

## Federal Communications Commission

## § 76.1902

system on any new frequency or frequencies in the aeronautical radio frequency bands (108–137 and 225–400 MHz). The notification shall be made on FCC Form 321. Such notification shall include:

(a) Legal name and local address of the MVPD;

(b) The names and FCC identifiers (e.g., CA0001) of the system communities affected, for a cable system, and the name and FCC identifier (e.g., CAB901), for other MVPDs;

(c) The names and telephone numbers of local system officials who are responsible for compliance with §§ 76.610 through 76.616 and § 76.1803;

(d) Carrier frequency, tolerance, and type of modulation of all carriers in the aeronautical bands at any location in the cable distribution system and the maximum of those average powers measured over a 2.5 kHz bandwidth as described in the introductory paragraph to this rule section;

(e) The geographical coordinates (in NAD83) of a point near the center of the system, together with the distance (in kilometers) from the designated point to the most remote point of the plant, existing or planned, that defines a circle enclosing the entire plant;

(f) Certification that the monitoring procedure used is in compliance with § 76.614 or description of the routine monitoring procedure to be used; and

(g) For MVPDs subject to § 76.611, the cumulative signal leakage index derived under § 76.611(a)(1) or the results of airspace measurements derived under § 76.611(a)(2), including a description of the method by which compliance with the basic signal leakage criteria is achieved and the method of calibrating the measurement equipment.

(h) Aeronautical Frequency Notifications, FCC Form 321, shall be personally signed either electronically or manually by the operator; by one of the partners, if the operator is a partnership; by an officer, if the operator is a corporation; by a member who is an officer, if the operator is an unincorporated association; or by any duly authorized employee of the operator.

(i) Aeronautical Frequency Notifications, FCC Form 321, may be signed by the operator's attorney in case of the

operator's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reasons why the FCC Form 321 was not signed by the operator. In addition, if any matter is stated on the basis of the attorney's belief only (rather than the attorney's knowledge), the attorney shall separately set forth the reasons for believing that such statements are true.

(j) The FCC Registration Number (FRN).

[68 FR 27003, May 19, 2003]

### § 76.1805 Alternative rate regulation agreements.

Small systems owned by small cable companies must file with the Commission a copy of any operative alternative rate regulation agreement entered into with a local franchising authority pursuant to § 76.934(g), within 30 days after its effective date.

## Subpart W—Encoding Rules

SOURCE: 68 FR 66735, Nov. 28, 2003, unless otherwise noted.

### § 76.1901 Applicability.

(a) Each multi-channel video programming distributor shall comply with the requirements of this subpart.

(b) This subpart shall not apply to distribution of any content over the Internet, nor to a multichannel video programming distributor's operations via cable modem or DSL.

(c) With respect to cable system operators, this subpart shall apply only to cable services. This subpart shall not apply to cable modem services, whether or not provided by a cable system operator or affiliate.

### § 76.1902 Definitions.

(a) *Commercial advertising messages* shall mean, with respect to any service, program, or schedule or group of programs, commercial advertising messages other than:

(1) Advertising relating to such service itself or the programming contained therein,

(2) Interstitial programming relating to such service itself or the programming contained therein, or

(3) Any advertising which is displayed concurrently with the display of any part of such program(s), including but not limited to “bugs,” “frames” and “banners.”

(b) *Commercial audiovisual content* shall mean works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied, transmitted by a covered entity and that are:

(1) Not created by the user of a covered product, and

(2) Offered for transmission, either generally or on demand, to subscribers or purchasers or the public at large or otherwise for commercial purposes, not uniquely to an individual or a small, private group.

(c) *Commercially adopted access control method* shall mean any commercially adopted access control method including digitally controlled analog scrambling systems, whether now or hereafter in commercial use.

(d) *Copy never* shall mean, with respect to commercial audiovisual content, the encoding of such content so as to signal that such content may not be copied by a covered product.

(e) *Copy one generation* shall mean, with respect to commercial audiovisual content, the encoding of such content so as to permit a first generation of copies to be made by a covered product but not copies of such first generation of copies.

