

under the present rules, for non-compliance with franchising authority deadlines.<sup>132</sup>

### **C. Discussion**

55. We believe that the current price cap adjustment system generally protects subscribers from unreasonable rates. Nevertheless, with the benefit of more than one year of experience with the current system, we have found that there are some disadvantages to the current price cap adjustment mechanism. One of our concerns about the current system is that operators file for multiple rate adjustments each year because they realize cost increases throughout the year and are unable to adjust their rates to recover these costs until after these costs are incurred. We believe that this process can be costly and inefficient because operators must file a Form 1210 and provide subscribers with 30 days' advance written notice each time they file for a rate adjustment. In addition, we are concerned that multiple rate adjustments in one year can cause confusion among subscribers. Furthermore, each rate adjustment imposes an administrative burden on regulatory authorities who must review the adjustment.

56. We also are concerned about the delays that operators may experience in recovering their costs under the current rate adjustment system. Because operators incur costs before they can file for rate adjustments and they often experience delays in being able to implement rate adjustments after they have filed for them, they never recover costs that are incurred as a result of these delays.

57. Moreover, the current rate adjustment system provides that if an operator waits more than 12 months to make rate adjustments reflecting increases in external costs and the number of regulated channels, the operator loses the ability to recover for these cost increases.<sup>133</sup> In addition, operators are required to make their annual inflation adjustment during an eleven month period or lose the ability to make that inflation adjustment. Although we adopted these rules to ensure that subscribers do not experience rate shock in cases where an operator delays implementing large numbers of rate increases, we are concerned that the "use or lose" mechanisms may result in some cable operators charging higher rates before they would otherwise elect to adjust their rates.

#### **1. Annual Rate Adjustment System**

58. In order to address these concerns, on our own motion<sup>134</sup> we are adopting a

---

<sup>132</sup> *Id.*

<sup>133</sup> 47 C.F.R. § 76.922(d)(3)(1).

<sup>134</sup> We have received a number of Petitions for Reconsideration concerning the pass through of external costs. While the methodology we adopt is not specifically contained in those petitions, the record supports much of our annual rate adjustment system.

new optional rate adjustment methodology that encourages cable operators to make only annual rate changes to their BSTs and CPSTs. Following the approval of the new Form 1240 by the Office of Management and Budget, operators may choose between the existing quarterly rate adjustment system and a new annual rate adjustment system. Operators that elect to use the new methodology would adjust their rates once a year to reflect changes in external costs, inflation, and the number of regulated channels that they expect to occur during the 12 months following the rate change. Because operators will be permitted to project changes that will occur in the 12 months following the rate filing, we expect that this methodology will limit delays that operators experience under the current system. Any cost that is not projected may be accrued and added to rates, with 11.25% interest,<sup>135</sup> when the operator makes its next filing. Moreover, at the end of the rate year, operators "true up" their projected changes to correct for differences between actual and projected costs during the rate year. Operators would not lose the right to make rate increases at a later date if they choose not to implement a rate change at the beginning of the next rate year. Moreover, if an operator overestimates its permitted rate as a result of its projections, the operator would be required to correct this overestimation, with interest, when it makes its next rate adjustment at the beginning of the next rate year.

59. We believe that this annual rate adjustment option will benefit subscribers, cable operators, franchising authorities, and the Commission. Annual rate modifications would limit subscriber confusion and frustration, for example, because subscribers would not have to contend with numerous rate adjustments during a given year. An annual adjustment makes good business sense for cable operators because it would allow them to file for a rate increase and provide notice to subscribers of such rate increases once a year. Regulatory authorities benefit from an annual rate adjustment system because it will minimize the number of rate adjustments they have to review each year.

60. Moreover, the annual filing option addresses concerns raised by some cable operators that under the current system they can experience delays in recovering costs.<sup>136</sup> Under the quarterly system, the operator will begin recovering these costs prospectively once the rate is approved, but will never recover the costs incurred during a period in which adjustments to its rates to reflect cost changes were delayed. However, operators that elect the annual system will face minimal delays in recovering their costs because they are permitted to adjust their rates to reflect reasonably certain and reasonably quantifiable changes that will occur up to 12 months after the rate adjustment will take effect. Moreover, even in cases where there are delays in cost recovery, the operator will be made whole because it will be permitted to recover for the accrual of unrecovered costs plus 11.25% interest between the date costs are incurred and the date the rate adjustment is made.

---

<sup>135</sup> See Section C(3), *infra*.

<sup>136</sup> See notes 83 & 84, *supra*.

61. Subscribers are protected by this system because if an operator overestimates its permitted rate as a result of its projections, the operator would be required to account for this overestimation plus 11.25% interest when it makes its next rate adjustment at the beginning of the next rate year.

62. On our own motion,<sup>137</sup> we are also eliminating the "use or lose" mechanism for inflation, increases in external costs and increases in the number of channels for operators that elect the annual rate adjustment method.<sup>138</sup> As a result, operators will not have to file more frequently than they would otherwise in order to recover costs they have incurred. In addition, subscribers will, in many cases, receive the benefit of having rate increases delayed.

63. The annual option applies to all rate changes: inflation, changes in external costs, changes in the number of regulated channels, and changes in equipment and installation costs. Under this option, an operator would file an FCC Form 1240 once a year for the purpose of making rate adjustments to reflect changes in external costs, inflation, and the number of regulated channels on a tier. On the same date that it files an FCC Form 1240, the operator also would file an FCC Form 1205 for the purpose of adjusting rates for regulated equipment and installations.

64. Operators may choose the annual filing date, but they must notify the franchising authority of their proposed date prior to their filing. Franchising authorities or their designees may reject the annual filing date chosen by the operator for good cause. For example, where a City Council must approve the rate adjustments at issue, if the review period the operator chooses coincides with a City Council recess, the franchising authority would be justified in rejecting the operator's chosen filing date. A franchising authority may not reject an operator's filing date, however, for the purpose of delaying an operator's ability to make rate adjustments. If the franchising authority finds good cause to reject the proposed filing date, the franchising authority and the operator should work together in an effort to reach a mutually acceptable date. If no agreement can be reached, the franchising authority may set the filing date up to 60 days later. In addition, operators that elect annual rate adjustments may change their filing dates from year-to-year, but at least twelve months must

---

<sup>137</sup> See note 1, *supra*.

<sup>138</sup> The elimination of "use or lose" for operators that use the annual rate adjustment system takes effect on the release date of this *Order*. Costs that have been incurred as of the release date of this *Order*, but which were first incurred less than one year before the release date of this *Order*, will not be lost if an operator's next filing uses the annual rate adjustment method. If an operator's next filing uses a Form 1210, the "use or lose" requirement remains for that operator, but would not apply to subsequently incurred costs should the operator's subsequent filing use the annual method.

pass before the operator can implement its next annual adjustment.<sup>139</sup>

65. Operators must use the annual or quarterly methodology for both BSTs and CPSTs.<sup>140</sup> This requirement makes BST and CPST cost assumptions on an equivalent basis and ensures that subscribers receive the full benefit of the annual rate adjustment methodology, i.e., a minimal number of rate adjustments.

