

that the provision applies to additions of a new tier of service or a new single channel service without the affirmative assent of a subscriber. We believe that subscribers would expect to be able to veto on an individual basis such significant changes in service before they actually receive such programming.<sup>1098</sup> However, as Congress intended, and many commenters urge,<sup>1099</sup> a change in the mix of channels in a tier, including additions or deletions of channels, will not be subject to the negative option billing provision, unless they change the fundamental nature of the tier.<sup>1100</sup> We agree with CSC that operators need this flexibility to modify and upgrade their offerings in response to marketplace changes.<sup>1101</sup> Moreover, we do not believe that consumers necessarily expect the mix and range of services in a tier to remain static. Thus, on balance, we conclude that the consumer benefits from giving operators the ability to diversify, improve or otherwise modify their offerings in a tier outweighs the slight reduction in consumer choice that would result from exempting such changes from the negative option billing requirements. We also observe that if we subjected relatively minor tier changes to the scope of the provision, subscribers might well perceive the need to resubscribe each time such a change occurred as a burden, rather than a benefit. Moreover, any actual or implicit<sup>1102</sup> change in price accompanying programming changes would be subject to our rate regulations -- to basic rate review at the local level and to review of cable programming service complaints at the FCC. We do not believe it necessary, as CFA suggests,<sup>1103</sup> also to subject any service changes accompanied by a price increase to negative option

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<sup>1098</sup> Cf. MCATC Comments at 29 (Massachusetts rule is that cable operator might obtain subscriber's consent prior to providing subscriber service package substantially different from that previously provided to the subscriber at an additional cost).

<sup>1099</sup> Comcast Comments at 65; MCATC Comments at 30-31; Armstrong Comments at 34; Intermedia Comments at 35.

<sup>1100</sup> For example, if an operator deleted all existing channels from a particular tier and added a completely new set of channels, we believe that the fundamental nature of that tier would have changed and subscribers would have to affirmatively assent before being billed for the reconstituted tier.

<sup>1101</sup> CSC Comments at 18.

<sup>1102</sup> Deletion of a channel might mean rates for a tier would have to be reduced under our rate regulations.

<sup>1103</sup> CFA Comments at 158. See also Miami Comments at 21.

billing requirements.<sup>1104</sup> We note that our customer service rules require operators to give subscribers 30-days advance notice of any changes in rates, programming or channel positions. We do not believe subscribers also need the additional protection of the negative option billing provision for every proposed rate increase, unless a price change accompanies a fundamental change in service, such as the addition of a tier.

441. Moreover, restructuring of tiers and equipment, including restructuring appropriate for implementing the Cable Act's provisions, will not bring the negative option billing provision into play if subscribers will continue to receive the same number of channels and the same equipment.<sup>1105</sup> As NCTA suggests, a subscriber presumably has already "affirmatively

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<sup>1104</sup> See, e.g., NCTA Reply at 72; Time Warner Reply at 57.

<sup>1105</sup> Cf. Adelphia II Reply at 73 (rearranging of services to a second tier without introduction of new services not negative option); Time Warner Comments at 79 (retiering to comply with Act); Intermedia Comments at 35 (retiering required to implement provisions of Act); MCATC Comments at 32 (splitting basic tier into two tiers that add up to the same service previously offered); CSC Comments at 52-53 (maintaining service to expanded basic subscribers notwithstanding creation of lower-cost basic). See generally TCI Comments at 66-67 (whether change in price for converter/remote from \$4/1 to \$3/2 is revenue neutral).

We do not believe that Austin's objection to this approach -- that a revenue-neutral change may nevertheless result in programming being switched to a deregulated tier -- poses a significant issue under the regulatory framework of the Act. Austin Comments at 10. Under the Cable Act, only programming sold on a per-channel or per-program basis is entirely deregulated. Thus, an operator would have to move a "tier" channel to "premium" status to escape regulation entirely. Based on our knowledge of industry practice to date, we doubt such changes will occur frequently. We also disagree with Austin that if a channel is moved from a basic to a non-basic tier, it should continue to be regulated as a basic service. Austin Comments at 71. The Act creates a regulatory framework, which subjects basic service to local regulation and all other services, except premium channels, to federal regulation. We do not believe that movement of a channel from a tier subject to local scrutiny to one subject to federal scrutiny should be constrained, particularly in light of the parallel rate regulations we adopt for basic and cable programming services. We also do not believe that anything in the Act requires us to restrict movement of a channel to premium and deregulated status. See also Section II.A. (5) (e), infra (Evasions).

requested" this level of service.<sup>1106</sup> However, as with other changes in the mix of programming services, restructuring will be subject to the negative option billing provision, if the restructuring effects a fundamental change in the nature of the service subscribers receive. We agree with Time Warner that retiering accompanied by a price increase is likely to be subject to rate regulation scrutiny.<sup>1107</sup>

442. The Notice tentatively concluded that the negative option billing provision does not apply where system-wide equipment improvements are accompanied by justified rate increases. Cable operators generally agree that they should be able to make equipment upgrades free of the restrictions of the negative option billing provision, but disagree that accompanying rate increases are relevant to determining whether such changes are within the scope of the statute.<sup>1108</sup> We believe that requiring operators to contact subscribers before making equipment improvements and securing their assent might deter beneficial upgrades<sup>1109</sup> and undermine one of the underlying policies of the Act, to "ensure that cable operators continue to expand, where economically justified, their capacity."<sup>1110</sup> Our rate regulations will apply to any price increases accompanying such equipment changes. We do not believe it is necessary to also bring the issue of the validity of such a rate increase within the scope of the negative option billing provision.

d. Collection of Information.

i. Background.

443. The statute requires cable operators to file annually with the Commission or franchising authorities, as appropriate, beginning one year from the date of enactment, such financial information as is necessary to administer and enforce rate regulation.<sup>1111</sup> The Notice proposed to annually collect

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<sup>1106</sup> NCTA Comments at 81.

<sup>1107</sup> Time Warner Reply at 59.

<sup>1108</sup> Notice, 8 FCC Rcd at 536, para. 120; CSC Comments at 19; NCTA Comments at 80; Nashoba Comments at 137-138; Time Warner Comments at 82. See also Continental Comments at 69-70; Falcon Comments at 80-81; Cox Comments at 91; CIC Comments at 96.

<sup>1109</sup> CSC Comments at 19.

<sup>1110</sup> Cable Act, § 2(b)(3).

