



Acquisition

**MULTICHANNEL VIDEO PROGRAMMING
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This Air Force Instruction (AFI) implements Air Force Policy Directive 64-1, *The Contracting System*. This instruction prescribes and explains the process required to obtain television services. It applies to all major commands (MAJCOMs), Field Operating Agencies (FOAs) and Direct Reporting Units (DRUs). This instruction applies to the Air Force Reserve Command (AFRC) and does not apply to the Air National Guard. In overseas areas where the Federal Communications Commission does not have jurisdiction, this instruction may be used to the maximum extent practicable, consistent with host nation laws, host nation support agreements, status of forces agreements, etc. Major Commands (MAJCOM), Field Operating Agencies (FOA), and Direct Reporting Units (DRU) may not supplement this AFI in a manner that would restrict the flexibilities contained herein. Ensure that all records created as a result of the processes prescribed in this publication are maintained in accordance with Air Force Manual (AFMAN) 37-123, (will convert to 330-363) *Management of Records* (August 31, 1994), and disposed in accordance with the *Air Force Records Disposition Schedule (RDS)* located at <https://afrims.amc.af.mil/>

SUMMARY OF REVISIONS

This document is substantially revised and must be completely reviewed. This revision incorporates procedural guidance to take advantage of a competitive telecommunication market.

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Chapter 1

INTRODUCTION

1.1. Competitive Telecommunications Market. The Air Force shall take advantage of the competitive telecommunications market when developing requirements and procuring television programming services.

1.1.1. Television programming service includes the one-way transmission to subscribers of video programming (which is considered comparable to programming provided by a television broadcast station) or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.1.2. Competitors in the market for the delivery of video programming include cable (i.e. cable systems) and non-cable (i.e. direct-to-home satellite service, wireless cable system, and Internet Protocol Television (IPTV)) multi-channel video program distributors (MVPD). Although competitive alternatives continue to develop, the use of cable systems still is the dominant technology for the delivery of video programming to consumers.

1.2. Obtaining Television Services from Non-Cable MVPDs:

1.2.1. If a decision is made (after conducting market research and acquisition planning) to procure television services from a non-cable MVPD (i.e. wireless or satellite dish – direct broadcast satellite service, or IPTV), a franchise agreement is not required, and **Chapter 4** of this instruction does not apply. However, the services may require a base access letter and/or a licensing agreement. A retransmission agreement may be required for programming distributed on the Internet (IPTV).

1.2.2. Use of Satellite Systems. The installation commander may establish guidelines on the size and placement of satellite dishes, but may not unduly restrict competition by banning satellite installations on Government facilities or Government-owned Military Family Housing. Appropriated and non-appropriated fund activity subscribers shall contact the Base Communications Squadron to obtain the proper approvals prior to acquiring and installing satellite systems and follow the installation's policy for obtaining a civil engineering work order. Individual subscribers must follow the installation's policy for size and placement of satellite dishes as well as the policy on civil engineering work orders prior to installing a satellite system.

1.3. Obtaining Television Services on Air Force (AF) Installations from a Cable-MVPD.

1.3.1. Cable-MVPDs (Ch 4) - Franchise Agreement. A cable operator must have a franchise agreement authorizing the construction or operation of a cable system. This agreement can be granted by the installation or the installation can be covered by an adjacent civil government's agreement. Franchise agreements are issued under the FAR and cannot include land use transactions or grants of privileges to solicit or sell commercial TV services to private users on a military installation. Exclusive franchises are no longer issued and other avenues of obtaining TV services shall be considered prior to the issuance of a franchise agreement. Further, multiple suppliers can coexist on a given installation. The granting of a franchise only allows the franchisee the right to engage in the business of supplying the service, it is not a contract for the service itself.

1.3.1.1. The proper method for acquiring television services from a cable MVPD (cable operator) depends on the base customer/subscriber.

1.3.1.2. All CATV franchise agreements and contracts the Air Force entered into before the effective date of this instruction continue in effect in accordance with their terms. However, the Air Force shall not enforce provisions in such agreements that conflict with statute.

1.4. Market research. Market research includes exploring the types of television programming available and determining which programming is right for your installation.

Chapter 2

RESPONSIBILITIES

2.1. Installation Commander or Equivalent: The Installation Commander:

- 2.1.1. Controls all access to an installation. In the case of MVPD sales representatives, this is accomplished through a Base Access Letter and may not be delegated.
- 2.1.2. Approves the License to Use Real Property for requests not exceeding five years. For requests exceeding five years makes recommendations for approval or denial to the Air Force Real Property Agency.
- 2.1.3. Serves as the Franchise Authority with the authority to approve and sign franchises on behalf of the United States. The Franchise Authority may not delegate the responsibility to regulate cable services and control operations on a base. Authority to negotiate and administer franchise agreements (including termination), and modifications may be delegated to the Contracting Officer (CO).
- 2.1.4. Establishes size and placement guidelines for satellite dishes on the installation.

