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**Broadcasting/Cablecasting**  
**Yearbook 1987**

# Cable

## Anatomy of Cable Regulations

**An outline of federal cable television rules, including current regulations and developments**

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 important, it set limits on state and local regulation. The following contains selected and edited rules of the FCC and provisions of the Cable Communications Act.

**Definitions**

**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 serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management unless such facility or facilities uses 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; or (4) any facilities of any electric utility used solely for operating its electric utility systems.

**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 a cable system; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

**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 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.

**Basic cable service.** For the purposes of regulating rates of cable systems found not to be subject to effective competition, basic cable service is the tier of service regularly provided to all subscribers that includes the retransmission of all must-carry broadcast television signals as defined in TK to TK of the rules (or, in the absence of at least three must-carry signals, any unaltered broadcast television signals) and the public, educational and governmental channels, if required by a franchising authority under Title VI of the Communications Act

**Standards for rate regulation (76.33)**

(a) A franchising authority may regulate the rates of a cable system granted a franchise after December 29, 1984, and any cable system after December 29, 1986, subject to the following conditions:

- (1) Only basic cable service may be regulated;
- (2) Only cable systems that are not subject to effective competition may be rate regulated. A cable system will be determined to have effective competition whenever at least three unduplicated signals serve the cable community. Signals shall be counted if they place a Grade B contour over any portion of the cable community; are significantly viewed within the cable community or are translator stations located within the cable community, provided that the translators are not used to retransmit stations already providing Grade B contour or significantly viewed signals within the cable community;
- (3) A cable system once determined to be subject to effective competition shall not be subject to regulation for one year after any change in market conditions which would cause it to be determined not to be subject to effective competition.
- (4) A cable system may automatically pass through to the basic service rate without franchising authority approval cost increases that are readily identifiable and entirely attributable to the provision of basic service. Rate increases of this type may be taken in addition to the automatic five percent annual rate

increase to which the cable systems may be entitled under Title VI of the Communications Act.

(b) For franchises granted on or before December 29, 1984, a franchising authority may, until December 29, 1986, to the extent provided in the franchise agreement.

- (1) Regulate the rates for the provision of basic cable service;
  - (2) Require the provision of any tier of service without charge (disregarding any installation or rental charge for equipment necessary for receipt of such tier); and
  - (3) Regulate the rates for the initial installation or the rental of one set of the minimum equipment necessary to receive basic cable service.
- (c) Any state or local law in existence on December 29, 1984, which limits or preempts regulation of rates for cable service by any franchising authority shall remain in effect until December 29, 1986, to the extent that it provides for such limitation or preemption.

(d) In establishing any rate for the provision of basic cable service by cable systems subject to paragraph (a) of this section, the franchising authority shall: (1) give formal notice to the public; (2) provide an opportunity for interested parties to make their views known, at least through written submissions; and (3) make a formal statement (including summary explanation) when a decision on a rate matter is made.

**Network Program Nonduplication Protection (76.92).**

(a) Any community unit which operates in a community located in whole or in part within the 35-mile specified zone of any commercial television broadcast station or within the secondary zone which extends 20 miles beyond the specified zone of a smaller market television broadcast station (55 miles altogether), and which carries the signal of such station shall, except as provided in paragraphs (e) and (f) of this section, delete, upon request of the station licensee or permittee, the duplicating network programming of lower priority signals in the manner and to the extent specified in Sections 76.94 and 76.95 [of the FCC rules].

