

unmanned aircraft and missiles, or their major components. The band 1525–1535 MHz is also available for these purposes on a secondary basis. Permissible uses of these bands include telemetry and telecommand transmissions associated with the launching and reentry into the earth's atmosphere as well as any incidental orbiting prior to reentry of manned or unmanned objects undergoing flight tests. In the 1435–1530 MHz band, the following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz. In the 2310–2390 MHz band, the following frequencies may be assigned on a co-equal basis for telemetry and associated telecommand operations in fully operational or expendable and re-usable launch vehicles whether or not such operations involve flight testing: 2312.5, 2332.5, 2352.5, 2364.5, 2370.5 and 2382.5 MHz. In 2310–2390 MHz band, all other telemetry and telecommand uses are secondary.

**Note:** Aeronautical telemetry operations must protect mobile-satellite operations in the 1525–1535 MHz band and maritime mobile-satellite operations in the 1530–1535 MHz band.

(2) The authorized bandwidths for stations operating in the bands 1435.0–1525.0 MHz, 1525.0–1535.0 MHz and 2310.0–2390.0 MHz are normally 1, 3 or 5 MHz. Applications for greater bandwidths will be considered in accordance with the provisions of § 87.135. Each assignment will be centered on a frequency between 1435.5 MHz and 1534.5 MHz or between 2310.5 MHz and 2389.5 MHz, with 1 MHz channel spacing.

\* \* \* \* \*

[FR Doc. 95–17509 Filed 7–21–95; 8:45 am]

BILLING CODE 6712–01–M

## 47 CFR Part 76

[MM Docket No. 92–264, FCC 95–21]

### Cable Television

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** The Commission amends the cable television rules by permitting cable television operators to acquire satellite master antenna television (SMATV) systems within the cable television operator's service area so long as any SMATV system owned by a cable television operator within the operator's cable franchise area is operated in

accordance with the terms and conditions of the local cable franchise agreement governing the cable television system. The Commission found that the prior rule which prohibited such acquisitions was inconsistent with the statutory provisions of section 11 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act). The Commission also affirms the regulatory framework implementing section 13 of the 1992 Cable Act that established a three-year holding requirement for cable systems and concludes, based on its experience with requests for waiver of the holding period, that such waiver requests generally will be looked on favorably unless the request raises serious concerns on its face or any objections to grant of the waiver provide evidence of other public interest bases for concern.

**EFFECTIVE DATE:** August 23, 1995.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Dorch, Cable Services Bureau, (202) 416–0800.

**SUPPLEMENTARY INFORMATION:** In the Memorandum Opinion and Order on Reconsideration of the First Report and Order (MO&O) in MM Docket No. 92–264, adopted January 12, 1995 and released January 30, 1995, the Commission acts on petitions for reconsideration of the First Report and Order (FR&O) in MM Docket No. 92–264, Implementation of Sections 11 and 13 of the 1992 Cable Act (Horizontal and Vertical Ownership Limits, Cross-Ownership & Anti-Trafficking Provision), 8 FCC Rcd 6828 (1993), 58 FR 42013, August 6, 1993. All significant comments in the petitions for reconsideration are considered and analyzed in light of the Commission's statutory directives. The Commission adopts revisions to the rules which, to the extent possible, minimize the regulatory burdens placed on entities covered by the ownership and anti-trafficking provisions of the 1992 Cable Act and which aim to reduce unnecessary regulatory restrictions and promote competition within the multichannel video distribution marketplace.

The complete text of the MO&O is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Regulatory Flexibility Act: No significant impact.