2.2. Contracting Officer (CO): The CO:

- 2.2.1. Serves as the television services business advisor to the installation commander.
- 2.2.2. Advertises opportunities for franchise agreements.
- 2.2.3. If authorized, negotiates and administers franchise agreements on behalf of the franchise authority. The CO is assisted by the PM, Base Communications Squadron (BCS), legal office (SJA), Base Civil Engineer (BCE), and Base Public Affairs (BPA) office.
- 2.2.4. With the BCS, maintains franchisee performance records.
- 2.2.5. Where appropriated funds (and possibly non-appropriated funds) are used for television services:
 - 2.2.5.1. Solicits, evaluates, and negotiates contract actions with the assistance of the BCS and BCE.
 - 2.2.5.2. Assisted by the PM, BCS, and BCE, awards and administers contract actions for television services.

2.3. CATV Project Manager (PM): The PM:

- 2.3.1. Coordinates the activities of base and supporting organizations (such as the BCE, CO, and BCS) to facilitate the installation and operation of a cable system(s) on the installation.
- 2.3.2. With the assistance of the BCS defines the requirement for television service, and estimates the number of potential customers for the installation.
- 2.3.3. With the CO, BCE, and BCS, evaluates franchise proposals and makes recommendations to the franchise authority.
- 2.3.4. Where appropriated funds (and possibly non-appropriated funds) are used for TV services the PM:

2.3.4.1. Coordinates the activities of base organizations and other appropriated/ non-appropriated fund subscribers to ensure their television service requirements can be met and competition maximized.

2.3.4.2. Defines the requirement for TV services and, with support organizations, prepares the TV services system description (Performance Work Statement).

2.3.4.3. Validates and periodically re-validates justifications for TV services paid for by appropriated funds.

2.3.5. Tracks customer complaints.

2.4. Base Civil Engineering (BCE): The BCE:

2.4.1. Processes and coordinates the License to Use Real Property through the appropriate approval level.

2.4.2. Partners with Contracting in providing information necessary to execute the Franchise Agreement.

2.4.3. Surveys potential installation sites with BCE to determine suitability and identify conditions that would impact television service delivery.

2.4.4. Provides utility service to the franchisee(s) as applicable agreements provide.

2.4.5. Grants digging permits to the franchisee(s) in accordance with installation standards and agreements, the work order, and digging permit processes.

2.4.6. With the PM and BCS, assists the CO with the negotiation and administration of franchise agreements and contract actions for TV service.

2.4.7. Provides input to the installation commander on the contents of the Base Access Letter.

2.5. Base Communications Squadron (BCS): The BCS:

2.5.1. Appoints the Communications – Computer Systems Officer (CSO) to serve as the PM.

2.5.2. Helps define television service requirements and prepare the television service system description for the installation, including the requirements for telephone pole mounting, cable disposal, runs to the buildings, as well as other detailed requirements.

2.5.3. Serves as the quality assurance evaluator ensuring television programming services comply with the technical parameters of the contract or franchise agreement. With the CO, maintains franchisee performance records.

2.5.4. Where appropriated funds (and possibly non-appropriated funds) are used television services the helps prepare the performance work statement and evaluate proposals, and verifies offered services meet minimum AF requirements.

2.5.5. Surveys potential installation sites with BCE to assess interference and other communication issues.

2.6. Base Public Affairs Officer (PAO): The PAO:

2.6.1. Determines appropriateness of having an installation government access channel. NOTE: Although Title 47, United States Code, Sections 531 and 541(a)(4) allows the franchise authority to require cable operators to provide the capacity for public, educational, and government channels. The government cannot require a cable operator to provide free programming over a government access channel. Use of the government access channel may be procured from a cable operator, or the cable operator may provide such a channel(s) as consideration for a privilege (e.g., use of government land to sell services to private subscribers) or other benefit.

2.6.2. Controls editorial content of material shown on a government access channel and, given adequate resources, produces TV programs at the direction of the installation commander.

2.6.3. Coordinates with the PM or local commercial station for downloading Air Force Television News programs and other official AF internal video news releases.

2.7. Staff Judge Advocate (SJA): The SJA provides legal advice to the installation commander, PM, CO, and other base organizations on television issues.

2.8. Base Subscribers: Base Subscribers on base may only obtain television services through companies allowed to operate on the installation in accordance with this AFI and installation policy and guidance.

2.8.1. Appropriated fund activities must identify, justify, and fund their requirements through the PM and finance office; and obtain television services through the use of a subscription contract. AFI 65-106, *Appropriated Fund Support of Morale, Welfare, and Recreation (MWR) and Nonappropriated Fund Instrumentalities (NAFIs)* provides guidance in this area.