(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

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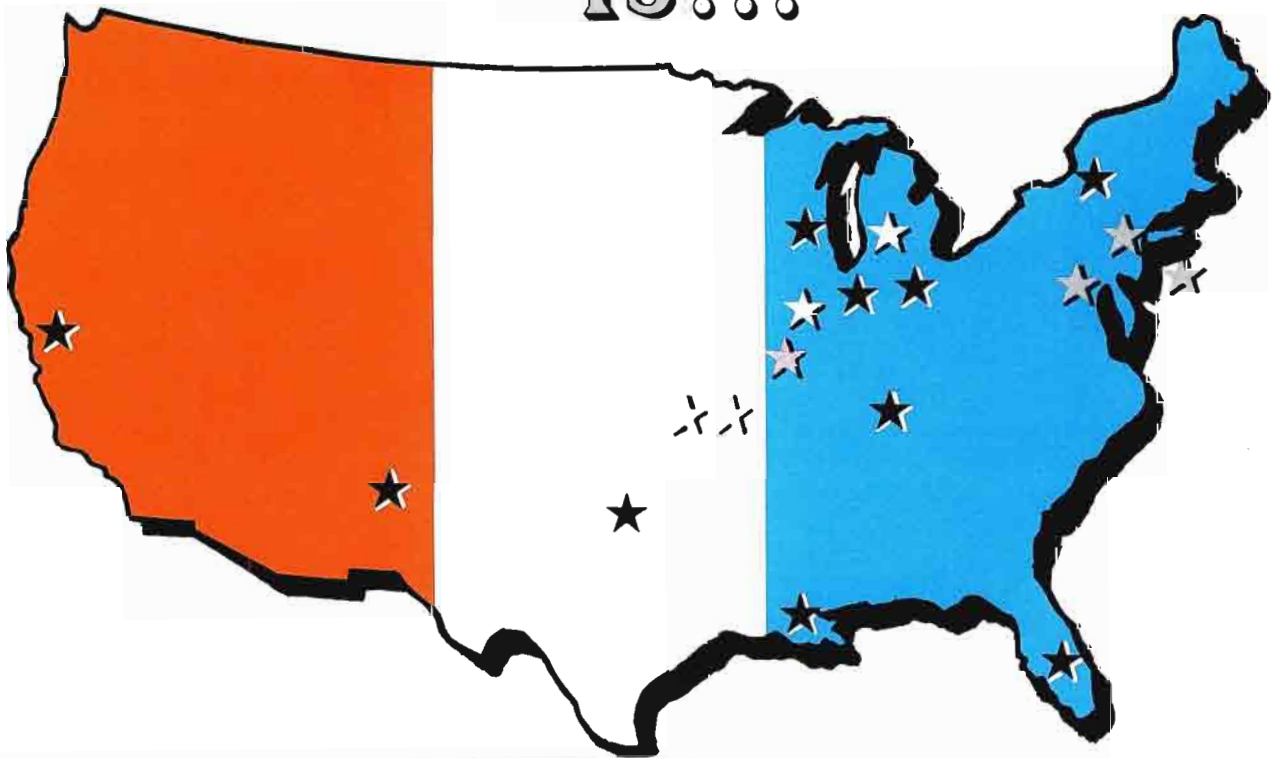
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television market as specified in 76.51 shall be treated in the same manner as a major market commercial television broadcast station, and all noncommercial educational television broadcast stations not licensed to a community located in whole or in 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 station is licensed, which 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 55 miles from the community of the community unit.

(e) Any community unit which operates in a community located in whole or in part within the specified zone of any television broadcast station or within the secondary zone of a smaller market television broadcast station is not required to delete the duplicating network programming of any 100-watt or higher power television translator station which is licensed to the community of the community unit.

(f) 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 55 miles of the community of the community unit.

(g) 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.

#### **Mandatory Carriage of Television Stations (76.56).**

(a) A cable system shall carry the signals of qualified television stations in accordance with the following provision:

(1) A cable system shall carry the signals of qualified noncommercial educational television stations or retransmitters of such stations, as follows:

(i) A cable system with fewer than 54 usable activated channels shall carry the signal of one qualified noncommercial educational station or translator;

(ii) A cable system with 54 or more usable activated channels shall carry the signals of two qualified noncommercial educational stations or translators

(2) A cable system with 21 or more usable activated channels shall carry the signals of qualified television stations as follows:

(b) Where the number of qualified television station signals exceeds the number that a cable system is required to carry pursuant to paragraph (a) of this section, the cable system may select which signals to carry, except that carriage of qualified noncommercial educational station signals pursuant to paragraph (a)(1) of this section is nondiscretionary

(c) In complying with the provisions of this section, a cable system shall be permitted but shall not be required to carry the signal of any qualified station that:

(1) Substantially duplicates the signal of another qualified television station affiliated with a particular commercial national network;

(2) Would result in payment by the cable system of distant signal copyright fees;

(3) Fails to deliver to the cable system principal headend a picture of high quality providing enjoyable viewing and in which interference is no greater than just perceptible.

