

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[CS Docket No. 98-132; FCC 01-314]

### 1998 Biennial Review—Multichannel Video and Cable Television Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule and clarifications.

**SUMMARY:** In this document we adopt a Commission rule which provides a limited exception for cable operators with 1000 or more, but fewer than 5000, subscribers. Specifically, such cable systems are relieved from certain recordkeeping requirements associated with maintaining the public file, requiring public file information to be provided only upon request. This action was taken in response to the Commission's 1998 biennial review of the public file and notice requirements concerning cable television. This document also makes a number of clarifications to various part 76 rules.

**DATES:** Effective January 28, 2002.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW-A-325, Washington, DC 20554.

#### FOR FURTHER INFORMATION CONTACT:

Sonia Greenaway-Mickle, Cable Services Bureau, (202) 418-1419.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Report and Order ("Second Order"), FCC 01-314, adopted October 22, 2001; released October 31, 2001. The full text of the Commission's Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at <http://www.fcc.gov/csb/>.

#### Synopsis of the Second Report and Order

1. In this 1998 Biennial Review—*Streamlining of Cable Television Service Part 76 Public File and Notice: Second Report and Order*, the Commission addresses portions of part 76 of the cable television rules pertaining to the public file, notice, recordkeeping, and reporting requirements. First, we reinstate, as a final rule, § 76.1700(a). Second, the Commission clarifies certain provisions in the part 76 rules in

order to more clearly set forth the compliance requirements and regulatory process for cable operators, franchising authorities, and the public. Finally, we make non-substantive rule changes to correct errors in the publication of part 76 of the Commission's rules. With this action, we complete the Commission's biennial review of the public file and notice requirements applicable to cable operators under part 76 of the Commission's rules.

2. The part 76 cable television rules contained numerous public file, notice, recordkeeping, and reporting requirements scattered throughout part 76. In connection with the 1998 *Biennial Regulatory Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, Report and Order*, the Commission revised and streamlined the public file and notice requirements set forth in the Commission's part 76 cable television rules. The *Notice of Proposed Rulemaking* in this proceeding, however, inadvertently was not published in the **Federal Register**. Because the rule changes adopted were deemed to be primarily procedural in nature, the failure of **Federal Register** notice was determined not to impair their effectiveness. In this regard, § 1.412(b)(5) of the Commission's rules, provides that rules involving Commission organization, procedure, or practice are exempt from the requirement of prior notice by publication in the **Federal Register**. Section 76.1700(a), however, was determined to alter the substantive public file requirements for a subset of cable operators and to be subject to the prior public notice requirement. Section 76.1700(a) was published subsequently in the **Federal Register** (65 FR 53610) Sept. 5, 2000, as an "interim rule," and interested parties were afforded an opportunity to comment upon it. No comments were filed.

In this proceeding, we adopt § 76.1700(a) as a final rule.

3. Part 76 rule clarification. We now consider on our own motion, specific rules adopted in part 76 relating to the public file, notice, recordkeeping, and reporting requirements requiring clarification.

4. Section 76.1700(a), entitled, "Records To Be Maintained Locally By Cable System Operators," provides, in part, that cable operators having 1000 or more subscribers but fewer than 5000 subscribers shall, upon request, make public file information available. This provision gives such operators an alternative to maintaining paper files and increases flexibility in complying with the public file maintenance

requirements and responding to information requests. Since operators meeting this particular subscriber requirement must produce public file information only upon request, records need not be maintained at a particular local site, provided they are made promptly available once a request is received. Therefore, we clarify the title of § 76.1700 to be more consistent with this particular aspect of the rule. We delete the word "locally" from the title to more accurately depict the fact that records need not be maintained locally where the cable system operator meets the specified subscriber limits, so long as the information can be made available "upon request;" access should not be delayed. Although the title of the rule section changes, with regard to those cable operators that have 5000 or more subscribers and that are required to maintain a public inspection file, we reiterate that documents required to be included in the public inspection file must be available, readily accessible and sited locally.

