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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC 93-519

DISPATCHED BY

In the Matter of )  
)  
)  
Implementation of Sections of )  
the Cable Television Consumer )  
Protection and Competition Act of )  
1992 )  
Rate Regulation )

MM Docket No. 92-266 ✓

### THIRD REPORT AND ORDER

Adopted: November 23, 1993

Released: November 24, 1993

By the Commission:

#### I. Introduction

1. By this Third Report and Order ("Third R & O") we amend Section 76.922(b) of the Commission's Rules to require cable operators facing regulation of both the basic and cable programming services tiers to select the same method of initial rate regulation for both tiers.<sup>1</sup> Specifically, the Third R & O will require that if an operator subject to rate regulation for the first time selects the benchmark rate-setting approach for one tier, the operator must also adopt the benchmark approach for all other tiers that become subject to regulation in the same year.<sup>2</sup> Similarly, if an operator chooses to justify rates for one regulated tier based upon a cost-of-service showing, the operator must also seek a cost-of-service determination on all other regulated tiers that same year. This requirement of applying a consistent rate evaluation approach across tiers is taken as a precautionary measure to prevent operators from engaging in retiering and cost-shifting strategies during the initial rate-setting process that would undermine the tier neutral rate-setting principles underlying the benchmark regulatory framework.<sup>3</sup>

#### II. Background

<sup>1</sup> See Appendix A for rule amendments.

<sup>2</sup> Thus, an operator that becomes subject to basic rate regulation on December 1, 1993 and selects the benchmark rate-setting approach must also choose the benchmark approach if the operator becomes subject to regulation of its non-basic tiers at any time up until December 1, 1994. Upon expiration of this one year time frame after initial rates have been set, the operator can adopt different rate determination methods for its service tiers.

<sup>3</sup> In order to avoid the application of inconsistent rate-setting methods by operators during this early phase of rate regulation when initial permitted per channel charges are being established, we find the need to make the rule changes adopted herein operative immediately. Accordingly, we find good cause for making our amendments to Section 76.922 (b) effective upon publication in the Federal Register. 5 U.S.C. Section 553(d)(3).

2. In the Rate Order, we established a benchmark and price cap approach as the primary method for setting the rates of regulated cable services.<sup>4</sup> We based our adoption of this regulatory regime on an evaluation of its advantages over traditional cost-of-service regulation. Under the benchmark approach, existing rates for cable service are compared to a benchmark that reflects the rates charged by cable systems that are subject to effective competition, with a given number of subscribers, regulated channels, and satellite-delivered signals. Once initial rates are determined by comparison to the benchmark, rates are governed on a going-forward basis by a price cap mechanism. The price cap permits annual adjustments for inflation and a recovery of increases in external costs, including programming costs, costs of franchise requirements, taxes, and franchise fees. As a "backstop" to the benchmark/price cap approach, we established an opportunity for cable operators to justify rates above benchmark or capped levels based on costs. In this regard, we recently sought comment on adoption of uniform cost-of-service standards for application to this alternative method of rate determination.<sup>5</sup>

3. The Commission also determined in the Rate Order that the regulatory framework for rate regulation based on the benchmark approach should be "tier neutral." In other words, we stated that we would apply the same substantive standard for calculating reasonable rates for both the basic and cable programming services tiers. The practical outcome of this approach is that it achieves a permitted charge per channel that, prior to adjustments for inflation and external costs, is the same for all tiers of regulated service. We found this approach to be preferable to one that would, for example, suppress rates for the basic service tier and allow higher earnings for cable programming services tiers. In this regard, we determined that the potential benefits of a low-priced basic tier were outweighed by the fact that such an approach would create incentives for cable operators to move programming to higher tiers where they would charge higher rates to the detriment of subscribers. We also indicated that different rate standards for the basic and cable programming services tiers could significantly increase the complexity of rate regulation.<sup>6</sup>

4. In the Rate Order, we did not specify whether a cable operator is permitted to choose the cost-of-service approach for one tier and the benchmark approach for another regulated tier, or whether parallel treatment for both tiers is required in setting initial rates. Several parties identified this as a problem on reconsideration of our Rate Order and we issued a Third Further Notice of Proposed Rulemaking ("Third Further NTRM") seeking comment on the matter. Specifically, we requested comment on whether cable operators should be permitted to choose the cost-of-service approach for one regulated tier of cable service and the benchmark approach for another regulated cable service tier, or whether consistent treatment for both tiers is required in setting initial rates. We tentatively concluded that cable operators should be required to elect the same regulatory approach for all regulated tiers. Thus, if a system became subject to regulation at the local level, and sought to justify its basic service rates using the benchmark system, the reasonableness of its cable programming services rates would also be based on the

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<sup>4</sup> See Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (1993) ("Rate Order").

