The imputed rate also seeks to recognize the loss of subscribers to the open video system operator’s programming package resulting from carrying competing programming.

NOTE TO PARAGRAPH (e)(1): Examples of specific “avoided costs” include:
1. All amounts paid to studios, syndicators, networks or others, including but not limited to payments for programming and all related rights;
2. Packaging, including marketing and other fees;
3. Talent fees; and
4. A reasonable overhead allowance for affiliated video service support.

(2) An open video system operator can demonstrate that its carriage service rates are just and reasonable through other market based approaches.


§ 76.1505 Public, educational and governmental access.

(a) An open video system operator shall be subject to public, educational and governmental access requirements for every cable franchise area with which its system overlaps.

(b) An open video system operator must ensure that all subscribers receive any public, educational and governmental access channels within the subscribers’ franchise area.

(c) An open video system operator may negotiate with the local cable franchising authority of the jurisdiction(s) which the open video system serves to establish the open video system operator’s obligations with respect to public, educational and governmental access channel capacity, services, facilities and equipment. These negotiations may include the local cable operator if the local franchising authority, the open video system operator and the cable operator so desire.

(d) If an open video system operator and a local franchising authority are unable to reach an agreement regarding the open video system operator’s obligations with respect to public, educational and governmental access channel capacity, services, facilities and equipment within the local franchising authority’s jurisdiction:
require that the connection occur on government property or on public rights of way.

(4) The costs of connection to the cable operator’s public, educational and governmental access channel feed shall be borne by the open video system operator. Such costs shall be counted towards the open video system operator’s matching financial contributions set forth in paragraph (d)(4) of this section.

(5) The local franchising authority may not impose public, educational and governmental access obligations on the open video system operator that would exceed those imposed on the local cable operator.

(6) Where there is no existing local cable operator, the open video system operator must make a reasonable amount of channel capacity available for public, educational and governmental use, as well as provide reasonable support for services, facilities and equipment relating to such public, educational and governmental use. If a franchise agreement previously existed in that franchise area, the local franchising authority may elect either to impose the previously existing public, educational and governmental access obligations or determine the open video system operator’s public, educational and governmental access obligations by comparison to the franchise agreement for the nearest operating cable system that has a commitment to provide public, educational and governmental access and that serves a franchise area with a similar population size. The local franchising authority shall be permitted to make a similar election every 15 years thereafter. Absent a previous franchise agreement, the open video system operator shall be required to provide channel capacity, services, facilities and equipment relating to public, educational and governmental access equivalent to that prescribed in the franchise agreement(s) for the nearest operating cable system with a commitment to provide public, educational and governmental access and that serves a franchise area with a similar population size.

NOTE TO PARAGRAPH (d)(6): This paragraph shall apply, for example, if a cable operator converts its cable system to an open video system under §76.1501.

(7) The open video system operator must adjust its system(s) to comply with new public, educational and governmental access obligations imposed by a cable franchise renewal; provided, however, that an open video system operator will not be required to displace other programmers using its open video system to accommodate public, educational and governmental access channels. The open video system operator shall comply with such public, educational and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or decreased demand for channel capacity.

(8) The open video system operator and/or the local franchising authority may file a complaint with the Commission, pursuant to our dispute resolution procedures set forth in §76.1514, if the open video system operator and the local franchising authority cannot agree as to the application of the Commission’s rules regarding the open video system operator’s public, educational and governmental access obligations under paragraph (d) of this section.

(e) If an open video system operator maintains an institutional network, as defined in Section 611(f) of the Communications Act, the local franchising authority may require that educational and governmental access channels be designated on that institutional network to the extent such channels are designated on the institutional network of the local cable operator.