### Synopsis of the Memorandum Opinion and Order on Reconsideration of the First Report and Order

1. In this MO&O the Commission addresses petitions for reconsideration of the FR&O in this proceeding, 58 FR 42013, August 6, 1993, in which it adopted rules implementing the cross-ownership and anti-trafficking provisions of Sections 11 and 13 of the 1992 Cable Act. In the FR&O, the Commission adopted a rule that prohibited cable system operators from acquiring satellite master antenna television ("SMATV") systems within their actual service areas. On reconsideration, the Commission finds that such a prohibition is inconsistent with the statutory provision upon which it was based. Consequently, the Commission revises that part of the rules that govern cable operators' ownership of SMATV systems within their franchise areas. The Commission believes its analysis and determination to revise the ownership rules adopted in the FR&O more accurately reflects the intent of Congress and comports with the meaning of Section 613(a)(2) of the Communications Act of 1934, as amended by the 1992 Cable Act (the "Communications Act"). The Commission further affirms its decision in the FR&O to adopt a regulatory framework implementing the anti-trafficking provision of Section 13 of the 1992 Cable Act, finding that the rules fulfill Congress' mandate and are consistent with the goal of promoting competition in the multichannel video marketplace. The Commission takes the opportunity, however, to clarify the manner in which those rules apply to various transactions.

2. Section 11(a) of the 1992 Cable Act amended the Communications Act by adding an ownership provision restricting multichannel multipoint distribution service ("MMDS") and SMATV ownership interests by cable operators. That provision, now Section 613(a)(2) of the Communications Act, prohibits a cable operator from holding a license for MMDS, or from offering SMATV service that is separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator's cable system. It grandfathered all such service in existence as of the date of enactment of the 1992 Cable Act, and authorizes the Commission to waive the requirements of the provision to the extent necessary to ensure that all significant portions of a franchise area are able to obtain video programming.

3. Section 13 of the 1992 Cable Act amended the Communications Act by

establishing a three-year holding requirement for cable systems (the "anti-trafficking provision"). That provision, now Section 617 of the Communication Act, restricts the ability of a cable operator to sell or otherwise to transfer ownership in a cable system within thirty-six months following either the acquisition or initial construction of the system by such operator. It also delineates specific exceptions to the general rule and provides waiver authority to the Commission.

4. In this MO&O the Commission addresses the various petitions for reconsideration and/or clarification, oppositions and replies filed with respect to the FR&O and the rules adopted therein to implement the ownership and anti-trafficking provisions of the 1992 Cable Act. The Commission clarifies and modifies the regulations adopted in the FR&O in several respects. These modifications are in furtherance of the statutory objectives of the 1992 Cable Act, and are consistent with an intent to eliminate artificial regulatory barriers to competitive and efficient delivery of multichannel programming services to the American public. In addition to responding to the parties' petitions, the Commission clarifies several matters that have arisen during the course of its administration of those regulations.

5. First, with respect to the SMATV ownership rules, the Commission removes the prohibition against cable operators' acquisitions of SMATV systems within their actual service areas based upon a revised interpretation of the language of Section 11(a) of the 1992 Cable Act. Second, the Commission affirms that any SMATV system owned by a cable operator within the operator's franchise area must be operated in accordance with the terms and conditions of the local franchise agreement. The Commission concludes that the revised rules are more fully supported by the statute and Congressional statements of intent than were the rules adopted in the FR&O. The Commission further finds, based on the record, that the policy of promoting competition to traditional coaxial cable systems is at least as well served, if not better served, by the revisions.

6. With respect to anti-trafficking, the Commission first affirms the Commission's rules regarding action by franchise authorities on requests for approval of transfers or assignments of cable systems that have been held for three or more years. Second, the Commission clarifies certain aspects of FCC Form 394. Third, the Commission clarifies that a franchise authority may

require approval of cable system transfers or assignments if so required by state or local law. Fourth, the Commission clarifies that the holding period does not recommence upon the consummation of a transaction that is exempt from the statutory three-year holding period. Fifth, the Commission clarifies certain aspects of calculating the holding period. Sixth, the Commission affirms the decision to grant a blanket waiver of the anti-trafficking rules to small systems. Finally, based on experience with waiver requests, the Commission concludes that it will generally look favorably on requests for waiver of the anti-trafficking rules unless the request raises serious concerns on its face or any objections received to grant of the waiver provide evidence of other public interest bases for concern.

