cable operators, franchising authorities, and the Commission. At the same time, we anticipate that the price cap requirements we adopt, coupled with the opportunity we include for cost showings to justify otherwise presumptively unreasonable rates, will establish a regulatory framework that will assure that basic service tier rates are reasonable and will also effectively balance the statutory goals and factors we are directed to use for making that determination.

(c) Local Authority Discretion

i. Background.

189. As indicated, in the Notice we proposed to adopt a benchmark as the primary mechanism to regulate the rates for the basic service tier with cost-of-service procedures invoked only if cable operators seek to justify a rate higher than the price defined by the applicable benchmark. The Notice did not specifically address whether local authorities should have discretion to choose cost-of-service regulation.

ii. Comments.

190. While not necessarily addressing local authority discretion to elect cost-of-service regulation, most cable operators oppose cost-of-service regulation.[484] Others directly oppose allowing local authorities to elect cost-of-service regulation.[485] NATOA and other commenters, however, contend that franchising authorities should be permitted to elect cost-of-service regulation.[486] They assert that there should be symmetry in the Commission's overall regulatory scheme, i.e., if cable operators are able to elect cost-of-service regulation to justify rates above the benchmark, local authorities should be permitted

---

[484] See, e.g., AdelphiaII Comments at 45-49; Armstrong Comments at 16-17; Carib Comments at 5; CIC Comments at 11-12; Cole Comments at 24-25: Comcast Comments at 22-29; Continental Comments at 26; Cox Comments at 8-11; NCTA Comments at 11-14; Newhouse Comments at 10; Prime Comments at 4; TCI Comments at 15-22; Time Warner Comments at 17-20.

[485] See, e.g., Comcast Comments 22-29; NCTA Comments at 13.

[486] See, e.g., Austin Comments at 48-49; Montana Comments at 2; NewBern Comments at 9; NATOA Comments at 45, n.20; NewBern Comments at 9, 18-22; NYConsumers Comments at 8; Rapids Comments at 30-31.

to elect it if they believe that rates below the benchmark are excessive in relation to costs.[487]

iii. Discussion.

191. As indicated, we believe that the best method of regulating basic service tier rates is to set rates initially using benchmarks and then to apply a price cap approach on a going-forward basis. This approach will be the primary mechanism for regulating basic service tier rates, with cost-of-service procedures playing a secondary role. We believe that permitting franchising authorities to elect cost-of-service regulation as their primary mode of regulation would strike a different balance of statutory objectives, one that could substantially increase administrative burdens on cable operators at the local level and on the Commission as it reviews local cost-of-service decisions. We believe that the imposition of such burdens would be less consistent with statutory objectives than the approach we have selected. Accordingly, we conclude that we will not permit local authorities to elect cost-of-service regulation for the basic service tier. Rather, local governments must apply the benchmark system of rate regulation we adopt herein.

(d) Basic Rate Level in Comparison to Other Tiers

i. Background.

192. In the Notice, we noted that the creation of a low priced basic service tier could increase the number of potential subscribers able to afford basic tier service.[488] The Notice also acknowledged, however, that a mandated low-priced service tier could give cable operators an incentive to include only the statutorily required channels on their basic tiers.[489] We asked for comment on the extent to which Congress intended a low priced tier, and the extent to which our rate regulations should not effectively restrict a cable operator's discretion to provide programming on the basic tier beyond the minimum statutory components. We tentatively concluded that any rate regulation approach we adopt should effectuate fully the goals of the Cable Act without unintentionally limiting either a cable operator's discretion to tier programming services directly, or the continued growth of cable programming services indirectly.

ii. Comments.

---

[487] See, e.g., Dover Comments at 15-16; Municipal Comments at 15.

[488] Notice, 8 FCC Rcd at 518-519.

[489] Id.

193. The cable industry and others argue that Congress favors the establishment of a low-cost basic service tier consisting mainly of broadcast stations.[490] Comcast asserts that Congress supports a low-priced minimum service tier because it found that broadcast stations are the most popular programming offered by cable operators.[491] New Bedford, however, contends that a low-cost basic tier is necessary to facilitate affordable access to cable services for the elderly and lower income subscribers.[492] Austin, Palm Desert, and Schaumburg agree that the Cable Act intended to produce low rates for basic service, but claim that cable operators should offer more than just a stripped-down version of basic tier service.[493]

194. CFA opposes a broadcast-basic-only tier and states that it is contrary to Congress' rejection of specific proposals to limit which programming operators could include in the basic tier.[494] CFA and others also contend that the term "low-priced" was used by Congress in order to prevent cable operators from loading excessive costs on basic tier subscribers.[495] USA avers that Congress opted for reasonable, rather than low-priced, basic tier rates so that subscribers could continue to receive high quality programming.[496] NYNEX asserts that an artificially low basic tier rate would give cable operators a competitive edge and discourage competition.[497] Finally, TIA maintains that a low-priced basic tier would stifle the cable industry's ability to invest in new technologies.[498]

iii. Discussion.

---

[490] See, e.g., Comcast Comments at 14-15; NewBedford Comments at 4; Newhouse Comments at 5; Northland at 10-11.

[491] Comcast Comments at 14-15.

[492] NewBedford Comments at 4; Somerville Comments at 4.

[493] Austin Reply Comments at 10-11; Palm Desert Comments at 10; Schaumburg Comments at 7.

[494] CFA Reply Comments at 15-15.

[495] CFA Reply Comments at 15-16; McKinney Comments at 7; NewBern Comments at 7.

[496] USA Comments at 11.

[497] NYNEX Comments at 2.

[498] TIA Comments at 19.

195. As we stated in the Notice, a low-priced basic tier could increase the number of subscribers who would be able to afford it. It would be possible for the Commission to establish rate regulation requirements that would encourage or mandate a low-priced basic service tier. We could, for example, provide for greater rate reductions for the basic service tier than for cable programming services. This, combined with other possible features of the framework for rate regulation of cable service, could effectively prevent cable operators from charging generally the same level of rates for the basic tier as for higher tiers.[499]

196. The potential benefits of a low cost basic tier in comparison to other tiers, however, must be balanced against the likelihood that suppressing price levels for the basic tier would give cable operators incentives to move services to the other tiers where they could receive relatively higher prices. We are not persuaded that this is preferable to a framework that permits a somewhat higher price for the basic tier, but one with more programming potentially available on it.

