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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 76****[CS Docket No. 98-82; CS Docket No. 96-85; FCC 99-288]****Cable Television Consumer Protection and Competition Act of 1992; Cable Act Reform Provision of the Telecommunications Act of 1996: Review of the Commission's Cable Attribution Rules****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: This document adopts amendments to the cable attribution and affiliation rules, which determine whether an entity is subject to the Commission's cable regulations, in order to more accurately identify interests that confer on their holders the ability to influence or control the operations of a held entity or create the type of economic incentives that the Commission's rules relating to the provision of cable television services are designed to address.

DATES: Effective February 9, 2000, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

Written comments by the public on the new and/or modified information collections are due January 31, 2000.

ADDRESSES: In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Darryl Cooper at (202) 418-7200 or via Internet at dacooper@fcc.gov. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, FCC 99-288, adopted on October 8, 1999 and released October 20, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554, or may be

purchased from the Commission's copy contractor, International Transcription Service ("ITS"), (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at <http://www.fcc.gov/Bureaus/Cable/WWW/csb.html>. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

This *Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

Paperwork Reduction Act

This *Report and Order* contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due January 31, 2000. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060-XXXX.

Title: Cable Attribution Rules.

Form No.: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 20.

Estimated Time per Response: 4 hours.

Total Annual Burden: 80 hours.

Cost to Respondents: \$3200.

Needs and Uses: Filings will be used by the Commission to determine the nature of the corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services

such that the holders are subject to the Commission's regulations.

Synopsis of Report and Order

1. The Commission's *Report and Order* amends the Commission's cable attribution and affiliation rules to more accurately identify interests that confer on their holders the ability to influence the operations of the held entity such that the holders should be subject to the cable rules.

2. *Key Decisions:*

- The *Report and Order* maintains the 5% voting equity attribution standard and adopts this standard for the Commission's cable-telco buyout prohibition rule, cable/SMATV cross-ownership rule, and the competing provider prong of the effective competition test. 47 CFR 76.505, 76.501(d), 76.905(h).

- *The Report and Order* raises the passive institutional investor threshold from 10% to 20%.

- The *Report and Order* eliminates the cable attribution rule's single majority shareholder exemption.

- The *Report and Order* attributes nonvoting equity and debt where an investor's interest is greater than 33% of a company's total assets, which is the sum of all equity and debt. This equity debt rule will also act as an exemption to the insulated limited partner exception.

- For the horizontal ownership and channel occupancy rules, 47 CFR 503, 504, the *Report and Order* narrowly tailors the insulated limited partnership criteria to permit a limited partner to insulate its interest so long as the limited partner is not involved in the video-programming activities of the partnership. In addition, for these two rules, the *Report and Order* permits interlocking and appointed directors and officers to petition the Commission for a waiver from attribution where the directors and officers are not involved in the video-programming activities of either company.

- The *Report and Order* adopts a 10% partnership or voting equity attribution threshold for the local exchange carrier prong of the effective competition test. 47 CFR 76.905(b)(4).

- The *Report and Order* permits investors in limited liability companies to insulate their interests under the insulated limited partnership criteria.

- The *Report and Order* clarifies the attribution and affiliation standards for the following rules: 47 CFR 76.1000 (program access); 47 CFR 76.1300 (program carriage); 47 CFR 76.924 (allocation of service cost categories); 47

CFR 76.922 (rates for the basic service tier and cable programming services tiers); 47 CFR 76.970 (commercial leased access); and 47 CFR 76.1500 (open video systems). Under these rules, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

• The *Report and Order* adopts transitional provisions. For the ownership rules covered in the *Report and Order*, the new attribution rules apply only to interests acquired on or after June 26, 1998. For the other rules covered in the *Report and Order*, the new attribution rules apply to all interests, no matter when acquired.

Ordering Clauses

3. Accordingly, pursuant to Sections 4(i), 303 and 612, 613(f)(1)(A)&(B), 616, 623, 628 and 652 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 532, 533(f)(1)(A)&(B), 536(a), 543, 548(b), 572 and 573, the amendments discussed in this *Report and Order* are adopted. These amendments shall become effective 70 days after publication in the **Federal Register**, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

4. The Commission's Office of Public Affairs, Reference Operations Division, *Shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1164, 5 U.S.C.A. 601 *et seq.*

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Equal employment opportunity, Political candidates, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

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, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534,

535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.501 is amended by revising Notes 1, 2, 5 and 6 to read as follows:

§ 76.501 Cross-ownership.

* * * * *

Note 1: Actual working control, in whatever manner exercised, shall be deemed a cognizable interest.