5. In the *Report and Order* (65 FR 53610) Sept. 5, 2000, we concluded that the Commission would maintain the exemption for small systems serving fewer than 1000 subscribers from the recordkeeping requirements contained in former § 76.305(a), which is redesignated as § 76.1700(a). Therefore, we clarify that § 76.1700(a) totally exempts systems serving fewer than 1000 subscribers from the Commission's recordkeeping requirements contained in §§ 76.1701 (political file); 76.1715 (sponsorship identification); 76.1702 (equal employment opportunity); 76.1703 (commercial records for children's programming); 76.1704 (proof-of-performance tests data); and 76.1706 (signal leakage logs and repair records). These records do not need to be maintained or produced by systems meeting the subscriber limitation.

6. Section 76.1705 provides that each cable system is required to maintain at its local office a current listing of the cable television channels that the system delivers to its subscribers. Although the rule states that channel listing information should be maintained, no mention is made of exactly where such lists should be located at the local office. In implementing this provision, the Commission stated that such information would be useful to consumers. To the extent necessary, we clarify that the operator of each cable television system subject to the public file requirements of § 76.1700(a) shall maintain as part of its public inspection file a current list of the cable television channels that the system delivers to its

subscribers. Cable operators that are exempt from the public file requirement shall maintain the channel lineup information in a location that is readily accessible by the general public.

7. Section 76.1715 requires that whenever sponsorship announcements are omitted, the cable system operator must maintain for public inspection a file listing the name, address, and telephone number of the advertiser of the commercial announcement. The length of time that such information should be retained is not provided. However, pursuant to § 73.1212, a similar collection of information from broadcast stations is required whenever sponsorship announcements are omitted. In the broadcast context such advertiser information must be retained for a period of two years from the date of broadcast. We interpret § 76.1715 in this *Second Order* to operate consistently with § 73.1212. Provided that it retains the required advertiser information for a period of at least two years after the airing of the commercial announcement, a cable operator will be in compliance with the record retention requirement of § 76.1715. This interpretation will ensure that operators have notice of their responsibilities regarding sponsorship announcement recordkeeping while accommodating the public by ensuring access to such information for an adequate period of time.

#### *Final Regulatory Flexibility Analysis*

8. As required by section 603 of the Regulatory Flexibility Act ("RFA"), the Commission incorporated an Initial Regulatory Flexibility Analysis ("IRFA") into its *Report and Order*. The Commission sought written public comments on the possible impact of the proposed rule on small entities, including comments on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") incorporated into the *Second Report and Order* ("Second Order") conforms to the RFA.

9. Need for, and Objectives of, the *Second Report and Order*. The Commission adopted the *1998 Biennial Regulatory Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, Report and Order* ("Report and Order") pursuant to Section 11 of the 1996 Telecommunications Act which requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest. Section 76.1700(a) was determined to alter the substantive

public file requirements for a subset of cable operators and to be subject to the prior public notice requirement. Section 76.1700(a) was published subsequently in the **Federal Register** (65 FR 53610) Sept. 5, 2000, as an interim rule and interested parties were afforded an opportunity to comment upon it. No comments were filed. The *Second Order* reinstates § 76.1700(a).

10. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. No comments were filed specifically in response to the IRFA.

11. Description and Estimate of the Number of Small Entities To Which the Rule Applies. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rule here adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under Section 3 of the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

12. The *Second Order* adopts § 76.1700(a), a rule that applies to cable operators with 1000 or more, but fewer than 5000, subscribers. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.

13. The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, we estimate that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not

exceed \$250 million in the aggregate. Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals 1,450. We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

14. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. Section 76.1700(a), adopted in the *Second Order*, will not increase the recordkeeping or information collection requirements for any cable operator. In fact, § 76.1700(a) will decrease certain recordkeeping requirements for cable operators with 1000 or more, but fewer than 5000, subscribers. The rule as adopted eliminates the requirement that cable operators with 1000 or more, but less than 5000, subscribers maintain certain records in their public file. The rule provides that those records need only be provided pursuant to a specific request. Thus, the adopted rule will result in reductions in administrative costs borne by cable operators in connection with reproducing and maintaining certain records in their public files.