<sup>478</sup> Communications Act, Section 623(g), 47 U.S.C. Section 643(g).

certain financial information specified in Appendix C as well as the information collected by the Commission in the Order, MM Docket No. 92-266, FCC 92-545, adopted December 10, 1992. The Notice noted that the information regulators would need to assure they can effectively administer and enforce the requirements of Section 623 will ultimately depend on the regulatory alternative selected for implementing rate regulation of cable service. It stated an intention to further tailor the collection of information to the method of implementing Section 623 ultimately adopted.<sup>1112</sup> Specifically, the Notice solicited comment on the appropriate scope of the information to be collected, whether all systems should be required to file the report, and what filing requirements should be placed on systems with 1000 or fewer subscribers.<sup>1113</sup>

ii. Comments.

444. Commenters generally favored per system filing<sup>1114</sup> on an annual basis.<sup>1115</sup> Most of the commenters favored mandatory filing by all cable operators,<sup>1116</sup> though a few favored imposing the requirement on a sampling of systems<sup>1117</sup> and others requested that public companies be exempt from the filing requirements.<sup>1118</sup> The National Telephone Cooperative Association argued strongly in support of an exemption for small cable systems,<sup>1119</sup> but comments filed by the Satellite Dealers Association noted that while an exemption for small systems may be appropriate, requiring all operators to submit information

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479 Notice, 8 FCC Rcd at 536.

480 Notice, 8 FCC Rcd at 536.

<sup>1114</sup> Adelpia Comments at 153-154; Nashoba Comments at 150; Newhouse Comments at 49; Time Warner Comments at 86.

<sup>1115</sup> SSO Comments at VI-VII; NATOA Comments at 81-82. Comments filed by Minn at 25, however, asserts that the Commission should not require annual filings, but should file relevant financial information upon request of franchising authorities.

<sup>1116</sup> See, e.g., Municipal Comments at page VI-VII; NATOA Comments at 81-82.

<sup>1117</sup> See, e.g., Comcast Comments at 64.

<sup>1118</sup> Time Warner Comments at 87; Adelpia Comments at 154; Nashoba Comments at 150.

<sup>1119</sup> NTCA Comments at 4.

would be most beneficial.<sup>1120</sup> Several commenters requested that a single form be used to avoid confusion concerning the information required.<sup>1121</sup> The National Association of Regulatory Utilities Commissioners urged the Commission to collect information in electronic form and make it publicly available on a computer-accessible dial-up data base.<sup>1122</sup>

445. Cable operators generally urged the Commission to narrowly tailor filing requirements so that only information necessary to administer and enforce rate regulation would be required,<sup>1123</sup> while other commenters argued that the Commission should require operators to provide adequate financial information based on the system's operation in that municipality.<sup>1124</sup> Some of the commenters argued that the information solicited in the December Public Notice<sup>1125</sup> was sufficient<sup>1126</sup> while others sought additional information.<sup>1127</sup> Several commenters requested that cost data not be required<sup>1128</sup> while others urged the Commission to seek broad financial information including cost data.<sup>1129</sup> Comments filed by Media General and Continental Cablevision<sup>1130</sup> offered an extensive

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<sup>1120</sup> SDA Comments at 15.

<sup>1121</sup> Adelphia Comments at 154; Nashoba Comments at 150; Newhouse Comments at 50.

<sup>1122</sup> NARUC Comments at 5-6.

<sup>1123</sup> Adelphia Comments at 153, Reply at 85-86; Nashoba Comments at 149; Carib Comments at 25; Newhouse Comments at 48.

<sup>1124</sup> See, e.g., New Bedford Comments at 7; Bayonne Reply Comments at 10.

<sup>1125</sup> Order, MM Docket No. 92-266, FCC 92-545 (adopted December 10, 1992).

<sup>1126</sup> Adelphia Comments at 153; Nashoba Comments at 149; Newhouse Comments at 48-49.

<sup>1127</sup> See, e.g., Fairfax County Reply Comments at 21-22.

<sup>1128</sup> Adelphia Comments at 152, Reply at 85-86. Nashoba Comments at 149; Newhouse Comments at 48; Time Warner Comments at 85.

<sup>1129</sup> Municipal Comments at page VI-VII; Miami Beach Comments at 19; NATOA Comments at 61-63.

<sup>1130</sup> Media General Comments at 4; Continental Comments at Appendix A.

critique of the financial filing requirements proposed in the Notice. Some commenters objected to mandatory filing of any confidential and proprietary information and sought protections for any filed.<sup>1131</sup> Certain commenters argued that the Commission should delay decision on the filing requirements until conclusion of the instant proceeding.<sup>1132</sup>

iii. Discussion

446. The statute envisions that within one year of its enactment cable operators will file with the Commission financial information necessary for the enforcement and administration of the statute.<sup>1133</sup> In the Order, we directed a random sample of cable systems to submit certain rate and other information to aid in fashioning benchmarks. We have concluded that the filing of this information meets the statutory requirement that cable operators file within one year of enactment financial information necessary to administer and enforce the statute. Accordingly, it is not necessary to immediately adopt additional collection of information requirements in order to meet statutory requirements.

447. Moreover, in a Second Further Notice to be adopted shortly, we will explore further what cost-of-service standards we should adopt to govern showings by cable operators seeking to raise rates above capped levels. Cost-of-service showings could be facilitated if requirements concerning collection of information from cable operators on an ongoing basis are tailored at least to some extent to the information that would be required in cost-of-service showings. Accordingly, we have determined to further consider in that rulemaking the adoption of final information collection requirements.

e. Prevention of Evasions

i. Background

448. The Cable Act requires that the Commission establish and periodically review regulations to prevent evasion of its cable rate regulations, including evasions resulting from retiering.<sup>1134</sup> The Notice proposed to prohibit evasions in

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<sup>1131</sup> Miami Beach Comments at 19; Carib Comments at 25; Newhouse Comments at 48; Jones Intercable Reply Comments at 26-27; Disney Channel Reply Comments at 3.

<sup>1132</sup> Newhouse Comments at 50; Time Warner Comments at 87, Reply Comments at 63; Adelphia Comments at 155; Nashoba Comments at 150.

<sup>1133</sup> See Communications Act, § 623(g), 47 U.S.C. §643(g).

<sup>1134</sup> Communications Act, § 623(h), 47 U.S.C. § 543(h).

general, and to use rate regulation procedures to redress evasions of rate regulations. The Notice further proposed to review our evasion rules as an initial matter two years after they become effective, and thereafter every three years. We also solicited comment on how to reconcile the evasion provisions with the restructuring of services that the Cable Act permits, and indeed appears to require in some cases.<sup>1135</sup> The Notice proposed to except from the scope of the evasion provision "retiering necessary to comply with basic tier requirements, retiering that did not change the ultimate price for the same mix of channels in issue to the subscriber, or retiering accompanied by a price change that complied with our rate regulations."<sup>1136</sup>

ii. Comments

449. Cable operators generally maintain that retiering is not a per se evasion of our rate regulations.<sup>1137</sup> Some contend that not only does the Cable Act fail to prohibit such retiering, it may even require retiering to permit operators to make adjustments to the new regulations.<sup>1138</sup> Municipalities, however, tend to view retiering as potentially evasive.<sup>1139</sup> They argue, for example, that the Act does not require retiering.<sup>1140</sup>

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<sup>1135</sup> Notice, 8 FCC Rcd at 537, paras. 126-127.