(f) *Copy no more* shall mean, with respect to commercial audiovisual content, the encoding of such content so as to reflect that such content is a first generation copy of content encoded as copy one generation and no further copies are permitted.

(g) *Covered product* shall mean a device used by consumers to access commercial audiovisual content offered by a covered entity (excluding delivery via cable modem or the Internet); and any device to which commercial audiovisual content so delivered from such covered product may be passed, directly or indirectly.

(h) *Covered entity* shall mean any entity that is subject to this subpart.

(i) *Defined business model* shall mean video-on-demand, pay-per view, pay television transmission, non-premium subscription television, free conditional access delivery and unencrypted broadcast television.

(j) *Encode* shall mean, in the transmission of commercial audiovisual content, to pass, attach, embed, or otherwise apply to, associate with, or allow to persist in or remain associated with such content, data or information which when read or responded to in a covered device has the effect of preventing, pausing, or limiting copying, or constraining the resolution of a program when output from the covered device.

(k) *Encoding rules* shall mean the requirements or prohibitions describing or limiting encoding of audiovisual content as set forth in this subpart.

(l) *Free conditional access delivery* shall mean a delivery of a service, program, or schedule or group of programs via a commercially-adopted access control method, where viewers are not charged any fee (other than government-mandated fees) for the reception or viewing of the programming contained therein, other than unencrypted broadcast television.

(m) *Non-premium subscription television* shall mean a service, or schedule or group of programs (which may be offered for sale together with other services, or schedule or group of programs), for which subscribers are charged a subscription fee for the reception or viewing of the programming contained therein, other than pay television, subscription-on-demand and unencrypted broadcast television. By way of example, “basic cable service” and “extended basic cable service” (other than unencrypted broadcast television) are “non-premium subscription television.”

(n) *Pay-per-view shall* mean a delivery of a single program or a specified group of programs, as to which each such single program is generally uninterrupted by commercial advertising messages and for which recipients are charged a separate fee for each program or specified group of programs. The term pay-per-view shall also include delivery of a

single program for which multiple start times are made available at time intervals which are less than the running time of such program as a whole. If a given delivery qualifies both as pay-per-view and a pay television transmission, then, for purposes of this subpart, such delivery shall be deemed pay-per-view rather than a pay television transmission.

(o) *Pay television transmission* shall mean a transmission of a service or schedule of programs, as to which each individual program is generally uninterrupted by commercial advertising messages and for which service or schedule of programs subscribing viewers are charged a periodic subscription fee, such as on a monthly basis, for the reception of such programming delivered by such service whether separately or together with other services or programming, during the specified viewing period covered by such fee. If a given delivery qualifies both as a pay television transmission and pay-per-view, video-on-demand, or subscription-on-demand then, for purposes of this subpart, such delivery shall be deemed pay-per-view, video-on-demand or subscription-on-demand rather than a pay television transmission.

(p) *Program* shall mean any work of commercial audiovisual content.

(q) *Subscription-on-demand* shall mean the delivery of a single program or a specified group of programs for which:

(1) A subscriber is able, at his or her discretion, to select the time for commencement of exhibition thereof,

(2) Where each such single program is generally uninterrupted by commercial advertising messages; and

(3) For which program or specified group of programs subscribing viewers are charged a periodic subscription fee for the reception of programming delivered by such service during the specified viewing period covered by the fee. In the event a given delivery of a program qualifies both as a pay television transmission and subscription-on-demand, then for purposes of this subpart, such delivery shall be deemed subscription-on-demand rather than a pay television transmission.

(r) *Undefined business model* shall mean a business model that does not

fall within the definition of a defined business model.

(s) *Unencrypted broadcast television* means the retransmission by a covered entity of any service, program, or schedule or group of programs originally broadcast in the clear without use of a commercially-adopted access control method by a terrestrial television broadcast station regardless of whether such covered entity employs an access control method as a part of its retransmission.

