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Subpart N Cable Rate Regulation

§ 76.900 Temporary freeze of cable rates.

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under Section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined under rates in effect on April 5, 1993, for a period of 120 days.

(b) The average monthly subscriber bill shall be calculated by determining for a monthly billing cycle the sum of all billed monthly charges for all cable services subject to regulation under Section 623 of the Communications Act and dividing that sum by the number of subscribers receiving any of those services. The average monthly subscriber bill determined under rates in effect on April 5, 1993, shall be calculated based on customer charges for the most recent monthly billing cycle ending prior to April 5, 1993.

§ 76.901 Definitions.

(a) Basic service. The basic service tier shall, at a minimum, include all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system) any public, educational, and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming signals a service added to the basic tier by the cable operator.

(b) Cable programming service. Cable programming service includes any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

(1) Video programming carried on the basic service tier as defined in this section;

(2) Video programming offered on a pay-per-channel or pay-per-program basis; or

(3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:

(i) Consists of commonly-identified video programming; and

(ii) Is not bundled with any regulated tier of service.

(c) Small system. A small system is a cable television system that serves fewer than 1,000 subscribers. The service area of a small system shall be determined by the number of subscribers that are served by a system's principal headend, including any other headends or microwave receive sites that are technically integrated to the system's principal headend.

§ 76.905 Standards for identification of cable systems subject to effective competition.

(a) Only the rates of cable systems that are not subject to effective competition may be regulated.

(b) A cable system is subject to effective competition when any one of the following conditions is met:

(1) Fewer than 30 percent of the households in its franchise area subscribe to the cable service of a cable system.

(2) The franchise area is:

(i) Served by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of the households in the franchise area; and

(ii) The number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.

(3) A multichannel video programming distributor, operated by the franchising authority for that franchise area, offers video programming to at least 50 percent of the households in the franchise area.

(c) Each separately billed or billable customer will count as a household subscribing to or being offered video programming services, with the exception of multiple dwelling buildings billed as a single customer. Individual units of multiple dwelling buildings will count as separate households.

(d) A multichannel video program distributor, for purposes of this section, is an entity such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a video dialtone service provider, or a satellite master antenna television service provider that makes available for purchase, by subscribers or customers, multiple channels of video programming.

(e) Service of a multichannel video programming distributor will be deemed offered:

(1) When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and

(2) When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.

(f) For purposes of determining the number of households subscribing to the services of a multichannel video programming distributor other than the largest multichannel video programming distributor, under para. (b)(2)(ii) of this section, the number of subscribers of all multichannel video programming distributors that offer service to at least 50 percent of the households in the franchise area will be aggregated.

(g) In order to offer comparable programming within the meaning of para. (b)(2)(i) of this section, a competing multichannel video programming distributor must offer at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.

<u>§ 76.906 Presumption of no effective competition</u>.

In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.

<u>§ 76.910 Franchising authority certification</u>.

(a) A franchising authority must be certified by the Commission in order to regulate the basic service tier and associated equipment of a cable system within its jurisdiction.

(b) To be certified, the franchising authority must file with the Commission a written certification that:

(1) The franchising authority will adopt and administer regulations with respect to the rates for the basic service tier that are consistent with the regulations prescribed by the Commission for regulation of the basic service tier;

(2) The franchising authority has the legal authority to adopt, and the personnel to administer, such regulations;

(3) Procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties; and

(4) The cable system in question is not subject to effective competition. Unless a franchising authority has actual knowledge to the contrary, the franchising authority may rely on the presumption in § 76.906 that the cable operator is not subject to effective competition.

(c) The written certification described in para. (b) of this section shall be made by filing the FCC form designated for that purpose. The form must be filed by

(1) Registered mail, return receipt requested, or

(2) Hand-delivery to the Commission and a date-stamped copy obtained. The date on the return receipt or on the date-stamped copy is the date filed.

(d) A copy of the certification form described in para. (c) of this section must be served on the cable operator before or on the same day it is filed with the Commission.

(e) Unless the Commission notifies the franchising authority otherwise, the certification will become effective 30 days after the date filed, provided, however, that the franchising authority may not regulate the rates of a cable system unless it:

(1) Adopts regulations:

(i) Consistent with the Commission's regulations governing the basic tier; and

(ii) Providing a reasonable opportunity for consideration of the views of interested parties, within 120 days of the effective date of certification; and

(2) Notifies the cable operator that the authority has been certified and has adopted the regulations required by paragraph (e)(1) of this section.

(f) If the Commission denies a franchising authority's certification, the Commission will notify the franchising authority of any revisions or modifications necessary to obtain approval.

§ 76.911 Petition for reconsideration of certification.

(a) A cable operator (or other interested party) may challenge a franchising authority's certification by filing a petition for reconsideration. The petition may allege either of the following:

(1) The cable operator is not subject to rate regulation because effective competition exists as defined in § 76.905.