<sup>1136</sup> Notice, 8 FCC Rcd at 537, para. 127.

<sup>1137</sup> See, e.g., Falcon Comments at 82-83; NCTA Comments at 81; Time Warner Comments at 89; Time Warner Reply at 67-68; Armstrong Comments at 35; Intermedia Comments at 36-37; NYSCCT Comments at 27; CSC Comments at 21; Nashoba Comments at 141; Adelphia II Reply Comments at 11. CSC asks us to affirm that an operator can continue to retier without prior approval of the franchising authority so long as the franchise permits such a change. CSC Comments at 20.

<sup>1138</sup> See, e.g., Nashoba Comments at 141; NYSCCT Comments at 27; Adelphia II Reply Comments at 11-13, 17; Time Warner Reply Comments at 66-68; Newhouse Reply Comments at 3-4. Cole observes that tiering flexibility is essential to maintaining a low-cost basic service.

<sup>1139</sup> See, e.g. NATOA Comments at 83-84 (operator should have burden of showing by a preponderance of the evidence that challenged action was for legitimate business purpose). But e.g. Austin Comments at 73-74 (listing specific categories of actions to be deemed evasive).

<sup>1140</sup> Baltimore Reply Comments at 8-9, 14; Austin Comments at 74 (the Cable Act does not require retiering, and cable operators are using this argument as an excuse to evade rate regulation).

Some express concern that operators have used or will use retiering to move channels out of the basic tier to a less regulated tier, thus avoiding local rate regulation.<sup>1141</sup> CFA argues that unless prohibited from so doing, cable operators will move their most popular programming off the basic tier to a less regulated higher tier, forcing consumers to take a higher-priced tier to obtain the programming.<sup>1142</sup> Municipalities would also scrutinize for possible evasions retiering and repricing occurring after the enactment of the Cable Act on October 5, 1992, and before the effective date of the Commission's cable rate regulations.<sup>1143</sup> Cable interests disagree<sup>1144</sup> arguing, for example, that the evasion provision does not become effective until April 3, 1993,<sup>1145</sup> and that the Act, as manifested in the anti-buy through clause and congressional intent, requires preparatory retiering to establish a new low cost basic service.<sup>1146</sup>

450. Many cable interests agree, in general, with the proposal in the Notice to except from the scope of the evasion provision retiering necessary to comply with the Act, that does not change the mix of channels, or is accompanied by a justified price increase.<sup>1147</sup> Some suggest that the provision covers

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<sup>1141</sup> Muskegon Comments at 6; Denison Comments at 1; Sioux Comments at 1; NATOA Reply Comments at 31-33; Bowling Green Reply Comments at 1-8; Michigan Cities Reply Comments at 7-8; Baltimore Reply at 17.

<sup>1142</sup> CFA Reply at 35-36.

<sup>1143</sup> See, e.g., Bowling Green Reply at 1-8; Rapids Reply at 7-8; NYC Reply at 5; NATOA Comments at 82-83. See also Austin Comments at 73; Denison Comments at 2; Minn Comments at 25-26 (the Commission should ignore any retiering which took place after October 5, 1992, and consider services moved out of the basic tier during that timeframe as basic services subject to rate regulation); Rapids Reply at 7-8 (to prevent evasions, regulators should have the authority to reduce existing rates and order refunds of any unreasonable rates charged from October 5, 1992, and beyond).

<sup>1144</sup> See, e.g., NCTA Reply at 73; Newhouse Reply at i, 3-4; Time Warner Reply at 68.

<sup>1145</sup> Cole Reply Comments at 36.

<sup>1146</sup> TCI Reply at 68-70.

<sup>1147</sup> See, e.g., Armstrong Comments at 35; Intermedia Comments at 36, CSC Comments at 21. But See NATOA Reply Comments at 31-33 (all retiering is an attempted evasion).

retiering which represents an implicit price increase,<sup>1148</sup> for example, when service is decreased and the price is unchanged or only slightly decreased.<sup>1149</sup> Several cable operators express concern about excepting retiering that represents the "same mix of channels" as proposed in the Notice. They argue that "mix" should be interpreted to mean the same number of channels, to avoid the Commission's making programming content judgments.<sup>1150</sup> Austin states that the following should be included in our description of evasion practices: A decrease in programming services without an accompanying decrease in rates, a decrease in the quality of customer services without a decrease in rates, omitting to report revenues, improper cost shifting between systems, and retiering to avoid rate regulation.<sup>1151</sup> NATOA believes that we should not attempt to list all evasive practices. However, it believes that the following should be scrutinized as a potential evasion: any retiering or price increases implemented since the effective date of the Act, and charging for installation and equipment where such services were previously free. NATOA believes that the operator should bear the burden of proving by a preponderance of evidence that the alleged evasion was for a legitimate business purpose, other than for increasing revenue.<sup>1152</sup> Most of those commenting on the issue agreed with the suggestion in the Notice that a parallel rate scheme for basic and for non-basic regulated services might discourage cable operators from evasive retiering.<sup>1153</sup>

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<sup>1148</sup> Falcon Comments at 82-83.

<sup>1149</sup> Time Warner Comments at 91-92. See also Cole Reply at 35-36. Cole argues matter decrease in the number of tier channels could be rate event, triggering a right for dissatisfied subscribers to appeal tier rates to the Commission. Cole Comments at 55, Time-Warner Reply Comments at 64-68 (example of retiering which involve attempted evasion, such as removing service from a tier, without a corresponding reduction in rate, which pushes the per channel fee above the benchmark per channel fee. However, if a cable operator retains the same level of service, but raises the rate, the increase is subject to regulation and cannot therefore be considered an evasion).

<sup>1150</sup> See, e.g., Falcon Comments at 84-85; Nashoba Comments at 142-143; Time Warner Comments at 89-92.

<sup>1151</sup> Austin Comments at 73.

<sup>1152</sup> NATOA Comments at 83-84.

<sup>1153</sup> Notice, 8 FCC Rcd at 537, para. 127. See, e.g., Connecticut Comments at 10; CFA Comments at 112; NATOA Comments at 85; NATOA Reply at 19-20 and fn. 20.