2.8.2. Non-appropriated fund (NAF) activities must identify, justify, and fund their requirements under local NAF acquisition procedures. (See AFI 65-106, *Appropriated Fund Support of Morale, Welfare, and Recreation and Nonappropriated Fund Instrumentalities*).

2.8.3. Individual Subscribers. Military family housing (MFH), individual dormitory room subscribers, and private organizations must arrange and contract for their own TV programming service, with the provider, at their expense, while following all base requirements (to include installation architectural standards, civil engineering work order process, etc.).

2.8.4. Appropriated and Non-Appropriated Funds Subscribers. Requesting appropriated and non-appropriated fund activities normally fund TV service installation costs.

Chapter 3

DEFINING REQUIREMENTS

3.1. Television Service Marketplace. The television service market and the market for television-related services is expected to become increasingly competitive as the technology evolves and alternative providers package television with other services, such as telephone and Internet. Air Force users should review whether they already have sufficient sources for telephone and Internet services before including these requirements in a CATV franchise or contract. Cable systems continue to be the dominant technology for the delivery of video programming to consumers. There are, however, numerous competitors in the market.

3.2. Requirements Definition.

3.2.1. TV programming service is a non-core service. Competition is required. Define requirements in such a way as to not limit competition to a single technology. For example, requiring a commander's access channel as part of a TV programming service contract will limit competition since this is not technically feasible for satellite-based TV programming providers.

3.2.2. The installation commander, as the franchise authority, may set requirements for facilities and equipment. These requirements are subject to exceptions and subject to the needs of the United States for official (appropriated fund and nonappropriated fund) users. The franchise authority may not set requirements for video programming or other information services that might be purchased by non-official (private subscription) users. Official use requirements can be described in a solicitation under the FAR. The franchise authority shall not restrict competition to a specific cable technology or require a certain superstation or premium movie channel, unless it is needed for official use. Types of cable equipment may not be restricted or specified; however, requirements for equipment compatibility are allowed.

3.2.3. Consider existing and potential requirements for video programming technology, including: internet access, interactive television, home video sales and rentals, local exchange carriers, broadband service providers, etc.

3.2.4. Conduct thorough market research.

3.2.4.1. Market research will identify potential offerors (MVPD), technologies available and associated costs.

3.2.4.1.1. A MVPD can be cable or non-cable provider. It is a person such as, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by base subscribers, multiple channels of video programming.

3.2.4.1.2. Technologies available and the associated costs. The cost and technology must be balanced, including the potential for future expansion and possible liability in the case of base closure.

3.2.4.2. Contact the local municipality or other civil franchise authority to determine if a franchise covering the installation exists. If a civil franchise has been granted that covers the installation, determine whether the franchise conforms to the policies of the AF. If so, apply it as the franchise. If a civil franchise has been granted but does not cover the installation, and the franchise otherwise

conforms to the policies of the AF, inquire of the franchising authority whether it would be willing to extend coverage to the installation.

3.2.5. BCE and CSO must evaluate available technologies in terms of impact on real property (new construction, easements, etc.) and responsiveness to requirements.

3.2.6. Be prepared to provide potential franchisees with information required to estimate capital costs. This may include but is not limited to the number of potential subscribers, location of utility poles and/or underground conduits, electrical power sources, and location and owner of existing cable.

3.2.7. If a decision is made to procure TV services from a cable MVPD, all sections of this instruction apply. However, if a decision is made to procure television services from a non-cable MVPD (i.e. wireless or satellite dish – direct broadcast satellite service - Internet Protocol Television (IPTV) all sections of this AFI apply, except **Chapter 4**. General guidance (license agreement, base access letter, etc) within **Chapter 4** may serve as an acquisition guide in non-cable MVPD procurements, but is not prescribed. AFI 63-124, *Performance-Based Services Acquisition (PBSA)* contains guidance on these acquisitions.

Chapter 4

OBTAINING TV SERVICES FROM A CABLE MPVD (CABLE OPERATOR)

4.1. Overview

4.1.1. To obtain CATV services a franchise agreement must exist that covers the AF installation. A cable provider cannot provide service without the franchise agreement (47 U.S.C. 541(b)(2)). Franchise agreements must be established under the *Federal Acquisition Regulation* (FAR). The FAR does not cover land use transactions or grants of access supporting commercial sales and subscriptions. Official users do not need a separate agreement if there is a subscription contract under the FAR. A franchise agreement is a right to offer CATV, it is not used to purchase the services. The franchise may be granted under the authority of the installation commander or the installation may be covered by a local civilian government's franchise.

4.1.2. In addition to the franchise other authorizations and associated documentation are required in accordance with paragraph 4.3.