(2) The franchising authority does not meet the certification standards set forth in 47 U.S.C. § 543(a)(3).

(b)(1) The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition, as defined in § 76.905, exists in the franchise area.

(2) For purposes of paragraph (a)(1) of this section, if the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days. Such responses may be limited to numerical totals.

(c) Stay of rate regulation.

(1) The filing of a petition for reconsideration pursuant to paragraph (a)(1) of this section will automatically stay the imposition of rate regulation pending the outcome of the reconsideration proceeding.

(2) A petitioner filing pursuant to paragraph (a)(2) of this section may request a stay of rate regulation.

(3) In any case in which a stay of rate regulation has been granted, if the petition for reconsideration is denied, the cable operator may be required to refund any rates or portion of rates above the permitted tier charge which were collected from the date the petition was filed.

(d) The filing of a petition for reconsideration alleging the presence of effective competition based on frivolous grounds is prohibited, and may be subject to forfeitures.

(e) If the Commission upholds a challenge to a certification filed pursuant to paragraph (a)(2) of this section, the Commission will notify the franchising authority of the revisions necessary to secure approval and provide the authority an opportunity to amend its

certification however necessary to secure approval. Provided, however, that pending approval of certification, the Commission will assume jurisdiction over basic cable service rates in that franchise area.

§ 76.912 Joint certification.

(a) Franchising authorities may apply for joint certification and may engage in joint regulation, including, but not limited to, joint hearings, data collection, and ratemaking. Franchising authorities jointly certified to regulate their cable system(s) may make independent rate decisions.

(b) Franchising authorities may apply for joint certification regardless of whether the authorities are served by the same cable system or by different cable systems and regardless of whether the rates in each franchising area are uniform.

§ 76.913 Assumption of jurisdiction by the Commission.

(a) Upon denial or revocation of the franchising authority's certification, the Commission will regulate rates for cable services and associated equipment of a cable system not subject to effective competition, as defined in § 76.905, in a franchise area. Such regulation by the Commission will continue until the franchising authority has obtained certification or recertification.

(b) A franchising authority unable to meet certification standards may petition the Commission to regulate the rates for basic cable service and associated equipment of its franchisee when:

(1) The franchising authority lacks the resources to administer rate regulation; provided, however, that the request must be accompanied by a demonstration that franchise fees are insufficient to fund any additional activities required to administer basic service rate regulation; or

(2) The franchising authority lacks the legal authority to regulate basic service rates; provided, however, that the authority must submit with its request a statement detailing the nature of the legal infirmity.

(c) The Commission will regulate basic service rates pursuant to this Section until the franchising authority qualifies to exercise jurisdiction pursuant to § 76.916.

§ 76.914 Revocation of certification.

(a) A franchising authority's certification shall be revoked if:

(1) After the franchising authority has been given a reasonable opportunity to comment, it is determined that state and local laws

and regulations do not conform to the Commission's rate regulations governing cable rates, §§ 76.922 through 76.925.

(2) After being given an opportunity to cure the defect, a franchising authority fails to fulfill one of the three conditions for certification, set forth in 47 U.S.C. § 543(a)(3), or any of the provisions of §§ 76.910(b).

(b) In all cases of revocation, the Commission will assume jurisdiction over basic service rates until an authority becomes recertified. The Commission will also notify the franchising authority regarding the corrective action that may be taken.

(c) A petition for revocation must be served on the franchising authority and contain a statement that service was made. The franchising authority may file an opposition within 30 days of filing of the petition. A reply may be filed within 15 days of filing of the opposition.

(d) While a petition for revocation is pending, and absent grant of a stay, the franchising authority may continue to regulate the basic service rates of its franchisees.

§ 76.915 Change in status of cable operator.

(a) A cable operator that becomes subject to effective competition, may petition the franchising authority for change in its regulatory status. The operator bears the burden of proving the existence of effective competition. Oppositions may be filed within 15 days of public notice of the filing of the petition, and must be served on the operator. Cable operators may reply within 7 days of filing of oppositions.

(b) Franchising authority decisions on petitions for change in status must be made within 30 days after the pleading cycle set forth in paragraph (a) of this section closes. Franchising authorities must notify the Commission within ten days of any decision changing status. Unless the Commission receives an opposition to such change in status, the decision will become final 30 days after adoption by the franchising authority.

(c) After an initial determination of the franchising authority that effective competition exists becomes final, the franchising authority will then cease regulating basic cable service rates, and the Commission's regulatory authority over cable programming services for the system in the franchise area will also cease.

(d) A cable operator and a franchising authority may submit a joint statement that effective competition exists. The joint statement must stipulate which of the three statutory tests for effective competition has been met and explain how the test has been satisfied. These joint statements will become final decisions within

30 days of filing with the Commission, unless challenged by an interested party.

(e) Cable operators denied a change in status by a franchising authority may seek review of that finding at the Commission by filing a petition for revocation.

