

tiers that are initiated at the subscriber's request after installation of service.<sup>776</sup> Continental contends that the statutory provision does not apply to changes in equipment independent of changing the service tier.<sup>777</sup> NATOA disagrees and argues that the Commission's regulations should also limit the charges for other changes a subscriber may request such as change in equipment. For example, activation charges for subscribers who want to use their own remote control devices rather than those supplied by the operator.<sup>778</sup> Many local franchising authorities also assert that under certain circumstances, operators should not be allowed to charge for service tier changes.<sup>779</sup> For example, no charges for downgrading or changing tiers for 30 days from the date of a rate increase or retiering.<sup>780</sup>

319. Although many commenters agreed that charges for changing service tiers effected by coded entry or other similarly simple method should be nominal,<sup>781</sup> few commenters suggested a level at which we should set the nominal amount.<sup>782</sup> Several operators argue that our rules should allow for the recovery of significant investment costs associated with systems that allow changing service tiers by coded entry.<sup>783</sup> In addition, many

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<sup>776</sup> Minn Comments at 17; NewBedford Comments at 6; Somerville Comments at 6.

<sup>777</sup> Continental Comments at 43.

<sup>778</sup> NATOA Comments at 54.

<sup>779</sup> Baltimore Comments at 10; LowerMerion Reply Comments at 5; NewBedford Comments at 6; Rapids Comments at 36; Somerville Comments at 6.

<sup>780</sup> NewBedford Comments at 6; Rapids Comments at 36; Somerville Comments at 6; see also LowerMerion Reply Comments at 5 (90 days).

<sup>781</sup> Armstrong Comments at 25; Baltimore Comments at 10; InterMedia Comments at 26; Lakeville Reply Comments at 5; Minn Comments at 17.

<sup>782</sup> See Carib Comments at 15-16 (should treat these like returned check charges because they require similar functions); Rapids Comments at 36 (five dollars); Tallahassee Comments at 4 (no charge unless a technician is dispatched to a customer's home).

<sup>783</sup> CIC Comments at 41 n.47 (should include cost of designing and building the requisite electronics into the cable plant); Cole Comments at 33 (equipment costs related to addressable technology); Continental Comments at 42 (cost of addressable technology).

cable operators expressed concern that if the charge for changing tiers is very low, subscriber churn will become a problem.<sup>784</sup> Several operators suggest that we allow charges to escalate if a particular subscriber orders multiple changes within a certain period of time.<sup>785</sup>

320. Some commenters agreed with the Commission's proposal to require nominal charges for all changes in service.<sup>786</sup> Similarly, Rapids suggests limiting operators to a recovery of direct costs plus a nominal contribution to joint and common costs.<sup>787</sup> However, NYSCCT points out that if the Commission limits all changes to nominal charges, the costs of some customer changes would be subsidized by all subscribers. According to NYSCCT, it is not sound policy to require subscribers to subsidize the browsing habits of other subscribers.<sup>788</sup> Another suggestion would involve a fully distributed cost methodology.<sup>789</sup> Several cable operators suggested that charges for changes in service tiers not effected by coded entry on a computer terminal or other similarly simple method should be compared to installation charges for a reasonableness comparison.<sup>790</sup> Operators also suggest that the Commission minimize the administrative burdens of this provision by creating a presumption of reasonableness where downgrade charges are at or below the price levels for upgrades. This suggestion assumes that Congress was concerned that excessive change charges were being imposed as a means of discouraging cable subscribers from downgrading service. Upgrade rates can be

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<sup>784</sup> Cole Comments at 34; Continental Comments at 42; MediaGeneral Comments at 13; TCI Comments at 40; TimeWarner Comments at 67. These operators generally argue that churn increases operating costs and complicates business planning. Cole Comments at 34; Continental Comments at 42; TCI Comments at 40; TimeWarner Comments at 67.

<sup>785</sup> TCI Comments at 40-41; TimeWarner Comments at 67; see also NYConsumers Comments at 10.

<sup>786</sup> Conn Comments at 12; NewBedford Comments at 6; Somerville Comments at 6.

<sup>787</sup> Rapids Comments at 36.

<sup>788</sup> NYSCCT Comments at 22.

<sup>789</sup> Continental Comments at 42; Schaumburg Comments at 9.

<sup>790</sup> Armstrong Comments at 24; InterMedia Comments at 25; TCI Comments at 40; TimeWarner Comments at 66-67; see also Tallahassee Comments at 4 (cable operator should apply no more than half the charge of the initial installation for service changes).

expected to be reasonably low because the operator has an incentive to promote subscription to all of its programming.<sup>791</sup> NATOA disagrees with this presumption.<sup>792</sup>

iii. Discussion

321. We adopt our tentative conclusion that regulations to implement Section 623(b)(5)(C) should apply to any changes in the number of service tiers that are initiated at the subscriber's request after installation of initial service.<sup>793</sup> These regulations will include charges for changing equipment. We believe that the same standards should apply to upgrades and downgrades in service tiers because the same costs are involved in both types of changes.<sup>794</sup> The Commission agrees with commenters who argue that customers should be allowed 30 days after notice of retiering or rate increases to change service tiers at no charge.<sup>795</sup>

322. As required by statute, operators may impose only a nominal charge for changing service tiers effected solely by coded entry on a computer terminal or by other similarly simple method. We will consider any charge under \$2.00 to be nominal. Because the record contains virtually no comment on what constitutes a nominal amount, we will allow franchising authorities discretion to consider additional community specific factors in evaluating these charges. However, these charges cannot exceed the actual costs, as defined below, of changing service tiers. We recognize that nominal charges for changing tiers have the potential to increase customer churn, but we do

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<sup>791</sup> TCI Comments at 41; TimeWarner Comments at 67-68.

<sup>792</sup> NATOA Reply Comments at 19, n.48.

<sup>793</sup> As an initial matter, some parties request clarification that any regulations regarding changes in service promulgated by the Commission should preempt existing state laws or regulations on the matter. CTANY Comments at 1-2; NewBedford Comments at 6; Somerville Comments at 6. We believe that any state laws that prohibit charges for changing service tier would be preempted to the extent that they conflict with Commission rules implementing Section 623(b)(5)(C), which requires cost-based charges for changing service tiers. See Communications Act § 636(c), 47 U.S.C. § 556(c).

<sup>794</sup> The statute requires that charges for changing the service tier selected shall be based on cost. Communications Act at § 623(b)(5)(C), 47 U.S.C. § 543(b)(5)(C).