<sup>5</sup> See Notice of Proposed Rulemaking in MM Docket No. 93-215, FCC 93-353 (released July 16, 1993), 58 FR 40762 (July 30, 1993) ("Cost-of-Service Notice").

<sup>6</sup> The benchmark formula is based on prices that are averaged across all tiers of regulated services. We indicated in the Rate Order that a "tier neutral" per channel rate calculated as an average of charges across all tiers and compared to the benchmark is simpler for cable operators and regulators to administer and would discourage the shifting of programming services away from the basic services tier. Rate Order, 8 FCC Rcd at 5759-60 and n. 501.

<sup>7</sup> See Third Further Notice in MM Docket No. 92-266, FCC 93-428 (released Aug. 27, 1993), 58 FR 46737 (Sept. 2, 1993).

benchmark, if the Commission were considering a complaint filed against those rates. In reaching this tentative conclusion, we sought to prevent cable operators from moving more expensive programming services from the benchmark-regulated tier to the tier regulated by a cost-of-service showing and ultimately recovering more than compensatory rates. We tentatively concluded that this was the best way to preserve the tier neutral approach to rate setting adopted in the Rate Order.<sup>8</sup>

5. We also requested comment on what procedural requirements, if any, we should adopt to provide for coordination between local franchising authorities and the Commission in the event that a cable operator chooses to make concurrent cost-of-service showings before each jurisdiction. We inquired as to whether we should require that the determination of one jurisdiction will govern, or be given considerable weight in setting rates for the tier subject to the oversight of the other jurisdiction. We solicited comment on whether cable operators should be allowed to switch from benchmarking to cost-of-service and vice-versa. We also questioned whether we should impose a specific timetable for any sort of "switching" activity that is allowed.<sup>9</sup>

### III. Comments

6. In response to the Third Further NPRM, cable operator commenters uniformly oppose enforcement of a consistent rate approach for all regulated tiers.<sup>10</sup> They make four primary arguments in support of their position. First, they argue that allowing operators to choose between the different rate-setting methods for the different tiers does not promote "gaming" because the Commission can consider overall costs and rates for all regulated services in setting rates for the cable programming services tier. Second, they contend that the Commission's price cap rules provide a disincentive to shift costs between tiers. Third, they argue that consistent rate treatment abandons the Cable Act's dichotomy between local and federal regulation of the different tiers. Fourth, they believe that requiring a consistent rate-setting approach will promote more cost-of-service showings for the tiers for which the cable operator would otherwise have adopted the benchmark approach.<sup>11</sup>

7. Holding the opposite view on this issue, municipalities and one telephone company support enforcement of a consistent rate-setting methodology. These commenters argue that such a requirement will reduce hidden costs passed on to subscribers due to "gaming"; lead to fewer cost-of-service proceedings, which will only be initiated if the benchmarks overall are inadequate; and promote the same initial permitted per-channel rates on each tier.<sup>12</sup>

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<sup>8</sup> Id. at paras. 146-152. See also Rate Order, 8 FCC Rcd at 5759.

<sup>9</sup> Third Further NPRM at paras. 146-52.

<sup>10</sup> See Appendix B for a complete list of commenting parties.

<sup>11</sup> See, e.g., Comments of Cablevision Industries Corp., et. al ("Joint Parties") at 11-14; National Cable Television Association ("NCTA") at 15-17; Tele-Communications, Inc. ("TCI") at 4-9; Continental Cablevision ("Continental") at 2-5; Media General Cable of Fairfax County, Inc. ("Media General") at 2-3; Time Warner Entertainment Co., L.P. ("Time Warner"); Falcon Cable TV, et. al ("Falcon") at 14-17; Cable Operators and Associations ("Cable Operators") at 6. See also Reply Comments of Continental at 11-12; Joint Parties at 10-12; Time Warner at 6-7.

<sup>12</sup> See, e.g., Comments of Municipal Franchising Authorities ("MFA") at 3-7; Austin, Texas, et. al ("Coalition") at 9-13; National Association of Telecommunications Officers and Advisors, et. al ("NATOA") at 11-12; New York State Commission on Cable Television ("New York") at 5-7; GTE Service Corp. ("GTE") at 10-11. See also Reply Comments of Coalition at 15-18; GTE at 7-10.