Note 2: In applying the provisions of this section, ownership and other interests in an entity or entities covered by this rule will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporation will be cognizable;

(b) Investment companies, as defined in 15 U.S.C. 80a-3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporation, or if any of the officers or directors of the corporation are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(c) Attribution of ownership interests in an entity covered by this rule that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest since X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.1 x 0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable.]

(d) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any

person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant entity covered by this rule are subject to said trust.

(e) Subject to paragraph (i) of this Note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (i) of this Note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(f)(1) Subject to paragraph (i) of this Note, a limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company ("LLC") or Registered Limited Liability Partnership ("RLLP") shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies.

(2) In the case of a limited partnership, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. In the case of an LLC or RLLP, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the media activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of these

certifications are described in the Memorandum Opinion and Order in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985), as modified on reconsideration in the Memorandum Opinion and Order in MM Docket No. 83-46, FCC 86-410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the media businesses of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the entity seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(g) Officers and directors of an entity covered by this rule are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary media business, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a media entity, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the media subsidiary, and a certification properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a media entity shall not be attributed with ownership of that entity by virtue of such status.

(h) Discrete ownership interests held by the same individual or entity will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through "passive investors" is equal to or exceeds 20 percent; or

(2) The sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (i)(1) of this section plus the sum of the interests computed

under paragraph (i)(2) of this section is equal to or exceeds 20 percent.

(i) Notwithstanding paragraphs (e) and (f) of this Note, the holder of an equity or debt interest or interests in an entity covered by this rule shall have that interest attributed if the equity (including all stockholdings, whether voting or nonvoting, common or preferred, and partnership interests) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (all equity plus all debt) of that entity, provided however that:

(1) in applying the provisions of paragraph (i) of this note to §§ 76.501, 76.505 and 76.905(b)(2), the holder of an equity or debt interest or interests in a broadcast station, cable system, SMATV or multiple video distribution provider subject to §§ 76.501, 76.505, or 76.905(b)(2) ("interest holder") shall have that interest attributed if the equity (including all stockholdings, whether voting or nonvoting, common or preferred, and partnership interests) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (defined as the aggregate of all equity plus all debt) of that entity; and

(i) the interest holder also holds an interest in a broadcast station, cable system, SMATV, or multiple video distribution provider that operates in the same market, is subject to §§ 76.501, 76.505, or 76.905(b)(2) and is attributable without reference to this paragraph (i); or

(ii) the interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held.

(2) For purposes of applying subparagraph (i)(1), the term "market" will be defined as it is defined under the rule that is being applied.

* * * * *

Note 5: Certifications pursuant to this section and these notes shall be sent to the attention of the Cable Services Bureau, Federal Communications Commission, 445 12th Street, NW Washington, DC 20554.

Note 6: In applying paragraph (a) of § 76.501, no minority voting stock interest will be cognizable if there is a single holder of more than 50% of the outstanding voting stock of the corporation in which the minority interest is held, provided however, that an investor that has an interest under the terms of Note 2(i) of this section shall have that interest attributed.

3. Section 76.503 is amended by adding a Note 2 to read as follows:

§ 76.503 National subscriber limits.

* * * * *

Note 2: *Attributable Interest* shall be defined by reference to the criteria set forth

in Notes 1 through 5 to § 76.501 provided however, that:

(a) Notes 2(f) and 2(g) to § 76.501 to shall not apply;

(b)(1) Subject to Note 2(i) to § 76.501, a limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company ("LLC") or Registered Limited Liability Partnership ("RLLP") shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies.

(2) In the case of a limited partnership, in order for an entity to make the certification set forth in paragraph (b)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the partnership. In the case of an LLC or RLLP, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of these certifications are described in the Report and Order, FCC No. 99-288, CS Docket No. 98-82 (released October 20, 1999). In order for the Commission to accept the certification, the certification must be accompanied by facts, e.g. in the form of documents, affidavits or declarations, that demonstrate that these insulation criteria are met. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the

management or operation of the video-programming activities of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the entity seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(c) Officers and directors of an entity covered by this rule are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in activities other than video-programming activities, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to the entity's video-programming activities. In the case of common or appointed directors and officers, if common or appointed directors or officers have duties and responsibilities that are wholly unrelated to video-programming activities for both entities, the relevant entity may request the Commission to waive attribution of the director or officer. The officers and directors of a parent company of a video-programming business, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the video-programming subsidiary, and a certification properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a cable system shall not be attributed with ownership of that entity by virtue of such status.

4. Section 76.504 is amended by removing paragraph (h) and adding a Note 1 to read as follows:

§ 76.504 Limits on carriage of vertically integrated programming.

