

Federal Communications Commission

§ 76.1513

(3) An open video system operator shall not restrict a video programming provider's ability to use part of the provider's channel capacity to provide an individualized guide or menu to the provider's subscribers;

(4) Where an open video system operator provides no navigational device, guide or menu, its affiliate's navigational device, guide or menu shall be subject to the requirements of Section 653(b)(1)(E) of the Communications Act;

(5) An open video system operator may permit video programming providers, including its affiliate, to develop and use their own navigational devices. If an open video system operator permits video programming providers, including its affiliate, to develop and use their own navigational devices, the operator must create an electronic menu or guide that all video programming providers must carry containing a non-discriminatory listing of programming providers or programming services available on the system and informing the viewer how to obtain additional information on each of the services listed;

(6) An open video system operator must grant access, for programming providers that do not wish to use their own navigational device, to the navigational device used by the open video system operator or its affiliate; and

(7) If an operator provides an electronic guide or menu that complies with paragraph (b)(5) of this section, its programming affiliate may create its own menu or guide without being subject to the requirements of Section 653(b)(1)(E) of the Communications Act.

(c) An open video system operator shall ensure that video programming providers or copyright holders (or both) are able to suitably and uniquely identify their programming services to subscribers.

(d) An open video system operator shall transmit programming identification without change or alteration if such identification is transmitted as part of the programming signal.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43177, Aug. 21, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43177, Aug. 21, 1996, in § 76.1512, paragraphs (b), (c), and

(d) were revised. These paragraphs contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.1513 Open video dispute resolution.

(a) *Complaints.* Any party aggrieved by conduct that it believes constitute a violation of the regulations set forth in this part or in section 653 of the Communications Act (47 U.S.C. 573) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The Commission shall resolve any such dispute within 180 days after the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7 of this part with the following additions or changes.

(b) *Alternate dispute resolution.* An open video system operator may not provide in its carriage contracts with programming providers that any dispute must be submitted to arbitration, mediation, or any other alternative method for dispute resolution prior to submission of a complaint to the Commission.

(c) *Notice required prior to filing of complaint.* Any aggrieved party intending to file a complaint under this section must first notify the potential defendant open video system operator that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in this part or in Section 653 of the Communications Act. The notice must be in writing and must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(d) *Contents of complaint.* In addition to the requirements of § 76.7 of this part, an open video system complaint shall contain:

(1) The type of entity that describes complainant (e.g., individual, private association, partnership, or corporation), the address and telephone number of the complainant, and the address

and telephone number of each defendant;

(2) If discrimination in rates, terms, and conditions of carriage is alleged, documentary evidence shall be submitted such as a preliminary carriage rate estimate or a programming contract that demonstrates a differential in price, terms or conditions between complainant and a competing video programming provider or, if no programming contract or preliminary carriage rate estimate is submitted with the complaint, an affidavit signed by an officer of complainant alleging that a differential in price, terms or conditions exists, a description of the nature and extent (if known or reasonably estimated by the complainant) of the differential, together with a statement that defendant refused to provide any further specific comparative information;

NOTE TO PARAGRAPH (d)(2): Upon request by a complainant, the preliminary carriage rate estimate shall include a calculation of the average of the carriage rates paid by the unaffiliated video programming providers receiving carriage from the open video system operator, including the information needed for any weighting of the individual carriage rates that the operator has included in the average rate.

(3) If a programming contract or a preliminary carriage rate estimate is submitted with the complaint in support of the alleged violation, specific references to the relevant provisions therein.

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (c) of this section has been made.

(e) *Answer.* (1) Any open video system operator upon which a complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) An answer to a discrimination complaint shall state the reasons for any differential in prices, terms or conditions between the complainant and its competitor, and shall specify the particular justification relied upon in support of the differential. Any documents or contracts submitted pursuant to this paragraph may be protected as

proprietary pursuant to §76.9 of this part.

(f) *Reply.* Within twenty (20) days after service of an answer, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(g) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs

(1) The open video system operator enters into a contract with the complainant that the complainant alleges to violate one or more of the rules contained in this part; or

(2) The open video system operator offers to carry programming for the complainant pursuant to terms that the complainant alleges to violate one or more of the rules contained in this part, and such offer to carry programming is unrelated to any existing contract between the complainant and the open video system operator; or

(3) The complainant has notified an open video system operator that it intends to file a complaint with the Commission based on a request for such operator to carry the complainant's programming on its open video system that has been denied or unacknowledged, allegedly in violation of one or more of the rules contained in this part.

(h) *Remedies for violations—(1) Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, the requiring carriage, awarding damages to any person denied carriage, or any combination of such sanctions. Such order shall set forth a timetable for compliance, and shall become effective upon release.

(2) *Additional sanctions.* The remedies provided in paragraph (h)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

[61 FR 28708, June 5, 1996, as amended at 61 FR 43178, Aug. 21, 1996; 62 FR 26239, May 13, 1997; 64 FR 6575, Feb. 10, 1999]