197. In addition, regulations that would encourage or mandate a relatively lower price for the basic service tier than for higher tiers would complicate rate regulation of cable programming services. Mandated separate rate levels for basic and higher tiers would require, for example, more extensive analyses of industry data and a careful examination of the impact of different rate levels on the cable industry, program suppliers, and consumers. Widely disparate rate levels would additionally increase the burdens on cable operators and rate regulators and the complexity of their decision making. We are unpersuaded that the possible benefits of a mandated low-priced basic service tier outweigh the added regulatory complexity it would bring. We prefer to take a more cautious approach at the initial stages of rate regulation for the cable industry and to avoid creating incentives that could reduce the number of services on the basic tier. Accordingly, we will not adopt a regulatory framework for cable service in this Report and Order that seeks lower rates for the basic service tier in comparison to higher tiers.[500] Instead, we establish a framework for rate

---

[499] Separate strict cost-of-service standards for the basic service tier could additionally restrict the ability of cable operators to charge rates for the basic tier that are comparable to rates for higher tiers.

[500] This does not mean, of course, that we are unconcerned about the price for basic service. Our regulations are designed to assure that rates for the basic service tier are reasonable. We conclude here only that we will not seek a low priced basic tier that requires shifting of a significant share of a system's costs

regulation that is tier neutral.[501] Thus, as we explain in succeeding portions of this Report and Order, we are establishing the same framework for calculating reasonable rates for both the basic service tier and cable programming services.[502]

---

to other tiers or encourages operators to reduce the level of programming carried on the basic tier.

[501] Our regulations provide that the permitted charge per channel will be calculated as an average across all tiers. The manner of determining the permitted per channel charge is explained and governed by FCC Form 393 that we are adopting in this Report and Order. See Appendix D. The permitted charge per channel, prior to adjustments for inflation and external costs, will be the same for all tiers. In addition, the benchmark formula is based on prices that are averaged across all tiers. Per channel charges calculated in this way and compared to a benchmark that is based on tier-averaged rates, will effectuate our determination that rules defining lawful rates should be tier neutral. Such per channel charges are also administratively simpler for cable operators and regulators to use than would be separate requirements for each tier. Thus, these provisions will help achieve the statutory requirement of reducing burdens on cable operators and regulators, although permitted charges for tiers can vary due to different external costs. This will not create incentives to shift programming between tiers because operators can recover incremental increases in external costs on either tier fully. See n. 607, supra.

[502] In the Notice, we proposed a cost-based regulatory alternative that would permit us to prescribe guidelines for basic service rate regulation by the local franchising authority that used an individual system's costs to define reasonable rates. Notice, 8 FCC Rcd at 523, paras. 53-56. We requested comment on the proposal that franchising authorities be required to find reasonable basic service rates that allow recovery of at least the direct costs of the channels in the basic tier, and that would also include a nominal contribution to the joint and common costs of the system as a whole. Cable operators uniformly oppose using this alternative. See, e.g., CIC Comments at 12-13, Cole Comments at 29; Continental Comments 34-35; Media General Comments at 8; Time Warner Comments at 34. Media General contends that such an approach would contradict the Cable Act's requirement that rates only include such portion of joint and common costs as is properly allocable to the basic service tier. Media General Comments at 8. CIC, Cole, and Continental also assert that this approach contains the same administrative disadvantages as traditional cost-of-service regulation. Municipalities, however, favor this cost-based alternative. See, e.g., Austin Comments at 47-48; Dover Comments at 15; Minn. Comments at 13; Municipal Comments at 15; Rapids at 29. Austin and Rapids claim that this alternative would satisfy

(e) Adoption of a Benchmark System to Govern Rates for the Basic Service Tier

198. In this section, we describe the benchmark system that will be incorporated into our framework for regulation of basic tier rates. At the heart of our scheme is our benchmark formula which is based on our analysis of the average rates of systems subject to effective competition. We additionally explain how the benchmark formula will be used to calculate a competitive benchmark rate for each cable system with which the system's current and/or September 30, 1992 rates can be compared to determine the initial regulated rate level for the basic service tier.

AA. The Competitive Benchmark

i. Background.

199. In the Notice we sought comment on several benchmark alternatives: rates charged by systems facing effective competition; past regulated rates; 1992 average per-channel rates of cable systems; or the average or typical costs of providing cable service.[503] Concurrently, we selected a random sample of approximately 300 cable systems from which we sought information concerning current prices, past prices, and system characteristics to aid in designing an appropriate benchmark.[504] We also obtained information from 141 systems appearing to be subject to effective competition, as defined by the statute, which submitted the same information so that the benchmark could also take into account the rates of systems subject to effective competition.[505]

ii. Comments.

---

the Cable Act's intent that basic service rates parallel rates charged by competitive systems. Dover and Municipal believe that the data necessary for this regulatory method is either readily available already or easily obtainable if required. We reject this approach since rate regulation based on the direct costs of signals plus a nominal contribution to joint and common costs would permit costs to be shifted from the basic tier to higher tiers.

[503] See Notice, 8 FCC Rcd at 521-22.

[504] Order, 8 FCC Rcd 226 (1992). For information concerning the survey instrument and the survey results, see Appendix E.

[505] Id. A notice of availability of an electronic compilation of the survey results was placed in the public record on February 24, 1993.

200. Rates of Systems Subject to Effective Competition. Among the various alternative benchmarks, cable operators, municipalities, telephone companies, and other commenters express the strongest support for the alternative based on rates charged by systems facing effective competition.[506] Parties endorsing this alternative aver that it would not be unduly burdensome to administer, and would also best achieve Congress' paramount directive to ensure that subscribers only pay rates reflective of effective competition.[507] On the other hand, some cable operators, municipalities, and other commenters opposing this approach question whether the existing small number of cable systems subject to effective competition can produce a statistically valid benchmark.[508] Several parties also maintain that rates charged by systems subject to effective competition would be skewed since short-term price wars in overbuild situations have created artificially low rates.[509] Finally, Dover and Municipal contend that this benchmark approach

---

[506] See, e.g., AGs Comments at 6-8; Atlanta Reply Comments at 2; Austin et. al. Comments at 41-43; Ayden Reply Comments at 2; Bayonne Reply Comments at 8-9; Bell Atlantic Comments at 6-8; Clinton Reply Comments at 2; Comcast Comments at 29; Continental Comments at 29-30; Fairborn Reply Comments at 2; Georgetown Reply Comments at 2; Greensboro Reply Comments at 2; Greenville Reply Comments at 2; Henderson Reply Comments at 2; Iowa City Reply Comments at 2; Kinston Reply Comments at 2; Laurens Reply Comments at 2; Laurinberg Reply Comments at 2; Municipal Reply Comments at 24; NATOA Comments at 41-42; NCTA Comments at 17-19; NMCC Comments at 2-3; Owensboro Reply Comments at 2; Piscataway Reply Comments at 2; Reidsville Reply Comments at 2; San Diego Comments at 4; Schaumburg Comments at 8; Thousand Oaks Comments at 14-15; Time Warner Comments at 24; Titusville Reply Comments at 2; Worthington Reply Comments at 2. We also note that many parties advocating a benchmark methodology contend that benchmarks should be calculated on a per-channel basis. See, e.g., AdelphiaII Comments at 53-56; Bell Atlantic Comments at 6-8; CIC Comments at 16-18; Discovery Comments at 6-10; Encore Comments at 12-13; Newhouse Comments at 11; Tallahassee Comments at 2; TCI Reply Comments at 10; Time Warner Comments at 21-25; Viacom Reply Comment at 9-11.