4.2. Funding Television Services. How television services are purchased depends on the customer and the funds involved.

4.2.1. Appropriated Funds Users

4.2.1.1. Purchasing CATV services is separate from the installation commander's decision to grant a franchise or use a local civilian government's franchise. The purchase of services is a contracting action in accordance with the *Federal Acquisition Regulation* (FAR), current edition. A subscription to contract separate from the franchise is required.

4.2.1.2. If the CATV subscription contract is terminated for convenience, FAR Part 49 is applicable.¹ FAR Part 49 does not permit payment of amounts in excess of the funds obligated on the contract. FAR Part 49 also does not permit payment of lost anticipated profits. CATV operators are entitled to recovery of their investments only to the extent authorized in FAR Part 49. Cable operators to spread their investment costs across all subscribers and to ensure the franchising authority does not have to pay any of the cost. Therefore, the CO may need to negotiate termination liability (liquidated damages) as a declining fixed dollar value representing the investment cost amortized over the life of the franchise.

4.2.1.3. No two television service procurements are alike. The acquisition team, and particularly the CO, must use good business judgment when determining acquisition strategy, type of contract, and contract terms and conditions.

1. Public Law 104-201, National Defense Authorization Act for Fiscal Year 1997, Section 833 states DoD cable franchises for the construction, installation, or capital investment of cable systems shall be considered contracts for purposes of the FAR and CATV operators are entitled to recovery of their investments at such installations to the extent authorized in Part 49 of the FAR. Section 833 implemented some of the Chief Judge of the United States Court of Federal Claims stemming from the 1996 National Defense Authorization Act. The United States Court of Appeals for the District of Columbia, decision in *Americable International, Inc. v. Department of the Navy*.

4.2.1.4. Appropriated funds may only be used to acquire CATV channels in an official capacity. If these channels are sold as an integral part of a package of channels, the entire package may be purchased if most advantageous to the AF.

4.2.1.5. Appropriated funds may not be used to provide individual CATV services to individual subscribers (e.g. to individual dormitory rooms) unless the recipient pays a pro-rata share of the fee. Non-appropriated funds should not be used to provide CATV service for appropriated fund activities.

4.2.2. Non-appropriated Funds Instrumentalities (NAFIs).

4.2.2.1. NAFIs enter into individual contracts with CATV operators. Prior to entering into an agreement, fund activities are required to contact BCE to determine the necessity for a civil engineering work order. If NAFI is receiving services through an appropriated funded service contract, the NAFI must pay a pro-rata share of any program costs the AF is charged.

4.2.3. Individual Subscribers.

4.2.3.1. Individual subscribers enter into individual contracts with private CATV operators. Prior to entering into a contract, individuals must contact BCE to determine if a civil engineering work order is necessary. If the AF operates the CATV system, individual subscribers must pay a pro-rata share of any program fees the AF is charged.

4.2.3.2. Individual subscribers should direct complaints about CATV service to the CATV operator or Federal Communications Commission (FCC). The BCS, functioning as the quality assurance evaluator, monitors and reports to the CO the operator's compliance with the franchise agreement; including provisions concerning response to subscriber complaints.

4.2.3.3. Complaints regarding fees set by the CATV operator should be directed to the franchise authority.

4.2.4. If Armed Forces Radio & Television Service (AFRTS) programming is included on a commercial or AF operated CATV system, and is not available through the air broadcast, it must be provided to DoD personnel at no cost.

4.3. Documents. Installations may need several documents in order to make CATV service available: (a) Base Access Letter, (b) License to Use Real Property, (c) Franchise Agreement (may use a franchise agreement from a local municipality or other civil franchise authority, if it covers the installation and conforms to AF policies), and (d) when obtaining the service itself, a Subscription Contract. Models of these documents are available at the SAF/AQC website: <http://www.safaq.hq.af.mil/contracting/toolkit/catv/>. The models are designed to address key issues in regards to government CATV procurement. The models should be used to ensure all issues are addressed and the Government's basic requirements and terms are included. The local Staff Judge Advocate should be consulted prior to deviating from the models.

4.3.1. Base Access Letter. Private entities (e.g., insurance salesmen, taxi drivers, and charities) must have specific permission in order to solicit private sales or donations on military installations. The AF documents the grant of permission in a letter or memorandum tailored to the specific facts. For television services, a "Base Access Letter" is granted by the installation commander and permits the franchisee access to the base to solicit private customers. The installation commander cannot delegate this authority.

4.3.1.1. The base access letter allows the cable operator to enter the installation for the purpose of soliciting commercial subscriptions from the families, military members, and private organizations located on the installation.

4.3.1.2. The letter must include specific access information for the installation. For example, the hours, locations, and the nature of private solicitation, such as requiring salespersons to be specifically invited to a family's home by appointment rather than by door-to-door sales.