<sup>795</sup> Any costs associated with these changes must be recovered as general system overheads.

not have any specific data on this topic. Therefore, we will create one exception to the cap on rates for changing service tiers effected by coded entry on a computer terminal or other simple methods. Cable operators who believe their system has an increasing and unacceptable level of churn in service tiers, may establish an increased charge for changing service tiers more than two times in one year, provided that such charges are not requested in response to a rate increase or a restoration of tiered service.<sup>796</sup> The operator must prove to the franchising authority that the churn level in cable service tiers has reached an unacceptable level and that its escalating scale of charges is reasonable. In addition, the cable system must notify all subscribers that they will be subject to an increased charge if they change service tiers more than the specified number of times in one year.

323. For changes in service tiers or equipment that involve more than coded entry on a computer or other similarly simple method, we adopt our actual cost guidelines for equipment and installation. The actual cost charge would be either the HSC times the amount of time it takes to effect the change or HSC times the average time such changes take. We believe that this method is reasonable because the costs for changing service tiers and equipment are similar to the costs of service installation. In addition, because of the similarity between the costs of effectuating downgrades, upgrades, and installations, we expect that charges to decrease service will not exceed charges to install or upgrade service tiers. Because operators have incentives to encourage service upgrades by keeping upgrade charges low, we believe that downgrade charges that are lower than upgrade charges would be evidence that the downgrade charges are not above actual costs. The Commission sees no need, at this time, to allow for an increased charge for changes in service tiers not effected by coded entry or other simple methods. We believe that the actual cost charge should create a barrier to excessive churn.

#### 4. Regulation of Cable Programming Services

##### a. Definition of "Cable Programming Service"

##### i. Background

324. As noted previously, regulation of "cable programming service" rates and associated equipment is to be conducted by this Commission, not local franchising authorities. The Cable Act defines the term "cable programming service"

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<sup>796</sup> For example, if a customer changes service tiers for a third time in one year, the charge might be \$5.00, and the charge for the fourth change might be \$10.00.

broadly. The statutory definition includes all video programming provided over a cable system except that provided on the basic service tier or on a per-channel or per-program basis.<sup>797</sup> Focusing on the second exclusion -- i.e., programming offered on a per-channel or per-program basis -- the Notice requested comment on a proposal to exclude from the definition of cable programming service pay-per-channel or pay-per-program premium services offered on a "multiplexed" or time-shifted basis.<sup>798</sup> The Notice also invited comment on whether separate premium services, each falling outside the definition of cable programming service when offered individually, could nevertheless become subject to rate regulation when offered as a package.<sup>799</sup>

ii. Comments

325. The record supports excluding pay-per-channel or pay-per-program premium services offered on a multiplexed or time-shifted basis from the definition of cable programming service.<sup>800</sup> However, the issue concerning possible regulation of collective offerings of otherwise exempt "a la carte" premium services generated sharply conflicting comments. Cable operators and programmers insist that per-channel or per-program premium services should not become subject to regulation simply because cable operators choose to offer the services as a package. They urge the Commission to make clear that such offerings do not fall within the definition of cable programming service and therefore remain exempt from regulation.<sup>801</sup> Municipalities and

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<sup>797</sup> Communications Act, § 623(1)(2), 47 U.S.C. § 543(1)(2).

<sup>798</sup> The House Report defines "multiplexing" as "the offering of multiple channels of commonly-identified video programming as a separate tier (e.g., HBO1, HBO2, HBO3)." House Report at 80.

<sup>799</sup> Notice, 8 FCC Rcd at 531, paras. 95-96.

<sup>800</sup> See, e.g., Discovery Comments at 14; Encore Comments at Att. 1, pp. 7-8; Time Warner Reply at 39; Viacom Reply at 3, 25. CFA supports this view with a caveat. It states that if a multiplexed premium service is packaged together with any other service, it would be the equivalent of a tier and therefore subject to regulation. It also believes that if the programming offered on multiplexed premium services is different in any way other than the time it is offered, it is different programming and must be subject to regulation as a separate tier. CFA Comments at 135-36.

<sup>801</sup> See Carib. Comments at 21-22; Cole Comments at 41-42; Encore Comments at 8-9; Falcon Comments at 63-64; Nashoba Comments at 103-104; Time Warner Comments at 39; Cole Reply at 9; Comcast Reply at 13; Discovery Reply at 10-11; Time Warner Reply at 38; Viacom Reply at 20, 24.

consumer/public interest advocates, in contrast, believe that bundled offerings of otherwise exempt per-program or per-channel premium services are subject to regulation under the Cable Act, even if offered at the same price as if a subscriber purchased each channel separately. This is so, they argue, because such offerings constitute a "tier" of service and the Cable Act requires the Commission to regulate all tiers of service.<sup>802</sup>

### iii. Discussion

326. We will exclude from the definition of cable programming service per-channel or per-program premium services offered on a multiplexed or time-shifted basis. This approach is consistent with congressional intent<sup>803</sup> and is supported by the record. Thus, multiplexed or time-shifted offerings of per-channel or per-program services will not be subject to rate regulation complaints so long as they consist of "commonly-identified video programming"<sup>804</sup> and are not bundled with any regulated tier of services.

327. Further, we will not regulate collective offerings of otherwise exempt per-channel or per-program services so long as two essential conditions are met. First, the price for the combined package must not exceed the sum of the individual charges for each component service. This is consistent with the rationale underlying Congress's decision to exempt from regulation per-channel or per-programming services offered on a stand-alone basis. Congress excluded per-channel or per-program service offerings on the basis of a determination that greater unbundling of offerings leads to more subscriber choice and greater competition among program services.<sup>805</sup> Implicit in this congressional determination is an expectation that market forces, rather than regulation, will ensure that rates for unbundled services are reasonable. It follows logically that the rate for a collective offering of such services will also be reasonable to the extent that it does not

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<sup>802</sup> See CFA Comments at 136-138; CFA Reply Comments at 71-72; NATOA Comments at 78-79; NYConsumer Comments at 13.

<sup>803</sup> See House Report at 80 ("The Committee intends for these 'multiplexed' premium services to be exempt from rate regulation to the same extent as traditional single channel premium services when they are offered as a separate tier or as a stand-alone purchase option."); id. at 90.

<sup>804</sup> House Report at 80.

