

INSTRUCTIONS FOR FCC 328 FRANCHISING AUTHORITY CERTIFICATION

1. The Cable Television Consumer Protection and Competition Act, enacted in October 1992, changes the manner in which cable television systems that are not subject to effective competition are regulated. In general, rates for the basic service tier (the tier required as a condition of access to all other video services and containing, among other services, local broadcast station signals and public, educational, and public access channels) and associated equipment will be subject to regulation by local or state governments ("franchising authorities"). Rates for cable programming services and associated equipment (all services except basic and pay channels) will be subject to regulation by the FCC. Rates for pay channels (channels for which there is a specific per-channel or per-program charge) are not regulated.
2. Only cable systems that are not subject to effective competition may be regulated. Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.
3. In order to regulate basic service tier rates, a franchising authority must be certified by the FCC. In order to be certified, a franchising authority must complete this form. An original and one copy of the completed form and all attachments must be returned to the FCC by registered mail, return receipt requested, to the FCC at the address on the form.
4. A copy of the form must be served on the cable operator by first-class mail on or before the date the form is sent or delivered to the FCC.
5. The franchising authority's certification will become effective 30 days after the date stamped on the postal return receipt unless otherwise notified by the Commission by that date. The franchising authority cannot begin to regulate rates, however, until it has actually adopted the required regulations (see below) and until it has notified the cable operator that it has been certified and that it has adopted the required regulations.
6. In order to be certified, franchising authorities must answer "yes" to Questions 3, 4, and 5, which are explained as follows:
7. Question 3: The franchising authority must adopt rate regulations consistent with the Commission's regulations for basic cable service. To fulfill this requirement for certification, the franchising authority may simply adopt a regulation indicating that it will follow the regulations established by the FCC.

The franchising authority has 120 days to adopt these regulations after the time it is certified. The franchising authority may not, however, begin to regulate cable rates until after it has adopted these regulations and until it has notified the cable operator that it has been certified and has adopted the required regulations.

8. Question 4(a): The franchising authority's "legal authority" to regulate basic service must come from state law. In some states, only the state government may regulate cable rates. In those states, the state government should file this certification. Provisions in franchise agreements that prohibit rate regulation are void, and do not prevent a franchising authority from regulating the basic service tier and associated equipment.

Question 4(b): The franchising authority must have a sufficient number of personnel to undertake rate regulation.

A franchise authority unable to answer "yes" to questions 4(a) or 4(b) may wish to review the FCC's Report and Order in Docket 92-246, FCC 93-177 (released May 3, 1993) for further information on the establishment of alternative federal regulatory procedures.

9. Question 5: Franchising authorities must have procedural regulations allowing for public participation in rate regulation proceedings. If a franchising authority does not have these regulations already in place, it must adopt them within 120 days of certification and before it may undertake rate regulation.
10. Question 6: Most cable systems are not subject to effective competition, as defined by the Cable Act. (The definition is included above and on the form.) The franchising authority may presume that the cable system in its jurisdiction is not subject to effective competition.

For purposes of applying the definition of effective competition (see Item 2 above), "multichannel video programming distributors" include a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a video dialtone service, and a satellite master antenna television system. A multichannel video programming distributor's services will be deemed "offered" when they are both technically and actually available. Service is "technically available" when the multichannel distributor is physically able to deliver the service to a household wishing to subscribe, with only minimal additional investment by the distributor. A service is "actually available" if subscribers in the franchise area are reasonably aware through marketing efforts that the service is available. Subscribership of those multichannel video programming distributors offering service to at least 50 percent of the households in a franchise area will be aggregated to determine whether at least 15 percent of the households in the franchise area are served by competitors. A multichannel video programming distributor must offer at least 12 channels of programming, at least one channel of which is nonbroadcast, to be found to offer "comparable" video programming.

11. This certification form must be signed by a government official with authority to act on behalf of the franchising authority.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information in this form is authorized by the Communications Act of 1934 as amended. The Commission will use the information provided in this form to determine if the franchise authority should be authorized to regulate cable rates. In reaching that determination, or for law enforcement purposes, a may become necessary to refer personal information contained in this form to another government agency. All information provided in this form will be available for public inspection. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 30 minutes including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, AME-PHS, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-XXXX), Washington, D.C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579

DECEMBER 31, 1975, 5 U.S.C. 522(a)(3) AND THE PAPERWORK REDUCTION ACT OF 1980,

P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.