

based on the particular location of the subscriber.⁹⁹ An operator need not indicate the total rate for each individual area in such circumstances.

144. Itemization of "Franchise Related" Costs. NATOA urges clarification of the decision to allow itemization of costs required under a franchise agreement for "support of institutional networks, free wiring of public buildings, provision of special municipal video services and voice and data transmissions." *Id.* at 5967-69. NATOA contends that such costs cannot be considered "franchise fees" within the definition of Section 622(g). Petitioner does not seem to raise any arguments that PEG-related costs cannot be itemized at all under Section 622(c), and the costs to which it refers, essentially costs to support PEG-related activities, are specifically provided for in subpart (2) of Section 622(c). We believe that these costs are properly classified as PEG-related and are therefore itemizable under Section 622(c)(2).

E. Effective Date.

145. In the Rate Order, we announced an effective date of June 21, 1993, for the rules adopted in that decision. Rate Order, *supra*, at 5932-33. Subsequently, after examining the feasibility of implementing cable rate regulation in light of the Commission's funding shortfall for Fiscal Year 1993, the effective date was deferred until October 1, 1993.¹⁰⁰ On June 30, however, the Congress appropriated supplemental funding, and the accompanying Conference Report expressed the intent of Congress that the Commission establish an effective date of September 1. The Commission then established September 1, 1993, as the effective date for the rate regulation rules, and provided certain mechanisms to facilitate a smooth transition.¹⁰¹

146. In its petition for reconsideration, Wometco urges the Commission to delay the effective date at least 60 days beyond the completion of the reconsideration process and any further rulemakings implementing the 1992 Act's rate regulation provisions. Wometco argues that this 60-day period is necessary for affected parties to become familiar with the Commission's final decisions. Since our rules went into effect on September 1, Wometco's petition to delay the effective date is moot.

V. EQUIPMENT AND INSTALLATION

147. In the Rate Order, we established standards for the regulation of equipment and installation charges for basic cable and cable programming services based on actual cost. Cable operators are required to unbundle each piece of equipment and must separate equipment from

⁹⁹ For instance, an advertisement might declare that basic service is \$14.00 per month plus a franchise fee of 28¢ to 70¢, depending on location, or that it is \$14.28 to \$14.70, depending on location.

¹⁰⁰ Order, FCC 93-304 (released June 15, 1993), 58 FR 33560 (June 18, 1993)(deferring the effective date until October 1, 1993).

¹⁰¹ Order, FCC 93-372 (released July 27, 1993), 58 FR 41042 (August 2, 1993) (moving forward the effective date from October 1, 1993, to September 1, 1993).

installation. They must establish an Equipment Basket that includes all costs associated with the equipment for and installation of regulated cable service. FCC Form 393 (and/or FCC Form 1205) provides the methodology and guidelines for determining the actual cost of each piece of equipment and of installations. *Id.* at 5815-16. In the First Rates Reconsideration we responded to petitions concerning: (1) the equipment covered by basic service regulation; (2) the application of the actual cost standard; (3) additional connections; and (4) most of the issues raised regarding the guidelines for determining equipment and installation charges. First Rates Reconsideration, *supra*, at paras. 37-69. Here we consider several remaining issues, including the treatment of the cost of promotions, seasonal property related charges, the methodology for determining the cost of home wiring and other issues concerning our Equipment Basket approach.

A. Promotions.

148. In the Rate Order we stated that operators would be afforded substantial discretion to offer promotions, including a below cost offering for some equipment and installations. *Id.* at 5819, 20. Additionally, we stated that certain limits would apply. *Id.* at 5820-21. Consistent with these statements, Section 76.923(j) of our rules allows promotions but limits the recovery, stating: "Operators may not recover the cost of promotional offerings by increasing program service rates above the maximum monthly charge per subscriber prescribed by these rules." Although the rules do not state how in the normal course of setting rates such recovery is to be effected, they do allow that "as part of a general cost-of-service showing, an operator may include the cost of promotions in its general system overhead costs."¹⁰²

149. Petitioners claim that the FCC Form 393 methodology (which is also employed on FCC Form 1205) does not allow for recovery of past costs associated with equipment and installation promotions. In many cases equipment and installations have been provided to customers "free" in the past with the expectation of recovering such costs over time in the rates for services. Since the required calculations remove the full cost of equipment and installations from the benchmark rate calculations, operators claim that they will not be able to recover such past promotional costs as planned. Further, they claim that they will be able to recover the full cost of future equipment and service installations only by discontinuing promotional offerings.