(t) *Video-on-demand* shall mean a delivery of a single program or a specified group of programs for which:

(1) Each such individual program is generally uninterrupted by commercial advertising messages;

(2) Recipients are charged a separate fee for each such single program or specified group of programs; and

(3) A recipient is able, at his or her discretion, to select the time for commencement of exhibition of such individual program or specified group of programs. In the event a delivery qualifies as both video-on-demand and a pay television transmission, then for purposes of this subpart, such delivery shall be deemed video-on-demand.

[68 FR 66735, Nov. 28, 2003, as amended at 69 FR 4082, Jan. 28, 2004]

#### § 76.1903 Interfaces.

A covered entity shall not attach or embed data or information with commercial audiovisual content, or otherwise apply to, associate with, or allow such data to persist in or remain associated with such content, so as to prevent its output through any analog or digital output authorized or permitted under license, law or regulation governing such covered product.

#### § 76.1904 Encoding rules for defined business models.

(a) Commercial audiovisual content delivered as unencrypted broadcast television shall not be encoded so as to prevent or limit copying thereof by covered products or, to constrain the resolution of the image when output from a covered product.

(b) Except for a specific determination made by the Commission pursuant to a petition with respect to a defined business model other than unencrypted

broadcast television, or an undefined business model subject to the procedures set forth in § 76.1906:

(1) Commercial audiovisual content shall not be encoded so as to prevent or limit copying thereof except as follows:

(i) To prevent or limit copying of video-on-demand or pay-per-view transmissions, subject to the requirements of paragraph (b)(2) of this section; and

(ii) To prevent or limit copying, other than first generation of copies, of pay television transmissions, non-premium subscription television, and free conditional access delivery transmissions; and

(2) With respect to any commercial audiovisual content delivered or transmitted in form of a video-on-demand or pay-per-view transmission, a covered entity shall not encode such content so as to prevent a covered product, without further authorization, from pausing such content up to 90 minutes from initial transmission by the covered entity (e.g., frame-by-frame, minute-by-minute, megabyte by megabyte).

**§ 76.1905 Petitions to modify encoding rules for new services within defined business models.**

(a) The encoding rules for defined business models in § 76.1904 reflect the conventional methods for packaging programs in the MVPD market as of December 31, 2002, and are presumed to be the appropriate rules for defined business models. A covered entity may petition the Commission for approval to allow within a defined business model, other than unencrypted broadcast television, the encoding of a new service in a manner different from the encoding rules set forth in § 76.1904(b)(1) and (2). No such petition will be approved under the public interest test set forth in paragraph (c)(4) of this section unless the new service differs from existing services provided by any covered entity under the applicable defined business model prior to December 31, 2002.

(b) *Petitions.* A petition to encode a new service within a defined business model other than as permitted by the encoding rules set forth in § 76.1904(b)(1) and (2) shall describe:

(1) The defined business model, the new service, and the proposed encoding terms, including the use of copy never and copy one generation encoding, and the encoding of content with respect to “pause” set forth in § 76.1904(b)(2).

(2) Whether the claimed benefit to consumers of the new service, including, but not limited to, the availability of content in earlier release windows, more favorable terms, innovation or original programming, outweighs the limitation on the consumers’ control over the new service;

(3) The ways in which the new service differs from existing services offered by any covered entity within the applicable defined business model prior to December 31, 2002;

(4) All other pertinent facts and considerations relied on to support a determination that grant of the petition would serve the public interest.

(5) Factual allegations shall be supported by affidavit or declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(c) *Petition process*—(1) *Public notice.* The Commission shall give public notice of any such petition.

(2) *Comments.* Interested persons may submit comments or oppositions to the petition within thirty (30) days after the date of public notice of the filing of such petition. Comments or oppositions shall be served on the petitioner and on all persons listed in petitioner’s certificate of service, and shall contain a detailed full statement of any facts or considerations relied on. Factual allegations shall be supported by affidavit or declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(3) *Replies.* The petitioner 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 or declaration, of any additional facts or considerations relied on. There shall be no further pleadings filed after petitioner’s reply, unless authorized by the Commission.