4.3.2. License to Use Real Property. Allows cable companies to construct and maintain their facilities on the installation. The term of the license may not be more than 5 years unless approved by SAF/IEI (AF Instruction 32-9003, *Granting Temporary Use of Air Force Real Property*). Cable operators seeking a term longer than 5 years must explain the nature and cost of their proposed investment and justify why a longer amortization period is desired. AF/IEI requests will include installation commander approval, and address termination liability and funding in the event of base closure.

4.3.2.1. The license agreement is signed by the cable company and the Government's real property representative.

4.3.2.2. The license authorizes the cable operator to "dig in the dirt", hang wires from existing utility poles, and/or install hardware, and addresses the requirement for cable operators to obtain excavation permits and safety clearances before undertaking any installation or other substantial construction

4.3.2.3. In cases where the poles or conduits are owned by an entity other than the AF, the license shall contain a provision advising the franchisee that it may have to negotiate with and pay a fee to the private owner.

4.3.2.4. The License does not authorize cable companies to solicit subscriptions of cable services on base; the Base Access Letter authorizes that activity. The License does not guarantee any commercial sales or profits, and does not authorize payment of any appropriated funds to the television service operator.

4.3.2.5. The License does not authorize cable companies to send television signals over the lines after they are installed; the franchise agreement grants that authority.

4.3.2.6. Contracting Officers should provide sound business advice in ensuring cable companies pay fair market value to compensate the government for allowing them use of the land. (Use existing utility poles or conduits, if applicable.) If the poles or conduits are owned by an entity other than the AF, the franchisee may have to negotiate with and pay a fee to the private owner in addition to any license it receives from the AF. Private ownership of the poles or conduits does not eliminate the requirement for a license.

4.3.2.7. Consideration may be in the form of a government access channel, a monetary sum, production equipment or facilities, or some combination as permitted by law.

4.3.3. The Franchise Agreement. This agreement allows the cable operator to transmit television signals and operate a cable television system on the installation for the benefit of private subscribers and the CATV operator's private commercial opportunity. Private CATV operators must obtain a non-exclusive franchise before offering on-base services. The length of a franchise agreement is dependent on and, therefore, cannot exceed the length of the term of the License to Use Real Property. Additionally, franchise agreements should be structured as one base year with annual options. Multi-year contracts must meet the requirement of FAR Part 17.

4.3.3.1. The franchise agreement is a Basic Agreement under FAR Part 15. Cable operators are entitled to recovery of their investments to the extent authorized in Part 49 of the FAR. The franchise agreement includes basic clauses and leaves room for tailored local clauses based on the FAR, and it can incorporate the FAR by reference.

4.3.3.2. Prior to issuing a franchise agreement, the installation should check with the local government authorities to see if they have issued a franchise agreement that covers the installation or would be willing to extend an existing franchise to include the installation. If the installation is covered by such a civil franchise agreement and the franchise conforms to AF policies, there is no need for the installation to act as the franchise authority. The license and base access letter, however, are still necessary.

4.3.3.3. If the installation is covered by a franchise issued by a local government entity having jurisdiction to do so, it is recommended the base official work with the local government entity to identify any base-specific requirements (e.g., Commander's Access Channel, access to the base) the franchise needs to cover. A Memorandum of Understanding with the civil franchise authority may be appropriate.

4.3.3.4. In the absence of a franchise agreement issued by a civilian authority, the contracting officer signs the franchise agreement. The installation commander signs the franchise agreement as the Franchising Authority. The Franchising Authority is responsible for regulation of cable services (e.g., how many channels, what is the basic tier, rate regulation, etc.).

4.3.3.5. All new CATV franchises must be issued on a non-exclusive basis. The PM and CO may solicit offers from potential CATV operators.

4.3.3.6. The number of franchises that may be granted is only limited by physical resources (e.g. communication ducts, pole capacity, and space for offices, equipment, and storage) and personnel resources (e.g., contracting, quality assurance, and security).

4.3.3.7. Franchise agreements are not required for television operators to offer telecommunications services. Telecommunication service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

4.3.3.8. Franchise agreements will not contain guarantees for a minimum number of subscribers.

4.3.3.9. Franchises, new and renewals, must include specific provisions covering the disposition of wiring (use, ownership, and responsibility for maintenance, repair, and modification). In accordance with AF policy on pre-wiring facilities for communications and computer systems, the base may install CATV wiring in specific facilities as a part of construction and alteration projects. Wiring installed by the installation becomes the property of the government.

4.3.3.10. The base may install multi-channel multi-point distribution systems (MMDS) as part of specific facility construction and alteration projects. Franchises, new and renewals, must include specific provisions covering disposition of this system (required frequency authorization, use, ownership, and responsibility for maintenance, repair, and modification, and ultimate removal/disposal).

