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(17 U.S.C. 408, 702, 710) [45 FR 13073, Feb. 28, 1980]

**37 CFR 201.16 [Reserved]**

**37 CFR 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.**

(a) General. This section prescribes rules pertaining to the deposit of Statements of Account and royalty fees in the Copyright Office as required by section 111(d)(2) of title 17 of the United States Code in order for secondary transmissions of cable systems to be subject to compulsory licensing.

(b) Definitions

- (1) Gross receipts for the "basic service of providing secondary transmissions of primary broadcast transmitters" include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees. All such gross receipts shall be aggregated and the DSE calculations shall be made against the aggregated amount. Gross receipts for secondary transmission services do not include installation (including connection, relocation, disconnection, or reconnection) fees, separate charges for security, alarm or facsimile services, charges for late payments, or charges for pay cable or other program origination services: Provided That, the origination services are not offered in combination with secondary transmission service for a single fee.
- (2) A cable system is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. A system that meets this definition is considered a "cable system" for copyright purposes, even if the FCC excludes it from being considered a "cable system" because of the number or nature of its subscribers or the nature of its secondary transmissions. The statements of account and royalty fees to be deposited under § 201.17 of these regulations, shall be recorded and deposited by each individual cable system desiring its secondary transmissions to be subject to compulsory licensing. For these purposes, and the purpose of § 201.17 of these regulations, an "individual" cable system is each cable system recognized as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission in effect: on the last day of the accounting period covered by a Statement of Account, in the case of the preparation and deposit of a Statement of Account and copyright royalty fee. For these purposes, two or more cable facilities are considered as one individual cable system if the facilities are either: (A) In contiguous communities under common ownership or control or (B) operating from one headend.
- (3) FCC means the Federal Communications Commission.
- (4) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, an FM radio signal is "generally receivable" if:
  - (i) It is usually carried by the system whenever it is received at the system's headend, and
  - (ii) as a result of monitoring at reasonable times and intervals, it can be expected to be received at the system's headend, with the system's FM

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antenna, at least three consecutive hours each day at the same time each day, five or more days a week, for four or more weeks during any calendar quarter, with a strength of not less than fifty microvolts per meter measured at the foot of the tower or pole to which the antenna is attached.

- (5) The terms primary transmission, secondary transmission, local service area of a primary transmitter, distant signal equivalent, network station, independent station, and noncommercial educational station have the meanings set forth in section 111(f) of title 17 of the United States Code, as amended by Pub. L. 94-553 and Pub. L. 103-369.
  - (6) A primary transmitter is a "distant" station, for purposes of this section, if the programming of such transmitter is carried by the cable system in whole or in part beyond the local service area of such primary transmitter.
  - (7) A translator station is, with respect to programs both originally transmitted and retransmitted by it, a primary transmitter for the purposes of this section. A translator station which retransmits the programs of a network station will be considered a network station; a translator station which retransmits the programs of an independent station shall be considered an independent station; and a translator station which retransmits the programs of a noncommercial educational station shall be considered a noncommercial educational station. The determination of whether a translator station should be identified as a "distant" station depends on the local service area of the translator station.
  - (8) For purposes of this section, the "rules and regulations of the FCC in effect on October 19, 1976," which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place, refers to that portion of former 47 CFR 76.61(b)(2), revised June 25, 1981, and § 76.63 (referring to § 76.61(b)(2)), deleted June 25, 1981, concerning the substitution of a program that is primarily of local interest to the distant community (e.g., a local news or public affairs program).
  - (9) For purposes of this section, the "rules and regulations of the FCC", which require a cable system to omit the retransmission of a particular program and substitute another program in its place, refers to 47 CFR 76.67.
  - (10) For purposes of this section, a cable system "lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry" only if:
    - (i) All of its activated television channels are used exclusively for the secondary transmission of television signals; and
    - (ii) the number of primary television transmitters secondarily transmitted by the cable system exceeds the number of its activated television channels.
- (c) Accounting periods and deposit
- (1) Statements of Account shall cover semiannual accounting periods of
    - (i) January 1 through June 30, and
    - (ii) July 1 through December 31,
 and shall be deposited in the Copyright Office, together with the total royalty fee for such accounting periods as prescribed by section 111(d)(2) (B), (C), or (D) of title 17, by not later than the immediately following August 29, if the Statement of Account covers the January 1 through June 30 accounting period, and by not later than the immediately following March 1, if the Statement of Account covers the July 1 through December 31 accounting period.
  - (2) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such Statement and fee were physically received in the Copyright Office. Thereafter, the Office will examine the Statement and fee for obvious errors or omissions appearing on the face of the

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documents, and will require that any such obvious errors or omissions be corrected before final processing of the documents is completed. If, as the result of communications between the Copyright Office and the cable system, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record of the case. However, completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of receipt shown in the official record. It shall in no case be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty fee had been deposited, that the statutory time limits for filing had been met, or that any other requirements to qualify for a compulsory license have been satisfied.

