

part of the authorized program, and are not incorporated by reference:

(i) *Arizona Laws Relating to Environmental Quality*, 1993 edition, reprinted from *Arizona Revised Statutes*, Title 49, Sections 49-901 through 49-905; 49-922.01; 49-927; 49-929 through 49-942; and 49-944.

(ii) *Arizona Administrative Code*, Title 18, Chapter 8, December 31, 1994, Sections R18-8-261.J; R18-8-261.L; R18-8-269; and R18-8-270.G.

(4) *Memorandum of Agreement*. The Memorandum of Agreement between EPA Region IX and the Arizona Department of Environmental Quality, signed by the EPA Regional Administrator on June 20, 1991, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of Legal Authority*. "Attorney General's Statement for Final Authorization", signed by the Attorney General of Arizona on September 13, 1984, and revisions, supplements and addenda to that Statement dated November 22, 1989, October 31, 1990, August 23, 1993 (two documents), and February 3, 1995, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program Description*. The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to Part 272 is amended by revising the listing for "Arizona" to read as follows:

**Appendix A to part 272—State Requirements**

\* \* \* \* \*

**Arizona**

The statutory provisions include: *Arizona Laws Relating to Environmental Quality*, 1993 edition, reprinted from *Arizona Revised Statutes*, Title 49, Sections 49-921 and 49-922. Copies of the Arizona statutes can be obtained from the State Bar of Arizona, 111 West Munroe, Suite 1800, Phoenix, Arizona 85003-1742.

The regulatory provisions include: *Arizona Administrative Code*, Title 18, Chapter 8, December 31, 1994, Sections R18-8-260.A through R18-8-260.C, R18-8-260.E through R18-8-260.H; R18-8-261.A through R18-8-261.I; R18-8-261.K; R18-8-262; R18-8-263; R18-8-264; R18-8-265; R18-8-266; R18-8-268; R18-8-270.A through R18-8-270.F; R18-8-270.H through R18-8-270.Q; and R18-8-271.A through R18-8-271.E. Copies of the Arizona regulations can be obtained from the Arizona Secretary of State,

Publications, Notary, Charitable Solicitation & Telemarketing Division, 1700 West Washington, 7th Floor, Phoenix, Arizona 85007-2808.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 63**

[CC Docket No. 87-266, FCC 95-357]

**Streamlined Section 214 Authorization for Stand-alone Cable Systems**

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Final rule.

**SUMMARY:** Section 214 of the Communications Act requires local exchange telephone companies (LECs) to obtain authorization from the Federal Communications Commission before constructing or acquiring a cable system in their service territories. Although section 613(b) of the Act generally prohibits LECs from providing video programming directly to subscribers in their service areas, various court decisions have enjoined the Commission from enforcing this telco-cable cross-ownership ban against virtually all LECs. This order concludes that it is in the public interest to streamline the section 214 process with respect to those LECs against whom the Commission is not enforcing the cross-ownership ban that seek authorization to construct facilities to provide cable service in their service areas on a stand-alone basis.

**EFFECTIVE DATE:** August 25, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mark S. Nadel, Policy and Program Planning Division, Common Carrier Bureau, (202) 418-1594.

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

Public reporting burden for the collections of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Room 234, Washington, DC

20554 and to the Office of Management & Budget, Paperwork Reduction Project, Washington, DC 20503.

**Background**

In 1970, the Commission concluded that section 214 of the Act requires that a LEC obtain Commission authorization before constructing or operating a cable system in its service territory. However, under Commission rules enacted in 1970 and later under section 613(b) of the Cable Communications Policy Act of 1984, LECs were generally prohibited from providing video programming directly to subscribers in their telephone service areas.

After this cross-ownership ban was found to violate the First Amendment and the Commission was enjoined from enforcing it against virtually all LECs, the Commission issued Telephone Company-Cable Television Cross-Ownership Rules, sections 63.54-63.58, Fourth Further Notice of Proposed Rulemaking, CC Docket No. 87-266, 10 FCC Rcd 4617, 60 FR 8996 (Feb. 16, 1995), to consider how current statutory provisions, including section 214, should apply to a LEC's provision of video programming to subscribers in its service area. Subsequently, to supplement the record on certain particular issues, Commission staff sought additional comment, *inter alia*, on whether the Commission should grant blanket section 214 authorization to such LECs for construction or acquisition of cable facilities in their service areas. Public Notice, DA 95-665, 60 FR 17763 (Apr. 7, 1995). Comment was also sought on whether such blanket section 214 authorization should apply both when the cable television facility is used also to provide telephone service and when the facility is used to provide only cable television services. Finally, comment was sought on what, if any, other circumstances warrant granting consideration of such blanket section 214 authorization when a telephone company provides video programming in its service area, on any methods for streamlining the section 214 application process, and on how the relevant rules should be amended.