150. We do not agree with petitioners that our rules do not allow for the recovery of costs of equipment and installations provided to customers free or at reduced rates for the purpose of promoting services. Our rules allow operators to recover all of their equipment and installation costs in the charges for those items if they so wish. Further, we expect that the benchmark rates already reflect an element of promotional costs because, prior to the inception of benchmark rates, it has been fairly routine in the cable industry to periodically run promotional offerings to entice customers to purchase cable services. Considering this, we believe that we have already adequately provided for the recovery of promotional offerings when setting the benchmark rates themselves. To the extent that this does not apply to any operator, that operator may attain recovery, if justified, by making a cost-of-service showing. In such case, the costs of promotional offerings may be included, pursuant to Section 76.924, in general system overheads.

¹⁰² 47 C.F.R. § 76.923(j).

We will, however, continue to monitor this issue. If we find that over time there is evidence that such costs have not been adequately provided for under our existing approach, we will consider any appropriate revisions to our rules or policies at that time.

B. Seasonal Property Related Charges.

151. Baraff Koerner and Higgins Lake claim that the benchmark design did not adequately consider companies with extraordinary churn associated with seasonal property. They claim that since the benchmarks did not include revenues for seasonal connect, disconnect, and maintenance orders, the elimination of the associated seasonal costs results in the elimination of an amount that was not included in the benchmarks. Some operators experience seasonally high maintenance costs associated with the need to turn service on and off at the beginning and end of the season for resort properties. Others provide special maintenance at a special fee that allows seasonal subscribers to avoid the inconvenience of having to disconnect and reconnect at the end and beginning of each season. Petitioners claim that since the benchmark compilations did not include revenues for the seasonal items, the elimination of the seasonal related costs results in the elimination of an amount that was not included in the benchmarks. They claim that the treatment of the revenues for seasonal items needs to be clarified or that some consideration should be given to the seasonal issue by making some special allowance for the fact that seasonal churn is not built into the compiled benchmarks.

152. We do not find that provision should be made for such operators to allow the rates for service to remain higher than average by allowing the cost for the seasonal turn-on and turn-off to remain in the rates for programming service. First of all, these operators are allowed to include the revenues from seasonal orders in their benchmark calculations of rates per channel in effect on September 30, 1992 and on the initial date of regulation.¹⁰³ They eliminate the associated costs in determining the maximum allowable rates because these costs are recoverable from separate rates for equipment. If seasonal operators wish to provide special charges for seasonal connect/disconnect services or for off-season maintenance, they may calculate rates for such on Line 7.e of Form 393, Part III (or Line 7.e Step B, Equipment and Installation Worksheet, FCC Form 1205), in accordance with our rules.

153. It should also be noted that the benchmark rates are essentially average rates and as such will not precisely consider every operational factor of each individual cable operator. In the Rate Order, we noted that we originally solicited comment on the specific system characteristics or variables that we could or should use to separate systems into distinct categories for which we should establish different benchmarks and/or define different rates. Id. at 5767-68. We did not find seasonality to be a factor requiring special consideration. Nor is it a statistically significant factor in setting rates under our revised benchmark analysis. Accordingly, we will not modify our equipment rules or rate-setting rules based on seasonal changes.

C. Sale of Home Wiring.

¹⁰³ 47 C.F.R. § 76.922.

154. The Commission requires that upon termination of service, home wiring must be offered for sale to subscribers. Such wiring is to be priced at the replacement cost of the installed material on a per foot basis.¹⁰⁴ NATOA claims that a schedule is needed for calculation of the charges allowable for home wiring sold to cable customers.

