

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Section 76.1506 of the
Commission's Rules

ORDER

Adopted: December 23, 2014

Released: December 23, 2014

By the Managing Director:

I. DISCUSSION

1. By this Order, the Office of the Managing Director (OMD) makes nonsubstantive, editorial revisions to correct outdated cross-references in the Federal Communications Commission's open video system (OVS) rules. These nonsubstantive revisions are part of the Commission's ongoing examination and improvement of its processes and procedures. Specifically, Section 76.1506(g) of the Commission's rules applies to OVS operators the cable operator notification requirements contained in Section 76.58. While Section 76.58 contained those notification requirements when Section 76.1506(g) was adopted, in 1999 the Commission deleted Section 76.58 and moved its contents to new sections of the Code of Federal Regulations (C.F.R.) with the minor modifications discussed below. Accordingly, in this Order we correct the outdated cross-references in Section 76.1506(g).

2. These revisions update references to obsolete rule sections. Accordingly, we find good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. The Commission's rules provide its Managing Director, or his or her designee, with "delegated authority to make nonsubstantive, editorial revisions of the Commission's rules and regulations upon approval of the bureau or staff office primarily responsible for the particular part or section involved." Updating the cross-references in Section 76.1506(g) is a nonsubstantive change, and the Media Bureau has approved the corrections made herein.

3. Upon the deletion of Section 76.58 of the Commission's rules in 1999, the Commission moved the contents of Section 76.58(a) to Section 76.1601. The Commission also moved the contents of

1 47 C.F.R. § 76.1506(g) ("Any provision of § 76.58 that refers to 'cable operator' shall apply to an open video system operator. Any provision of § 76.58 that refers to a 'cable system' shall apply to an open video system. Any provision of § 76.58 that refers to a 'principal headend' shall apply to the equivalent of the principal headend for an open video system").

2 See Open Video Systems, Second Report and Order, 11 FCC Rcd 18223 (1996).

3 See 1998 Biennial Regulatory Review - Streamlining of Cable Television Services, Part 76 Public File and Notice Requirements, Report and Order, 14 FCC Rcd 4653 (1999) (1998 Biennial Review Order). Appendix D of the 1998 Biennial Review Order contains a list of the new regulations and the sections from which the new regulations were moved.

4 See 5 U.S.C. § 553(b)(3)(B).

5 47 C.F.R. § 0.231(b).

6 Former Section 76.58(a) stated, "Effective April 2, 1993, a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such (continued...)"

Section 76.58(b), (d) and (e) to Section 76.1617.⁷ Further, the Commission moved the contents of Section 76.58(c) to Section 76.1607 and part of Section 76.1708(a).⁸ Additionally, the Commission moved the note to Section 76.58 to Section 76.1601.⁹ However, Section 76.1506(g) continues to cross-reference deleted Section 76.58 as follows:

Any provision of § 76.58 that refers to a “cable operator” shall apply to an open video system operator. Any provision of § 76.58 that refers to a “cable system” shall apply to an open video system. Any provision of § 76.58 that refers to a “principal headend” shall apply to the equivalent of the principal headend for an open video system.¹⁰

4. We revise Section 76.1506(g) of the Commission’s rules to eliminate cross-references to deleted Section 76.58 and replace those references with the updated cable rule sections. We need not revise FCC Form 1275, Certification for Open Video Systems, because that form does not mention deleted Section 76.58. In addition, to make Section 76.1506(g) easier to read now that it will cross-reference multiple rule sections instead of a single rule section, we make editorial revisions by merging the three former sentences into a single sentence. Section 76.1506(g) will now read, “Any provision of §§ 76.1601, 76.1607, 76.1617, or 76.1708(a) (second sentence) that refers to a ‘cable operator,’ ‘cable system,’ or ‘principal headend’ shall apply, respectively, to an open video system operator, to an open video system, or to the equivalent of the principal headend for an open video system.” The corrections

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notification shall also be provided to subscribers of the cable system.” Current Section 76.1601 contains identical language. See 47 C.F.R. § 76.1601.