(d) A cable system shall not accept payment or other consideration in exchange for carriage of the signal of any qualified television station carried in fulfillment of mandatory signal carriage obligations, except that any such station may bear any costs associated with: (1) delivering a good quality signal to the cable system; (2) meeting copyright obligations that are incurred as a consequence of such carriage

(e) A cable system shall identify on request those stations carried in fulfillment of its must carry signal carriage obligations.

#### **Definition of "qualified television station".**

(1) Any television broadcast station, as defined in 76.5(b), that with respect to a particular cable system:

(a) Is licensed to a community whose reference point is within 50 miles of the principal headend of the cable system; and

(b) If a commercial station receives an average share of total viewing hours of at least 2 percent and a net weekly circulation of at least 5 percent in noncable households in the county served by the cable system or has been operational less than one full year. For the purposes of this section, a station is considered operational as of the date it commences operation under program test authority. The viewing standards of this paragraph shall not apply for one full year from January 15, 1987 to otherwise qualified stations that commenced operation after July 19, 1985 but before January 15, 1987 (the effective date of these rules).

#### **Method to be followed for showings.**

(1) A commercial television station shall demonstrate that it meets the viewing standard on the basis of an independent professional survey of noncable homes conducted according to the following provisions:

(a) If the station has been operational for at least one complete television survey season, the survey shall cover four separate, consecutive four-week periods, including one in each of the four quarters of the survey season (i.e. April-June, July-September, October-December, January-March), and be conducted pursuant to the methodology used to compile Appendix B of the *Memorandum Opinion and Order on Reconsideration of Cable Television Report and Order*, FCC 72-530.36 FCC 2d 326 (1972).

(b) If the station has been operational for less than one complete television survey season, the survey shall cover a single period of at least two weeks. The survey sample shall be proportionally distributed among the noncable homes in the county served by the cable system and shall be of sufficient size to assure that the reported results are at least one standard error above the required viewing standard

#### **Carriage of Other Television Signals.**

(a) In addition to the qualified television station(s) a cable system may carry the signals of any other television station, low power television station, or television translator.

(b) A cable system shall be permitted, but shall not be required, to carry any subscription television broadcast program or any ancillary service transmission on the vertical blanking interval or the aural baseband of any television broadcast signal including, but not limited to, multichannel television sound and teletext.

#### **Manner of Carriage (76.63).**

(a) Where a qualified television broadcast signal is carried by a cable system in fulfillment of the mandatory signal obligations set forth in this part of the rules:

(1) the signal shall be carried in full, without deletion or alteration of any portion, except as required by this part;

(2) the signal shall be carried in its entirety, without material degradation, on the lowest-priced, separately available cable service tier

(b) Where a television broadcast signal otherwise is carried by a cable system pursuant to the rules in this part, program broadcast shall be carried in full, without alteration or deletion of any portion, except as required by this part.

#### **Expiration of Mandatory Carriage Provision (76.64).**

The [must carry] provisions shall remain in force until January 15, 1992, and shall thereafter be of no further force or effect.

#### **Input Selector Switches (76.66).**

(a) A cable system operator shall supply to each new subscriber and offer to supply to each existing subscriber an input selector switch for each separate television receiver to which the cable service is provided by the cable operator. The operator shall comply with the following requirements in providing the switch and installing cable service:

(1) Supply and install the switch at no additional cost to the new subscribers, unless the subscriber already

has an input selector switching device or his/her television has such a device built-in;

(2) Offer to supply the switch to any person who is a subscriber on January 15, 1987, within six months of that date and thereafter on an annual basis until January 15, 1992, at no cost other than reasonable labor charges for installation, if necessary or requested, by providing the following form, in the same words or in other words that convey the same meaning, to all persons who do not have input selector switches:

In Accordance with FCC rules, we are offering to supply you with an input selector switch, at no cost, for each separate television receiver to which cable service is provided. This device, which connects you both to the cable service and an antenna you supply, will enable you to select between cable service and off-the-air television signals. You may already have such a switching capability, either in a separate device or as a built in feature to your television receiver. If you already have this capability you do not need an additional switch. However, if you do not have such a switching capability, we will install a switch for a reasonable charge that reflects our actual labor costs or we will provide you a switch with written self-installation instructions at no charge. If you wish to obtain an input selector switch, please check the appropriate box below and return this form to our business office.

