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FEDERAL COMMUNICATIONS COMMISSION**47 CFR PART 0**

[DA 05-43]

Freedom of Information Act**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's rules that implement the Freedom of Information Act (FOIA) Fee Schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and the Commission's rules, unless such fees are restricted or waived. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

DATES: Effective February 8, 2005.**FOR FURTHER INFORMATION CONTACT:**

Shoko B. Hair, Freedom of Information Act Officer, Office of Performance Evaluation and Records Management, Room 1-A827, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418-1379 or via Internet at shoko.hair@fcc.gov.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission is modifying § 0.467(a) of the Commission's rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA Fee Schedule on the grade level of the employee who processes the request. Thus, the Fee Schedule was computed at a Step 5 of each grade level based on the General Schedule effective January 1987 (including 20 percent for personnel benefits). The Commission's rules provide that the Fee Schedule will be modified periodically to correspond

with modifications in the rate of pay approved by Congress. *See* 47 CFR 0.467(a)(1) note.

In an Order adopted on January 14, 2005 and released on January 24, 2005 (DA 05-43), the Managing Director revised the schedule of fees set forth in 47 CFR 0.467 for the recovery of the full, allowable direct costs of searching for and reviewing agency records requested pursuant to the FOIA and the Commission's rules, 47 CFR 0.460, 0.461. The revisions correspond to modifications in the rate of pay, which was approved by Congress.

These modifications to the Fee Schedule do not require notice and comment because they merely update the Fee Schedule to correspond to modifications in rates of pay, as required under the current rules. The Commission will not send a copy of this Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the rules are a matter of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

Accordingly, pursuant to the authority contained in § 0.231(b) of the Commission's rules, 47 CFR 0.231 (b), *it is hereby ordered*, that, effective on February 8, 2005, the Fee Schedule contained in § 0.467 of the Commission's rules, 47 CFR 0.467, is amended, as described herein.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Andrew S. Fishel,
Managing Director.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, unless otherwise noted.

■ 2. Section 0.467 is amended by revising the last sentence of paragraph (a)(1), the table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * * The fee is based on the grade level of the employee(s) who conduct(s) the search or review, as specified in the following schedule:

Grade	Hourly fee
GS-1	12.10
GS-2	13.18
GS-3	14.84
GS-4	16.67
GS-5	18.65
GS-6	20.78
GS-7	23.10
GS-8	25.58
GS-9	28.26
GS-10	31.12
GS-11	34.19
GS-12	40.98
GS-13	48.73
GS-14	57.59
GS-15	67.74

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a) (1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 2005 and include 20 percent for personnel benefits.

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[FR Doc. 05-2426 Filed 2-7-05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 76**

[MB Docket No. 05-28; DA 05-169]

Inquiry Regarding the Impact of Certain Rules on Competition in the Multichannel Video Programming Distribution Market**AGENCY:** Federal Communications Commission.**ACTION:** Review of rules and statutory provisions; solicitation of comments.

SUMMARY: This document solicits public comment on the impact of certain provisions of the Communications Act of 1934, as amended, and Commission rules on competition in the multichannel video programming distribution market. The Commission is required by legislative mandate to submit a report to Congress based on the results of this inquiry no later than September 8, 2005.

DATES: Comments may be filed on or before March 1, 2005, and reply comments may be filed on or before March 16, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Media Bureau,

(202) 418-7046, TTY (202) 418-7172, or via e-mail at

Marcia.Glauber@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document in MB Docket No. 05-28, DA 05-169, released January 25, 2005. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1-800-378-3160.

Synopsis

1. On December 8, 2004, the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) was enacted. (The Satellite Home Viewer Extension and Reauthorization Act, Pub. L. 108-447; 118 Stat. 2809 (2004). SHVERA was enacted as Title IX of the Consolidated Appropriations Act, 2005.) Section 208 of SHVERA requires the Commission to conduct an inquiry on the impact of specific provisions of the Communications Act of 1934, as amended, and Commission rules on competition in the multichannel video programming distribution (MVPD) market. The Commission is required to submit a report to Congress on the results of its inquiry no later than nine months after SHVERA's enactment (*i.e.*, September 8, 2005).

