

(1) When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and

(2) When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.

(f) For purposes of determining the number of households subscribing to the services of a multichannel video programming distributor other than the largest multichannel video programming distributor, under paragraph (b)(2)(ii) of this section, the number of subscribers of all multichannel video programming distributors that offer service in the franchise area will be aggregated.

(g) In order to offer comparable programming as that term is used in this section, a competing multichannel video programming distributor must offer at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.

(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 non-voting, 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%.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17972, Apr. 15, 1994; 61 FR 18978, Apr. 30, 1996; 62 FR 6495, Feb. 12, 1997; 64 FR 35950, July 2, 1999; 64 FR 67196, Dec. 1, 1999; 69 FR 72046, Dec. 10, 2004]

§ 76.906 Presumption of effective competition.

In the absence of a demonstration to the contrary cable systems are presumed: (a) To be subject to effective competition pursuant to section 76.905(b)(2); and (b) Not to be subject to effective competition pursuant to section 76.905(b)(1), (3) or (4).

[80 FR 38012, July 2, 2015]

§ 76.907 Petition for a determination of effective competition.

(a) A cable operator (or other interested party) may file a petition for a determination of effective competition with the Commission pursuant to the Commission’s procedural rules in § 76.7.

(b) If the cable operator seeks to demonstrate that effective competition