[507] See, e.g., AGs Comments at 6-8; Austin Comments at 41-43; NATOA Comments at 41-42.

[508] See, e.g., AdelphiaII Comments at 56-57; Dover Comments at 10-11; Falcon Comments at 28; Municipal Comments at 11; NAB Reply Comments at 13; NJ Comments at 18; Rapids Comments at 25. Although NCTA favors this approach with modifications, it too raises this issue. NCTA Comments at 17-19.

[509] CIC Comments at 27; NCTA Comments at 18; Northland Comments at 25-27; SDA Comments at 10; Time Warner Comments at 24.

also fails to address whether cable systems subject to effective competition are truly competitive with one another and, if they are, whether their costs are representative of other cable systems.[510]

201. Past Regulated Rates. Cable operators along with several municipalities and telephone companies oppose implementing benchmark regulation based upon the historical rates charged by cable operators in previous years.[511] NCTA and others argue that the Commission should not rely on past regulated rates, from either 1984 or 1986, since those rates were suppressed below competitive levels by franchising authorities.[512] Cable operators also maintain that no past regulated rate adjustment mechanism would fairly take into account the effect of cable systems that were acquired, upgraded, rebuilt or integrated with adjacent systems since 1986.[513] NCTA and Intermedia contend that a major flaw in establishing a benchmark based on past regulated rates adjusted for inflation, is that it would not reflect the spiraling increases in cable operators' labor and benefit costs, costs that have outpaced inflation since 1984.[514] Finally, Adelphia avers that a past regulated rate benchmark would ignore the fact that, in 1986,

---

[510] Dover Comments at 10-11; Municipal Comments at 11.

[511] AdelphiaII Comments at 57-60; Bell Atlantic Comments at 7; Cole Comments at 28; Continental Comments at 30-31; Falcon Comments at 28-30; Intermedia Reply Comments at 3-6; NCTA Comments at 21-23; NJ Comments at 19; Rapids Comments at 26; TIA Comments at 21-22.

[512] See, e.g., AdelphiaII Comments at 57-60; Cole Comments at 28; Continental Comments at 30-31; Intermedia Reply Comments at 3-6; NCTA Comments at 20. Parties contend that enactment of the Cable Act of 1984 supports this contention since it was premised on the need to liberate cable systems from artificial rate restraints. Adelphia avers that rates in effect in 1986 were artificially low because they reflected the urban market "bidding wars" for cable franchises. In addition, Continental claims that many cable systems in 1986 were operating under local government imposed multi-year rate freezes.

[513] See, e.g., Cole Comments at 28; Continental Comments at 30-31. Bell Atlantic and Rapids add that an adjusted past regulated rate would also not account for changes in operating efficiency achieved by cable operators since either 1984 or 1986. Bell Atlantic Comments at 7; Rapids Comments at 26.

[514] Intermedia Reply Comments at 3-6; NCTA Comments at 22.

cable operators often included a number of cable networks and superstations in the composition of their basic offerings.[515]

202. Consumer advocates, state governmental organizations, and others favor implementing a benchmark based on past regulated rates.[516] CFA and BellSouth argue that cable rates from 1984 or 1986 should be assumed to be reasonable since they represent charges that were deemed acceptable when rates were subject to regulation or oversight by local franchise authorities.[517] Connecticut contends that a benchmark based on 1986 rates, but adjusted for inflation, would: eliminate the excessive rate increase since 1986, protect cable systems that could cost justify rate increases above the CPI, and reward operators who have efficiently kept their costs below the CPI's level.[518] BellSouth and Connecticut also state that this approach would have the advantage of ensuring that benchmark rates throughout the nation will be reasonable for all individual systems.[519]

203. Average Rates. Municipalities, state governmental organizations, telephone companies and others oppose using a benchmark based on an average of the rates currently charged by all cable operators.[520] Most of the commenters opposing such a benchmark contend that it would incorporate monopoly profits included in existing cable rates, and would result in violating the Cable Act's intent to protect consumers from noncompetitive unreasonable cable rates.[521] BellSouth maintains that this

---

[515] AdelphiaII Comments at 58.

[516] See, e.g., BellSouth Comments at 2-7; CFA Comments at 87-89; Conn. Comments at 9; MCATC Comments at 8; NMCC Comments at 3.

[517] Bell South Comments at 2-5; CFA Comments at 87-89.

[518] Conn Comments at 9.

[519] BellSouth Comments at 5; Conn. Comments at 9.

[520] See, e.g., Austin Comments at 43-46; Bell Atlantic Comments at 7; BellSouth Comments at 5-6; Comcast Comments at 29; Dover Comments at 14; Fairfax Reply Comments at 16-17; Lakeville Reply Comments at 2; Lower Merion Reply Comments at 3-4; Minn. Comments at 11; MCATC Comments at 8; Municipal Comments at 14; NCTA Comments at 24; NJ Comments at 19; NMCC Comments at 2; Rapids Comments at 26; TIA Comments at 22.

[521] Austin Comments at 43-46; Bell Atlantic Comments at 7; Comcast Comments at 29; Dover Comments at 14; Minn Comments at 11; Municipal Comments at 14; NJ Comments at 19; Rapids Comments at 26.

benchmark proposal would also force cable systems to resort to cost-of-service regulation since there is a likelihood that many systems would have operational costs above the average embedded costs assumed in any average rate calculation.[522] On the other hand, Continental, NCTA, and Time Warner assert that a benchmark founded on current average rates would be readily available and could be used as either a stop-gap measure, or, in conjunction with the proposed benchmark based on rates of competitive cable systems.[523]

204. Average or Typical System Costs. Cable operators uniformly oppose any benchmark based on average costs and application of cost-of-service principles.[524] They claim that a cost-of-service benchmark would: be at odds with the intent of the Cable Act, be administratively difficult to implement; and would have all the undesirable characteristics of traditional cost-based regulation.[525] Municipalities and broadcasters, however, favor a cost-of-service benchmark and maintain that it would best achieve Congress' intent to produce reasonable cable rates by limiting the cable operator to cost plus a reasonable rate of return.[526] Austin, CFA and NAB all present specific modified cost-based benchmark proposals that they assert would result in achieving reasonable rates without the negative incentives normally associated with traditional rate of return regulation.[527]

---

[522] BellSouth Comments at 6.