2. By this document, the Media Bureau (Bureau) initiates the inquiry required by section 208 and seeks comment for use in preparation of the required report. Section 208 states:

STUDY OF IMPACT ON CABLE TELEVISION SERVICE

(a) **STUDY REQUIRED**—No later than 9 months after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Federal Communications Commission shall complete an inquiry regarding the impact on competition in the multichannel video programming distribution market of the current retransmission consent, network nonduplication, syndicated exclusivity, and sports blackout rules, including the impact of those rules on the ability of rural cable operators to compete with the direct broadcast satellite industry in the provision of digital broadcast television signals to consumers. Such report shall include such recommendations for changes in any statutory provisions relating to such rules as the Commission deems appropriate.

(b) **REPORT REQUIRED**—The Federal Communications Commission shall submit a

report on the results of the inquiry required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 9 months after the date of the enactment of this Act. (SHVERA, Pub. L. 108-447 sec. 208, 118 Stat. 2809, 3428-29 (2004).)

The following is a brief explanation of the specific rules the Commission's study must address.

- **Retransmission Consent:** (47 U.S.C. 325(b); 47 CFR 76.64-70) In general, cable and direct broadcast satellite (DBS) operators must obtain retransmission consent from a commercial broadcast television station in order to carry its signal unless the broadcaster has elected to be carried pursuant to must-carry status. (47 U.S.C. 325(b); 47 CFR 76.64.) Under retransmission consent, the broadcaster and cable or DBS operator negotiate an agreement that may involve compensation in return for permission to retransmit the broadcast television station.

- **The Network Program Nonduplication Rules** (47 CFR 76.120-122 and 76.92-95) allow a local commercial television station to protect its exclusive distribution rights for network programming based on its affiliate agreement with the network within the geographic zone specified in the Commission's rules.¹ In the cable context, the station may assert these rights against duplicative programming on a broadcast station carried by a cable operator. In the satellite context, network nonduplication rights may only be asserted against the duplicative programming carried on a "nationally distributed superstation." (47 CFR 76.122, 124. The FCC's definition of "nationally distributed superstation" can be found at 47 CFR 76.120.)

- **The Syndicated Program Exclusivity Rules** (47 CFR 76.101-110, 76.120 and 76.123-125) allow a local television broadcast station or distributor to protect its exclusive distribution rights for syndicated programming within the geographic zone specified in the Commission's rules.² In the cable context, the station or distributor may assert these rights

¹ See 47 CFR 76.92 and 76.93. The Commission's rules provide stations such protection within a 35-mile geographic zone (or 55 miles in smaller markets), which extends from the reference point of the community of license of the television station. See 47 CFR 73.658(m), 76.53, and 76.92 Note.

² See 47 CFR 76.101 and 76.103. The Commission's rules provide such protection within a station's 35-mile geographic zone, which extends from the reference point of the community of license of the television station. See 47 CFR 73.658(m), 76.53, and 76.101 Note.

against duplicative programming on a broadcast station carried by a cable operator. In the satellite context, syndicated exclusivity rights may only be asserted against the duplicative programming carried on a nationally distributed superstation.

- **The Sports Blackout Rules** (47 CFR 76.111, 76.120, 76.127-130) protect a sports team or league's exclusive distribution rights to a local sporting event (*i.e.*, a sports team). The sports blackout rules are applied only if a local TV broadcast station is not carrying the local sporting event. If a local TV broadcast station does not have permission to carry the local game, then no other broadcaster's signal displaying the game can be carried by cable or satellite to subscribers in the protected local blackout zone. (47 CFR 76.128.)

3. In addition to these existing rules, SHVERA also authorizes satellite carriers to offer distant digital stations and out-of-market "significantly viewed" stations to subscribers under certain circumstances. (See 47 U.S.C. 339 and 340, as amended by Sections 202 and 204 of SHVERA.) Existing statutory provisions permit cable operators to offer such stations. (17 U.S.C. 111 (a), (c), and (f).)

4. The Bureau seeks comments, information and analysis on how these rules, individually or collectively, affect competition in the MVPD market. The Bureau also seeks studies that measure the impact of these rules, either individually or collectively, on competition generally. The Bureau further requests comment and analysis on the impact of these rules on the ability of rural cable operators to compete with DBS in the provision of digital broadcast television signals to consumers. In addition, the Bureau requests recommendations for statutory changes regarding these four rules affecting competition in the MVPD market.

Procedural Matters

5. **Ex Parte Rules.** There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

6. **Comment Information.** Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in*

Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the

message, "get form." A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All

hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

- **People with Disabilities:** Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Media Bureau.

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