(f) In cases where a local franchising authority has not been certified to regulate rates, a cable operator may petition the Commission for change in its regulatory status. The time periods in paragraph (a) of this section will apply to oppositions and replies concerning these petitions.

§ 76.916 Petition for recertification.

(a) After its request for certification has been denied or its existing certification has been revoked, a franchising authority wishing to assume jurisdiction to regulate basic service and associated equipment rates must file a "Petition for Recertification" accompanied by a copy of the earlier decision denying or revoking certification.

(b) The petition must:

(1) Meet the requirements set forth in 47 U.S.C. § 543(a)(3);

(2) State that the cable system is not subject to effective competition; and

(3) Contain a clear showing, supported by either objectively verifiable data such as a state statute, or by affidavit, that the reasons for the earlier denial or revocation no longer pertain.

(c) The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification.

(d) Oppositions may be filed within 15 days after the petition is filed, and must be served on the petitioner. Replies may be filed within seven days of filing of oppositions, and must be served on the opposing party(ies).

§ 76.920 Composition of the basic tier.

Every subscriber of a cable system must subscribe to the basic tier in order to subscribe to any other tier of video programming or to purchase any other video programming.

§ 76.921 Buy-through of other tiers prohibited.

(a) No cable system operator may require the subscription to any tier other than the basic service tier as a condition of subscription

to video programming offered on a per channel or per program charge basis. A cable operator may, however, require the subscription to one or more tiers of cable programming services as a condition of access to one or more tiers of cable programming services.

(b) A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per-channel or per-program charge basis.

(c) Prior to October 5, 2002, the provisions of paragraph (a) of this section shall not apply to any cable system that lacks the capacity to offer basic service and all programming distributed on a per channel or per program basis without also providing other intermediate tiers of service:

(1) By controlling subscriber access to nonbasic channels of service through addressable equipment electronically controlled from a central control point or

(2) Through the installation, noninstallation, or removal of frequency filters (traps) at the premises of subscribers without other alteration in system configuration or design and without causing degradation in the technical quality of service provided.

(d) Any retiering of channels or services that is not undertaken in order to accomplish legitimate regulatory, technical, or customer service objectives and that is intended to frustrate or has the effect of frustrating compliance with paragraphs (a) through (c) of this Section is prohibited.

<u>§ 76.922 Rates for the basic service tier and cable programming services Tiers.</u>

(a) <u>Basic and cable programming service tier rates</u>. Basic service tier and cable programming service rates shall be subject to regulation by the Commission and by state and local authorities, as is appropriate, in order to assure that they are in compliance with the requirements of 47 U.S.C. § 543. Rates that are demonstrated, in accordance with these rules, not to exceed the "Initial Permitted Per Channel Charge" or the "Subsequent Permitted Per Channel Charge" as described below, or the equipment charges as specified in § 76.923, will be accepted as in compliance. The maximum monthly charge per subscriber for a tier of regulated programming services offered by a cable system shall consist of a permitted per channel charge multiplied by the number of channels on the tier, plus a charge for franchise fees. The maximum monthly charges for regulated programming services shall not include any charges for equipment or installations. Charges for equipment and installations are to be calculated separately pursuant to § 76.923 of these rules.

(b) Initial permitted per channel charge.

(1) The permitted per channel charge on the initial date of regulation shall be, at the election of the cable operator, either: (1) a charge determined pursuant to a cost-of-service proceeding; or (2) the charge specified in subsection (i), (ii), or (iii) below, as applicable:

(i) if the operator's per channel charge for regulated programming services and equipment in effect on the date of initial regulation is equal to or below the benchmark per channel charge, as adjusted forward for inflation from September 30, 1992 to the date of initial regulation, then the permitted per channel charge shall be the per channel charge in effect on the date of initial regulation, adjusted for equipment.

(ii) if (1) the operator's per channel charge for regulated programming services and equipment in effect on the date of initial regulation is above the benchmark per channel charge, as adjusted forward for inflation from September 30, 1992 to the date of initial regulation, and (2) the operator's per channel charge for regulated programming services and equipment in effect on September 30, 1992 was above the benchmark per channel charge, then the permitted per channel charge is nine-tenths of the per channel charge in effect on September 30, 1992, but no lower than the benchmark per channel charge, additionally adjusted for inflation from September 30, 1992 to the initial date of regulation, for equipment, and for any changes in the number of channels offered on all regulated tiers.

(iii) if (1) the operator's per channel charge for regulated programming services and equipment in effect on the date of initial regulation is above the benchmark per channel charge, as adjusted forward for inflation from September 30, 1992 until the initial date of regulation, and (2) the operator's per channel charge for regulated programming services and equipment in effect on September 30, 1992 was below the benchmark per channel charge, then the permitted per channel charge is the benchmark rate per channel adjusted for inflation from September 30, 1992 to the initial date of regulation, for equipment, and for any changes in the number of channels offered on all regulated tiers.