7. The Commission first considers the statutory SMATV ownership restrictions. The Commission notes that SMATV systems (also known as "private cable systems") are multichannel video programming distribution systems that serve residential, multiple-dwelling units ("MDUs"), and various other buildings and complexes, that a SMATV system typically offers the same type of programming as a cable system, and that the operation of a SMATV system largely resembles that of a cable system—a satellite dish receives the programming signals, equipment processes the signals, and wires distribute the programming to individual dwelling units—with the primary difference between the two being that a SMATV system typically is an unfranchised, stand-alone system that serves a single building or complex, or a small number of buildings or complexes in relatively close proximity to each other. The Commission also notes that a SMATV system is defined under the Communications Act by means of an exception to the definition of a cable system: the term "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment \* \* \* but such term does not include \* \* \* (B) a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; \* \* \*. Therefore, the Commission states that a SMATV system is different from a cable system only in that it does not use "closed transmission paths" to (a) serve buildings that are not commonly

owned, controlled, or managed; or (b) use a public right-of-way.

8. The Commission notes that the distinction between a SMATV system and a cable system is based on the limited manner in which a SMATV system provides its services: that when the service is no longer so limited, the SMATV system ceases to be eligible for the statutory exception and becomes a cable system. The Commission notes that if a system's lines interconnect separately owned and managed buildings or if the system's lines use public rights of way, the system is a cable system for purposes of the Communications Act. The Commission states that closed transmission path interconnection of a cable system and a SMATV system will, therefore, cause the SMATV system to become a part of the cable system.

9. Noting the prohibition in the statute that makes it "unlawful for a cable operator \* \* \* to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator's cable system," the Commission observes that the FR&O interpreted this provision as restricting franchised cable operators from acquiring existing SMATV systems within their actual service areas, but not prohibiting all SMATV-cable cross-ownership within cable operators' actual service areas. In particular, the Commission had previously determined that cable operators are permitted to construct stand-alone or integrated SMATV systems in their actual service areas, provided such SMATV service is offered in accordance with the terms and conditions of agreements with the local franchise authorities; that common ownership of a SMATV system that itself qualifies as a "cable system under Section 602(7)(B) of the Communications Act and a separate stand-alone SMATV system" would also be permitted; that a cable operator is permitted to acquire, or build, a stand-alone SMATV system located in the unserved portions of the franchise area, provided such cable-owned SMATV system is operated in accordance with the terms and conditions of the cable franchise agreement; but that a cable operator would not be allowed to acquire existing SMATV facilities within the cable operator's actual service area for the purpose of providing cable service. In reaching this conclusion the Commission concluded that allowing cable operators to acquire existing SMATV facilities would undermine competition between cable operators and SMATV providers,

reinforce existing cable monopolies, and reduce competitive opportunities for SMATV providers within the cable service area.

10. The Commission reviews the arguments and positions of the petitioners for reconsideration, including those that argue that it was an error to prohibit cable operators from acquiring existing SMATV systems within their service areas. The Commission decides to modify the rules based upon a revised analysis of the language of Section 613(a)(2) and the Congressional intent underlying that provision. The Commission notes that the modified rules are consistent with the diversity and competitive considerations associated with the statutory ownership restriction. The Commission concludes that the statutory language means that cable operator may not offer SMATV service anywhere in its franchised service area unless such service is offered together with or as part of the cable service provided pursuant to its local cable franchise agreement. In other words, if a cable operator offers SMATV service to subscribers within its franchised service area, it must offer this otherwise unregulated multichannel video programming service to those subscribers pursuant to the same terms and conditions upon which the regulated cable television service is offered to subscribers within that same franchise. Thus, cable operators may not use facilities that meet the statutorily-created SMATV exception to the definition of a cable system to provide multichannel video programming service that does not comply with franchise obligations or the Commission's rules.