- (3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office. Statements of Account and royalty fees received after the filing deadlines of August 29 or March 1, respectively, will be accepted for whatever legal effect they may have, if any.
- (d) Forms
- (1) Each Statement of Account shall be furnished on an appropriate form prescribed by the Copyright Office, and shall contain the information required by that form and its accompanying instructions. Computation of distant signal equivalents and the copyright royalty fee shall be in accordance with the procedures set forth in the forms. Copies of Statement of Account forms are available free upon request to the Licensing Division, United States Copyright Office, Library of Congress, Washington, D.C. 20557.
  - (2) The forms prescribed by the Copyright Office are designated "Statement of Account for Secondary Transmissions By Cable Systems":
    - (i) Form SA1-2-"Short Form" for use by cable systems whose semiannual gross receipts for secondary transmission total less than \$292,000; and
    - (ii) Form SA3-"Long Form" for use by cable systems whose semiannual gross receipts for secondary transmission total \$292,000 or more.
- (e) Contents. Each Statement of Account shall contain the following information:
- (1) A clear designation of the accounting period covered by the Statement.
  - (2) The designation "Owner," followed by:
    - (i) The full legal name of the owner of the cable system. If the owner is a partnership, the name of the partnership is to be followed by the name of at least one individual partner;
    - (ii) any other name or names under which the owner conducts the business of the cable system; and
    - (iii) the full mailing address of the owner. Ownership, other names under which the owner conducts the business of the cable system, and the owner's mailing address shall reflect facts existing on the last day of the accounting period covered by the Statement of Account.
  - (3) The designation "System," followed by:
    - (i) Any business or trade names used to identify the business and operation of the system, unless these names have already been given under the designation "Owner"; and
    - (ii) the full mailing address of the system, unless such address is the same as the address given under the designation "Owner".

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Business or trade names used to identify the business and operation of the system, and the system's mailing address, shall reflect the facts existing on the last day of the accounting period covered by the Statement of Account.

- (4) The designation "Area Served", followed by the name of the community or communities served by the system. For this purpose a "community" is the same as a "community unit" as defined in FCC rules and regulations.
- (5) The designation "Channels," followed by:
  - (i) The number of channels on which the cable system made secondary transmissions to its subscribers, and
  - (ii) The cable system's total activated channel capacity, in each case during the period covered by the Statement.
- (6) The designation "Secondary Transmission Service: Subscribers and Rates", followed by:
  - (i) A brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters;
  - (ii) The number of subscribers to the cable system in each such subscriber category; and
  - (iii) The charge or charges made per subscriber to each such subscriber category for the basic service of providing such secondary transmissions. Standard rate variations within a particular category should be summarized; discounts allowed for advance payment should not be included. For these purposes:
    - (A) The description, the number of subscribers, and the charge or charges made shall reflect the facts existing on the last day of the period covered by the Statement; and
    - (B) Each entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) which is charged by the cable system for the basic service of providing secondary transmissions shall be considered one subscriber.
- (7) The designation "Gross Receipts", followed by the gross amount paid to the cable system by subscribers for the basic service of providing secondary transmissions of primary broadcast transmissions during the period covered by the Statement of Account. If the cable system maintains its revenue accounts on an accrual basis, gross receipts for any accounting period includes all such amounts accrued for secondary transmission service furnished during that period, regardless of when accrued:
  - (i) Less the amount of any bad debts actually written-off during that accounting period, excluding bad debts for secondary transmission service furnished before January 1, 1978;
  - (ii) plus the amount of any previously written-off bad debts for secondary transmission service which were actually recovered during that accounting period, excluding bad debt recoveries for secondary transmission service furnished before January 1, 1978. If the cable system maintains its revenue accounts on a cash basis, gross receipts for any accounting period includes all such amounts actually received by the cable system during that accounting period, excluding amounts paid for secondary transmission service furnished before January 1, 1978; however, amounts received before January 1, 1978, for secondary transmission service furnished after that date, are to be considered as if they had been received during the accounting period in which the service

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covered by such payments was furnished.