(2) For purposes of this section, the initial date of regulation for the basic service tier shall be the date on which local notice is given pursuant to § 76.910 of our rules, that the provision of the basic service tier is subject to regulation. For a cable programming services tier, the initial date of regulation shall be the first date on which a complaint on the appropriate form is filed with the Commission concerning rates charged for the cable programming services tier.

(3) For purposes of this section, rates in effect on the initial date of regulation or on September 30, 1992 shall be the rates charged to subscribers for service received on that date.

(c) Subsequent permitted per channel charge. After the initial date of regulation, the permitted per channel charge for regulated programming services shall be, at the election of the cable operator, either: (1) a per channel rate determined pursuant to a cost-of-service showing, or (2) the prior permitted per channel charge previously approved by a regulatory authority, adjusted for inflation and external costs in accordance with the price cap requirements set forth in subsection (d) below.

(d) Price cap requirements.

(1) Inflation adjustments. Permitted per channel charges for regulated programming services may be adjusted periodically on account of inflation. Adjustments to permitted per channel charges on account of inflation shall be based on changes in the Gross National Product Price Index published by the Bureau of Economic Analysis of the United States Department of Commerce.

(2) External costs. Permitted per channel charges for regulated programming services may also be adjusted for changes in external costs measured on a per channel per subscriber basis. To the extent external cost increases are greater or less than the GNP-PI for the relevant period, the per-channel charge will be adjusted accordingly. Per channel charges may not be increased if external costs increase at a rate less than inflation. Permitted per channel charges also shall be decreased on account of external costs to the extent such costs decrease from previous levels.

(i) Categories. External Costs shall consist of costs in the following categories: (1) state and local taxes applicable to provision of cable television service; (2) franchise fees; (3) costs of complying with franchise requirements, including costs of providing public, educational, and governmental access channels as required by the franchising authority; (4) retransmission consent fees; and (5) programming costs.

(ii) The permitted per channel charge for a tier of regulated programming services shall be adjusted on account of programming costs and retransmission consent fees only for programming or broadcast signals offered on that tier.

(iii) The permitted per channel charge shall not be adjusted for costs of retransmission consent fees or changes in those fees incurred prior to October 6, 1994.

(iv) The starting date for adjustments on account of external costs for a tier of regulated programming service shall be the initial date of regulation of the tier or 180 days from the effective date of

these rules, if the initial date of regulation occurs on or after 180 days from the effective date of these rules.

(v) Changes in franchise fees shall not result in an adjustment to permitted per channel charges, but rather shall be calculated separately as part of the maximum monthly charge per subscriber for a tier of regulated programming service.

(vi) Adjustments to permitted per channel charges on account of increases in costs of programming obtained from affiliated programmers, as defined in § 76.901 of the rules, shall be the lesser of actual increases or the previous permitted rate level increased by the amount of inflation.

(vii) Adjustments to permitted per channel charges on account of increases in costs of programming shall be further adjusted to reflect any revenues received by the operator from the programmer.

<u>§ 76.923 Rates for equipment and installation used to receive the basic service tier.</u>

(a) <u>Scope</u>. The equipment regulated under this section consists of all equipment in a subscriber's home that is used to receive the basic service tier, regardless of whether such equipment is additionally used to receive other tiers of regulated programming service and/or unregulated service. Such equipment shall include, but is not limited to:

(1) converter boxes;
(2) remote control units;
(3) connections for additional television receivers; and
(4) other cable home wiring.

Subscriber charges for such equipment shall not exceed charges based on actual costs in accordance with the requirements set forth below.

(b) <u>Unbundling</u>. A cable operator shall establish rates for remote control units, converter boxes, other customer equipment, installation, and additional connections separate from rates for basic tier service. In addition, the rates for such equipment and installations shall be unbundled one from the other.

(c) <u>Equipment basket</u>. A cable operator shall establish an Equipment Basket, which will include all costs associated with providing customer equipment and installation under this section.

(1) Equipment Basket costs shall be limited to the direct and indirect material and labor costs of providing, leasing, installing, repairing, and servicing customer equipment, as determined in accordance with the cost accounting and cost allocation requirements of § 76.924. The Equipment Basket shall not include general

administrative overhead including general marketing expenses. The Equipment Basket shall include a reasonable profit.

(d) Hourly service charge. A cable operator shall establish charges for equipment and installation using the Hourly Service Charge (HSC) methodology. The HSC shall equal the operator's annual Equipment Basket costs, excluding the purchase cost of customer equipment, divided by the total person hours involved in installing, repairing, and servicing customer equipment during the same period. The HSC is calculated according to the following formula:

$$HSC = \frac{EB - CE}{H}$$

Where, EB = annual Equipment Basket Costs; CE = annual purchase cost of all customer equipment; and H = person hours involved in installing and repairing equipment per year. The purchase cost of customer equipment shall include the cable operator's invoice price plus all other costs incurred with respect to the equipment until the time it is provided to the customer.