* * * * *

Note 1: Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided however, that:

- (a) Notes 2(f) and 2(g) to § 76.501 to shall not apply;
- (b)(1) Subject to Note 2(i) to § 76.501, a limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company ("LLC") or Registered Limited Liability Partnership ("RLLP") shall be attributed to the

interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies.

(2) In the case of a limited partnership, in order for an entity to make the certification set forth in paragraph (b)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the partnership. In the case of an LLC or RLLP, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of these certifications are described in the Report and Order, FCC No. 99-288, CS Docket No. 98-82 (released October 20, 1999). In order for the Commission to accept the certification, the certification must be accompanied by facts, e.g. in the form of documents, affidavits or declarations, that demonstrate that these insulation criteria are met. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the video-programming activities of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the entity seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(c) Officers and directors of an entity covered by this rule are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in activities other than video-programming activities, it may request the Commission to waive attribution for any officer or director

whose duties and responsibilities are wholly unrelated to the entity's video-programming activities. In the case of common or appointed directors and officers, if common or appointed directors or officers have duties and responsibilities that are wholly unrelated to video-programming activities for both entities, the relevant entity may request the Commission to waive attribution of the director or officer. The officers and directors of a parent company of a video-programming business, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the video-programming subsidiary, and a certification properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a cable system shall not be attributed with ownership of that entity by virtue of such status.

5. Section 76.505 is amended by adding paragraphs (f) and (g) to read as follows:

§ 76.505 Prohibition on buy outs.

* * * * *

(f) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(g) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501.

6. Section 76.905 is amended by adding paragraphs (h) and (i) to read as follows:

§ 76.905 Standards for identification of cable systems subject to effective competition.

* * * * *

(h) For purposes of paragraph (b)(2) of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities. Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501.

(i) For purposes of paragraph (b)(4) of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities. Attributable interest shall be defined as follows:

- (1) A 10% partnership or voting equity interest in a corporation will be cognizable.
- (2) Subject to paragraph (i)(3), a limited partnership interest of 10% or

more shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company ("LLC") or Registered Limited Liability Partnership ("RLLP") shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies. Certifications must be made pursuant to the guidelines set forth in Note 2(f) to § 76.501.

(3) Notwithstanding paragraph (i)(2), the holder of an equity or debt interest or interests in an entity covered by this rule shall have that interest attributed if the equity (including all stockholdings, whether voting or nonvoting, common or preferred, and partnership interests) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (all equity plus all debt) of that entity.

(4) Discrete ownership interests held by the same individual or entity will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if the sum of the interests other than those held by or through "passive investors" is equal to or exceeds 10%.

7. Section 76.922 is amended by adding paragraphs (f)(6) (i) and (ii) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(f) * * *

(6)(i) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(ii) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(A) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) 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.

* * * * *

8. Section 76.924 is amended by adding paragraphs (i)(6) and (i)(7) to read as follows:

§ 76.924 Allocation to service cost categories.

* * * * *

(i) * * *

(6) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(7) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(i) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(ii) 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.

* * * * *

9. Section 76.970 is amended by redesignating paragraphs (c), (d), (e), (f), (g) and (h) as paragraphs (d), (e), (f), (g), (h) and (i); revising paragraph (b); and adding a new paragraph (c) to read as follows:

§ 76.970 Commercial leased access rates.

* * * * *

(b) In determining whether an entity is an "affiliate" for purposes of commercial leased access, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(c) Attributable interest shall be defined by reference to the criteria set forth in Notes 1-5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) 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.

* * * * *

10. Section 76.1000 is amended by revising paragraph (b) to read as follows:

§ 76.1000 Definitions.

* * * * *

(b) *Cognizable interests.* In applying the provisions of this subpart, ownership and other interests in cable operators, satellite cable programming vendors or satellite broadcast programming vendors will be attributed to their holders and subject the interest holders to the rules of this subpart. Cognizable and attributable interests shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) 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.

* * * * *

11. Section 76.1300 is amended by redesignating paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e); revising paragraph (a) and adding a new paragraph (b) to read as follows:

§ 76.1300 Definitions.

* * * * *

(a) *Affiliated.* For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(b) *Attributable interest.* The term "attributable interest" shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) 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.

* * * * *

§ 76.1401 [Removed]

12. Section 76.1401 is removed.

13. Section 76.1500 is amended by redesignating paragraph (h) as paragraph (i), revising paragraph (g) and adding a new paragraph (h) to read as follows:

§ 76.1500 Definitions.

* * * * *

(g) *Affiliated.* For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(h) *Attributable Interest.* The term "attributable interest" shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) 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.

* * * * *