### iii. Discussion

451. We define a prohibited evasion as any practice or action which avoids the rate regulation provisions of the Act or our rules contrary to the intent of the Act or its underlying policies. The rules we are adopting, including in particular the initial rate freeze as the transition to regulation is accomplished, parallel substantive standards for basic tier and cable programming service tiers, and cost based equipment regulations, are all intended, consistent with the mandate of Section 623(h), to address potential evasions, including those that might result from retiering of services. We agree with NATOA, however, that might not be possible to specifically list at the outset all types of potentially evasive practices.<sup>1154</sup> By definition, an evasion is an act attempting to elude scrutiny. Congress contemplated that, as regulation developed, different types of evasive behavior would be likely to evolve.<sup>1155</sup> It thus provided that we should periodically review and revise our regulations on evasion.<sup>1156</sup> As we proposed, we will review our rules two years from their effective date, and every three years thereafter, unless circumstances indicate more or less frequent reviews would be in the public interest.<sup>1157</sup>

452. Franchising authorities and subscribers may address specific instances of evasive behavior in rate regulation proceedings. As NATOA suggests, the operator will have the burden of demonstrating in such cases that the alleged evasion actually was primarily for a legitimate business purpose and not

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<sup>1154</sup> NATOA Comments at 83-84.

<sup>1155</sup> Thus, beyond the rules adopted, we will not attempt to adopt a specific list of prohibited "evasive" actions but will deal with such issues on a case-by-case basis.

<sup>1156</sup> Communications Act, § 623 (h), 47 U.S.C. § 543 (h).

<sup>1157</sup> Notice, 8 FCC Rcd at 537, para. 126. We agree with CFA that the Act obligates us to prevent evasions on an on-going basis. CFA Comments at 112 & n 95. We provide for enforcement mechanisms to carry out this responsibility. However, as a practical and legal matter we cannot and do not conduct rulemakings to change our rules in response to new evasive behaviors on an ongoing basis. Although CFA is unclear on this last point, to the extent it contends that we conduct formal proceedings on an ongoing, open-ended basis, we disagree and decline to do so. We do agree, however, that we will enforce the evasion prohibition continuously on a complaint basis and will adjust our definition and scrutiny of evasions as part of that ongoing process.

simply to evade rate regulation.<sup>1158</sup> This provision for ongoing enforcement, together with our commitment to periodic reviews of our rules one evasions, provides assurance that we will be able to stem any new evasion practices that might arise.

453. However, in order to provide some guidance to the public, franchising authorities, and the industry regarding our interpretation of the Act and our implementing regulations, we address certain practices which have been questioned as evasive behavior in this proceeding. We clarify that all retiering is not potentially evasive. As we stated in the Notice, some operators may have retier to comply with the Act's requirements regarding, for example, the composition of the basic service tier.<sup>1159</sup> Such retiering is not an evasion. Moreover, as many commenters have urged, we have adopted parallel rate regulation for both the basic and cable programming service tiers.<sup>1160</sup> Thus, in the absence of extraordinary circumstances, we do not perceive that operators will have any monetary incentive to shift channels from basic to cable programming service, to the detriment of subscribers.<sup>1161</sup> In addition, operator flexibility to retier is essential to permit needed system improvements. Thus, retiering otherwise permitted under our rules will not be deemed an evasion.

454. We also do not find that retiering effectuated between the date the 1992 Cable Act was enacted and the effective date of our rate regulations is a per se evasion. As noted above, some cable operators may have to retier to comply with the Act.<sup>1162</sup> We also agree with Time Warner that Congress specifically mandated that regulations to prevent rate evasion be

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<sup>1158</sup> NATOA Comments at 83-84.

<sup>1159</sup> Notice, 8 FCC Rcd at 537, para. 127; Communications Act. § 633(a)(7)(A), 47 U.S.C. § 543(a)(7)(A).

<sup>1160</sup> See, e.g., CFA Comments at 112; NATOA Comments at 85.

<sup>1161</sup> There is no evidence that operators would or, as a business matter, could shift programming previously offered as part of a tier to "a la carte" status, i.e., a per-channel or per-program offering, to avoid the rate regulation applicable to tiers. A consumer, moreover, has the ability to choose or veto such programming on an individual channel or program basis. Thus, we do not, in the absence of a particular factual context, decide whether a shift of programming from a tier to an "a la carte" offering in and of itself would constitute evasion.

<sup>1162</sup> Time Warner Reply Comments at 65-66, TCI Reply Comments at 68-70.

enacted within 180 days of the Act's enactment,<sup>1163</sup> suggesting that the provision would not be effective prior to the adoption of our regulations. Moreover, the rate reductions we will be ordering are based on rates in effect immediately prior to the date of enactment of the Act, i.e., on September 30, 1992. Thus, interim retiering that resulted in price increases may not affect the initial rate levels required to be set under our rules in any event.<sup>1164</sup>

455. We also believe that the following practices, if established by the evidence, are evasions: (1) implicit rate increases; (2) a significant decline in customer service without a similar decline in price; and (3) deceptive practices such as improper cost shifting or intentionally misstating revenues. An implicit rate increase would include, for example, a decrease in the number of programming services offered, all other costs being equal, without a decrease in rates.<sup>1165</sup> Similarly, a significant decline in customer service, such as no longer providing a programming guide (all other costs being equal), without an accompanying decrease in price, would be deemed an evasion of our rate regulations.<sup>1166</sup> In these first two instances, an operator, instead of proposing a rate increase subject to our rules, has attempted to earn more profits by decreasing services offered to subscribers. Finally, intentional or grossly negligent misstatements of costs or revenues, or attempts to hide or falsify evidence in a rate proceeding, are attempts to avoid the effect of our rate regulations and will be deemed evasions.

f. Small System Burdens

i. Background

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<sup>1163</sup> Time Warner Reply Comments at 68.

<sup>1164</sup> Because our rate regulations, as adopted, address potentially evasive practices, it is not necessary to codify our evasive policies as a separate rule.

<sup>1165</sup> An operator reducing programming service without a price reduction would have to file for a basic service rate increase if basic service programming was affected, and would be subject to Commission complaint review if cable programming service offerings were decreased.

<sup>1166</sup> An operator reducing service in this fashion would have to file for a de facto rate increase with local franchising authorities if the services in issue were primarily associated with the basic tier, and would be subject to a complaint of unreasonable cable programming service rates if the services in issue were associated with upper, non-premium tiers.

456. Section 623(i) of the Cable Act requires that the Commission develop and prescribe cable rate regulations that reduce the administrative burdens and cost of compliance for cable systems that have 1000 or fewer subscribers.<sup>1167</sup> The Notice sought comment on proposals to exempt small systems from certain administrative, procedural and substantive requirements associated with rate regulation.<sup>1168</sup> We also asked parties to comment on whether we should distinguish between independent- and MSO-owned small systems. In addition, we invited comment on how to measure the size of a cable system, for example by the number of subscribers by an integrated headend, or by franchise area.<sup>1169</sup>

ii. Comments

457. Most municipalities and cable interests generally support relaxing administrative and procedural requirements for small systems.<sup>1170</sup> One commenter suggests that communities with less than 1000 subscribers served by the same system should meet filing requirements jointly.<sup>1171</sup>

458. Cable interests generally favor either a small system exemption from substantive rate regulation for systems with less than 1000 subscribers<sup>1172</sup>, or alternatively, imposition of a benchmark specifically for small systems.<sup>1173</sup> They generally argue that such treatment is justified by the relatively higher costs small systems face.<sup>1174</sup> Some cable interests also argue that if a benchmark is not specifically formulated for small systems, greater latitude to deviate from an

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<sup>1167</sup> Communications Act, §623(i), 47 U.S.C. §543(i).

