider that such a waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Such waiver requests should be made pursuant to §76.7. Such a waiver shall be effective for all service providers and products in the category in which the waiver is granted.

76.1208 Sunset of regulations. The regulations adopted under this subpart shall cease to apply when the Commission determines that (1) the market for multichannel video distributors is fully competitive; (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and (3) elimination of the regulations would promote competition and the public interest. Any interested party may petition the Commission for such a determination.

76.1209 Theft of service. Nothing in this subpart shall be construed to authorize or justify any use, manufacture, or importation of equipment that would violate 47 USC §553 or any other provision of law intended to preclude the unauthorized reception of multichannel video programming service.

76.1210 Effect on other rules. Nothing in this subpart affects §64.702(d) of the Commission's regulations or other Commission regulations governing interconnection and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

## Cable Act of 1984, as amended 1992

Purposes (Sec. 601). The purposes of this title are to —

(1) establish a national policy concerning cable communications;

(2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;



(3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;

(4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;

(5) establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this title; and

(6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

**Definitions (Sec. 602).** For purposes of this title —

(1) the term "activated channels" means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;

(2) the term "affiliate," when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;

(3) the term "basic cable service" means any service tier which includes the retransmission of local television broadcast signals;

(4) the term "cable channel" or "channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);

(5) the term "cable operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(6) the term "cable service" means —

(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

(7) the term "cable system" means a facility, consisting of a set of closed 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, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act, except that such facility shall be considered a cable system (other than for purposes of Section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility systems;

(8) the term "Federal agency" means any agency of the United States, including the Commission;

(9) the term "franchise" means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

(10) the term "franchising authority" means any governmental entity empowered by Federal, State, or local law to grant a franchise;

(11) the term "grade B contour" means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

(12) the term "interactive on-demand services" means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;

(13) the term "multichannel video programming distributor" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;

(14) the term "other programming service" means information that a cable operator makes available to all subscribers generally;

(15) the term "person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

(16) the term "public, educational, or governmental access facilities" means —

(A) channel capacity designated for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel capacity;

(17) the term "service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

(18) the term "State" means any State, or political subdivision, or agency thereof; and

(19) the term "usable activated channels" means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and

(20) the term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

**(Sec. 602).**

**Cable channels for public, educational, or governmental use (Sec. 611).**

(a) A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section.

(b) A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 626, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity pursuant to this section.

(c) A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, whether or not required by the franchising authority pursuant to subsection (b).

(d) In the case of any franchise under which the channel capacity is designated under subsection (b), the franchising authority shall prescribe:

(1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and

(2) rules and procedures under which such permitted use shall cease.

(e) Subject to Section 624(d), a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.

(f) For the purposes of this section, the term "institutional network" means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

**Cable channels for commercial use (Sec. 612).**

(a) The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.

(b)(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

(A) An operator of any cable system with 36 or more (but not more than 54) activated channels shall designate 10 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

(B) An operator of any cable system with 55 or more (but not more than 100) activated channels shall designate 15 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

(C) An operator of any cable system with more than 100 activated channels shall designate 15 percent of all such channels.

(D) An operator of any cable system with fewer than 36 activated channels shall not be required to designate channel capacity for commercial use by persons unaffiliated with the operator, unless the cable system is required to provide such channel capacity under the terms of the franchise in effect on the date of the enactment of this title.

(E) An operator of any cable system in operation on the date of the enactment of this title shall not be required to remove any service actually being provided on July 1, 1984, in order to comply with this section, but shall make channel capacity available for commercial use as such capacity becomes available until such time as the cable operator is in full compliance with this section.

(2) Any Federal agency, State, or franchising authority may not require any cable system to designate channel capacity for commercial use by unaffiliated persons in excess of the capacity specified in paragraph (1), except as otherwise provided in this section.

(3) A cable operator may not be required, as part of a request for proposals or as part of a proposal for renewal, subject to section 626, to designate channel capacity for any use (other than commercial use by unaffiliated persons under this section) except as provided in sections 611 and 637, but a cable operator may offer in a franchise, or proposal for renewal thereof, to provide, consistent with applicable law, such capacity for other than commercial use by such persons.

(4) A cable operator may use any unused channel capacity designated pursuant to this section until the use of such channel capacity is obtained, pursuant to a written agreement, by a person unaffiliated with the operator.

(5) For the purposes of this section, the term "commercial use" means the provision of video programming, whether or not for profit.

(6) Any channel capacity which has been designated for public, educational, or governmental use may not be considered as designated under this section for commercial use for purpose of this section.

(c)(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) for commercial use, the cable operator shall establish, consistent with the purpose of this section, and with rules prescribed by the Commission under paragraph (4), the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.

(2) Any Federal agency, State, or franchising authority may not require any cable system to designate channel capacity for commercial use by unaffiliated persons in excess of the capacity specified in paragraph (1), except as otherwise provided in this section.

(3) Any cable system channel designated in accordance with this section shall not be used to provide a cable service that is being provided over such system on the date of the enactment of this title, if the provision of such programming is intended to avoid the purpose of this section.

(4)(A) The Commission shall have the authority to—

(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use;

(ii) establish reasonable terms and conditions for such use, including those for billing and collection; and



(iii) establish procedures for the expedited resolution of disputes concerning rates or carriage under this section.

(B) Within 180 days after the date of enactment of this paragraph, the Commission shall establish rules for determining maximum reasonable rates under subparagraph (A)(i), for establishing terms and conditions under subparagraph (A)(ii), and for providing procedures under subparagraph (A)(iii).

(d) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available for use pursuant to this section may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available. If the court finds that the channel capacity sought by such person has not been made available in accordance with this section, or finds that the price, terms, or conditions, established by the cable operator are unreasonable, the court may order such system to make available to such person the channel capacity sought, and further determine the appropriate price, terms, or conditions, for such use consistent with subsection (c), and may award actual damages if it deems such relief appropriate. In any such action, the court shall not consider any price, term, or condition established between an operator and an affiliate for comparable services.

(e)(1) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available pursuant to this section may petition the Commission for relief under this subsection upon a showing of prior adjudicated violations of this section. Records of previous adjudications resulting in a court determination that the operator has violated this section shall be considered as sufficient for the showing necessary under this subsection. If the Commission finds that the channel capacity sought by such person has not been made available in accordance with this section, or that the price, terms, or conditions established by such system are unreasonable under subsection (c), the Commission shall, by rule or order, require such operator to make available such channel capacity under price, terms, and conditions consistent with subsection (c).

(2) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by an operator, the Commission may also establish any further rule or order necessary to assure that the operator provides the diversity of information sources required by this section.

(3) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by any person who is an operator of more than one cable system, the Commission may also establish any further rule or order necessary to assure that such person provides the diversity of information sources required by this section.

(f) In any action brought under this section in any Federal district court or before the Commission, there shall be a presumption that the price, terms, and conditions for use of channel capacity designated pursuant to subsection (b) are reasonable and in good faith unless shown by clear and convincing evidence to the contrary.

(g) Notwithstanding Sections 621(c) and 623(a), at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources. Any rules promulgated by the Commission pursuant to this subsection shall not preempt authority expressly granted to franchising authorities under this title.

(h) Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgment of the franchising authority or the cable operator is obscene, or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States. This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

(i)(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming source, whether or not such source is affiliated with the cable operator. The channel capacity used to provide programming from a qualified minority programming source or

from any qualified educational programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming or educational programming on that cable system under this subsection.

(2) For purposes of this subsection, the term "qualified minority programming source" means a programming source which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term "minority" is defined in Section 309(i)(3)(c)(ii).

(3) For purposes of this subsection, the term "qualified educational programming source" means a programming source which devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding \$15,000,000. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

(4) Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under Section 615.

(j)(1) Within 120 days following the date of the enactment of this subsection, the Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) by—

(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section;

(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing; and

(C) requiring programmers to inform cable operators if the program would be indecent as defined by Commission regulations.

(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).

#### Ownership restrictions (Sec. 613).

(a) It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator's cable system. The Commission—

(1) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph;

(2) may waive the requirements of this paragraph to the extent the Commission determines it is necessary to ensure that all significant portions of a franchise area are able to obtain video programming; and

(3) shall not apply the requirements of this subsection to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under Section 623(i).

(b) [Repealed]

(c) The Commission may prescribe rules with respect to the ownership or control of cable systems by persons who own or control other media of mass communications which serve the same community served by a cable system.

(d) Any State or franchising authority may not prohibit the ownership or control of a cable system by any person because of such person's ownership or control of any other media of mass communications or other media interests. Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other cable system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction.

(e)(1) Subject to para. (2), a State or franchising authority may hold any ownership interest in any cable system.

(2) Any State or franchising authority shall not exercise any editorial control regarding the content of any cable

service on a cable system in which such governmental entity holds ownership interest (other than programming on any channel designated for educational or governmental use), unless such control is exercised through an entity separate from the franchising authority.

(f)(1) In order to enhance effective competition, the Commission shall, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, conduct a proceeding—

(A) to prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest;

(B) to prescribe rules and regulations establishing reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest; and

(C) to consider the necessary and appropriateness of imposing limitations on the degree to which multichannel video programming distributors may engage in the creation or production of video programming.

(2) In prescribing rules and regulations under paragraph (1), the Commission shall, among other public interest objectives—

(A) ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer;

(B) ensure that cable operators affiliated with video programmers do not favor such programmers in determining carriage on their cable systems or do not unreasonably restrict the flow of the video programming of such programmers to other video distributors;

(C) take particular account of the market structure, ownership patterns, and other relationships of the cable television industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests;

(D) account for any efficiencies and other benefits that might be gained through increased ownership or control;

(E) make such rules and regulations reflect the dynamic nature of the communications marketplace;

(F) not impose limitations which would bar cable operators from serving previously unserved rural areas; and

(G) not impose limitations which would impair the development of diverse and high quality video programming.

(g) This section shall not apply to prohibit any combination of any interests held by any person on July 1, 1984, to the extent of the interests so held as of such date, if the holding of such interests was not inconsistent with any applicable Federal or State law or regulations in effect on that date.

(h) For purposes of this section, the term "media of mass communications" shall have the meaning given such term under Section 309(i)(3)(c)(i) of this Act.

#### Carriage of local commercial television signals (Sec. 614).

(a) Carriage Obligations. Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to Section 325(b).

(b) Signals Required.—

(1) In general. (A) A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

(B) A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.

(2) Selection of signals. Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that—



(A) under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

(B) If the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in §76.53 of Title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

(3) Content to be carried. (A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under §76.67 or Subpart F of Part 76 of Title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

(4) Signal quality.—

(A) Nondegradation; technical specifications. The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

(B) Advanced television. At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

(5) Duplication not required. Notwithstanding paragraph (1), a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a cable operator elects to carry on its cable system a signal which substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the operator is required to carry under paragraph (1).

(6) Channel positioning. Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission.

(7) Signal availability. Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at rates in accordance with Section 623(b)(3).

(8) Identification of signals carried. A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

(9) Notification. A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

(10) Compensation for carriage. A cable operator shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section or for the channel positioning rights provided to such stations under this section, except that—

(A) any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system;

(B) a cable operator may accept payments from stations which would be considered distant signals under Section 111 of Title 17, United States Code, as indemnification for any increased copyright liability resulting from carriage of such signal; and

(C) a cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a cable operator and a local commercial television station entered into prior to June 26, 1990.

(c) Low Power Station Carriage Obligation.—

(1) Requirement. If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b)—

(A) a cable operator of a cable system with a capacity of 35 or fewer usable activated channels shall be required to carry one qualified low power station; and

(B) a cable operator of a cable system with a capacity of more than 35 usable activated channels shall be required to carry two qualified low power stations.

(2) Use of public, educational, or governmental channels. A cable operator required to carry more than one signal of a qualified low power station under this subsection may do so, subject to approval by the franchising authority pursuant to Section 611, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

(d) Remedies.—

(1) Complaints by broadcast stations. Whenever a local commercial television station believes that a cable operator has failed to meet its obligations under this section, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The cable operator shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning in accordance with this section by a cable operator may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

(2) Opportunity to respond. The Commission shall afford such cable operator an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) Remedial actions; dismissal. Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable

operator has fully met the requirements of this section, it shall dismiss the complaint.

(e) Input Selector Switch Rules Abolished. No cable operator shall be required—

(1) to provide or make available any input selector switch as defined in §76.5(mm) of Title 47, Code of Federal Regulations, or any comparable device; or

(2) to provide information to subscribers about input selector switches or comparable devices.

(f) Regulations by Commission. Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section. Such implementing regulations shall include necessary revisions to update §76.51 of Title 47 of the Code of Federal Regulations.

(g) Sales Presentations and Program Length Commercials.—

(1) Carriage pending proceeding. Pending the outcome of the proceeding under paragraph (2), nothing in this Act shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

(2) Proceeding concerning certain stations. Within 270 days after the date of enactment of this section, the Commission, notwithstanding prior proceedings to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity, shall complete a proceeding in accordance with this paragraph to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity. In conducting such proceeding, the Commission shall provide appropriate notice and opportunity for public comment. The Commission shall consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the Commission shall qualify such stations as local commercial television stations for purposes of subsection (a). In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

(h) Definitions.—

(1) Local commercial television station.—

(A) In general. For purposes of this section, the term "local commercial television station" means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of Section 615(f)(1), licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.