66. Although we do not expect that operators will want to switch between the annual rate adjustment option and the quarterly option, our new rules will permit switching, provided they meet certain conditions. Whenever an operator switches from the current quarterly system to the annual system, the operator may not file a Form 1240 earlier than 90 days after the operator proposed its last rate adjustment on a Form 1210.<sup>141</sup> This will give regulatory authorities a reasonable period of time to complete their review of an operator's previous rate increase request before it begins reviewing an annual rate adjustment request. Similarly, when an operator changes from the annual system to the quarterly system, the operator may not return to a quarterly adjustment using a Form 1210 until a full quarter after it has filed a true up of its annual rate on a Form 1240 for the preceding period.<sup>142</sup> This will ensure that operators do not file a Form 1210 until after the initial regulatory review period for the true up on the Form 1240 has expired. It will also prevent operators from being able to double recover for changes in their expenses because the rate period under the annual

---

<sup>139</sup> This provision does not alter the requirement that net cost decreases must be implemented at least every twelve months.

<sup>140</sup> Such a requirement is consistent with our earlier decision requiring operators to elect either the cost-of-service or benchmark method for initial BST and CPST rate filings. *Third Report and Order*, MM Docket No. 92-266, FCC 93-519, 8 FCC Rcd 8444 (1993).

<sup>141</sup> Operators may begin filing for rate adjustments under the annual option (subject to our rules) as soon as the new Form 1240 is approved by the Office of Management and Budget.

<sup>142</sup> When returning to the quarterly adjustment method from the annual method, the operator should still file its FCC Form 1205 on an annual basis. However, the operator cannot file its final true up until 15 months after the operator filed its most recent FCC Form 1240. The true up will cover a 15-month period, the last three months from the previous projection and the 12 months of the just completed rate year. Because of the extra period for review, operators that switch from a Form 1240 to a Form 1210 need not file for decreases in costs until the end of that 15-month period. This is a limited exception to the requirement that they file within 12 months of such decreases. See note 139, *supra*.

system and the quarterly system will not coincide.<sup>143</sup>

67. The Commission will review this new annual rate adjustment option prior to December 31, 1998 to determine whether the new option is producing the expected benefits and whether the quarterly system should be eliminated and replaced with the annual rate adjustment system.

## 2. Projecting Changes in External Costs, Inflation, and Number of Regulated Channels

68. An operator that elects the annual option will be permitted to adjust its rates to reflect changes in its costs that are projected in the 12 months after its rate change is scheduled to go into effect. An operator's annual filing on a Form 1240 may include projections of changes in external costs, inflation, and the number of regulated channels that are expected in the 12 months following the date the operator files for the rate adjustment.<sup>144</sup> Projected rate adjustments must be based upon reasonably certain and reasonably quantifiable changes in external costs, inflation, and the number of regulated channels. In accordance with Sections 76.937(a) and 76.956(b) of the Commission's rules, operators have the burden of proving that projected changes in external costs, inflation or the number of regulated channels are reasonably certain and reasonably quantifiable.<sup>145</sup> The total amount of expenses the operator is entitled to recover between the date the rate change is expected to occur and the date of the next annual rate increase must be calculated by dividing the amount into 12 equal monthly installments and converted into a per subscriber amount.

---

<sup>143</sup> Any operator that cannot meet these conditions can file for a waiver of these filing limitations. A waiver will be granted only for good cause and upon a showing that double recovery is absent. Moreover, an operator may file a cost-of-service showing after two years from the date initial rates have been approved. *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 93-215, 9 FCC Rcd 4527, 4541 (1994) ("*Cost-of-Service Order*").

<sup>144</sup> In an operator's first annual filing, the operator will be permitted to recover for the accrual of costs associated with increases in external costs and changes in the number of regulated channels that occur between the date of the operator's last Form 1210 filing and the date the operator implements its rate adjustment pursuant to its Form 1210. If there is a net decrease in such costs during this period, the operator's rate adjustment on its Form 1240 must reflect the accrual of such cost decreases from the date the decreases occur through the date of the rate adjustment.

<sup>145</sup> Section 76.937 of the Commission's rules provide that a cable operator has the burden of proving that its existing or proposed rates for basic service and associated equipment comply with 47 U.S.C. § 543 and §§ 76.922 and 76.923. Section 76.956(b) provides that "[t]he burden shall be on the cable operator to prove that the [cable programming] service rate or equipment charge in question is not unreasonable."

69. We believe that operators will benefit from this system because it will minimize the delays they experience in recovering their costs under the existing rate adjustment system. Under the current rate adjustment system, operators must wait until the quarter after costs are incurred to file for a rate adjustment. As a result, operators begin recovering these costs prospectively once the rates are approved, but never recover the costs during the quarter when first incurred. In contrast, operators that elect the annual system will face minimal delays in recovering their costs because they are permitted to adjust their rates to reflect projected increases that will occur up to 12 months after the rate adjustment will take effect.

70. At the same time, subscribers will be protected from paying unreasonable rates because operators must demonstrate that their projections are reasonably certain and reasonably quantifiable. We agree with Cox that subscribers would also benefit under this approach because it would give operators incentives to add new programming without delay. Moreover, as explained more fully below, if an operator overestimates its permitted rate as a result of its projections, the operator would be required to correct this overestimation, with interest, when it makes its next rate adjustment at the beginning of the next rate year.

71. Under the annual system, operators may adjust for inflation at the beginning of each year for the coming year using the most recent 12 month estimate of the GNP-PI made available by the Commission. We believe that the previous year's inflation will serve as a fair proxy to the upcoming year's inflation. The Commission will issue a public notice in September of each year indicating the GNP-PI figure, based on inflation for the July 1 through June 30 year.

72. Operators may recover reasonably certain and reasonably quantifiable changes expected in external costs during the twelve months to which the rate filing applies. We believe that most external costs can and should be projected because this will minimize the need to permit operators to recover accrued costs plus interest. Accordingly, filings for the following categories of external costs are presumed to be reasonably certain and reasonably quantifiable: copyright fees, retransmission consent fees, other programming costs, Commission regulatory fees, and cable specific taxes.<sup>146</sup> As explained below, it is neither necessary nor appropriate to project the rate impact of increases in franchise fees. Moreover, we will not presume, as a matter of course, that franchise requirement costs are reasonably certain and reasonably quantifiable, although they may be projected to the extent the operator demonstrates that they are reasonably certain and reasonably quantifiable.

