

subsequent review and refund if the franchising authority determines that the increase in basic tier rates exceeds the increase in regulatory fees or in franchise fees allocable to the basic tier. This determination shall be appealable to the Commission pursuant to Section 76.944. When the Commission is regulating basic service tier rates pursuant to Section 76.945 or cable programming service rates pursuant to Section 76.960, an increase in those rates resulting from franchise fees or Commission regulatory fees shall be reviewed by the Commission pursuant to the mechanisms set forth in Section 76.945.

(h) If an operator files an FCC Form 1205 for the purpose of setting the rate for a new type of equipment under Section 76.923(o), the franchising authority has 60 days to review the requested rate. The proposed rate shall take effect at the end of this 60-day period unless the franchising authority rejects the proposed rate as unreasonable.

(1) If the operator's most recent rate filing was based on the system that enables them to file up to once per quarter found at Section 76.922(d), the franchising authority must issue an accounting order before the end of the 60-day period in order to order refunds and prospective rate reductions.

(2) If the operator's most recent rate filing was based on the annual rate system at Section 76.922(e), in order to order refunds and prospective rate reductions, the franchising authority shall be subject to the requirements described in paragraph (g)(1) of this section.

6. Section 76.934 is amended by revising paragraph (f) to read as follows:

§ 76.934 Small systems and small cable companies.

(f) Small Systems owned by Small Cable Companies. Small systems owned by small cable companies shall have 90 days from their initial date of regulation on a tier to bring their rates for that tier into compliance with the requirements of Sections 76.922 and 76.923. Such systems shall have sixty days from the initial date of regulation to file FCC Forms 1200, 1205, 1210, 1211, 1215, 1220, 1225, 1230, and 1240 and any similar forms as appropriate. Rates established during the 90-day period shall not be subject to prior approval by franchising authorities or the Commission, but shall be subject to refund pursuant to sections 76.942 and 76.961.

7. Section 76.942 is amended by revising paragraph (f) to read as follows:

§ 76.942 Refunds.

(f) Once an operator has implemented a rate refund to subscribers in accordance with a refund order by the franchising authority (or the Commission, pursuant to paragraph (a) of

this section), the franchising authority must return to the cable operator an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The franchising authority must promptly return the franchise fee overcharge either in an immediate lump sum payment, or the cable operator may deduct it from the cable system's future franchise fee payments. The franchising authority has the discretion to determine a reasonable repayment period, but interest shall accrue on any outstanding portion of the franchise fee starting on the date the operator has completed implementation of the refund order. In determining the amount of the refund, the franchise fee overcharge should be offset against franchise fees the operator holds on behalf of the franchising authority for lump sum payment. The interest rate on any refund owed to the operator presumptively shall be 11.25%.

8. Section 76.944 is amended by adding paragraph (c) as follows:

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

(c) An operator that uses the annual rate adjustment method under Section 76.922(e) may include in its next true up under Section 76.922(e)(3) any amounts to which the operator would have been entitled but for a franchising authority decision that is not upheld on appeal.

9. Section 76.957 is revised to read as follows:

§ 76.957 Commission adjudication of the complaint.

The Commission will consider the complaint and the cable operator's response and then determine by written decision whether the rate for the cable programming service or associated equipment is unreasonable or not. In making its determination, the Commission will only review the amount of the rate increase subject to the complaint. If the Commission determines that the rate change in question is unreasonable, it will grant the complaint and may order appropriate relief, including, but not limited to, prospective rate reductions and refunds. If it determines that the rate in question is reasonable, the Commission will deny the complaint.

10. Section 76.960 is revised to read as follows:

§ 76.960 Prospective rate reductions.

Upon a finding that a rate for cable programming service or associated equipment is unreasonable, the Commission may order the cable operator to implement a prospective rate reduction to the class of customers subscribing to the cable programming service at issue.

(a) For an operator that adjusts its rates using the quarterly rate adjustment system pursuant to Section 76.922(d), the Commission's decision regarding a prospective rate

reduction shall remain binding on the cable operator for one year unless the Commission specifies otherwise.

(b) For an operator that adjusts its rates using the annual rate adjustment system pursuant to Section 76.922(e), for one year following the Commission's decision, the operator shall provide the Commission at least 30 days' notice of any proposed change.

**SEPARATE STATEMENT OF
COMMISSIONER RACHELLE B. CHONG**

Re: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 92-266), Thirteenth Order on Reconsideration

Under the Commission's existing cable rate regulation rules, cable operators often seek to implement multiple rate adjustments within the same year. This frequent rate churn causes confusion and frustration for subscribers, and increases costs and administrative burdens for cable operators and regulators. The new rules adopted in this Order on Reconsideration are designed to address these concerns by encouraging cable operators to seek rate changes less frequently, on an annual basis. Minimizing the number of rate adjustments within a particular twelve month period should benefit consumers, cable operators, local franchising authorities and the FCC. I therefore support this decision, even though of necessity it adds another layer to the Commission's already abundant cable rate regulation rules.

As I have noted previously, regulation of cable television rates "is a complex, burdensome and resource-intensive proposition for cable operators, local franchising authorities and the Commission."¹ Cable rate regulation is pervasive and, in some instances, may be overly intrusive. It involves detailed intervention by the government in a myriad of pricing and marketing decisions by private businesses, as this reconsideration order amply illustrates. I eagerly await the day when the rise of competition and the discipline of market forces enables cable rate regulation to go the way of the dinosaurs -- so that the FCC is not called upon to issue orders like this one. In the meantime, the Commission should seek ways to reduce the substantial burdens associated with cable rate regulation, consistent with existing law.

¹

Video Dialtone Reconsideration Order, 10 FCC Rcd 244, 399 (1994)
(Separate Statement of Commissioner Rachelle B. Chong).