4.3.3.11. The franchise agreement must indicate (a) no appropriated funds are being obligated, (b) there is no guarantee of any commercial sales or profit, and (c) there is no guarantee the installa-

tion will remain open. **Failure to include this type of information could result in an Anti-Deficiency Act violation.**

4.3.3.12. Cable franchises shall be considered contracts under the *Federal Acquisition Regulation* (FAR). (The franchise agreement must address termination (termination for breach and termination for convenience (TforC) (e.g. base closure)) and the government's liability associated with termination for convenience of the franchise agreement. Regarding the government's termination liability, the cable operator is NOT entitled to foregone income or profit. The CATV operator is entitled to recoup capital investments not recovered during the course of the franchise agreement. Ordinarily, recoupment is to be achieved through subscription prices during the term of the franchise. Termination and the government's termination liability must also be addressed in the subscriber contract.

4.3.3.12.1. Before termination for convenience of a franchise agreement, the CO must determine if sufficient appropriated funds are available to cover the potential termination liability. Termination costs must be considered in determining costs associated with base closure or realignment.

4.3.3.12.2. Consider the following when preparing the termination clause and negotiating the government's termination liability:

4.3.3.12.2.1. The cable operator's proposed capital investment and installation costs. If the franchise agreement is new and the installation has not been previously wired or is otherwise technologically incompatible with the operator's CATV system, the cable operator will incur capital investment and installation costs. If a renewal, the cable operator may or may not incur additional capital investment and installation costs.

4.3.3.12.2.2. The amount of risk borne by the cable operator and the government. The intent is for cable operators to engage in private commercial business at their own risk and recover capital investments from the subscribers and not the franchise authority. The franchise authority, however, may share some of the risk associated with early termination of the agreement (e.g., base closure).

4.3.3.12.2.3. The ability of the cable operator to recover its investment if the franchise agreement is terminated early (TforC). The cable operator will amortize its capital investment costs and, ordinarily, recover its investment totally from subscriptions within the first term of a franchise. Therefore, cable operator costs need to be addressed for renewals. If the franchise agreement is new or a renewal and the cable operator is making capital investments, the termination clause must include a provision to allow the cable operator to recoup capital investments not recovered during the course of the franchise agreement. The government's termination liability can be computed using a formula that takes into consideration the cable operator's amortization of the capital investment costs.

4.3.3.13. Renewal of CATV franchise agreements

4.3.3.13.1. The franchise authority may renew a franchise agreement. If an expiring franchise agreement contained a provision(s) granting exclusive right to provide CATV service, do not renew the exclusivity terms. Clauses, terms and other contract requirements must be brought current and reflect the Government's current needs as well as the community's projected needs. There is no statutory requirement that forces renewal. Renewal is not automatic.

4.3.3.13.2. It is not a renewal if the franchise authority cannot complete the renewal before the expiration of the franchise agreement, or if the CO must negotiate a temporary extension to the term of the franchise.

4.3.3.13.3. Review of the franchisee's performance and proposal. The franchisee must substantially comply with the terms of the existing franchise; provide reasonable service, including signal quality, be responsive to complaints, and billings; submit a reasonable renewal proposal to meet future cable needs; and possess the financial, legal and technical ability to provide the services offered in the renewal proposal.

4.3.3.13.3.1. The evaluation of a long-term proposal must include discussion on the likelihood of base closure.

4.3.3.13.3.2. A long-term proposal may be considered if the cable operator fully explains what it is offering and why those technologies are valuable to subscribers, and why those technologies are not available from any other source. A long-term proposal must detail the capital investment, the desired termination liability, and how the capital cost will be recovered from subscribers, and not from the franchise authority.

4.3.3.13.3.3. The proposal must allow the Franchise Authority to choose what upgrades, if any, are needed. The cable operator cannot dictate the Government's (communities) needs.

4.3.3.13.4. Use performance records maintained by the CO and BCS. These will include but may not be limited to notices of deficiencies and responsiveness to subscriber complaints.

4.3.3.13.5. Use informal renewal procedures if past performance is satisfactory and no significant renewal issues are anticipated.

4.3.3.13.5.1. Under informal procedures, the cable operator submits a renewal proposal. The franchise authority must give the base community an opportunity to comment on the proposal.

4.3.3.13.5.2. After reviewing the proposal and the comments, the franchise authority may grant or deny the renewal proposal or continue with negotiations.

4.3.3.13.6. Formal procedures may be initiated by the franchise authority or at the request of the cable operator by submitting a written renewal notice requesting formal proceedings. To the extent practicable, the initiation of or a request for formal procedures should occur during the 6-month period, which begins 36 months before the franchise expiration, based on total contract length assuming all options will be exercised. Throughout the formal procedures, the public is provided notice of the proceedings.