155. There is currently no required schedule for any equipment sold. Requirements for pricing of equipment leased involves calculation of a ratebase type of profit element, allocation of overheads, inclusion of depreciation on equipment leased, and the estimation of the maintenance element includible in the equipment charges. Considering the requirements for equipment pricing, we provided schedules to guide operators in calculating rates. These schedules also documented the rate calculations for review by regulating authorities. Equipment sold is less involved and does not require the level of monitoring that equipment leased does. It is not, therefore, necessary to provide the kind of guidance for pricing computation and documentation. While the home wiring is somewhat unique in that there is a special requirement for sale upon service termination, the pricing for the sale of home wiring does not appear to be any more complicated than the sale of other regulated equipment.

156. We do not find that it has been demonstrated that a significantly unique and complicated situation prevails for pricing of home wiring and consequently that a special form is needed. We thus will not impose the additional burden of a special schedule for home wiring. Nevertheless, we clarify that adequate documentation should be maintained to demonstrate compliance with Commission pricing requirements for home wiring as well as for other equipment sold and for installations.

D. Time Lag.

157. In the Rate Order, the Commission directed operators to establish an equipment basket for accumulation of equipment and installation costs but did not establish the time periods for measuring equipment basket costs. Rate Order, *supra*, at 5815-16. The FCC Form 393 and related instructions, however, generally require inclusion of historical costs rather than historically-based projected costs. With respect to this, Time Warner states that the equipment basket approach is flawed because it has a built-in time lag that effectively does not allow costs incurred in a given year to be recovered until the following year. This is because the actual costs of the year ending are used for the development of rates for the upcoming year instead of projected costs. Petitioner claims that this particularly penalizes systems with unusually high installation expenses arising from high levels of new construction. The petitioner contends that systems that have, for example, recently installed many new subscribers or have added addressable converters will have to back out these high costs from their program service rates, even if they intended to recover such costs gradually over time. Petitioner recommends that cable operators be permitted to use *pro forma* expense figures averaged over the life of the franchise instead.

¹⁰⁴ See Report and Order in MM Docket No. 92-160, 8 FCC Rcd 1435, 1437 (1993), petitions for recon. pending. See also Communications Act, § 624(i); 47 U.S.C. § 544(i).

158. We believe our methodology, as modified on reconsideration, will allow recovery of unusually high costs. We have provided a methodology that eliminates the cost of equipment from service rate calculation because there is a provision to calculate separate rates for installations and equipment. Further, we have clarified in the First Rates Reconsideration that adjustments for unusual changes in operations are permitted, subject to regulatory approval, by using a representative month for developing equipment rates. First Rates Reconsideration, supra, at para. 67. See also FCC Form 1205, General Instructions. We believe that this provision will allow operators to recover the full cost of equipment and we are denying Time Warner's request to use *pro forma* expense figures averaged over the life of the franchise.

VI. ORDERING CLAUSES

159. Accordingly, IT IS ORDERED that Part 76 of the Commission's rules, 47 U.S.C. Part 76, IS AMENDED, as indicated below, May 15, 1994.

160. IT IS FURTHER ORDERED that the Petitions for Reconsideration ARE GRANTED in part, DENIED in part, as indicated above, and to the extent that Petitions raise issues concerning leased access rates, they will be disposed of in future orders.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

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 76.905 is amended by revising paragraph (c) to read as follows:

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

* * * * *

(c) For purposes of paragraphs (b)(1) through (b)(3) of this section, 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. The term "households" shall not include those dwellings that are used solely for seasonal, occasional, or recreational use.

* * * * *

3. Section 76.914(a)(1) is revised to read as follows:

§ 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 and cure any minor nonconformance, it is determined that state and local laws and regulations are in substantial and material conflict with the Commission's regulations governing cable rates.

* * * * *

4. Section 76.917 is added to Subpart N to read as follows:

§ 76.917 Notification of certification withdrawal.