(B) Exclusions. The term "local commercial television station" shall not include—

(i) low power television stations, television translator stations, and passive repeaters which operate pursuant to Part 74 of Title 47, Code of Federal Regulations, or any successor regulations thereto;

(ii) a television broadcast station that would be considered a distant signal under Section 111 of Title 17, United States Code, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

(iii) a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of -45 dBm for UHF signals or -49 dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

(C) Market determinations. (i) For purposes of this section, a broadcasting station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns, except that, following a written request, the Commission may, with respect to a particular television broadcast station, in-



clude additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section. In considering such requests, the Commission may determine that particular communities are part of more than one television market.

(i) In considering requests filed pursuant to clause (i), the Commission shall afford particular attention to the value of localism by taking into account such factors as—

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

(II) whether the television station provides coverage or other local service to such community;

(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.

(iii) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this subparagraph.

(iv) Within 120 days after the date on which a request is filed under this subparagraph (or 120 days after the date of enactment of the Telecommunications Act of 1996, if later), the Commission shall grant or deny the request.

(2) Qualified low power station. The term "qualified low power station" means any television broadcast station conforming to the rules established for Low Power Television Stations contained in Part 74 of Title 47, Code of Federal Regulations, only if—

(A) such station broadcasts for at least the minimum number of hours of operation required by the Commission for television broadcast stations under Part 73 of Title 47, Code of Federal Regulations;

(B) such station meets all obligations and requirements applicable to television broadcast stations under Part 73 of Title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;

(C) such station complies with interference regulations consistent with its secondary status pursuant to Part 74 of Title 47, Code of Federal Regulations;

(D) such station is located no more than 35 miles from the cable system's headend, and delivers to the principal headend of the cable system an over-the-air signal of good quality, as determined by the Commission;

(E) the community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

(F) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.

Nothing in this paragraph shall be construed to change the secondary status of any low power station as provided in Part 74 of Title 47, Code of Federal Regulations, as in effect on the date of enactment of this section.

#### Carriage of noncommercial educational television (Sec. 615).

(a) Carriage obligations. In addition to the carriage requirements set forth in Section 614, each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

(b) Requirements to carry qualified stations.—

(1) General requirement to carry each qualified station. Subject to paragraphs (2) and (3) and subsection (e), each cable operator shall carry, on the cable system of that cable operator, any qualified local noncommercial educational television station requesting carriage.

(2)(A) Systems with 12 or fewer channels. Notwithstanding paragraph (1), a cable operator of a cable system with 12 or fewer usable activated channels shall be required to carry the signal of one qualified local noncommercial educational television station; except that a cable operator of such a system shall comply with subsection (c) and may, in its discretion, carry the signals of other qualified noncommercial educational television stations.

(B) In the case of a cable system described in subparagraph (A) which operates beyond the presence of any qualified local noncommercial educational television station—

(i) the cable operator shall import and carry on that system the signal of one qualified noncommercial educational television station;

(ii) the selection for carriage of such a signal shall be at the election of the cable operator; and

(iii) in order to satisfy the requirements for carriage specified in this subsection, the cable operator of the system shall not be required to remove any other programming service actually provided to subscribers on March 29, 1990; except that such cable operator shall use the first channel available to satisfy the requirements of this subparagraph.

(3) Systems with 13 to 36 channels. (A) Subject to subsection (c), a cable operator of a cable system with 13 to 36 usable activated channels—

(i) shall carry the signal of at least one qualified local noncommercial educational television station but shall not be required to carry the signals of more than three such stations, and

(ii) may, in its discretion, carry additional such stations.

(B) In the case of a cable system described in this paragraph which operates beyond the presence of any qualified local noncommercial educational television station, the cable operator shall import and carry on that system the signal of at least one qualified noncommercial educational television station to comply with subparagraph (A)(i).

(c) The cable operator of a cable system described in this paragraph which carries the signal of a qualified local noncommercial educational station affiliated with a State public television network shall not be required to carry the signal of any additional qualified local noncommercial educational television stations affiliated with the same network if the programming of such additional stations is substantially duplicated by the programming of the qualified local noncommercial educational television station receiving carriage.

(D) A cable operator of a system described in this paragraph which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29, 1990, shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e).

(c) Continued carriage of existing stations. Notwithstanding any other provision of this section, all cable operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried on their systems as of March 29, 1990. The requirements of this subsection may be waived with respect to a particular cable operator and a particular such station, upon the written consent of the cable operator and the station.

(d) Placement of additional signals. A cable operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so, subject to approval by the franchising authority pursuant to Section 611, by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

(e) Systems with more than 36 channels. A cable operator of a cable system with a capacity of more than 36 usable activated channels which is required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations the programming of which substantially duplicates the programming broadcast by another qualified local noncommercial educational television station requesting carriage. Substantial duplication shall be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.

(f) Waiver of nonduplication rights. A qualified local noncommercial educational television station whose signal is carried by a cable operator shall not assert any network nonduplication rights it may have pursuant to §76.92 of Title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified

local noncommercial educational television stations whose signals are carried by that cable operator.

(g) Conditions of carriage.—

(1) Content to be carried. A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.

(2) Bandwidth and technical quality. A cable operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

(3) Changes in carriage. The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the cable operator, at least 30 days in advance of such repositioning, has provided written notice to the station and all subscribers of the cable system. For purposes of this paragraph, repositioning includes (A) assignment of a qualified local noncommercial educational television station to a cable system channel number different from the cable system channel number to which the station was assigned as of March 29, 1990, and (B) deletion of the station from the cable system. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

(4) Good quality signal required. Notwithstanding the other provisions of this section, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission.

(5) Channel positioning. Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a qualified local noncommercial educational television station shall be resolved by the Commission.

(h) Availability of signals. Signals carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

(i) Payment for carriage prohibited.—

(1) In general. A cable operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system.

(2) Distant signal exception. Notwithstanding the provisions of this section, a cable operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provision of subsection (c), where such signal would be considered a distant signal for copyright purposes unless such station indemnifies the cable operator for any increased copyright costs resulting from carriage of such signal.

(j) Remedies.—

(1) Complaint. Whenever a qualified local noncommercial educational television station believes that a cable operator of a cable system has failed to comply with the signal carriage requirements of this section, the station may file a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

(2) Opportunity to respond. The Commission shall afford such cable operator an opportunity to present data, views, and arguments to establish that the cable opera-



tor has complied with the signal carriage requirements of this section.

(3) Remedial actions; dismissal. Within 120 days after the date a complaint is filed under this subsection, the Commission shall determine whether the cable operator has complied with the requirements of this section. If the Commission determines that the cable operator has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the cable operator to take such remedial action as is necessary to meet such requirements. If the Commission determines that the cable operator has fully complied with such requirements, the Commission shall dismiss the complaint.

(k) Identification of signals. A cable operator shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

(l) Definitions. For purposes of this section—

(1) Qualified noncommercial educational television station. The term "qualified noncommercial educational television station" means any television broadcast station which—

(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in Section 396(k)(6)(B); or

(B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

Such term includes (I) the translator of any noncommercial educational television station with five watts or higher power serving the franchise area, (II) a full-service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to §73.606 of Title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations.

(2) Qualified local noncommercial educational television station. The term "qualified local noncommercial educational television station" means a qualified noncommercial educational television station—

(A) which is licensed to a principal community whose reference point, as defined in §76.53 of Title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; or

(B) whose Grade B service contour, as defined in §73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the cable system.

**Regulation of carriage agreements (Sec. 616).**

(a) Regulations. Within one year after the date of enactment of this section, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors. Such regulations shall—

(1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;

(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;

(4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;

(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

(6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

(b) Definition. As used in this section, the term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

**Sales of cable systems (Sec. 617).**

A franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.

**General franchise requirements (Sec. 621).**

(a)(1) A franchising authority may award, in accordance with the provisions of this title, one or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of Section 635 for failure to comply with this subsection.

(2) Any franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure:

(A) that the safety, functioning, and appearance of the property and the convenience and safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system;

(B) that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and

(c) that the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator.

(3) In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local cable area in which the group resides.

(4) In awarding a franchise, the franchising authority—  
(A) shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;

(B) may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capability, facilities, or financial support; and

(C) may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.

(b)(1) Except to the extent provided in paragraph (2) and subsection (f), a cable operator may not provide cable service without a franchise.

(2) Paragraph (1) shall not require any person lawfully providing cable service without a franchise on July 1, 1984, to obtain a franchise unless the franchising authority so requires.

(3)(A) If a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

(i) such cable operator or affiliate shall not be required to obtain a franchise under this title for the provision of telecommunications services; and

(ii) the provisions of this title shall not apply to such cable operator or affiliate for the provision of telecommunications services.

(B) A franchising authority may not impose any requirement under this title that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

(C) A franchising authority may not order a cable operator or affiliate thereof—

(i) to discontinue the provision of a telecommunications service, or

(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this title with respect to the provision of such telecommunications service.

(D) Except as otherwise permitted by Sections 611 and 612, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, other than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise.

(c) Any cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.

(d)(1) A State or the Commission may require the filing of informational tariffs for any intrastate communications service provided by a cable system, other than cable service, that would be common carrier subject, in whole or in part, to title II of this Act. Such informational tariffs shall specify the rates, terms and conditions for the provision of such service, including whether it is made available to all subscribers generally, and shall take effect on the date specified therein.

(2) Nothing in this title shall be construed to affect the authority of any State to regulate any cable operator to the extent that such operator provides any communication service other than cable service, whether offered on a common carrier or private contract basis.

(3) For the purposes of this subsection, the term "State" has the meaning given it in section (3).

(e) Nothing in this title shall be construed to affect the authority of any State to license or otherwise regulate any facility or combination of facilities which serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management and which does not use any public right-of-way.

(f) No provision of this Act shall be construed to—

(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the franchise area, notwithstanding the granting of one or more franchises by such franchising authority; or

(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.

**Franchise fees (Sec. 622).**

(a) Subject to the limitation of subsection (b), any cable operator may be required under terms of any franchise to pay a franchise fee.

(b) For any 12-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services. For purposes of this section, the 12-month period shall be the 12-month period applicable under the franchise for accounting purposes. Nothing in this subsection shall prohibit a franchising authority and a cable operator from agreeing that franchise fees which lawfully could be collected for any such 12-month period shall be paid on a prepaid or deferred basis; except that the sum of the fees paid during the term of the franchise may not exceed the amount, including the time value of money, which would have lawfully been collected if such fees had been paid per annum.

(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber.

(d) In any court action under subsection (c), the franchising authority shall demonstrate that the rate structure reflects all costs of the franchise fees.

(e) Any cable operator shall pass through to subscribers the amount of any decrease in the franchise fee.

(f) A cable operator may designate that portion of a subscriber's bill attributable to the franchise fee as a separate item on the bill.

(g) For the purposes of this section:

(1) the term "franchise fee" includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such.

(2) the term "franchise fee" does not include:

(A) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);



(B) in the case of any franchise in effect on the date of the enactment of this title, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities;

(C) in the case of any franchise granted after such date if enactment, capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities;

(D) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(E) any fee imposed under title 17, United States Code.

(h)(1) Nothing in this Act shall be construed to limit any authority of a franchising authority to impose a tax, fee, or other assessment of any kind on any person (other than a cable operator) with respect to cable service or other communications service provided by such person over a cable system for which charges are assessed to subscribers but not received by the cable operator.

(2) For any 12-month period, the fees paid by such person with respect to any such cable service or other communications service shall not exceed 5 percent of such person's gross revenue derived in such period from the provision of such service over the cable system.

(i) Any Federal agency may not regulate the amount of the franchise fees paid by a cable operator, or regulate the use of funds derived from such fees, except as provided in this section.

#### Regulation of rates (Sec. 623).

(a) Competition preference; local and Federal regulation.—

(1) In general. No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and Section 612. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

(2) Preference for competition. If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition—

(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

(B) the rates for cable programming services shall be subject to regulation by the Commission under subsection (c).

(3) Qualification of franchising authority. A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that—

(A) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b);

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

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

(4) Approval by Commission. A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that—

(A) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority do not provide a reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

(5) Revocation of jurisdiction. Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority.

(6) Exercise of jurisdiction by Commission. If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (3). Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

(7) Aggregation of equipment costs.—

(A) In general.—The Commission shall allow cable operators, pursuant to any rules promulgated under subsection (b)(3), to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.

(B) Revision to commission rules; forms.—Within 120 days of the date of enactment of the Telecommunications Act of 1996, the Commission shall issue revisions to the appropriate rules and forms necessary to implement subparagraph (A).

(b) Establishment of basic service tier rate regulations.—

(1) Commission obligation to subscribers. The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition.

(2) Commission regulations. Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission—

(A) shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission;

(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

(c) shall take into account the following factors:

(i) the rates for cable systems, if any, that are subject to effective competition;

(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B), and changes in such costs;

(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

(iv) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

(vii) a reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1).

(3) Equipment. The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for—

(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and

(B) installation and monthly use of connections for additional television receivers.

