6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 17-105, 02-144; MM Docket Nos. 92-266, 93-215; CS Docket No. 94-28; FCC 18-148]

Modernization of Media Regulation Initiative: Revisions to Cable Television Rate Regulations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seek comment on whether to replace and simplify the Commission's cable rate-regulation framework. We also seek comment on decisions to deregulate rates charged for equipment used to receive service tiers that have been deregulated, deregulate some small systems owned by small cable companies and clarify that the rate regulations do not apply to services provided to commercial entities. Lastly, we seek comment on our decision to eliminate outdated forms and make changes to how regulated rates are calculated.

DATES: Submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; reply comments on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 17-105 and 02-144, by any of the following methods:

- Federal Communications Commission's Web Site: http://apps.fcc.gov/ecfs//. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 888-835-5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Katie Costello, katie.costello@fcc.gov, of the Media Bureau, (202) 418-2233. For additional information concerning the information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Cathy Williams, (202) 418-2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking, FCC 18-148, adopted and released on October 23, 2018. The full text of these documents is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC, 20554. These documents will also be available via ECFS (http://www.fcc.gov/cgb/ecfs/). (Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request these documents in accessible formats (computer diskettes, large print, audio recording, and

Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

In this Further Notice of Proposed Rulemaking (*FNPRM*) we seek comment on updates to the cable television rate regulations in part 76 of our rules. In the *FNPRM*, we seek comment on how to update our rules so that they reflect the current video marketplace. First, we seek comment on whether we should consider replacing our existing complex rate regulation framework with a new and simple methodology. Second, and in the alternative, we seek comment on, among other issues, whether to greatly streamline our existing initial rate-setting methodology by eliminating numerous rate forms that we believe are no longer necessary or useful, substantially reducing the amount of equipment subject to rate regulation, and ending rate regulation entirely for small cable systems owned by small operators.

We first seek comment on whether to make fundamental changes to our existing cable rate regulatory regime based on recent developments in the competitive and regulatory landscape. Alternatively, we seek comment on ways to streamline and update our existing rules and forms to better serve cable operators and LFAs while still protecting subscribers from unreasonable prices. In this regard, we seek comment on whether to exempt from rate regulation equipment used to receive CPST service and also small cable systems owned by small cable operators, and we tentatively find that "commercial cable service" is exempt from rate regulation. We seek comment on ways to greatly simplify the process cable operators use to set their initial regulated Basic Service Tier (BST) rates and to justify subsequent rate increases. We seek comment on whether these changes would be consistent with section 623 of the Act, including the statutory purpose to protect subscribers from "rates for the basic service tier that

exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition," and whether they would reduce the burdens that cable operators and LFAs bear under our current rate regulation rules.

We note that the Commission sought comment in 2002 in MB Docket No. 02-144 on many of the proposals that we seek comment on in this *FNPRM*, but we seek to update the record on these proposals due to the passage of time and the significant changes that have since occurred in the marketplace, legal landscape, and technology. Those that commented in response to that *2002 Revised Order and NPRM* (67 FR 56682) (Sept. 05, 2002)) that wish to ensure their previous comments are considered in this proceeding with respect to the issues raised here should refile their comments in response to this *FNPRM*. We also seek comment on closing MB Docket No. 02-144.

Fundamental Changes to Existing Framework. We seek comment on whether to adopt fundamental changes to our rate regulation framework and what those changes could be. We seek comment on whether there are simpler, more streamlined methods for determining reasonable rates that could be implemented and still satisfy our statutory obligations under section 623 of the Act. For example, should we significantly simplify our rate regulation regime by eliminating all of our existing rate regulation forms and directing those few Local Franchising Authorities (LFAs) that remain engaged in rate regulation to set reasonable BST rates based on the factors listed in section 623(b)(2)(C)? Under this proposal we would eliminate FCC Forms 1200, 1205, 1210, 1211, 1215, 1220, 1225, 1230, 1235 and 1240. Similarly, under this approach, LFAs could set equipment rates that are based on the "actual cost" of the relevant equipment, as required by section 623(b)(3), without reliance on our existing forms. To the extent necessary, the Commission could adjudicate any disputes that arise on a case-by-case