73. Projected changes in programming costs, which generally are program licensing fees and retransmission consent fees, are reasonably certain and reasonably quantifiable to the extent that programmers and operators have agreed in advance to the

---

<sup>146</sup> This presumption does not eliminate an operator's duty to respond to reasonable requests for information in support of its rate filings. See 47 C.F.R. § 76.937(a).

amount of programming cost changes and the date the cost changes will take effect.<sup>147</sup> We find that the appropriate regulatory authority should also be able to verify projected copyright fees because cable operators pay these fees to the U.S. Copyright Office on the basis of operators' gross receipts and distant signal equivalents.<sup>148</sup> We believe most operators should be able to project the number of broadcast signals and the amount of gross receipts 12 months in advance.

74. In addition, we find that increases in Commission regulatory fees should normally be reasonably certain and reasonably quantifiable after the Commission adopts fee changes. We expect that increases in Commission regulatory fees will be reasonably certain and reasonably quantifiable because in adopting any change to the fees, the Commission will prescribe a specific change to be assessed and to take effect on a specific date.

75. Further, we expect that changes in cable specific taxes will normally be reasonably certain and reasonably quantifiable. We believe that if a state or local government imposes a cable specific tax change, it normally will be reasonably certain and reasonably quantifiable because we would expect that the tax change would be set at a specific amount to take effect on a specific date.

76. We will not presume that changes in franchise requirement costs are reasonably certain and reasonably quantifiable. Certain changes in franchise requirement costs may not be reasonably certain and reasonably quantifiable because determining the types of costs and implementation dates can be more difficult than with other types of external costs. Even determining what qualifies as a franchise requirement cost may, in some cases, be difficult. For example, if a franchising authority adopts customer service standards that exceed the Commission's customer service standards, the operator will be permitted to pass-through the cost of implementing these standards only to the extent that the costs exceed the costs of implementing the Commission standards. We believe that it may be difficult, in some cases, to determine the difference between the cost of implementing the Commission's standards and the franchising authority's standards. Nevertheless, to the extent that operators demonstrate that such franchise requirement costs are reasonably certain and reasonably quantifiable, such costs may be projected.

77. In addition, we find that, given the way franchise fees are collected from subscribers, it would be neither necessary nor appropriate to project the rate impact of increases in franchise fees on FCC Form 1240. It is not possible to project the rate impact

---

<sup>147</sup> Letter from Meredith J. Jones, Chief, Cable Services Bureau, to Wesley Heppler and Paul Glist, of Cole, Raywid & Braverman, DA 95-1175 (May 26, 1995).

<sup>148</sup> See U.S. Copyright Office Form SA3, Statement of Account for Secondary Transmissions by Cable Systems. Copyright fees for carriage of local signals are accounted for on the basis of the operator's gross receipts.

of an increase in franchise fees on particular subscribers because franchise fees are normally collected from cable subscribers by assessing a fixed percentage of their total bill, at the time they receive their bill. Therefore, the amount of franchise fees collected will differ among subscribers, depending upon the total bill of a particular subscriber. Accordingly, an operator using the annual rate adjustment system may use the same methodology as with the quarterly rate adjustment system,<sup>149</sup> i.e., it may pass through franchise fees to its subscribers within 30 days of filing for an increase unless the franchising authority finds that the rate adjustment is unreasonable before 30 days has expired or requires additional information due to an incomplete rate filing.<sup>150</sup> If the franchising authority does not issue a rate decision within this 30 day period, the proposed rate will go into effect, subject to subsequent refund orders. Alternatively, if the effective date of an increase in franchise fees is the same as that for the annual rate increase, the operator may file the franchise fee adjustment concurrent with the rate increase. We encourage such an approach to minimize subscriber confusion and to reduce the franchising authority's administrative burden.

78. Finally, operators are permitted to adjust their rates to reflect reasonably certain and reasonably quantifiable changes expected in the number of regulated channels on a tier. An operator may know when changes in the number of channels on a regulated tier will take place. We believe operators should be able to make these projections just as they can with external cost changes.

### 3. True-up and Accrual for Changes Not Projected

79. In many cases, we expect that operators' projections will not exactly reflect the actual changes in external costs, inflation, and the number of regulated channels. For example, differences may result from estimations that were not exact, or from changes in the date an operator incurs the additional costs. Similarly, an operator's projections may not include certain changes in external costs and the number of regulated channels. Therefore, as part of the annual rate change, a "true up" mechanism is available to correct projected cost changes with actual cost changes.<sup>151</sup> The true up requires operators to decrease their

---

<sup>149</sup> See Section III.A, *infra*.

<sup>150</sup> The operator may give notice to subscribers of an increase in franchise fees concurrent with its filing with the franchising authority. 47 C.F.R. §§ 76.932, 76.964.

<sup>151</sup> Because the true-up will examine what costs were actually incurred, it can only examine costs as of the date the Form 1240 is filed. As a result, and because the Form 1240 must be filed at least 90 days before the proposed increase is scheduled to take effect, *see* Section C(6), *infra*, and the projections are made for the year beginning with the proposed implementation date, the period applicable for the true up will not exactly coincide with the previous year's projections. For example, if an operator files annually on October 1 for rates to take effect on January 1, the true up will cover the period from the previous October through September, but the projections will apply to the period January to December.

rates or permits them to increase their rates to adjust for over- or under- estimations of these cost changes. To the extent that there is an underestimation of these cost changes, future rates may be increased to permit recovery of the accrued costs plus interest between the date the costs are incurred and the date the operator is entitled to make its next rate adjustment.<sup>152</sup> To the extent that there is an overestimation of these cost changes, future rates must be reduced to reflect the accrued amount of the overcharge plus interest.

80. Moreover, operators will be able to recover excess accrued costs with interest to the extent that the projected costs did not cover the increases that actually took place.<sup>153</sup> In the operator's next filing, the operator is entitled to recover these excess costs plus interest between the date the costs are incurred and the date the operator is entitled to make its next annual rate adjustment. Because we have already determined that 11.25% is presumptively the cable operator's cost of capital,<sup>154</sup> we find that the interest rate presumptively should be 11.25%. If the operator elects not to recover these accrued costs with interest on the date the operator is entitled to make its annual rate adjustment, the interest will cease to accrue as of the date the operator is entitled to make the annual rate adjustment, but the operator will not lose its ability to recover such costs and interest. Although interest will cease to accrue, operators will be permitted to recover for the accrual of costs between the date such costs are incurred and the date the operator actually implements the rate adjustment to recover for such costs. This policy will give operators the flexibility to delay rate increases without losing the opportunity to recover interest on costs that accrued due to circumstances beyond their control. At the same time, this policy ensures that where an operator makes a business decision to delay a rate increase, subscribers are not required to pay for the cost of the delay.

81. We are adopting this true up mechanism because we find that it will allow operators to elect the annual rate adjustment system without incurring financial harm due to inaccurate projections. Although operators electing this option will limit themselves to annual rate adjustments, the true up will provide them with the opportunity to recover for all costs associated with changes in external costs, inflation and the number of regulated channels. To the extent that there are any delays in making rate adjustments, the true up will minimize the operator's lost revenues because the operator will be permitted to recover for these costs.