8. Commenters' suggestions on procedural requirements were varied in nature. These suggestions include: 1) consolidating all cost-of-service hearings at the Commission; 2) requiring the sharing of cost-of-service data between the franchising authorities and the Commission; 3) allowing either the local franchising authority or the Commission to use the other jurisdiction's rate determination as binding or informative; and 4) requiring notification to all other local jurisdictions in which the same company has initiated a cost-of-service proceeding for the purpose of consolidation.<sup>13</sup> The commenters generally advocate imposing some type of time limitation on a consistent rate structure requirement, suggesting that cable operators should be able to switch from one rate-setting method to another after a period of six months<sup>14</sup>, one year<sup>15</sup>, or whenever there is a reasonable basis for doing so.<sup>16</sup>

#### IV. Decision.

9. After carefully considering the record before us, we affirm our tentative conclusion that cable operators facing regulation of the basic and cable programming services tiers should be required to select the same method of initial rate-setting for both tiers. Thus, if a cable operator's basic service tier becomes subject to regulation at the local level (or in some instances, at the federal level), and the cable operator selects the benchmark approach, it must also adopt the benchmark approach if its cable programming services tier becomes subject to a complaint at the Commission within the same year. Similarly, if the cable operator chooses to make a cost-of-service showing in response to regulation of the basic service tier, then the operator must also make a cost-of-service showing in response to a cable programming services complaint filed within that year. On balance, we believe this approach is a necessary part of the tier neutral and rate averaging principles built into the benchmark system, particularly because it eliminates the incentive for cable operators to shift costs among tiers to the detriment of consumers.

10. Requiring operators to select the same rate determination method for all regulated tiers when initial rates are being set is necessary because it bolsters our ability to ensure that subscribers to all regulated tiers of service pay reasonable rates. Asymmetric treatment of the two tiers would hamper the ability of both local franchising authorities and the Commission to apply the benchmark's permitted per channel rate in a consistent manner across tiers. In particular, operators able to choose a different rate-setting approach for each of its cable services tiers could selectively apply the benchmark in a manner that would enable the operator to charge higher overall rates than would be allowed if either the benchmark or the cost-of-service approach had been applied consistently across all program tiers. Specifically, an operator could retier its services and place its most expensive programming on the tier regulated by a cost-of-service determination. The operator would then be allowed to charge a per channel rate for the low cost tier based on the benchmark (which is an averaged rate) that actually far exceeds its costs for that tier (and, thus, the rate it would be able to charge under a cost-of-service showing). At the same time, the operator may be able to charge a higher-than-benchmark rate for the other service tier through a cost-of-service showing, based on its higher costs for that tier. The end result would be rates that exceed the reasonableness standard set forth in the 1992

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<sup>13</sup> See e.g., Comments of MFA at 7-8; Massachusetts Community Antenna Television Commission ("MCATC") at 8; NATOA at 12-14. See also Reply Comments of Joint Parties at 13-14; KBLCOM, et al., at 1-3; Viacom International, Inc. at 9-11.

<sup>14</sup> Comments of Falcon at 18.

<sup>15</sup> See Comments of NATOA at 11 n.6.

<sup>16</sup> See, e.g., Comments of Coalition at 11-12; Time Warner at 10.

Cable Act.<sup>17</sup> Thus, we conclude that a requirement that operators apply consistent rate-setting approaches across tiers is needed to uphold the concept of tier neutrality and prevent cost-shifting, thereby making the process of setting initial benchmark rates work effectively and as intended.<sup>18</sup> We will, however, review this policy after 18 months to determine whether it is necessary and appropriate to serve the purposes for which we are adopting it.

11. Additionally, we note that we are restricting our requirement that operators must use the same rate-setting method to one year from the date that the operator first becomes subject to regulation at either the local or federal level. Thus, after the expiration of its first year of initial rate regulation on a service tier, an operator is free to adopt different rate determination methods for its other service tiers. We take this approach for two reasons. First, we have given operators the ability to use either of two rate-setting methodologies on the possibility that there may be some systems for which benchmark rates may not provide adequate recompense because of that system's particular cost structure. Any system's cost structure may vary substantially over time, however, so that a rate-setting methodology that is appropriate at the initial date of regulation for both tiers of service may not be appropriate much later for both tiers of service. Moreover, after the initial rates have been set for a tier, those rates will change over time, pursuant to the going forward rules governing rate increases. As this occurs, our concern for tier neutrality in rates and rate-setting will likely not be as acute as in this period of transition to regulation. We recognize that over time, the cost structure of cable services from tier to tier may legitimately evolve to the point where consistent rate treatment across tiers might be overly restrictive. Accordingly, we have decided to grant cable operators the flexibility to use different rate-setting methods across tiers after the passage of one year of initial rate regulation so that bona fide structural and operational changes may be made as rate-making proceeds.