I wish to have an input selector switch installed. I understand that I will be charged reasonable labor costs for this service.

I wish to receive an input selector switch with installation instructions at no additional charge.

Please contact: [NAME OF CONTACT SYSTEM OFFICE] at [ADDRESS AND TELEPHONE NUMBER] for further information.

(3) Comply with the following requirements with respect to antennas:

(i) If an antenna is present, the operator shall not recommend that the antenna be removed;

(ii) If an antenna is not present, the operator shall inform the subscriber that the switch will be operational only if connected to an antenna, which the subscriber may purchase from an antenna supplier;

(iii) Where the operator installs a switch and an antenna is present, it shall connect the switch to that existing antenna.

(b) Input selector switches used for alternating between a cable system and an antenna for reception of television broadcast signals shall comply with the technical standards of 15.606(a) of the cable rules.

(c) The cable system operator shall provide the following information, in the same words or in other words that convey the same meaning, to each new subscriber at the time of installation of cable service and to existing subscribers that do not have input selector switches in writing within six months after January 15, 1987, and annually thereafter to all subscribers:

The FCC in 1986 adopted new requirements concerning cable system carriage of local television broadcast stations. Under these regulations, a cable system will be required to carry one or more local broadcast stations, but not necessarily all such stations, until January 15, 1992. After that date, carriage of local broadcast stations will be at the discretion of the cable operator. As a result, at this time or at a later date, you may not be able to receive all local television stations over your cable system. To ensure that you will retain the capability of receiving all of the broadcast stations that are available off-the-air, which might not be carried on the cable system, either now or in the future, it may be necessary to use an input selector switching device in conjunction with an antenna. This device, which connects both to your cable service and your antenna, will enable you to select between cable service and off-the-air television signals.

At this time, [NAME OF CABLE SYSTEM] is not carrying the following local broadcast stations: [LIST CALL LETTERS AND CHANNELS].

Questions related to input selector switches should be directed to [NAME OF CONTACT AT CABLE SYSTEM OFFICE] at [TELEPHONE NUMBER].

Editor's note: The mandatory-carriage and input-selector rules, better known as the must-carry and A/B switch rules respectively, which were issued by the FCC in December 1986, were expected to be challenged by broadcasters, cable operators and cable programmers. As a result, they may undergo significant modification in 1987

#### **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 of 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 a lottery conducted by a State acting under the authority of State law when such information is transmitted:

(1) by a cable system located in that State,

(2) by a cable system located in an adjacent State which also conducts such a lottery, or

(3) by a cable system located in another State which is integrated with a cable system described in (c)(1) or (2) herein, if termination of the receipt of such transmission by the cable system in such other State would be technically infeasible.

(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.

#### **Obscenity (76.215).**

No cable television system operator when engaged in origination cablecasting shall transmit or permit to be transmitted on the origination cablecasting channel or channels material that is obscene or indecent.

#### **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. For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for"

(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 television 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) if 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

## **A short course in cable, 1987**

There are 7,800 operating cable systems in the U.S., serving some 20,000 communities. Another 700 franchises are approved but not built. Texas has the most systems (540) and California the most subscribers (3.9 million). Operating systems currently reach about 41.5 million subscribers, perhaps over 116 million people—47.9% of the nation's TV households. The largest (Cox Cable in San Diego) has about 271,000 subscribers. Some have fewer than 100. Tele-Communications Inc. is the largest multiple system operator (MSO), with more than 3,900,000 subscribers. Industry revenues last year totaled approximately \$4.5 billion. Most systems offer 20 or more channels. Systems constructed after March 1972 must have a minimum 20-channel capacity. The average monthly fee (basic service) is \$11. Costs of laying cable range from \$10,000 per mile in rural areas to \$100,000 in urban areas and up to \$300,000 where underground cable is required. An estimated 4,200 systems originate programming in their own studios, the average for 23 hours weekly. Equipment costs are as low as \$30,000 for a small black and white operation and \$200,000 for a color studio. Over 1,600 systems (20% of all systems) accept advertising on their local origination channels (excluding automated channels), with rates from \$2 to \$250 per 30-second spot. Most cable systems derive less than 5% of their gross revenues from advertising. Pay cable is on approximately 7,000 systems and reaches 32 million subscribers in 50 states. Most pay cable operators are reporting close to 78% penetration of their subscriber count. Home Box Office Inc. initiated the first national satellite interconnected pay network Sept. 30, 1975, using transponder time leased on the Satcom satellite. Aside from contracting for packaged pay programs, like HBO, cable operators can lease a channel to a pay program operator or secure their own programming directly from a supplier. Almost 32% of all cable systems have ties with broadcast interests, over 20% with program producers and approximately 18% with newspapers. Many systems have multiple cross-ownership ties.

