



regulation unless the system faces effective competition.<sup>1</sup> In particular, the 1992 Cable Act directed the Commission to establish regulations designed to protect subscribers from unreasonable rates for certain types of cable services offered by such systems.<sup>2</sup> Rate-regulated services consist of the basic service tier ("BST") and the cable programming services tier ("CPST").

3. Every cable operator subject to rate regulation must offer a BST that includes all local broadcast stations that the operator carries on its system, plus all public, educational, and governmental ("PEG") access channels required by the operator's franchise agreement with its local franchising authority.<sup>3</sup> If it so chooses, a cable operator may offer additional programming on its BST beyond these minimum requirements.<sup>4</sup> Subscribers to a rate-regulated cable system must purchase the BST in order to have access to any other tier of service.<sup>5</sup> CPSTs include all non-BST programming offered over the cable system, other than programming offered to subscribers on a per channel or per program basis.<sup>6</sup> There is no general requirement that an operator offer a CPST, and some operators offer no CPST. Per channel and per program offerings are generally exempt from rate regulation.

4. Congress identified several specific factors that the Commission must consider in establishing regulations governing BST and CPST rates.<sup>7</sup> The Commission may take other factors into account as well.<sup>8</sup> In addition, the 1992 Cable Act required that the Commission "seek to reduce administrative burdens on subscribers, cable operators, franchising authorities and the Commission" in establishing its regulations.<sup>9</sup>

5. Under the primary method of rate regulation adopted by the

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<sup>1</sup> Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992), Sections 623(a)(2) of the Communications Act of 1934, as amended ("Communications Act").

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

<sup>3</sup> Communications Act, § 623(b)(7)(A).

<sup>4</sup> *Id.* at 623(b)(7)(B).

<sup>5</sup> *Id.* at 623(b)(7)(A).

<sup>6</sup> *Id.* at 623(l)(2).

<sup>7</sup> *Id.* at § § 623(b)(2)(C) and (c)(2).

<sup>8</sup> *Time Warner Entertainment Co., L.P. v. FCC*, 56 F.3d 151, 175 (D.C. Cir. 1995).

<sup>9</sup> Communications Act, § 623(b)(2)(A).

Commission, a regulated cable system determines the maximum permitted initial rates for cable services pursuant to a benchmark formula.<sup>10</sup> In selecting a primary regulatory model, the Commission employed a benchmark formula instead of the cost-of-service methodology that is traditionally applied to public utilities because of the often significant administrative costs and burdens on regulators and regulated companies associated with cost-of-service regulation.<sup>11</sup> However, operators subject to regulation do have the option of setting rates in accordance with a cost-of-service methodology that the Commission has developed.

6. To set or justify its initial rates in accordance with the benchmark formula, a cable operator first must use FCC Form 1200. This form generates a maximum permitted rate as of May 15, 1994 for a particular franchise area, based upon various characteristics specific to the cable system within that franchise area.<sup>12</sup> These variables include channels per tier, number of regulated non-broadcast channels per tier, number of subscribers in the local franchise area, number of tier changes, the census income level for the franchise area, number of additional outlets and remote control units in the franchise area, system-wide subscribership, whether the system is part of a multiple system operation ("MSO"), and the number of systems in the MSO.<sup>13</sup> A benchmark operator may, and sometimes must, adjust the rates permitted by Form 1200 to take account of changes in inflation and other costs since May 15, 1994.<sup>14</sup> Currently, the operator must use FCC Form 1210 to calculate these adjustments.<sup>15</sup> In addition, operators may increase rates to reflect the

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<sup>10</sup> See 47 C.F.R. § 76.922.

<sup>11</sup> See *Report and Order* in MM Docket No. 92-266 (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation), 8 FCC Rcd 5631, 5731 (1992) ("*Rate Order*"); *Thirteenth Order on Reconsideration* in MM Docket No. 92-266 (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation), 60 FR 52106, at para. 2. (Oct. 5, 1995) ("*Thirteenth Order on Reconsideration*")

<sup>12</sup> FCC Form 1200: Setting Maximum Initial Permitted Rates for Regulated Cable Services Pursuant to Rules Adopted February 22, 1994 (May 1994).

<sup>13</sup> *Id.*

<sup>14</sup> 47 C.F.R. § 76.922(d).