- (8) The designation "Services Other Than Secondary Transmissions: Rates," followed by a description of each package of service which consists solely of services other than secondary transmission services, for which a separate charge was made or established, and which the cable system furnished or made available to subscribers during the period covered by the Statement of Account, together with the amount of such charge. However, no information need be given concerning services furnished at cost. Specific amounts charged for pay cable programming need not be given if the rates are on a variable, per-program basis. (The fact of such variable charge shall be indicated.)
- (9) The designation "Primary Transmitters: Television", followed by an identification of all primary television transmitters whose signals were carried by the cable system during the period covered by the Statement of Account, other than primary transmitters of programs carried by the cable system exclusively pursuant to rules, regulations, or authorizations of the FCC in effect on October 19, 1976, permitting the substitution of signals under certain circumstances, and required to be specially identified by paragraph (e)(11) of this section, together with the information listed below:
  - (i) The station call sign of the primary transmitter.
  - (ii) The name of the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).
  - (iii) The number of the channel upon which that primary transmitter broadcasts in the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).
  - (iv) A designation as to whether that primary transmitter is a "network station", an "independent station", or a "noncommercial educational station".
  - (v) A designation as to whether that primary transmitter is a "distant" station.
  - (vi) If that primary transmitter is a "distant" station, a specification of whether the signals of that primary transmitter are carried: (A) On a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; or (B) on any other basis. If the signals of that primary transmitter are carried on a part-time basis because of lack of activated channel capacity, the Statement shall also include a log showing the dates on which such carriage occurred, and the hours during which such carriage occurred on those dates. Hours of carriage shall be accurate to the nearest quarter-hour, except that, in any case where such part-time carriage extends to the end of the broadcast day of the primary transmitter, an approximate ending hour may be given if it is indicated as an estimate.
  - (vii) The information indicated by paragraph (e)(9), subclauses (v) and (vi) of this section, is not required to be given by any cable system that appropriately completed Form SA1-2 for the period covered by the Statement.
  - (viii) Notwithstanding the requirements of this section, where a cable system carried a distant primary transmitter under FCC rules and regulations in effect on October 19, 1976 which permitted carriage of specific network programs on a part-time basis in certain circumstances (former 47 CFR 76.59 (d) (2) and (4), 76.61(e) (2) and (4), and 76.63, referring to § 76.61(e)

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- (2) and (4), all of which were deleted June 25, 1981), carriage of that primary transmitter on that basis need not be reported, and that carriage is to be excluded in computing the distant signal equivalent of that primary transmitter.
- (10) The designation "Primary Transmitters: Radio", followed by an identification of primary radio transmitters whose signals were carried by the cable system during the period covered by the Statement of Account, together with the information listed below:
- (i) A designation as to whether each primary transmitter was electronically processed by the system as a separate and discrete signal.
  - (ii) The station call sign of each:
    - (A) AM primary transmitter;
    - (B) FM primary transmitter, the signals of which were electronically processed by the system as separate and discrete signals; and
    - (C) FM primary transmitter carried on an all-band retransmission basis, the signals of which were generally receivable by the system.
  - (iii) A designation as to whether the primary transmitter is AM or FM.
  - (iv) The name of the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).
- (11) A special statement and program log, which shall consist of the information indicated below for all nonnetwork television programming that, during the period covered by the Statement, was carried in whole or in part beyond the local service area of the primary transmitter of such programming under
- (i) rules or regulations of the FCC requiring a cable system to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission; or
  - (ii) rules, regulations, or authorizations of the FCC in effect on October 19, 1976, permitting a cable system, at its election, to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission:
    - (A) The name or title of the substitute program.
    - (B) Whether the substitute program was transmitted live by its primary transmitter.
    - (C) The station call sign of the primary transmitter of the substitute program.
    - (D) The name of the community to which the primary transmitter of the substitute program is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).
    - (E) The date when the secondary transmission of the substitute program occurred, and the hours during which such secondary transmission occurred on that date accurate to the nearest 5 minutes.
    - (F) A designation as to whether deletion of the omitted program was permitted by the rules, regulations, or authorizations of the FCC in effect on October 19, 1976, or was required by the rules, regulations, or authorizations of the FCC.
- (12) A statement of the total royalty fee payable for the period covered by the Statement of Account, together with a royalty fee analysis which gives a clear, complete, and detailed presentation of the determination of such fee. This analysis shall present

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in appropriate sequence all facts, figures, and mathematical processes used in determining such fee, and shall do so in such manner as required in the appropriate form so as to permit the Copyright Office to verify readily, from the face of the Statement of Account, the accuracy of such determination and fee. The royalty fee analysis is not required to be given by any cable system whose gross receipts from subscribers for the period covered by the Statement of Account, for the basic service of providing secondary transmissions of primary broadcast transmissions, total \$75,800 or less.