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.

#### **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:

(1) A national television network (such as ABC, CBS or NBC); or

(2) 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).

(A) Only those stockholders need be considered who are officers or directors or who directly or indirectly own 1 percent or more of the outstanding voting stock.

(B) Stock ownership by an investment company as defined in 15 U.S.C. Section 80 a-3, by a bank holding stock through its trust accounts or by an insurance company need be considered only if officers or directors of the the corporation are representatives of the investment company, bank or insurance company or if it directly or indirectly owns 5 percent or more of the outstanding voting stock, provided, however, that the investment company, bank or insurance company exercise no control over the management or policies of the corporation. Holdings by a bank or insurance company shall be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies shall be aggregated if under common management.

(C) In calculating the percentage of ownership of voting stock under the provisions of (B), if an investment company, bank or insurance company directly or indirectly owns voting stock in an intermediate company which in turn directly or indirectly owns 50 percent or more of the voting stock of the corporation, the investment company, bank or insurance company shall be considered to own the same percentage of outstanding shares of such corporation as it owns of the intermediate company, provided, however, that such holdings need not be considered where the intermediate company owns less than 50 percent of the voting stock, but officers or directors of the corporation who are representatives of the intermediate company shall be deemed to be representatives of the investment company, bank or insurance company if the investment company, bank or insurance company owns 5 percent or more of the intermediate company.

(D) 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, trusts holding stock as record owners for the benefit of designated parties, 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 the purposes of these rules.

#### **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.

#### **Channel Access Enforcement (76.10).**

(a) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communications Act 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.

(b) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communications Act may petition the Commission for relief upon showing of three prior adjudication violations. Records of previous adjudications resulting in a court determination that the operator has violated the provisions of the Communications Act concerning commercial channel access shall be considered as sufficient for the showing necessary under this section.

(c) Petitions filed with the Commission in response to paragraph (b) shall be made in accordance with the provisions and procedures set forth in Section 76.7 for petitions for special relief.

#### **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 Section 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 76.306, and 76.307 and 76.311 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 is expected to be familiar with the rules governing cable television systems.

#### **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 1,000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by 76.205(d) (origination cablecasts by candidates for public office); 76.221(f) (sponsorship identification); and 76.311(j) (equal employment opportunities).

(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) shall be retained for the periods specified in 76.205(d) and 76.311(j).

(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.

#### **Scope of Application (76.7).**

(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 Section 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 395A) with the Commission on or before May 1 of each year. Employment data on the annual employment report shall reflect the figures from any one payroll period in January, February or March 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) 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.

## Cable Act of 1984

#### 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 subsection.

(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 assure that the widest possible diversity of information sources are made available to the public from the 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:

(A) the term "activated channels" means those channels engineered at the headend of the 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; and

(B) 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, 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) A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that an operator may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.

(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.

#### **Ownership Restrictions (Sec. 613).**

(a) It shall be unlawful for any person to be a cable operator if such person, directly or through one or more affiliates, owns or controls, the license of a television broadcast station and the predicted grade B contour of such station covers any portion of the community served by such cable operator's system.

(b)(1) It shall be unlawful for any common carrier, subject in whole or in part to title II of this Act, to provide video programming directly to subscribers in its telephone service area, either directly or indirectly through an affiliate owned by, operated by, controlled by, or under common control with the common carrier.