11. The Commission declines to adopt an interpretation of the statutory language that suggests that the statute requires the physical interconnection of commonly-owned cable systems and facilities that would otherwise qualify for the SMATV exception. Rather, the Commission concludes that the statutory "separate and apart" language refers to the service, not the delivery system, and are used to limit cable operators' ability to offer the unregulated SMATV service. Accordingly, the Commission states its belief that the statutory language requires cable operators to comply with all franchise requirements in their delivery of multichannel video programming without regard to whether any part of the facilities used might qualify as a SMATV system.

12. The Commission reviews the legislative history and concludes that in the context of the SMATV provision,

Congress was unconcerned with the manner in which SMATV systems are obtained by cable operators and was mostly concerned with the manner in which such service is "offered" to subscribers in the cable operator's franchised service area; i.e., "separate and apart from any franchised cable service." Accordingly, on further analysis the Commission concludes that revising the rule to eliminate the regulatory distinction between the acquisition and construction of SMATV systems accurately and appropriately interprets the statutory provision. The Commission further explains its belief that the revisions more closely comport with Congressional intent in enacting the SMATV ownership restriction.

13. The Commission also explains its belief that Congress's intent to preclude franchised cable operators from owning SMATV services in their franchise areas was not directed at the technology involved but rather at prohibiting cable operators from using the SMATV exception to offer service that does not comply with federal law and franchise obligations. The Commission notes that its interpretation ensures competitive opportunities for SMATV operators and is consistent with the interpretation proffered in the FR&O where it also required cable operators to comply with the terms and conditions of their franchise agreements if they offered multichannel video programming services through SMATV facilities in the unserved portions of their service areas. The Commission further believes that the revisions are consistent with the overall policy goals of the 1992 Cable Act.

14. The Commission finds that the record contains insufficient evidence on which to base an economic analysis as to the workings of the SMATV marketplace and on which to conclude with any degree of certainty that either the rule adopted in the FR&O or the revision would have particular economic consequences. Nevertheless, the Commission notes that the availability of capital necessary to construct a SMATV system is often dependent on the availability of exit strategies, and in particular on the ability to recoup sunk costs by being able to sell to a locally-franchised cable operator when that operator is the only potential buyer and that the revision would eliminate that constraint and level the competitive field for initial entry.

15. Accordingly, the Commission reconsiders the decision in the FR&O that cable operators may not acquire SMATV systems located within their service areas, and in this MO&O,

modifies the rules by permitting cable operators to purchase SMATV systems located within their franchise areas, provided they operate such systems in accordance with the terms and conditions of their local franchise agreements. By this action the Commission notes that it eliminates the regulatory distinction drawn in the FR&O accorded disparate regulatory treatment based upon distinctions between the construction and acquisition of SMATV systems. The Commission concludes that the revised rule is more consistent with and more accurately and appropriately interprets the language of Section 613(a)(2) than the rule adopted in the First Report & Order.

16. The Commission next addresses cable operators' use of SMATV facilities within their franchise areas and rejects arguments that it lacks authority to require franchised cable operators to operate SMATV systems under their ownership, control or management within their franchise areas in accordance with their franchise obligations, that there are no public policy reasons for requiring cable operators to operate SMATV systems in accordance with their franchise obligations, and that the economies of providing SMATV service in an MDU are sufficiently different from those involved in providing franchise-wide cable service that a cable operator acquiring a cable system should not be required to operate the SMATV system in accordance with its franchise agreement requirements. The Commission notes that the decision to permit cable operators to acquire SMATV facilities within their service areas renders moot concerns regarding conveyances of access contracts and distribution facilities. The Commission further notes that in two separate *Erratum* to the FR&O the Mass Media Bureau corrected the relevant MMDS-cable and SMATV-cable cross-ownership rules to grandfather authorized combinations in existence as of October 5, 1992, as required by the statute. The Commission declines to also grandfather arrangements between private parties that were merely agreed to prior to December 4, 1992.