<sup>805</sup> See House Report at 90; Senate Report at 77.

exceed the sum of the charges for the component services.<sup>806</sup> Moreover, we believe cable operators should be free to offer collective offerings at a combined price which is less than the sum of the charges for the individual services. Such discounts benefit the consumer by making premium channels more affordable and thus more widely available.<sup>807</sup>

328. Second, the cable operator must continue to provide the component parts of the package to subscribers separately in addition to the collective offering. This requirement will further Congress's goals of enhancing consumer choice and encouraging greater competition among program services. Importantly, it will guard against potential harm to subscribers by ensuring that they will continue to be able to choose "only those program services they wish to see" and are not forced to pay for "programs they do not desire."<sup>808</sup>

329. We believe the two safeguards described above make it unnecessary to regulate collective offerings of per-channel or per-program offerings. Since market forces are likely to ensure that rates are reasonable and subscribers will continue to be able to select individual per-channel or per-program services, regulation of collective offerings of otherwise exempt "a la carte" services would not serve the purposes of the Cable Act. In fact, regulation in such circumstances might be counterproductive. If cable operators are subjected to regulation and exposed to complaints simply by combining premium services into an integrated package, they likely will refrain from making such offerings -- even when the collective package would be offered at a reduced rate. While municipalities and consumer/public interest advocates urge to us find that such offerings are a "tier" subject to regulation, interpreting the statute in such a literal fashion could disadvantage consumers by denying them discounts on packages of per-channel or per-program

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<sup>806</sup> See Discovery Reply at 10-11 (as long as the channels within the grouping are also separately available, the rates for the entire package must be reasonable).

<sup>807</sup> See, e.g., Cole Reply at 9 (discounted packages extend real value to consumers); Encore Comments at 8-9; Viacom Reply at 24.

<sup>808</sup> Senate Report at 77. This second condition is satisfied only when the per channel offering provides consumers with a realistic service choice. For example, we do not think a cable operator can escape rate regulation simply by announcing that tiered services are available a la carte or by offering the services at a per channel rate that ensures that few subscribers will avail themselves of this option. Under the requirements of the evasion prohibition of Section 623(h), we retain the discretion to review such situations on a case-by-case basis.

services and by limiting subscriber access to a greater quantity of premium programming. We do not believe the statute requires such an anomalous result. Therefore, so long as cable operators observe the two requirements specified above -- the package price may not exceed the sum of the rates for the individual components, and the individual services must continue to be offered separately -- we will not regulate such collective offerings.<sup>809</sup>

b. Complaints Regarding Cable Programming Service Rates

(1) Procedures for Receiving, Considering, and Resolving Complaints

i. Background

330. The Cable Act directs us to adopt rules establishing "fair and expeditious procedures" for receiving, considering, and resolving complaints from "any subscriber, franchising authority, or other relevant State or local government entity" alleging that rates for cable programming service are unreasonable.<sup>810</sup> Accordingly, the Notice sought comment on the statutory minimum showing necessary for a complaint to obtain Commission consideration and resolution, specific forms or language to be used in filing complaints, and the possibility of enlisting the franchising authority to aid subscribers in the complaint process. Further, the Notice asked parties to comment on an appropriate limitations period for the filing of complaints regarding prospective rate increases for cable programming service. The Notice also solicited comment on alternatives that the Commission might employ to determine whether a complaint should go forward and the timing of a cable

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<sup>809</sup> Of course, to the extent that a cable operator bundles such a package with any regulated tier of services, or simply replicates its existing service structure through the rebundling of a la carte services into packages of services, without also continuing to offer these services a la carte, such collective offerings would become subject to regulation.

<sup>810</sup> Communications Act, § 623(c)(1)(B), 47 U.S.C. § 543(c)(1)(B). Congress defined "cable programming service" as all video programming offered over a cable system except that provided on the basic service tier or on a per-channel or per-program basis. This statutory definition also includes the "installation or rental of equipment used for the receipt of such video programming..." Communications Act, § 623(1)(2), 47 U.S.C. § 543(1)(2). Thus, cable programming service rate complaints may involve allegations of unreasonableness with respect to charges for equipment installation and rental.

operator's response, as well as possible service requirements, pleading cycles, and burdens of proof. In addition, the Notice requested comment on the appropriate treatment of information submitted to the Commission that the cable operator regards as proprietary, as well as rules governing ex parte communications.<sup>811</sup>

#### ii. Comments

331. Very generally, municipalities, state governments and consumer/public interest advocates urge the adoption of simple, minimal, nontechnical procedures that would enable an ordinary subscriber to voice concern over rates for cable programming service.<sup>812</sup> Cable operators generally seek procedures that afford an expeditious means to determine whether a rate is unreasonable and that discourage frivolous complaints.<sup>813</sup> We describe the record in detail below as it pertains to each stage of the complaint process.

#### iii. Discussion

332. When Must Complaints Be Filed? Section 623(c)(3) provides that, with one exception, our procedures for cable programming service rate complaints shall be available only in the event of a rate increase occurring after the effective date of our rules. Pursuant to Section 623(c)(3), complaints must be filed within "a reasonable period of time" following a change in rates, including a change in rates resulting from a tiering change.<sup>814</sup> In the Notice, we tentatively found that a time limit of 30 days from the time a subscriber received notification of such a rate change would constitute a "reasonable period" for a subscriber to formulate and file a complaint with the Commission.<sup>815</sup> While cable operators generally support this proposal,<sup>816</sup> municipalities and consumer/public interest

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<sup>811</sup> Notice, 8 FCC Rcd at 532-33, 534, paras. 98-106, 109-110.

<sup>812</sup> See, e.g., AGs Comments at 12; Carbondale Comments at 7; CFA Comments at 138-39; Conn. Comments at 14; NYConsumer Comments at 13; Winter Comments at 2.

<sup>813</sup> See, e.g., Cox Comments at 70; CIC Comments at 73; Falcon Comments at 65-66.

<sup>814</sup> Communications Act, § 623(c)(3), 47 U.S.C. § 543(c)(3).

<sup>815</sup> Notice, 8 FCC Rcd at 533, para. 105.

<sup>816</sup> See Cole Comments at 43; Comcast Comments at 41; NCTA Comments at 74 n.78; NCTA Reply at 69; Time Warner Comments at 47; TCI Comments at 60.

advocates overwhelmingly oppose it and suggest longer time periods in which complainants may file complaints.<sup>817</sup> These commenters contend that 30 days from notification of a proposed rate increase is wholly inadequate to permit the subscriber to become cognizant of the rate increase, determine the proper procedure, gather necessary information and file the complaint.