---

<sup>152</sup> For ease of administration, FCC Form 1240 calculates interest for purposes of the true up by assuming the additional costs are incurred at the mid-point of the true-up period.

<sup>153</sup> Operators that use the annual methodology in their next filing after the release date of this Order may accrue costs and interest incurred since July 1, 1995, in that filing. Operators that file a Form 1210 in their next filing after the release date of this Order, and elect to use Form 1240 in a subsequent filing, may accrue costs and interest incurred since the end of the last quarter to which a Form 1210 applies.

<sup>154</sup> *Cost of Service Order*, 9 FCC Rcd at 4633-35.

82. By the same token, the true up will allow many subscribers to realize the benefit of only one rate increase per year without ultimately being overcharged for regulated services. Although in some cases an operator may make an annual rate increase that reflects projected cost changes that are greater than what actually occur in practice, when operators adjust their rates pursuant to the true up in the next year, the operator will reduce its rates on a prospective basis and the overcharges plus interest will be returned to subscribers in the form of reduced rates in twelve equal monthly installments. Further, because the result of operators being able to recover more of their costs sooner is that operators will be more likely to invest in services of interest to subscribers, and do so earlier, subscribers will benefit from the true-up mechanism.

#### 4. Channel Additions

83. Generally, operators that elect the annual rate adjustment option will not be permitted to make more than one rate adjustment per year. However, we recognize that customer and market demands for channel line-ups may change during the course of a year. As a result, operators might want to add programming during the year that they could not reasonably have projected at the time of their annual filing. Although operators may accrue these costs and reflect them in the following year's filing, we are concerned that operators may be reluctant to add new channels until they can raise rates, particularly because new programming costs can be substantial.

84. Consequently, operators may make rate adjustments for the addition of required channels to BSTs that the operator is required by federal or local law to carry, i.e., must-carry, local origination, public, educational and governmental access and leased access channels. The parties agree that when an operator is required to add channels after its annual rate adjustment, the operator should be able to pass through the costs of such channels immediately, even if this occurs outside of the annual filing cycle.<sup>155</sup> Since there would be no programming costs associated with these channel additions, adjustments will be limited to the non-external costs adjustment associated with channel additions. 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. Should the operator elect not to pass through the costs immediately, it may accrue the costs of the additional channels plus interest, as described in Section II(C)(3) above.

85. Further, because we have a longstanding policy to encourage new programming beyond channel additions that are required by law, we will allow operators to make one additional rate adjustment during the year to reflect channel additions to CPSTs, or 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.

---

<sup>155</sup> See, e.g., Cox Letter at 3; NATOA Letter at 2.

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. Should the operator elect not to pass through the costs immediately, it may accrue the costs of the additional channels plus interest, as described in Section II(C)(3) above. We encourage operators to put channel adjustments in their annual filings especially where their channel addition filing would be close in time to the annual filing. The regulatory review period for an increase under the mid-year channel addition is the same as under the annual adjustment for CPST.

86. We recognize, as we did in the *Sixth Reconsideration Order*, that allowing recovery for unlimited mid-year channel additions to CPSTs, and not to BSTs (except systems with only one regulated tier) may create greater incentives to add channels to CPSTs than to BSTs.<sup>156</sup> We believe that preserving rate stability on the BST, which carries broadcast signals and which every subscriber must purchase in order to receive other programming services, is sufficient reason to limit the applicability of this rule to CPSTs.<sup>157</sup> Moreover, we are concerned that, if we allowed operators to add an unlimited number of channels to BSTs, it would increase the complexity of the regulatory task faced by franchising authorities.<sup>158</sup> For these reasons, we limit application of the new rules to CPSTs and to those BSTs that are offered by operators with only a single regulated tier. Franchising authorities that receive mid-year channel addition filings from single-tier operators have 60 days to review these filings.

## 5. Treatment of Equipment and Installation

87. 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>159</sup> Therefore, for operators that elect to use the annual rate adjustment methodology, we are changing the current rule which requires operators to file Form 1205 60 days after the close of their fiscal year.<sup>160</sup> Both forms must be filed with franchising authorities 90 days before the rate adjustment is scheduled to go

---

<sup>156</sup> 10 FCC Rcd at 1250-51.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 1251. In addition, NATOA has stated that it opposes permitting operators make unlimited channel additions to BSTs. NATOA Letter at 2-3.

<sup>159</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>160</sup> *Id.*

into effect so that operators propose to implement all rate adjustments on the same date. We also find that requiring the filing of both forms on the same date would ease the administrative burdens on franchising authorities. This modifies the current requirement that operators file their Form 1205 no more than annually to the extent necessary when the operator changes to the annual system.

88. In addition, we will continue to require operators to base their proposed annual customer equipment and installations rate adjustments on past costs. However, in order to provide operators with flexibility to set their annual filing dates, we will allow an alternative to the present requirement that operators must set their rates using data from the last fiscal year.<sup>161</sup> Specifically, if an operator that elects the annual rate change option chooses a filing date that does not coincide with the end of its fiscal year, the operator may use either data from the 12 months preceding the filing or data from its most recent fiscal year. We are providing operators with the flexibility to choose between these options because we recognize that an operator's equipment costs may change significantly between the close of the fiscal year and the date the operator files its Form 1205. Moreover, where operators face an unusual change in operations that would not be reflected in either methodology, we will continue to permit them to use a representative month for the purpose of calculating equipment rates, provided that franchising authorities agree to this arrangement.<sup>162</sup>

89. We believe that it would be far more difficult to project changes in equipment and installation costs because the variables involved with the calculation of customer equipment and installation rates are more numerous than are the variables in projecting external costs, inflation, and channel additions. In determining equipment rates, for example, it is necessary to determine the total maintenance costs and/or service hours, the total number of units that have been brought into service, the gross book value of the equipment, the accumulated depreciation of the equipment, the deferred tax balance associated with the equipment, the grossed up rate of return on the equipment, and the depreciation expense. This is far more complicated and uncertain than projecting inflation, channel additions, and increases in external costs. Moreover, installation costs are set by determining an hourly service charge which is based on calculating (a) the total capital costs for vehicles, tools and facilities used for maintenance of equipment, (b) annual operating expenses associated with vehicles, tools and facilities used for maintaining equipment, (c) a percentage of the total capital costs and operating expenses for equipment and installations, and (d) the total labor hours for maintenance and installation of customer equipment and services. In light of the large number of complicated variables that enter into calculating equipment and installation costs, we will not permit operators to project these costs. We believe that verifying these projected costs would impose a substantial administrative burden on franchising authorities that exceeds the benefit to operators associated with projecting

---

<sup>161</sup> *First Reconsideration Order*, 9 FCC Rcd at 1200.

<sup>162</sup> *See First Reconsideration Order*, 9 FCC Rcd at 1200.

equipment costs.