basis. Would this approach be consistent with the Act, including the Commission's obligation under section 623(b)(1) to ensure that BST rates are "reasonable" and "designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition?" Would this approach be consistent with the statutory directive that the Commission "shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission"? If the Commission adopted this approach, what new rules should we adopt? Should we retain any of our existing rules governing cable rates and, if so, which ones? What advantages or disadvantages would this type of approach have for subscribers, LFAs, and cable operators? We also seek comment on the type of adjudicatory process the Commission should implement to resolve disputes if we adopt the type of rate-setting approach described above. If the Commission adopts the rate-setting approach described above, should we continue to resolve disputes between cable operators and LFAs by using the appeal process? If so, how should we determine whether the LFA's decision comports with the statutory factors? To what extent should we rely on existing rate appeal precedent for guidance? Should we adopt instead an alternative form of dispute resolution? For example, should Commission staff mediate rate disputes on an informal basis in the first instance? Alternatively, or if mediation is unsuccessful, should we consider adopting a more formal adjudicatory process and, if so, how should it work? We note that, in the program access context, the Commission has adopted merger conditions that impose baseball-style arbitration if parties cannot come to agreement. Would a similar arbitration process work as an option for parties to elect to resolve rate disputes, with the Commission or a designated Bureau acting as the decisionmaker? Are there other adjudicatory processes that would work better in this context? If the Commission were to take this type of approach, what other issues should we consider? Alternatively, should we consider a proposal

submitted by NCTA that would allow a cable operator to justify its regulated BST and equipment rates by comparison to rates for comparable offerings in communities that are subject to effective competition? Under this framework, a cable operator would establish a national or regional rate, which NCTA refers to as an "Updated Comparative Benchmark" (UCB), that it would charge all BST subscribers. NCTA suggests that an "[o]perator complying with the UCB could avoid all formal rate filings." It avers that this "[a]pproach would benefit consumers by facilitating consistent, market-driven rates across an operator's cable systems" and "would provide a built-in incentive for operators to offer competitive prices to all subscribers, even in markets without effective competition." We seek comment on this framework. Would a UCB approach be consistent with section 623(b)? Given differences in channel lineups from system to system, how could "comparable offerings" be defined for purposes of establishing and comparing a UCB to a regulated rate? NCTA states that, under its proposal, "[o]perators would be allowed to calculate UCB rates based on reasonable system sampling" of systems subject to effective competition. We seek comment on this idea. What type of sampling could be used to calculate the UCB? For example, should a sampling include only communities with a comparable channel lineup? NCTA's proposal refers to "comparable offerings" but also states that the national or regional rates would be "compared to the regulated [BST] rate without regard to the particular number of BST channels offered in either regulated or unregulated communities, provided the [national or regional] rate encompasses at least the same services that must be included in a rate regulated BST (i.e., local broadcast channels and, PEG channels, where applicable)." Is it appropriate to base rates for a regulated area's BST on a non-regulated area's rate for a system that carries different channels and/or a substantially different number of channels? How would "comparable offerings" be defined if it doesn't account for differences in

the channel lineup? What if the cable operator has no systems that are subject to effective competition that it can use as a "comparable offering" to set its rate? If the Commission were to adopt this type of approach, to what extent should a cable operator be required to document and support its calculations? Should we adopt a presumption of reasonableness to such calculations that would be rebuttable by other interested parties? If so, what should such parties be required to demonstrate by way of rebuttal, and which party should bear the burden of persuasion? We also seek comment on the likely costs and benefits of this approach. NCTA proffers that, if we were to permit cable operators to use the UCB, we could retain our existing rate regime as "alternative rate support." Would the addition of this layer of requirements to our existing rules be consistent with the goal of simplifying and eliminating outdated rate regulations? How would this process account for LFA review? For example, if we were to adopt a UCB approach, what formal process would a cable operator use to notify an LFA about the rate it plans to charge? What authority would the LFA have to review and approve the UCB, and what if the LFA doesn't approve the UCB? Would an LFA have an opportunity to appeal the UCB rate as unreasonable, and if so, under what process? When would the cable operator be allowed to implement its UCB? What specific changes would we need to make to our rules if we were to adopt this framework or would retaining our existing rules as NCTA suggests be sufficient? To the extent that commenters are concerned about this framework, we also seek input on ways to revise the process to make it more acceptable to all interested parties. We seek comment on any other proposals we should consider to restructure and simplify our existing rate regulation regime. Are there other processes that would reduce burdens on cable operators and local governments and achieve our statutory directive to ensure reasonable rates for subscribers? With respect to any alternative approaches we should consider, we ask commenters to explain and, if

possible, quantify and provide support for their assessment of the relative costs and benefits vis-à-vis our existing regulatory framework; identify any uncertainties or limitations in their assessment of costs and benefits; and explain how their proposal would satisfy the requirements of section 623, whether and how it would be cost effective for LFAs, cable operators, and the Commission, and how it would fit in with today's marketplace realities.