333. After reviewing the record, we are persuaded that a somewhat longer period is appropriate to afford complainants a reasonable opportunity to become fully informed of the rate increase for cable programming service or associated equipment and file a complaint with the Commission. Accordingly, we shall require complainants to file such complaints within 45 days from the time a subscriber receives a bill from the cable operator that reflects the rate increase.<sup>818</sup> We believe this modification to our original proposal will provide sufficient time for subscribers and other complainants to become fully cognizant of a rate increase, gather necessary information, and formulate and file a complaint with the Commission. At the same time, this period is not so long as to permit stale complaints. Computing the time period based on customer receipt of a bill reflecting an increase, rather than customer notification of a proposed increase, serves two purposes. First, it will facilitate subscriber knowledge of the nature and extent of the rate increase and allow a subscriber a reasonable period in which to decide whether to contest the increase based on more complete knowledge. While cable operators must give subscribers and franchising authorities advance written notification of a change

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<sup>817</sup> See Austin Comments at 65, 67 (advocating 120 days); CFA Comments at 143-144 (90 days after service change); Commerce Comments at 4 (30 days after implementation of rate increase); Conn. Comments at 14 (90 days from notification of rate increase); Dade Comments at 11 (90 days from receipt of bill reflecting increase); MCATC Comments at 46-47 (60 days); Minn. Comments at 22 (60 days); NATOA Comments at 73 (90 days from time of receipt of first bill reflecting increase); NJ Comments at 22 (90-120 days).

<sup>818</sup> Since, under federal standards, a cable subscriber must be given at least 30 days written advance notice of a proposed rate increase, see Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection and Customer Service, MM Docket No. 92-263, Report and Order, FCC 93-145, at 35-36 & Appendix B, Section 76.309(c)(3)(i)(B) (released April 7, 1993) ("Customer Service Order") (to be codified at 47 C.F.R. § 76.309(c)(3)(i)(B)), this approach as a practical matter will afford subscribers at least 75 days from initial notification to submit a rate complaint.

in cable programming service rates,<sup>819</sup> such notification may not fully inform the subscriber and, as noted by some commenters, the subscriber may not focus on the change until actually seeing it reflected in a bill.<sup>820</sup> Second, as discussed below, subscribers will be able to include a copy of the bill with their complaint, thus providing proof that the complainant is in fact a subscriber of the service and offering concrete evidence of the rate and a description of the service involved.

334. We reject commenters' suggestions for even longer filing periods. An extended filing period not only would risk permitting stale complaints but would be unnecessary to provide complainants a "reasonable period of time" in which to file a complaint, in light of the simplified procedures set forth below.

335. The statute provides one limited exception to the requirements that complaints may be filed only against a rate increase, and then only within a "reasonable period of time" following the rate increase. This exception concerns the filing of complaints regarding existing cable programming service and associated equipment rates as of the effective date of our rules. Section 623(c)(3) affords complainants 180 days following the

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<sup>819</sup> Several commenters in this docket urge us to require cable operators to notify franchising authorities and subscribers in advance of any cable programming service rate increase. See Austin Comments at 67; CFA Comments at 146-47; NATOA Comments at 77. As noted above, in addressing consumer protection and customer service issues in MM Docket No. 92-263, we recently adopted a requirement that cable operators notify subscribers of any changes in rates, programming or channel positions as soon as possible through announcements on the cable system and in writing. If the change is within the control of the cable operator, notice must be given to subscribers a minimum of 30 days in advance of any such changes. See Customer Service Order, *supra* n. 818, at 35-36 and Appendix B, Section 76.309(c)(3)(i)(B). Since franchising authorities, like subscribers, may file cable programming service rate complaints pursuant to Section 623(c)(1)(B), we will adopt a similar requirement that cable operators give a minimum of 30 days advance written notice to the franchising authority of any changes in rates for cable programming service. In circumstances where the proposed rate increase meets our reasonable rate standards, the notification requirements also will give cable operators an opportunity to explain to subscribers and the franchising authority that the proposed rate comports with the Commission's regulations and, therefore, is entitled to a presumption of reasonableness. This may reduce significantly the number of complaints filed as a result of the rate change, thereby alleviating burdens on subscribers, cable operators and the Commission.

<sup>820</sup> See CFA Comments at 143-44; MCATC Comments at 46-47.

effective date of our rules to challenge existing rates for cable programming service and associated equipment. Complainants thus may file against cable programming service and associated equipment rates existing as of the effective date of our rules for a 180 day period, without regard to our general 45-day limitation period. Once this initial 180-day period passes, however, Section 623(c)(3) bars complaints challenging the reasonableness of cable programming service and associated equipment rates existing as of the effective date of our rules.<sup>821</sup> Thereafter, complaints may be filed only if a cable operator subsequently raises its rate, and such complaints will be subject to the 45-day limitation period described above. Late-filed complaints will be dismissed with prejudice, *i.e.*, without an opportunity to refile. We intend strictly to observe this statutory limitation period.

336. Minimum Showing. Section 623(c)(1)(C) directs the Commission to adopt procedures that specify the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution. The Notice proposed two alternative approaches to implement this requirement. The first would require complainants to state concisely facts showing how an operator has violated our rate regulations. Defective complaints would not be dismissed initially; complainants would receive an informational letter and be given an opportunity to refile. The second proposal would require a less rigorous showing by the complainant. Under this approach, the complainant would be required to supply certain readily available factual information and allege that cable rates have risen unreasonably within a given period. Complaints failing to satisfy this more lenient minimum showing standard would be dismissed.<sup>822</sup>

337. Comments on these proposals were mixed. Several commenters appear generally to support the first approach whereby a complainant who fails to demonstrate why the rate in question violates the Commission's rules would receive an informational letter with an opportunity to refile.<sup>823</sup> CFA, however, strongly objects to this approach. It argues that such a requirement places too great a burden on subscribers and effectively forces them to plead a prima facie case, a standard

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<sup>821</sup> See Blade Comments at 12 (challenges to existing tier rates are cut off after 180 days from effective date of rules).

<sup>822</sup> Notice, 8 FCC Rcd at 532, paras. 99-100.

<sup>823</sup> See NATOA Comments at 77-78 (complaint adequate if it shows rate charged by cable operator exceeds benchmark or price cap); Austin Comments at 64-65 (complaint must merely state that the rate exceeds the FCC-prescribed price per channel); Conn. Comments at 14.

that Congress clearly rejected.<sup>824</sup> CFA endorses the second proposal outlined in the Notice as more consistent with Congress's intent.<sup>825</sup> In contrast, several cable operators object to the second proposal. These commenters argue that complaints must contain more than a mere allegation that rates have risen unreasonably in order to deter frivolous filings.<sup>826</sup>

338. We adopt an approach that combines elements of both proposals described in the Notice. Specifically, in order to make the "minimum showing" mentioned in the statute, we shall require the complainant to supply certain readily available factual information that we consider necessary to adjudicate any complaint. This information must be provided on a standard complaint form, which we discuss in more detail below. In addition, the complainant must allege simply that a rate for cable programming service or associated equipment charged by the cable operator is unreasonable because it violates the Commission's rate regulations.<sup>827</sup> The complainant will not, however, be required to provide the underlying information and calculations necessary to judge the particular rate against the Commission's rate standards. As we observed in the Notice, and as certain commenters confirm, our reasonable rate formulas may not be readily accessible to the ordinary subscriber who desires to file a complaint nor may the subscriber possess the necessary information to calculate the reasonable rate for the system in question.<sup>828</sup>

339. The "minimum showing" standard we adopt is consistent with Congress's decision to avoid a prima facie case pleading requirement and is not "so technical or complicated as to require subscribers to retain the services of a lawyer to file a complaint and obtain Commission consideration of the

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<sup>824</sup> CFA Comments at 139; CFA Reply at 73. See also Commerce Comments at 3 (typical subscriber may not have the where-with-all to participate in such a stringent and proscribed process).