12. We take this opportunity to respond to the specific arguments that cable operators have made in support of differential treatment of basic and cable programming tiers. The first is that a tier-neutral approach is not necessary to achieve the goals of rate regulation. Specifically, cable commenters contend that as long as regulators are entitled to consider a cable system's overall costs and rates for all regulated services, then operators will be unable to shift costs from tier to tier.<sup>19</sup> One commenter suggests that the Commission should require any operator who elects cost-of-service treatment of the non-basic tier to demonstrate that its overall return for both basic and cable programming services is reasonable.<sup>20</sup>

13. We acknowledge that, in reviewing the cost-of-service showings made by operators for cable services, regulators will need to examine how costs are allocated among the regulated tiers. We have adopted and are in the process of developing additional cost allocation rules that

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<sup>17</sup> Indeed, in the First Order On Reconsideration, we stated that one reason for the adoption of tier neutrality was to eliminate any incentive for operators to move services to other tiers where they could charge relatively higher prices without necessarily corresponding higher costs. See First Order on Reconsideration in MM Docket No. 92-266, FCC 93-428 (released August 27, 1993) at para. 31. See also Rate Order at para. 196.

<sup>18</sup> We have adopted similar safeguards to address concerns of cost-shifting in other regulatory contexts. See, e.g., Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6819 (para. 271) 1990, recon., 6 FCC Rcd 2537 (1991), aff'd sub nom. National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993) (Commission adopted "all-or-nothing" rule to eliminate incentive for local exchange carriers to shift costs from affiliates subject to price cap regulation to rate of return affiliates).

<sup>19</sup> Joint Parties Comments at 12; Continental Cablevision Comments at 4; Media General Comments at 3.

<sup>20</sup> Continental Cablevision Comments at 4.

will help to accomplish this goal.<sup>21</sup> However, even with cost allocation rules in place, the Commission, in evaluating a cost-of-service showing for non-basic service, cannot call into question the rates charged for basic service without undermining the Cable Act's shared jurisdictional scheme. Basic tier rates generally are regulated by local franchising authorities. Therefore, in most instances, even where we uncover unreasonable cost-shifting, we could not compel the operators to justify their rates across all tiers and adjust them accordingly.<sup>22</sup>

14. The second argument made by cable commenters has to do with the creation of rules that remove incentives for cost-shifting. Specifically, cable commenters argue that they have no incentive to manipulate the rate process under the Commission's price cap regime. Specifically, they allege that since operators can pass through programming costs directly to subscribers as external to the benchmark rates, they can effectively recover such costs without having to shift them disproportionately to the tier regulated by cost-of-service.<sup>23</sup> They also observe that if an operator attempts to lower its programming costs on the basic tier, the Commission's external price cap adjustment rules require the operator to decrease the price of its basic service to reflect the reduction in costs.<sup>24</sup> Thus, operators believe it is not possible for them to manipulate costs between tiers under price cap rate regulation.

15. These arguments address the ability of operators potentially to manipulate the rate process in the context of our future price cap regime, but they do not address the probability that operators might engage in such practices now, while initial rates are being set. We believe that a tier-neutral approach is important to diminish any incentive or opportunity for operators to manipulate the initial rate-setting process to warrant the adoption of a requirement of consistent rate approaches as a solution to the problem. As the cable operators suggest, the future price cap regime may effectively prevent operators from shifting basic service programming costs to the non-basic tier. As we gain experience in rate regulation, we will reevaluate our position in light of these arguments. For the time being, however, we will require consistent rate approaches across tiers to guard against cost-shifting retiering strategies that subvert the initial rate-setting process.

16. We are also not persuaded that consistent rate treatment abandons the Cable Act's dichotomy between local and federal regulation of the different tiers, as cable operators allege. We have previously rejected the argument that the statute requires different substantive rate-

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<sup>21</sup> See Cost-of-Service Notice *supra* at note 5.