<sup>15</sup> As of the effective date of the Form 1240 promulgated pursuant to the recently adopted *Thirteenth Order on Reconsideration*, operators may make rate adjustments as provided by FCC Form 1240 in lieu of Form 1210. *Thirteenth Order on Reconsideration*, 60 FR at 52109. Whereas an operator can file Form 1210 as often as once per calendar quarter to adjust rates to take account of costs already incurred by the operator, Form 1240 will be filed no more than annually but will permit the operator to adjust rates based on costs to be incurred within the coming year.

addition of new programming services to regulated tiers.<sup>16</sup>

7. Enforcement of the Commission rate regulations is divided between qualified local franchising authorities and the Commission. A local franchising authority may enforce regulation of the cable operator's BST once the Commission has received and approved the local franchising authority's certification that it has the legal and practical ability to do so.<sup>17</sup> Upon receiving notification that the franchising authority has been certified by the Commission to regulate rates, a cable operator opting for benchmark regulation must justify its existing BST rates pursuant to the benchmark formula. Once regulated, the operator also must seek local approval for future BST rate increases. The operator seeks such approvals by filing the forms described above. The operator also must justify its rates for equipment and installations associated with the BST.<sup>18</sup> The franchising authority must then review the forms, may request additional information if reasonably necessary to complete its review, and ultimately issue an order approving or disapproving the rates proposed by the operator.<sup>19</sup>

8. The participation by local franchising authorities in the regulation of cable service is critical. Generally, the Commission establishes federal standards and procedures concerning various aspects of cable service which local franchising authorities implement. These rules include but are not limited to subscriber rates,<sup>20</sup> cable service technical standards,<sup>21</sup> and customer service.<sup>22</sup> Local franchising authorities are the first line of

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<sup>16</sup> Our rules provide two methods for adjusting rates for the addition of programming services. First, an operator can add channels to CPSTs using our original "going-forward" rules, which allow the operator to charge subscribers the cost of the additional programming plus up to an additional 7.5% markup on that cost. 47 C.F.R. § 76.922(d) and (e). Second, an operator may add programming services under the Commission's more recently adopted going-forward option, which allows an operator to charge subscribers up to \$0.20 per channel for additional channels and up to a further \$0.30 in associated licensing fees. The latter going-forward rules similarly require specific decreases in subscriber rates when an operator deletes channels from its lineup, depending on when the channel in question was added. Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking in MM Docket No. 92-266 (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation), 10 FCC Rcd 1226 (1994).

<sup>17</sup> *Id.* at §§ 623(3)-(4).

<sup>18</sup> 47 C.F.R. § 76.923.

<sup>19</sup> 47 C.F.R. §§ 76.930 and 76.933.

<sup>20</sup> 47 C.F.R. §§ 76.922 - 923.

<sup>21</sup> 47 C.F.R. §§ 76.601-630.

enforcement of these numerous regulations. While the Commission may be on hand, either by statute or informally, to help resolve any disputes that may arise between a cable provider and a local franchising authority, the responsibility to oversee cable service regulations falls primarily on the franchise authorities. Generally, the Commission gives significant deference to decisions by local franchising authorities. For example, where a cable operator appeals a franchising authority's rate decision, the Commission will not conduct *de novo* review of the decision; rather, the Commission will defer to the local authority's decision provided there is a rational basis for the decision.<sup>23</sup> This process is just one example of the Commission's significant reliance upon local franchising authorities in the regulation of basic cable service. Moreover, in all but the most rare situations, local authorities administer cable service regulation without federal assistance.

9. An operator's CPST is subject to regulation directly by the Commission.<sup>24</sup> Commission enforcement of CPST rate regulation is triggered by the filing of a complaint by a subscriber or franchising authority or other relevant state or local regulatory authority.<sup>25</sup> Upon the filing of such a complaint, the operator must file the necessary forms with the Commission, which then follows a review process analogous to that used by local franchising authorities regulating BST rates.

10. The benchmark approach described above requires operators to establish a separate rate structure in each franchise area served, since many of the variables used to generate the maximum rate are franchise specific. For example, while the data on whether the system is part of an MSO will be identical throughout all of the franchise areas served, the census income and subscribership variables are measured on a franchise area basis and necessarily will vary among franchise areas. Similarly, costs associated with PEG channels and other franchise-related costs may vary among franchise areas. A disparity in rates among franchise areas will occur even if the operator provides service to multiple franchise areas through a single, integrated cable system, since even in that case rates are set separately for each franchise area on the basis of variables specific to the franchise area.