(e) Installation charges. Installation charges shall be either:

(i) the HSC multiplied by the actual time spent on each individual installation; or

(ii) the HSC multiplied by the average time spent on a specific type of installation.

(f) Remote charges. Monthly charges for rental of a remote control unit shall consist of the average annual unit purchase cost of the type of remote leased, including acquisition price and incidental costs such as sales tax, financing and storage up to the time it is provided to the customer, added to the product of the HSC times the average number of hours annually repairing or servicing a remote, divided by 12 to determine the monthly lease rate for a remote according to the following formula:

$$\text{Monthly Charge} = \frac{UCE + (HSC \times HR)}{12}$$

Where, HR = average hours repair per year; and UCE = average annual unit cost of remote. Separate charges shall be established for each significantly different type of remote control unit.

(g) Other equipment charges. The monthly charges for rental of converter boxes and other customer equipment shall be calculated in the same manner as for remote control units. Separate charges shall be established for each significantly different type of converter box

and each significantly different type of other customer equipment.

(h) Additional connection charges. The costs of installation and monthly use of additional connections shall be recovered as charges associated with the installation and equipment cost categories, and at rate levels determined by the actual cost methodology presented in the foregoing subsections (e), (f), and (g). An operator may recover additional programming costs and the costs of signal boosters on the customers premises, if any, associated with the additional connection as a separate monthly unbundled charge for additional connections.

(i) Charges for equipment sold. A cable operator may sell customer premises equipment to a subscriber. The equipment price shall recover the operator's cost of the equipment, including costs associated with storing and preparing the equipment for sale up to the time it is sold to the customer, plus a reasonable profit. An operator may sell service contracts for the maintenance and repair of equipment sold to subscribers. The charge for a service contract shall be the HSC times the estimated average number of hours for maintenance and repair over the life of the equipment.

(j) Promotions. A cable operator may offer equipment or installation at charges below those determined under subsections (e) - (g), above, as long as those offerings are reasonable in scope in relation to the operator's overall offerings in the Equipment Basket and not unreasonably discriminatory. Operators may not recover the cost of a promotional offering by increasing charges for other Equipment Basket elements, or by increasing programming service rates above the maximum monthly charge per subscriber prescribed by these rules. As part of a general cost-of-service showing, an operator may include the cost of promotions in its general system overhead costs.

(k) Franchise fees. Equipment charges may include a properly allocated portion of franchise fees.

§ 76.924 - Cost accounting and cost allocation requirements.

(a) Applicability. The requirements of this section are applicable to cable operators for which the basic service tier is regulated by local franchising authorities or the Commission, or, with respect to a cable programming services tier, for which a complaint has been filed with the Commission. The requirements of this section are applicable for purposes of rate adjustments on account of external costs and for cost-of-service showings.

(b) Generally accepted accounting principles. Cable operators shall maintain their accounts in accordance with generally accepted accounting principles, except as otherwise directed by the Commission.

(c) Accounts required. Cable operators shall maintain accounts in a manner that will enable identification of appropriate costs and application of the Commission's cost assignment and allocation procedures, to cost categories necessary for rate adjustments due to changes in external costs and for cost-of-service showings. Such categories shall be sufficiently detailed and supported to permit verification and audit against the company's accounting records.

(d) Accounting level. Except to the extent indicated below, cable operators shall aggregate expenses and revenues at either the franchise, system, regional, or company level in a manner consistent with practices of the operator as of April 3, 1992. However, in all events, cable operators shall identify at the franchise level their costs of franchise requirements, franchise fees, local taxes, and local programming.

(e) Cost allocation requirements.

(1) For purposes of establishing expenses at the franchise level, cable operators shall allocate expenses and revenues aggregated at higher levels to the franchise level based on the ratio of the total number of subscribers served at the franchise level to the total number of subscribers served at the higher level.

(2) Except to the extent indicated below, all categories of costs allocated to, or identified at, the franchise level shall be allocated to the basic service tier based on the ratio of channels in the basic tier to the total number of channels offered in the franchise area, including nonregulated and leased commercial access channels. These costs shall be allocated to each tier of cable programming services based on the ratio of channels in that tier to the total number of channels offered in the franchise area.

(3) Costs of programming and retransmission consent fees, however, shall be allocated only to the tier on which the programming or broadcast signal at issue is offered.

(4) Costs of franchise fees shall be allocated among equipment and installations, program service tiers and subscribers in a manner that is most consistent with the methodology of assessment of franchise fees by local authorities.

(5) Costs of public, educational, and governmental access channels carried on the basic tier shall be directly assigned to the basic tier where possible.