<sup>22</sup> If we required operators electing cost-of-service for the upper tier and benchmark for the lower tier to justify their overall return for both basic and cable programming services, as Continental Cablevision suggests, we would effectively be imposing a cost-of-service showing for both services. Not only would this be undermining the jurisdiction of the local franchising authority to regulate rates, but it would also be second-guessing the authority's benchmark analysis. The Cable Act vests in franchising authorities the primary responsibility to regulate basic rates and only in limited instances do we regulate basic rates. See Rate Order at para. 55.

<sup>23</sup> NCTA Comments at 16; TCI Comments at 8. We reject TCI's argument that the Commission's proposed solutions to the "gaming" problem come "dangerously close to taking editorial control over the placement of programming." TCI Comments at 8. To the extent that TCI raises First Amendment concerns, we have found that rate regulation under the 1992 Cable Act pursuant to content-neutral standards does not implicate the First Amendment. See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in MM Docket 92-266, 8 FCC Rcd at 5588 n. 30. (1993). See also Daniels Cablevision, Inc. v. FCC, Civil Action No. 92-2292, slip op. at 13 (D.D.C. Sept. 16, 1993) (holding that the rate regulation provisions of the 1992 Cable Act are compatible with the First Amendment).

<sup>24</sup> TCI Comments at 16.

setting standards.<sup>25</sup> As we have observed before, the Cable Act establishes different procedural regulatory schemes rather than a dichotomy of substantive rate standards for the regulation of service tiers. Accordingly, the statute's procedural dichotomy does not require that we allow cable operators to pick and choose substantive rate-setting standards.

17. Cable commenters also have not demonstrated that requiring consistent rate-setting across tiers will increase the number of cost-of-service showings made either at the Commission or at the local level. Indeed, other commenters contend the opposite.<sup>26</sup> We expect cable operators to submit cost-of-service showings in every case where such a showing is essential to ensure that systems are allowed to recover their costs plus a reasonable return. Furthermore, even if consistent rate treatment were to produce a greater number of cost-of-service proceedings, the preservation of the tier neutral benchmark system and the protection it affords subscribers (i.e., elimination of the incentive for operators to shift costs), outweighs the administrative burden posed by such additional proceedings.

18. In essence, the cable operators urge us to allow them flexibility to pick and choose between benchmark and cost-of-service regulation in order to enable them to maximize total revenues derived from all regulated tiers. However, as we have noted previously in this docket, there is no "constitutional or statutory requirement that the Commission's regulatory scheme must enable cable operators to select the option that maximizes their financial position."<sup>27</sup> Moreover, as discussed above, the cable operators' proposal would undermine our policies regarding tier neutrality and cost shifting, which are designed to protect consumers from excessive rates. We therefore will require cable operators to use a consistent method of rate-setting for all regulated tiers during the first year of regulation.

19. For any cable operators that have become subject to regulation of basic or cable programming services and have filed rate justifications before the effective date of the amendment to Section 76.922(b) adopted herein, we will apply the following procedures. Where the cable operator has become subject to regulation on only one tier, the operator is bound to select the same rate-setting approach for all other tiers that become subject to regulation within one year of the date of initial regulation. Any such cable operator will have thirty (30) days from the effective date of this Third R & O to change a rate-setting justification filed prior to the effective date of this order. In such cases, the amended filing will govern initial rates as of the date it is filed. In this circumstance, the operator may rely, if it chooses, on its initial rate justification to justify its rates from September 1, 1993, (when potential refund liability would begin) until the date of its amended filing. Where a cable operator has already filed justifications for both basic and cable programming service tiers, and has selected different rate-setting approaches for different tiers of service, we will require such operators to establish consistent rate-setting methodologies for the period beginning on the effective date of this order. Specifically, in such cases, the operator must refile within thirty (30) days of the effective date of this order, the rate-setting approach for one of the tiers, and this rate-setting election will govern initial rates for that tier as of the date it is filed. As in the first circumstance described above, cable operators who have filed inconsistent rate justifications may rely on those initial rate justifications to justify rates from September 1, 1993, until the date of their amended filings.

20. Finally, because we are not requiring consistent rate justification indefinitely, we perceive no need to adopt rules today to govern the sharing of cost-of-service data among franchising authorities or between franchising authorities and the Commission. Rather, as we

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<sup>25</sup> See Rate Order, 8 FCC Rcd at 5875-76; First Order on Reconsideration at paras. 31-36.

<sup>26</sup> See supra note 12.