11. Relatedly, we note that the acquisition and clustering of neighboring cable systems by MSOs has become fairly common. An operator seeking to establish uniform rates and services for clustered systems likely will need to add channels to the programming lineups of certain systems and delete channels from the lineups of other systems. While the Commission's "going-forward" rate regulations typically provide operators with the flexibility to establish a uniform package of programming services, the

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<sup>22</sup> 47 C.F.R. § 76.309.

<sup>23</sup> *Rate Order*, 8 FCC Rcd at 5731.

<sup>24</sup> *Id.* at §§ 623(c)(1).

<sup>25</sup> *Id.* at §§ 623(c)(1)(B).

operator's efforts to equalize prices will be severely constrained because the rules quite specifically dictate permitted changes in rates that must accompany changes in level of service and do not permit regional averaging of the data used to complete rates.

### III. DISCUSSION

12. We tentatively conclude that permitting operators serving multiple franchise areas to establish uniform services at uniform rates in all such areas would be beneficial for subscribers, franchising authorities, and operators. For example, facilitating an operator's ability to advertise a single rate for cable service over a broad geographic region may lower marketing costs and enhance the operator's efficiency in responding to competition from alternative service providers that typically may establish and market uniform services and rates without regard to franchise area boundaries. The increased ability of operators to compete resulting from this approach may increase penetration in a particular franchise area. Such an approach could reduce consumer confusion because a subscriber moving from one part of the operator's service area to another would not experience any difference in price or service offerings. We explore below two alternatives for permitting an operator to establish uniform rates for uniform services across multiple franchise areas, while fully protecting subscribers from unreasonable rates, and solicit comment on these and any other possible approaches. Before discussing these two methodologies, we will identify several issues that will arise regardless of which methodology we ultimately adopt.

13. Cable operators currently serve multiple franchise areas using a variety of system structures; some operators serve multiple areas with a single, integrated cable system while others use multiple, distinct systems. An operator's rates are not dependent on whether single or multiple systems are used to deliver service. We propose that under a uniform rate-setting option, a cable operator be allowed to establish uniform rates for uniform service offerings in multiple franchise areas regardless of whether the operator serves the multiple franchise areas with one integrated cable system (i.e., one "headend") or with multiple separate cable systems, and seek comment on this proposal.

14. We believe that cable operators primarily will seek to establish uniform rates for systems serving multiple franchise areas that are located within some measure of proximity to each other, perhaps for purposes of regional advertising. Moreover, it is likely that the service costs and characteristics, such as the number of channels, density of subscribers, and median income level, associated with various franchise areas typically will vary as the geographic distances increase between the multiple franchise areas. This circumstance can increase the complexity of uniform rate-setting across multiple franchise areas. We note that a cable operator's obligation under the "must-carry" rules to carry local over-the-air broadcast stations,<sup>26</sup> as well as the operator's copyright fee responsibilities,<sup>27</sup> are

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<sup>26</sup> 47 C.F.R. § 76.56. Section 4 of the 1992 Cable Act specifies that a commercial broadcasting station's market shall be determined in the manner provided in §73.3555(d)(3)(i)

determined based on the Area of Dominant Influence ("ADI") in which the system is located. Accordingly, we seek comment on whether the ADI, or some other region,<sup>28</sup> would be appropriate for the setting of uniform rates. We seek comment on additional benefits of limiting uniform rate-setting to franchise areas located within the same ADI or similar region, as well as any difficulties resulting from this limitation. We further seek comment on the benefits or detriments of limiting uniform rates to franchise areas located within the same county or state. Finally, we seek comment on the costs and benefits of permitting cable operators to select the region in which to set uniform rates under a uniform rate-setting method.

15. Below we describe two possible approaches for permitting cable operators to establish uniform rates for uniform packages of services offered to multiple franchise areas. We invite comment from interested parties as to these approaches and we seek suggestions as to any other alternatives that would further the goals discussed above.

16. The first approach would work generally as follows. A cable operator first would determine or identify BST and CPST rates established in each local franchise area pursuant to our existing rate regulations, as adjusted to reflect permitted or required rate changes resulting from the addition or deletion of channels necessary to structure uniform tiers throughout the franchise areas served. We seek comment on whether an operator would similarly follow our existing regulations concerning rates for equipment. BST rates then would be equalized by reducing all BST rates charged in the relevant region to the lowest regulated BST rate charged in any one franchise area located in the region. The new uniform BST rate would now constitute the operator's maximum permitted rate for basic cable service in all the relevant franchise areas. The operator then would add the total amount of "lost" revenue resulting from the various BST rate reductions to the total CPST revenues to which the operator is otherwise entitled, under our existing rules, for all franchise areas in the relevant region. The operator then would determine a uniform CPST rate by dividing the total of the displaced BST revenues and existing CPST revenues by all CPST

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of the Commission's Rules, as in effect on May 1, 1991. This section of the rules, now redesignated §73.3555(e)(3)(i), refers to Arbitron's ADI for purposes of the broadcast multiple ownership rules. Section 76.55(e) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991-1992 *Television Market Guide*.