<sup>1168</sup> Notice, 8 FCC Rcd at 537-38 paras. 128-131.

<sup>1169</sup> Notice, 8 FCC Rcd at 538 para. 133.

<sup>1170</sup> See, e.g., Nashoba Comments at 115; NCTA Comments at 4; NATOA Comments at 87; Bloomingdale Reply at 3; Small Systems Reply at 3; NY State Reply at 6.

<sup>1171</sup> Falcon Comments at 88.

<sup>1172</sup> See, e.g., Nashoba Comments at 113; Adelpia Comments at 110; Fanch Comments at 7; NCTA Comments at 4-5; SCSO Reply at 3.

<sup>1173</sup> See, e.g., Cole Comments at 57; Nashoba Comments at 114; Falcon Comments at 88.

<sup>1174</sup> Cole Comments at 57.

industry benchmark should be permitted.<sup>1175</sup> CATA proposes that the Commission issue a Further Notice of Proposed Rule Making to establish a simple cost justification process for small system rates above a benchmark.<sup>1176</sup> Cole believes that small systems should be able to bypass individual rate proceedings based on a showing that the pertinent subsidiary or MSO owning the system failed to earn undue profit.<sup>1177</sup> Some cable interests favor a presumption that small system rates are reasonable,<sup>1178</sup> and others would extend this presumption to systems larger than 1,000 subscribers.<sup>1179</sup>

459. Municipal interests, including NATOA, oppose either a substantive exemption,<sup>1180</sup> or a presumption that small system rates are reasonable.<sup>1181</sup> Watertown, however, believes that the very smallest systems, those with under 400 subscribers, should be completely exempt from rate regulation. It argues that in such cases, a rate proceeding would be either a major administrative burden or so superficial as to be meaningless.<sup>1182</sup> Some municipalities want to have discretion whether and how to relax requirements.<sup>1183</sup> NTCA, instead of a blanket exemption, proposes that the FCC could require small systems to file or negotiate rates with a franchising authority.<sup>1184</sup>

460. Most cable interests do not believe that we should distinguish between small systems that are independent and

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<sup>1175</sup> Falcon Comments at 88; CATA Comments at 17-18; Nashoba Comments at 114.

<sup>1176</sup> CATA Comments at 21-27.

<sup>1177</sup> Cole at 57.

<sup>1178</sup> See, e.g.; Bloomingdale Reply at 3; SSO Reply at 3.

<sup>1179</sup> See, e.g., CATA Comments at 21-27 (3,500 subscribers or less); Mountain Comments at 1-2 (rural companies with up to 5,000 subscribers per headend); USTA Reply at 9-10; Alaska Reply at 1 (telephone companies providing cable service pursuant to "rural area" exemption).

<sup>1180</sup> NATOA Comments at 19; Municipal Comments at 61.

<sup>1181</sup> Municipal Comments at 61.

<sup>1182</sup> Watertown Reply at 12.

<sup>1183</sup> Municipal Comments at 61.

<sup>1184</sup> NTCA Comments at 6.

those controlled by a large MSO.<sup>1185</sup> They generally argue that the statute does not make such a distinction, and that in reality small systems face the same difficulties regardless of the size of their owners.<sup>1186</sup> However, Northland would distinguish systems controlled by very large MSOs, e.g., those with over a million subscribers.<sup>1187</sup> Municipalities, state and telephone interests generally believe that small system exceptions should apply only to independent-stand alone systems with less than 1,000 subscribers.<sup>1188</sup>

461. On the question of whether to measure the size of small systems on a franchise or integrated headend basis, most cable interests would use a franchise-area basis.<sup>1189</sup> Falcon argues that this harmonizes with the framework of the 1992 Cable Act, which makes the franchise unit the essential unit of rate regulation.<sup>1190</sup> Watertown opposes this approach, arguing that an operator with subscribers in several different jurisdictions in a compact geographic area should be subject to regulation throughout the area. Watertown observes that in such a case it would create confusion if rates were regulated in some jurisdictions but not in others.<sup>1191</sup> Several cable operators and municipal interests would use the number of subscribers served by an integrated headend.<sup>1192</sup>

### iii. Discussion

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<sup>1185</sup> See e.g., Cole Comments at 55-56; CATA Comments at 35-36; NCTA Comments at 84; Continental Comments at 73; TCI Comments at 68; SSO Reply at 11.

<sup>1186</sup> See, e.g., TCI Comments at 68.

<sup>1187</sup> See, e.g., Northland Comments at 18-19.

<sup>1188</sup> See, e.g., NATOA Comments at 88-89; West Virginia Reply at 9 (supporting NATOA's definition); USTA Comments at 17 (only give special relief to small systems that are not affiliated with any of the top 100 MSOs). See also NY State Reply at 5 (law exempts small "companies" rather than "systems").

<sup>1189</sup> See, e.g., Cole Comments at 56; Falcon Reply at 7; SSO Reply at 3; Adelphia II Reply at 65 (community unit approach)

<sup>1190</sup> Watertown Reply at 11.

<sup>1191</sup> Watertown Reply at 11.

<sup>1192</sup> See e.g., Bloomingdale Comments at 4-5; NATOA Comments at 89 (including all headends of a system).

**462. Procedural and Administrative Requirements.** In order to ease the burdens on small system operators, we will permit franchise authorities to exempt small systems from having to file an initial rate schedule with the local franchise authority in the following manner.<sup>1193</sup> Once the franchise authority has been certified to regulate basic rates, it will have the discretion to permit a small system to certify, where appropriate, that its rates for basic service and equipment are reasonable under the FCC's rate standards. We believe local authorities are in the best position to evaluate the cost of compliance with initial rate review on small systems and weigh that cost against the beneficial impact that such a review might have on basic cable service rates. However, contrary to SSO's suggestion,<sup>1194</sup> a small system proposing to increase its basic service rates, or answering a cable programming service complaint,<sup>1195</sup> will continue to be required to follow any notice and other procedural requirements we have established. In cases of a proposed basic rate increase or subscriber complaint, the need to ensure that consumers are adequately protected outweighs our concern that small systems' subscribers not be unduly burdened.<sup>1196</sup> We believe that in light of the expedited complaint and dispute resolution procedures we adopt herein, it is not necessary to streamline these further for small systems, as NCTA suggests. As Falcon suggests, we encourage nearby franchise authorities regulating the same small system to file joint certifications with us,<sup>1197</sup> to help reduce regulatory burdens both for the system and the authorities. In addition, in establishing financial and statistical reporting requirements, as well as leased access reporting obligations, we will consider whether these reports can be abbreviated for small systems.