A franchising authority that has been certified to regulate rates may, at any time, notify the Commission that it no longer intends to regulate basic cable rates. Such notification shall

include the franchising authority's determination that rate regulation no longer serves the interests of cable subscribers served by the cable system within the franchising authority's jurisdiction, and that it has received no consideration for its withdrawal of certification. Such notification shall be served on the cable operator. The Commission retains the right to review such determinations and to request the factual finding of the franchising authority underlying its decision to withdraw certification. The franchising authority's withdrawal becomes effective upon notification to the Commission.

5. Section 76.922(b) is amended by adding paragraph (b)(9) to read as follows:

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

* * * * *

(b) * * *

(9) Updating Data Calculations.

(i) For purposes of this section, if:

(A) A cable operator, prior to becoming subject to regulation, revised its rates to comply with the Commission's rules; and

(B) The data on which the cable operator relied was current and accurate at the time of revision, and the rate is accurate and justified by the prior data; and

(C) Through no fault of the cable operator, the rates that resulted from using such data differ from the rates that would result from using data current and accurate at the time the cable operator's system becomes subject to regulation;

then the cable operator is not required to change its rates to reflect the data current at the time it becomes subject to regulation.

(ii) Notwithstanding the above, any subsequent changes in a cable operator's rates must be made from rate levels derived from data [that was current as of the date of the rate change].

(iii) For purposes of this subsection, if the rates charged by a cable operator are not justified by an analysis based on the data available at the time it initially adjusted its rates, the cable operator must adjust its rates in accordance with the most accurate data available at the time of the analysis.

* * * * *

6. Section 76.923 is amended by adding paragraph (m) to read as follows:

§ 76.923 Rates for equipment and installation used to receive the basic service tier.

* * * * *

(m) Cable operators shall maintain adequate documentation to demonstrate that charges for the sale and lease of equipment and for installations have been developed in accordance with the rules set forth in this section.

7. Section 76.930 is revised to read as follows:

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

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. 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 official FCC form, a copy thereof, or a copy generated by FCC software. Failure to file on the official FCC form, a copy thereof, or a copy generated by FCC software, may result in the imposition of sanctions specified in § 76.937(d). A cable operator shall include rate cards and channel line-ups with its filing and include an explanation of any discrepancy in the figures provided in these documents and its rate filing.

8. Section 76.933 is amended to add paragraph (d) to read as follows:

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

* * * * *

(d) A franchising authority may request, pursuant to a petition for special relief under § 76.7, that the Commission examine a cable operator's cost-of-service showing, submitted to the franchising authority as justification of basic tier rates, within 30 days of receipt of a cost-of-service showing. In its petition, the franchising authority shall document its reasons for seeking Commission assistance. The franchising authority shall issue an order stating that it is seeking Commission assistance and serve a copy before the 30-day deadline on the cable operator submitting the cost showing. The cable operator shall deliver a copy of the cost showing, together with all relevant attachments, to the Commission within 15 days of receipt of the local authority's notice to seek Commission assistance. The Commission shall notify the local franchising authority and the cable operator of its ruling and of the basic tier rate, as established by the Commission. The rate shall take effect upon implementation by the franchising authority of such ruling and refund liability shall be governed thereon. The Commission's ruling shall be binding on the franchising authority and the cable operator. A cable operator or franchising authority may seek reconsideration of the ruling pursuant to § 1.106(a)(1) of this chapter or

review by the Commission pursuant to § 1.115(a) of this chapter.

9. Section 76.937 is amended to by adding paragraphs (d) and (e) to read as follows:

§ 76.937 Burden of proof

* * * * *

(d) A franchising authority or the Commission may find a cable operator that does not attempt to demonstrate the reasonableness of its rates in default and, using the best information available, enter an order finding the cable operator's rates unreasonable and mandating appropriate relief, as specified in §§ 76.940, 76.941, and 76.942.

(e) A franchising authority or the Commission may order a cable operator that has filed a facially incomplete form to file supplemental information, and the franchising authority's deadline to rule on the reasonableness of the proposed rates will be tolled pending the receipt of such information. A franchising authority may set reasonable deadlines for the filing of such information, and may find the cable operator in default and mandate appropriate relief, pursuant to paragraph (d) of this section, for the cable operator's failure to comply with the deadline or otherwise provide complete information in good faith.

10. Section 76.938 is revised to read as follows:

§ 76.938 Proprietary information.

A franchising authority may require the production of proprietary information to make a rate determination in those cases where cable operators have submitted initial rates, or have proposed rate increases, pursuant to an FCC Form 393 (and/or FCC Forms 1200/1205) filing or a cost-of-service showing. The franchising authority shall state a justification for each item of information requested and, where related to an FCC Form 393 (and/or FCC Forms 1200/1205) filing, indicate the question or section of the form to which the request specifically relates. Upon request to the franchising authority, the parties to a rate proceeding shall have access to such information, subject to the franchising authority's procedures governing non-disclosure by the parties. Public access to such proprietary information shall be governed by applicable state or local law.

11. Section 76.939 is added to Subpart N to read as follows:

§ 76.939 Truthful written statements and responses to requests of franchising authority.

Cable operators shall comply with franchising authorities' and the Commission's requests for information, orders, and decisions. No cable operator shall, in any information submitted to a franchising authority or the Commission in making a rate determination pursuant to an FCC

Form 393 (and/or FCC Forms 1200/1205) filing or a cost-of-service showing, make any misrepresentation or willful material omission bearing on any matter within the franchising authority's or the Commission's jurisdiction.

12. Section 76.942 is amended by revising paragraphs (a), (c)(2), and adding (c)(3) and (f) to read as follows:

§ 76.942 Refunds.

(a) A franchising authority (or the Commission, pursuant to § 76.945) 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. An operator's liability for refunds shall be based on the difference between the old bundled rates and the sum of the new unbundled program service charge(s) and the new unbundled equipment charge(s). Where an operator was charging separately for program services and equipment but the rates were not in compliance with the Commission's rules, the operator's refund liability shall be based on the difference between the sum of the old charges and the sum of the new, unbundled program service and equipment charges. Before ordering a cable operator to refund previously paid rates to subscribers, a franchising authority (or the Commission) must give the operator notice and opportunity to comment.

* * * * *

(c) * * *

(1) * * *

(2) From the date a franchising authority issues an accounting order pursuant to § 76.933(c), to the date a prospective rate reduction is issued, then back in time from the date of the accounting order to the effective date of the rules; however, the total refund period shall not exceed one year from the date of the accounting order.

(3) Refund liability shall be calculated on the reasonableness of the rates as determined by the rules in effect during the period under review by the franchising authority or the Commission.

* * * * *

(f) At the time a franchising authority (or the Commission, pursuant to paragraph (a) of this section) orders a cable operator to pay refunds to subscribers, the franchising authority must return to the cable operator an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The franchising authority must promptly return the franchise fee overcharge either in an immediate lump sum payment, or the cable operator may deduct it from the cable system's future franchise fee payments.

13. Section 76.943 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 76.943 Fines

* * * * *

(b) If a cable operator willfully fails to comply with the terms of any franchising authority's order, decision, or request for information, as required by § 76.939, the Commission may, in addition to other remedies, impose a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b).

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

14. Section 76.944 is amended by revising paragraph (b) to read as follows:

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

* * * * *

(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. Appeals shall be served on the franchising authority or other authority that issued the rate decision. Where the state is the appropriate decisionmaking authority, the state shall forward a copy of the appeal to the appropriate local official(s). Oppositions may be filed within 15 days after the appeals 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.

15. Section 76.945(b) is revised to read as follows:

§ 76.945 Procedures for Commission review of basic service rates.

* * * * *

(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 official FCC form, a copy thereof, or a copy generated by FCC software. Failure to file on the official FCC form or a copy may result in the imposition of sanctions specified in § 76.937(d). Cable operators seeking to justify the reasonableness of 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.

* * * * *

16. Section 76.946 is added to Subpart N to read as follows:

§ 76.946 Advertising of rates.

Cable operators that advertise rates for basic service and cable programming service tiers shall be required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a "fee plus" rate that indicates the core rate plus the range of possible additions, depending on the particular location of the subscriber.

17. Section 76.953(b) is revised to read as follows:

§ 76.953 Limitation on filing a complaint.

* * * * *

(b) Complaint regarding a rate change. 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 change, including an increase or decrease in rates, or a change in rates that results from a change in a system's service tiers. A rate change may involve an implicit rate increase (such as deleting channels from a tier without a corresponding lowering of the rate for that tier). A complaint regarding a rate change for cable programming service or associated equipment may be filed against a cable operator only in the event of a rate change. A complaint regarding a rate change 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 rate change.

* * * * *

18. Section 76.956(a) is revised to read as follows:

§ 76.956 Cable operator response.

(a) Unless the Commission notifies a cable operator to the contrary, the cable operator must file with the Commission a response to the complaint filed on the applicable form, within 30 days of the date of service of the complaint. The response shall indicate when service occurred. Service by mail is complete upon mailing. See § 1.47(f) of this chapter. The response shall include the information required by the appropriate FCC form, including rate cards, channel line-ups, and an

explanation of any discrepancy in the figures provided in these documents and the rate filing. The cable operator must serve its response on the complainant (and, if the complainant is a subscriber, the relevant franchising authority) via first class mail.

* * * * *

19. Section 76.961 is amended by revising paragraph (b) and adding paragraph (e) to read as follows:

§ 76.961 Refunds

* * * * *

(b) The cumulative refund due subscribers shall be calculated from the date a valid complaint is filed until the date a cable operator implements a prospective rate reduction as ordered by the Commission pursuant to § 76.960. The Commission shall calculate refund liability according to the rules in effect for determining the reasonableness of the rates for the period of time covered by the complaint.

* * * * *

(e) At the time the Commission orders a cable operator to pay refunds to subscribers, the franchising authority must return to the cable operator an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The franchising authority may return the franchise fee overcharge either in an immediate lump sum payment, or the cable operator may deduct it from the cable system's future franchise fee payments.

20. Section 76.984 is revised to read as follows:

§ 76.984 Geographically uniform rate structure.

(a) The rates charged by cable operators for basic service, cable programming service, and associated equipment and installation shall be provided pursuant to a rate structure that is uniform throughout each franchise area in which cable service is provided.

(b) This section does not prohibit the establishment by cable operators of reasonable categories of service and customers with separate rates and terms and conditions of service, within a franchise area. Cable operators may offer different rates to multiple dwelling units of different sizes and may set rates based on the duration of the contract, provided that the operator can demonstrate that its cost savings vary with the size of the building and the duration of the contract, and as long as the same rate is offered to buildings of the same size with contracts of similar duration.

(c) Contracts between cable operators and multiple dwelling units entered into on or before April 1, 1993 may remain in effect until their previously agreed-upon expiration date.

APPENDIX B

MM Docket No. 92-266

Petitions for Reconsideration of Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92-266, 8 FCC Rcd 5631 (1993)

Affiliated Regional Communications, Ltd.
Alaska Cablevision, Inc.
Alsea River Cable TV
Arizona Cable Television Association, et al.
Atlanta Interfaith Broadcasters, Inc.
Bank of New York
Baraff, Koerner, Olender & Hochberg, P.C.
Bell Atlantic
Black Entertainment Television, Inc.
Blade Communications, Inc.
Booth American Company, et al.
C-SPAN
Cable Services
Cablevision Systems Corporation
California Cable Television Association
Center for Media Education, et al.
Century Communications Corp.
Coalition of Small System Operators
Colony Communications, Inc., et al.
Comcast Cable Communications, Inc.
Community Antenna Television Association, Inc.
Community Broadcasters Association
Continental Cablevision, Inc.
Corning Incorporated; Scientific Atlanta, Inc.
Crown Media, Inc.
Discovery Communications, Inc.
The Disney Channel
E! Entertainment Television, Inc.
Encore Media Corporation
Fairmont Cable
Harron Communications Corp.
Higgins Lake Cable, Inc.
Inland Bay Cable TV Associates
InterMedia Partners
King County, Wash., et al.
Liberty Media Corp.
Longview Cable Television

Michigan C-TEC Communities
Mountain Cablevision, Inc.
Multichannel Communication Sciences, Inc.
Municipal Franchising Authorities
National Association of Telecommunications Officers and Advisors, et al.
National Cable Television Association, Inc.
Newhouse Broadcasting Corporation
Northland Communications Corp.
Paradise Television Network, Inc.
Searle, Stanley M.
SuperStar Connection
Sur Corporation
Tele-Communications, Inc.
Time Warner Entertainment Company, L.P.
TKR Cable Company/TKR Cable of Kentucky
Turner Broadcasting System, Inc.
Valuevision International, Inc.
Viacom International, Inc.
Video Data Systems
Video Jukebox Network, Inc.
Wometco Cable Corp.

Comments/Oppositions to Petitions for Reconsideration

Ad Hoc Rural Consortium
Advanced Communications, Inc.
Affiliated Regional Communications, Ltd.
Arizona Cable Television Association
Bell Atlantic
Bellsouth Telecommunications
Bend Cable Communications, Inc., et al.
Cable TV of Jersey City, Inc.
Cablevision Industries Corporation, et al.
Cablevision Systems Corporation
Center for Media Education, et al.
Consumer Electronics Group of the Electronic Industries Association
Consumer Federation of America
C-TEC Cable Systems
Continental Cablevision, Inc.
General Instrument Corporation
GTE Service Corporation
Home Recording Right Coalition
Home Shopping Network, Inc.
King County, et al.
Liberty Cable Company, Inc.
Medium-Sized Operators Group

Michigan Communities
National Association of Telecommunications Officers and Advisors, et al.
National Association of Towns and Townships
National Cable Television Association, Inc.
National Telephone Cooperative Association
Prevue Networks, Inc.
Time Warner Entertainment Company, Inc.
United States Telephone Association
USA Networks
Valuevision International, Inc.
Viacom International, Inc.
Videomaker Magazine

Replies to Oppositions to Petitions for Reconsideration

Cablevision Industries Corp., et al.
Cablevision Systems Corporation
Center for Media Education, et al.
City of Saint Paul
Coalition of Small System Operators
Continental Cablevision, Inc.
Corning Incorporated; Scientific-Atlanta, Inc.
Discovery Communications, Inc.
Engle Broadcasating
King County, Wash., et al.
Liberty Media Corporation
Medium-Sized Operators Group
Michigan C-TEC Corporation
National Association of Telecommunications Officers and Advisors, et al.
National Cable Television Association, Inc.
Paradise Television Network, Inc.
Puerto Rico Cable Television Association
State of Hawaii
Sur Corporation
Televista Communications, Inc.
Time Warner Entertainment Company, L.P.
United Video, Inc.
Valuevision International, Inc.
Viacom International, Inc.

Petitions for Reconsideration of First Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking in MM Docket No. 92-266, FCC 93-428, released August 27, 1993.

New York Telephone Company and New England Telephone and Telegraph Company

("NYNEX")

Attorney General of the State of Connecticut (Statement in support of NYNEX)

Oppositions to Petitions for Reconsideration

Cablevision Industries Corporation, et al.

Continental Cablevision, Inc.

Time Warner Entertainment Company, L.P.

Viacom International, Inc.

Reply to Oppositions to Petitions for Reconsideration

NYNEX

MM Docket No. 92-262

Petition for Reconsideration of Report and Order in MM Docket No. 92-262, 8 FCC Rcd 2274 (1993)

Prime Cable

February 22, 1994

SEPARATE STATEMENT
OF
COMMISSIONER ANDREW C. BARRETT

RE: In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation and Buy-Through Prohibition Third Order on Reconsideration MM Docket Nos. 92-266 and 92-262, respectively

In this action, the Commission has resolved numerous issues on reconsideration regarding the implementation of its cable rate regulations. I write separately to address the issue of evasion. It is imperative that the patterns of conduct cited in this Order (e.g., the collapsing of multiple tiers of service into the basic tier) not be viewed as *per se* evasions of the Commission's rules. Rather these actions will be viewed on a case-by-case basis subject to a showing which can rebut any presumption of evasion. Without more specific information, I believe the Commission should not make a final determination about cable operator conduct in this regard.