<sup>825</sup> CFA Comments at 139. See also Commerce Comments at 3.

<sup>826</sup> See Falcon Comments at 65-66; Nashoba Comments at 106; Newhouse Comments at 43-44.

<sup>827</sup> See Communications Act, § 623(c)(1)(B), 47 U.S.C. § 543(c)(1)(B) (complaint should allege "that a rate for cable programming services charged by a cable operator violates the criteria prescribed [by the FCC to identify unreasonable rates]").

<sup>828</sup> See Notice, 8 FCC Rcd at 532, para. 99. See generally CFA Comments at 139; Commerce Comments at 3.

reasonableness of the rate in question."<sup>829</sup> Complaints that fail initially to meet the minimum showing requirement described above will be dismissed without prejudice. In this circumstance, the complainant will be given one additional opportunity to file a corrected complaint. The Commission will send the complainant a blank copy of the standard complaint form and instructions for filling out the form. In addition, the complainant will receive an informational letter describing why the original complaint was defective and outlining the complainant's right to refile the complaint.<sup>830</sup> For a complaint filed on the standard form but which is otherwise defective, the complainant will have an additional 30 days from the date of the Commission's notice to file a corrected complaint.<sup>831</sup> If the corrected complaint fails for a second time to meet the minimum showing described above, the Commission will dismiss it with prejudice and will notify the complainant and the cable operator accordingly.<sup>832</sup>

340. Standard Complaint Form. The Notice sought comment on specific forms or language that might be standardized

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<sup>829</sup> Conference Report at 64.

<sup>830</sup> The Commission concurrently will notify the cable operator that the original complaint fails to meet the minimum showing and that the complainant will be afforded a single opportunity to refile within 30 days. Such notification will relieve the cable operator of its obligation to respond unless and until the complainant files a corrected complaint with the Commission and serves the corrected complaint on the cable operator.

<sup>831</sup> The filing of an original complaint on the standard complaint form but which is otherwise defective, will toll the limitation period regarding the filing of complaints. In such circumstances, however, should the complainant fail to file a corrected complaint within the additional 30 day period described above, the complainant's opportunity to file a valid complaint will be extinguished. As with late-filed original complaints, corrected complaints received after the supplemental 30 day period has expired will be dismissed with prejudice, *i.e.*, without an opportunity to refile. An attempt to file an original complaint without using the standard complaint form will not toll the applicable limitation period.

<sup>832</sup> We will apply the same minimum showing requirement to all complaints. There is no record support for holding complaints filed by franchising authorities or parties represented by counsel to a different standard, and we perceive no public interest benefits in such a dichotomy. See NATOA Comments at 77-78; USTA Comments at 18.

for use by subscribers in filing rate-related complaints.<sup>833</sup> The idea of a standardized form enjoyed wide support in the comments, with several parties offering specific suggestions as to the content of such a form.<sup>834</sup> Because we believe a simple standardized form will serve to aid complainants in filing complaints and will specify the minimum factual information necessary to avoid dismissal, we will require complainants to obtain and file with the Commission a standard complaint form. A copy of this form is attached to this order as an appendix.<sup>835</sup> We intend to make this form widely available upon request not only from the Commission, but also from franchising authorities and cable operators.<sup>836</sup>

341. Complainants will be required to provide the following factual information on the form:

- (1) the complainant's name, mailing address and daytime telephone number;
- (2) the name, mailing address, and FCC community unit identifier of the cable operator charging the disputed rate;<sup>837</sup>

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<sup>833</sup> Notice, 8 FCC Rcd at 532, para. 101.

<sup>834</sup> See, e.g., Austin Comments at 68; CFA Comments at 140; Cole Comments at 43; MCATC Comments at 44-45; USTA Comments at 18.

<sup>835</sup> The standard complaint form must be used by any person seeking to file a cable programming service rate complaint with the Commission. This includes subscribers, franchising authorities, or other relevant state or local government entities. See Communications Act, § 623(c)(1)(B), 47 U.S.C. § 623(c)(1)(B). As noted above, should a complainant fail to utilize this form, the Commission will dismiss the complaint without prejudice. The complainant may attempt to file a new complaint on the standard form, but will remain subject to the applicable limitation period discussed at paras. 333-335, supra. See para. 339 and n. 831, supra.

<sup>836</sup> See Notice, 8 FCC Rcd at 532, para. 101; CFA at Comments 147 (forms should be available from the local franchising authority, the Commission, and the offices of the local cable operator); Austin Comments at 68. We will require cable operators to furnish subscribers with a copy of the standard complaint form upon request.

<sup>837</sup> The FCC community unit identifier is a code generated by the Commission for administrative purposes and is assigned to a cable television system upon registration with the Commission. The community unit identifier is unique to each individual cable system

(3) the name and address of the relevant franchising authority;<sup>838</sup>

(4) an indication whether the complainant is challenging the reasonableness of an existing rate for cable programming service or associated equipment as of the effective date of our rules, or a rate increase;

(5) for subscriber complaints challenging the reasonableness of a rate increase, the date the complainant first received a bill reflecting the increased rate;

(6) a description of the cable programming service or associated equipment involved and, if applicable, how service or equipment has changed;

(7) the current rate for the cable programming service or associated equipment at issue, and, if applicable, the most recent rate for the service or equipment in effect immediately prior to the rate increase;

(8) an indication whether the complainant is filing a complaint regarding this specific rate for the first time, or is filing a corrected complaint regarding this specific rate to cure a defect in a prior complaint that was dismissed without prejudice;

(9) if the complainant is filing a corrected complaint, an indication of the date the complainant filed the prior complaint and the date the complainant received notification from the Commission that the prior complaint was defective;

(10) a certification that a copy of the complaint, including all attachments, is being served contemporaneously via first class mail on the cable operator and, if the complainant is a subscriber, on the local franchising authority;

(11) an allegation that the rate in question is unreasonable because it violates the Commission's rate regulations; and

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that operates within a separate and distinct community or municipal entity. Since subscribers do not normally have access to this information, we will require cable operators to provide the FCC community unit identifier on monthly subscriber bills.