15. Steps taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. We are adopting a rule that establishes reduced regulatory burdens on small entities with regard to certain recordkeeping requirements. In addition, we sought comment on the proposed rule to ease the recordkeeping requirements for certain small cable operators. No comments were received and we are aware of no alternatives to further reduce burdens on small entities consistent with the important regulatory objectives served by the reporting requirements.

16. Report to Congress. The Commission will send a copy of the *Second Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). The *Second Order* and this FRFA (or summaries thereof) will also be published in the **Federal Register**, see 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

#### *Paperwork Reduction Act*

This *Second Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and does not impose new or modified information collection requirements on the public.

OMB Approval Number: 3060-0981.

Title: 1998 Biennial Regulatory Review "Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, Second Report and Order.

Type of Review: None.

Respondents: Businesses or other for-profit entities.

**Needs and Uses:** The Commission adopted the *Report and Order* pursuant to Section 11 of the 1996 Telecommunications Act which requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest. Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presented an excellent opportunity for a thorough examination of all of the Commission's regulations. The initial NPRM in this proceeding was not published in the **Federal Register**. The Commission found that, with the exception of one provision, the rules adopted in the *Report and Order* are procedural in nature and subject to the prior notice exemption contained in § 1.412(b)(5) of the Commission's rules. The **Federal Register** notice provided notice of § 76.1700(a), adopted as an interim rule and provided interested parties the opportunity to comment.

#### **List of Subjects in 47 CFR Part 76**

Multichannel video and cable television service.

Federal Communications Commission.  
**Magalie Roman Salas,**  
Secretary.

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR part 76 as follows:

#### **PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

1. The authority citation for Part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1700 is amended by revising the section heading and the introductory text of paragraph (a) to read as follows:

#### **§ 76.1700 Records to be maintained by cable system operators.**

(a) *Recordkeeping requirements.* The operator of every cable television system having fewer than 1,000 subscribers is exempt from the public inspection requirements contained in § 76.1701 (political file); § 76.1715 (sponsorship identification); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); and § 76.1706 (signal leakage logs and repair records). The operator of every cable television system having 1000 or more subscribers but fewer than 5000 subscribers shall, upon request, provide the information required by § 76.1715 (sponsorship identification); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); and § 76.1706 (signal leakage logs and repair records) but shall maintain for public inspection a file containing a copy of all records required to be kept by § 76.1701 (political file). The operator of every cable television system having 5000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by § 76.1701 (political file); § 76.1715 (sponsorship identification); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); and § 76.1706 (signal leakage logs and repair records).

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[FR Doc. 01-31869 Filed 12-27-01; 8:45 am]

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#### **DEPARTMENT OF TRANSPORTATION**

#### **Office of the Secretary of Transportation**

#### **49 CFR Part 1**

[Docket No. OST-1999-6189]

RIN 2105-ZZ04

#### **Organization and Delegation of Powers and Duties to the Under Secretary of Transportation for Security, Transportation Security Administration**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** A new operating administration, the Transportation Security Administration (TSA), headed by the Under Secretary of Transportation for Security, was established within the United States Department of Transportation (DOT) pursuant to the Aviation and Transportation Security Act [Public Law 107-71 (November 19, 2001)]. Accordingly, by this action, the Secretary of Transportation (Secretary) amends Part 1 of title 49, *Code of Federal Regulations*, to reflect this new DOT operating administration and its general responsibilities.

**EFFECTIVE DATE:** This Final Rule is effective on December 28, 2001.

**FOR FURTHER INFORMATION CONTACT:** Steven Cohen, Office of the General Counsel, Office of Environmental, Civil Rights, and General Law, Department of Transportation (C-10), 400 Seventh Street, SW., Room 10101, Washington, DC 20590, (202) 366-4684 (voice), (202) 366-9170 (fax) (202) 755-7687 (TDD).

#### **SUPPLEMENTARY INFORMATION:**

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