<sup>27</sup> See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92-266, 8 FCC Rcd 5585, 5588 (1993).

stated in the Rate Order at para. 149, we will review the franchising authority's cost-of-service determination on appeal pursuant to Section 76.944 of our rules to determine if there is a rational basis for that decision. To resolve any uniformity problems, if there is a complaint on file at the Commission regarding cable programming services tier rates at the same time an appeal is filed, we will endeavor to consider the complaint and the appeal simultaneously. We will, however, reverse the franchising authority's determination, and remand the case to the franchising authority, only if there is a misapplication of an existing Commission rule or policy.<sup>28</sup> If the Commission makes a determination on a cable programming services complaint based on a cost-of-service showing, the local franchising authority should use the analysis developed by the Commission with respect to the allocation of costs among tiers when evaluating any subsequent cost-of-service showing for the basic tier.

#### IV. Administrative Matters

21. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis with respect to the Third Report and Order is as follows:

Need and purpose for this action: This action is taken to preserve the integrity of the tier neutrality and rate averaging principles underlying the benchmark regulatory approach established in the Report and Order and Further Notice of Proposed Rulemaking in MM Docket 92-266.

Summary of issues raised by comments in response to the Initial Regulatory Flexibility Analysis: No comments were received in response to the request for comments to the Initial Regulatory Flexibility Analysis.

Significant alternatives considered and rejected: The Commission considered and rejected allowing cable operators to choose different rate-setting methods across tiers when establishing initial rates.

#### V. Ordering Clauses

22. Accordingly, **IT IS ORDERED** that, pursuant to authority granted in Sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 543, this Third Report and Order **IS ADOPTED** amending Part 76 of the Commission's rules, 47 C.F.R. Part 76, as indicated in Appendix A.

23. **IT IS FURTHER ORDERED** that, the Secretary shall send a copy of this Third Report and Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq. (1981).

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<sup>28</sup> Although this may on occasion result in different resolutions of question of fact by the Commission and the local franchising authority, this is a result contemplated by the Act in creating a dual jurisdiction regulatory scheme for cable rates. Moreover, we anticipate that in most cases, the second regulator will be informed by the decision reached by the first regulator.

24. **IT IS FURTHER ORDERED** that the requirements and regulations established in this Third Report and Order shall become effective upon publication in the Federal Register.<sup>29</sup>

FEDERAL COMMUNICATIONS COMMISSION

*William F. Caton*  
William F. Caton  
Acting Secretary

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<sup>29</sup> For reasons set forth in note 3 *supra*, we find good cause for making our amendments to Section 76.922 (b) effective upon publication in the Federal Register. See 5 U.S.C. Section 553 (d) (3).

**APPENDIX A**

Part 76 of Title 47 of the Code of Federal Regulations is amended to read as follows:

Part 76 Cable Television Service

1. The authority citation for Part 76 continues to read as follows:

**AUTHORITY:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.922 is amended by revising paragraph (b)(1) to read as follows:

**§ 76.922 Rates for the basic service tier and cable programming services tiers.**

\* \* \* \* \*

(b) \* \* \*

(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. Provided, however, that if within one year of becoming subject to initial regulation of one service tier, a cable operator becomes subject to initial regulation of another service tier or tiers, the cable operator must elect the same method of determining the permitted per channel charge for all regulated service tiers. The cable operator must maintain a consistent method for determining the permitted per channel charge across all service tiers for a period of one year from the date that the cable operator first becomes subject to regulation on either the basic service or cable programming services tiers.

**APPENDIX B**

**COMMENTS**

**MM Docket No. 92-266**

Austin, Texas, et. al  
Cable Operators and Associations  
Cablevision Industries, et. al  
Community Antenna Television Association  
Continental Cablevision, Inc.  
Falcon Cable TV, et. al  
GTE Service Corporation  
Massachusetts Community Antenna Television Commission  
Media General Cable of Fairfax County, Inc.  
Municipal Franchising Authorities  
National Association of Telecommunications Officers and Advisors, et. al  
National Cable Television Association  
New York State Commission on Cable Television  
Tele-Communications, Inc.  
Time Warner Entertainment Co., L.P.

**REPLY COMMENTS**

Austin, Texas, et. al  
Cablevision Industries Corp., et. al  
Continental Cablevision, Inc.  
GTE Service Corporation  
KBLCOM, et. al  
Media General Cable of Fairfax County, Inc.  
National Cable Television Association  
Time Warner Entertainment Co., L.P.  
Viacom International, Inc.