17. The Commission next addresses the anti-trafficking rules. Section 617 of the Communications Act establishes a three-year holding requirement for cable systems that, with certain exceptions, restricts the ability of a cable operator to sell or otherwise transfer ownership in a cable system within a thirty-six month period following either the acquisition or initial construction of the system. The statute expressly exempts from the

restriction: (1) any transfer of ownership interest in any cable system which is not subject to Federal income tax liability; (2) any sale required by operation of any law or any act of any Federal agency, any State or political subdivision thereof, or any franchising authority; and (3) any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor. Section 617 also authorizes the Commission to grant waivers in cases of default, foreclosure or other financial distress, and on a case-by-case basis where a waiver serves the public interest; provides that certain subsequent transfers of systems are not subject to the holding requirement; and imposes a 120-day time limit on local franchise authority action on a request for approval of a transfer of a cable system held for three or more years.

18. The Commission reviews the conclusions drawn and the rules adopted in the FR&O that: (a) Implemented the statutory anti-trafficking provision; (b) delineated specific instances where waiver requests will be favorably reviewed; and (c) instituted a blanket waiver for small systems. The Commission notes that in the FR&O it concluded that Congressional intent underlying the anti-trafficking provision was to restrict profiteering transactions and other transfers that are likely to adversely affect cable rates or service in the local franchise area, but not to inhibit investment in the cable industry or delay or disrupt legitimate cable transactions. In this MO&O the Commission recognizes that the use of the term "profiteering" is a misnomer in the context of anti-trafficking because the underlying concern is over speculative purchases and sales of cable systems made for the purpose of realizing quick profits from increases in values, which could overburden systems with debt and thereby lead to higher rates and reduced services for subscribers.

19. The Commission affirms the rules that provide local franchise authorities a 120-day period for review of transfer requests for cable systems held for three years and rejects arguments that the statute does not limit the information a franchising authority may require a cable operator to submit in connection with a request for approval of a sale or transfer, that the rules impermissible limit the amount and type of information the local franchise authority may obtain from the cable operator and the duration of local franchising authorities' power to disapprove cable

system transfers, and that the 120-day period not commence until the cable operator is affirmatively advised that the franchise authority has received all information it seeks. The Commission notes that the rules provide that the franchise authority shall have 120 days from the submission of a completed FCC Form 394 and any additional information required by the terms of the franchise agreement or applicable state or local law, to act upon the waiver request. Thus, the cable operator is on notice that information requirements may exist in three locations and that the submission of all such information is necessary for the franchise authority to be bound by the 120-day time period. To the extent the local franchise authority seeks additional information, as stated in the FR&O, cable operators are required to respond promptly by completely and accurately submitting all information reasonably requested by the franchise authority. The Commission believes that Congress sought to provide a degree of regulatory certainty to cable operators when it established the 120-day time period for franchise authority action on transfer requests pertaining to cable systems held for three or more years. The Commission also believes that submission of the information required by FCC Form 394, the franchise agreement and state or local law, is sufficient to commence the 120-day time period for local franchise authority action on the request. The Commission states that this conclusion provides a degree of certainty to the parties, comports with the legislative history and is consistent with our rulings with respect to franchise authority action on rate regulation matters.

20. The Commission rejects requests to revise FCC Form 394, but clarifies that transferees and assignees responding to the inquiry regarding their legal qualifications, in particular Question 5 of Section II pertaining to adverse findings or actions by courts and administrative bodies, should be guided by the charter qualification policy statements adopted by the Commission in 1986 and 1990. The Commission also clarifies that Form 394 is to be used to apply for franchise authority approval to assign or transfer control of a cable system owned for three or more years: it is not intended for use by a cable operator seeking local franchise authority approval of an assignment or transfer of a cable system held for less than three years.