90. Moreover, under existing rules, operators set their equipment and installation rates on an annual basis using the preceding fiscal year. We continue to believe, as we found in the *Third Reconsideration Order*, that setting rates using costs not projected permits operators to recover their full cost of equipment.<sup>163</sup> For those cases where operators face an unusual change in operations that would not be reflected in the previous year's annual data, the *First Reconsideration Order* stated that operators are permitted to use a representative month for the purpose of calculating equipment rates, provided that franchising authorities agree to this arrangement.<sup>164</sup>

91. Finally, we clarify how an operator should set its initial rates for new types of equipment.<sup>165</sup> We have previously stated that when an operator introduces a new type of equipment, the operator may set a rate for that equipment at the time it is introduced.<sup>166</sup> Until now, however, we have not provided a methodology. Accordingly, no earlier than 60 days before the date the new type of equipment is scheduled to be introduced to subscribers, the operator will be permitted to file for a rate adjustment on a Form 1205. 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. In setting rates for new types of equipment, operators would complete the relevant portion of Schedule C and the relevant step of the Worksheet for Calculating Permitted Equipment and Installation Charges of a Form 1205. Moreover, where applicable, the operator would use figures from the most recent Form 1205 for the information not specifically related to the new equipment, e.g., the Hourly Service Charge. In calculating the annual maintenance and service hours for the new equipment, the operator should base its entry on the average annual expected time required to maintain the unit, i.e., expected service hours required over the life of the equipment unit being introduced divided by the equipment unit's expected life.

## 6. Regulatory Review Period for Annual Rate Changes

### a. Basic Service Tier

92. Operators that elect the annual rate adjustment methodology must file BST rate change requests at least 90 days prior to the date they plan to implement the proposed

---

<sup>163</sup> *Third Reconsideration Order*, 9 FCC Rcd 4372.

<sup>164</sup> *First Reconsideration Order*, 9 FCC Rcd at 1200.

<sup>165</sup> This approach is not limited to operators that elect the annual filing, but applies to all operators that file Form 1205.

<sup>166</sup> *First Reconsideration Order*, 9 FCC Rcd at 1199.

changes.<sup>167</sup> Operators may implement rate changes as they have 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 require a refund after the 90-day review period. However, if at the end of the 90-day review period an operator inquires as to whether the franchising authority is continuing to review the operator's filing, the franchising authority or its designee must respond to the operator within 15 days of receiving the inquiry. Failure to reply in the requisite amount of time will result in the franchising authority losing its ability to issue refunds or to order prospective rate reductions. In its response, the franchising authority must indicate whether it is continuing to review the operator's filing. 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.<sup>168</sup> In the event that the franchising authority does not act within the 12-month period, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing. We set this time constraint on franchising authorities because we believe that one year should provide ample time for review, and because operators need to have certainty with respect to their liability for refunds and whether their rates will be permitted to remain in effect.

93. We believe that a 90-day regulatory review period strikes a good balance among the interests of subscribers, franchising authorities and cable operators. If operators were required to file any more than 90 days before a rate adjustment is scheduled to take effect, they would encounter much greater difficulty in projecting their costs accurately. On the other hand, if operators were permitted to file less than 90 days before a rate adjustment is scheduled to take effect, franchising authorities may not have enough time to review a complete rate filing because the franchising authority must simultaneously determine whether an operator has (a) justified projected inflation, changes in external costs, and changes in the number of regulated channels; (b) accurately estimated any undercharges or overcharges in its true up of the previous year; and (c) accurately determined its actual costs for customer equipment and installations in its annual Form 1205 filing. Without ample time to review operators' rate filings, franchising authorities may be unable to ensure that subscribers are paying reasonable rates for BSTs. This 90-day review period will also help operators

---

<sup>167</sup> Such requests would include FCC Forms 1205 and 1240, and may include Form 1215. An operator may file more than 90 days in advance of its implementation date, but the franchising authority still has a 90-day review period. This option will allow an operator to implement a price change after it knows how the franchising authority has acted on its proposal.

<sup>168</sup> Our current price cap rules contain no limits on the amount of time franchising authorities can take to issue rate decisions. See 47 C.F.R. § 76.933(c).

develop their business plans because it provides them with certainty as to when rate changes will become effective.

94. If there is a material change in an operator's circumstances during the 90-day review period and the change affects the operator's rate change filing, the operator may file an amendment to its Form 1240. Such an amendment must be filed, however, before the end of the 90-day review period. If the operator files such an amendment to its filing, the franchising authority will have at least 30 days to review the filing. Therefore, if the amendment is filed more than 60 days after the operator made its initial filing, the operator's proposed rate change may not go into effect any earlier than 30 days after the filing of its amendment. However, if the operator files its amended application on or prior to the sixtieth day of the 90-day review period, the operator may implement its proposed rate adjustment, as modified by the amendment, 90 days after its initial filing.

95. Consistent with our current rule,<sup>169</sup> proposed rates do not take effect at the end of the 90-day period if the franchising authority concludes that the operator has submitted a facially incomplete filing. We maintain the current rule because we recognize that a franchising authority lacks sufficient information to act on a rate justification that is facially incomplete, and because the franchising authority's period to review a complete filing should not be limited as the result of the operator's failure to provide the information required on the form. Facially incomplete filings are those filings which do not have all the information required by the form. They are to be distinguished from other filings which contain all of the required information, but about which franchising authorities seek clarifying or substantiating information. Under this limited exception, the franchising authority or its designee must notify the operator of the incomplete filing within 45 days of the date the filing is made. While the franchising authority is waiting for this information, the franchising authority's deadline for issuing a decision, the date on which rates may go into effect if no decision is issued, and the period for which refunds are payable, will be tolled.

96. At the time an operator files its rates with the franchising authority, the operator may give customers notice of the proposed rate changes.<sup>170</sup> Such notice should state that the proposed rate change is subject to approval by the franchising authority. If the operator is only permitted a smaller increase than was provided for in the notice, the operator must provide an explanation to subscribers on the bill in which the rate adjustment is implemented. If the operator is not permitted to implement any of the rate increase that was provided for in the notice, the operator must provide an explanation to subscribers

---

<sup>169</sup> 47 C.F.R. § 76.937(e).

<sup>170</sup> If an operator plans to implement a rate adjustment 90 days after the operator submits its filing for a rate adjustment, the operator is required to provide subscribers with advance written notice of the proposed rate increase no later than 30 days before the end of the 90-day review period. See 47 C.F.R. §§ 76.309(b)(3)(i)(B), 76.964(b).

within 60 days of the date of the franchising authority's decision.<sup>171</sup> Additional advance notice is only required in the unlikely event that the rate exceeds the previously noticed rate.