(4) Costs of franchise requirements. The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

(5) Implementation and enforcement. The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and enforcement of such regulations, which shall include—

(A) procedures by which cable operators may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

(B) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such regulations;

(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section, which standards shall require that charges for changing the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method; and

(D) standards and procedures to assure that subscribers receive notice of the availability of the basic service tier required under this section.

(6) Notice. The procedures prescribed by the Commission pursuant to paragraph (5)(A) shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.

(7) Components of basic tier subject to rate regulation.—

(A) Minimum contents. Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

(i) All signals carried in fulfillment of the requirements of Sections 614 and 615.

(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

(B) Permitted additions to basic tier. A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

(B) Buy-through of other tiers prohibited.—

(A) Prohibition. A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate be-



tween subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

(B) Exception; limitation. The prohibition in subparagraph (A) shall not apply to a cable system that, by reason of the lack of addressable converter boxes or other technological limitations, does not permit the operator to offer programming on a per channel or per program basis in the same manner required by subparagraph (A). This subparagraph shall not be available to any cable operator after—

(i) the technology utilized by the cable system is modified or improved in a way that eliminates such technological limitation; or

(ii) 10 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, subject to subparagraph (c).

(c) Waiver. If, in any proceeding initiated at the request of any cable operator, the Commission determines that compliance with the requirements of subparagraph (A) would require the cable operator to increase its rates, the Commission may, to the extent consistent with the public interest, grant such cable operator a waiver from such requirements for such specified period as the Commission determines reasonable and appropriate.

(c) Regulation of unreasonable rates.—

(1) Commission regulations. Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

(A) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for cable programming services that are unreasonable;

(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any franchising authority (in accordance with paragraph (3)) alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of the first complaint filed with the franchising authority under paragraph (3) and that are determined to be unreasonable.

(2) Factors to be considered. In establishing the criteria for determining in individual cases whether rates for cable programming services are unreasonable under paragraph (1)(A), the Commission shall consider, among other factors—

(A) the rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers and other relevant factors;

(B) the rates for cable systems, if any, that are subject to effective competition;

(C) the history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

(D) the rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

(E) capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

(F) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration, obtained in connection with the cable programming services concerned.

(3) Review of rate changes.—The Commission shall review any complaint submitted by a franchising authority after the date of enactment of the Telecommunications Act of 1996 concerning an increase in rates for cable programming services and issue a final order within 90 days after it receives such a complaint, unless the parties agree to extend the period for such review. A franchising authority may not file a complaint under this paragraph unless, within 90 days after such increase becomes effective it receives subscriber complaints.

(4) Sunset of upper tier rate regulation.—This subsection shall not apply to cable programming services provided after March 31, 1999.

(d) Uniform rate structure required. - A cable operator shall have a rate structure, for the provision of cable serv-

ice, that is uniform throughout the geographic area in which cable service is provided over its cable system. This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

(e) Discrimination; services for the hearing impaired. Nothing in this title shall be construed as prohibiting any Federal agency, State, or a franchising authority from—

(1) prohibiting discrimination among subscribers and potential subscribers to cable service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or

(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.

(f) Negative option billing prohibited. A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

(g) Collection of information. The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

(h) Prevention of evasions. Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

(i) Small system burdens. In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

(j) Rate regulation agreements. During the term of an agreement made before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, nothing in this section (or the regulations thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.

(k) Reports on average prices. The Commission shall annually publish statistical reports on the average rates for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment, of—

(1) cable systems that the Commission has found are subject to effective competition under subsection (a)(2), compared with

(2) cable systems that the Commission has found are not subject to such effective competition.

(l) Definitions. As used in this section—

(1) The term "effective competition" means that—

(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;

(B) the franchise area is—

(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area;

(C) a multichannel video programming distributor operated by the franchising authority for that franchise area

offers video programming to at least 50 percent of the households in that franchise area; or

(D) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

(2) The term "cable programming service" means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis.

(m) Special Rules for Small Companies.—

(1) In general.—Subsections (a), (b), and (c) do not apply to a small cable operator with respect to—

(A) cable programming services, or

(B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994, in any franchise area in which that operator services 50,000 or fewer subscribers.

(2) Definition of small cable operator.—For purposes of this subsection, the term "small cable operator" means a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.

(n) Treatment of Prior Year Losses.—Notwithstanding any other provision of this section or of Section 612, losses associated with a cable system (including losses associated with the grant or award of a franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation under this section are lawful.

**Regulation of services, facilities, and equipment (Sec. 624).**

(a) Any franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this title.

(b) In the case of any franchise granted after the effective date of this title, the franchising authority, to the extent related to the establishment or operation of a cable system:

(1) in its request for proposals for a franchise (including requests for renewal proposals, subject to section 626), may establish requirements for facilities and equipment, but may not, except as provided in subsection (h), establish requirements for video programming or other information services; and

(2) subject to section 625, may enforce any requirements contained within the franchise:

(A) for facilities and equipment; and

(B) for broad categories of video programming or other services.

(c) In the case of franchise in effect on the effective date of this title, the franchising authority may, subject to section 625, enforce requirements contained within the franchise for the provision of services, facilities, and equipment, whether or not related to the establishment or operation of a cable system.

(d)(1) Nothing in this title shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the Constitution of the United States.

(2) In order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

(3)(A) If a cable operator provides a premium channel without charge to cable subscribers who do not subscribe to such premium channel, the cable operator shall, not later than 30 days before such premium channel is provided without charge—

(i) notify all cable subscribers that the cable operator plans to provide a premium channel without charge;

(ii) notify all cable subscribers when the cable operator plans to offer a premium channel without charge;



(iii) notify all cable subscribers that they have a right to request that the channel carrying the premium channel be blocked; and

(iv) block the channel carrying the premium channel upon the request of a subscriber.

(B) For the purpose of this section, the term "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC-17, or R.

(e) Within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems' technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. 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.

(f)(1) Any Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided in this title.

(2) Paragraph (1) shall not apply to:

(A) any rule, regulation, or order issued under any Federal law, as such rule, regulation, or order (i) was in effect on September 21, 1983, or (ii) may be amended after such date if the rule, regulation, or order as amended is not inconsistent with the express provisions of this title; and

(B) any rule, regulation, or order under title 17, United States Code.

(g) Notwithstanding any such rule, regulation, or order, each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in Subpart G of Part 73, Title 47, Code of Federal Regulations.

(h) A franchising authority may require a cable operator to do any one or more of the following:

(1) Provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority.

(i) Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.

#### Consumer electronics equipment compatibility (Sec. 624A).

(a) Findings. The Congress finds that—

(1) new and recent models of television receivers and video cassette recorders often contain premium features and functions that are disabled or inhibited because of cable scrambling, encoding, or encryption technologies and devices, including converter boxes and remote control devices required by cable operators to receive programming;

(2) if these problems are allowed to persist, consumers will be less likely to purchase, and electronics equipment manufacturers will be less likely to develop, manufacture, or offer for sale, television receivers and video cassette recorders with new and innovative features and functions; and

(3) cable operators should use technologies that will prevent signal thefts while permitting consumers to benefit from such features and functions in such receivers and recorders.

(4) compatibility among televisions, video cassette recorders, and cable systems can be assured with narrow technical standards that mandate a minimum degree of common design and operation, leaving all features, functions, protocols, and other product and service options for selection through open competition in the market.;

(b) Compatible interfaces.—

(1) Report; regulations. Within 1 year after the date of enactment of this section, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to Congress on means of assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and video cas-

sette recorders. Within 180 days after the date of submission of the report required by this subsection, the Commission shall issue such regulations as are necessary to assure such compatibility.

(2) Scrambling and encryption. In issuing the regulations referred to in paragraph (1), the Commission shall determine whether and, if so, under what circumstances to permit cable systems to scramble or encrypt signals or to restrict cable systems in the manner in which they encrypt or scramble signals, except that the Commission shall not limit the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers' television receivers or video cassette recorders.

(c) Rulemaking requirements.—

(1) Factors to be considered. In prescribing the regulations required by this section, the Commission shall consider—

(A) the need to maximize open competition in the market for all features, functions, protocols, and other product and service options of converter boxes and other cable converters unrelated to the scrambling or decryption of cable television signals; and

(B) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers in a manner that, while providing effective protection against theft or unauthorized reception of cable service, will minimize interference with or nullification of the special functions of subscribers' television receivers or video cassette recorders, including functions that permit the subscriber—

(i) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

(ii) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

(iii) to use advanced television picture generation and display features; and

(C) the need for cable operators to protect the integrity of the signals transmitted by the cable operator against theft or to protect such signals against unauthorized reception.

(2) Regulations required. The regulations prescribed by the Commission under this section shall include such regulations as are necessary—

(A) to specify the technical requirements with which a television receiver or video cassette recorder must comply in order to be sold as "cable compatible" or "cable ready";

(B) to require cable operators offering channels whose reception requires a converter box

(i) to notify subscribers that they may be unable to benefit from the special functions of their television receivers and video cassette recorders, including functions that permit subscribers—

(I) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

(II) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

(III) to use advanced television picture generation and display features; and

(ii) to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers' television receivers or video cassette recorders without passing through the converter box;

(C) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxes and of remote control devices compatible with converter boxes;

(D) to ensure that any standards or regulations developed under the authority of this section to ensure compatibility between televisions, video cassette recorders, and cable systems do not affect features, functions, protocols, and other product and service options other than those specified in paragraph (1)(B), including telecommunications interface equipment, home automation communications, and computer network services;

(E) to require a cable operator who offers subscribers the option of renting a remote control unit—

(i) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and

(ii) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

(F) to prohibit a cable operator from taking any action that prevents or in any way disables the converter box

supplied by the cable operator from operating compatibly with commercially available remote control units.

(d) Review of regulations. The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.

#### Modification of franchise obligations (Sec. 625).

(a)(1) During the period a franchise is in effect, the cable operator may obtain from the franchising authority modifications of the requirements of the franchise:

(A) in the case of any such requirements for facilities or equipment, including public, educational, or governmental access facilities or equipment, if the cable operator demonstrates that (i) it is commercially impracticable for the operator to comply with such requirement, and (ii) the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability; or

(B) in the case of any such requirement for services, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

(2) Any final decision by a franchising authority under this subsection shall be made in a public proceeding. Such decision shall be made within 120 days after receipt of such request by the franchising authority, unless such 120 day period is extended by mutual agreement of the cable operator and the franchising authority.

(b)(1) Any cable operator whose request for modification under subsection (a) has been denied by a final decision of a franchising authority may obtain modification of such franchise requirements pursuant to the provisions of section 635.

(2) In the case of any proposed modification of a requirement for facilities or equipment, the court shall grant such modification only if the cable operator demonstrates to the court that:

(A) it is commercially impracticable for the operator to comply with such requirement; and

(B) the terms of the modification requested are appropriate because of commercial impracticability.

(3) In the case of any proposed modification of a requirement for services, the court shall grant such modification only if the cable operator demonstrates to the court that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

(c) Notwithstanding subsections (a) and (b), a cable operator may, upon 30 days' advance notice to the franchising authority, rearrange, replace, or remove a particular cable service required by the franchise if:

(1) such service is no longer available to the operator; or

(2) such service is available to the operator only upon the payment of a royalty required under section 801(b)(2) of title 17, United States Code, which the cable operator can document:

(A) is substantially in excess of the amount of such payment required on the date of the operator's offer to provide such service; and

(B) has not been specifically compensated for through a rate increase or other adjustment.

(d) Notwithstanding subsections (a) and (b), a cable operator may take such actions to rearrange a particular service from one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation under section 623.

(e) A cable operator may not obtain modification under this section of any requirement for services relating to public, educational, or governmental access.

(f) For the purposes of this section, the term "commercially impracticable" means, with respect to any requirement applicable to a cable operator, that it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.

#### Renewal (Sec. 626).

(a)(1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then cur-



rent franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

(2) The cable operator may not invoke the renewal procedures set forth in subsections (b) through (g) unless—

(a) such a proceeding is requested by the cable operator by timely submission of such notice; or

(B) such a proceeding is commenced by the franchising authority on its own initiative.

(b)(1) Upon completion of a proceeding under subsection (a), a cable operator seeking renewal of a franchise may, on its own initiative or at the request of a franchising authority, submit a proposal for renewal.

(2) Subject to Section 624, any such proposal shall contain such material as the franchising authority may require, including proposals for an upgrade of the cable system.

(3) The franchising authority may establish a date by which such proposal shall be submitted.

(c)(1) Upon submission by a cable operator of a proposal to the franchising authority for the renewal of a franchise, pursuant to subsection (b) the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b), renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with para. (2) to consider whether

(A) the cable operator has substantially complied with the material terms of the existing franchise with applicable law;

(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

(2) In any proceeding under para. (1), the cable operator shall be afforded adequate notice and the cable operator and the franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (a)), to require the production of evidence, and to question witnesses; and a transcript shall be made of any such proceeding.

(3) At the completion of a proceeding under this subsection, the franchising authority shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

(d) Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c)(1), pursuant to the record of the proceeding under subsection (c). A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) or on events considered under subsection (c)(1)(B) in any case in which a violation of the franchise or the events considered under subsection (c)(1)(B) occur after the effective date of this title unless the franchising authority has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the franchising authority has waived its right to object, or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice.