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<sup>1193</sup> See SDA Comments at 3, 14; Municipal Comments at 62, 65; NATOA Comments at 87; Small Systems Comments at 4-5.

<sup>1194</sup> SSO Reply at 9.

<sup>1195</sup> We believe that local franchising authorities are more likely than the Commission to be familiar with the cable service of a particular operator, such as the level of satisfaction subscribers have with the cable service in their particular franchise area. We thus do not believe that the Commission has the same ability as local authorities to judge whether certification as to the reasonableness of rates would be appropriate.

<sup>1196</sup> We also decline, to adopt SSO's suggestion that all complaints relating to tiered service be considered by the franchising authority in the first instance. We do not believe that the dual jurisdictional scheme established by the Act permits us to do so. SSO Reply at 18; see supra Section II.A.3.(a)(1)(a).

<sup>1197</sup> Falcon Comments at 88.

463. Substantive Requirements. As we describe above, our plan to regulate cable rates is based upon a formula and a table which takes into account the number of subscribers served by a system, the number of channels offered by the system, and the number of satellite-delivered signals carried on the system.<sup>1198</sup> This table expressly takes into account subscriber levels. Thus, our approach adequately responds to comments calling for special treatment of small systems.<sup>1199</sup> We do not agree that complete exemption from substantive rate regulation as some urge<sup>1200</sup> is advisable, as subscribers deserve to be protected from exorbitant charges, regardless of the size of a system. As we explain above, however, the unique characteristics of small systems, including the often higher costs of operating such a system, justify application of a somewhat different standard to them. This difference is reflected in the rate formula we have devised for evaluating the reasonableness of cable rates. Moreover, our rate approach permits the pass-through of many external costs which are beyond the operator's control, as SSO argues.<sup>1201</sup> This should help alleviate the difficulties that small systems with small revenue bases may have in absorbing cost increases over time. We do not believe that our responsibility under the Cable Act to ensure that consumers are protected from unreasonable rates permits us totally to exempt small systems,<sup>1202</sup> even those very small systems with under 400 subscribers, from rate regulation, or to delegate this

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<sup>1198</sup> See supra Section E.

<sup>1199</sup> See, e.g., Cole Comments at 57; CATA Comments at 17-18; Nashoba Comments at 114; Falcon Comments at 88; SBA Reply Comments at 13-14; SCSCO at 4, 6. We will also consider in our Further Notice of Proposed Rulemaking on cost-of-service whether above-the-benchmark cost justifications can be simplified for small systems, as CATA suggests. CATA Comments at 21-27. The Office of Advocacy of the Small Business Administration has filed a motion for acceptance of late filed reply comments. In light of the extraordinary circumstances cited, and the SBA's statutory role in advocating the interests of small business, we grant the motion.

<sup>1200</sup> See e.g., NASHOBA Comments at 113; Adelpia Comments at 110; Small Systems Comments at 4-5; NTCA Comments at 4; Fanch Comments at 7; Falcon Comments at 88.

<sup>1201</sup> SCSCO Reply at 4.

<sup>1202</sup> See generally, West Virginia Reply at 9 (Congress did not intend to exempt small systems from rate regulation, but merely to reduce burdens and cost of compliance). See also, Municipal Comments at 61.

responsibility to franchising authorities, as some argue.<sup>1203</sup> We also believe that a rate methodology that takes into account the special characteristics of cable systems is a more refined regulatory approach than the use of a presumption that small systems' rates are reasonable.<sup>1204</sup>

**464. Small Systems Controlled by MSOs.** We agree with commenters that no distinction should be made between small systems that are independent and those controlled by MSOs. First, the language of the Cable Act does not distinguish between independently owned small systems and those owned by MSOs. Second, the problems faced by small systems serving smaller, often more rural communities occur whether or not the system is owned by an MSO. Operators must still cope with higher costs associated with serving a smaller subscriber base. We agree with NCTA that in light of the decentralized nature of the cable industry, we should not presume that large corporate ownership of a small system automatically would make compliance with our rate regulation rules and procedures less costly.<sup>1205</sup> Therefore, we will apply our small system rules to systems with under 1000 subscribers, regardless of whether the system is an independent one or owned by an MSO.

**465. Measuring Small System Size.** For rate regulation purposes, we will determine system size by a system's principal headend, including any other headends or microwave receive sites that are technically integrated to the system's principal headend,<sup>1206</sup> rather than on a franchise area basis, as urged by

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<sup>1203</sup> See, e.g., SSO Comments at 3-8; Bloomingdale Comments at 4. Our rate formula allows systems to arrive at a permitted tier charge exactly calibrated to their number of subscribers.

<sup>1204</sup> See, e.g., Bloomingdale Comments at 3; SSO Comments at 3-8; ARC Comments at 2, 5; NCTA Comments at 84. We also observe, as West Virginia suggests, that establishing a presumption that small system rates are reasonable would place an extremely difficult burden on franchising authorities or others challenging an operator's rates, as the operator would possess the data necessary to overcome the presumption. West Virginia Reply at 8.

<sup>1205</sup> NCTA Comments at 84-85.

<sup>1206</sup> See, Memorandum Opinion and Order in MM Docket Nos. 91-169 and 85-38, 7 FCC Rcd 8676 (1992) (Cable Technical Reconsideration), See also 47 C.F.R. § 76.5(kk) (defining a technically integrated system as one which receives 75 percent or more of its video channels from a common headend).

several commenters.<sup>1207</sup> This definition will ensure that systems that serve large numbers of subscribers in geographic areas do not qualify for relief merely because the franchise areas comprising the system have a subscriber base of less than 1000. In adopting this definition, we are harmonizing our small system rule with most of our existing regulations on cable system size.<sup>1208</sup> We also believe, contrary to Nashoba's assertions, that the benefits of consolidating operations in an integrated headend are sufficiently great that the loss of small system status alone is unlikely to be a significant deterrent to such improvements.<sup>1209</sup>

g. Grandfathering of Rate Agreements

i. Background

466. The Notice also sought comment on the proper interpretation of Section 623(j) of the Cable Act.<sup>1210</sup> That section provides that the statute and its implementing regulations do not supersede franchising agreements made before July 1, 1990 that authorize regulation of basic cable service rates, if there was no effective competition as of that date. We invited comment on our tentative conclusion that this provision permits a franchising authority with a franchise agreement executed before July 1, 1990 that was regulating basic cable rates at that time to continue regulating basic cable rates for the remaining term of that agreement without certification from the Commission. We asked whether such franchising authorities should be required to notify this Commission that they intend to continue to regulate basic cable rates under the provisions of Section 623(j). We also sought comment on whether an agreement that falls within the terms of Section 623(j) would supersede Commission regulations governing the rates for cable programming services that are not part of the basic tier. Finally, we requested comment on how franchising authorities now regulating rates and not covered by the grandfathering provision of Section

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<sup>1207</sup> See, e.g., SSO Comments at 3; Nashoba Comments at 110-111.