(4) *Commission determination as to encoding rules for a new service within a defined business model.* (i) Proceedings initiated by petitions pursuant to this section shall be permit-but-disclose proceedings, unless otherwise specified by the Commission. The covered entity shall have the burden of proof to establish that the proposed change in encoding rules for a new service is in the public interest. In making its determination, the Commission shall take into account the following factors:

(A) Whether the benefit to consumers of the new service, including but not limited to earlier release windows, more favorable terms, innovation or original programming, outweighs the limitation on the consumers' control over the new service;

(B) Ways in which the new service differs from existing services offered by any covered entity within the applicable defined business model prior to December 31, 2002; and

(ii) The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate.

(iii) A petition may, upon request of the petitioner, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the petition. A petitioner's request for the return of a petition will be regarded as a request for dismissal.

(d) *Complaint regarding a new service not subject to petition.* In an instance in which an interested party has a substantial basis to believe and does believe in good faith that a new service within a defined business model has been launched without a petition as required by this section, such party may file a complaint pursuant to § 76.7.

**§ 76.1906 Encoding rules for undefined business models.**

(a) Upon public notice and subject to requirements as set forth herein, a covered entity may launch a program service pursuant to an undefined business model. Subject to Commission review upon complaint, the covered entity may initially encode programs pursuant to such undefined business model

without regard to limitations set forth in § 76.1904(b).

(1) *Notice.* Concurrent with the launch of an undefined business model by a covered entity, the covered entity shall issue a press release to the PR Newswire so as to provide public notice of the undefined business model, and the proposed encoding terms. The notice shall provide a concise summary of the commercial audiovisual content to be provided pursuant to the undefined business model, and of the terms on which such content is to be available to consumers. Immediately upon request from a party entitled to be a complainant, the covered entity shall make available information that indicates the proposed encoding terms, including the use of copy never or copy one generation encoding, and the encoding of content with respect to "pause" as defined in § 76.1904(b)(2).

(2) *Complaint process.* Any interested party ("complainant") may file a complaint with the Commission objecting to application of encoding as set forth in the notice.

(i) *Pre-complaint resolution.* Prior to initiating a complaint with the Commission under this section, the complainant shall notify the covered entity that it may file a complaint under this section. The notice must be sufficiently detailed so that the covered entity can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of thirty (30) days from such notice before filing such complaint with the Commission. During this period the parties shall endeavor in good faith to resolve the issue(s) in dispute. If the parties fail to reach agreement within this 30 day period, complainant may initiate a complaint in accordance with the procedures set forth herein.

(ii) *Complaint.* Within two years of publication of a notice under paragraph (a)(1) of this section, a complainant may file a complaint with the Commission objecting to application of the encoding terms to the service at issue. Such complaint shall state with particularity the basis for objection to the encoding terms.

(A) The complaint shall contain the name and address of the complainant

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and the name and address of the covered entity.

(B) The complaint shall be accompanied by a certification of service on the named covered entity.

(C) The complaint shall set forth with specificity all information and arguments relied upon. Specific factual allegations shall be supported by a declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(D) The complaint shall set forth attempts made by the complainant to resolve its complaint pursuant to paragraph (a)(2)(i) of this section.

(iii) *Public notice.* The Commission shall give public notice of the filing of the complaint. Once the Commission has issued such public notice, any person otherwise entitled to be a complainant shall instead have the status of a person submitting comments under paragraph (a)(2)(iv) of this section rather than a complainant.

(iv) *Comments and reply.* (A) Any person may submit comments regarding the complaint within thirty (30) days after the date of public notice by the Commission. Comments shall be served on the complainant and the covered entity and on any persons listed in relevant certificates of service, and shall contain a detailed full statement of any facts or considerations relied on. Specific factual allegations shall be supported by a declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(B) The covered entity may file a response to the complaint and comments within twenty (20) days after the date that comments are due. Such response shall be served on all persons who have filed complaints or comments and shall also contain a detailed full showing, supported by affidavit or declaration, of any additional facts or considerations relied on. Replies shall be due ten (10) days from the date for filing a response.

