



Federal Communications Commission
Washington, D.C. 20554

June 4, 2008

DA 08-1308

Small Entity Compliance Guide

SECOND REPORT AND ORDER

In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992

Released November 6, 2007
MB Docket No. 05-311
FCC 07-190

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the FCC rules adopted in the above-referenced docket. This Guide is not intended to replace the rules, which provide the final authority in this context. While we have attempted to cover all parts of the rule/s that might be especially important to small entities, the coverage may not be exhaustive. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be made based on application of the statute and regulations. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may revise this Guide without public notice to clarify or update the contents. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

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Background.

On November 6, 2007, the Federal Communications Commission released a *Second Report and Order* in MB Docket No. 05-311, 22 FCC Rcd 19633 (2007). In its *First Report and Order* in the Docket, the Commission adopted rules governing the consideration of new franchise applications by local franchising authorities and provided guidance regarding legal limits on terms and conditions that may be included in franchise agreements. The *Second Report and Order* extended some of the findings from the *First Report and Order* to incumbent cable operators, where applicable, to promote the federal goals of enhanced cable competition and accelerated broadband development.

Compliance Requirements.

The *Second Report and Order* places compliance requirements on you only if you are an entity that engages in the cable franchising process. Such entities would include small government jurisdictions in states that engage in cable franchising on the local level and cable operators. Under these compliance requirements a local franchising authority may only charge a five-percent franchise fee (as defined in the *First Report and Order* and *Second Report and Order*) in exchange for a cable operator's right to enter public rights of way to lay cable. Furthermore, any payments an incumbent cable operator makes as non-capital support of public, educational, and governmental access channels must be considered franchise fee payments. Finally, in regulating the public rights of way to lay cable, local franchising authorities are only afforded jurisdiction over cable service.

Small Businesses Affected by This Rule Are Subject to the Commission's Findings Regarding Reasonable Local Franchise Requirements.

In the *Second Report and Order*, the Commission determined that certain findings adopted by the Commission in the *First Report and Order* in MB Docket No. 05-311 also apply to incumbent cable operators. According to these findings, in exchange for the right to lay cable in public rights of way: (1) a local franchising authority may only charge a five-percent franchise fee (as defined in the *First Report and Order* and *Second Report and Order*), (2) non-capital support of public, educational, and governmental access channels must be considered franchise fee payments, and (3) local franchising authorities are only afforded jurisdiction over cable service. The Commission based these findings on interpretations of various statutory provisions. The Commission also realized, however, that the particular facts regarding each local franchising agreement must be assessed on a case-by-case basis under applicable law to determine whether the findings should alter the incumbent's existing franchise agreement. The Commission stated that the *Second Report and Order* did not give incumbent cable operators the unilateral right to breach their existing contractual obligations. Therefore, local franchising authorities and incumbent franchisees will need to review their franchise agreements and applicable law to determine whether the franchise agreement charges a proper franchise fee and whether the local franchising authority's regulatory authority exceeds its jurisdiction.

Internet Link.

A copy of the *Report and Order* is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-190A1.pdf