<sup>27</sup> See Satellite Home Viewer Act of 1994, P.L. 103-369, 108 Stat. 3477 (amending the definition of the local service area relevant to a cable operator's copyright obligations to reflect the ADI in which the cable operator's system is located).

<sup>28</sup> We note that Arbitron, the company that establishes the boundaries for ADIs, has ceased updating its ADI market list. Commission staff is currently exploring the designation of a replacement measure.

subscribers in the region.<sup>29</sup> Thereafter, the operator would apply our going-forward policies and annual rate adjustment regulations on a regional basis.

17. In some instances, cable systems may be regulated in certain franchise areas within the region and unregulated in others. We propose that operators be free to establish uniform rates under the uniform rate-setting approach in unregulated as well as regulated franchise areas for purposes of uniformity. We believe that in such situations, an operator may elect to base uniform rates in part on data from unregulated areas only if such uniform rates also are charged in the unregulated areas. We believe that this optional approach further enhances operators' flexibility in establishing uniform rates. Moreover, uniform rates calculated pursuant to the method ultimately adopted in this proceeding, and charged in unregulated areas, should increase an operator's regulatory certainty with respect to whether the subscriber rates charged in the unregulated areas are reasonable under our rules should the operator later become subject to rate regulation in one of those areas.<sup>30</sup> We seek comment on this approach. We also seek comment on how an operator's regulated rates for equipment may affect the setting of uniform rates.

18. An operator's rates would remain subject to the dual jurisdictions of the affected local franchising authorities and the Commission. Upon the initial application of this approach, BST rates would be unchanged in at least one franchise area and would be reduced in each franchise area with higher rates. Thus, this proposal may benefit many subscribers who receive only basic cable service, and should be cost-neutral to the remaining basic-only subscribers in the franchise area(s) with the lowest current BST rates. Certified local franchising authorities would retain jurisdiction to ensure that the operator's BST rates are in compliance with our rules. The operator would recoup the costs of reduced BST rates through the averaged CPST rates over which the Commission would retain jurisdiction. We seek comment on this proposed approach, including comment on: (1) the costs and benefits of requiring operators to reduce BST rates to the lowest common rate under this option, (2) the impact of an operator's redistribution of BST rate reductions among CPST rates charged in neighboring franchise areas, and (3) the application of our going-forward policies and annual rate adjustment on a regional basis. We note that our rules allow franchising authorities to review and approve operators' proposed BST rates and increases to those rates. Under this option, however, pre-approval of uniform BST rates by franchising authorities generally will be unnecessary given that subscriber rates typically will decrease or remain unchanged. We seek comment on the benefits and costs of this approach for local franchising authorities, and whether this approach will protect subscribers from unreasonable rates.

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<sup>29</sup> A numerical example of this option can be found in Appendix A.

<sup>30</sup> An operator later becoming subject to regulation would follow our existing procedures for establishing regulated rates, including determining an initial rate pursuant to our benchmark formula or cost-of-service rules, and seeking the approval of rates from the local franchising authority.

19. Under the second possible approach for establishing uniform rates for uniform services, a cable operator would determine or identify BST and CPST rates charged in each of the relevant franchise areas pursuant to our existing rate regulations, as adjusted for rate changes resulting from the addition or deletion of channels necessary to structure uniform service tiers. We seek comment on whether an operator similarly would follow our existing regulations concerning rates for equipment. After aggregating the BST rates and revenues for all the franchise areas in the region, and then the CPST rates and revenues for all franchise areas, the operator would determine a single "blended" rate for BSTs, and a single blended rate for CPSTs, to be charged in all franchise areas in the region pursuant to a formula designed by the Commission. The blended rates for BSTs and CPSTs would be determined by averaging the operator's total BST and CPST rates, respectively, on a per subscriber basis for all subscribers in the region, in order to ensure that the establishment of uniform rates is revenue-neutral to the cable operator.<sup>31</sup> The operator would be required to justify its blended rates to each local franchising authority certified to regulate rates. The operator would be free, of course, to establish this rate in uncertified franchise areas, for purposes of uniformity across a wide region. As noted for the other proposed approach, we propose that an operator may elect to base uniform rates in part on data from unregulated areas only if such uniform rates also are charged in the unregulated areas, and believe that similar benefits for operators and subscribers will result from this requirement under both possible approaches. We seek comment on this tentative conclusion, as well as comment on other benefits and detriments of the cable operator basing the blended rate in part on data from such unregulated areas. We also seek comment on how an operator's establishment of uniform rates in uncertified areas may impact on the operator's ability to later implement required refunds or prospective rate reductions in certified areas.