[523] Continental Comments at 30-33; NCTA Comments at 24-26; Time Warner Comments at 30.

[524] See, e.g., Adelphia Comments at 50-51; Comcast Comments at 29; Continental Comments at 35-36; Falcon Comments at 31; NCTA Comments at 27; Time Warner Comments at 33.

[525] Id.

[526] See, e.g., Atlanta Reply Comments at 3; Ayden Reply Comments at 3; Austin Comments at 46-7; Clinton Reply Comments at 4; Conn. Comments at 7; Dover Comments at 14-15; Georgetown Reply Comments at 3; Greensboro Reply Comments at 3; Greenville Reply Comments at 3; Henderson Reply Comments at 3; Iowa City Reply Comments at 3; Kinston Reply Comments at 3; Laurens Reply Comments at 3; Laurinberg Reply Comments at 3; Municipal Comments at 14-15; NAB Reply Comments at 17-22; NATOA Comments at 42; NMCC Comments at 2; Owensboro Reply Comments at 3; Piscataway Reply Comments at 3; Reidsville Reply Comments at 3; Titusville Reply Comments at 3; Union Reply Comments at 3; Worthington Reply Comments at 3.

[527] Austin Comments at 12-14, Appendix B; CFA Comments at 86-93; NAB Comments at 14-22.

iii. Discussion.

205. As indicated above, the Cable Act of 1992 permits us to place primary weight on rates of systems subject to effective competition as we fashion regulations governing rates for the basic service tier. The statutory findings, the overall structure of the Act, the statutory goal for the basic service tier, and the statutory factors reveal a congressional concern that rates of systems not subject to effective competition may be excessive when compared to rates of systems that are subject to effective competition. Our industry survey reveals that, in fact, non-competitive rates exceed competitive rate levels by approximately 10 percent.[528] There is, therefore, a strong policy basis grounded in the statute and the underlying congressional intent for the Commission to place substantial weight upon the rates of systems subject to effective competition as the primary measure of the reasonableness of rates for the basic service tier.

206. We are not persuaded that the other possible bases for measuring and setting cable service rates would be superior for establishing a standard of reasonableness. Past regulated rates could be considered reasonable because they were subject to local oversight. However, past rates adjusted upward by a general industry index would not account for significant capital outlays incurred since that time, as commenters point out. We believe that adjusting for past capital improvements could require significant regulatory oversight and substantial expenditure of industry and regulators' resources. In addition, a past regulated rates approach would not address systems not in existence in 1986.

207. We also do not believe that average industry rates by themselves can form the basis for defining reasonable rate levels because, by definition, average industry rates merely reflect current rates. However, average industry rates provide a useful measure of the extent to which current industry rates overall exceed competitive levels and thus, by comparison with competitive systems' rates, enable identification of the rate differential between systems subject, and not subject, to effective competition. We also do not believe that average system costs could at this time form the basis for defining the reasonable level of cable service rates. Although the Notice requested such data, there is simply insufficient information in the record to permit identification of typical system costs.[529]

---

[528] See n.129, supra.

[529] In the Second Further Notice, however, we will seek further cost information that will enable us to refine the competitive benchmark.

In addition, the need to update, collect, and review average industry cost data may not make this a feasible approach. Accordingly, we conclude that we should determine the reasonableness for rates of the basic service tier by reference to the rates of systems subject to effective competition. We are therefore adopting a benchmark formula based on our analysis of the average rates of systems subject to effective competition. We explain and justify in detail the derivation of this benchmark formula in Appendix E. In general, the formula will be used to calculate the rate that a cable system with a given number of channels, subscribers and satellite-delivered signals would charge if it faced effective competition. This competitive benchmark is expressed as a rate per channel.[530] We explain below how we apply this competitive benchmark to determine the initial reasonable rate for the basic service tier.

BB. System Characteristics

i. Background

208. In the Notice, we asked whether there were specific system characteristics or variables that we could or should use to separate systems into distinct categories for which we should establish different benchmarks and/or define different rates.[531] We stated that such variables might include some of the following characteristics, which we believed might directly affect system costs and, consequently what would be a reasonable rate level: homes passed per mile; number of subscribers; and number of channels. We also asked for comment on what, if any, positive effect would result when rates of systems subject to the same benchmark converge over time to that benchmark. We asked commenters to address whether, if this is undesirable, we should permit individual system adjustment to otherwise widely applicable benchmarks and what measures should and could be established to permit such adjustments.

ii. Comments

209. Newhouse and Time Warner, among others, recommend that a series of benchmarks be established that could segregate different classes of systems to account for such factors including, but not limited to: population density, channel

---

[530] In addition to the benchmark formula, we also adopt and provide a table of benchmark rates for systems with a given number of channels, subscribers and satellite systems.

[531] Notice, 8 FCC Rcd at 520, para. 37.

capacity, age of plant, and number of subscribers.[532] NATOA supports establishment of a matrix of benchmark rates based on system characteristics, (e.g., plant miles, channel capacity, population density) so long as franchising authorities could determine which matrix rate its cable system would charge.[533] SDA proposes benchmark breakdowns by system size and supports the use of a matrix based on service, plant architecture, and geography, in order to distinguish between the inconsistencies that exist in prices amongst large and small basic tiers.[534] Municipalities also support development of a methodology that incorporates differences in basic cable system information. For example, the municipalities propose that the number of active cable channels received by subscribers should be a major component in determining a reasonable rate.[535]

iii. Discussion.

210. Our analysis of cable industry rates reveals that the variance in rates charged by cable systems nationwide can be explained in large part by three key system characteristics: the number of channels offered by the system; the number of subscribers it serves; and the number of satellite-delivered signals.[536] Accordingly, we have developed a benchmark formula for use during this initial phase of rate regulation that incorporates these three system characteristics. Our survey data do not provide a sufficient basis for identifying additional system characteristics that should be incorporated in our benchmark formula. However, as we obtain new information and

---

[532] CIC Comments at 19-30; Mesa Comments at 4; NATOA Comments at 43; Newhouse Comments at 13-16; Northland Comments at 7; Small Systems Comments at 6; ThousandOaks Comments at 4.

[533] NATOA Comments at 43.