(f) Common costs. Expenses which cannot be assigned to any single expense or service category shall be described as common costs. Common costs shall be allocated to expense categories as follows:

(1) Wherever possible, common costs are to be allocated to service cost categories based on direct analysis of the origin of the costs themselves.

(2) When direct analysis is not possible, common costs shall, if possible, be allocated to service cost categories based on an indirect, cost-causative linkage to other costs directly assigned or allocated to the service cost category.

(3) When neither direct nor indirect measures of cost allocation can be found, common costs shall be allocated to each service cost category based on the ratio of all costs directly assigned and attributed to a service cost category over total costs directly assignable and attributable.

(g) Unrelated expenses and revenues. Cable operators shall exclude from cost categories used to develop rates for the provision of regulated cable service, equipment, and leased commercial access, any direct or indirect expenses and revenues not related to the provision of such services. Common costs of providing regulated cable service, equipment, and leased commercial access and unrelated activities shall be allocated between them in accordance with subsection (f).

(h) Part-time channels. In situations where a single channel is divided on a part-time basis and is used to deliver service associated with different tiers or with pay per channel or pay per view service, a reasonable and documented allocation of that channel between services shall be required along with the associated revenues and costs.

§ 76.925 Costs of franchise requirements.

(a) The costs of satisfying franchise requirements to support public, educational, and governmental channels shall consist of the sum of: (1) all per channel costs for the number of channels used to meet franchise requirements for public, educational, and governmental channels; (2) any direct costs of meeting such franchise requirements; and (3) a reasonable allocation of general and administrative overhead.

(b) The costs of satisfying any other requirement under the franchise shall consist of the direct and indirect costs including a reasonable allocation of general and administrative overhead.

§ 76.930 Initiation of review of basic cable service and equipment rates.

(a) A cable operator shall file its schedule of rates for the basic service tier and associated equipment with a franchising authority within 30 days of receiving written notification from the franchising authority that the franchising authority has been

certified by the Commission to regulate rates for the basic service tier.

§ 76.931 Notification of basic tier availability.

A cable operator shall provide written notification to subscribers of the availability of basic tier service by September 19, 1993, or three billing cycles from June 21, 1993, and to new subscribers at the time of installation. This notification shall include the following information:

(1) That basic tier service is available;

(2) The cost per month for basic tier service;

(3) A list of all services included in the basic service tier.

§ 76.932 Notification of proposed rate increase.

A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

§ 76.933 Franchising authority review of basic cable rates and equipment costs.

(a) After a cable operator has submitted for review its existing rates for the basic service tier and associated equipment costs, or a proposed increase in these rates (including increases in the baseline channel change that results from reductions in the number of channels in a tier), the existing rates will remain in effect or the proposed rates will become effective after 30 days from the date of submission; provided, however, that the franchising authority may toll this 30-day deadline for an additional time by issuing a brief written order as described in paragraph (b) within 30 days of the rate submission explaining that it needs additional time to review the rates.

(b) If the franchising authority is unable to determine, based upon the material submitted by the cable operator, that the existing or proposed rates are within the Commission's permitted basic service tier charge or actual cost of equipment as defined in §§ 76.922 and 76.923, or if a cable operator has submitted a cost-of-service showing pursuant to §§ 76.937(c) and 76.924, seeking to justify a rate above the Commission's basic service tier charge as defined in §§ 76.922 and 76.923, the franchising authority may toll the 30-day deadline in paragraph (a) of this section to request and/or consider additional information or to consider the comments from interested parties as follows:

(1) For an additional 90 days in cases not involving cost-of-service showings; or

(2) For an additional 150 days in cases involving cost-of-service showings.

(c) If a franchising authority has availed itself of the additional 90 or 150 days permitted in paragraph (b) of this section, and has taken no action within these additional time periods, then the proposed rates will go into effect at the end of the 90 or 150 day periods, or existing rates will remain in effect at such times, subject to refunds if the franchising authority subsequently issues a written decision disapproving any portion of such rates, provided, however, that in order to order refunds, a franchising authority must have issued a brief written order to the cable operator by the end of the 90 or 150-day period permitted in paragraph (b) of this section directing the operator to keep an accurate account of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid.

§ 76.934 Small systems.

A franchising authority that has been certified, pursuant to § 76.910 to regulate rates for basic service and associated equipment may permit a small system as defined in section 76.901 to certify that the small system's rates for basic service and associated equipment comply with § 76.922, the Commission's substantive rate regulations.

§ 76.935 Participation of interested parties.

In order to regulate basic tier rates or associated equipment costs, a franchising authority must have procedural laws or regulations applicable to rate regulation proceedings that provide a reasonable opportunity for consideration of the views of interested parties. Such rules must take into account the 30, 120, or 180-day time periods that franchising authorities have to review rates under § 76.933.

§ 76.936 Written decision.