(e)(1) Any cable operator whose proposal for renewal has been denied by a final decision of a franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of Section 635.

(2) The court shall grant appropriate relief if the court finds that—

(A) any action of the franchising authority, other than harmless error, is not in compliance with the procedural requirements of this section; or

(B) in the event of a final decision of the franchising authority denying the renewal proposal, the operator has demonstrated that the adverse finding of the franchising authority with respect to each of the factors described in subparagraphs (A) through (D) of subsection (c)(1) on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection (c).

(f) Any decision of a franchising authority on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred or the opportunity therefor has lapsed.

(g) For purposes of this section, the term "franchise expiration" means the date of the expiration of the term of the franchise, as provided under the franchise, as it was in effect on the date of the enactment of this title.

(h) Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (a) through (g) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (g).

(i) Notwithstanding the provisions of subsections (a) through (h), any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section.

**Conditions of sale (Sec. 627).**

(a) If a renewal of a franchise held by a cable operator is denied and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be—

(1) at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself; or

(2) in the case of any franchise existing on the effective date of this title, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

(b) If a franchise held by a cable operator is revoked for cause and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be—

(1) at an equitable price; or

(2) in the case of any franchise existing on the effective date of this title, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

**Development of competition and diversity in video programming distribution (Sec. 628).**

(a) Purpose. - The purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies.

(b) Prohibition. - It shall be unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

(c) Regulations required.

(1) Proceeding required. - Within 180 days after the date of enactment of this section, the Commission shall, in order to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market and the continuing development of communications technologies, prescribe regulations to specify particular conduct that is prohibited by subsection (b).

(2) Minimum contents of regulations. - The regulations to be promulgated under this section shall—

(A) establish effective safeguards to prevent a cable operator which has an attributable interest in a satellite

cable programming vendor or a satellite broadcast programming vendor from unduly or improperly influencing the decision of such vendor to sell, or the prices, terms, and conditions of sale of, satellite cable programming or satellite broadcast programming to any unaffiliated multichannel video programming distributor;

(B) prohibit discrimination by a satellite cable programming vendor in which a cable operator has an attributable interest or by a satellite broadcast programming vendor in the prices, terms, and conditions of sale or delivery of satellite cable programming or satellite broadcast programming among or between cable systems, cable operators, or other multichannel video programming distributors, or their agents or buying groups; except that such a satellite cable programming vendor in which a cable operator has an attributable interest or such a satellite broadcast programming vendor shall not be prohibited from—

(i) imposing reasonable requirements for creditworthiness, offering of service, and financial stability and standards regarding character and technical quality;

(ii) establishing different prices, terms, and conditions to take into account actual and reasonable differences in the cost of creation, sale, delivery, or transmission of satellite cable programming or satellite broadcast programming;

(iii) establishing different prices, terms, and conditions which take into account economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor; or

(iv) entering into an exclusive contract that is permitted under subparagraph (D);

(C) prohibit practices, understandings, arrangements, and activities, including exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor or satellite broadcast programming vendor, that prevent a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest or any satellite broadcast programming vendor in which a cable operator has an attributable interest for distribution to persons in areas not served by a cable operator as of the date of enactment of this section; and

(D) with respect to distribution to persons in areas served by a cable operator, prohibit exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, unless the Commission determines (in accordance with paragraph (4)) that such contracts in the public interest.

(3) Limitations.

(A) Geographic limitations. - Nothing in this section shall require any person who is engaged in the national or regional distribution of video programming to make such programming available in any geographic area beyond which such programming has been authorized or licensed for distribution.

(B) Applicability to satellite retransmissions. - Nothing in this section shall apply (i) to the signal of any broadcast affiliate of a national television network or other television signal that is retransmitted by satellite but that is not satellite broadcast programming, or (ii) to any internal satellite communication of any broadcast network or cable network that is not satellite broadcast programming.

(4) Public interest determinations on exclusive contracts. - In determining whether an exclusive contract is in the public interest for purposes of paragraph (2)(D), the Commission shall consider each of the following factors with respect to the effect of such contract on the distribution of video programming in areas that are served by a cable operator;

(A) the effect of such exclusive contract on the development of competition in local and national multichannel video programming distribution markets;

(B) the effect of such exclusive contract on competition from multichannel video programming distribution technologies other than cable;

(C) the effect of such exclusive contract on the attraction of capital investment in the production and distribution of new satellite cable programming;

(D) the effect of such exclusive contract on diversity of programming in the multichannel video programming distribution market; and

(E) the duration of the exclusive contract.

(5) Sunset provision. - The prohibition required by paragraph (2)(D) shall cease to be effective 10 years after the date of enactment of this section, unless the



Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

(d) **Adjudicatory proceeding.** - Any multichannel video programming distributor aggrieved by conduct that it alleges constitutes a violation of subsection (b), or the regulations of the Commission under subsection (c), may commence an adjudicatory proceeding at the Commission.

(e) **Remedies for violations.**

(1) **Remedies authorized.** - Upon completion of such adjudicatory proceeding, the Commission shall have the power to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming to the aggrieved multichannel video programming distributor.

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

(f) **Procedures.** - The Commission shall prescribe regulations to implement this section. The Commission's regulations shall—

(1) provide for an expedited review of any complaints made pursuant to this section;

(2) establish procedures for the Commission to collect such data, including the right to obtain copies of all contracts and documents reflecting arrangements and understandings alleged to violate this section, as the Commission requires to carry out this section; and

(3) provide for penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

(g) **Reports.** - The Commission shall, beginning not later than 18 months after promulgation of the regulations required by subsection (c), annually report to Congress on the status of competition in the market for the delivery of video programming.

(h) **Exemptions for prior contracts.**

(1) **In general.** - Nothing in this section shall affect any contract that grants exclusive distribution rights to any person with respect to satellite cable programming and that was entered into on or before June 1, 1990, except that the provisions of subsection (c)(2)(C) shall apply for distribution to persons in areas not served by a cable operator.

(2) **Limitation on renewals.** - A contract that was entered into on or before June 1, 1990, but that is renewed or extended after the date of enactment of this section shall not be exempt under paragraph (1).

(i) **Definitions.** - As used in this section:

(1) The term "satellite cable programming" has the meaning provided under Section 705 of this Act, except that such term does not include satellite broadcast programming.

(2) The term "satellite cable programming vendor" means a person engaged in the production, creation, or wholesale distribution for sale of satellite cable programming, but does not include a satellite broadcast programming vendor.

(3) The term "satellite broadcast programming" means broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.

(4) The term "satellite broadcast programming vendor" means a fixed service satellite carrier that provides service pursuant to Section 119 of Title 17, United States Code, with respect to satellite broadcast programming.

(j) **Common Carriers.**—Any provision that applies to a cable operator under this section shall apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall apply to any satellite cable programming vendor in which such common carrier has an attributable interest. For the purposes of this subsection, two or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in a satellite cable programming vendor (or its parent company).

#### **Competitive Availability of Navigation Devices (Sec. 629).**

(a) **Commercial Consumer Availability of Equipment Used To Access Services Provided by Multichannel Video Programming Distributors.**—The Commission shall, in consultation with appropriate industry standard-setting organizations, adopt regulations to assure the commercial availability, to consumers of multichannel

video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. Such regulations shall not prohibit any multichannel video programming distributor from also offering converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, to consumers, if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service.

(b) **Protection of System Security.**—The Commission shall not prescribe regulations under subsection (a) which would jeopardize security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service.

(c) **Waiver.**—The Commission shall waive a regulation adopted under subsection (a) for a limited time upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider, that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Upon an appropriate showing, the Commission shall grant any such waiver request within 90 days of any application filed under this subsection, and such waiver shall be effective for all service providers and products in that category and for all providers of services and products.

(d) **Avoidance of Redundant Regulations.**—

(1) **Commercial availability determinations.**—Determinations made or regulations prescribed by the Commission with respect to commercial availability to consumers of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, before the date of enactment of the Telecommunications Act of 1996 shall fulfill the requirements of this section.

(2) **Regulations.**—Nothing in this section affects Section 64.702(e) of the Commission's regulations (47 CFR §64.702(e)) or other Commission regulations governing interconnection and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

(e) **Sunset.**—The regulations adopted under this section shall cease to apply when the Commission determines that—

(1) the market for the multichannel video programming distributors is fully competitive;

(2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and

(3) elimination of the regulations would promote competition and the public interest.

(f) **Commission's Authority.**—Nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before the date of enactment of the Telecommunications Act of 1996.

#### **Protection of Subscriber Privacy (Sec. 631).**

(a)(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the cable operator;

(D) the times and place at which the subscriber may have access to such information in accordance with subsection (d); and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h)—

(A) the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;

(B) the term "other service" includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term "cable operator" includes, in addition to persons within the definition of cable operator in Section 602, any person who (i) is owned or controlled by, or under common ownership or control with a cable operator, and (ii) provides any wire or radio communications service.

(b)(1) Except as provided in paragraph (2), a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(2) A cable operator may use the cable system to collect such information in order to—

(A) obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

(B) detect unauthorized reception of cable communications.

(c)(1) Except as provided in paragraph (2), a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

(2) A cable operator may disclose such information if the disclosure is—

(A) necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the subscriber;

(B) subject to subsection (h), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed; or

(C) a disclosure of the names and addresses of subscribers to any cable service or other service, if—

(i) the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the—

(I) extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator; or

(II) the nature of any transaction made by the subscriber over the cable system of the cable operator.

(d) A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

(e) A cable operator shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) or pursuant to a court order.

(f)(1) Any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in a United States district court.



## Cable Regulations

(2) The court may award —

(A) actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorney's fees and other litigation costs reasonably incurred.

(3) The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.

(g) Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(h) A governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order —

(1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

### Consumer Protection and Customer Service (Sec. 632).

(a) Franchising authority enforcement. - A franchising authority may establish and enforce —

(1) customer service requirements of the cable operator; and

(2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator.

(b) Commission standards. - The Commission shall, within 180 days of enactment of the Cable Television Consumer Protection and Competition Act of 1992, establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing —

(1) cable system office hours and telephone availability;

(2) installations, outages, and service calls; and

(3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

(c) Subscriber Notice.—A cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion. Notwithstanding Section 623(b)(6) or any other provision of this Act, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

(d) Consumer protection laws and customer service agreements. —

(1) Consumer protection laws. - Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title.

### Unauthorized Reception of Cable Service (Sec. 633).

(a)(1) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.

(2) For the purpose of this section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception or any communications service offered over a cable system in violation of subparagraph (1).

(b)(1) Any person who willfully violates subsection (a)(1) shall be fined not more than \$1,000 or imprisoned for not more than 6 months, or both.

(2) Any person who violates subsection (a)(1) willfully and for purposes of commercial advantage or private financial gain shall be fined not more than \$50,000 or

imprisoned for not more than 2 years, or both, for the first offense and shall be fined not more than \$100,000 or imprisoned for not more than 5 years, or both, for any subsequent offense.

(3) For purposes of all penalties and remedies established for violations of subsection (a)(1), the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.

(c)(1) Any person aggrieved by any violation of subsection (a)(1) may bring a civil action in a United States district court or in any other court of competent jurisdiction.

(2) The court may —

(A) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (a)(1);

(B) award damages as described in paragraph (3); and

(C) direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails.

(3)(A) Damages awarded by any court under this section shall be computed in accordance with either of the following clauses:

(i) the party aggrieved may recover the actual damages suffered by him as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation; or

(ii) the party aggrieved may recover an award of statutory damages for all violations involved in the action, in a sum of not less than \$250 or more than \$10,000 as the court considers just.

(B) In any case in which the court finds that the violation was committed willfully and for purposes of commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory under subparagraph (A), by an amount of not more than \$50,000.

(C) In any case where the court finds that the violator was not aware and had no reason to believe that his acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than \$100.

(D) Nothing in this title shall prevent any State or franchising authority from enacting or enforcing laws, consistent with this section, regarding the unauthorized interception or reception of any cable service or other communications service.

### Equal Employment Opportunity (Sec. 634).

(a) This section shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system.

(b) Equal opportunity in employment shall be afforded by each entity specified in subsection (a), and no person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age or sex.

(c) Any entity specified in subsection (a) shall establish, maintain, and execute a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of its employment policies and practices. Under the terms of its program, each such entity shall —

(1) define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;

(3) communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, age, or sex, and solicit their recruitment assistance on a continuing basis;

(4) conduct a continuing program to exclude every form of prejudice or discrimination based on race, color, religion, national origin, age, or sex, from its personnel policies and practices and working conditions; and

(5) conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all its organizational units, occupations, and levels of responsibility.

(d)(1) Not later than 270 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, and after notice and opportunity for hearing, the Commission shall prescribe revisions in the rules under this section in order to implement the amendments made to this section by such Act. Such revisions shall be designed to promote equality of employment opportunities for females and minorities in each of the job categories itemized in paragraph (3).

