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-
ing 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 5 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
provision 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 op-
erator. Any provision of §76.55 that re-
fers to the “principal headend” of a
cable system as defined in §76.55(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
stations carried in fulfillment of its carriage obligations under this section.

(f) Channel positioning. Open video system operators shall comply with the provisions of §76.57 to the closest extent possible. Any provision of §76.57 that refers to a “cable operator” shall apply to an open video system operator. Any provision of §76.57 that refers to a “cable system” shall apply to an open video system, except the references to “cable system” in §76.57(d) which shall apply to an open video system operator.

(g) Notification. 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.

(h) Modification of television markets. Any provision of §76.59 that refers to a “cable system” shall apply to an open video system. Any provision of §76.59 that refers to a “cable operator” shall apply to an open video system operator.

(i) Compensation for carriage. Any provision of §76.60 that refers to a “cable operator” shall apply to an open video system operator. Any provision of §76.60 that refers to a “cable system” shall apply to an open video system. Any provision of §76.60 that refers to a “principal headend” shall apply to the equivalent of the principal headend for an open video system.

(j) Manner of carriage. Any provision of §76.61 that refers to a “cable operator” shall apply to an open video system operator. Any provision of §76.61 that refers to a “cable system” shall apply to an open video system. Any provision of §76.61 that refers to a “principal headend” shall apply to the equivalent of the principal headend for an open video system.

(k) Disputes concerning carriage. Any provision of §76.62 that refers to a “cable operator” shall apply to an open video system operator.

(l) Retransmission consent. Section 76.64 shall apply to open video systems in accordance with the provisions contained in this paragraph.

(1) Any provision of §76.64 that refers to a “cable system” shall apply to an open video system. Any provision of §76.64 that refers to a “cable operator” shall apply to an open video system operator.

(2) Must-carry/retransmission consent election notifications shall be sent to the open video system operator. An open video system operator shall make all must-carry/retransmission consent election notifications received available to the appropriate programming providers on its system.

(3) Television broadcast stations are required to make the same election for open video systems and cable systems serving the same geographic area, unless the overlapping open video system is unable to deliver appropriate signals in conformance with the broadcast station’s elections for all cable systems serving the same geographic area.

(4) An open video system commencing new operations shall notify all local commercial and noncommercial broadcast stations as required under paragraph (l) of this section on or before the date on which it files with the Commission its Notice of Intent to establish an open video system.

(m) Sports broadcast. Section 76.67 shall apply to open video systems in accordance with the provisions contained in this paragraph.

(1) Any provision of §76.67 that refers to a “community unit” shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

(2) Notification of programming to be deleted pursuant to this section shall be served on the open video system operator. The open video system operator shall make all notifications immediately available to the appropriate video programming providers on its open video system. Operators may effect the deletion of signals for which they have received deletion notices unless they receive notice within a reasonable time from the appropriate programming provider that the rights claimed are invalid. The open video
system operator shall not delete signals for which it has received notice from the programming provider that the rights claimed are invalid. An open video system operator shall be subject to sanctions for any violation of this subpart. An open video system operator may require indemnification as a condition of carriage for any sanctions it may incur in reliance on a programmer’s claim that certain exclusive or non-duplication rights are invalid.

(n) Exemption from input selector switch rules. Any provision of §76.70 that refers to a “cable system” or “cable systems” shall apply to an open video system or open video systems.

(o) Special relief and must-carry complaint procedures. The procedures set forth in §76.7 shall apply to special relief and must-carry complaints relating to open video systems, and not the procedures set forth in §76.1514 (Dispute resolution). Any provision of §76.7 that refers to a “cable television system operator” or “cable operator” shall apply to an open video system operator. Any provision of §76.7 that refers to a “cable television system” shall apply to an open video system. Any provision of §76.7 that refers to a “system community unit” shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).


EFFECTIVE DATE NOTE: At 61 FR 43177, Aug. 21, 1996, in §76.1506, paragraphs (d), (l)(3), and (m)(2) were revised. These paragraphs contain information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.1507 Competitive access to satellite cable programming.

(a) Any provision that applies to a cable operator under §§76.1000 through 76.1003 shall also apply to an operator of an open video system and its affiliate which provides video programming on its open video system, except as limited by paragraph (a) (1)–(3) of this section. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall also apply to any satellite cable programming vendor in which an open video system operator has an attributable interest, except as limited by paragraph (a) (1)–(3) of this section.

(1) Section 76.1002(c)(1) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator or its affiliate that provides video programming on its open video system shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which an open video system operator has an attributable interest, or any satellite broadcasting vendor in which an open video system operator has an attributable interest for distribution to person in areas not served by a cable operator as of October 5, 1992.

(2) Section 76.1002(c)(2) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, or any satellite broadcasting vendor in which an open video system operator has an attributable interest for distribution to person in areas not served by a cable operator as of October 5, 1992, in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor, unless the Commission determines in