[534] SDA Comments at 4, 9-10.

[535] See, e.g., Atlanta Reply Comments at 3; Ayden Reply Comments at 3; Clinton Reply Comments at 3; Fairborn Reply Comments 3; Georgetown Reply Comments at 3; Greensboro Reply Comments at 3; Greenville Reply Comments at 3; Henderson Reply Comments at 3; Iowa City Reply Comments at 3; Kinston Reply Comments at 3; Laurens Reply Comments at 3; Laurinburg Reply Comments at 3; Owensboro Reply Comments at 3; Piscataway Reply Comments at 3; Reidsville Reply Comments at 3; Titusville Reply Comments at 3; Union Reply Comments at 3; Worthington Reply Comments at 3.

[536] These three system characteristics accounted for over 60 percent of the variance in rates accross all systems. See Appendix E.

data, and as we gain more experience with cable rate regulation, we may reevaluate this conclusion.

CC. Application of the Benchmark to Determine Initial Regulated Rate Levels.

i. Background.

211. As indicated, in the Notice, we proposed an approach for rate regulation of cable service rates under which we would establish a benchmark rate, or simple formula that could be used to derive such a rate.[537] We stated that the benchmark would permit identification of systems with presumptively unreasonable rates, while establishing a zone of reasonableness for systems with rates below the benchmark level.

ii. Comments.

212. Many commenters support use of a benchmark to determine the reasonable rate level for the basic service tier.[538] While some commenters oppose use of a benchmark to govern rates for the basic service tier,[539] and some commenters favoring the benchmark approach favored particular methodologies for establishing the benchmark rate,[540] no commenters challenged

---

[537] See Notice, 8 FCC Rcd at 519-520.

[538] See generally, AdelphiaII Comments at 53-56; AEN Comments at 9; AG's Comments at 3-5; Armstrong Comments at 16-17; Bell Atlantic Comments at 6-8; BellSouth Comments at 3; CalCities Comments at 16; Carib Comments at 5; CATA Comments at 14; CIC Comments at 11-12; Cole Comments at 25-26; Comcast Comments at 29-32; Cox Comments at 8-11; Falcon Comments at 24-27; Mesa Comments at 4; NATOA Comments at 40; Newhouse Comments at 10; NJ Comments at 7; Northland Comments at 6; Oxnard Comments at 4; Prime Comments at 4; Schaumburg Comments at 7-8; Spring Comments at 1-2; Tallahassee Comments at 2; TCI Comments at 15-22; TIA Comments at 19; Time Warner Comments at 15; USA Comments at 3-9.

[539] Baltimore Comments at 8-9; Commerce Comments at 6-8; Dennison Comments at 2; Minn. Comments at 10; Montana Comments at 2; Randolph Comments at 1-2; Rocky Comments at 3.

[540] See, e.g., AG's Comments at 6-8; Atlanta Reply Comments at 2-3; Austin et. al. Comments at 41-43, 46-47; Ayden Reply Comments at 2-3; Bayonne Reply Comments at 8-9; Bell Atlantic Comments at 6-8; BellSouth Comments at 2-7; CFA Comments at 87-89; Clinton Reply Comments at 2, 4; Comcast Comments at 29; Conn. Comments at 7,9; Continental Comments at 29-33; Dover Comments at 14-15; Fairborn Reply Comments at 2; Georgetown Reply Comments at 2-3; Greensboro Reply Comments at 2-3; Greenville Reply Comments at 2-3; Henderson

the concept of a benchmark consisting of a rate or a simple formula to define a rate, which would, in turn, define an upper limit, below which basic tier rates can be found reasonable without further analysis.

iii. Discussion.

213. As noted above, we conclude that the best means of implementing rate regulation for cable systems not facing effective competition is to apply a benchmark formula that will enable us to determine what rates would be charged by similarly-situated systems that do operate in a competitive marketplace. We accordingly will require regulated cable systems to use our benchmark formula to calculate the competitive benchmark for a given system. Actual rates that are at or below this competitive level will be deemed to be reasonable. Thus, as explained below, if a system's actual rates are below its benchmark level on the day regulation begins, the system will not be required to reduce its rates, although any future rate increases will be subject to a price cap. By contrast, actual rates above the competitive level, as determined by the benchmark formula, will be deemed to be presumptively unreasonable. Accordingly, if a system's rates are above its benchmark level when regulation begins, it will either have to reduce its rates by amounts specified in our rules in order to be found reasonable, or submit a cost-of-service showing to justify the unreduced rates. Requests for future rate increases by these systems will also be subject to our price cap scheme.

214. Applying the Benchmark Formula. In essence, the benchmark formula is applied by inserting three characteristics of a given cable system -- the number of channels, subscribers and satellite-delivered signals -- into a mathematical equation. (As noted in the preceding section, our cable rate survey revealed that it is these three system elements that account for much of the variance in rates charged by different cable systems nationwide). The rate resulting from the benchmark formula, which will be expressed as a per channel rate, represents the rate that a competitive cable system with the same characteristics as the system subject to regulation would charge.

Reply Comments at 2-3; Iowa City Reply Comments at 2-3; Kinston Reply Comments at 2-3; Laurens Reply Comments at 2-3; Laurinberg Reply Comments at 2-3; MCATC Comments at 8; Municipal Reply Comments at 14-15, 24; NAB Reply Comments at 17-22; NATOA Comments at 41-42; NCTA Comments at 17-19, 24-26; NMCC Comments at 2-3; Owensboro Reply Comments at 2-3; Piscataway Reply Comments at 2-3; Reidsville Reply Comments at 2-3; San Diego Comments at 4; Schaumburg Comments at 8; Thousand Oaks Comments at 14-15; Time Warner Comments at 3, 24; Titusville Reply Comments at 2-3; Union Reply Comments at 3; Worthington Reply Comments at 2-3.

As noted previously, the formula is set forth and explained in Appendix E of this Report and Order. However, in order to assist operators and regulators in applying the formula, and to ensure its uniform application, we have developed FCC Form 393 that sets forth precisely how the formula is to be used in calculating the permitted rate for a regulated cable system. This form, which is included in Appendix D, must be used when systems submit their basic rate schedule for review to local franchise authorities (or the Commission, where it is regulating basic rates). Similarly, the form must be used by cable operators when responding to subscriber complaints filed at the FCC concerning cable programming service rates.

215. Having applied the benchmark formula to determine a given system's competitive per channel rate, the system must then calculate its current per channel rate using the same methodology so that it may be compared to the competitive benchmark. Form 393 sets forth the precise computations that should be made to ascertain the system's rate per channel as of the initial date of regulation.[541] We now turn to a discussion of how we will treat cable systems whose existing basic service rates are either below or above their competitive benchmarks on the date regulation begins.