<sup>838</sup> If the franchising authority is the complainant, this section will be left blank. As with the FCC community unit identifier, we will require the cable operator to provide this information on monthly subscriber bills.

(12) a certification that, to the best of the complainant's knowledge, the information provided on the form is true and correct.

Finally, the complainant must attach to the standard complaint form a copy of the most recent bill reflecting the disputed rate or rate increase.

342. We believe this information is readily accessible to the complainant and essential to processing a complaint. As mentioned above, failure to provide this information initially will result in dismissal of the complaint without prejudice. In such circumstances, if the complainant does not file a corrected complaint containing all requisite information within 30 days of notification of a deficiency, the complaint will be dismissed with prejudice for failure to provide the "minimum showing" referred to by the statute.

343. Service Requirements. As proposed in the Notice,<sup>839</sup> complainants will be required to serve a copy of the complaint on the cable operator. In addition, a complaining subscriber will be required to serve a copy of the complaint on the relevant franchising authority. This may be accomplished simply by mailing a copy of the complaint form via first class mail to the cable operator and franchising authority. Service must be accomplished at the same time the complainant files the complaint with the Commission. The service requirement will facilitate and expedite the complaint process by promptly informing the cable operator, and, in appropriate circumstances, the franchising authority, that a complaint has been filed with the Commission. With such contemporaneous notice, a cable operator will be prepared expeditiously to provide the Commission with any needed information and to respond formally to the complaint in a timely fashion. As noted above, the complainant will be required to certify on the standard complaint form that service is being accomplished contemporaneously with the filing of the complaint.

344. While a service requirement is supported by municipalities and cable operators alike,<sup>840</sup> CFA contends that it would serve as a barrier to subscribers wishing to file complaints at the Commission.<sup>841</sup> We believe that the burden involved in simply mailing copies of the complaint via first

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<sup>839</sup> 8 FCC Rcd at 532, para. 103.

<sup>840</sup> See Cole Comments at 43; Cox Comments at 72-73; NCTA Comments at 75; NewBedford Comments at 5; Sommerville Comments at 5; Thousand Oaks Comments at 27-28.

<sup>841</sup> CFA Comments at 142.

class mail to two entities is slight. On the other hand, the benefits of contemporaneous notice to the cable operator and the franchising authority in facilitating and expediting the complaint process are plain. On balance, we believe the service requirement will advance the complaint process without unduly burdening the complainant.

345. We will not, however, adopt the suggestion of some cable operators that complainants first serve the complaint on the cable operator and obtain an informal response by that operator, prior to filing their complaint with the Commission.<sup>842</sup> This would complicate the process for subscribers and, unlike a simple contemporaneous service requirement, would delay Commission consideration of a subscriber's complaint. It is possible, as some cable operators suggest, that serving the cable operator first may result in informal settlements and reduce complaints filed with the Commission. This possible benefit, when measured against the burden on subscribers, the potential for delay, and Congress's clear intent that subscribers be permitted to file complaints with the Commission pursuant to simple and expeditious procedures, does not persuade us to adopt this additional step. Hence, we will not adopt such an advance notice requirement.

346. Role of Franchising Authorities. The Notice asked whether a subscriber should be permitted, or required, to obtain a franchising authority's decision or concurrence as a precondition to the filing of a complaint with the Commission.<sup>843</sup> This question generated widely divergent comments from municipalities, cable operators and consumer/public interest advocates. The majority of municipalities favor this approach. Many of them urge the Commission to go beyond the possible role discussed in the Notice, which in essence contemplated the franchising authority as providing informal assistance to subscribers and the Commission. Instead, they propose that the Commission provide that in the first instance the local franchising authority shall formally review and adjudicate complaints regarding cable programming service and enforce their decisions, with an appeal process at the Commission.<sup>844</sup> These

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<sup>842</sup> See CATA Comments at 33-34; Cole Comments at 43; see also NCC Comments at 27-28.

<sup>843</sup> Notice, 8 FCC Rcd at 532, para. 102.

<sup>844</sup> See, e.g., Commerce Comments at 3; Dover Comments at 25; Minn. Comments at 22; NATOA Comments at 72-73; Thousand Oaks Comments at 26-27; Baltimore Reply at 15; Dade Reply at 4; Dearborn Reply at 2; Garden City Reply at 2; Hays Reply at 3; Hollywood Reply at 6; Iowa City Reply at 5; Madison Reply at 3; Mankato Reply at 3; Marshall Reply at 2; Mentor Reply at 3; Multnomah Reply at 3;

commenters believe such an approach would have the primary benefit of relieving administrative burdens on the Commission. Other asserted benefits include furthering the franchising authority's role as a responsible party in the process and providing a fuller record on which to base a Commission decision.

347. In contrast, several cable operators vigorously oppose participation by the franchising authority and specifically argue that the Cable Act provides no power to the Commission to delegate adjudicatory functions concerning cable programming service complaints to local franchising authorities.<sup>845</sup> CFA believes the proposal in the Notice regarding participation by the local franchising authority conflicts with Congress's intent.<sup>846</sup> Similarly, USTA believes that participation by the franchising authority is more than Congress anticipated and would unreasonably burden both the franchising entity and the complaining subscriber.<sup>847</sup> Several municipalities also believe that Congress did not intend such a precondition and that complaints should be filed directly with the Commission.<sup>848</sup>

348. We will not require subscribers to obtain a franchising authority's concurrence or decision before filing a complaint with the Commission. In our view, such a requirement

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San Antonio Reply at 3. See also Cox Comments at 70, 72-73 (cable operator); SSO Reply Comments at 8-9 (cable operators); West Virginia Reply at 4-5 (state government) (supporting permissive delegation of FCC authority with consent of subscriber); MCATC Comments at 44-45 (franchising authority collects complaints from subscribers, reviews them and provides additional comments, and forwards complaints to FCC).

<sup>845</sup> See Comcast Reply at 12; NCTA Reply at 68-69; Time Warner Reply at 42. See also CATA Comments at 32-33 (apart from dubious legality of requiring franchising authority's concurrence, in many cases there will be no regulatory body to complain to; even where a local authority exists, its expertise is limited to regulation of a system's basic tier rates and nothing more).

<sup>846</sup> CFA argues that the statute and its legislative history place subscribers on an equal footing with franchising authorities and other relevant state and local governmental authorities in terms of the ability to file a complaint directly with the Commission. CFA Comments at 141-42.

<sup>847</sup> USTA Comments at 19.