21. The Commission acknowledges that franchise authorities' right to review transfer requests may arise from state or local law or ordinance and

where local or state law requires franchise authority approval of cable system transfers or assignments, local franchise authorities may require cable operators to obtain their approval, regardless of whether the franchise agreement so requires. The Commission rejects a suggestion that certifications of compliance with the anti-trafficking rules should be filed with the Commission rather than the local franchise authority. The Commission affirms its prior determination to vest primary responsibility for enforcement of the statutory anti-trafficking provision with local authorities and reiterates that cable operators are obligated to submit anti-trafficking certifications to the local franchise authorities for all proposed transfers, assignments or sales of cable systems. The Commission also clarifies that if local franchise authority approval of an assignment or transfer of a cable system is not required and the system has been held for three or more years, the cable operator is not required to use FCC Form 394 solely for purposes of submission of the anti-trafficking certification. Rather, in that circumstance, the cable operator may submit its certification of compliance with the anti-trafficking provision as a separate document.

22. The Commission also clarifies that the three-year holding period does not commence anew when the transaction involves the transfer of a cable system that qualifies for one of the three exemptions. The Commission believes that no sound basis exists to require a new three-year holding period to begin after every pro forma transfer because a pro forma transfer is, by its terms, not a substantial change of control and such transactions do not raise the specter of speculation or exploitation of short-term ownership that concerned Congress when it adopted the anti-trafficking provision. Moreover, imposing a new holding period every time pro forma restructuring occurs would impose unnecessary burdens on the cable industry without providing any commensurate benefits. The Commission believes that unnecessarily costly and burdensome obligations would be imposed on those persons who acquire cable systems through involuntary transfer procedures if it were to require them to hold those systems for three years, or to obtain waivers of the statutory three-year holding period in order to sell those systems. With respect to tax exempt transactions, the Commission believes that applying the exemption to systems acquired pursuant to a tax exempt

transaction is consistent with Congress' intent regarding treatment of such transactions and notes that it sees no compelling basis to insist that such transactions be treated differently than pro forma and involuntary transfer transactions.

23. The Commission declines to reconsider its decision to provide favorable treatment to MSO waiver requests, but clarifies two aspects of the MSO transfer rules. Section 617(b) of the Communications Act provides that in the case of MSO transfers, if the terms of the sale require the buyer to subsequently transfer ownership of one or more such systems to one or more third parties, such transfers shall be considered a part of the initial transaction. The implementing rules specify that in order to qualify as part of the initial transaction, a request for approval of the subsequent transfer must be filed with the local franchise authority within ninety days of the closing date of the original transfer and the closing date of the subsequent transfer must be no later than ninety days following the grant of the transfer approval by the local franchise authority. If local franchise approval is not required, the rules specify that the subsequent transfer must be completed within 180 days of the date of the closing of the original transaction in order to qualify as part of the original transaction. The rules do not address the situation where the subsequent transfer involves multiple systems with differing franchise approval requirements. The Commission thus concludes that where a subsequent transfer involves both systems that require franchise approval and systems that do not, the original transferee must complete the subsequent transfers of all affected systems within 90 days of the date the last system involved receives franchise authority approval of the transfer.

24. The Commission also clarifies that the three-year holding period does not begin anew when the system extends lines into existing or new communities, or when the system integrates previously separate communities through line extension. The Commission believes this clarification renders the rules neutral as to system upgrades, and permits expansion and deployment of new technologies without potentially adverse regulatory consequences.

25. The Commission declines to revise its blanket waiver of the three-year holding requirement for small systems at this time, concluding that the decision in the FR&O that weighed and assessed costs and benefits was

precisely the type of consideration of the public interest required under the Commission's waiver authority under the Communications Act.