<sup>1208</sup> See, e.g., 47 C.F.R. §76.5(a). Further, we do not believe that Falcon's proposal, to base entitlement to small system relief on area population density, adequately comports with the statutory language. Falcon Comments at 87. See also Nashoba Comments at 112. Section 623(i) applies to systems that have "1,000" or fewer subscribers". (emphasis supplied.)

<sup>1209</sup> Nashoba Comments at 110-111.

<sup>1210</sup> Communications Act, § 623(j), 47 U.S.C. § 543(j).

623(j) should make the transition to rate regulation under our new rules.<sup>1211</sup>

ii. Comments

467. Two of the parties addressing these issues agree with our tentative conclusion that Section 623(j) "grandfathers" only rate agreements in place on July 1, 1990, if the cable system was subject to rate regulation at that time.<sup>1212</sup> On the other hand, six commenters contend that the Commission should broadly construe Section 623(j) as grandfathering any rate regulation agreement in effect upon implementation of the Commission's rules, whether or not the agreement was executed before or after July 1, 1990, as long as there was no effective competition under governing Commission rules. They argue that there is no rational basis for treating agreements concluded after July 1, 1990 differently.<sup>1213</sup> Most commenters also believe that any rules implementing Section 623(j) should apply only to basic cable service, and that any rates for non-basic tiers of cable programming service are subject to exclusive Commission review.<sup>1214</sup>

iii. Discussion

468. We conclude that Section 623(j) authorizes a franchising authority with a franchise agreement executed before July 1, 1990, that was regulating basic cable rates at that time to continue regulating basic cable rates for the remaining term of that agreement. While such a grandfathered rate agreement is in effect, the franchising authority may regulate basic cable rates without following the Commission's substantive rate standards.<sup>1215</sup> In addition, a grandfathered franchising authority will not have to file for certification during the

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<sup>1211</sup> Notice, 8 FCC Rcd at 538-39, para. 135.

<sup>1212</sup> See Newhouse Comments at 47; Cole Reply Comments at 29.

<sup>1213</sup> See Falcon Cable Group Comments at 89-90; Nashoba Comments at 146-47; Time Warner Comments at 93-4; Austin Comments at 76; Adelphia Reply Comments at 83; Cole Reply Comments at 29; Time Warner Reply Comments at 69-70.

<sup>1214</sup> See Time Warner Comments at 93; NASHOBA Comments at 147; Falcon Cable Group Comments at 90.

<sup>1215</sup> Consistent with our decision regarding the impact of grandfathered agreements on cable programming services, infra this section, grandfathered agreements will not be enforceable to the extent they seek to limit a cable operator's ability to retier service offerings.

remaining term of the agreement, but will simply have to notify the Commission of its intent to continue regulating basic cable rates. As we stated in the Notice, this notification will give the Commission the information we need regarding those systems regulated under the 1984 Act to assess the impact of our new regulatory scheme under the 1992 Cable Act.<sup>1216</sup>

469. While many commenters urge us to grandfather rate agreements executed after July 1, 1990, we do not believe that an expansive reading of Section 623(j) is warranted. Such an interpretation conflicts with both the explicit wording of Section 623(j,) and the intent of the Cable Act that local franchising agreements are abrogated unless they conform with the Act and the Commission's Rules.<sup>1217</sup> Moreover, it appears that Section 623(j) was added as a limited exception to permit communities such as Dubuque, Iowa "to maintain [their] very unique rate regulation agreement[s]"<sup>1218</sup> where there had not been effective competition.

470. Likewise, we find that Section 623(j) does not supersede the Commission's regulation of cable programming services. Since the 1984 Cable Act only permitted local franchising authorities to regulate basic rates in instances where there was no effective competition, we do not believe that we can interpret such a grandfathered rate agreement as conferring greater authority today than it did in 1990. Furthermore, the explicit wording of Section 623(j) and its legislative history limit the scope of the grandfathering to basic rate regulation.<sup>1219</sup> Thus, the Commission shall regulate cable programming service rates in all cases, irrespective of whether there is a grandfathered rate agreement regulating basic cable rates.

471. Finally, we recognize that some franchising authorities have been regulating basic cable rates but are not covered by Section 623(j) because their franchise agreements were executed after July 1, 1990. As noted above, we do not believe

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<sup>1216</sup> Communications Act, § 623(k), 47 U.S.C. § 543(k).

<sup>1217</sup> See Section II.A.3.a(1)(b)AA, supra.

<sup>1218</sup> See 138 Cong. Rec. H.6506 (daily ed. July 23, 1992). For cable programming services complaints filed against operators subject to grandfathered rate agreements, we will make an effective competition finding prior to acting on the merits of the complaint. The burden will be on the operator to establish, in its response to the complaint, that effective competition exists in the franchise area.

<sup>1219</sup> See House Report at 66.

that these rate agreements can be grandfathered under Section 623(j). Accordingly, if a franchising authority with such an agreement wishes to continue regulating basic cable rates, it must file for certification pursuant to the 1992 Cable Act and our rules and apply our substantive rate standards. We recognize that this may cause some difficulty for franchising authorities that have recently completed ratemaking proceedings. However, in view of the mandate of Section 623 that local regulation of basic rates must comply with the Commission's new standards, we believe that this result is unavoidable.

#### h. Reports on Average Prices

##### i. Background

472. Section 623(k) of the Cable Act requires the Commission to annually publish statistical reports regarding average cable rates and associated fees, including a comparison of such charges between those systems that are subject to effective competition and those systems that are not subject to effective competition, as determined under Section 623(a)(2) of the Act.<sup>1220</sup> The Notice listed different types of data that we proposed to collect and several ways to obtain such data. We stated that such information might be obtained from trade publications but suggested that information obtained directly from cable operators on an annual basis might be preferable. We also stated that requiring the annual collection of data would be costly for both the industry and the Commission, and proposed that we might collect data from a sample of cable systems rather than from the industry as a whole. We observed that such a collection of data may duplicate in part the data needed to carry out the ongoing rate regulation provisions of the Cable Act and tentatively concluded that we should combine the data requirements on a single form. We invited comment on these proposals and invited commenters to suggest other ways we may obtain the data needed to fulfill the annual reporting requirements specified in Section 623(k).<sup>1221</sup>

##### ii. Comments

473. Only a few commenters address these issues. Of those who did, all oppose using trade publications as a source of data. Cole and Continental emphasize that the data in trade publications are based on voluntary compliance and often

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<sup>1220</sup> Communications Act, § 623 (k), (a)(2), 47 U.S.C. § 543 (k), (a)(2).