<sup>848</sup> See Fairfax Comments at 21; Miami Comments at 18; Austin Comments at 68. See also Conn. Comments at 14; NYConsumer Comments at 13.

would not serve Congress's objective of establishing simple, fair and expeditious complaint procedures. To the contrary, it would complicate the filing process for the consumer and delay Commission consideration of a subscriber's complaint. Such a process would require the subscriber to file the complaint with the franchising authority; await action by the franchising authority during a specified time period; and then, if still unsatisfied, file the complaint with the Commission, attaching the franchising authority's decision or a summary of the franchising authority's disposition of the complaint. Because we conclude that such a process would not serve the goals of the statute, we will not require a subscriber to obtain the decision or concurrence of the franchising authority as a precondition to filing a complaint at the Commission.<sup>849</sup>

349. We agree with the many commenters, however, who believe that franchising authorities may offer constructive assistance to subscribers wishing to file complaints regarding cable programming service rates and to the Commission in resolving such complaints. A franchising authority may provide inquiring subscribers with the complaint form described above and may aid subscribers in filling out the form and formulating the complaint. This could involve, for example, attaching to the subscriber's complaint a statement from the franchising authority expressing its views on the reasonableness of the rate in question. Since the franchise authority has a uniquely informed perspective on its local cable operator and the needs of subscribers within the franchise area, its participation in the process is desirable and its views are of considerable interest to the Commission. Moreover, coordination by the local franchising authority of multiple subscriber complaints following a rate increase may help focus the issues and assist the Commission in resolving the situation. Therefore, we will encourage -- but not require -- subscribers who wish to file a complaint with the Commission to coordinate their efforts with the relevant franchising authority. Since subscribers will not be required to consult with the franchising authority, however, we see no need at this time to extend the filing period described above.

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<sup>849</sup> MCATC suggests that an initial review by the franchising authority would not conflict with the statute because the local authority would have no discretion to withhold filing a complaint with the FCC if the subscriber is not satisfied with local resolution. MCATC Comments at 44-45. We agree that, as a legal matter, we could require subscribers to obtain the informal views of the local franchising authority as a precondition to filing the complaint with the Commission. As a policy matter, however, as noted above, we believe such a requirement would be inconsistent with the statutory goals of simplicity, fairness and expedition.

350. Finally, we conclude that we are not free to adopt the broader approach advanced by some municipalities that local franchising authorities, as opposed to the FCC, formally review and adjudicate cable programming service complaints and enforce these decisions in the first instance. In contrast to the statutory provisions governing regulation of basic service tier rates, which explicitly provide for formal review and enforcement by local franchising authorities in certain circumstances,<sup>850</sup> the statute does not provide a formal role for franchising authorities with respect to cable programming service complaints. Moreover, as cable operators observe, absent specific authority to delegate our adjudicatory and enforcement powers we are unable to delegate such powers to the local franchising authorities in the cable programming context. See Planned Parenthood Federation of America, Inc. v. Heckler, 712 F.2d 650, 663 (D.C. Cir. 1983) ("In the absence of Congress' express authorization to HHS to in turn empower the state to set eligibility criteria, the Secretary has no power to do so.").<sup>851</sup>

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<sup>850</sup> See Communications Act, § 623(a), (b)(5), 47 U.S.C. § 543(a), (b)(5).

<sup>851</sup> See also Comcast Reply at 12; NCTA Reply at 68-69; Time Warner Reply at 42. NATOA asserts that nothing in Section 623 of the Cable Act or its legislative history prohibits the delegation of authority to local franchising authorities. This assertion falls short of demonstrating express delegation authority as required under the Planned Parenthood decision, and NATOA offers no suggestion that Congress intended such a delegation. West Virginia believes that there is precedent for a delegation from the FCC to local franchising authorities, citing the Commission's practice of processing employment discrimination complaints. West Virginia notes that, pursuant to a Memorandum of Understanding between the FCC and the Equal Employment Opportunity Commission ("EEOC"), if the FCC receives a complaint which falls both within its own jurisdiction and the jurisdiction of the EEOC or a state employment discrimination agency, the FCC may refer the matter to the EEOC or the applicable state agency. The employment discrimination model is clearly distinguishable, however. First, with respect to referral to the EEOC, referral to another federal agency with concurrent jurisdiction is different from delegation to a local government. With respect to referral to state agencies, the EEOC's organic statute not only recognizes a dual state/federal regulatory scheme for employment discrimination complaints, it actually requires complainants to file a complaint initially with an authorized state agency prior to filing with the EEOC. See 42 U.S.C. § 2000e-5(c). As noted above, the Cable Act provides no formal role for local authorities in the cable programming service complaint context, nor is there any evidence that Congress intended such a result. We thus conclude that we are unable to delegate formal adjudicatory and enforcement powers to local franchising

351. Initial Review of the Complaint and Cable Operator Response. Upon receipt of a complaint, the Commission must determine whether it meets the minimum showing necessary to permit the complaint to go forward. The Notice sought comment on two possible approaches in this regard.<sup>852</sup> The first would require the cable operator to respond to all complaints, and the Commission would consider both the complaint and the response in deciding whether a complaint should go forward. If the Commission determined that a minimum showing had been made, the burden would be on the cable operator to disprove the allegation of unreasonable rates in a supplemental response. Under the second proposed approach, the Commission would consider only the complaint itself in deciding whether the complaint meets the minimum showing requirement to permit it to go forward. Under this approach, cable operators would only be required to respond to those complaints the Commission determines present a valid claim.

352. These proposals generated a mixed record. Municipalities generally seem to favor the first proposal discussed in the Notice.<sup>853</sup> Cable operators, in contrast, seek a process that requires them to respond only to those complaints that the Commission initially has reviewed and found to have merit. In this regard, they believe operators should not have to respond to complaints regarding rates that fall below a presumptively reasonable level.<sup>854</sup> CFA also advocates an initial review by the Commission regarding the minimum showing standard, in order to avoid cable operators having to respond to frivolous complaints or to make separate responses to separate complaints that make identical claims. CFA does not, however, support an approach that would require cable operators to respond only to those complaints that specify a rate which exceeds the presumptively reasonable level.<sup>855</sup>

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authorities with respect to cable programming service rates.

<sup>852</sup> Notice, 8 FCC Rcd at 532-33, paras. 103-104.

<sup>853</sup> See, e.g., NewBedford Comments at 5; Sommerville Comments at 5; Thousand Oaks Comments at 27-28.

<sup>854</sup> See, e.g., Cablevision Comments at 53; Cole Comments at 43-44; Cox Comments at 72-73; NCTA Comments at 69. But see CATA Comments at 33 (expressing discomfort over a complaint process without initial involvement by the cable system).