97. We reject Cox's proposal that we allow contested rate increases to go into effect subject to refund liability pending the outcome of an expedited appeal to the Commission.<sup>172</sup> We find that it would be inappropriate for the Commission to allow operators to implement BST rate increases in cases where the operator has appealed a franchising authority decision that found the rates to be unreasonable because the Commission only conducts an appellate review of franchising authority decisions regarding BST rates and does not set the rate on appeal. In fact, the Commission will reverse a franchising authority's decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules in rendering its local rate order.<sup>173</sup> If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.<sup>174</sup>

98. However, if a franchising authority finds that the rate set by the operator on its Form 1240 is unreasonable and the operator appeals the decision to the Commission, the operator will recover any lost revenues if the Commission ultimately determines that the franchising authority unreasonably denied the operator's proposed rate adjustment. The operator will be permitted to recover all lost revenues with interest between the date of the franchising authority's decision and the date the operator is permitted to make the rate adjustment as a part of the true up in its next annual rate filing.<sup>175</sup> We allow the operator to make this recovery because we believe it is appropriate to place the operator in the position in which it would have been had the franchising authority approved the operator's reasonable rate adjustment proposal.

#### **b. Cable Programming Services Tiers**

99. Section 76.960 of the Commission's rules provides that if the Commission has ordered an operator to make a prospective rate reduction for a CPST, the rate reduction will

---

<sup>171</sup> Consistent with our customer service standards, of which the notice requirement is a part, this Order does not preempt notice requirements imposed by state and local law. 47 C.F.R. §§ 76.309(b)(3-4), .309(c)(3)(B)(i); *see also Report & Order*, MM Docket No. 92-263, FCC 93-145, 8 FCC Rcd 2892, 2895-96 (1993).

<sup>172</sup> Cox Letter at 2.

<sup>173</sup> *Rate Order*, 8 FCC Rcd at 5732; *Third Reconsideration Order*, 9 FCC Rcd at 4346.

<sup>174</sup> *Id.*

<sup>175</sup> *See* Section II(C)(3), *supra*.

be binding on the operator for one year, unless the Commission specifies otherwise.<sup>176</sup> Accordingly, operators that have been required to reduce their CPST rates have not been permitted to increase their rates under our price cap rules for one year without prior Commission approval.

100. We will eliminate this requirement for operators that elect to use the annual rate adjustment system. Operators that have been ordered to make a rate reduction within one year of filing for an increase under the annual system may implement their annual rate adjustment without prior Commission approval. They will be required to file a Form 1240 proposing an annual rate adjustment for their CPST rate adjustments 30 days before the operator plans to implement the rate change. The Commission can deny the increase before the end of 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 may be ordered at a later time.

101. Operators that elect the annual rate adjustment system and have CPST complaints pending also must propose the annual rate adjustment by filing an FCC Form 1240 with the Commission at least 30 days prior to the date the operator plans to implement the rate change.<sup>177</sup> The Commission can deny the increase before the end of 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 refunds, where appropriate, which may be ordered at a later time.

102. An operator that has a CPST complaint pending or has been ordered by the Commission to reduce its CPST rates within the past year may amend its rate change filing after the 30-day review period has commenced, if there is a material change in an operator's circumstances that affects the operator's proposed rate change. Such an amendment must be filed, however, before the end of the 30-day review period.

103. Where both an operator's BST and CPSTs are subject to rate regulation and the operator is filing for annual adjustments to both tiers, the operator must file for these rate adjustments so that they are scheduled to go into effect on the same date. That is, the 90-day review period for the BST adjustment must coincide with the 30-day review period for the CPST adjustment so that both rate adjustments may be implemented on the same subscriber bills. While we are not requiring operators to actually implement the rate adjustments on the same date, we believe that this policy will encourage operators to make rate changes to their

---

<sup>176</sup> 47 C.F.R. § 76.960.

<sup>177</sup> 47 C.F.R. § 76.958. An operator may of course file its Form 1240 with the Commission at the same time that it files with its franchising authority.

BSTs and CPSTs on the same date once per year, which will reduce customer confusion associated with multiple rate increases.<sup>178</sup>

104. The operator may give the required notice to subscribers<sup>179</sup> concurrently with its filing with the Commission.<sup>180</sup> If the Commission acts on the rate application before it goes into effect and the operator is only permitted a smaller increase than was provided for in the notice, the operator must provide an explanation to subscribers on the bill in which the rate adjustment is implemented. If the operator is not permitted to implement any of the rate increase that was provided for in the notice, the operator must provide an explanation to subscribers within 60 days of the date of the Commission's decision.<sup>181</sup> Additional advance notice is only required in the unlikely event that the rate exceeds the previously noticed rate.

## **7. Treatment of External Costs Under the Quarterly Rate Adjustment System**

105. In light of our decision to adopt this annual rate adjustment option, we will not alter the existing quarterly rate adjustment system. We find that it is not necessary to eliminate regulatory lag under the quarterly system because if operators believe that regulatory lag under the quarterly system prevents them from recovering all of their costs, they can use the annual option. Moreover, we reject suggestions by TKR and CATA that we allow operators to pass through changes in external costs under the existing quarterly system within 30 days of an operator's filing for such a rate adjustment. We reject this recommendation because we are not convinced that, in all cases, the 30-day period will provide franchising authorities with the time to conduct a proper review of the reasonableness of these external costs.

106. As an initial matter, we find that TKR's request that the Commission permit operators to pass through all external costs without prior regulatory approval is an issue that

---

<sup>178</sup> Operators with CPST complaints pending or that have been ordered by the Commission to reduce their CPST rates must implement net cost decreases by the anniversary date of the annual adjustment period.

<sup>179</sup> 47 C.F.R. §§ 76.309(b)(3)(i)(B) and 76.964(b).

<sup>180</sup> Operators should notify subscribers about rate changes for the BST, CPSTs, and equipment at the same time, in order to avoid subscriber confusion resulting from giving multiple notices.

<sup>181</sup> Consistent with our customer service standards, of which the notice requirement is a part, this Order does not preempt notice requirements imposed by state and local law. 47 C.F.R. §§ 76.309(b)(3-4), .309(c)(3)(B)(i); *see also Report & Order*, MM Docket No. 92-263, FCC 93-145, 8 FCC Rcd 2892, 2895-96 (1993).

is properly before us on reconsideration of the *Fourth Reconsideration Order*. In the *Fourth Reconsideration Order*, we permitted cable operators to pass through two categories of external costs without prior regulatory approval: franchise fees and Commission regulatory fees. Because TKR is seeking to extend this treatment to all categories of external costs, we find that TKR is raising issues that were addressed in the *Fourth Reconsideration Order*.<sup>182</sup>

107. Although, under the quarterly rate adjustment system, we previously decided to permit operators to adjust their rates to reflect changes in franchise fees and Commission regulatory fees within 30 days of filing for recovery of such costs because we found that franchising authorities should be able to easily complete their review of the reasonableness of these costs within 30 days,<sup>183</sup> we find that TKR and CATA have failed to demonstrate that 30 days will always provide franchising authorities with sufficient time to review the reasonableness of a cable operator's filing concerning other categories of external costs. We believe that unlike franchise fees, determining the reasonableness of other categories of external costs, particularly retransmission consent fees, programming costs, and franchise requirement costs, can be somewhat complicated. In determining the reasonableness of the cost of franchise requirements, for example, the franchising authority's determination as to the amount of a franchise requirement cost may, in some cases, be a difficult question which may take a franchising authority longer than 30 days to resolve. If a franchising authority adopts customer service and technical standards that exceed such requirements under our rules, operators are permitted to pass through the cost of these standards, to the extent that they exceed the requirements under our rules. Because it may be difficult in some cases to determine the incremental cost of the local standards that exceed the requirements under our rules, franchising authorities may reasonably need more time to make this determination. Franchising authorities also may require additional time, in some cases, to review retransmission consent fees and other programming cost increases because the franchising authority may have to review additional information in order to verify the costs claimed on the operator's FCC Form 1210.