(a) A franchising authority must issue a written decision in a ratemaking proceeding whenever it disapproves an initial rate for the basic service tier or associated equipment in whole or in part, disapproves a request for a rate increase in whole or in part, or approves a request for an increase in whole or in part over the objections of interested parties. A franchising authority is not required to issue a written decision that approves an unopposed existing or proposed rate for the basic service tier or associated equipment.

(b) Public notice must be given of any written decision required in paragraph (a), including releasing the text of any written decision to the public.

§ 76.937 Burden of proof.

(a) A cable operator has the burden of proving that its existing or proposed rates for basic service and associated equipment comply with 47 U.S.C. § 543, and §§ 76.922 and 76.923.

(b) For an existing or a proposed rate for basic tier service or associated equipment that is within the permitted tier charge and actual cost of equipment as set forth in §§ 76.922 and 76.923, the cable operator must submit the appropriate FCC form.

(c) For an existing or a proposed rate for basic tier service that exceeds the permitted tier charge as set forth in §§ 76.922 and 76.923, the cable operator must submit a cost-of-service showing to justify the proposed rate.

§ 76.938 Proprietary information.

A franchising authority may require the production of proprietary information to make a rate determination and in such cases must apply procedures analogous to those set forth in § 0.459 regarding requests for confidentiality.

§ 76.940 Prospective rate reduction.

A franchising authority may order a cable operator to implement a reduction in basic service tier or associated equipment rates where necessary to bring rates into compliance with the standards set forth in §§ 76.922 and 76.923.

§ 76.941 Rate prescription.

A franchising authority may prescribe a reasonable rate for the basic service tier or associated equipment after it determines that a proposed rate is unreasonable.

§ 76.942 Refunds.

(a) A franchising authority may order a cable operator to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted tier charge or above the actual cost of equipment, unless the operator has submitted a cost-of-service showing which justifies the rate charged as reasonable. Before ordering a cable operator to refund previously paid rates to subscribers, a franchising authority must give the operator notice and opportunity to comment.

(b) An operator's liability for refunds is limited to a one-year period, <u>except that</u> an operator that fails to comply with a valid rate order issued by a franchising authority or the Commission shall be liable for refunds commencing from the effective date of such order until such time as it complies with such order.

(c) The refund period shall run as follows:

(1) From the date the operator implements a prospective rate reduction back in time to June 21, 1993, or one year, whichever is shorter.

(2) From the date a franchising authority issues an accounting order pursuant to § 76.933(c), and ending on the date the operator implements a prospective rate reduction ordered by a franchising authority or one year, whichever is shorter.

(d) The cable operator, in its discretion, may implement a refund in the following manner:

(1) By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified credit to those subscribers' bills; or

(2) By means of a prospective percentage reduction in the rates for the basic service tier or associated equipment to cover the cumulative overcharge. This shall be reflected as a specifically identified, one-time credit on prospective bills to the class of subscribers that currently subscribe to the cable system.

(e) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments.

<u>§ 76.943 Fines</u>.

(a) A franchising authority may impose fines or monetary forfeitures on a cable operator that does not comply with a rate decision or refund order directed specifically at the cable operator, provided the franchising authority has such power under state or local laws.

(b) A cable operator shall not be subject to forfeiture because its rate for basic service or equipment is determined to be unreasonable.

<u>§ 76.944 Commission review of franchising authority decisions on rates for the basic service tier and associated equipment</u>.

(a) The Commission shall be the sole forum for appeals of decisions by franchising authorities on rates for the basic service tier or associated equipment involving whether or not a franchising

authority has acted consistently with the Cable Act or §§ 76.922 and 76.923. Appeals of ratemaking decisions by franchising authorities that do not depend upon determining whether a franchising authority has acted consistently with the Cable Act or §§ 76.922 and 76.923, may be heard in state or local courts.

(b) Any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with the Commission within 30 days of release of the text of the franchising authority's decision as computed under § 1.4(b) of this chapter. Oppositions may be filed within 15 days after the appeal is filed, and must be served on the party(ies) appealing the rate decision. Replies may be filed 7 days after the last day for oppositions and shall be served on the parties to the proceeding.

§ 76.945 Procedures for Commission review of basic service rates.

(a) Upon assumption of rate regulation authority, the Commission will notify the cable operator and require the cable operator to file its basic rate schedule with the Commission within 30 days, with a copy to the local franchising authority.

(b) Basic service and equipment rate schedule filings for existing rates or proposed rate increases (including increases in the baseline channel change that results from reductions in the number of channels in a tier) must use the appropriate FCC forms. Cable operators with existing or proposed rates above the permitted tier rate must submit a cost-of-service showing sufficient to support a finding that the rates are reasonable.

(c) Filings proposing annual adjustments or rates within the rate regulation standards in §§ 76.922 and 76.923, must be made 30 days prior to the proposed effective date and can become effective on the proposed effective date unless the Commission issues an order deferring the effective date or denying the rate proposal. Petitions opposing such filings must be filed within 15 days of public notice of the filing by the cable operator and be accompanied by a certificate that service was made on the cable operator and the local franchising authority. The cable operator may file an opposition within five days of filing of the petition, certifying to service on both the petitioner and the local franchising authority.