(2) Such rules shall specify the terms under which an entity specified in subsection (a) shall, to the extent possible —

(A) disseminate its equal opportunity program to job applicants, employees, and those with whom it regularly does business;

(B) use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applicants, to supply referrals whenever jobs are available in its operation;

(C) evaluate its employment profile and job turnover against the availability of minorities and women in its franchise area;

(D) undertake to offer promotions of minorities and women to positions of greater responsibility;

(E) encourage minority and female entrepreneurs to conduct business with all parts of its operation; and

(F) analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women and explain any difficulties encountered in implementing its equal employment opportunity program.

(3)(A) Such rules also shall require an entity specified in subsection (a) with more than 5 full-time employees to file with the Commission an annual statistical report identifying by race, sex, and job title the number of employees in each of the following full-time and part-time job categories:

(i) Corporate officers.

(ii) General Manager.

(iii) Chief Technician.

(iv) Comptroller.

(v) General Sales Manager.

(vi) Production Manager.

(vii) Managers.

(viii) Professionals.

(ix) Technicians.

(x) Sales Personnel.

(xi) Office and Clerical Personnel.

(xii) Skilled Craftspersons.

(xiii) Semiskilled Operatives.

(xiv) Unskilled Laborers.

(xv) Service Workers.

(B) The report required by subparagraph (A) shall be made on separate forms, provided by the Commission, for full-time and part-time employees. The Commission's rules shall sufficiently define the job categories listed in clauses (i) through (vi) of such subparagraph so as to ensure that only employees who are principal decisionmakers and who have supervisory authority are reported for such categories. The Commission shall adopt rules that define the job categories listed in clauses (vii) through (xv) in a manner that is consistent with the Commission policies in effect on June 1, 1990. The Commission shall prescribe the method by which entities shall be required to compute and report the number of minorities and women in the job categories listed in clauses (i) through (x) and the number of minorities and women in the job categories listed in clauses (i) through



(xv) in proportion to the total number of qualified minorities and women in the relevant labor market. The report shall include information on hiring, promotion, and recruitment practices necessary for the Commission to evaluate the efforts of entities to comply with the provisions of paragraph (2) of this subsection. The report shall be available for public inspection at the entity's central location and at every location where 5 or more full-time employees are regularly assigned to work. Nothing in this subsection shall be construed as prohibiting the Commission from collecting or continuing to collect statistical or other employment information in a manner that it deems appropriate to carry out this section.

(4) The Commission may amend such rules from time to time to the extent necessary to carry out the provisions of this section. Any such amendment shall be made after notice and opportunity for comment.

(e)(1) On an annual basis, the Commission shall certify each entity described in subsection (a) as in compliance with this section if, on the basis of information in the possession of the Commission, including the report filed pursuant to subsection (d)(3), such entity was in compliance, during the annual period involved, with the requirements of subsections (b), (c), and (d).

(2) The Commission shall, periodically but not less frequently than every five years, investigate the employment practices of each entity described in subsection (a), in the aggregate, as well as in individual job categories, and determine whether such entity is in compliance with the requirements of subsections (b), (c), and (d), including whether such entity's employment practices deny or abridge women's and minorities' equal employment opportunities. As part of such investigation, the Commission shall review whether the entity's reports filed pursuant to subsection (d)(3) accurately reflect employee responsibilities in the reported job classifications.

(f)(1) If the Commission finds after notice and hearing that the entity involved has willfully or repeatedly without good cause failed to comply with the requirements of this section, such failure shall constitute a substantial failure to comply with this title. The failure to obtain certification under subsection (e) shall not itself constitute the basis for a determination of substantial failure to comply with this title. For purposes of this paragraph, the term "repeatedly," when used with respect to failures to comply, refers to three or more failures during any 7-year period.

(2) Any person who is determined by the Commission, through an investigation pursuant to subsection (e) or otherwise, to have failed to meet or failed to make best efforts to meet the requirements of this section, or rules under this section, shall be liable to the United States for a forfeiture penalty of \$500 for each violation. Each day of a continuing violation shall constitute a separate offense. Any entity defined in subsection (a) shall not be liable for more than 180 days of forfeitures which accrued prior to notification by the Commission of a potential violation. Nothing in this paragraph shall limit the forfeiture imposed on any person as a result of any violation that continues subsequent to such notification. In addition, any person liable for such penalty may also have any license under this Act for cable auxiliary relay service suspended until the Commission determines that the failure involved has been corrected. Whoever knowingly makes any false statement or submits documentation which he knows to be false, pursuant to an application for certification under this section shall be in violation of this section.

(3) The provisions of paragraphs (3) and (4), and the last 2 sentences of paragraph (2), of Section 503(b) shall apply to forfeitures under this subsection.

(4) The Commission shall provide for notice to the public and appropriate franchising authorities of any penalty imposed under this section.

(g) Employees or applicants for employment who believe they have been discriminated against in violation of the requirements of this section, or rules under this section, or any other interested person, may file a complaint with the Commission. A complaint by any such person shall be in writing, and shall be signed and sworn to by that person. The regulations under subsection (d)(1) shall specify a program, under authorities otherwise available to the Commission, for the investigation of complaints and violations, and for the enforcement of this section.

(h)(1) For purposes of this section, the term "cable operator" includes any operator of any satellite messenger antenna television system, including a system described in Section 602(7)(A) and any multichannel video programming distributor.

(2) Such term does not include any operator of a system which, in the aggregate, serves fewer than 50 subscribers.

(3) In any case in which a cable operator is the owner of a multiple unit dwelling, the requirements of this section shall only apply to such cable operator with respect to its employees who are primarily engaged in cable telecommunications.

(i)(1) Nothing in this section shall affect the authority of any State or any franchising authority —

(A) to establish or enforce any requirement which is consistent with the requirements of this section, including any requirement which affords equal employment opportunity protection for employees;

(B) to establish or enforce any provision requiring or encouraging any cable operator to conduct business with enterprises which are owned or controlled by members of minorities groups (as defined in Section 309(i)(3)(C)(ii) or which have their principal operations located within the community served by the cable operator; or

(C) to enforce any requirement of a franchise in effect on the effective date of this title.

(2) The remedies and enforcement provisions of this section are in addition to, and not in lieu of, those available under this or any other law.

(3) The provisions of this section shall apply to any cable operator, whether operating pursuant to a franchise granted before, on, or after the date of the enactment of this section.

#### Judicial Proceedings (Sec. 635).

(a) Any cable operator adversely affected by any final determination made by a franchising authority under Section 621(a)(1), 625 or 626 may commence an action within 120 days after receiving notice of such determination, which may be brought in —

(1) the district court of the United States for any judicial district in which the cable system is located; or

(2) in any State court of general jurisdiction having jurisdiction over the parties.

(b) The court may award any appropriate relief consistent with the provisions of the relevant section described in subsection (a) and with the provisions of subsection (a).

(c)(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of Section 614 or 615 of this Act or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of Section 2284 of Title 28, United States Code.

(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding Section 614 or 615 of this Act or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.

#### Limitation of Franchising Authority Liability (Sec. 635A).

(a) Suits for damages prohibited. - In any court proceeding pending on or initiated after the date of enactment of this section involving any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

(b) Exception for completed cases. - The limitation contained in subsection (a) shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of a cable operator's rights.

(c) Discrimination claims permitted. - Nothing in this section shall be construed as limiting the relief authorized with respect to any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, to the extent such claim involves discrimination on the basis of

race, color, sex, age, religion, national origin, or handicap.

(d) Rule of construction. - Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by any franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity.

#### Coordination of Federal, State, and Local Authority (Sec. 636).

(a) Nothing in this title shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare, to the extent consistent with the express provisions of this title.

(b) Nothing in this title shall be construed to restrict a State from exercising jurisdiction with regard to cable services consistent with this title.

(c) Except as provided in Section 637, any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this Act shall be deemed to be preempted and superseded.

(d) For purposes of this section, the term "State" has the meaning given such term in Section 3.

#### Existing Franchise (Sec. 637).

(a) The provisions of —

(1) any franchise in effect on the effective date of this title, including any such provisions which relate to the designation, use, or support for the use of channel capacity for public, educational, or governmental use; and

(2) any law or any State (as defined in Section 3) in effect on the date of the enactment of this section, or any regulation promulgated pursuant to such law, which relates to such designation, use or support of such channel capacity, shall remain in effect, subject to the express provisions of this title, and for not longer than the current remaining term of the franchise as such franchise existed on such effective date.

(b) For purposes of subsection (a) and other provisions of this title, a franchise shall be considered in effect on the effective date of this title if such franchise was granted on or before such effective date.

#### Criminal and Civil Liability (Sec. 638).

Nothing in this title shall be deemed to affect the criminal or civil liability of cable programmers or cable operators pursuant to the Federal, State, or local law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that cable operators shall not incur any such liability for any program carried on any channel designated for public, educational, governmental use or on any other channel obtained under Section 612 or under similar arrangements unless the program involves obscene material.

#### Obscene Programming (Sec. 639).

Whoever transmits over any cable system any matter which is obscene or otherwise unprotected by the Constitution of the United States shall be fined under Title 18, United States Code or imprisoned not more than 2 years, or both.

#### Scrambling of Cable Channels for Nonsubscribers (Sec. 640).

(a) Subscriber Request.—Upon request by a cable service subscriber, a cable operator shall, without charge, fully scramble or otherwise fully block the audio and video programming of each channel carrying such programming so that one not a subscriber does not receive it.

(b) Definition.—As used in this section, the term "scramble" means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.

#### Scrambling of Sexually Explicit Adult Video Service Programming (Sec. 641).

(a) Requirement.—In providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming, a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portion of such channel



## Cable Regulations

so that one not a subscriber to such channel or programming does not receive it.

(b) **Implementation.**—Until a multichannel video programming distributor complies with the requirement set forth in subsection (a), the distributor shall limit the access of children to the programming referred to in that subsection by not providing such programming during the hours of the day (as determined by the Commission) when a significant number of children are likely to view it.

(c) **Definition.**—As used in this section, the term "scramble" means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.

### Regulatory Treatment of Video Programming Services (Sec. 651).

#### (a) Limitations on Cable Regulation.—

(1) **Radio-based systems.**—To the extent that a common carrier (or any other person) is providing video programming to subscribers using radio communication, such carrier (or other person) shall be subject to the requirements of title III and Section 652, but shall not otherwise be subject to the requirements of this title.

(2) **Common carriage of video traffic.**—To the extent that a common carrier is providing transmission of video programming on a common carrier basis, such carrier shall be subject to the requirements of title II and Section 652, but shall not otherwise be subject to the requirements of this title.

This paragraph shall not affect the treatment under Section 602(7)(C) of a facility of a common carrier as a cable system.

(3) **Cable systems and open video systems.**—To the extent that a common carrier is providing video programming to its subscribers in any manner other than that described in paragraphs (1) and (2)—

(A) such carrier shall be subject to the requirements of this title, unless such programming is provided by means of an open video system for which the Commission has approved a certification under Section 653; or

(B) if such programming is provided by means of an open video system for which the Commission has approved a certification under Section 653, such carrier shall be subject to the requirements of this part, but shall be subject to parts I through IV of this title only as provided in 653(c).

(4) **Election to operate as open video system.**—A common carrier that is providing video programming in a manner described in paragraph (1) or (2), or a combination thereof, may elect to provide such programming by means of an open video system that complies with Section 653. If the Commission approves such carrier's certification under Section 653, such carrier shall be subject to the requirements of this part, but shall be subject to parts I through IV of this title only as provided in 653(c).

(b) **Limitations on Interconnection Obligations.**—A local exchange carrier that provides cable service through an open video system or a cable system shall not be required, pursuant to title II of this Act, to make capacity available on a nondiscriminatory basis to any other person for the provision of cable service directly to subscribers.

(c) **Additional Regulatory Relief.**—A common carrier shall not be required to obtain a certificate under Section 214 with respect to the establishment or operation of a system for the delivery of video programming.

### Prohibition on Buy-Outs (Sec. 652).

(a) **Acquisitions by Carriers.**—No local exchange carrier or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier may purchase or otherwise acquire directly or indirectly more than a 10 percent financial interest, or any management interest, in any cable operator providing cable service within the local exchange carrier's telephone service area.

(b) **Acquisitions by Cable Operators.**—No cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area.

(c) **Joint Ventures.**—A local exchange carrier and a cable operator whose telephone service area and cable fran-

chise area, respectively, are in the same market may not enter into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within such market.

#### (d) Exceptions.—

(1) **Rural systems.**—Notwithstanding subsections (a), (b), and (c) of this section, a local exchange carrier (with respect to a cable system located in its telephone service area) and a cable operator (with respect to the facilities of a local exchange carrier used to provide telephone exchange service in its cable franchise area) may obtain a controlling interest in, management interest in, or enter into a joint venture or partnership with the operator of such system or facilities for the use of such system or facilities to the extent that—

(A) such system or facilities only serve incorporated or unincorporated—

(i) places or territories that have fewer than 35,000 inhabitants; and

(ii) are outside an urbanized area, as defined by the Bureau of the Census; and

(B) in the case of a local exchange carrier, such system, in the aggregate with any other system in which such carrier has an interest, serves less than 10 percent of the households in the telephone service area of such carrier.

(2) **Joint use.**—Notwithstanding subsection (c), a local exchange carrier may obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission.

