

## 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; or (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; or (d) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that 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 rule 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 franchising authority unable to answer "yes" to questions 4(a) or 4(b) may wish to review the FCC's Report and Order in Docket 92-266, 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(a): The Commission presumes that cable systems

are subject to competing provider effective competition. (The definition of competing provider effective competition is included in Item 2(b), above.) If the franchising authority believes that this presumption is incorrect with regard to the listed cable system(s), it must submit an attachment containing evidence adequate to satisfy the franchising authority's burden of rebutting the presumption of competing provider effective competition with specific evidence that such effective competition does not exist in the franchise area.

Question 6(b): The franchising authority must indicate whether it has reason to believe that the listed cable system(s) are subject to any of the other three types of effective competition, as defined in Item (a), (c)-(d) above.

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 dial tone 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. Subscriber Ship 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 non-broadcast, 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 REQUIRED BY THE PAPERWORK REDUCTION ACT**

Public reporting burden for this collection of information is estimated to average 2 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or on how we can improve the collection and reduce the burden it causes you, please e-mail them to [pra@fcc.gov](mailto:pra@fcc.gov) or send them to the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0550), Washington, DC 20554.

Please DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS.

**THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, MAY 22, 1995, 47 U.S.C. 3507.**

For FCC Use Only
------------------

### FCC 328

## CERTIFICATION OF FRANCHISING AUTHORITY TO REGULATE BASIC CABLE SERVICE RATES AND INITIAL FINDING OF LACK OF EFFECTIVE COMPETITION

1. 

Name of Franchising Authority		
Mailing Address		
City	State	ZIP Code
Telephone No. (include area code):		
Person to contact with respect to this form:		

3. Will your franchising authority adopt (within 120 days of certification) and administer regulations with respect to basic cable service that are consistent with the regulations adopted by the FCC pursuant to 47 U.S.C Section 543(b)?  Yes  No

4. With respect to the franchising authority's regulations referred to in question 3,

a. Does your franchising authority have the legal authority to adopt them?  Yes  No

b. Does your franchising authority have the personnel to administer them?  Yes  No

2a. Name(s) and address(es) of cable system(s) and associated FCC Community unit identifier(s) within your jurisdiction. (Attach additional sheets if necessary)

Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		
Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

5. Do the procedural laws and regulations applicable to rate regulation proceedings by your franchising authority provide a reasonable opportunity for consideration of the views of interested parties?  Yes  No

6a. The Commission presumes that the cable system(s) listed in 2b is (are) subject to competing provider effective competition. Based on definition (b) below, do you have reason to believe that this presumption is incorrect? If so, you must provide an attachment containing evidence adequate to satisfy your burden of rebutting the presumption with specific evidence.  Yes  No

6b. The Commission presumes that the cable system(s) listed in 2b is (are) not subject to any other type of effective competition. Based on definitions (a), (c), and (d) below, do you have reason to believe that this presumption is correct?  Yes  No

2b. Name(s) of system(s) and associated community unit identifier(s) you claim are subject to regulation and with respect to which you are filing this certification. (Attach additional sheets if necessary.)

Name of System
Name of System

2c. Have you served a copy of this form on  Yes  No all parties listed in Item 2?

(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 distributors exceeds 15 percent of the households in the franchise area; (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 the franchise area; or (d) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area. 47 C.F.R. § 76.905.)

Signature
Title
Date

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM  
ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT  
(U.S. CODE TITLE 18, SECTION 1001).**

---

Return the original and one copy of this certification form (as indicated in the Instructions for FCC 328), along with any attachments, to:

Federal Communications Commission  
Attn: Media Bureau, Policy Division  
FCC Form 328 Cable Franchising Authority Certification  
445 12th Street, SW  
Washington, DC 20554