26. Finally, the Commission notes that its experience to date with requests for waiver of the anti-trafficking rules has demonstrated that systems owned less than three years are not being transferred or assigned purely for purposes of quick economic gain. Rather, those waiver requests have been premised upon proposed transfers involving bankruptcy, systems barely over the subscriber limit established for the small system blanket waiver, a system with no change in de facto control and systems qualifying for treatment under our MSO transfer rules. The Commission believes that it is appropriate, after one year of strictly scrutinizing waiver requests, to revise its approach to waiver requests. Thus, the Commission announces that it generally will look favorably on waiver requests unless the transaction raises serious concerns on its face or any objections we receive to grant of the waiver provide other public interest bases for concern.

27. Accordingly, the Commission: (1) denies in part and grants in part the petitions for reconsideration of the FR&O filed by Wireless Cable Association International, Inc. ("WCA"), Multivision Cable TV Corp. and Providence Journal Company ("Multivision"), Time Warner Entertainment Company, L.P. ("Time Warner"), National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors, and the National Association of Counties (collectively referred to as "NATOA"), Oklahoma Western Telephone Company ("Oklahoma Western"), National Private Cable Association, MSE Cable Systems, Cable Plus and Metropolitan Satellite (collectively referred to as "NPCA"); (2) adopts the MO&O; and (3) amends Section 76.501 and 76.502 of its rules.

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

Cable television.

Federal Communications Commission.

**William F. Caton,**  
*Acting Secretary.*

47 CFR, Part 76, is amended as follows:

**PART 76—CABLE TELEVISION SERVICE**

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

**Authority:** 47 U.S.C. §§ 152, 153, 154, 301, 303, 307, 308, 309, 532, 535, 542, 543, 552, 554.

2. Section 76.501 is amended by revising paragraphs (d) and (e); adding paragraph (f); transferring Notes 1 through 4 following paragraph (b) to the end of the section and adding Note 5 to read as follows:

**§ 76.501 Cross-ownership.**

\* \* \* \* \*

(d) No cable operator shall offer satellite master antenna television service ("SMATV"), as that service is defined in § 76.5(a)(2), separate and apart from any franchised cable service in any portion of the franchise area served by that cable operator's cable system, either directly or indirectly through an affiliate owned, operated, controlled, or under common control with the cable operator.

(e) (1) A cable operator may directly or indirectly, through an affiliate owned, operated, controlled by, or under common control with the cable operator, offer SMATV service within its franchise area if the cable operator's SMATV system was owned, operated, controlled by or under common control with the cable operator as of October 5, 1992.

(2) A cable operator may directly or indirectly, through an affiliate owned, operated, controlled by, or under common control with the cable operator, offer service within its franchise area through SMATV facilities, provided such service is offered in accordance with the terms and conditions of a cable franchise agreement.

(f) The Commission will entertain requests to waive the restrictions in paragraphs (d) and (e) of this section when necessary to ensure that all significant portions of the franchise area are able to obtain multichannel video service. Such waiver requests should be filed in accordance with the special relief procedures set forth in § 76.7.

**Note 1:** \* \* \*

\* \* \* \* \*

**Note 5:** In applying the provisions of paragraphs (d) and (e) of this section, control and an attributable ownership interest shall be defined by reference to the definitions contained in Notes 1 through 4, provided however, that:

(a) The single majority shareholder provisions of Note 2(b) and the limited partner insulation provisions of Note 2(g) shall not apply; and

(b) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

3. Section 76.502 is revised to read as follows:

**§ 76.502 Three-year holding requirement.**

(a) Except as otherwise provided in this section, no cable operator may sell, assign, or otherwise transfer controlling ownership of a cable system within a three-year period following either the acquisition or initial construction of such cable system by such cable operator.

(b) For initially constructed cable systems, the three-year holding period shall be measured from the date on which service is activated to the system's first subscriber through the proposed effective date of the closing of the transaction assigning or transferring control of the cable system. The holding period for acquired systems shall be measured from the effective date of the closing of the transaction in which control of the cable system was acquired through the proposed effective date of the closing of the transaction assigning or transferring control of such cable system.