(3) **Acquisitions in competitive markets.**—Notwithstanding subsections (a) and (c), a local exchange carrier may obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as "the subject cable system"), if—

(A) the subject cable system operates in a television market that is not in the top 25 markets, and such market has more than 1 cable system operator, and the subject cable system is not the cable system with the most subscribers in such television market;

(B) the subject cable system and the cable system with the most subscribers in such television market held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

(C) the subject cable system is not owned by or under common ownership or control of any one of the 50 cable system operators with the most subscribers as such operators existed on May 1, 1995; and

(D) the system with the most subscribers in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as such operators existed on May 1, 1995.

(4) **Exempt cable systems.**—Subsection (a) does not apply to any cable system if—

(A) the cable system serves no more than 17,000 cable subscribers, of which no less than 8,000 live within an urban area, and no less than 6,000 live within a nonurbanized area as of June 1, 1995;

(B) the cable system is not owned by, or under common ownership or control with, any of the 50 largest cable system operators in existence on June 1, 1995; and

(C) the cable system operates in a television market that was not in the top 100 television markets as of June 1, 1995.

(5) **Small cable systems in nonurban areas.**—Notwithstanding subsections (a) and (c), a local exchange carrier with less than \$100,000,000 in annual operating revenues (or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier) may purchase or otherwise acquire more than a 10 percent financial interest in, or any management interest in, or enter into a joint venture or partnership with, any cable system within the local exchange carrier's telephone service area that serves no more than 20,000 cable subscribers, if no more than 12,000 of those subscribers live within an urbanized area, as defined by the Bureau of the Census.

(6) **Waivers.**—The Commission may waive the restrictions of subsections (a), (b), or (c) only if—

(A) the Commission determines that, because of the nature of the market served by the affected cable system or facilities used to provide telephone exchange service—

(i) the affected cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions;

(ii) the system or facilities would not be economically viable if such provisions were enforced; or

(iii) 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

(B) the local franchising authority approves of such waiver.

(e) **Definition of Telephone Service Area.**—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 this 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.

### Establishment of Open Video Systems (Sec. 653).

#### (a) Open Video Systems.—

(1) **Certificates of compliance.**—A local exchange carrier may provide cable service to its cable service subscribers in its telephone service area through an open video system that complies with this section. To the extent permitted by such regulations as the Commission may prescribe consistent with the public interest, convenience, and necessity, an operator of a cable system or any other person may provide video programming through an open video system that complies with this section. An operator of an open video system shall qualify for reduced regulatory burdens under subsection (c) of this section if the operator of such system certifies to the Commission that such carrier complies with the Commission's regulations under subsection (b) and the Commission approves such certification. The Commission shall publish notice of the receipt of any such certification and shall act to approve or disapprove any such certification within 10 days after receipt of such certification.

(2) **Dispute resolution.**—The Commission shall have the authority to resolve disputes under this section and the regulations prescribed thereunder. Any such dispute shall be resolved within 180 days after notice of such dispute is submitted to the Commission. At that time or subsequently in a separate damages proceeding, the Commission may, in the case of any violation of this section, require carriage, award damages to any person denied carriage, or any combination of such sanctions. Any aggrieved party may seek any other remedy available under this Act.

#### (b) Commission Actions.—

(1) **Regulations required.**—Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary (including any reconsideration) to prescribe regulations that—

(A) except as required pursuant to Section 611, 614, or 615, prohibit an operator of an open video system from discriminating among video programming providers with regard to carriage on its open video system, and ensure that the rates, terms, and conditions for such carriage are just and reasonable, and are not unjustly or unreasonably discriminatory;

(B) if demand exceeds the channel capacity of the open video system, prohibit an operator of an open video system and its affiliates from selecting the video programming services for carriage on more than one-third of the activated channel capacity on such system, but nothing in this subparagraph shall be construed to limit the number of channels that the carrier and its affiliates may offer to provide directly to subscribers;

(C) permit an operator of an open video system to carry on only one channel any video programming service that is offered by more than one video programming provider (including the local exchange carrier's video program-



ming affiliate), provided that subscribers have ready and immediate access to any such video programming service;

(D) extend to the distribution of video programming over open video systems the Commission's regulations concerning sports exclusivity (47 CFR 76.67), network non-duplication (47 CFR 76.92 et seq.), and syndicated exclusivity (47 CFR 76.151 et seq.); and

(E)(i) prohibit an operator of an open video system from unreasonably discriminating in favor of the operator or its affiliates with regard to material or information (including advertising) provided by the operator to subscribers for the purposes of selecting programming on the open video system, or in the way such material or information is presented to subscribers;

(ii) require an operator of an open video system to ensure that video programming providers or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers;

(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

(iv) prohibit an operator of an open video system from omitting television broadcast stations or other unaffiliated video programming services carried on such system from any navigational device, guide, or menu.

(2) Consumer access.—Subject to the requirements of paragraph (1) and the regulations thereunder, nothing in this section prohibits a common carrier or its affiliate from negotiating mutually agreeable terms and conditions

with over-the-air broadcast stations and other unaffiliated video programming providers to allow consumer access to their signals on any level or screen of any gateway, menu, or other program guide, whether provided by the carrier or its affiliate.

(c) Reduced Regulatory Burdens for Open Video Systems.—

(1) In general.—Any provision that applies to a cable operator under—

(A) Sections 613 (other than subsection (a) thereof), 616, 623(f), 628, 631, and 634 of this title, shall apply,

(B) Sections 611, 614, and 615 of this title, and Section 325 of title III, shall apply in accordance with the regulations prescribed under paragraph (2), and

(C) Sections 612 and 617, and parts III and IV (other than Sections 623(f), 628, 631, and 634), of this title shall not apply, to any operator of an open video system for which the Commission has approved a certification under this section.

(2) Implementation.—

(A) Commission action.—In the rulemaking proceeding to prescribe the regulations required by subsection (b)(1), the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in paragraph (1)(B) of this subsection. The Commission shall complete all action (including any reconsideration) to prescribe such regulations no later than 6 months after

the date of enactment of the Telecommunications Act of 1996.

(B) Fees.—An operator of an open video system under this part may be subject to the payment of fees on the gross revenues of the operator for the provision of cable service imposed by a local franchising authority or other governmental entity, in lieu of the franchise fees permitted under Section 622. The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the franchise area, as determined in accordance with regulations prescribed by the Commission. An operator of an open video system may designate that portion of a subscriber's bill attributable to the fee under this subparagraph as a separate item on the bill.

(3) Regulatory streamlining.—With respect to the establishment and operation of an open video system, the requirements of this section shall apply in lieu of, and not in addition to, the requirements of title II.

(4) Treatment as cable operator.—Nothing in this Act precludes a video programming provider making use of an open video system from being treated as an operator of a cable system for purposes of Section 111 of title 17, United States Code.

(d) Definition of Telephone Service Area.—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 this Act means the area within which such carrier is offering telephone exchange service.



## Industry Standard Coding Identification System (ISCI)

ISCI is a computer-format system for identifying TV commercials, programs and program-related materials. ISCI stands for "Industry Standard Coding Identification" and is accepted by ABC, CBS, NBC, Fox, the Cable Advertising Bureau and the National Association of Broadcasters. The system provides identity coding for TV commercials, TV programs and music used in both commercials and programs. The ISCI System consists of two separate parts: ISCI Commercial System and ISCI Program System.

### **The ISCI Commercial System**

The ISCI Commercial System is owned by the American Association of Advertising Agencies and Association of National Advertisers and is administered by the American Association of Advertising Agencies. Approximately 5,000 advertisers and agencies worldwide have been

assigned prefixes for TV commercial use, insuring non-duplication of commercial airing, precise invoicing and tracking through an eight-character (four letters followed by four numbers) code which is placed on tapes, schedules, leaders, invoices, etc. This standard of TV commercial coding is offered to advertisers and agencies worldwide.

For more information concerning the ISCI Commercial System or to purchase an ISCI Commercial Register, which lists the assigned prefixes of advertisers and agencies, contact Louise O'Gara, ISCI, c/o AAAA, The Chrysler Building, 405 Lexington Ave., New York, NY 10174. (212) 850-0766.

### **The ISCI Program System**

The ISCI Program System is owned and operated by ISCI Program Systems Inc. This system is offered to

cover program material of all types, lengths and media which is intended for syndication, network, or local usage. Another portion of the ISCI system is offered to cover all musical compositions in the ASCAP, BMI, SESAC and other performing rights societies as well as "original" compositions created specifically for use in TV commercials and programs (present and future) worldwide. The ISCI system licenses a specific eight-character permanent code to each piece of programming and each composition.

For more information concerning the ISCI Program System, to register program or music codes, or to purchase ISCI Program Register data, contact Timothy J. Daly, General Manager, ISCI Program Systems Inc., 747 3rd Ave., 5th Fl., New York, NY 10017. (212) 572-9270.



## National Association of Broadcasters (NAB) Television and Radio Codes

Both codes of broadcast standards promulgated by the National Association of Broadcasters have been suspended.

The NAB and U.S. Justice Department agreed to a consent decree abolishing commercial time standards in the television code, in settlement of an antitrust suit

brought by the Justice Department (see *Broadcasting Magazine*, July 19, 1982).

Programming standards in the television and radio codes were suspended in 1976 after a U.S. federal judge

in Los Angeles ruled that family-viewing provisions of the television code violated the First Amendment.

For texts of the suspended codes, see *Broadcasting/Cablecasting Yearbook 1982*.



# U.S. Government Agencies of Interest to Broadcasting and Cable

The following information is current as of January 1999.

**Department of Agriculture.** 14th & Independence Ave. S.W., Rm. 4028, Washington, DC 20250. (202) 720-4623. FAX: (202) 720-5043. Dan Glickman, sec.

**Department of Commerce.** 14th & Constitution Ave. N.W., Suite 5040, Washington, DC 20230. (202) 219-3605. FAX: (202) 482-2639. E-mail: opaosec@doc.gov. Web Site: <http://www.doc.gov/opa>. William M. Daley, sec.

**Department of Defense.** Pentagon, Washington, DC 20301. (703) 545-6700. FAX: (703) 695-4299; FAX: (703) 695-9080. William S. Cohen, sec of defense. Pub affrs: (703) 697-5737.

Dept. of the Army: Louis Caldera, sec; Brigadier General G. Meyer Jr., chief pub affrs. (703) 695-5135.

Dept. of the Navy: Rear Admiral Thomas J Jurkowsky, chief of information; Richard Danzig, sec; Captain Craig R. Quigley, pub affrs. (703) 697-7391.

Dept. of the Air Force: F. Witton Peters, acting sec; Colonel Ronald Rand, dir pub affrs. (703) 697-6061.

Marine Corps: General Charles C. Krulak, commandant; General William A. Whitlow, dir pub affrs. (703) 614-8010. FAX: (703) 697-7246.

**Department of Education.** 600 Independence Ave. S.W., Washington, DC 20202. (202) 401-1576. FAX: (202) 401-3130. Web Site: <http://www.ed.gov>. Richard Riley, sec. (202) 401-3000. David Frank, dir pub affrs. (202) 401-3026. Audio Broadcast Service (800) 424-0214; in D.C. (202) 401-1052. Contact: Gregg Wiggins. Provides daily audio service for radio news; arranges bcst interviews with sr department officials.

**Department of Health and Human Services.** 200 Independence Ave. S.W., Washington, DC 20201. (202) 619-0257. FAX: (202) 690-7203. Dr. Donna E. Shalala, sec. (202) 690-7000.

**Department of Justice.** Constitution Ave. & 10th St. N.W., Washington, DC 20530. (202) 514-2000. FAX: (202) 514-5331. Janet Reno, atty gen; Eric H. Holder Jr., deputy atty gen; Raymond C. Fisher, assoc atty gen; Seth Waxman, solicitor gen; John C. Kenney, AAG/criminal; Frank Hunger, AAG/civil division; Joel I. Klein, AAG/antitrust; Lois J. Schiffer, AAG/environment & natural resources div; Loretta C. Argrett, AAG/tax division; Bill Lann Lee, AAG/civil rights; Eleanor D. Acheson, AAG/office policy dev; Tony Sutin, AAG/legislative affrs; Laurie Robinson, AAG for office justice programs; Bert Brandenburg, dir office of pub affrs; Louis J. Freeh, dir FBI; Doris Meissner, commissioner/immigration & naturalization service; Michael Bronwich, actg dir/office of inspector gen.

**Department of Labor.** 200 Constitution Ave. N.W., Washington, DC 20210. (202) 219-5000. FAX: (202) 219-9699. Alexis M. Herman, sec labor. Office of pub affrs: (202) 219-7316. Meg Ingold, chief media & editorial svcs.

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**Department of State.** 2201 C St. N.W., Washington, DC 20520. (202) 647-4000. FAX: (202) 647-7120; FAX: (202) 647-5939. Madeleine K. Albright, Secretary of State; Pat Kennedy, Under Secretary for Management; James Rubin, asst Sec of State for public affrs & department spokesman, (202) 647-7191.

**Department of the Treasury.** 1500 Pennsylvania Ave. N.W., 3442 MT, Washington, DC 20020. (202) 622-2000. FAX: (202) 622-0073. Web Site: <http://www.us-treas.gov>. Robert E. Rubin, treasury sec; Lawrence Summers, deputy sec; Howard M. Schloss, asst sec pub affrs, (202) 622-2910.