**Summary of Fourth Report and Order**

This is a summary of the Commission's Fourth Report and Order in Telephone Company-Cable Television Cross-Ownership Rules §§ 63.54-63.58, CC Docket No. 87-266; FCC 95-357, Adopted: August 11, 1995 and Released: August 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M

Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, (202)-857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

This order streamlines the authorization process for telephone companies who seek to construct stand-alone cable television facilities in their service areas. These streamlined procedures apply to those telephone companies who have obtained injunctions that bar the FCC from enforcing the telco-cable cross-ownership ban.

The Cable Act of 1984 generally prohibits LECs from providing video programming directly to subscribers in their telephone service areas. A series of court decisions, however, have found that this cross-ownership ban violates the First Amendment and have enjoined the Commission from enforcing it. In response, in January, the Commission adopted a Notice of Proposed Rulemaking seeking comment on the rules that should apply to a LEC's provision of video programming to subscribers in its service area. In April, Commission staff sought additional comment on whether it should grant blanket section 214 authorization to such LECs for construction or acquisition of cable facilities in their service areas.

Under section 214 of the Communications Act, LECs are required to obtain Commission authorization before acquiring, constructing, or operating a cable television system. In 1984, the Commission found that it was in the public interest to grant a blanket section 214 authorization to LECs seeking to operate cable systems outside of their telephone service areas.

Because judicial injunctions prevent the Commission from enforcing the cross-ownership ban, it finds, in this Order, that the public interest will be served by adopting a streamlined authorization process for those LECs against whom it is not enforcing the cross-ownership ban who seek to construct stand-alone cable facilities in their service areas.

Under these streamlined procedures, a LEC will be required to certify that the system it proposes to construct is not a common carrier system, that it will

comply with the rules the Commission has promulgated to protect telephone ratepayers, and that it has secured a franchise to provide cable service pursuant to Title VI of the Communications Act. Unless the Common Carrier Bureau notifies the applicant within 14 days of the issuance of the public notice listing the application as accepted for filing, the authorization will be deemed granted. Where the Bureau notifies the applicant, action by the full Commission will be taken within 180 days of that notification.

#### **List of Subjects in 47 CFR Part 63**

Cable television, Communications common carriers, Reporting and recordkeeping requirements, Telephone.

#### **Amendments to the Code of Federal Regulations**

Title 47 of the CFR, Part 63 is amended as follows:

#### **PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS**

1. The authority citation for Part 63 continues to read as follows:

**Authority:** Sections 1, 4(i), 4(j), 201-205, 218, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. secs. 151, 154(i), 154(j), 201-205, 218, and 403, unless otherwise noted.

2. New § 63.16 is added under the heading "Extensions and Supplements" to read as follows:

#### **§ 63.16 Construction of stand-alone cable system by a carrier in its exchange telephone service area.**

(a) Applications of telephone common carriers proposing to construct and operate stand-alone cable systems within their telephone service areas, either directly or indirectly through affiliates, need include only the following information in lieu of that required by § 63.01:

(1) Applicant's name, address and telephone number. This information shall also be submitted for Applicant's affiliate, if applicable;

(2) Location of the proposed system (city, town or village, county, and state);

(3) Certification that the lines constructed by the Applicant constitute a stand-alone cable system that will not be used to provide common carrier service unless and until it has secured any prior approvals necessary under Part 64 of this chapter and any other requirements designed to ensure that the local exchange carriers' telephone ratepayers do not subsidize the provision of cable service;

(4) Certification that the Applicant will comply with 47 CFR 32.23, 32.27, 64.901-64.904;

(5) Certification that the Applicant is franchised to provide cable service pursuant to Title VI of the Communications Act, and date of franchise; and

(b) As used in this section, a stand-alone cable system is one that does not share central office assets (USOA Accounts 2210 through 2232, 47 CFR 32.2210-32.2232) or cable and wire facilities (USOA Accounts 2410 through 2441, 47 CFR 32.2410-32.2441) with the carrier's regulated telephone telephone business.

(c) An original and two copies of the application shall be furnished to the Secretary, Federal Communications Commission, Washington, DC 20554. Applicant shall furnish a copy of the Governor of the state in which the line is to be constructed, and also to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon, Washington, DC 20301.

(d) Unless the Bureau notifies the applicant otherwise within 14 days of the issuance of the public notice listing the application as accepted for filing, the 47 U.S.C. 214 authorization will be deemed granted, and the LEC may begin construction on the 15th day. The Bureau will confirm such authorizations in public notices issued monthly. Where the Bureau has notified the applicant, action by the full Commission on the 47 U.S.C. 214 application will be taken within 180 days from the date of the Bureau notification.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

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