(2) It shall be unlawful for any common carrier, subject in whole or in part to title II of this Act, to provide channels of communications or pole line conduit space, or other rental arrangements, to any entity which is directly or indirectly owned by, operated by, controlled by, or under common control with such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in the telephone service area of the common carrier.

(3) This subsection shall not apply to any common carrier to the extent such carrier provides telephone exchange service in any rural area (as defined by the Commission).

(4) In those areas where the provision of video programming directly to subscribers through a cable system demonstrably could not exist except through a cable system owned by, operated by, controlled by, or affiliated with the common carrier involved, or upon their showing of good cause, the Commission may, on petition for waiver, waive the applicability of paragraphs (1) and (2) of this subsection. Any such waiver shall be made in accordance with section 63.56 of title 47, Code of Federal Regulations (as in effect September 20, 1984) and shall be granted by the Commission upon a finding that the issuance of such waiver is justified by the particular circumstances demonstrated by the petitioner, taking into account the policy of this subsection.

(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 the 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 media of mass communications or other media interests.

(e)(1) Subject to paragraph (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) 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 regulation in effect on that date.

(g) For the 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.

#### **General Franchise Requirements (Sec. 621).**

(a)(1) A franchising authority may award, in accordance with the provisions of this title, 1 or more franchises within its jurisdiction.

(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.

(b)(1) Except to the extent provided in paragraph (2), 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.

(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)(v).

(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.

#### **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 twelve-month period, the franchise fee 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. For the 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.

(c) A cable operator may pass through to subscribers the amount of any increase in a franchise fee, unless the franchising authority demonstrates that the rate structure specified in the franchise reflects all costs of franchise fees and so notifies the cable operator in writing.

(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 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 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)(A) 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.

(B) Subparagraph (A) shall take effect 180 days after the effective date of this title.

(e) The Commission may establish technical standards relating to the facilities and equipment of cable systems which franchising authority may require in the franchise.

(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.

## 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 mod-

ification 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) During the 6-month period which begins with the 36th month before the franchise expiration, the franchising authority may on its own initiative, and shall at the request of the cable operator, commence proceedings which afford the public in the franchise area appropriate notice and participation for the purpose of:

(1) identifying the future cable-related community needs and interests; and

(2) reviewing the performance of the cable operator under franchise during the then current franchise term.

(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 submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise, the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the completion of any proceedings under subsection (a), 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 paragraph (2) to consider whether:

(A) the cable operator has substantially complied with the material terms of the existing franchise and 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, quality, or level 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 paragraph (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. 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 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 has effectively acquiesced.

(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 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 the 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).

# Cable Systems in the United States and Canada

## Key to Listings

Listed in this directory are all the cable television systems and franchise holders in the United States and Canada. Each is listed under the principal community of service, by state or province.

Shown to the right is a sample listing, with explanation of information keyed to the boldface numbers. This information is as of May 1986.

**(1)** Name of System, local address, zip code and telephone.

**(2)** Personnel.

**(3)** Area served: Springfield is the principal community; the system also serves nearby Paris borough and Twilham township.

**(4)** County in which the service area is located.

**(5)** Type of TV market. According to FCC rules a CATV system is within a TV market if any part of the system falls within 35 miles of a commercial TV city-of-license. There are three locational categories: Top 100 markets; "smaller TV markets," i.e., any community with a commercial TV station not in the top 100; and, third, locations outside all TV markets. Systems outside a market may still be required to offer nonduplication protection if they fall within 55 miles of a city of license.

**(6)** Statistical data: total number of subscribers; homes passed by the system; total homes in the communities served; date the system began; length of the plant; cost to the subscriber for installation and monthly service; and fee the community levies on the cable company (usually a percentage of gross revenue). In states with across-the-board fee, the fee appears under the state heading.

**(7)** Summary of system, showing number of channels used for each service. Total capacity is that of the distribution system. Pan-State has 27 channels. Twelve are used for TV carriage; one for pay cable (which carries high-quality programming at an additional charge); two for basic cable services, such as CNN or ESPN; two for automated services, such as weather and news data; four for public access programming; three for any other programming originated by the cable system; two are technically unavailable; three are dark but available for future use. The system also supplies allband FM service.