Bureau of Alcohol, Tobacco & Firearms: 650 Massachusetts Ave. N.W., Washington, DC 20226. (202) 927-7777. John Magaw, dir; David Benton, chief pub affrs, (202) 927-8500.

Comptroller of the Currency: 250 E St. S.W., Washington, DC 20219. (202) 874-4900. Julie Williams, actg comptroller; Leonora C., dep comptroller pub affrs, (202) 874-4970.

U.S. Customs Service: 1301 Constitution Ave. N.W., Washington, DC 20229. (202) 927-1000. Raymond W. Kelly, commissioner, (202) 927-1770; William Anthony, dir pub affrs, (202) 927-1770.

Bureau of Engraving & Printing: 14th & C Sts. S.W., Washington, DC 20227. (202) 874-2000. Thomas A. Ferguson, actg dir; Larry Felix, dir pub affrs, (202) 874-3019.

Financial Management Service: 401 14th St. N.W., Washington, DC 20227. (202) 874-7000. Richard Gregg, commissioner; James Hagedorn, dir pub affrs, (202) 874-6750.

Internal Revenue Service: 1111 Constitution Ave. N.W., Washington, DC 20224. (202) 622-4010. Charles Rossotti, commissioner, Frank Keith, natl dir communications, (202) 622-4010. Steve Pyrek, dir media rel, (202) 622-4000.

U.S. Mint: 633 3rd St. N.W., Washington, DC 20220. (202) 874-6000. Philip Diehl, dir; Lynn Parrish, dir pub affrs (202) 874-9696.

Bureau of Public Debt: 999 E St. N.W., Washington, DC 20239. (202) 219-3300. Van Zeck, commissioner; Pete Hollenbach, dir pub affrs, (202) 219-3302.

U.S. Secret Service: 1800 G St. N.W., Washington, DC 20223. (202) 435-5700. Lewis C. Merletti, dir; H. Terrence Samway, asst dir govt liaison & pub affrs, (202) 535-5708.

Office of Thrift Supervision: 1700 G St. N.W., Washington, DC 20552. (202) 906-6590. Ellen Seidman, dir; William Fulwider, actg dir pub affrs, (202) 906-6913.

Financial Crimes Enforcement Network (FinCEN): 2070 Chain Bridge Road, Vienna, VA 22182. (703) 905-3591. William F. Baity, actg dir; Joyce McDonald, communications off, (703) 905-3770.

Federal Law Enforcement Training Center (FLETC); Glynco, GA 31525. (912) 267-2100. W. Ralph Basham, dir; Peggy Dixon, dir pub affrs, (912) 267-2447.

**Department of Transportation.** 400 7th St. S.W., Washington, DC 20590. (202) 366-4000. FAX: (202) 366-7202.

Rodney E. Slater, sec; Steven J. Akey, dir pub affrs, (202) 366-1111.

Federal Highway Administration: (202) 366-0660. (vacant), admin; Jim Pintelman, actg dir pub affrs.

Federal Aviation Administration: (202) 267-3111. Jane Garvey, admin; Sandra Allen, actg asst admin pub affrs.

Federal Transit Administration: (202) 366-4040. Gordon J. Linton, admin.

United States Coast Guard: (202) 267-2390. Admiral Loy, commandant; Lt. CMDR Pat Philbin, media rel branch.

Saint Lawrence Seaway Development Corp.: (202) 366-0118. (vacant), admin. Dennis E. Deuschl, communications dir.

Federal Railroad Administration: (202) 632-3114. Jolene Molitoris, admin; David Bolger, pub affrs.

National Highway Traffic Safety Administration: (202) 366-1836. Dr. Ricardo Martinez, admin; Bill Combs, actg dir public & consumer affrs.

Maritime Administration: (202) 366-1719. Clude Hart, admin; Cher Brooks, pub affrs off.

**Executive Office of the President.** The White House, 1600 Pennsylvania Ave. N.W., Washington, DC 20500. (202) 456-1414. Web Site: <http://www.whitehouse.gov>. Mike McCurry, asst to Pres/press sec; Amy Weiss Tobe, deputy press sec opns; Beverly Barnes, Joe Lockhart, Barry Toiv, deputy press sec.

**Federal Communications Commission.** 1919 M St. N.W., Washington, DC 20554. (202) 418-0200. FAX: (202) 418-0232.

(For full listing of commissioners & staff, see FCC Executives & Staff).

**Federal Emergency Management Agency.** 500 C St. S.W., Washington, DC 20472. (202) 646-4600. FAX: (202) 646-4086. E-mail: [eipa@fema.gov](mailto:eipa@fema.gov). Web Site: <http://www.fema.gov>. James Lee Witt, dir; Joe Stocks, dir office emergency info & pub affrs. (202) 646-4600. FAX: (202) 646-4086.

Comprehensive info source on emergency preparedness & federal disaster response & recovery.

**Federal Trade Commission.** 6th & Pennsylvania Ave. N.W., Washington, DC 20580. (202) 326-2180. FAX: (202) 326-3676. Web Site: <http://www.ftc.gov>. Robert Pitofsky, chmn; Victoria Streltfield, dir public affrs. Commissioners: Sheila S. Anthony, Mozelle W. Thompson, Orson Swindle, William Baer, dir Bureau of Competition; Jonathan Baker, dir Bureau of Economics; Jodie Bernstein, dir Bureau of Consumer Protection; Michelle Muth, sr press off.

**House Appropriations Committee.** Rm. H218, Capitol Bldg, Washington, DC 20515. (202) 225-2771. Subcommittee on Commerce, Justice, State, Judiciary & Related Agencies. (202) 225-3351. Hal Rogers (R-KY), chmn. Subcommittee on Labor, Health & Human Services, & Education. (202) 225-3508. John Edward Porter (R-IL), chmn.

Funds government agencies.

**House Committee on Commerce.** Rm. 2125, Rayburn House Office Bldg., Washington, DC 20515-6115. (202) 225-2927. FAX: (202) 225-1919. James Derderian, chief of staff; Tom Bliley, chmn (VA); W.J. "Billy" Tauzin, (LA); Michael G. Oxley, (OH); Michael Bilirakis, (FL); Dan Schaefer, (CO); Joe Barton, (TX); J. Dennis Hastert, (IL); Fred Upton, (MI); Cliff Stearns, (FL); Bill Paxon, (NY); Paul E. Gillmor, (OH); James C. Greenwood, (PA); Michael D. Crapo, (ID); Christopher Cox, (CA); Nathan Deal, (GA); Steve Largent, (OK); Richard Burr, (NC); Brian P. Bilbray, (CA); Ed Whitfield, (KY); Greg Ganske, (IA); Charlie Norwood, (GA); Rick White, (WA); Tom Coburn, (OK); Rick Lazio, (NY); Barbara Cubin, (WY); James Rogan, (CA); John Shimkus, (IL); John D. Dingell, (MI); Henry A. Waxman, (CA); Edward J. Markey, (MA); Ralph M. Hall, (TX); Rick Boucher, (VA); Thomas J. Manton, (NY); Edolphus Towns, (NY); Frank Pallone Jr. (NJ); Sherrod Brown, (OH); Bart Gordon, (TN); Elizabeth Furse, (OR); Peter Deutch, (FL); Bobby L. Rush, (IL); Anna G. Eshoo, (CA); Ron Klink, (PA); Bart Stupak, (MI); Eliot L. Engel, (NY); Thomas C. Sawyer, (OH); Albert R. Wynn, (MD); Gene Green, (TX); Karen McCarthy, (MO); Ted Strickland, (OH); Diana DeGette, (CO); Heather Wilson (NM).

**House Judiciary Committee.** Rm. 2138, Rayburn House Office Bldg., Washington, DC 20515-6216. (202) 225-3951. FAX: (202) 225-7682. Web Site: <http://www.house.gov/judiciary>. Committee on the Judiciary: Mr. Hyde (R-IL), chmn; Mr. Sensenbrenner (R-WI); Mr. McCollum (R-FL); Mr. Gekas (R-PA); Mr. Coble (R-NC); Mr. Smith (R-TX); Mr. Gallegly (R-CA); Mr. Canady (R-FL); Mr. Inglis (R-SC); Mr. Goodlatte (R-VA); Mr. Buyer (R-IN); Mr. Bryant (R-TN); Mr. Chabot (R-OH); Mr. Barr (R-GA); Mr. Jenkins (R-TN); Mr. Hutchinson (R-AR); Mr. Pease (R-IN); Mr. Cannon (R-UT); Mr. Rogan (R-CA); Mr. Graham (R-SC); Ms. Bono (R-CA); Mr. Conyers (D-MI), Ranking; Mr. Frank (D-MA); Mr. Schumer (D-NY); Mr. Berman (D-CA); Mr. Boucher (D-VA); Mr. Nadler (D-NY); Mr. Scott (D-VA); Mr. Watt (D-NC); Ms. Lofgren (D-CA); Ms. Jackson Lee (D-TX); Ms. Waters (D-CA); Mr. Meehan (D-MA); Mr. Delahunt (D-MA); Mr. Wexler (D-FL); Mr. Rothman (D-NJ). Subcommittee Assignments: Mr. Hyde, chmn.

Subcommittee on Courts & Intellectual Property: Mr. Coble, chmn; Mr. Sensenbrenner, Mr. Gallegly; Mr. Goodlatte; Mr. Pease; Mr. Cannon; Mr. McCollum; Mr. Canady; Mr. Rogan; Ms. Bono; Mr. Frank; Mr. Conyers; Mr. Berman; Mr. Boucher; Ms. Lofgren; Mr. Delahunt.

Subcommittee on Crime: Mr. McCollum, chmn; Mr. Buyer; Mr. Chabot; Mr. Barr; Mr. Hutchinson; Mr. Gekas; Mr. Coble; Mr. Graham; Mr. Schumer; Ms. Jackson Lee; Mr. Meehan; Mr. Wexler; Mr. Rothman.

Subcommittee on Immigration & Claims: Mr. Smith, chmn; Mr. Gallegly; Mr. Jenkins; Mr. Pease; Mr. Cannon; Mr. Bryant; Mr. Rogan; Ms. Bono; Mr. Watt; Mr. Schumer; Mr. Berman; Ms. Lofgren; Mr. Wexler.

Subcommittee on Commercial & Administrative Law: Mr. Gekas, chmn; Mr. Smith; Mr. Inglis; Mr. Bryant; Mr. Chabot; Mr. Graham; Mr. Nadler; Ms. Jackson Lee; Mr. Meehan; Mr. Delahunt.

Subcommittee on the Constitution: Mr. Canady, chmn; Mr. Hyde; Mr. Inglis; Mr. Bryant; Mr. Jenkins; Mr. Goodlatte; Mr. Barr; Mr. Hutchinson; Mr. Scott; Ms. Waters; Mr. Conyers; Mr. Nadler; Mr. Watt.

Minority Rm. B351-C, (202) 225-6909. Main Committee Rm. 2141. Subcommittee Hearing Rm. 2237. Subcommittee Hearing Rm. 2226. Subcommittee Hearing Rm. B352.

**National Advisory Committee, Emergency Alert System.** Federal Communications Commission, 1919 M St. N.W., Washington, DC 20554. (202) 418-1220. FAX: (202) 418-2817. E-mail: [eas@fcc.gov](mailto:eas@fcc.gov). Web Site: <http://www.fcc.gov/cib/eas>. Frank Lucia, dir emergency communications.

Assists the FCC in overseeing the EAS & advises the FCC on all matters concerning EAS & its implementation.



**National Aeronautics & Space Administration (NASA).** 300 E St. S.W., Washington, DC 20546. (202) 358-0000; (202) 358-1898 pub affrs. FAX: (202) 358-4333. Daniel S. Golden, admin; Peggy Wilhelm, pub affrs.

**National Labor Relations Board.** 1099 14th St. N.W., Washington, DC 20570-0001. (202) 273-1991. FAX: (202) 273-4266. E-mail: dperker@nlrb.gov. Web Site: <http://www.nlrb.gov>. Sarah M. Fox, John E. Higgins Jr., bd members; Fred Feinstein, acting gen counsel; David B. Parker, dir division information.

Adjudicate unfair labor practice charges & conduct union representation elections under the National Labor Relations Act.

**National Science Foundation.** 4201 Wilson Blvd., Arlington, VA 22230. (703) 306-1070. FAX: (703) 306-0202. E-mail: jmoore@nsf.gov. Web Site: <http://www.nsf.gov>. Dr. Neal Lane, dir; Julia Moore, dir office of legislative & pub affrs.

**National Telecommunications and Information Administration.** 14th & Constitution N.W., Washington, DC 20230. (202) 482-7002. FAX: (202) 482-1635. Web Site: <http://www.ntia.doc.gov>. Larry Irving, asst sec for C&I.

NTIA serves as the principal advisor to the exec branch on domestic & international communication & info issues.

**Securities and Exchange Commission.** 450 5th St. N.W., Washington, DC 20549. (800) SEC-0330. FAX: (202) 942-9628. Members: Arthur Levitt, chmn; Norman S. Johnson, Isaac C. Hunt Jr., Paul A. Carey, Laura S. Unger, commissioners; Richard Lindsey, dir div of mkt regulation. Office of the sec: (202) 942-7070. Jonathan Katz, sec.