20. After setting initial uniform rates, the operator would apply our going-forward policies and the recently adopted annual adjustment method on a regional basis to adjust future rates. Again, the dual jurisdictional boundaries of franchising authorities and the Commission would remain intact. We seek comment on this approach generally, including comment on: (1) any associated burdens for regulated cable companies and regulators, (2) whether this approach would protect cable subscribers from unreasonable rates in accordance with the 1992 Cable Act, (3) the proposed calculation of the blended rate, and (4) the application of our going-forward policies and annual adjustment method on a regional basis. We note that under this approach subscribers' BST rates may increase in certain jurisdictions (and decrease in others) as BST rates are adjusted to establish uniformity. We seek comment on the benefits and costs of adopting this formula given that certain BST subscribers may experience rate increases.

21. Both proposed uniform rate setting methodologies will result in increases in CPST rates for some subscribers. In light of the cost savings to cable operators likely to be created by implementation of uniform rates, we seek comment on whether it is

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<sup>31</sup> A numerical example of this option can be found in Appendix A.

appropriate to either limit the amount of increase a CPST subscriber must pay in a given year as a result of the institution of uniform rates or to phase-in significant increases over a two-year period. Comments should also address what administrative burdens such a limitation or phased-in increase would create for operators.

22. Several potential timing circumstances may affect the implementation of a uniform rate-setting approach. For example, where an operator has submitted justifications, the operator may be subject to multiple local tolling orders of varying durations which can complicate implementation of uniform BST rates.<sup>32</sup> We seek suggestions of procedures that would permit a cable operator in this situation to establish uniform rates as expeditiously as possible. We solicit comment on allowing proposed uniform rates to take effect automatically after some period of time, subject to ultimate resolution in a later "truing-up" process, in which rate discrepancies could be reflected in rates for the following year.

23. In proposing to give cable operators flexibility to charge uniform rates for uniform services, we in no way seek to circumscribe the authority of local franchising authorities to negotiate franchise-specific terms in their agreements with cable operators. For example, we note that local franchising authorities typically establish requirements in a franchise agreement with respect to the designation or use of the franchised cable operator's channel capacity for PEG services.<sup>33</sup> This could result in a cable system having a non-uniform channel line-up within franchise areas where it seeks to establish uniform rates. We seek comment on whether our uniform rate proposals require any modification or adjustment to accommodate such non-uniform offerings.

24. A further problem may arise because PEG requirements and other franchise obligations will vary between franchise areas, such that the operator's "franchise related costs," one of the variables used to establish and adjust rates,<sup>34</sup> also will vary among franchise areas. We seek to provide cable operators with uniform rate alternatives while allowing franchising authorities flexibility to negotiate franchise terms and conditions that respond to particular community needs. We also seek to ensure that the uniform rate proposal does not allow franchise-specific costs to be shifted from one community to another. One alternative for resolving this issue would be to permit the cable operator simply to itemize and charge for franchise-related costs outside the uniform rate-setting formula. We seek comment on this approach. We also seek suggestions of other methods that could compensate operators for legitimately incurred expenses while protecting subscribers from unreasonable rates. Finally, we seek comment on additional potential obstacles to the

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<sup>32</sup> After the initial 30 day notice period that must precede any rate adjustment, franchising authorities can toll the effective date of a proposed rate for an additional 90 days in benchmark cases or 150 days in cost of service cases. 47 C.F.R. § 76.922(b)(1)-(2).

<sup>33</sup> Communications Act, § 611(a).

<sup>34</sup> 47 C.F.R. § 76.922(d)(3)(iv)(B)-(C).

establishment of uniform rates and service offerings, and possible resolutions to such obstacles.

#### IV. Initial Regulatory Flexibility Act Analysis

25. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis ("IRFA") of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *NPRM*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the *NPRM*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

26. *Reason for Action.* The Commission has perceived that our cable service rate regulations may impede a cable operator's ability to establish uniform rates for uniform services offered in multiple clustered franchise areas. We believe that allowing operators to set such uniform rates may facilitate operators' regional marketing of services, reduce administrative burdens on both regulators and cable companies, and reduce consumer confusion resulting from disparate rates. The *NPRM* proposes two possible alternatives for setting uniform rates, and solicits comments on further approaches.