<sup>855</sup> CFA Comments at 142-143. CFA believes that if operators are granted the ability to prove the reasonableness of rates above the presumptively reasonable level, subscribers should have an equal opportunity to prove that rates below that level are unreasonable. CFA Comments at 143 n.150.

353. After review of the record, we adopt a process that is a hybrid of the proposals discussed in the Notice. We have already described the minimum showing standard necessary for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable. In addition to requiring certain factual information, this standard requires a complainant to allege simply that the rate at issue is unreasonable because it violates the Commission's rate regulations. Because subscribers may not possess the information necessary to compute the reasonable rate for the system in question, the minimum showing standard does not require the complainant to make this computation. Indeed, it is quite possible that the Commission may not possess this information when the complaint is filed. Therefore, we must establish a process that produces information required to make the reasonable rate calculation, and, in certain circumstances, facilitates a cost-based review of rates.

354. Accordingly, upon receipt of a complaint, we shall review it to determine if it meets the minimum showing, described above, to permit the complaint to go forward. Because it is likely that necessary information will not be available at this early stage, the reasonable rate calculation will not be included in this review. As noted above, if the complaint does not satisfy the minimum showing threshold, we shall dismiss it without prejudice and notify all parties. Corrected complaints submitted pursuant to the 30 day supplemental filing period that do not satisfy the minimum showing requirement will be dismissed with prejudice and the Commission will notify the parties. In any event, a cable operator is not obliged to respond to any complaint -- whether initial or corrected -- that the Commission has determined is defective and has notified the parties accordingly.

355. Absent a Commission notification that the complaint fails to satisfy the minimum showing requirement, however, the cable operator must respond.<sup>856</sup> The cable operator

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<sup>856</sup> We recognize that there may be instances in which a local franchising authority has not yet asserted jurisdiction over basic cable rates at the time we receive a complaint from a subscriber about the rates for cable programming service. As noted previously, we generally intend to use the certification process triggered by local governments seeking to regulate basic rates to resolve questions concerning the presence or absence of effective competition. However, if the effective competition issue has not been resolved by the time we receive a cable programming service complaint, the cable operator may raise it as a defense in its response to the complaint. The burden will be on the operator to demonstrate that it faces effective competition in the franchise area.

shall provide its response on a standard form. The standard response form, which is attached as an appendix to this order, must be used to respond both to complaints involving cable programming service rates and charges for installation or rental of associated equipment. Because the cable operator uniquely possesses information necessary to perform the reasonable rate calculation and other cost data that may bear on our evaluation of service or equipment rates, the burden shall be on the cable operator to prove that the rate in question is not unreasonable.<sup>857</sup> It may do so in several different ways. For a complaint involving a service rate at or below the permitted level, the cable operator may simply provide information and calculations on the standard response form that demonstrate that the rate in question falls at or below the permitted level. In this case, a strong presumption of reasonableness attaches. For a complaint involving a service rate that exceeds the permitted level, the cable operator may choose simply to respond by reducing the rate charged to a level at or below the permitted level and by providing proof that it has done so.<sup>858</sup> Alternatively, the cable operator may provide detailed cost-based information that demonstrates that the rate in question, when considered in light of the specific factual circumstances, is reasonable despite the fact that it exceeds the permitted rate level.<sup>859</sup> Finally, for a complaint involving a charge for

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<sup>857</sup> The record generally supports this requirement. See, e.g., Austin Comments at 14, 65; Carbondale Comments at 7; CFA Comments at 140; NATOA Comments at 74; NewBedford Comments at 5; Minn. Comments at 23; Parsippany Comments at 12; Sommerville Comments at 5; USTA Comments at 19. Some cable operators, however, oppose shifting the burden to the operator after a minimum showing; these commenters believe the burden should shift only after the complainant shows the rate is above the presumptively reasonable level. See Cox Comments at 75; CIC Comments at 78; Falcon Comments at 65-66; Nashoba Comments at 108; NCTA Reply at 69. We will not adopt this approach. As discussed above, complainants likely will not have access to the requisite information to make such a showing. Since cable operators, in contrast, do possess this information, we find it is appropriate and essential to place the burden initially on the cable operator to produce data and prove that its rate is not unreasonable.

<sup>858</sup> In such circumstances, we will review the reduced rate to ensure that the rate for the service complies with our reasonableness standard.

<sup>859</sup> During the pendency of our further rulemaking in this docket designed to craft specific cost-of-service criteria, we will analyze a cable operator's showing under general cost-of-service regulatory principles. For complaints filed after we conclude the supplemental rulemaking proceeding and adopt more specific cost-of-

equipment installation or rental, the cable operator must respond by providing information on the standard response form that demonstrates that the charge is based on the cable operator's actual cost.

356. A cable operator must file its response with the Commission within 30 days from the date of service of the complaint,<sup>860</sup> unless the Commission notifies the operator during the 30-day period that the complaint fails to satisfy the minimum showing requirement.<sup>861</sup> The cable operator's response must indicate when service occurred. In the event there are multiple complaints regarding the identical rate increase, the cable operator may file a consolidated response to all complaints.<sup>862</sup> The cable operator shall serve its response on the complainant and the local franchising authority via first class mail. In keeping with Congress's intent to establish expeditious procedures that are simple and do not require complainants to

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service criteria, we will analyze a cable operator's cost-of-service showing under those criteria.

<sup>860</sup> Pursuant to our rules, service by mail is complete upon mailing. 47 C.F.R. § 1.47(f) (1992). Thus, if the complainant serves the cable operator at the same time he or she sends the complaint to the Commission, the cable operator must submit its response no later than 30 days from the date of the complaint.

<sup>861</sup> In the event a cable operator believes a particular complaint does not meet the minimum showing requirement, but has not received notification from the Commission that the complaint is defective within the 30-day filing time period, the cable operator must respond to the merits of the complaint no later than the 30th day after service of the complaint. In addition to its response on the merits, the cable operator also may include a motion to dismiss stating with particularity the reasons the cable operator thinks the complaint is procedurally defective.

<sup>862</sup> Outside the initial 180 day period for filing complaints regarding rates in existence at the time our rules take effect, complaints concerning cable programming service will be triggered by an event initiated by the cable operator, such as a rate increase or a change in the number of channels provided on a particular tier. To the extent that such an event elicits multiple complaints concerning the same operator and the identical service, we would resolve them in a consolidated proceeding. Unless notified by the Commission to the contrary, a cable operator's consolidated response will be due within 30 days of service of the first complaint filed. The cable operator will be permitted to amend its consolidated response to address any new issues raised by complaints received after the filing of the cable operator's initial response.