(v) *Basis for Commission determination as to encoding terms for an undefined business model.* In a permit-but-disclose proceeding, unless otherwise specified by the Commission, to determine whether encoding terms as noticed

may be applied to an undefined business model, the covered entity shall have the burden of proof to establish that application of the encoding terms in the undefined business model is in the public interest. In making any such determination, the Commission shall take into account the following factors:

(A) Whether the benefit to consumers of the new service, including but not limited to earlier release windows, more favorable terms, innovation or original programming, outweighs the limitation on the consumers' control over the new service;

(B) Ways in which the new service differs from services offered by any covered entity prior to December 31, 2002;

(vi) *Determination procedures.* The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate.

(b) *Complaint regarding a service not subject to notice.* In an instance in which an interested party has a substantial basis to believe and believes in good faith that a service pursuant to an undefined business model has been launched without requisite notice, such party may file a complaint pursuant to § 76.7.

**§ 76.1907 Temporary bona fide trials.**

The obligations and procedures as to encoding rules set forth in §§ 76.1904(b) and (c) and 76.1905(a) and (b) do not apply in the case of a temporary bona fide trial of a service.

**§ 76.1908 Certain practices not prohibited.**

Nothing in this subpart shall be construed as prohibiting a covered entity from:

(a) Encoding, storing or managing commercial audiovisual content within its distribution system or within a covered product under the control of a covered entity's commercially adopted access control method, provided that the outcome for the consumer from the application of the encoding rules set out in § 76.1904(a) and (b) is unchanged

thereby when such commercial audiovisual content is released to consumer control, or

(b) Causing, with respect to a specific covered product, the output of content from such product in a format as necessary to match the display format of another device connected to such product, including but not limited to providing for content conversion between widely-used formats for the transport, processing and display of audiovisual signals or data, such as between analog and digital formats and between PAL and NTSC or RGB and Y,Pb,Pr.

**§76.1909 Redistribution control of unencrypted digital terrestrial broadcast content.**

(a) For the purposes of this section, the terms unencrypted digital terrestrial broadcast content, EIT, PMT, broadcast flag, covered demodulator product, and marked content shall have the same meaning as set forth in §73.9000 of this chapter.

(b) *Encrypted retransmission.* Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content in encrypted form, such distributor shall, upon demodulation of the 8-VSB, 16-VSB, 64-QAM or 256-QAM signal, inspect either the EIT or PMT for the broadcast flag, and if the broadcast flag is present:

(1) Securely and robustly convey that information to the consumer product used to decrypt the distributor's signal information, and

(2) Require that such consumer product, following such decryption, protect the content of such signal as if it were a covered demodulator product receiving marked content.

(c) *Unencrypted retransmission.* Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content in unencrypted form, such distributor shall, upon demodulation:

(1) Preserve the broadcast flag, if present, in both the EIT and PMT; and  
 (2) Use 8-VSB, 16-VSB, 64-QAM, or 256-QAM signal modulation for the retransmission.

(d) *Unmarked content.* Where a multichannel video programming distributor retransmits unencrypted digital terres-

trial broadcast content that is not marked with the broadcast flag, the multichannel video programming distributor shall not encode such content to restrict its redistribution.

[68 FR 67607, Dec. 3, 2003]

**Subpart X—Access to MDUs**

**§ 76.2000 Exclusive access to multiple dwelling units generally.**

(a) *Prohibition.* No cable operator or other provider of MVPD service subject to 47 U.S.C. 548 shall enforce or execute any provision in a contract that grants to it the exclusive right to provide any video programming service (alone or in combination with other services) to a MDU. All such exclusivity clauses are null and void.

(b) *Definition.* For purposes of this rule, MDU shall include a multiple dwelling unit building (such as an apartment building, condominium building or cooperative) and any other centrally managed residential real estate development (such as a gated community, mobile home park, or garden apartment); provided however, that MDU shall not include time share units, academic campuses and dormitories, military bases, hotels, rooming houses, prisons, jails, halfway houses, hospitals, nursing homes or other assisted living facilities.

[73 FR 1089, Jan. 7, 2008]

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