216. Systems Below the Benchmark. We first conclude that, where a regulated cable system is not charging rates that are above competitive levels, as determined by our benchmark formula, there is no reason to assume that its rates reflect undue market power even in the absence of effective competition. We determine, therefore, that we should generally presume that basic service tier rates that are at, or below, the benchmark level on the date regulation begins are reasonable. Thus, the benchmark will define a broad zone of reasonableness for rates below the benchmark. We will not require any reductions for basic tier rates that are at or below the system's benchmark

---

[541] The rate form prescribes in detail how cable operators will determine their current per channel rate (and, where necessary, their September 30, 1992 per channel rate). In summary, the cable operator will divide the total monthly revenues by the number of channels on both basic and cable programming service tiers. Adjustments are also prescribed for equipment revenues and franchise fees. (Equipment revenues are added to other revenues because the benchmark data are based on prices including equipment revenues. Any revenues to recover franchise fees are excluded because the survey data on which the benchmark is based exclude franchise fees). The resulting per channel charge is then compared to the benchmark. This calculation is tier-neutral in that it is an average across all tiers.

level at the time the system becomes subject to regulation.[542] Therefore, the initial regulated rate for a system with per channel rates below the benchmark on the date on which the system becomes subject to regulation shall be its rate in effect on that date, regardless of how far below the benchmark those rates may be.[543]

217. Systems Above the Benchmark. By contrast, we believe that basic service rates that exceed the system's benchmark level at the time regulation begins are presumptively unreasonable because they exceed the average rates charged by systems subject to effective competition. In order to produce basic tier rates on an industry-wide basis that is close to reasonable levels, we conclude that rates above the benchmark should be reduced by 10 percent (or to the benchmark, whichever is less).[544] This rate reduction will enable us to recapture, for subscribers' benefit, the competitive rate differential that we found to exist across the industry between rates charged by systems facing effective competition and those that do not. A rate reduction of up to 10 percent for above-benchmark rates will thus bring those rates considerably closer to competitive levels, in accordance with Congressional intent.

218. We also conclude that the reductions required for systems with basic rates above the benchmark should be made from the rates in effect on September 30, 1992.[545] Our reasons for this are two-fold. First, the rate survey data from which our benchmark formula was derived reflect rates in effect on

---

[542] Our benchmark formula is based on cable system rates in effect on September 30, 1992. We will therefore compare systems' current rates to the benchmark rates produced by the formula, adjusted forward by inflation. The adjustment forward for inflation is prescribed in FCC Form 393. We find no basis for requiring a rollback for systems that have raised rates from September 30, 1992 levels to the extent the increased rates are still below the benchmark on the date regulation begins.

[543] Cable operators become subject to regulation by local franchising authorities on the date the local authority notifies the operator that it is certified and has adopted the requisite regulations. See Section II.A.3.a(2)(c), supra.

[544] We will not require rates to be reduced below the competitive benchmark because the benchmark represents the upper limit of systems' presumptively reasonable rates. In addition, no rollbacks of rates are necessary for systems with below benchmark rates as long as they remain at the time of regulation still below the benchmark.

[545] See n.541, supra.

September 30, 1992. Thus, to ensure that an appropriate comparison is made when analyzing systems with above-benchmark rates, we will use the actual rates that were in effect for the system on that same date. Second, we are concerned that systems whose rates are above the benchmark -- and are thus presumptively unreasonable -- may have implemented unjustified rate increases after the 1992 Cable Act was passed in October 1992 but before we were able to adopt our rate regulation standards.[546] Accordingly, to protect subscribers from potentially unwarranted rate increases that may have occurred since September 30, 1992, we will set the reasonable rate level for systems with above-benchmark rates at the September 30, 1992 rates, reduced by 10 percent or to the benchmark, whichever yields the higher rate level.

219. We recognize that we could have required all systems with rates above the applicable benchmark to reduce rates to the benchmark level. This approach would have meant that systems that are far above the competitive rate level would have steep rate reductions while those only somewhat above the competitive level would not. However, we believe that such an approach would ignore the possibility that some systems' high rates may be based at least in part on higher costs, thus encouraging unweidly and expensive cost-of-service showings. Given our plans to further refine the benchmark and to collect more data on system costs, we prefer to take a more cautious approach to initial cable rate regulation.

220. Therefore, instead of requiring all systems to reduce rates to benchmark levels, we will take other steps to identify correct rate reductions for systems with rates more than 10 percent above the benchmark. First, we will conduct further surveys to refine the competitive benchmark and to assess and determine more precisely the competitive rate differential between systems subject, and not subject, to effective competition. We will also gather certain specific cost information from a sample of representative cable systems. In the Further Notice, we will also examine whether we can, or should, exclude from our competitive benchmark analysis those systems with less than 30 percent penetration. Excluding those systems from our competitive sample could significantly increase the extent to which cable systems' rates would appear to exceed competitive levels, and may require further rollbacks. In addition, systems that are substantially above the benchmark even after the rate rollbacks will be subject to special scrutiny through cost-of-service investigations.

---

[546] In a separate Order, FCC 93-176 (released April 1, 1993), we imposed a temporary rate freeze on regulated cable rates to ensure that rates do not increase further while our regulatory regime gets underway.

221. Finally, we note that some systems which have rates above the benchmark when regulation begins may have had rates that were below the benchmark on September 30, 1992. Such systems will not be subject to a rollback from levels in effect on September 30, 1992 because the rates were presumptively reasonable on that date, i.e., they were below the benchmark. We determine that the reasonable rate for such systems will be the benchmark rate. Thus, while those systems must reduce rates from existing levels, they may retain any increases from September 30, 1992 levels up to the benchmark.

222. The foregoing determinations define the initial permitted rate for the basic service tier when the system becomes subject to regulation. Those systems whose initial rates would be their September 30, 1992 rates, as reduced by the required amount, may further adjust those rates to reflect inflation occurring between September 30, 1992 and the time when regulation of the basic service tier begins. They must also apply an efficiency adjustment to those rates if the total number of channels on the system has changed from September 30, 1992 to the time of regulation. In general, because prices per channel tend to decline as the number of channels increases, and because our survey reveals that cable service rates tend to decline as system size and number of subscribers increase, the permitted charge per channel will decrease as the total number of channels increases. All of these adjustments are prescribed in FCC Form 393. After those adjustments are made, the initial permitted rate for the basic service tier will then be capped as we describe in the next section.