- (13) The name, address, and telephone number of an individual who may be contacted by the Copyright Office for further information about the Statement of Account.
- (14) The handwritten signature of:
  - (i) The owner of the cable system or a duly authorized agent of the owner, if the owner is not a partnership or a corporation; or
  - (ii) A partner, if the owner is a partnership; or
  - (iii) An officer of the corporation, if the owner is a corporation. The signature shall be accompanied by:
    - (A) The printed or typewritten name of the person signing the Statement of Account;
    - (B) The date of signature;
    - (C) If the owner of the cable system is a partnership or a corporation, by the title or official position held in the partnership or corporation by the person signing the Statement of Account;
    - (D) A certification of the capacity of the person signing; and
    - (E) A declaration of the veracity of the statements of fact contained in the Statement of Account and the good faith of the person signing in making such statement of fact.
- (f) Computation of distant signal equivalents
  - (1) A cable system that elects to delete a particular television program and substitute for that program another television program ("substitute program") under rules, regulations, or authorizations of the FCC in effect on October 19, 1976, which permit a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place shall compute the distant signal equivalent ("DSE") of each primary transmitter that broadcasts one or more substitute programs by dividing:
    - (i) The number of the primary transmitter's live, nonnetwork, substitute programs that were carried by the cable system, during the period covered by the Statement of Account, in substitution for programs deleted at the option of the system; by
    - (ii) The number of days in the year in which the substitution occurred.
  - (2)(i) Where a cable system carries a primary transmitter on a full-time basis during any portion of an accounting period, the system shall compute a DSE for that primary transmitter as if it was carried full-time during the entire accounting period.
    - (ii) Where a cable system carries a primary transmitter solely on a substitute or part-time basis, in accordance with paragraph (f)(3) of this section, the system shall compute a DSE for that primary transmitter based on its cumulative carriage on a substitute or part-time basis. If that primary transmitter is carried on a full-time basis as well as on a substitute or part-time basis, the full DSE for that primary transmitter shall be the full DSE type value for that primary transmitter, for the entire accounting period.
  - (3)(i) In computing the DSE of a primary transmitter in a particular case of carriage

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before July 1, 1981, the cable system may make no prorated adjustments other than those specified as permissible "exceptions and limitations" in the definition of "distant signal equivalent" in the fifth paragraph of section 111(f) of title 17 of the United States Code, as amended by Pub. L. 94-553. Four prorated adjustments, as prescribed in the fourth and fifth sentences of said definition, are permitted under certain conditions where:

- (A) A station is carried pursuant to the late-night programming rules of the Federal Communications Commission in effect on the date of carriage;
  - (B) A station is carried pursuant to the specialty programming rules of the Federal Communications Commission in effect on the date of carriage;
  - (C) A station is carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and
  - (D) A station is carried on a "substitute" basis under rules, regulations, or authorizations of the Federal Communications Commission in effect on October 19, 1976.
- (ii) In computing the DSE of a primary transmitter in a particular case of carriage on or after July 1, 1981, the cable system may make no prorated adjustments other than those specified as permissible "exceptions and limitations" in the definition of "distant signal equivalent" in the fifth paragraph of section 111(f) of title 17 of the United States Code, as amended by Pub. L. 94-553, and which remain in force under that provision. Two prorated adjustments, as prescribed in the fourth and fifth sentences of said definition, are permitted under certain conditions where:
- (A) A station is carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and
  - (B) A station is carried on a "substitute" basis under rules, regulations, or authorizations of the Federal Communications Commission in effect on October 19, 1976, which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place.
- (4) In computing a DSE, a cable system may round off to the third decimal point. If a DSE is rounded off in any case in a Statement of Account, it must be rounded off throughout the Statement. Where a cable system has chosen to round off, and the fourth decimal point for a particular DSE value would, without rounding off, have been 1, 2, 3, or 4, the third decimal point remains unchanged; if, in such a case, the fourth decimal point would, without rounding off, be 5, 6, 7, 8, or 9, the third decimal point must be rounded off the next higher number.
- (5) For the purposes of computing DSE values, specialty primary television transmitters in the United States and all Canadian and Mexican primary television transmitters shall be assigned a value of one.

(g) Computation of the copyright royalty fee: Partially distant stations. A cable system located partly within and partly without the local service area of a primary television transmitter ("partially distant station") computes the royalty fee specified in section 111(d)(2)(B) (ii), (iii), and (iv) of the Copyright Act ("DSE fee") by excluding gross receipts from subscribers located within that station's local service area from total gross receipts. A cable system which carries two or more partially distant stations with local service areas that do not exactly coincide shall compute a separate DSE fee for each group of subscribers who are located outside of the local service areas of exactly the same complement of distant stations. Computation of the DSE fee for each subscriber group is to be based on: