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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 95-397

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

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**THIRTEENTH ORDER ON RECONSIDERATION**

Adopted: September 15, 1995

Released: September 22, 1995

By the Commission; Commissioner Chong issuing a statement:

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## I. INTRODUCTION

1. The Cable Television Consumer Protection and Competition Act of 1992 ("the 1992 Cable Act") required the Commission to prescribe rate regulations that protect subscribers from having to pay unreasonable rates by ensuring that basic service tier ("BST") and cable programming service tier ("CPST") rate levels do not exceed rates that would be charged in the presence of effective competition.<sup>1</sup> The 1992 Cable Act directed the Commission to "seek to reduce administrative burdens on subscribers, cable operators, franchising authorities and the Commission" in meeting this mandate.<sup>2</sup>

2. Pursuant to the 1992 Cable Act's rate regulation requirements, we designed a system of rate regulation that ensures subscribers pay reasonable rates for regulated cable services. Our rules for establishing initial rates employ a benchmark formula in lieu of using the cost-of-service methodology that is traditionally applied to public utilities. We developed the benchmark formula because the significant administrative and compliance costs of cost-of-service regulation would impose heavy burdens on regulators and regulated companies.

3. Moreover, as required by the 1992 Cable Act, the benchmark system protects subscribers by ensuring that an operator's regulated rates do not exceed what the operator would charge if it faced effective competition.<sup>3</sup> Under our rules, we required most regulated cable operators to either reduce their regulated rates to a level that represented their September 30, 1992 regulated revenues reduced by a 17% "competitive differential" (adjusted for annual inflation increases, changes in external costs and changes in the number

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<sup>1</sup> Cable Television Consumer Protection and Competition Act ("1992 Cable Act"), Pub. L. No. 102-385, 106 Stat. 1460 (1992), Sections 623(b), (c) of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 543(b), (c). In this order, we modify our rules in light of petitions for reconsideration filed in response to our Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-28, 9 FCC Rcd 4119 (1994) ("*Second Reconsideration Order*"); Third Order on Reconsideration, MM Docket Nos. 92-262 and 92-266, FCC 94-40, 9 FCC Rcd 4316 (1994) ("*Third Reconsideration Order*"); and Fourth Order on Reconsideration, MM Docket No. 92-266, FCC 94-254, 9 FCC Rcd 5795 (1994) ("*Fourth Reconsideration Order*"). We also reconsider, in response to the petitions for reconsideration and on our own motion, certain decisions made in the *Fourth Report and Order* in this docket. The Commission retains jurisdiction to modify on its own motion an order from which reconsideration is sought. See 47 U.S.C. § 405; 47 C.F.R. § 1.108; see also *Central Florida Enterprises v. FCC*, 598 F. 2d 37, 48 n.51 (D.C. Cir. 1978).

<sup>2</sup> Communications Act, § 623(b)(2)(A).

<sup>3</sup> *Id.* at § 623(b)(1).

of programming channels) or submit a cost-of-service showing supporting higher rates.<sup>4</sup> The 17% "competitive differential" represented the average difference that the Commission determined existed between the rates of competitive and noncompetitive systems.<sup>5</sup>

4. We also adopted a price cap approach to govern how operators can adjust their rates on a going forward basis following the establishment of initial rates. Under the price cap approach, operators adjust their rates annually for inflation and may reflect changes in external costs and changes in the number of regulated channels up to four times per year. Operators make these rate adjustments by filing an FCC Form 1210 pursuant to a streamlined rate review process.

5. Based on information we have secured from operators, we have concluded that we should further streamline the rate review process in ways that will benefit subscribers, cable operators, local franchising authorities, and the Commission. The current process allows, and to some degree encourages, operators to file for multiple rate adjustments during each year. This process can be costly for operators because they must file Form 1210s and provide subscribers with 30 days' advance written notice each time they file for a rate adjustment. In addition, multiple rate adjustments in one year could create subscriber confusion. Multiple rate adjustments also impose administrative burdens on regulatory authorities because they must review each proposed rate adjustment.

6. We have found that under the current rate framework, some operators are delayed when attempting to recover their costs because they are not permitted to file for recovery of external cost increases and additions of new channels until the quarter after costs are incurred or channel changes are made. Operators may experience further delay while regulatory authorities review the proposed adjustments. Further, operators are never able to recover costs between the date they are incurred and the date a rate adjustment is permitted. Also, under the so-called "use or lose" provision of the current rules, operators must file for rate increases that reflect cost increases within one year of the date they first incur those additional costs, or else lose the ability to pass through those costs.

7. In order to address these concerns, we are adopting on our own motion a new optional rate adjustment methodology where cable operators will be permitted to make only annual rate changes to their BSTs and CPSTs. Operators that elect to use this new methodology will adjust their rates once per year to reflect reasonably certain and reasonably quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the 12 months following the rate change. Because operators will be permitted to estimate cost changes that will occur in the 12 months following the rate filing, we expect that this methodology will limit delays in recovering costs that operators may

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<sup>4</sup> See *Second Reconsideration Order*, 9 FCC Rcd at 4124.

<sup>5</sup> *Id.*

experience under the current system. Any incurred cost that is not projected may be accrued with interest and added to rates at a later time. If actual and projected costs are different during the rate year, a "true up" mechanism is available to correct estimated costs with actual cost changes. The "true up" requires operators to decrease their rates or alternatively, permits them to increase their rates to make adjustments for over- or under- estimations of these cost changes. Operators would not lose the right to make a rate increase at a later date if they choose not to implement a rate adjustment at the beginning of the next rate year. Finally, in order that operators not feel compelled to make rate filings or increase rates when they otherwise would not, we will eliminate the "use or lose" requirement for operators that elect this methodology.

8. We believe that operators will benefit from this system because it will alleviate the difficulty of delays for rate adjustments that they now experience and will permit them to utilize annual rate adjustments without the loss of revenues they now incur as a result of the current methodology. Subscriber confusion will be alleviated because rate adjustments will take place once per year. Moreover, subscribers will be protected by this system because if an operator overestimates its permitted rate increase as a result of its projections, the operator would be required to rectify the error with interest when it makes its rate adjustment at the beginning of the next rate year. Finally, franchising authorities and the Commission will benefit from this methodology because they will not be required to review more than one rate adjustment per year.<sup>6</sup>

9. We are also requiring operators that elect the annual rate adjustment methodology to file BST rate adjustment requests 90 days prior to the effective date of the proposed changes. Operators may implement rate changes as proposed in their filings 90 days after they file unless the franchising authority rejects the proposed rate as unreasonable. If the franchising authority has not issued a rate decision and the operator makes a rate adjustment after the 90-day period has expired, the franchising authority may order a prospective rate reduction and refunds at a later time, where appropriate. The franchising authority need not issue an accounting order to preserve its right to issue its rate order after the 90-day review period. However, if an operator inquires as to whether the franchising authority intends to issue a rate order after the 90-day review period, the franchising authority must notify the operator of its intent in this regard within 15 days of the operator's request or lose its ability to order a refund or a prospective rate reduction. If a proposed rate goes into effect before the franchising authority issues its rate order, the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within this time, it may not at a later date order a refund or a prospective rate reduction with respect to the rate

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<sup>6</sup> Some operators may prefer the quarterly system because they are already familiar with it, or because they are unable or unwilling to gather the information they would need to project costs in advance. For this reason we will retain the quarterly system, and will provide the annual system as an optional alternative.

filing.

10. An operator that has a CPST complaint pending against it or has been ordered by the Commission to reduce its CPST rates, and that elects the annual rate adjustment option, must propose the annual rate adjustment at least 30 days prior to the effective date of the rate change. The Commission can deny an increase before the end of the 30-day period, but if the Commission does not act within 30 days, the operator may implement the rate increase as proposed on the Form 1240. The increase would go into effect, subject to a prospective rate reduction and refund, where appropriate, which the Commission may order at a later time.

11. Although operators that elect the annual rate adjustment option generally will not be permitted to make more than one rate adjustment per year, we will permit operators to make rate adjustments for the addition of channels to BSTs that the operator is required by federal or local law to carry, i.e., new must-carry, local origination, public, educational and governmental access and leased access channels. Franchising authorities will have 60 days to review these increases prior to their going into effect. The proposed rate adjustment will go into effect 60 days after filing unless the franchising authority finds that the adjustment would be unreasonable. We also will allow operators to make one additional rate adjustment during the year to reflect channel additions to CPSTs, and to BSTs where the operator offers only one regulated tier. Operators may make this additional rate adjustment reflecting channel additions to CPSTs at any time during the year. Subject to the existing going forward rules, which affect the amount by which an operator can increase its rates, operators will have no limit on the number of channels they may add when they make this rate adjustment during the year.

12. Operators that elect the annual rate adjustment system must file for rate adjustments for equipment and installations on Form 1205 on the same date that they file for their other rate adjustments on Form 1240.<sup>7</sup> Therefore, for operators that elect to use the annual rate adjustment methodology, we are changing the current rule which requires operators to file 60 days after the close of their fiscal year.<sup>8</sup> In addition, we will continue to require operators to base their proposed annual customer equipment and installations rate adjustments on past costs because we believe that it would be far more difficult to project reasonably certain and reasonably quantifiable changes in equipment and installation costs. We also will require that when an operator introduces a new type of equipment, the operator must file for a rate adjustment no later than 60 days before the date the operator intends to

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<sup>7</sup> If an operator's BST is subject to regulation and the operator elects not to file a Form 1240 during a given year, the operator must continue to file its Form 1205 on an annual basis. FCC Form 1205, Instructions for Determining Costs of Regulated Cable Equipment and Installation at 2.

<sup>8</sup> *Id.*

charge subscribers for the new type of equipment. The proposed rate would go into effect at the end of this 60-day period unless the franchising authority rejects the proposed rate as unreasonable or the franchising authority finds that the operator has submitted an incomplete filing.

13. Operators that do not elect to use the annual rate adjustment system may continue to use the existing system which allows operators to make rate adjustments up to once per calendar year quarter. With respect to the current quarterly rate adjustment system, this order affirms our decision in the *Fourth Reconsideration Order* to allow operators to pass through changes in franchise fees and Commission regulatory fees within 30 days of filing for a rate adjustment reflecting these costs unless the franchising authority finds that these rate adjustments are unreasonable before 30-day period has expired.

14. This Order will also simplify the rate review process by eliminating our current practice of reviewing the entire CPST rate after receiving a CPST complaint. On the effective date of these rules, this system of rate regulation, commonly referred to as "all rates in play," will be eliminated for CPSTs that have not been subject to a rate complaint. Following that date, CPST rate complaints will require a Commission determination whether the amount of the rate increase complained about is reasonable.

15. In addition, we clarify that for purposes of adjusting rates to reflect increases in franchise requirement costs, operators are entitled to pass through any increases in costs that are specifically required by franchise agreements, provided that the recovery of costs may not encompass costs the operator would incur in the absence of the franchise requirement. Consistent with this goal, operators are permitted to pass through to subscribers (a) cost increases associated with technical standards and customer service standards that exceed federal requirements; (b) cost increases attributable to satisfying franchise requirements to support public, educational and governmental access; (c) increases in the costs of providing institutional networks, video services, voice transmissions and data services to or from governmental institutions and educational institutions, including private schools; and (d) cost increases associated with a franchise requirement that an operator remove cable from utility poles and place the same cable underground.

16. Further, the Order affirms the Commission's decision to permit operators to advertise rates for regulated cable services regionally using a single tier rate plus a franchise fee. The order also permits franchising authorities to determine the method by which franchise fee overpayments are returned to cable operators. However, franchising authorities must return overpayments within a reasonable period of time.

## **II. ANNUAL RATE ADJUSTMENTS FOR BASIC SERVICES AND CABLE PROGRAMMING SERVICES**

### **A. Background**

## **1. Jurisdiction Over BSTs and CPSTs**

17. Under the 1992 Cable Act, cable rate regulation is undertaken jointly by the Commission and by state and local governments. For purposes of allocating regulatory responsibility over the rates for services offered by cable system operators, the 1992 Cable Act divides regulated cable services into two categories.

18. The first category is the BST which includes, at a minimum, the local broadcast signals distributed by the cable operator and any public, educational, and governmental access channels.<sup>9</sup> Cable operators have the discretion to include other services in the BST. Regulation of rates for BSTs is the responsibility of certified state and local governments, pursuant to standards and procedures established by the Commission.<sup>10</sup> The Commission serves as the forum for appeals to review local rate decisions.<sup>11</sup> Under certain circumstances, the Commission will directly regulate BST rates.<sup>12</sup>

19. The second category is the CPST, which includes all video programming distributed over the system that is not on the BST and for which the operator does not charge on a per channel or per program basis.<sup>13</sup> Under the 1992 Cable Act, CPSTs are subject to regulation by the Commission only if the Commission receives a complaint from a subscriber or local regulatory authority regarding an operator's CPST rate.<sup>14</sup> The following subsections describe our current rules regarding the setting of initial rates, the regulatory review process under the price cap system, and permitted adjustments under the price cap.

## **2. Setting Initial Rates**

### **a. Regulatory Review Process for Initial Rates**

20. The 1992 Cable Act permits a franchising authority to regulate its BST only if it certifies in writing to the Commission that (a) its rate regulations will be consistent with the standards prescribed by the Commission; (b) it has the legal authority to adopt, and the personnel to administer, rate regulations; and (c) its procedural rules provide an opportunity

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<sup>9</sup> 47 C.F.R. § 76.901(a). Unless otherwise stated, all references to Commission rules are to rules in effect as of the date of this Order, and not to rule changes made in this Order.

<sup>10</sup> Communications Act, § 623(a)(2)(A).

<sup>11</sup> 47 C.F.R. § 76.944(a).

<sup>12</sup> 47 C.F.R. § 76.913.

<sup>13</sup> Communications Act, § 623(l)(2).

<sup>14</sup> Communications Act, § 623(c)(3).

for the consideration of views of interested parties.<sup>15</sup> A franchising authority becomes certified to regulate BSTs 30 days after filing for certification unless the Commission denies certification because the franchising authority has not met one of the criteria.<sup>16</sup> Once a franchising authority has been certified and has adopted rules, it must notify the cable operator that these requirements have been met and that the franchising authority intends to regulate the rates for the BST and the customer premises equipment used to receive the BST.<sup>17</sup> The operator is then required to justify its existing BST rate by filing FCC Form 1200, Form 1220, or Form 1225 with the franchising authority.

21. The franchising authority reviews the operator's justification for initial BST rates through a two step process. Under the first step, if a franchising authority approves the operator's existing rate within 30 days of the filing, the increase will go into effect 30 days after the filing.<sup>18</sup> Under the second step, if a franchising authority is unable to determine whether the BST rate is reasonable within the initial 30 day period, the franchising authority may issue a tolling order so that it may review the rate justification for an additional 90 days.<sup>19</sup> If no action is taken within this 90 day period, the franchising authority may preserve its right to issue a subsequent refund order by issuing a written accounting order before the end of the 90 day period, which directs the operator to keep accurate accounts of all amounts received by reason of the proposed rate and on whose behalf such amounts are paid.<sup>20</sup> The refund period is limited to a maximum of one year.

22. The 1992 Cable Act provides that the Commission will regulate rates of CPSTs only in response to complaints.<sup>21</sup> Under the 1992 Cable Act, parties had 180 days from the effective date of the Commission rules to file a complaint about CPST rates that existed as of the effective date of the Act.<sup>22</sup> Complainants must use the complaint form

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<sup>15</sup> 47 C.F.R. § 76.910.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *See Report and Order and Further Notice of Proposed Rulemaking ("Rate Order")*, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631, 5709 (1993); *see also* 47 C.F.R. § 76.933(a).

<sup>19</sup> Franchising authorities can toll the effective date of a proposed rate adjustment for 150 days to evaluate cost-of-service showings. *Rate Order*, 8 FCC Rcd at 5709.

<sup>20</sup> *Id.*

<sup>21</sup> Communications Act, § 623(c)(1).

<sup>22</sup> *Id.*

adopted by the Commission and serve a copy on the cable operator and franchising authority.<sup>23</sup> The operator must respond to a complaint within 30 days of its service.<sup>24</sup> If the Commission finds that the operator's rates are unreasonable, the operator is required to make a prospective rate reduction and may have to make refunds to subscribers.<sup>25</sup> The refund period runs from the date the operator implements a prospective rate reduction pursuant to a Commission order and extends back to the date the complaint was filed with the Commission.<sup>26</sup>

**b. Standard for Establishing Initial Rates on BSTs and CPSTs**

23. In the *Rate Order*, we developed a benchmark formula for the purpose of establishing initial rates for BSTs and CPSTs.<sup>27</sup> Companies electing to justify rates under the benchmark approach were required to use a formula established to calculate an applicable benchmark -- an estimate of the rate that a cable system with similar characteristics, but subject to effective competition, would charge.<sup>28</sup> Cable systems whose rates exceeded the applicable benchmark were required to reduce their rates either to the benchmark or by 10%, whichever reduction was less.<sup>29</sup> The 10% "competitive differential" represented the average difference that the Commission determined existed between the rates of competitive and noncompetitive systems.<sup>30</sup> In the *Second Reconsideration Order*, we refined the econometric model, recalculated the competitive differential, and concluded that a competitive differential of 17% more accurately estimated the difference between cable rates in competitive and noncompetitive markets.<sup>31</sup> For those cases in which the benchmark approach may not

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<sup>23</sup> 47 C.F.R. § 76.956.

<sup>24</sup> 47 C.F.R. § 76.956(a).

<sup>25</sup> 47 C.F.R. §§ 76.960, 76.961.

<sup>26</sup> 47 C.F.R. § 76.961(b).

<sup>27</sup> *Rate Order*, 8 FCC Rcd 5770.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 5772.

<sup>30</sup> *Id.* at 5770.

<sup>31</sup> *Second Reconsideration Order*, 9 FCC Rcd at 4124. We granted two classes of cable systems transition relief by not requiring them to implement the full 17% reduction rate, pending a review of their prices and costs. The first category of systems that were provided with transition relief is systems owned by "small operators," defined as operators serving 15,000 or fewer subscribers and not affiliated with a larger operator. *Id.* at 4167-68, 4172-

produce fully compensatory rates, operators were given the option of establishing rates based on costs pursuant to individual cost-of-service showings.<sup>32</sup>

### 3. Rate Adjustments Under the Price Cap System

#### a. Basic Service Tier

24. Where a franchising authority has been certified, a cable operator in a franchise area that is not subject to effective competition as defined in the 1992 Cable Act may not increase its BST rates without approval from the franchising authority. If such an operator proposes a rate increase to its BST and the franchising authority determines that the proposed rate increase is reasonable, the increase goes into effect 30 days after FCC Form 1210 is filed.<sup>33</sup> If the franchising authority is unable to determine whether the proposed rate adjustment is reasonable within the initial 30 day period, the franchising authority may toll the effective date of the rate adjustment for an additional 90 days.<sup>34</sup> Franchising authorities can take this additional time to solicit further information, to review the proposed rates, and to consider the views of interested parties.<sup>35</sup> If no action is taken within this 90 day period, the proposed rate goes into effect.<sup>36</sup> In order to preserve its ability to order a refund, the franchising authority must issue a written order at the end of the tolling period directing the operator to keep accurate accounts of all amounts received by reason of the proposed rate.<sup>37</sup> However, the refund period begins on the date the rate increase is implemented and ends on either the date that the operator implements a prospective rate reduction ordered by the franchising authority or one year after the rate increase, whichever period is shorter.<sup>38</sup>

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75. The second category of systems that were provided with transition relief is systems that charge relatively low prices for regulated services. *Id.* at 4168-69, 4176-78.

<sup>32</sup> *Rate Order*, 8 FCC Rcd at 5794-95.

<sup>33</sup> *See Rate Order*, 8 FCC Rcd at 5709-10; *see also* 47 C.F.R. § 76.933(a).

<sup>34</sup> Franchising authorities can toll the effective date of a proposed rate adjustment for 150 days to evaluate cost-of-service showings. *Rate Order*, 8 FCC Rcd at 5709.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> 47 C.F.R. § 76.933(c).

<sup>38</sup> 47 C.F.R. § 76.942(c).

Franchising authorities may order prospective rate reductions at any time.<sup>39</sup>

25. If an operator fails to complete its rate justification form or to include supporting information called for by the form, the franchising authority may order the cable operator to file the required information.<sup>40</sup> While the franchising authority is waiting to receive this information from the cable operator, the deadline for the franchising authority to rule on the reasonableness of the proposed rates is tolled.<sup>41</sup> Once the operator has made its filing complete, the time for determining the reasonableness of the rate by the franchising authority will recommence.<sup>42</sup>

#### **b. Cable Programming Service Tier**

26. Section 3(c) of the 1992 Cable Act requires that, upon the receipt of a specific complaint regarding a CPST rate, the Commission is to ensure that such rates are not unreasonable.<sup>43</sup> We review CPST rate changes when a complaint is filed with the Commission within 45 days from the date the subscriber receives a bill from the cable operator reflecting the rate change.<sup>44</sup> The cable operator is required to respond to a CPST complaint within 30 days of the date that it is served with the complaint.<sup>45</sup> As a part of its review of rate increase complaints, the Commission reviews the amount of the rate increase and the operator's existing rates as of the effective date of the rules.

27. If an operator seeks to make a rate adjustment to a CPST due to an increase in external costs and the Commission has found the rate unlawful and ordered the operator to reduce CPST rates during the past year, the operator must receive approval from the Commission before the rate can go into effect.<sup>46</sup> A cable operator with pending CPST complaints but no adverse Commission decision in a franchise area must inform the Commission of any CPST rate changes in that franchise area by filing FCC Form 1210, but

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<sup>39</sup> 47 C.F.R. § 76.933(c).

<sup>40</sup> *Third Reconsideration Order*, 9 FCC Rcd at 4348.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 4348 n.52.

<sup>43</sup> Communications Act, § 623(c).

<sup>44</sup> 47 C.F.R. § 76.953(b).

<sup>45</sup> 47 C.F.R. § 76.956.

<sup>46</sup> 47 C.F.R. § 76.960.

the rate change may go into effect without prior approval.<sup>47</sup> If the rate change goes into effect without prior approval, the Commission may order a prospective rate reduction and refund if it later determines the rate is unreasonable.<sup>48</sup> The refund liability period would begin on the date the Commission receives a valid complaint and end on the date the operator implements a rate decrease pursuant to a Commission order.<sup>49</sup>

#### 4. Price Cap Adjustment Mechanism

28. Under the Commission's price cap rules, once initial rates are established, operators are permitted to adjust their rates for inflation, changes in external costs, and changes in the number of regulated channels.<sup>50</sup> Operators adjust their rates on an annual basis to reflect inflation.<sup>51</sup> They are permitted to adjust their rates on a calendar year quarterly basis to reflect changes in certain categories of external costs, and in the number of regulated channels.<sup>52</sup> Cable operators seeking to adjust regulated rates to reflect these changes must support the proposed rate on FCC Form 1210,<sup>53</sup> and file the form with the appropriate regulatory authority. The changes in external costs reflected on FCC Form 1210 are based upon costs which were actually incurred, and operators may not file to recover these costs until the quarter after such costs were incurred.<sup>54</sup>

29. Under our rules, operators are permitted to adjust their BST and CPST rates annually for inflation by tracking the external cost component of their permitted charge and

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<sup>47</sup> *Id.*

<sup>48</sup> 47 C.F.R. § 76.933(c).

<sup>49</sup> 47 C.F.R. § 76.961(b).

<sup>50</sup> *Rate Order*, 8 FCC Rcd at 5776; *Second Reconsideration Order*, 9 FCC Rcd at 4202-04.

<sup>51</sup> *Second Reconsideration Order*, 9 FCC Rcd at 4203.

<sup>52</sup> First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking in MM Docket No. 92-266, 9 FCC Rcd 1164, 1235 ("*First Reconsideration Order*") (1993).

<sup>53</sup> FCC Form 1210, Updating Maximum Permitted Rates for Regulated Cable Service (May 1994). See also 47 C.F.R. §§ 76.922(d), 76.933. Cable operators need not use FCC Form 1210 when merely demonstrating the calculation of rate increases on account of franchise or Commission regulatory fees. *Fourth Reconsideration Order*, 9 FCC Rcd at 5796 n.13, 5797.

<sup>54</sup> 47 C.F.R. § 76.922(d)(3)(iii).

adjusting the remaining charge, referred to as the residual component, for inflation.<sup>55</sup> The inflation adjustment is based on changes in the Gross National Product Price Index (GNP-PI) as published by the Bureau of Economic Analysis of the United States Department of Commerce.<sup>56</sup> The annual inflation adjustment is based on inflation occurring between June 30 of the previous year and June 30 of the year in which the inflation adjustment is made. The adjustment may not be made until after September 30, and can be implemented any time before August 31 of the next calendar year.<sup>57</sup>

30. Operators may increase rates to reflect increases in external costs to the extent that such increases exceed inflation. External costs include retransmission consent fees, other programming costs, copyright fees, cable specific taxes, Commission regulatory fees, franchise fees, and franchise requirement costs.<sup>58</sup>

31. When cable operators seek to make rate adjustments due to changes in external costs, they may not file for rate adjustments more frequently than once per calendar year quarter.<sup>59</sup> Operators are not permitted to file for a proposed rate adjustment reflecting these changes before the first day of the quarter following the quarter in which the change in external costs occurred.<sup>60</sup> If an operator incurs an external cost increase in January, for example, the operator may not file FCC Form 1210 until April 1.

32. Any time an operator files for an increase in external costs or its annual

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<sup>55</sup> 47 C.F.R. § 76.922(d).

<sup>56</sup> The Bureau of Economic Analysis (BEA) produces two fixed weight indexes that measure inflation in the overall economy. The GNP-PI measures inflation in the gross national product. The Gross Domestic Product fixed weight price index (GDP-PI), which BEA began producing recently, measures inflation in the domestic national product. The GNP-PI is an appropriate measure of inflation that the Commission currently allows telephone companies to use for inflation adjustment in annual price cap filings. U.S. Department of Commerce, Bureau of Economic Analysis, Survey of Current Business: August 1991.

<sup>57</sup> 47 C.F.R. § 76.922(d)(2).

<sup>58</sup> 47 C.F.R. § 76.922(d)(3)(iv). In the *Fourth Reconsideration Order* we permitted operators to pass through two types of external costs, franchise fees and Commission regulatory fees, within 30 days of filing for rate increases reflecting such fees unless the franchising authority determines that the rate adjustment is unreasonable before 30 days has expired. See Section III, *infra*; see also 47 C.F.R. § 76.933(e).

<sup>59</sup> 47 C.F.R. § 76.922(d)(3)(i).

<sup>60</sup> 47 C.F.R. § 76.922(d)(3)(iii).

inflation adjustment, it must also identify any decreases in external costs that have occurred over the same period.<sup>61</sup> In addition, all regulated operators must adjust their rates annually to reflect any net decreases in external costs that have not previously been accounted for in rates.<sup>62</sup> Moreover, if a regulated operator is going to adjust its rates to reflect increases in external costs, the operator has one year from the date the cost is incurred to make the rate adjustment or lose the right to ever adjust rates for those external costs.<sup>63</sup>

33. Operators may adjust their rates quarterly to reflect increases in the number of regulated channels.<sup>64</sup> Operators may file FCC Form 1210 no earlier than the first day of the quarter following the quarter in which the channel change occurred.<sup>65</sup> When an operator reduces the number of regulated channels on a tier, the operator must adjust the tier charge to reflect this change in the next calendar quarter.<sup>66</sup>

34. In making these rate adjustments for channel changes, operators must use either the channel adjustment methodology provided for under the initial rules<sup>67</sup> or the alternative per channel adjustment methodology adopted pursuant to our new going forward rules.<sup>68</sup> The initial per channel adjustment methodology must be used for adding channels to

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<sup>61</sup> 47 C.F.R. § 76.922(d).

<sup>62</sup> *Id.*

<sup>63</sup> 47 C.F.R. § 76.922(d)(3).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> The Commission's initial per channel adjustment methodology permits operators to increase rates by a per channel amount when channels are added to BSTs and CPSTs, with the per channel amount decreasing as the number of channels on a system increases. These rules also permit operators to pass through the costs of obtaining programming plus a 7.5% mark-up on new programming costs. See 47 C.F.R. § 76.922(d)-(e).

<sup>68</sup> Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking ("*Sixth Reconsideration Order*") in MM Docket No. 92-266, 10 FCC Rcd 1226 (1994). Operators electing to use the new rules are allowed to take a per channel mark-up of up to 20 cents for each channel added to CPSTs. *Id.* Under this alternative, operators may make rate adjustments at any time during the three-year period beginning on January 1, 1995. *Id.* They may not make per channel adjustments to monthly rates totalling more than \$1.20 per subscriber over the first two years of the three-year period for new channels added on CPSTs or by more than \$1.40 plus licensing fees over the full three-year

BSTs except for single tier systems. Operators may choose between the initial channel adjustment methodology and the alternative methodology for channels added to CPSTs and single tier systems between May 15, 1994 and December 31, 1997. They must make this election the first time they adjust rates after December 31, 1994 to reflect a channel addition that occurred on or after May 15, 1994 and must use the elected methodology for all channel adjustments through December 31, 1997.

## 5. Equipment and Installation

35. The 1992 Cable Act requires cable operators to charge rates based on actual costs for installation and lease of subscriber equipment.<sup>69</sup> Regulated equipment includes all of the equipment located in the subscriber's home, including converter boxes, remote control units, connections for additional television receivers, and other cable wiring used to obtain basic services.<sup>70</sup> Cable operators must unbundle charges for equipment, installation, and additional outlets from the BST rate.<sup>71</sup> They also must use a specific methodology for determining the actual cost of each piece of equipment and installation.<sup>72</sup> Under this methodology, the cable operator must establish an equipment basket to which it assigns the direct costs of service installation, additional outlets and leasing and repairing equipment.<sup>73</sup> In the equipment basket, the cable operator must allocate the system's joint and common costs that service installation, leasing, and equipment repair share with other activities (but not general system overhead), plus a reasonable profit.<sup>74</sup> Cable operators must complete and file with the franchising authority an FCC Form 1205 for several different purposes. First, they must file Form 1205 with the franchising authority for the purpose of setting initial rates

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period. *Id.* Operators may make the 20 cents per channel adjustment in the third year only for channels added in that year. *Id.* Operators electing to use the per channel adjustment in the new rules may not take the 7.5% mark-up on programming cost increases for channels added after May 14, 1994. *Id.* Between January 1, 1995 and December 31, 1996, operators may use any portion of the \$1.20 per channel adjustment to recover license fees. *Id.* In addition, operators may recover an additional amount of not more than 30 cents per subscriber per month for license fees associated with adding new channels during this two year period. *Id.*

<sup>69</sup> 1992 Cable Act, § 3(b)(3); Communications Act, § 623(b)(3).

<sup>70</sup> 47 C.F.R. § 76.923(a).

<sup>71</sup> 47 C.F.R. § 76.923(b).

<sup>72</sup> 47 C.F.R. § 76.923(d)-(m).

<sup>73</sup> 47 C.F.R. § 76.923(c).

<sup>74</sup> *Id.*

under either the benchmark system or through a cost-of-service showing.<sup>75</sup> Second, all operators must file Form 1205 with their franchising authorities once every year within 60 days of the end their fiscal year.<sup>76</sup> Finally, operators must file Form 1205 with the franchising authority 30 days before they seek to adjust their equipment rates.<sup>77</sup>

## **B. Contentions**

### **1. Quarterly Rate Adjustment System**

36. In its Petition for Reconsideration of the *Fourth Reconsideration Order*, TKR Cable Company ("TKR") criticizes the quarterly rate adjustment system because it believes that operators will never recover that portion of the increases in external costs that are incurred between the date the additional external costs begin accumulating and the date the new rate takes effect. TKR argues that the denial of a portion of their external costs deprives TKR of its property without due compensation, and implicates takings considerations under the Fifth and Fourteenth Amendments to the U.S. Constitution.<sup>78</sup> Moreover, TKR contends that permitting subscribers to pay "lower" rates, or rates not based on TKR's current actual costs of providing service, grants subscribers an undeserved benefit.<sup>79</sup>

37. According to TKR, Section 76.933(b) of our rules is inconsistent with the language of the *Rate Order* concerning franchising authority review of external cost showings. TKR notes that while in the *Rate Order* the Commission determined that franchising authorities may toll the effective date of rate adjustments as necessary in certain complex cases, Section 76.922(b) permits franchising authorities to issue a tolling order in cases "where it cannot be determined, based on the material submitted, whether the

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<sup>75</sup> 47 C.F.R. § 76.922(b)(6).

<sup>76</sup> In a letter released March 1, 1995, the Cable Services Bureau granted operators a waiver permitting them to file 30 days after the 60 day period, provided that they notify the appropriate regulatory authority that strict compliance with the 60 day requirement is not feasible. Letter from Meredith Jones, Chief, Cable Services Bureau to Eric Breisach, Howard and Howard, DA 95-381 (Mar. 1, 1995).

<sup>77</sup> FCC Form 1205, Determining Costs of Regulated Cable Equipment and Installation.

<sup>78</sup> TKR Petition for Reconsideration at 14 (citing *Duquesne Light Co. v. Barash*, 488 U.S. 299, 308 (1989)).

<sup>79</sup> *Id.* at 15 (citing *Papago Tribal Util. Auth. v. FERC*, 628 F.2d 235, 240-41 (D.C. Cir., cert. denied, 449 U.S. 1061 (1980))).

operator's rates are reasonable."<sup>80</sup> TKR and the Cable Telecommunications Association, Inc. ("CATA") argue that franchising authorities should not be permitted to issue a tolling order when they examine external cost showings because external cost showings do not offer complex cases.<sup>81</sup> CATA further asserts that no room for judgment exists in a cable operator's calculation of external cost pass throughs. CATA states, for example, that the costs of franchise requirements should be apparent to the franchising authority to the same degree as are franchise fees, and permitted rate increases resulting from channel additions which are pre-determined under the Commission's going forward rules.<sup>82</sup> TKR asserts that its interpretation is supported by the *Rate Order* because it describes the increases reflecting external costs as "automatic adjustments."<sup>83</sup>

38. In addition, TKR asserts that franchising authorities arbitrarily take advantage of the tolling mechanism, often failing to even begin reviewing external cost showings within the initial 30 day period.<sup>84</sup> CATA asserts that franchising authorities have political incentives to delay all rate increases no matter how justified, and that this delay unfairly and arbitrarily

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<sup>80</sup> *Id.* at 3 (citing *Rate Order*, 8 FCC Rcd at 5710).

<sup>81</sup> *Id.*; CATA Comments at 3-4 (citing *Rate Order*, 8 FCC Rcd at 5710).

<sup>82</sup> CATA Comments at 6 (citing 47 C.F.R. §§ 76.922(d)(3)(x) - (e)(7)); see also *Sixth Reconsideration Order*, 10 FCC Rcd at 1248-57.

<sup>83</sup> TKR Petition for Reconsideration at 4.

<sup>84</sup> *Id.* at 6. TKR references a letter it submitted to the Cable Services Bureau in which it accuses the State of New Jersey Board of Public Utilities' Office of Cable Television (BPU/OCT) of "arbitrarily, and without sufficient cause" tolling the effectiveness of proposed rates demonstrated on TKR's FCC Form 1210 showing submitted in June 1994. TKR argued that the BPU/OCT wrongly refused to rely on statements contained in a letter issued by the Cable Services Bureau concerning the addition of the program service *The fX Channel*. These statements encouraged local authorities to act upon rate increase showings promptly, and to endeavor to approve the new rates, where at all possible, within 30 days. Letter from Mark J. Palchick, Esq., Counsel for TKR Cable Company to Gregory J. Vogt, Esq., Deputy Chief, Cable Services Bureau, at 3 (October 19, 1994) (citing *In re The fX Channel* at 3 (Cable Services Bureau, April 22, 1994)). The BPU/OCT responded that it tolled TKR's proposed rates after determining that it was not possible to properly review TKR's rates within the 30 day time period based on the data provided by TKR, and that it would not be in the best interest of TKR's subscribers to approve a rate increase pursuant to Form 1210 before the BPU/OCT could review and approve TKR's Form 1200, on which TKR supported its initial rates. Letter from Deborah T. Poritz, Esq., Attorney General, State of New Jersey to Gregory J. Vogt, Esq., Deputy Chief, Cable Services Bureau, at 1 (November 10, 1994).

denies operators their ability to recover legitimate costs.<sup>85</sup> TKR states that tolling can lead to a delay of its recovery of external costs for up to eight months. TKR notes, for example, that if an operator incurs an external cost in the first month of a quarter, it must wait nearly three months to file its FCC Form 1210 because it is not permitted to file until the quarter after a cost is incurred. In addition, after the operator files, the franchising authority has an initial 30 days to review the filing and can subsequently toll the effective date of the rate adjustment for an additional 90 days. Finally, TKR states that after the operator has received approval for the rate adjustment, it must provide subscribers with 30 days advance written notice before it can implement the new rate.<sup>86</sup> United Video argues that the Commission's regulations governing operators' recovery of additional programming costs resulting from the addition of new program services unfairly force operators to wait as long as three months before beginning to recover those new costs in subscriber rates.<sup>87</sup> The National Cable Satellite Corporation, Inc. ("C-SPAN") believes that because of the delays in recovering costs, the current tolling provisions reduce operators' incentives to launch new cable programming services.<sup>88</sup>

39. TKR also requests that we permit cable operators to collect the cumulative amount of all categories of external costs on the same conditions as Commission regulatory fees, namely, in 12 equal monthly installments during the year after that in which the cost increases were incurred.

40. TKR, supported by CATA and Howard & Howard, urges the Commission to permit cable operators to pass through all external costs without the prior regulatory approval of franchising authorities. TKR argues that operators should be permitted to pass through all external costs automatically upon 30 days' prior notice to subscribers and the franchising authority. Under TKR's proposal, franchising authorities would be permitted to toll the review of proposed rates for 90 days without suspending their effectiveness and later to order refunds for rates found to be calculated incorrectly. CATA believes that tolling is unnecessary because franchising authorities need only determine that a few lines on FCC Form 1210 have been properly completed and calculated in order to approve the new rate.<sup>89</sup>

41. CATA urges the Commission to prohibit franchising authorities from denying a proposed rate increase even during the initial 30 day period for review, stating that refunds fully protect subscribers. Without this provision, CATA asserts, franchising authorities will

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<sup>85</sup> CATA Comments at 8.

<sup>86</sup> TKR Petition for Reconsideration at 6-7.

<sup>87</sup> See Petition for Reconsideration, filed by United Video (May 16, 1994).

<sup>88</sup> C-SPAN Comments at 1-2.

<sup>89</sup> CATA Comments at 2-3.

"automatically" deny the proposed rates during the initial 30 days, thereby forcing the operator to appeal to the Commission for a final decision.<sup>90</sup> CATA and Howard & Howard believe the current rate adjustment process can result in an operator filing multiple FCC Form 1210s, and results in excess work for both industry and regulators.<sup>91</sup> Howard & Howard also believes the current procedure causes problems because cable operators do not know when rate adjustments will go into effect.<sup>92</sup> Howard & Howard contends that customers would benefit under its proposals because they prefer less frequent rate increases.<sup>93</sup>

42. Further, Howard & Howard and Cole, Raywid & Braverman ("Cole Raywid") ask that the Commission change its current practice of requiring operators to adjust their rates within one year of the date they incur their costs. They contend that this requirement forces cable operators to raise rates sooner and more frequently than they would if they could wait without permanently forfeiting the increase, and is therefore contrary to the intent of the 1992 Cable Act.<sup>94</sup> Cole, Raywid also believes that allowing cable operators to avoid repeated rate adjustments will avoid confusion on the part of subscribers and franchising authorities, and will alleviate the real costs of printing and mailing subscriber notices and fielding subscribers' phone inquiries.<sup>95</sup>

43. Howard & Howard suggests allowing operators to use a target date for implementing rate adjustments, and if that date is missed, a compensating adjustment would be carried over to the next filing.<sup>96</sup> Howard & Howard predicts that the amount of this compensating adjustment would be minimal. According to Howard & Howard, this proposal

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<sup>90</sup> *Id.* at 6-7. CATA argues that the Commission need not amend its rules to prohibit franchising authorities from tolling external cost-based rate adjustments. Rather, CATA contends that the Commission merely needs to clarify that statements in the *Rate Order* describing such cost adjustments as "automatic," "simple," and "presumed reasonable," indicate the Commission's genuine intent that an operator's external cost showing should be automatically approved by the franchising authority, and not tolled unless the franchising authority reasonably requires additional information from the operator for its review of the showing. *Id.* at 3-4 (*citing Rate Order*, 8 FCC Rcd at 5720).

<sup>91</sup> *Id.* at 8; Howard & Howard at 4.

<sup>92</sup> Howard & Howard at 5.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 6; Letter to Meredith Jones, Chief, Cable Service Bureau, from Paul Glist of Cole, Raywid & Braverman, at 1 ((Mar. 15, 1995) ("Cole, Raywid Letter").

<sup>95</sup> Cole, Raywid Letter at 2.

<sup>96</sup> Howard & Howard at 5.

would alleviate the industry's uncertainty with respect to routine rate adjustments and it would help operators consolidate their rate increases into one per year.<sup>97</sup>

44. Finally, Howard & Howard contends that the timing for filing FCC Form 1205 is not concurrent with the year end or first quarter rate increases preferred by operators.<sup>98</sup> It asks that the Commission recommend a remedy to the timing problem.

45. The National Association of Telecommunications Officers and Advisors ("NATOA") and the City of New York (collectively, the "Local Governments") argue that TKR's petition for reconsideration is not properly before the Commission because TKR does not seek Commission reconsideration of any decisions reached in the *Fourth Reconsideration Order*. The Local Governments argue that because TKR asks the Commission to permit cable operators to automatically pass through all categories of external cost increases without the prior approval of franchising authorities, this request actually requires reconsideration of Commission rules governing the time periods for a franchising authority's review of a proposed rate increase and our rules setting forth the procedures for filing FCC Form 1210,<sup>99</sup> which were adopted in the *Rate Order* and the *Second Reconsideration Order*.<sup>100</sup> They argue, therefore, that TKR's petition for reconsideration must be denied because the deadlines for seeking reconsideration of the issues addressed by these Commission decisions have long passed.<sup>101</sup>

46. In addition, the Local Governments oppose the substance and impact of TKR's proposal. They note that the *Rate Order* clearly states that the "franchising authority may toll the effective date of the proposed rates."<sup>102</sup> They argue that nothing in Section 76.933(b) of our rules, or any other section of our rules, supports TKR's assertion that the Commission intended to limit the period for franchising authority review of external cost showings to only 30 days. Local Governments then state that the proper allocation and calculation of external costs is far from clear in many jurisdictions. They argue that franchising authorities would find it very difficult to render decisions within 30 days because cable operators typically fail

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<sup>97</sup> *Id.* at 4.

<sup>98</sup> *Id.* at 6.

<sup>99</sup> 47 C.F.R. §§ 76.933(a) - (c), 76.922(d) - (d)(3)(iii).

<sup>100</sup> *See Rate Order*, 8 FCC Rcd 5631; *Second Reconsideration Order*, 9 FCC Rcd 4119.

<sup>101</sup> Local Governments Opposition at 2-3. *See also* 47 C.F.R. § 1.429(d) (requiring petitions for reconsideration to be filed within 30 days of the date of public notice of a Commission action). Local Governments suggest that TKR alternatively may file a petition for rulemaking.

<sup>102</sup> Local Governments Opposition at 4 (*citing Rate Order*, 8 FCC Rcd at 5709-10).

to submit all the information required for the authority's review concurrent with the FCC Form 1210, and, in many cases take an unreasonable amount of time to respond to a franchising authority's request for such information. The Local Governments argue that TKR's approach would allow operators simply to adjust rates as they see fit, and, because the rates would already be in effect, would completely eliminate operators' incentives to submit timely data required by franchising authorities for their review of external cost showings. The Local Governments reiterate that all rate increases should be subject to the same review and approval process because, from the subscriber's point of view, no difference exists between an overcharge based on external costs and one for basic cable service.<sup>103</sup>

47. The Local Governments also urge the Commission to deny TKR's recommendation that operators be permitted to recover for the accrual of external costs between the date they are incurred and the date a rate adjustment is approved. They state that cable operators can alleviate their concerns over being denied recovery of a portion of their external costs by taking a few simple actions. First, the Local Governments state that the review period for rate justifications could be reduced if cable operators would submit a properly completed FCC Form 1210, accompanied by all supplemental information called for by the form, and respond promptly to requests for such information from franchising authorities where the information was not provided with the form. Second, the Local Governments recommend that operators ensure that any budgetary increases, new investments, or other new increased expenditures sufficiently coincide with the FCC Form 1210 approval process before taking on such financial obligations. Third, the Local Governments state that operators should gather all the data justifying their external cost increases before submitting the FCC Form 1210. Fourth, Local Governments suggest that cable operators can better plan their annual budgets by, for example, taking into account when programming contracts will expire.<sup>104</sup>

## **2. Annual Rate Adjustment Option**

48. The parties in this proceeding generally agree that operators should be encouraged to reduce the number of rate filings.<sup>105</sup> TKR proposes, for example, a mechanism for operators seeking to recover the aggregate amount of increases in external

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<sup>103</sup> *Id.* at 5-8.

<sup>104</sup> Local Governments Opposition at 8-9.

<sup>105</sup> *See, e.g.*, Letter to Gregory J. Vogt, Deputy Chief, Cable Services Bureau from James A. Hatcher, Vice President, Legal & Regulatory Affairs at Cox Communications, Inc. (Mar. 30, 1995) ("Cox Letter"); Letter to William Caton from Eric E. Breisach at 4 (Feb. 27, 1995) ("Howard & Howard Letter"); Ex Parte presentation from William E. Cook, Jr., National Association of Telecommunications Officers and Advisors at 1 (May 23, 1995) ("NATOA Letter").

costs that were previously incurred.<sup>106</sup> The aggregate amount could be recovered in 12 equal monthly installments during the year following the year in which the additional costs were incurred by the operator, in the same manner as that prescribed for the Commission regulatory fees.<sup>107</sup> TKR states that this could permit operators to increase subscriber rates no more than annually, thereby greatly reducing the administrative burden on both regulators and industry. TKR asserts that subscribers would be fully protected by this approach because franchising authorities have the ability to order refunds for rates that are calculated incorrectly or exceed reasonable levels.<sup>108</sup>

49. Cox Communications, Inc. ("Cox") also suggests a methodology designed to encourage operators to make annual rather than quarterly filings. It contends that cable operators incur substantial external costs during the franchising authorities' period of review. Cox argues that the review period, when combined with the requirement to give customers 30 days prior written notice of any rate changes, creates an unreasonably long regulatory lag between the date a rate increase is deemed necessary and the date the increase actually goes into effect.<sup>109</sup> According to Cox, cable operators are currently unable to recover the substantial external costs they incur during the lag time.<sup>110</sup> As a remedy, Cox suggests an annual rate change option, through which cable operators would have the option of filing rate increases once per year.<sup>111</sup> Cox argues that such a policy would avoid customer dissatisfaction by reducing the number of rate increases, and would reduce the administrative burden for both operators and the regulatory authorities. Cox contends that the current policy encourages numerous rate increases because of the "use or lose" provisions, whereby an operator must file for an increase within a certain time, or else lose its ability to file for the increase. In addition, the current rules require that the operator must immediately anticipate the need for a rate increase and file for such an increase, or lose its ability to recoup the revenue for the time it delayed the rate increase.<sup>112</sup>

50. Cox asserts that its proposal would limit the number of rate changes operators could take without losing the chance to recover costs and would give operators incentives to add new programming without delay. The annual filing would request an increase in rates

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<sup>106</sup> TKR Petition for Reconsideration at 8-9.

<sup>107</sup> *Id.* at 9.

<sup>108</sup> *Id.*

<sup>109</sup> Cox Letter at 1.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 3.

<sup>112</sup> *Id.* at 2.

based upon external costs incurred over the preceding year, plus interest and prospective known and verifiable costs such as programming, user fees and cable-related taxes. Cox's proposal would also enable cable operators to project their inflation by using the officially published data for the preceding 12 months rather than the final GNP-PI. Equipment rates would still be based on costs from the preceding year, but could be determined using the preceding 12-month period rather than the operator's preceding fiscal year.<sup>113</sup> Additionally, Cox proposes that an operator be permitted to carry over to the following year any portion of its rate increase it deems inadvisable to implement immediately.<sup>114</sup> Cox further argues that such a mechanism should allow for the addition of must-carry stations and other government mandated channel additions when they occur, rather than annually.<sup>115</sup> In examining a rate justification under this methodology, franchising authorities would have 60 days to review rate filings, and would be given no extensions and no opportunity to request accounting orders.<sup>116</sup> Cox believes this procedure would allow cable operators to implement approved rate increases in a more timely fashion and would expedite the appeals process for rate increases that are denied. Cox suggests the rate increases would go into effect 105 days after filing, after allowing 45 days to implement the 30 day customer notice requirement.<sup>117</sup>

51. NATOA also supports a system that would encourage operators to limit themselves to annual rate adjustments.<sup>118</sup> NATOA recommends that each operator's annual filing date be set jointly by the franchising authority and the cable operator.<sup>119</sup> NATOA suggests that the filing date be based on the operator's budget year, program contract year, the franchising authority's fiscal year or some "other appropriate base."<sup>120</sup> Under this model, NATOA argues, the rate review process will be faster and franchising authorities can approve rates before the budget year begins.<sup>121</sup>

52. NATOA asserts that, under the once a year rate review model, operators could

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<sup>113</sup> *Id.* at 3.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 3-4.

<sup>116</sup> *Id.* at 2.

<sup>117</sup> *Id.*

<sup>118</sup> NATOA Letter at 1.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

set rates prospectively based on actual and verifiable increases in external costs that will take place in the coming year.<sup>122</sup> NATOA states that at the end of each year, it may be appropriate for operators to "true up" the cost increases they projected at the beginning of the year and adjust their rates accordingly.<sup>123</sup> NATOA argues that if it is determined that an operator overcharged its subscribers, subscribers should receive refunds with the same interest that operators would receive if it was determined that the operator undercharged its subscribers.<sup>124</sup> NATOA also argues that all program cost decreases must be factored into the true up.<sup>125</sup>

53. In addition, NATOA states that if the Commission adopts an annual methodology, there should be at least a one or two quarter moratorium on rate adjustments so that franchising authorities can complete current and pending rate cases.<sup>126</sup> Alternatively, NATOA suggests that franchising authorities be permitted to look at pending cases under the new rules so that rates may be examined both retrospectively and prospectively.<sup>127</sup>

54. In addition, NATOA states that franchising authorities would be better able to review rate justifications if they receive clear guidelines for review.<sup>128</sup> NATOA further asks that refund liability for BSTs extend for more than one year.<sup>129</sup> It argues that franchising authorities should be granted adequate time to review rate filings, and that the rules should take into account the fact that franchising authorities' governments do not always meet or remain in session within the Commission's mandated review periods.<sup>130</sup> NATOA also asks that we adopt rules to ensure that operators promptly supply relevant information.<sup>131</sup> NATOA argues that cable operators should be penalized, rather than rewarded as they are

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<sup>122</sup> *Id.* at 2.

<sup>123</sup> *Id.* at 3.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 1.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 2.

<sup>130</sup> *Id.* at 1-2.

<sup>131</sup> *Id.* at 2.