## SAMPLE LISTING

**Springfield.** **(1)** Pan-State Cable Inc. Box 100 99999. (800) 555-1000. **(2)** Chester A. Arthur, mgr; A.G. Bell, chief tech.

**(3)** Serves Springfield, Paris bor, Twilham twp. **(4)** Washington county. **(5)** Smaller TV market.

**(6)** Subs: 3,000; homes passed: 4,000; total homes in franchised area: 15,000. Started 12/68. Length 25 mi. Charges: instal \$8; \$4.50/mo. Franchise fee 3%.

**(7)** Channel usage: total ch capacity 27; TV chs 12; pay cable 1; basic cable 2; automated 2; access 4; other local origination 1; technically unavailable 2; available unused 3. Allband FM.

**(8)** Pay cable: one ch (HBO; 350 subs; \$9/mo.).

**(9)** Basic cable: 2 chs (CNN, ESPN).

**(10)** Origination: automated: 2 chs (news, time, weather); **(11)** access: 4 chs (public, educ, govt, leased); **(12)** other: 1 ch (local origination).

**(13)** Adv accepted; annual volume \$35,000.

**(14)** Other services: two-way capability, burglar alarm.

**(15)** Ownership: Lunar Cable Co. 60% (see MSO); James Buchanon, pres, 15%; G. Marconi, exec VP, 25% (see Bcstrs in Cable TV).

(If the system carries selected radio, rather than allband, the number of AM and FM stations is shown).

**(8)** Pay cable: Where a cable system provides a pay cable service, a solid square (■) highlights the pertinent information: the number of channels on which pay service is carried, the program supplier, total pay subscribers and monthly subscriber cost above that charged for regular cable services. Pay cable program suppliers are: Home Box Office (HBO), Showtime, The Movie Channel, Cinemax, The Playboy Channel, The Disney Channel, Bravo and American Movie Classics, as well as several regional sports and general programming services. Galavision is converting from a pay to a basic service.

**(9)** Basic cable: The sample listing shows that this system has two basic cable channels. The two channels carry satellite transmitted programming. Basic cable services carry a minimal charge paid by the cable system operator or no charge programming. These services often carry advertising. Services are: ACTS Satellite

Network, Arts & Entertainment (A&E), Black Entertainment Television (BET), CNN, CNN Headline News, CBN Cable Network, Country Music Television, C-SPAN, C-SPAN II, The Discovery Channel, Entertainment & Sports Programming Network (ESPN), Eternal Word Television Network (EWTN), Financial News Network (FNN), Galavision, Genesis Story Time, The Home Shopping Network, KTVT(TV) Dallas, The Learning Channel, The Liberty Network, Music Television (MTV), The Nashville Network (TNN), National Jewish Television (NJT), Nickelodeon, PTL-The Inspiration Network, The Silent Network, Tempo, USA Cable Network, Video Hits One (VH-1), The Weather Channel (TWC), WFMT(FM) Chicago, WGN-TV Chicago, WOR-TV New York, WPIX(TV) New York, WTBS(TV) Atlanta.

**(10)** Automated origination: Two channels are used by this system to carry automated news, weather and time.

**(11)** Access channels: Channels are made available for programming by persons other than the cable operator. Channels are assigned to the general public, educational institutions and local government. Channels may also be leased by private parties.

**(12)** Other origination: The sample listing shows that this system has one other origination channel. It is a locally originated channel. This type of origination often carries advertising.

**(13)** System accepts advertising (on local origination or automated channels), with yearly revenue shown.

**(14)** Other services offered by the system: "Two-way capability" indicates the distribution system is equipped to handle subscriber-to-headend signals. Special radio service (distant imported signals, shortwave, etc.) are also shown.

**(15)** Ownership: If a multiple system operator (MSO) owns the system in part or in whole, reference is made to the MSO directory on page D-305 of this section, listing the particulars for persons and companies with an interest in three or more cable operations. (Canadian MSO's are listed in the following directory). Headquarters addresses and other interests may appear here, rather than under the individual system's listing. If a cable operator has broadcast interests, reference is made to the "Broadcasters in Cable TV" directory which is in this section on page D-324.