(f) Adoption of the Price Cap

223. In this section, we impose price cap requirements to govern rate increases for the basic service tier once the initial regulated per channel rate has been determined as explained in the preceding section. First, we address the general question of whether we should rely upon a price cap regime to govern rates for the basic service tier once the initial regulated rate has been determined. We then discuss how the cap will apply to systems with initial rates below the competitive benchmark; the annual adjustment index for the cap; and external costs for which recovery will not be limited by the cap, i.e., costs that cable operators may pass on directly to subscribers through increases to its otherwise capped rate without a cost-of-service showing.[547]

AA. In general

---

[547] However, our procedural rules for regulation of the basic service tier provide for review by local franchise authorities of proposed rate increases based on these "external" costs.

i. Background.

224. In the Notice we solicited comment on whether we should apply a price cap to govern rate increases by cable systems.

ii. Comments.

225. Telephone companies and TIA aver that the Commission should apply price cap regulation to basic cable rates once existing rates are set at a reasonable level, either under benchmarks or cost-of-service regulation.[548] According to Bell Atlantic and BellSouth, a price cap scheme should be imposed on cable operators similar to the existing price cap regulation on telephone companies. They claim it would encourage improvements in productivity and efficiency, and promote deployment of new technologies.[549] Moreover, the telephone companies contend that a price cap structure would limit the cable industry's incentive to cross-subsidize and would lessen the administrative burdens on subscribers, cable operators, and franchising authorities by eliminating the need for annual rate reviews.[550]

226. Cable operators and others argue against instituting a price cap structure on the cable industry.[551] Cole and Continental contend that price caps does not properly account for the differences between the cable and telephone industry.[552] For example, Cole and Continental state that unlike the telephone industry, cable is not a declining cost business, nor does it have a regulatory history from which appropriate price caps could be established.[553] Armstrong adds that application of price caps to cable would be difficult without uniform accounting methods in

---

[548] See, e.g., Bell Atlantic Comments at 4-6; BellSouth Comments at 10-16; NYNEX Comments at 6-9; TIA Comments at 22.

[549] Bell Atlantic Comments at 4-6; BellSouth Comments at 10-13.

[550] Id. The telephone companies assert that any price cap structure for cable operators should contain a "productivity offset" that would require annual rate decreases in real inflation-adjusted terms.

[551] See, e.g., AdelphiaII Comments at 61; Armstrong Comments at 16-17; Austin Comments at 47; Cole Comments at 23-24; Comcast Comments at 29; Discovery Comments at 9-10; Falcon Comments at 31-32; NMCC Comments at 4; Rapids Comments at 28-29; TimeWarner Comments at 31.

[552] Cole Comments at 23-24; Continental Comments at 25-26.

[553] Id. See also Discovery Comments at 9-10.

place.[554] In addition, Time Warner believes price caps would be inappropriate due to its historic reliance on cost-of-service regulation.[555]

iii. Discussion.

227. The Cable Act of 1992 reflects a congressional concern that rates for cable service since rate deregulation have increased to an unreasonable degree exceeding the overall rate of inflation because of a lack of effective competition in the industry.[556] We believe that a price cap mechanism applied to the initial regulated rate level will assure that future rate increases remain reasonable. At the same time, adjustments to recover costs attributable to inflation and other factors beyond an operators control will assure that the cap does not unfairly restrict cable operators' ability to recover costs. The provision allowing cost-of-service showings will also assure that cable operators can recover appropriate costs of service where necessary.

228. The Commission has found a price cap approach to be an effective alternative to cost-of-service regulation in other regulated areas.[557] Price caps give companies an incentive to reduce costs and operate efficiently. They circumvent the perverse incentives associated with rate of return regulation under which, for example, more expense can mean higher rates, not less profit. In addition, price caps minimize regulatory intervention and reduce the overall administrative burdens imposed on government and on those companies dealing with government. Finally, with its emphasis on prices, a price cap alternative permits companies reducing costs faster than the industry, or the nation as a whole, to earn higher profits than other companies. This will encourage cable operators to operate

---

[554] Armstrong Comments at 17.

[555] Time Warner Comments at 20.

[556] Cable Act of 1992, § 2 (a)(1).

[557] See Notice, 8 FCC Rcd at 523, para.51-52; see also Policy and Rules Concerning Rates for Dominant Carriers, CC Docket 87-313, Report and Order and Second Further Notice, 4 FCC Rcd 2873 (1989) ("Price Cap Order") and Erratum, 4 FCC Rcd 3379 (1989), modified on recon. 6 FCC Rcd 665 (1991) rev'd in part on other grounds AT&T v. FCC, 974 F.2d 1351 (D.C. Cir. 1992); Second Report and Order, 5 FCC Rcd 6786 (1990) ("Second Price Cap Order") and Erratum, 5 FCC Rcd 7664 (1990), modified on recon. 6 FCC Rcd 2637 (1991), aff'd Nat'l Rural Telecom Assoc. v. FCC, No. 91-1300, (D.C. Cir. 1993).

efficiently.[558] We believe that these benefits of price caps should be extended to cable service. Accordingly, we will adopt a price cap regime to govern changes in rates from initial regulated levels.

229. We additionally determine that the price cap rate for the basic service tier will be expressed as a rate per channel. A rate expressed as a rate per channel will facilitate rate calculations and review by cable operators, franchising authorities and the Commission because the initial rate to which the cap will be applied is expressed as a rate per channel and because a rate per channel is relatively easy to calculate. With a cap expressed as a rate per channel we can also more easily refine the price cap structure to reflect additional individual system characteristics if our experience with rate regulation of the cable industry appears to warrant such adjustments.

BB. Application of the Cap to Systems with Current Rates Below the Benchmark

i. Background.

230. In the Notice, we asked whether we should impose a price cap to limit how quickly systems with rates below the benchmark could raise their rates to that benchmark price. We asked for comment on what such a price cap formula should be.[559]

ii. Comments.

231. Cable operators and certain municipalities oppose applying price caps to those systems that charge below the benchmark rate.[560] Cable operators argue that instituting price caps in this circumstance would only serve to penalize "good actors" with the lowest rates, and reward those operators with the highest initial rates.[561] They contend that operators with

---

[558] We will explore in the Second Further Notice whether we should include among our price cap mechanisms a productivity factor to assure that subscribers benefit when a cable system operates more efficiently under capped rates.

[559] See Notice, 8 FCC Rcd at 520, para 34.

[560] See, e.g., AdelphiaII Reply Comments at 24; CATA Comments at 20-21; Dover Comments at 9-10; NATOA Comments at 45; NCTA Comments at 29-31; Newhouse Comments at 15; Time Warner Comments at 24.