Administers federal securities laws that protect investors. These laws ensure that securities markets are fair & provide sanctions for enforcement.

**Senate Appropriations Committee.** Rm. SD-118, Dirksen Senate Office Bldg., Washington, DC 20510. (202) 224-3471. Web Site: <http://www.senate.gov/appropriations>. Members: Ted Stevens (R-AK), chmn; Thad Cochran (R-MS); Arlen Specter (R-PA); Pete V. Domenici (R-NM); Christopher S. Bond (R-MO); Slade Gorton (R-WA); Mitch McConnell (R-KY); Conrad Burns (R-MT); Richard C. Shelby (R-AL); Judd Gregg (R-NH); Robert F. Bennett (R-UT); Ben Nighthorse Campbell (R-CO); Larry Craig (R-ID); Lauch Faircloth (R-NC); Kay Bailey Hutchison (R-TX); Robert C. Byrd (D-WV); Daniel K. Inouye (D-HI); Ernest F. Hollings (D-SC); Patrick J. Leahy (D-VT); Dale Bumpers (D-AR); Frank R. Lautenberg (D-NJ); Tom Harkin (D-IA); Barbara A. Mikulski (D-MD); Harry Reid (D-NV); Herb Kohl (D-WI); Patty Murray (D-WA); Byron Dorgan (D-ND); Barbara Boxer (D-CA).

**Senate Committee on Commerce, Science, and Transportation.** Suite 508, Dirksen Senate Office Bldg., Washington, DC 20510-6125. (202) 224-5115. FAX: (202) 224-1259 (Rep.); (202) 228-0303 (Dem.). Web

Site: <http://www.senate.gov/commerce>. Members: John McCain (R-AZ), chmn; Ted Stevens (R-AK); Conrad Burns (R-MT); Slade Gorton (R-WA); Trent Lott (R-MS); Kay Bailey Hutchison (R-TX); Olympia J. Snowe (R-ME); John Ashcroft (R-MO); Bill Frist (R-TN); Spencer Abraham (R-MI); Sam Brownback (R-KS); Ernest F. Hollings (D-SC); Daniel K. Inouye (D-HI); Wendell H. Ford (D-KY); John D. Rockefeller IV (D-WV); John Kerry (D-MA); John B. Breaux (D-LA); Richard H. Bryan (D-NV); Byron L. Dorgan (D-ND); Ron Wyden (D-OR).

Communications Subcommittee: Conrad Burns (R-MT).

Aviation Subcommittee: Slade Gorton (R-WA). Consumer Affairs, Foreign Commerce, and Tourism Subcommittee: John Ashcroft (R-MO).

Manufacturing and Competitiveness Subcommittee: Spencer Abraham (R-MI).

Oceans and Fisheries Subcommittee: Olympia J. Snowe (R-ME).

Science, Technology, and Space Subcommittee: Bill Frist (R-TN).

Surface Transportation and Merchant Marine Subcommittee: Kay Bailey Hutchison (R-TX).

Jurisdiction includes surface transportation, aviation, telecommunications, science, space, technology, merchant marine, oceans & fisheries, consumer affrs, product liability, foreign commerce & tourism.

**Senate Judiciary Committee.** Suite 224, Dirksen Bldg, Washington, DC 20510-6275. (202) 224-5225. FAX: (202) 224-9102. Members: Orrin G. Hatch (R-UT), chmn; Strom Thurmond (R-SC); Charles E. Grassley (R-IA); Arlen Specter (R-PA); Fred Thompson (R-TN); Jon Kyl (R-AZ); Mike DeWine (R-OH); Spencer Abraham (R-MI); John Ashcroft (R-MO); Jeff Sessions, (R-AL); Patrick J. Leahy (D-VT); Edward M. Kennedy (D-MA); Joseph R. Biden Jr. (D-DE); Herb Kohl (D-WI); Dianne Feinstein (D-CA); Russell D. Feingold (D-WI); Richard J. Durbin (D-IL); Robert G. Torricelli (D-NJ).

**U.S. Department of Energy.** 1000 Independence Ave. S.W., Washington, DC 20585. (202) 586-5000. FAX: (202) 586-9987 (Dir.); (202) 586-5823 (Press Of). Web Site: <http://www.doe.gov>. Bill Richardson, sec energy; Elizabeth A. Moler, dep sec energy; Ernest J. Moniz, under sec; Elwood Holstein Jr., chief of staff; Thomas T. Tamura, actg sec admin & human resource mgmt; John C. Angell, asst sec for congressional & intergovernmental affrs; Brooke D. Anderson, dir pub affrs; Victor H. Reis, asst sec defense programs; James M. Owendoff, actg asst sec for environmental mgmt; Robert W. Gee, asst sec office of policy & intergovernmental affrs; Mary Anne Sullivan, actg gen counsel; Rose E. Gottemoeller, dir office of nonproliferation & natl security; Gregory H. Friedman, actg inspector gen; Jay E. Hakes, admin energy info admin; William D. Magwood, dir nuclear energy; Dan W. Reicher, asst sec energy efficiency & renewable energy; Michael L. Telson, CFO; Sarah Summerville, actg dir economic impact & diversity; Peter N. Brush, actg asst sec environment, safety & health;

Martha Krebs, dir energy rsch; Robert S. Kripowicz, actg asst sec fossil energy; G. Thomas Todd, dir office of field mgmt; Lake H. Barrett, actg dir civilian radioactive waste mgmt; George Breznay, dir hearings & appeals; Janice Stark, actg dir office of quality mgmt; Skila S. Harris, exec dir office of sec of energy advisory bd.

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**U.S. Advisory Commission on Public Diplomacy.** 301 4th St. S.W., Washington, DC 20547. (202) 619-4457. FAX: (202) 619-5489. E-mail: [jouen@usia.gov](mailto:jouen@usia.gov). Web Site: <http://www.advcmm.gov>. Lewis Manlow, chmn; Jonathan Owen, staff dir.

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**U.S. Court of Appeals for the District of Columbia Circuit.** 333 Constitution Ave. N.W., Washington, DC 20001-2866. (202) 216-7300. FAX: (202) 273-0988; (202) 219-8530. Web site: <http://www.cadc.uscourts.gov>. Chief Judge: Harry T. Edwards. Mark J. Langer, clerk.

Appeals from District Court cases. Appeals from federal agency decisions.

**U.S. District Court for the District of Columbia.** 333 Constitution Ave. N.W., Washington, DC 20001. (202) 273-0555. FAX: (202) 273-0479. E-mail: [eparet@ccmail.dcd.uscourts.gov](mailto:eparet@ccmail.dcd.uscourts.gov). Chief Judge: Norma Holloway Johnson; Nancy Mayer-Whittington, clerk.

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**U.S. Supreme Court.** One First St. N.E., Washington, DC 20543. (202) 479-3000. Chief Justice of the United States: William H. Rehnquist. Associate Justices: John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy, David H. Souter, Clarence Thomas, Ruth Bader Ginsburg, Steven G. Breyer. Retired Associate Justices: Byron R. White, Harry A. Blackmun.

**United States Information Agency.** 301 4th St. S.W., Washington, DC 20547. (202) 619-4700; (202) 205-0484 (fax). FAX: (202) 619-4510; (202) 619-6988. E-mail: [inquiry@usia.gov](mailto:inquiry@usia.gov). Web Site: <http://www.usia.gov>. Assignment edit bcst svcs: (202) 619-1741. Dr. Joseph Duffey, dir; Ann T. Pincus, rsch office; Marthena Cowart, dir public liaison office.

The United States Information Agency is an independent foreign affrs agency within the exec branch of the U.S. govt. USIA explains & supports American foreign policy & promotes U.S. natl interests through a wide range of overseas info programs.



## Canadian Government Agencies of Interest to Broadcasting and Cable

**Canadian Radio-Television & Telecommunications Commission.** Ottawa, ON, Canada K1A0N2. (819) 997-0313 (gen info); (819) 997-4484 (library). FAX: (819) 994-0218. E-mail: info@CRTC.x400.GC.CA. Web Site: <http://www.CRTC.GC.CA>. Commissioners: Françoise Bertrand, chairperson; David Colville, vice-chairperson telecommunications (Atlantic region); Andrew Cardozo; David McKendry; Joan Penefather; Andrée P. Wylie; Cindy Grauer

(BC/YT regions); Martha Wilson (ON region). Officers: Laura M. Talbot-Allan, sec gen/CEO; Céline Leblanc, actg dir gen finance & corporate svcs; Diane Rhéaume, dir gen corporate affrs & client svcs; John Koegh, sr gen counsel; Susan Baldwin, exec dir bcstg; Antoine Lacombe, actg dir gen bcst analysis; Wayne Charman, dir gen bcst distribution & technology; Peter Vivian, exec dir telecommunications; Louis Meduri, actg dir gen financial

analysis; Malcolm Andrew, dir gen competition, consumer & tariff policy.

**Industry Canada.** 235 Queen St., 11th Fl., Ottawa, ON, Canada K1A 0H5. (613) 995-9001; (613) 941-0222 info svcs. FAX: (613) 992-0302. Minister: The Hon. John Manley.



## U.S. State Cable Regulatory Agencies

**Alaska Public Utilities Commission.** 1016 W. Sixth Ave., Suite 400, Anchorage, AK 99501. (907) 276-6222. FAX: (907) 276-0160. Sam Cotton, chmn; Robert A. Lohr, exec dir.

**Commonwealth of Massachusetts Cable Television Division.** 133 Portland St., Suite 300, Boston, MA 02114-1707. (617) 727-6925. FAX: (617) 727-7887. E-mail: MCable@state.ma.us. Web Site: <http://www.mag-net.state.ma.us/dpu/catv>. Alicia C. Matthews, dir.

**Connecticut Department of Public Utility Control.** 10 Franklin Sq., New Britain, CT 06051. (860) 827-1553. FAX: (860) 827-2613. Donald W. Downes, chmn.

**Delaware Public Services Commission.** Connor Bldg., 861 Silver Lake Blvd., Suite 100, Dover, DE 19901. (302) 739-4247. FAX: (302) 739-4849. Dr. Robert McMahon, chmn; Bruce Burcat, exec dir.

**Hawaii Cable Television Division.** Box 541, Dept. of Commerce & Consumer Affairs, Honolulu, HI 96809. (808) 586-2620. FAX: (808) 586-2625. Kathryn S. Matayoshi, Benjamin Fukumoto, deputy dirs; Clyde Sonobe, admin.

**New Jersey Office of Cable Television.** 2 Gateway Center, Newark, NJ 07102. (973) 648-2670. FAX: (973) 648-4298. Web Site: <http://www.njin.net/njbpu>. Celeste M. Fasone, dir; Charles Russell, deputy dir.

**New York State Department of Public Services.** 3 Empire State Plaza, Albany, NY 12223-1350. (518) 474-1939. FAX: (518) 486-5727. Chad G. Hume, deputy dir cable; Steven A. Shaye, chief municipal assistance; Daniel W. Whelan, chief video & broadband systems; John Wright, chief cable analysis & evaluation.

**Rhode Island Division of Public Utilities and Carriers.** 100 Orange St., Providence, RI 02903. (401) 277-3500. FAX: (401) 277-6805. Thomas F. Ahern, division admin; John A. Notte III, assoc admin CATV.

**Vermont Public Service Board.** Chittenden Bank Bldg., 112 State St., 4th Fl., Drawer 20, Montpelier, VT 05620. (802) 828-2358. FAX: (802) 828-3351. Richard H. Cowart, chmn.





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**UPN may reduce programming.** Sinclair Broadcasting President, Barry Baker says that UPN has privately admitted its error in going to five nights this season before getting its first three nights firing on all cylinders. Baker told a gathering yesterday at the Paine Webber Media Conference in New York that he wouldn't be surprised if the network - which is down 30%-40% in the ratings this season - cut back by a night or two to shore up its schedule. Sinclair operates seven UPN affiliates.



**Speaker-elect speaks out on LMA.** House Speaker-elect Bob Livingston (R-Va.) has signed a letter telling the FCC to drop a proposal that would eliminate local TV marketing agreements (LMAs) because it is contrary to the 1996 telecommunications Act. "Most broadcasters who invested the time, money and resources in LMAs will face financial hardship if forced to walk away from their investments," the letter says. "This is a harsh message to send to broadcasters who now face the multi billion dollar challenge of absorbing the infrastructure costs in the transition to digital television."



**AT&T waits on Time Warner.** Cable operators being wooed by AT&T to cut telephone joint ventures are waiting for Time Warner Cable to do its deal first. At least that's what cable executives were saying in the hallways of the Paine Webber, Inc. annual media investment conference in New York, Tuesday. Even after buying Tele-Communications Inc., AT&T needs to line up other MSOs as telephone affiliates to fully execute its strategy of finding a way around the Baby Bells' monopoly of funneling long distance calls to the home.

### BREAKING NEWS

#### TOP OF THE NEWS

**With the cancellation of the NBA All-Star game, NBC becomes yet another casualty in the basketball lockout.** NBC planned to air the game during the key Feb. sweeps.

#### CENTURY UP

The New Canaan, Conn. - based Century Communications Corp., expects cash flow to increase 12.5%.

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