### III. TREATMENT OF FRANCHISE FEES AND COMMISSION REGULATORY

---

<sup>182</sup> Even if this issue was not properly before the Commission on reconsideration, the Commission has the authority to decide this issue on our own motion. *See* note 1, *supra*.

<sup>183</sup> We found that the franchising authority's review of the pass through of franchise fees and regulatory fees should entail minimal administrative burdens because the amount of these fees can be easily verified. For example, Commission regulatory fees can be easily calculated because each cable system operator is assessed \$370 per 1,000 subscribers for the fee and franchise fees most often can be determined by computing a fixed percentage of the operator's gross annual revenues.

## FEES UNDER QUARTERLY RATE ADJUSTMENT OPTION

108. As stated above, operators that do not elect the annual rate adjustment option may continue to adjust their rates on a calendar year quarterly basis to reflect changes in certain categories of external costs, and the number of regulated channels. Cable operators seeking to adjust regulated rates to reflect these changes must support the proposed rate on FCC Form 1210,<sup>184</sup> and file the form with the appropriate regulatory authority. In the *Fourth Reconsideration Order*, we extended external cost treatment to Commission regulatory fees and modified external cost treatment of franchise fees. This section addresses petitions for reconsideration that were filed in response to the *Fourth Reconsideration Order*.

### A. Franchise Fees

#### 1. *Fourth Reconsideration Order*

109. In the *Fourth Reconsideration Order* we permitted operators to pass through franchise fees as external costs in 30 days unless the franchising authority determines that the rate adjustment is unreasonable before 30 days has expired.<sup>185</sup> In making this decision, we found that because franchise fees are set by the franchising authority, which generally is aware of and sensitive to the fees' impact on subscribers, prior regulatory review of the franchise fee appears less necessary from a consumer protection standpoint than it is for other categories of external costs. Under this approach, the new rate automatically takes effect following a franchising authority's 30-day review period.<sup>186</sup> However, we preserved a cable operator's obligations to provide subscribers and franchising authorities with 30 days' prior notice of any rate changes,<sup>187</sup> and to supply the franchising authority with information justifying the calculation of the new rate.<sup>188</sup> We also presumed a franchising authority's right to order a prospective rate reduction, a refund, or both, in accordance with our rules in cases where the franchising authority allowed a rate to go into effect, but later found the rate to be

---

<sup>184</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>185</sup> *Fourth Reconsideration Order*, 9 FCC Rcd at 5796; see also 47 C.F.R. § 76.933(e).

<sup>186</sup> 47 C.F.R. § 76.933(e).

<sup>187</sup> 47 C.F.R. § 76.964(b).

<sup>188</sup> *Fourth Reconsideration Order*, 9 FCC Rcd at 5796 n.12.

unlawful.<sup>189</sup>

## 2. Contentions

110. The Local Governments dispute our assumption that prior review of subscriber rate increases due to increased franchise fees is less necessary because the franchising authority usually sets the fees. They assert that the amount of an operator's costs that may be properly allocated to franchise fees is far from clear in many jurisdictions, particularly with respect to the amount attributed to franchise fees on subscribers' bills. For example, they argue that cable operators often attempt to treat costs associated with the provision of public, educational or governmental ("PEG") access channels as franchise fees. The Local Governments argue that our decisions in the *Fourth Reconsideration Order* will permit cable operators to exploit these disagreements with franchising authorities by simply passing through the alleged franchise fee increases without prior regulatory review or approval. They contend that, although subscribers ultimately may be protected by refunds for rate increases later deemed unreasonable, it is unfair to force subscribers to suffer higher rates while the franchising authority reviews the new rates. Finally, the Local Governments contend that subscriber rate increases on account of franchise fees should be subject to prior regulatory review just like increases in the rate for the BST because, from a subscriber's viewpoint, no difference exists between an overcharge due to improper franchise fees and an overcharge associated with some other type of external cost.<sup>190</sup>

111. The National Cable Television Association ("NCTA"), on the other hand, urges the Commission to refrain from modifying our decision permitting the automatic pass through of franchise fees. NCTA disputes the Local Governments' claim that cable operators will abuse disagreements with franchising authorities pursuant to this revised rule. NCTA notes that franchising authorities will continue to receive 30 days' prior notice of the proposed rate increase and argues that this period should be sufficient for their review of franchise fee-based rate increases in all but the most unusual cases. Finally, NCTA argues that the refund mechanism adequately protects subscribers from harm if the rate increase is later found to be based on incorrect data calculations.<sup>191</sup>

## 3. Discussion

112. We affirm our decision to permit operators that file rate adjustments under the quarterly system to pass through franchise fees within 30 days of filing unless the franchising authority finds that the rate adjustment is unreasonable before 30 days has expired. If the

---

<sup>189</sup> *Id.* at 5796 n.18 (describing requirements under 47 C.F.R. § 76.933(a) - (c)). *See also* 47 C.F.R. §§ 76.942, 76.945.

<sup>190</sup> Local Governments Petition for Reconsideration at 2-5.

<sup>191</sup> NCTA Opposition at 2-3.

franchising authority does not issue a rate decision within this 30 day period, the proposed rate will go into effect, subject to subsequent refund orders.<sup>192</sup> In order to issue a refund order, the franchising authority must issue a written order at the end of the 30 day period directing the operator to keep an accurate account of all amounts received by reason of the proposed rate and on whose behalf such amounts are paid.<sup>193</sup>

113. We do not believe this rule presents a serious risk of harm to subscribers because, contrary to the assertions of Local Governments, we believe franchising authorities normally should be able to complete their review of rate adjustments reflecting the pass through of franchise fees within 30 days of an operator's filing. In most cases, the franchising authority's review of the franchise fee pass through generally should entail minimal administrative burdens since the franchising authority is intimately familiar with how the fee is assessed. Because the operator pays the franchise fee to the franchising authority, there should not be any dispute over the amount of franchise fees that were actually paid to the franchising authority. Further, the franchise fee is generally easily determined by computing a fixed percentage of the operator's gross annual revenues or some other easily ascertainable amount. We find that franchising authorities can easily determine how the pass through of such fees should be reflected in a BST rate adjustment because the entire cost of franchise fees is directly assigned to the BST.<sup>194</sup> Finally, to the extent franchise fees are miscalculated, we believe that our approach fully protects subscribers' interests in paying reasonable rates because franchise fee increases are subject to refunds.