(c) A cable operator who seeks to assign or transfer control of a cable system is required to certify to the local franchise authority that the proposed assignment or transfer of control of such cable system will not violate the three-year holding requirement. Such certification shall be submitted to the franchise authority at the time the cable operator submits a request for transfer approval to the local franchise authority. If local transfer approval is not required by the terms of the franchise agreement, certification of compliance with the three-year holding requirement must be submitted to the franchise authority no later than 30 days in advance of the proposed closing date of the transfer or assignment.

(1) Receipt by the local franchise authority of a certification containing a description of the transaction and indicating that the cable system has been owned for three or more years, or that the transferor has obtained or is seeking a waiver from the Commission, or that the transaction is otherwise exempt under this section, shall create a presumption that the proposed assignment or transfer of the cable system will comply with the three-year holding requirement.

(2) A franchise authority that questions the accuracy of a certification filed pursuant to this section must notify the cable operator within 30 days of the filing of such certification, or such certification shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonable requested by the

franchise authority within 10 days of such request.

(d) If an assignment or transfer of control involves multiple systems and the terms of the transaction require the buyer to subsequently transfer or assign one or more such systems to one or more third parties, such subsequent transfers shall be considered part of the original transaction for purposes of measuring the three-year holding period.

(1) In order to qualify as part of the original transaction, a request for approval of the subsequent transfer must be filed with the local franchise authority within 90 days of the closing date of the original transfer and the closing date of the subsequent transfer must be no later than 90 days following the grant of transfer approval by the local franchise authority.

(2) If local transfer approval is not required by the terms of the cable franchise agreement, then a subsequent transfer must be completed within 180 days of the date of the closing of the original transaction in order to qualify as part of the original transaction.

(3) If a subsequent transfer involves transfers of multiple systems to the same party, at least one of which requires local transfer approval and at least one of which does not require local transfer approval, the subsequent transfer must then be closed within 90 days of the date the last system involved in the subsequent transfer receives franchise authority approval of the transfer.

(e) Paragraph (a) of this section shall not apply to:

(1) Any assignment or transfer of control of a cable system that is not subject to Federal income tax liability under the Federal Income Tax Code;

(2) Any assignment or transfer of control of a cable system required by operation of law or by any act, order or decree of any Federal agency, any State or political subdivision thereof or any franchising authority;

(3) Any assignment or transfer of control to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with, the seller, assignor or transferor.

(f) Paragraph (a) of this section shall not apply to any assignment or transfer of a cable system subject to paragraph (e) of this section.

(g) The Commission will consider requests for waivers from the three-year holding requirement and, consistent with the public interest, will grant waivers in appropriate cases of default, foreclosure and financial distress. Waiver requests under this section should be filed in accordance with the

special relief procedures set forth in § 76.7. Waivers granted by the Commission will not become effective, however, unless local franchise authority approval of a transfer is obtained when such approval is required by the terms of the franchise agreement or state or local law.

(1) The Commission will look favorably upon waiver requests involving multiple system operators or transfers of multiple systems if at least two-thirds of the subscribers of the system being transferred are served by systems owned by the cable operator for three-years or more.

(2) Conditioned upon receipt of local franchise authority transfer approval, where such approval is required by the terms of the franchise agreement or applicable state or local law, transfers of cable systems serving 1,000 or fewer subscribers shall be subject to a blanket Commission waiver.

(h) A cable operator may seek Commission review of a franchise authority's decision regarding the application of the three-year holding period to a particular transaction pursuant to the special relief procedures set forth in § 76.7.

(i) A cable system operator seeking to assign or transfer a cable system it has held for three or more years must submit a completed copy of FCC Form 394 to the local franchise authority if franchise authority approval of the transfer is required by the terms of the franchise agreement.

(1) A franchise authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable state or local law to act upon such transfer request.

(2) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting party otherwise agree to an extension of time.

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