(d) Filings proposing a rate not within the rate regulation standards of §§ 76.922 and 76.923, must be made 90 days before the requested effective date. Petitions opposing such filings must be filed within 30 days of public notice of the filing, and be accompanied by a certificate that service was made on the cable operator and the local franchising authority. The cable operator may file an opposition within 10 days of the filing of the petition, and certifying that service was made on the petitioner and the local franchising authority.

§ 76.950 Complaints regarding cable programming service rates.

Any subscriber, franchising authority, or other relevant state or local government entity may file with the Commission a complaint challenging the reasonableness of a cable operator's rate for cable programming service, or the reasonableness of a cable operator's charges for installation or rental of equipment used for the receipt of cable programming service.

§ 76.951 Standard complaint form; other filing requirements.

(a) Any complaint regarding a cable operator's rate for cable programming service or associated equipment must be filed using standard complaint form, FCC 329. The cable operator must provide a copy of the standard complaint form to any subscriber upon request.

(b) The following information must be provided on the standard complaint form:

(1) The complainant's name, mailing address, and daytime telephone number;

(2) The name, mailing address, and FCC community unit identifier of the relevant cable operator (**Note**: pursuant to § 76.952, the cable operator must provide its FCC community unit identifier on monthly bills to subscribers);

(3) The name and address of the relevant franchising authority (**Note**: pursuant to § 76.952, the cable operator must provide this information on monthly bills to subscribers);

(4) An indication whether the complainant is challenging the reasonableness of:

(i) A rate concerning cable programming service or associated equipment in effect on June 21, 1993; or

(ii) A rate increase for cable programming service or associated equipment;

(5) For subscriber complaints regarding a rate increase, the date the complainant first received a bill from the cable operator reflecting the increased rate;

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

(7) The current rate for the cable programming service or associated equipment at issue and, if the complainant is challenging the reasonableness of a rate increase, the most recent rate for the

service or associated equipment immediately prior to the rate increase;

(8) An indication whether the complainant is filing:

(i) a complaint regarding this specific rate for the first time; or

(ii) 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 relevant franchising authority;

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

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

(c) The complainant must attach to the standard complaint form a copy of the most recent bill reflecting the disputed rate or rate increase.

(d) A complaining subscriber may, but is not required to, attach to the standard complaint form a statement from the relevant franchising authority presenting its views on the reasonableness of the rate in question.

<u>§ 76.952 Information to be provided by cable operator on monthly subscriber bills</u>.

All cable operators must provide the following information to subscribers on monthly bills:

(a) The name and mailing address of the relevant franchising authority; and

(b) The FCC community unit identifier for the cable system.

<u>§ 76.953 Limitation on filing a complaint</u>.

(a) <u>Complaint regarding a rate in effect on June 21, 1993</u>. Notwithstanding paragraph (b) of this section, a complaint regarding

a rate for cable programming service or associated equipment in effect on June 21, 1993 must be filed by December 20, 1993.

(b) Complaint regarding a rate increase. Except as provided in paragraph (a) of this section, a complaint alleging an unreasonable rate for cable programming service or associated equipment may be filed against a cable operator only in the event of a rate increase. A complaint regarding a rate increase for cable programming service or associated equipment must be filed with the Commission within 45 days from the date the complainant receives a bill from the cable operator that reflects the increased rate.

(c) Late-filed complaints will be dismissed with prejudice.

§ 76.954 Initial review of complaint; minimum showing requirement; dismissal of defective complaints.

(a) The Commission will conduct an initial review of a complaint to determine if it meets the minimum showing required to allow the complaint to go forward. The minimum showing shall be satisfied if the complaint is filed using the standard complaint form described in § 76.951 and includes all information and attachments required by that form. A complainant will not be required, as part of the minimum showing, to provide the underlying information and calculations necessary to judge the cable programming service rate in question against the Commission's rate standards.

(b) A complaint that does not meet the minimum showing requirement described in para. (a) of this section will be considered defective. A defective complaint will be dismissed without prejudice to filing a corrected complaint as provided by § 76.955. The Commission will notify the complainant by mail of the dismissal. The filing of a complaint on the applicable form, but which is otherwise defective, will toll the limitation period established by § 76.953.

§ 76.955 Additional opportunity to file corrected complaint.

(a) If the Commission dismisses an initial complaint without prejudice pursuant to § 76.954, the complainant shall have one additional opportunity to cure the defect and file a corrected complaint.

(b) For a complaint filed on the applicable form but is otherwise defective, the complainant must cure the defect and file a corrected complaint with the Commission within 30 days from the date of the Commission's dismissal notice. Failure to cure the defect and file a corrected complaint within this time period will result in dismissal of the complaint with prejudice.