4.3.3.13.6.1. When feasible, the franchise authority gives the appropriated and non-appropriated fund subscribers as well as the individual subscribers of the base community an opportunity to express their views on the future cable-related community needs and interests and to review the performance of the cable operator. Individual subscribers of the base community are transient, and their views are very short-term. The needs and funding sources of the official appropriated and non-appropriated fund users are the longer-term view of the community needs.

4.3.3.13.6.2. Any cable operator whose proposal for renewal is denied by a final decision of a franchising authority, or by failure of the franchising authority to act, may appeal such final decision or failure.

4.3.4. **Subscription Contract.** The Government purchases television service for appropriated fund users by awarding a subscription contract to the television service provider. Purchases may also be made on behalf of non-appropriated fund instrumentalities. The subscription contract with the television service provider does not apply to individual subscribers. In some cases, it may not apply to funds users. Such users and individuals must subscribe directly with the television provider.

4.3.4.1. Where market research reveals the acquisition is a commercial service, FAR Part 12 procedures apply.

4.3.4.2. The subscription contract must address the government's termination liability regarding capital investment costs. The CO must be cognizant that the cable operator will amortize capital costs over a given period of time, frequently the length of the franchise agreement. In the event franchise agreement is terminated early (Termination for Convenience), the government can incur a significant contingent liability for the remaining unamortized costs, even though the contract is for one year, with options for follow-on years. To address this situation, the contract must also include a provision to allow the cable operator to recoup its capital investments not recovered during the course of the franchise agreement. The cable operator is NOT entitled to foregone income. The government's termination liability can be computed using a formula that takes into consideration the cable operator's capital investments (including improvements) and amortization of the investment costs.

4.3.4.3. Consolidated TV service subscription contracts should include provisions that enable decentralized billing to the lowest level practicable. Using organizations are responsible for payment of their TV service bills using unit funds, where contractually applicable. The PM needs to work closely with the CO to determine the best processes. Wings/bases may elect to use centralized payment processes upon receipt of written approval from their MAJCOM/SC, MAJCOM/FM, or their equivalents. The use of the Government Purchase Card as a payment vehicle is encouraged, however, the local finance office must agree to such an arrangement.

4.4. Rate Regulation

4.4.1. An AF Franchising Authority only regulates the rates of cable systems that are not subject to effective competition. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition. A cable operator (or other interested party) may file a petition for a determination of effective competition with the Federal Communications Commission (FCC). The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition exists in the franchise area.

4.4.2. Rates for the basic service tier will be subject to regulation by the franchise authority. Rates for cable programming services will be subject to regulation by the FCC. Rates for pay channels are not regulated.

4.4.3. The installation commander, as the franchising authority must be certified by the FCC in order to regulate the basic service tier and associated equipment of a cable system within its jurisdiction. To obtain certification, the franchising authority must:

4.4.3.1. Complete FCC Form 328, Certification of Franchising Authority to Regulate Base Cable Service Rates and Initial Finding of Lack of Effective Competition, and send the original and two copies to the Internet Protocol Television (DISA), General Counsel, 701 South Courthouse Road, Arlington, VA 22204-2199. DISA will file the form with the FCC and send the FCC stamped copy to the installation. (The form is available on the web www.fcc.gov/Forms/Form328/328.pdf or from: FCC, Cable Form Request 328, P.O. Box 18238, Washington DC 20036.) Unless the FCC notifies the franchising authority otherwise, the certification will become effective 30 days after the date filed.

4.4.3.2. Notify the cable operator that the franchise authority is certified by the FCC and will follow the FCC's rate regulations. Within 30 days of the franchise authority receiving written notification the certification by the FCC to regulate rates for the basic service tier has been received, a cable operator shall file its schedule of rates for the basic service tier and associated equipment with the franchising authority.

4.4.3.3. Consult with the local Staff Judge Advocate to determine if the CATV operator's rates are within the FCC's permitted basic service tier charge or actual cost of equipment as defined in FCC regulations (47 CFR 76.922 and 76.923). Continue to pay the CATV operator's rates until a formal rate regulation finding is made.

Chapter 5

ADDITIONAL INFORMATION

5.1. Using Reserved Government Access Channels.

5.1.1. The installation commander sets rules and procedures for using government access channels based on community needs and the mission. The rules and procedures may be included in the franchise agreement.

5.1.2. The AF must avoid both the fact and the appearance of underwriting a commercial TV service. Installation commanders shall not require AF members to subscribe to such a system.

5.1.3. No commercial advertising will appear on Government access channels during periods of government use.

5.1.4. The installation commander may insist through the franchise agreement that government access channels not be broadcast off base to non-AF subscribers during government use.