<sup>1221</sup> Notice, 8 FCC Rcd at 539.

incomplete reporting.<sup>1222</sup> Continental and TCI state that the Commission should collect data directly from cable operators, but should restrict the breadth of its inquiry and the number of systems queried. TCI contends that a statistically significant random sample should provide adequate information on every variety of cable system.<sup>1223</sup> Cole suggests that a modest, random sample (rotating on an annual basis) should provide adequate information on the range of cable systems.<sup>1224</sup>

474. Several cable operators state that data collection should be by system, and not by franchise area.<sup>1225</sup> Newhouse points out that most operators do not keep detailed information on a franchise-by-franchise basis.<sup>1226</sup> Nashoba also argues that to reduce administrative burden, data collection should be system-wide.<sup>1227</sup> Further, Operators argue that all data requirements should be on a single form, so the operator will know the full extent of the information required.<sup>1228</sup> Newhouse further states that the FCC should not finalize forms in this proceeding but issue a Further Notice so forms can be specifically tailored to regulations adopted in response to the Notice.<sup>1229</sup>

### iii. Discussion

475. In order to comply with the requirements of Section 623(k), we have concluded that we need to collect certain cable system data. These data include: rates charged for basic cable service, cable programming services and other cable programming; fees for converter boxes, remote control units, installation and disconnection; and any other charges for equipment or service levied on subscribers. We will also collect information on system size (measured by number of subscribers), system channel capacity and other characteristics such as percent of distribution plant above or below ground, length of

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<sup>1222</sup> Cole at 58; Continental at 73.

<sup>1223</sup> TCI at 68.

<sup>1224</sup> Cole at 58.

<sup>1225</sup> Adelphia at 152; Nashoba at 150.

<sup>1226</sup> Newhouse at 49.

<sup>1227</sup> Nashoba at 150.

<sup>1228</sup> Nashoba at 150; Newhouse at 50; Continental at 73.

<sup>1229</sup> Newhouse at 50.

distribution plant, subscriber density per mile. <sup>1230</sup> The annual statistical report will consist of a compilation of the above data elements.

476. We agree with commenters that we need to require cable operators to submit the information directly to us on a regular basis. Information obtained directly from cable operators would be more reliable, complete and comparable than that obtained, for example, from trade publications. We recognize that commenters unanimously support collecting information on a per system rather than a per franchise basis. However, our recent experience with our 1992 Cable Survey indicates that the necessary information is indeed available by franchise area. We further believe that the franchise is the appropriate unit to examine, because franchise authority-imposed costs and rate regulations may vary among franchises.

477. We will collect this information from cable operators on either a sample basis or from the industry as a whole. We will also solicit specific information from cable operators on their leased access channel usage and rates. This information collection may, or may not, be part of the process whereby data relating to system rate and financial information is collected for purposes of compliance with Section 623(g) (collection of information).

i. Effective Date

i. Background

478. The Cable Act of 1992 states that the amendments to Section 623, that mandate rate regulation by the Commission of cable systems that are not subject to effective competition, shall become effective 180 days from the date of enactment of the Act.<sup>1231</sup> Section 3 of the Act requires the Commission to prescribe regulations governing the rates for basic and cable programming service, as well as the prevention of evasions within 180 days of enactment.<sup>1232</sup> In order to meet statutory deadlines, we proposed in the Notice, that we adopt implementing rules prior to April 3, 1993, and make them "effective as rapidly thereafter as is reasonably feasible."<sup>1233</sup> We sought comment on this proposal and on what, if any, interim requirements may be

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<sup>1230</sup> We will address this issue in more detail in a further notice of proposed rulemaking.

<sup>1231</sup> Cable Act of 1992, § 3(b).

<sup>1232</sup> Cable Act of 1992, § 3(b).

<sup>1233</sup> Notice, 8 FCC Rcd at 539, para. 143.

necessary for us to impose until the new rules come into force.<sup>1234</sup> We also tentatively concluded that although we must establish regulations within 180 days of the date of enactment of the Cable Act of 1992, we are not required by the Act to implement all "steps that cable systems must take to meet the obligations of the statute or our rules must be completed on that date."<sup>1235</sup>

ii. Comments

479. Cable operators, in general, maintain that the Commission should provide a transition period prior to final implementation. They argue that the rules issued in this proceeding should be introduced gradually because this rulemaking will require significant changes in how cable systems conduct their operations.<sup>1236</sup> Some of these parties point out that in prior proceedings the Commission has allowed a transitional approach to phase-in rules.<sup>1237</sup> Some cable operators argue for a long implementation period prior to the final rules adopted in this proceeding take effect. Many cable operators argue for a six month waiting period before any of our rate regulation rules become effective.<sup>1238</sup> This time period, they argue, will permit cable operators and the Commission to adapt to the new regulatory regime. NCTA states that such a delay is consistent with the Cable Act of 1992, which it asserts, simply requires promulgation of rules within 180 days of the day the Act was enacted.<sup>1239</sup>

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<sup>1234</sup> Notice, 8 FCC Rcd at 539, para. 143.

<sup>1235</sup> Notice, 8 FCC Rcd at 539-540, para. 143.

<sup>1236</sup> See, e.g., CIC Comments at 9-10; NCTA Comments at 85; Nashoba Comments at 151-152; AdelpiaII Comments at 155-156; Cole Comments at 61; Armstrong Comments at 37; Intermedia Comments at 38-39; Continental Reply Comments at 87; Comcast Comments at 65-66; and Falcon Comments at 93.

<sup>1237</sup> See, e.g., Comcast Comments at 69-70, citing Second Computer Inquiry, 84 F.C.C. 2d 50, 66 (1980); Amendment to Part 69 of the Rules, 2 F.C.C. Rcd 6447, 6457 (1987); MTS and WATS Market Structure (Phase I), 93 F.C.C. 2d 241, 283-297 (1983), recon. 97 F.C.C. 2d 682 (1983).

<sup>1238</sup> See, e.g., Continental Comments at 74; NCTA Comments at 85; Nashoba Comments at 153; AdelpiaII Comments at 157; Cole Comments at 62; Continental Reply Comments at 90; Comcast Comments at 72; and Falcon Comments at 94.

<sup>1239</sup> NCTA Comments at 85; see also CIC Comments at 10; Continental Comments at 74-75; Cole Comments at 62; Continental Reply Comments at 89; and Comcast Comments at 69.