(f) An open video system operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this subsection, provided, however, that any open video system operator may prohibit the use on its system of any channel capacity of any public, educational, or governmental facility for any programming which contains nudity, obscene material, indecent material as defined in §76.701(g), or material soliciting or promoting unlawful conduct. For purposes of this section, “material soliciting or promoting unlawful conduct” shall
mean material that is otherwise pro-
scribed by law. An open video system
operator may require any access user,
or access manager or administrator
agreeing to assume the responsibility
of certifying, to certify that its pro-
gramming does not contain any of the
materials described above and that rea-
sonable efforts will be used to ensure
that live programming does not con-
tain such material.
[61 FR 28708, June 5, 1996, as amended at 61
FR 43176, Aug. 21, 1996]

Effective Date Note: At 61 FR 43176, Aug.
21, 1996, in §76.1505, paragraphs (d)(1), (4), (6),
and (8) were revised. These paragraphs con-
tain information collection and record-
keeping requirements and will not become
effective until approval has been given by
the Office of Management and Budget.

§ 76.1506 Carriage of television broad-
cast signals.
(a) The provisions of Subpart D shall
apply to open video systems in accord-
ance with the provisions contained in
this subpart.
(b) For the purposes of this Subpart
S, television stations are significantly
viewed when they are viewed in house-
holds that do not receive television sig-
nals from multichannel video program-
ning distributors as follows:
(1) For a full or partial network sta-
tion—a share of viewing hours of at
least 3 percent (total week hours), and
a net weekly circulation of at least 25
percent; and
(2) For an independent station—a
share of viewing hours of at least 2 per-
cent (total week hours), and a net
weekly circulation of at least 5 per-
cent. See §76.1506(c).

Note to Paragraph (b): As used in this
paragraph, “share of viewing hours” means
the total hours that households that do not
receive television signals from multichannel
video programming distributors viewed the
subject station during the week, expressed as
a percentage of the total hours these house-
holds viewed all stations during the period,
and “net weekly circulation” means the
number of households that do not receive
television signals from multichannel video
programming distributors that viewed the
station for 3 minutes or more during the en-
tire week, expressed as a percentage of the
total households that do not receive tele-
vision signals from multichannel video pro-
gramming distributors in the survey area.
(c) Significantly viewed signals; method
to be followed for special showings. Any
provision of §76.54 that refers to a
“cable television community” or
“cable community or communities” shall apply to an open video system
community or communities. Any pro-
vision of §76.54 that refers to “non-
cable television homes” shall apply to
households that do not receive tele-
vision signals from multichannel video
programming distributors. Any provi-
sion of §76.54 that refers to a “cable
television system” shall apply to an
open video system.
(d) Definitions applicable to the must-
carry rules. Section 76.55 shall apply to
all open video systems in accordance
with the provisions contained in this
section. Any provision of §76.55 that re-
fers to a “cable system” shall apply to
an open video system. Any provision of
§76.55 that refers to a “cable operator”
shall apply to an open video system
operator. Any provision of §76.55 that re-
fers to the “principal headend” of a
cable system as defined in §76.5(pp)
shall apply to the equivalent of the
principal headend of an open video sys-
tem. Any provision of §76.55 that refers
to a “franchise area” shall apply to the
service area of an open video system.
The provisions of §76.55 that permit
cable operators to refuse carriage of
signals considered distant signals for
copyright purposes shall not apply to
open video system operators. If an open
video system operator cannot limit its
distribution of must-carry signals to
the local service area of broadcast sta-
tions as used in 17 U.S.C. 111(d), it will
be liable for any increase in copyright
fees assessed for distant signal carriage
under 17 U.S.C. 111.
(e) Signal carriage obligations. Any
provision of §76.56 that refers to a
“cable television system” or “cable
system” shall apply to an open video
system. Any provision of §76.56 that re-
fers to a “cable operator” shall apply
to an open video system operator. Sec-
tion 76.56(d)(2) shall apply to open
video systems as follows: An open video
system operator shall make available
to every subscriber of the open video
system all qualified local commercial
television stations and all qualified non-commercial educational television