5.2. Using Other Channels for Internal Information Programming. The AF must separate internal information programming from civilian commercial or educational programming. Installations may not demand or use time on any television system, other than Government access channels or emergency broadcast announcements, for internal information activities.

5.3. Programming Support for CATV System Operators. The installation commander must give as much support and assistance to CATV operators who originate local programming as is given to local television stations.

5.4. Management of Government Access Channel Video Equipment.

5.4.1. Provide 24-hour access to equipment to allow the programming OPR to insert emergency broadcast announcements.

5.4.2. Procure equipment non-experts can use.

5.4.3. Use of local government access channel production equipment and facilities for simple recording, editing, and playback of local interest items as determined by the installation commander and PAO, is permitted after coordination with the Base Visual Information Manager. Local production may not include Audiovisual Production described in AFI 33-117, *Multimedia Management*. (MM)

5.4.4. The installation may use contractors to maintain AF-owned or leased origination equipment. If the CSO has television maintenance personnel on staff, they may perform routine maintenance if the unit commander agrees.

5.5. Cable and Satellite Service Overseas:

5.5.1. Assistant Secretary of Defense for Public Affairs (OASD(PA)), through the Armed Forces Radio and Television Service (AFRTS) Broadcast Center, is the only source authorized to negotiate for, procure, and, distribute commercial and public broadcasting service to US forces overseas. AFRTS must approve requests to bring additional radio and television broadcasting to US forces over-

seas via non-AFRTS cable distribution systems in accordance with DoD 5120.20-R, *Management and Operation of Armed Forces Radio and Television Service (AFRTS)*, November 1998.

5.5.2. Do not include AFRTS on commercial cable systems without prior approval of AFRTS. Requests for new or additional AFRTS service should be prepared in accordance with DoD 5120.20-R.

Michael W. Wynne
Secretary of the Air Force

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

National Defense Authorization Act for Fiscal Year 1997, *Section 833* (Public Law 104-201)

Federal Acquisition Regulation (FAR) Part 12, Acquisition of Commercial Items

Federal Acquisition Regulation (FAR), *Part 15, Contracting By Negotiation*

Federal Acquisition Regulation (FAR), *Part 17, Special Contracting Methods*

Federal Acquisition Regulation (FAR) Part 49, *Termination of Contracts*

Department of Defense (DoD) 5120.20-4, *Management and Operation of the Armed Forces Radio and Television Services (AFRTS)*

Department of Defense (DoD) 5120.20-R, *Management and Operation of Armed Forces Radio and Television Service (AFRTS)*

AFPD 64-1, *The Contracting System*

AFMAN 37-123, (will convert to 33-363) *Management of Record*

AFI 32-9003, *Granting Temporary Use of Air Force Real Property*

AFI 33-117, *Multimedia (MM)Management*

AFI 63-124, *Performance-Based Services Acquisition (PBSA)*

AFI 65-106, *Appropriated Fund Support of Morale, Welfare, and Recreation (MWR) and Nonappropriated Fund Instrumentalities*

Abbreviations and Acronyms

RDS—*records disposition schedule*

Terms

AF—Air Force

AFI—Air Force Instruction

AFDPO—Air Force Distribution Publishing Office

AFRC—Air Force Reserve Command

AFRTS—Armed Forces Radio & Television Services

AFMAN—Air Force Manual

AQ—Acquisition

AQC—Deputy Assistant Secretary (Contracting)

AQCP—Deputy Assistant Secretary (Contracting) (Policy Division)

BCE—Base Civil Engineer

BCS—Base Communications Squadron
BPA—Base Public Affairs
BVISC—Base Visual Information Service Center
CATV—Cable Television
CFR—Code of Federal Regulations
CO—Contracting Officer
CSO—Communications/Computer Systems Officer
DISA—Defense Information Systems Agency
DoD—Department of Defense
DRU—Direct Reporting Unit
FCC—Federal Communications Commission
FAR—Federal Acquisition Regulation
FOA—Field Operating Agency
IPTV—internet protocol television
MAJCOM—major command
MFH—Military Family Housing
MM—multimedia management.
MMDS—Multi-channel multi-point distribution system
MVPD—multichannel video program distributors
MWR—morale, welfare and recreation
NAF—Nonappropriated funds
NAFI—Nonappropriated fund instrumentalities
NDAA—National Defense Authorization Act
OASD—Assistant Secretary of Defense
OPR—Office of Primary Responsibility
PA—Public Affairs
PAO—Public Affairs Office
PBSA—Performance-Based Services Acquisition
PDO—Publishing Distribution Office
PM—Project Manager
RDS—records disposition schedule
SAF—Secretary of the Air Force (Acquisition)

SJA—Staff Judge Advocate

TforC—Termination for Convenience

U.S.C.—United States Code