⁷ Former Section 76.58(b) stated, “By May 3, 1993, a cable operator must notify all qualified NCE stations of its designated principal headend by certified mail.” Former Section 76.58(d) stated, “By May 3, 1993, a cable operator must notify all local commercial and NCE stations that may not be entitled to carriage because they either (1) Fail to meet the standards for delivery of a good quality signal to the cable system’s principal headend or (2) May cause an increased copyright liability to the cable system.” Former Section 76.58(e) stated, “By June 2, 1993, a cable operator must send by certified mail a copy of a list of all broadcast television stations carried by its system and their channel positions to all local commercial and noncommercial television stations, including those not designated as must-carry stations and those not carried on the system.” In 1999, the Commission decided that the references to the 1993 notification requirements contained in 76.58 were outdated and, thus, replaced those references with more general language, a 60 day notification requirement, when it moved the contents of Section 76.58(b), (d) and (e) into new Section 76.1617. See 47 C.F.R. § 76.1617; *1998 Biennial Review Order*, 14 FCC Rcd at Appendix C. The *1998 Biennial Review Order* contained a discussion of the replacement of the 1993 dates with the new 60-day notification requirements, and while the text referenced these requirements as appearing in new Section 76.1619, an erratum indicated that they actually appear in Section 76.1617. *1998 Biennial Review Order*, 14 FCC Rcd at 4667, paras. 28-29; Erratum, 1999 WL 163015, at Appendix C (Mar. 26, 1999).

⁸ Former Section 76.58(c) stated, “A cable operator shall provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend, and shall include the new designation in its public file.” Current Section 76.1607 states, “A cable operator shall provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend.” See 47 C.F.R. § 76.1607. The second sentence of current Section 76.1708(a) states, “If an operator changes the designation of its principal headend, that new designation must be included in its public file.” See 47 C.F.R. § 76.1708(a).

⁹ The note to former Section 76.58 stated, “No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods – generally including February, May, July and November – commonly known as audience sweeps.” Note 1 to Section 76.1601 contains identical language.

¹⁰ 47 C.F.R. § 76.1506(g).

discussed herein are nonsubstantive, editorial revisions that the Media Bureau has approved, and OMD thus has authority to implement them pursuant to Section 0.231(b).¹¹

II. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

5. Because we adopt this Order without notice and comment, the Regulatory Flexibility Act (RFA) does not apply.¹²

B. Final Paperwork Reduction Act of 1995 Analysis

6. The Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.¹³ In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

C. Congressional Review Act

7. The Commission will send a copy of the Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

D. Additional Information

8. For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2120.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in Sections 4(i), 4(j), 303(r), and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 573, and Section 0.231(b) of the Commission’s rules, 47 C.F.R. § 0.231(b), this Order **IS ADOPTED**, effective thirty (30) days after the date of publication in the *Federal Register*.

10. **IT IS ORDERED** that, pursuant to the authority found in Sections 4(i), 4(j), 303(r), and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 573, and 0.231(b) of the Commission’s rules, 47 C.F.R. § 0.231(b), the Commission’s rules **ARE HEREBY AMENDED** as set forth in Appendix A.

11. **IT IS FURTHER ORDERED** that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Order to the Chief Counsel for Advocacy of the Small Business Administration.

¹¹ *See* 47 C.F.R. § 0.231(b). In addition, we note that the Communications Act of 1934, as amended (Act), directs the Commission to apply to OVS operators certain provisions that apply to cable operators. *See* 47 U.S.C. § 573(c).

¹² *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

¹³ The Commission will file a nonsubstantive modification to the information collection that contains Sections 76.1601, 76.1607, 76.1617, and 76.1708 (OMB 3060-0649).

12. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

OFFICE OF THE MANAGING DIRECTOR

Jon Wilkins
Managing Director

APPENDIX A

Final Rules

The Federal Communications Commission amends Part 76 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

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, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Amend § 76.1506 by revising paragraph (g) to read as follows:

§ 76.1506 Carriage of television broadcast signals.

* * * * *

(g) *Notification.* Any provision of §§ 76.1601, 76.1607, 76.1617, or 76.1708(a) (second sentence) that refers to a “cable operator,” “cable system,” or “principal headend” shall apply, respectively, to an open video system operator, to an open video system, or to the equivalent of the principal headend for an open video system.

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