[561] AdelphiaII Reply Comments at 24; CATA Comments at 20-21; NCTA Comments at 29-31; Newhouse Comments at 15.

low rates are unlikely to suddenly impose excessive rate increases, but that these "good actors" would be punished by limiting their ability to increase rates to the benchmark, which, by definition, is a reasonable rate. NCTA adds that if implemented, this measure could give "good actors" a perverse incentive to raise rates to the highest permissible level whether necessary to cover costs or not in order to maximize their flexibility to cover subsequent cost increases.[562] NATOA and Dover claim that applying a price cap mechanism to those below the benchmark would not be appropriate because the fact that cable operator is charging that lower rate suggests that the lower rate is reasonable.[563] On the other hand, other municipalities assert that cable operators with rates below the benchmark should be subject to annual price caps so that subscribers are not faced with automatic and substantial rate increases.[564]

iii. Discussion.

232. We conclude that Congress intended that subscribers pay no more for basic service than they would if their cable system were subject to effective competition. It is reasonable to assume in most cases that, whatever the rate an operator not subject to effective competition is charging for basic service, such a rate is not unreasonably low from that operator's perspective. Indeed, the rate level was voluntarily selected by the operator, who faces no effective competition, at a time before rate regulation began. The fact that the rate is less than the maximum amount entitled to our presumption of reasonableness does not change the validity of our assumption that the rate is not unreasonably low. It also appears reasonable to conclude that the rate is not less than the operator would charge if subject to effective competition. For these reasons, we are not persuaded that every cable operator with basic rates below the benchmark at the time of regulation should be able to raise its rates towards or up to that limit, without a cost showing to justify that increase. Accordingly,

---

[562] NCTA Comments at 29.

[563] NATOA Comments at 45.

[564] See, e.g., Atlanta Reply Comments at 3; Ayden Reply Comments at 3; Bayonne Reply Comments at 8; Clinton Reply Comments at 5; Fairborn Reply Comments at 3; Georgetown Reply Comments at 3; Greensboro Reply Comments at 3; Greenville Reply Comments at 4; Henderson Reply Comments at 3; Iowa City Reply Comments at 3; Kinston Reply Comments at 3; Laurens Reply Comments at 3; Laurinberg Reply Comments at 3; Owensboro Reply Comments at 3; Piscataway Reply Comments at 3; Reidsville Reply Comments at 3; Titusville Reply Comments at 3; Union Reply Comments at 3.

those systems with rates in effect on the date regulation begins that are below the benchmark, as calculated pursuant to FCC Form 393, are not subject to rollbacks but will nonetheless have their rates capped at the level in effect on that date. Rate increases for such systems will then be subject to price caps on a going-forward basis.

CC. Annual Adjustment Index

i. Background.

233. In the Notice, we asked commenters to address what annual index the Commission should adopt to measure accurately the general change in the cost of doing business.[565] We tentatively concluded that although such changes are generally represented by the general consumer price index (CPI) or producer price index (PPI), a local service price index (LSPI) would be more accurate for adjusting cable rate benchmarks. We solicited comment on this tentative conclusion, and requested that commenters also address what the composition of a LSPI should be, how such an index would be created, what services should be included, where data would come from, and what geographical area would be appropriate for comparison.

ii. Comments.

234. Cable operators, programmers, consumer advocates, and others advocate that periodic adjustments are vital to the success of any rate regulation structure.[566] Commenters urge the Commission to adopt a simple and appropriate index, such as the CPI[567] or LSPI[568], that could adjust the benchmark on an annual basis to account for cost changes. Several cable operators support the adoption of an inflation index but did not identify a

---

[565] Notice, 8 FCC Rcd at 520, para. 38.

[566] See, e.g., AdelphiaII Comments at 61-62; Armstrong Comments at 20-21; Blade Comments at 8; Carib Comments at 7; CFA Comments at 89-91; CIC Comments 19-30; Cole Comments at 25-26; Continental Comments at 28; Comcast Comments at 30-31; Cox Comments at 15-22; ESPN Comments at 8; Falcon Comments at 31-32; Lifetime Comments at 12; Media General Comments at 10; NCTA Comments at 31-33; NATOA Comments at 43; Newhouse Comments at 13-15; Northland Comments at 10-24; SDA Comments at 4, 9-10; Small Systems Comments at 6; TCI Comments at 33-36; Thousand Oaks Comments at 6-7.

[567] See, e.g., AdelphiaII Comments at 61-62; Armstrong Comments at 20-21; NCTA Comments at 31-33; SDA Comments at 4, 9-10; TCI Comments at 33-36.

[568] See, e.g., Carib Comments at 7; Falcon Comments at 31-32.

preferred index.[569] SDA prefers the CPI over the LSPI, since it claims that inflation's impact is felt more in the value to its subscribers of an individual system than in particular localized costs.[570] Cole also favors adoption of the CPI adjustment factor and argues that the LSPI seems unnecessarily complicated.[571] Adelphia asserts that the Commission should adopt the "admissions" component of the CPI, since it measures the price of services competitive with the cable industry such as movies, theater, and sporting events.[572] Programmers contend that the annual adjustment index should reflect inflation in entertainment services, which they maintain is higher than the CPI measurement.[573]

235. Other commenters oppose using either a CPI or LSPI as an adjustment price index.[574] CFA, for example, asserts that the Gross National Product Price Index (GNP-PI) is a superior index that should be used as an inflator for future rate changes. Media General, however, contends that the American Chamber of Commerce Research Association (ACCRA) cost-of-living index provides a better measurement of nationwide costs than a LSPI.

iii. Discussion.

236. After reviewing the record on this issue, we will not adopt an LSPI as the annual adjustment to the benchmark at this time. Such an index, because it could be more closely tied to local costs, could provide a more accurate measure of increases in the local cost of doing business than would a national index. However, the record does not contain the information we would need to fashion an LSPI. In particular, the commenting parties did not provide information that easily translates to localized cost standards. The ACCRA index suggested by Media General provides cost-of-living comparisons for 300 metropolitan areas. Many cable franchises are not in, or near, one of these 300 metropolitan areas. The cost of living comparisons are based on sample local prices, which do not

---

[569] See, e.g., Blade Comments at 9; CIC Comments at 19-21; Continental Comments at 28; Comcast Comments at 30-31; Cox Comments at 15.

[570] SDA Comments at 4, 9, 10.

[571] Cole Comments at 25-26.

[572] AdelphiaII Comments at 61-62.

[573] See, e.g., ESPN Comments at 8; Lifetime Comments at 12.

[574] See, e.g., CFA Comments at 89-91; Media General Comments at 10.