114. As with all other rate adjustment filings, if an operator files for a rate adjustment to reflect an increase in franchise fees and 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 supplemental information.<sup>195</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>196</sup> Once the supplemental information has been filed with the franchising authority, the time for determining the reasonableness of the rate by the franchising authority will recommence.<sup>197</sup> We believe that this requirement is essential if franchising authorities are going to have the minimum information necessary to complete a review of an operator's rate adjustment

---

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *See* FCC Form 1210, Module B.

<sup>195</sup> *See Third Reconsideration Order*, 9 FCC Rcd at 4348.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 4348 n.52.

request within 30 days of the filing.

## **B. Commission Regulatory Fees**

### **1. Fourth Reconsideration Order**

115. In the *Fourth Reconsideration Order* we also determined that Commission annual regulatory fees<sup>198</sup> imposed under Section 9 of the Communications Act of 1934 should be passed through as external costs as provided under our price cap rules governing cable service regulation.<sup>199</sup> We further determined that cable operators may adjust rates to reflect the annual regulatory fees on the same conditions as franchise fees, namely, without the prior approval of franchising authorities, but subject to potential refund liability.<sup>200</sup> Finally, we stated that, on a going-forward basis, operators may recover the regulatory fees in 12 equal monthly installments from subscribers during the fiscal year following the fiscal year during which the payment was imposed. We recognized that a cable operator may not collect the fees from subscribers until after the operator has paid the fees to the Commission; however, we prohibited operators from assessing interest on the amounts charged to the subscribers to avoid the substantial administrative burdens required for such calculations.<sup>201</sup>

### **2. Contentions**

116. The Local Governments urge the Commission to reverse our decision according external cost treatment to the Commission cable service regulatory fees because the fees will not represent a significant burden to cable operators. They note that the Commission declined to accord external treatment to Cable Television Antenna Relay Service ("CARS") license application fees assessed on cable operators because these fees, which are assessed on a flat fee basis of \$220 per license, are viewed as insignificant by most

---

<sup>198</sup> *Fourth Reconsideration Order*, 9 FCC Rcd at 5797; 47 C.F.R. § 76.922(d)(3)(iv)(F). The Commission is required to collect cable system regulatory fees of \$370 per 1,000 subscribers from cable television systems on an annual basis. See Public Notice: Cable Television System Regulatory Fees (June 20, 1994); see also 47 C.F.R. § 159 (imposing the fees). The purpose of requiring cable systems to pay regulatory fees to the Commission is to permit the Commission to recover the annual cost of its various regulatory activities.

<sup>199</sup> *Fourth Reconsideration Order*, 9 FCC Rcd at 5797.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

operators.<sup>202</sup>

117. The Local Governments also oppose the Commission's assignment of the Commission regulatory fees to the BST for purposes of cable operators' recovery of the fees from subscribers. They argue that this approach is regressive in that it unfairly burdens basic-only subscribers who, the Local Governments allege, often are elderly, low-income subscribers or those who cannot otherwise receive over-the-air local broadcast stations due to signal interference from mountains, buildings, and other structures. The Local Governments contend that assignment of the fees to the BST forces basic-only subscribers to pay a disproportionate share of the fees, and therefore contradicts Section 543(b)(1) of the Communications Act, which requires the Commission to ensure that subscribers pay only "reasonable" rates for regulated cable service.<sup>203</sup> NCTA opposes the Local Governments' request, stating that the law imposing the regulatory fees is not based on an individual's level of service; rather, the law requires payment on a per subscriber basis. Therefore, assignment of the fees to the BST is appropriate because every subscriber must receive the BST.<sup>204</sup>

### 3. Discussion

118. We affirm our decision to permit operators to pass through Commission annual regulatory fees as external costs. As we stated in the *Fourth Reconsideration Order*, Commission annual regulatory fees should be afforded external cost treatment because they are exceptional, newly imposed, governmentally assessed fees that are easily measurable and beyond the control of operators.<sup>205</sup> We disagree with NATOA's argument that Commission regulatory fees are like CARS fees in that they do not impose a significant financial burden on cable operators. We find that Commission regulatory fees can reach significant levels because they are assessed on a per subscriber basis, as opposed to CARS fees, which are assessed on a flat fee basis of \$220 per license and which comprise only a small expense for most cable systems.

119. In addition, with respect to operators that elect to file rate adjustments under the quarterly system, we affirm our decision to permit operators to adjust rates on account of

---

<sup>202</sup> Local Governments Petition for Reconsideration at 8 (citing *Fourth Reconsideration Order*, 9 FCC Rcd at 5797 n.35).

<sup>203</sup> *Id.* at 6-7 (citing 47 U.S.C. § 543(b)(1)).

<sup>204</sup> NCTA Opposition at 6-7.

<sup>205</sup> *Fourth Reconsideration Order*, 9 FCC Rcd at 5797.

changes in Commission regulatory fees within 30 days of filing.<sup>206</sup> We do not believe this rule presents a serious risk of harm to consumers because we believe franchising authorities normally should be able to complete their review of rate adjustments reflecting the pass through of Commission annual regulatory fees within 30 days of an operator's filing. In most cases, the franchising authority's review of the franchise fee pass through should entail minimal administrative burdens because the amount of any rate adjustment reflecting an increase should be easy to determine since it is fixed on a per subscriber basis. To the extent Commission annual regulatory fees are miscalculated, we believe that our approach fully protects subscribers' interests in paying reasonable rates because fee increases are subject to refunds.

120. We also affirm our decision to require operators to assign the Commission's annual regulatory fee directly to the BST. As we noted in the *Fourth Reconsideration Order*, the fee is intended to reimburse the Commission for its costs of regulating cable service, including oversight of basic cable service and other regulatory activities. We continue to believe that direct assignment to the BST is the most equitable means of permitting cable systems to pass through regulatory fees to subscribers because cable system annual regulatory fees are assessed on a per subscriber basis and all subscribers receive the BST. If we were to allocate these costs among the tiers, some subscribers would pay more than others even though the cost is imposed on the cable operator evenly per subscriber.<sup>207</sup> Moreover, the administrative burdens associated with calculating and assigning fees among the BST and CPSTs weigh against such an assignment.<sup>208</sup>

#### IV. EXTERNAL COST TREATMENT OF FRANCHISE REQUIREMENTS

##### A. Background

121. The 1992 Cable Act specifically identifies franchise-imposed costs as being relevant to the determination of whether cable rates for basic service are reasonable. In prescribing regulations governing basic rates of regulated operators, Section 623(b)(2)(C) of the Communications Act directs the Commission to take into account, among other factors, "any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any

---

<sup>206</sup> Operators that elect the new annual rate filing methodology incorporate changes in Commission regulatory fees into their annual filings. See Section II(C)(2).

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*