27. *Objectives.* To explore a method under which a cable operator could establish uniform rates for uniform services offered in multiple franchise areas.

28. *Legal Basis.* Action as proposed for this rulemaking is contained in Section 623 of the Communications Act of 1934, as amended, 47 U.S.C. § 543.

29. *Description, Potential Impact and Number of Small Entities Affected.* The proposals, if adopted, will not have a significant effect on a substantial number of small entities.

30. *Reporting, Recordkeeping and Other Compliance Requirements.*  
None.

31. *Federal Rules which Overlap, Duplicate or Conflict with these Rules.* None.

32. *Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives.* None.

## V. PAPERWORK REDUCTION ACT

33. This *NPRM* contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB comments are due 60 days from date of publication of this *NPRM* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

## VI. PROCEDURAL PROVISIONS

34. *Ex parte Rules - Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

35. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. Comments are due by January 12, 1996, and reply comments are due by February 12, 1996. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

36. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov), and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

37. For additional information concerning the information collections contained in this *NPRM* contact Dorothy Conway at 202-418-0217, or via the Internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

## VII. ORDERING CLAUSES

38. IT IS ORDERED that, pursuant to Sections 623 of the Communications Act of 1934, as amended, 47 U.S.C. § 543, NOTICE IS HEREBY GIVEN of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this *NPRM*, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

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

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

### Appendix A: Examples of Proposed Methods

<u>Current Rates</u> <u>Franchise C</u>	<u>Franchise A</u>	<u>Franchise B</u>	
BST	\$10	\$11	\$11
CPST	\$21	\$21	\$20
Total	\$31	\$32	\$31

\* Each franchise area has 11,000 BST subscribers and 10,000 CPST subscribers.

#### First Proposed Method:

- Step 1: BST rates reduced to lowest in region: BST rates in franchise areas "B" and "C" reduced to \$10.
- Step 2: "Lost" BST revenue is totalled: \$1/subscriber in franchise areas "B" and "C" =  $(\$1 \times 11,000) + (\$1 \times 11,000) = \$22,000$ .
- Step 3: Current CPST revenue is totalled:  $(\$21 \times 10,000) + (\$21 \times 10,000) + (\$20 \times 10,000) = \$620,000$ .
- Step 4: Current CPST revenue is added to Lost BST revenue to create new CPST revenue requirement:  $\$620,000 + \$22,000 = \$642,000$ .
- Step 5: New CPST revenue requirement is divided evenly by all CPST subscribers in the region to calculate new uniform CPST rate:  $\$642,000/30,000 = \$21.40$ .

<u>New Rates</u>	<u>Franchise A</u>	<u>Franchise B</u>	<u>Franchise C</u>
BST	\$10	\$10	\$10
CPST	\$21.40	\$21.40	\$21.40
Total	\$31.40	\$31.40	\$31.40

Franchise A: no change in BST rates; increase in CPST and overall rates.

Franchise B: decrease in BST rates; increase in CPST rates; decrease in overall rates.

Franchise C: decrease in BST rates; increase in CPST rates; increase in overall rates.

Second Proposed Method:

Step 1: Average current BST rates on a per BST subscriber basis to calculate average, uniform BST rate:

$$\$10(11,000) + \$11(11,000) + \$11(11,000) = \$10.67/\text{BST subscriber.}$$

Step 2: Average current CPST rates on a per CPST subscriber basis to calculate average, uniform CPST rate:

$$\$21(10,000) + \$21(10,000) + \$20(10,000) = \$20.67/\text{CPST subscriber.}$$

Total: \$31.34/subscriber.

<u>New Rates</u>	<u>Franchise A</u>	<u>Franchise B</u>	<u>Franchise C</u>
BST	\$10.67	\$10.67	\$10.67
CPST	\$20.67	\$20.67	\$20.67
Total	\$31.34	\$31.34	\$31.34

Franchise A: increase in BST rates; decrease in CPST; increase in overall rates.

Franchise B: decrease in BST rates; decrease in CPST rates; decrease in overall rates.

Franchise C: decrease in BST rates; increase in CPST rates; increase in overall rates.

The results under each proposed method will vary widely depending on the current rates and the numbers of subscribers in each franchise area. In addition, these examples do not account for the impact of channel changes that may be necessary to achieve uniform packages of services.