

## Federal Communications Commission

## § 76.910

as defined in § 76.905(b)(1), (3), or (4) exists in the franchise area, it bears the burden of demonstrating the presence of such effective competition. Effective competition as defined in § 76.905(b)(2) is governed by the presumption in § 76.906, except that where a franchising authority has rebutted the presumption of competing provider effective competition as defined in § 76.905(b)(2) and is certified, the cable operator must demonstrate that circumstances have changed and effective competition is present in the franchise area.

NOTE TO PARAGRAPH (b): The criteria for determining effective competition pursuant to § 76.905(b)(4) are described in Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96-85, FCC 99-57 (released March 29, 1999).

(c) If the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days. Such responses may be limited to numerical totals. In addition, with respect to petitions filed seeking to demonstrate the presence of effective competition pursuant to § 76.905(b)(4), the Commission may issue an order directing one or more persons to produce information relevant to the petition's disposition.

[64 FR 35950, July 2, 1999, as amended at 80 FR 38013, July 2, 2015]

### § 76.910 Franchising authority certification.

(a) A franchising authority must be certified by the Commission in order to regulate the basic service tier and associated equipment of a cable system within its jurisdiction.

(b) To be certified, the franchising authority must file with the Commission a written certification that:

(1) The franchising authority will adopt and administer regulations with respect to the rates for the basic service tier that are consistent with the regulations prescribed by the Commission for regulation of the basic service tier;

(2) The franchising authority has the legal authority to adopt, and the personnel to administer, such regulations;

(3) Procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties; and

(4) The cable system in question is not subject to effective competition. The franchising authority must submit specific evidence demonstrating its rebuttal of the presumption in § 76.906 that the cable operator is subject to effective competition pursuant to section 76.905(b)(2). Unless a franchising authority has actual knowledge to the contrary, the franchising authority may rely on the presumption in § 76.906 that the cable operator is not subject to effective competition pursuant to section 76.905(b)(1), (3), or (4). The franchising authority bears the burden of submitting evidence rebutting the presumption that competing provider effective competition, as defined in § 76.905(b)(2), exists in the franchise area. If the evidence establishing the lack of effective competition is not otherwise available, franchising authorities may request from a multichannel video programming distributor information regarding the multichannel video programming distributor's reach and number of subscribers. A multichannel video programming distributor must respond to such request within 15 days. Such responses may be limited to numerical totals.

(c) The written certification described in paragraph (b) of this section shall be made by completing and filing FCC Form 328. FCC Form 328 can be obtained from the internet at <http://www.fcc.gov/Forms/Form328/328.pdf> or by calling the FCC Forms Distribution Center at 1-800-418-3676. The form must be filed by

(1) Registered mail, return receipt requested, or

(2) Hand-delivery to the Commission and a date-stamped copy obtained. The date on the return receipt or on the date-stamped copy is the date filed.

(d) A copy of the certification form described in paragraph (c) of this section must be served on the cable operator before or on the same day it is filed with the Commission.

(e) Unless the Commission notifies the franchising authority otherwise, the certification will become effective 30 days after the date filed, *provided, however*, That the franchising authority may not regulate the rates of a cable system unless it:

- (1) Adopts regulations;
- (i) Consistent with the Commission's regulations governing the basic tier; and
- (ii) Providing a reasonable opportunity for consideration of the views of interested parties, within 120 days of the effective date of certification; and
- (2) Notifies the cable operator that the authority has been certified and has adopted the regulations required by paragraph (e)(1) of this section.

(f) If the Commission denies a franchising authority's certification, the Commission will notify the franchising authority of any revisions or modifications necessary to obtain approval.

[58 FR 29753, May 21, 1993, as amended at 80 FR 38013, July 2, 2015; 83 FR 60776, Nov. 27, 2018]

**§ 76.911 Petition for reconsideration of certification.**

(a) A cable operator (or other interested party) may challenge a franchising authority's certification by filing a petition for reconsideration pursuant to § 1.106. The petition may allege either of the following:

(1) The cable operator is not subject to rate regulation because effective competition exists as defined in § 76.905. Sections 76.907(b) and (c) apply to petitions filed under this section.

(2) The franchising authority does not meet the certification standards set forth in 47 U.S.C. 543(a)(3).

(b) Stay of rate regulation. (1) The filing of a petition for reconsideration pursuant to paragraph (a)(1) of this section will automatically stay the imposition of rate regulation pending the outcome of the reconsideration proceeding.

(2) A petitioner filing pursuant to paragraph (a)(2) of this section may request a stay of rate regulation.

(3) In any case in which a stay of rate regulation has been granted, if the petition for reconsideration is denied, the cable operator may be required to refund any rates or portion of rates above the permitted tier charge or permitted equipment charge which were collected from the date the operator implements a prospective rate reduction back in time to September 1, 1993, or one year, whichever is shorter.

(c) The filing of a petition for reconsideration alleging the presence of effective competition based on frivolous grounds is prohibited, and may be subject to forfeitures.

(d) If the Commission upholds a challenge to a certification filed pursuant to paragraph (a)(2) of this section, the Commission will notify the franchising authority of the revisions necessary to secure approval and provide the authority an opportunity to amend its certification however necessary to secure approval. *Provided, however*, That pending approval of certification, the Commission will assume jurisdiction over basic cable service rates in that franchise area.

[58 FR 29753, May 21, 1993, as amended at 58 FR 46735, Sept. 2, 1993; 64 FR 35950, July 2, 1999]

**§ 76.912 Joint certification.**

(a) Franchising authorities may apply for joint certification and may engage in joint regulation, including, but not limited to, joint hearings, data collection, and ratemaking. Franchising authorities jointly certified to regulate their cable system(s) may make independent rate decisions.

(b) Franchising authorities may apply for joint certification regardless of whether the authorities are served by the same cable system or by different cable systems and regardless of whether the rates in each franchising area are uniform.

**§ 76.913 Assumption of jurisdiction by the Commission.**

(a) Upon denial or revocation of the franchising authority's certification, the Commission will regulate rates for cable services and associated equipment of a cable system not subject to effective competition, as defined in