Reform of Existing Rules and Forms. In lieu of more extensive revisions to our overall rate regulation framework, we seek comment on eliminating, updating and streamlining our existing cable rate regulations. We first seek comment on eliminating rate regulation for cable equipment that is used to receive non-BST tiers of service and exempting small cable systems owned by small cable companies from rate regulation. Next, we tentatively find that rate regulation does not apply to commercial rates. These three areas appear to be ripe for deregulation, regardless of the regulatory framework that will apply going forward. Next, for those cable systems that remain subject to BST rate regulation, we seek comment on simplifying the process for establishing initial rates, discontinuing quarterly rate filings, and eliminating the cost of service methodology for setting rates. Collectively, these deregulatory steps would enable us to eliminate Forms 1200, 1210, 1220 and 1230. We also seek comment on clarifying the methodology cable operators use to adjust their BST rates and on whether certain of our rules are still relevant in light of the end of CPST rate regulation.

Deregulation of Equipment, Small Systems and Commercial Rates. We seek comment on modifying our current rules regarding the regulation of equipment rates in light of the sunset of Cable Programming Service Tier (CPST) regulation. Section 76.923 of our rules provides that LFAs may regulate costs for equipment used to receive both the BST and additional tiers of service. While the Commission's original interpretation of section 623(b)(5) may have been

appropriate when both the BST and CPST were rate regulated, we seek comment on whether our interpretation should be revisited and we should exempt from rate regulation equipment used by subscribers that receive additional tiers of service beyond the BST, now that CPST rate regulation has sunset. Would it be consistent with section 623 to limit rate regulation to equipment used exclusively to receive the BST and non-tiered services? We seek comment on this approach and on any other approaches we should consider. Would this approach result in any complications or problems that we should consider? We seek comment on whether to exempt from rate regulation those small cable systems, defined by our rules as cable systems serving 15,000 or fewer subscribers, that are owned by small cable companies, defined by our rules as cable television operators serving 400,000 or fewer subscribers. If we find that rate regulation is no longer necessary for such small systems owned by small cable companies, we propose to eliminate the rules establishing alternate methodologies for small systems as well as the Form 1230.Would an exemption for small systems be consistent with the Act, including section 623(i), which requires the Commission to "reduce the administrative burdens and costs of compliance" for cable systems that have "1000 or fewer" subscribers, and section 623(m), which exempts certain small cable operators from regulation of the BST? Are there any small systems serving 15,000 or fewer subscribers that are owned by small cable companies of 400,000 or fewer subscribers that are currently rate regulated? To the extent any such systems exist, would there be any benefit to retaining rate regulation for these cable systems? For example, should we retain our regulations on the premise that additional cable systems may become subject to regulation in the future? Should we create a different exemption for small entities or provide another form of relief short of a blanket exemption? What are the costs, if any, of retaining regulations for this class of providers, particularly where it appears no such providers are

currently regulated? To the extent possible, commenters should quantify anticipated costs and benefits of this proposal or any proposed alternatives, provide support, and describe any uncertainties or limitations inherent in their analysis. We also seek comment on whether a cable operator that loses its deregulated status as a small system, small cable company or small cable operator because it gains subscribers and surpasses the maximum subscriber threshold for such an exemption should be required to notify its LFA that it no longer qualifies for the exemption. We tentatively conclude that cable services offered to commercial subscribers, such as bars and restaurants, are not subject to the Commission's rate regulations. Parties that previously filed comments on this issue should resubmit any comments they believe are still relevant. Section 623(a)(2) specifies that rate regulation shall not be imposed on a cable system that is subject to effective competition, and it defines "effective competition" based on the percentage of "households" subscribing to cable or the percentage of households to which competing service is available. In applying the test for effective competition, the Commission has concluded that the term "household" means "occupied" housing units. Given the use of the term "households" in section 623 and the Commission's prior definition of that term in connection with the test for effective competition, we tentatively find that Congress did not intend to include cable service offered to commercial subscribers within the scope of rate regulation. We seek comment on this interpretation and, if we were to adopt it, on how we should define cable service offered to commercial subscribers for purposes of our rate regulation rules. One alternative would be to define it as a "cable service offered to locations that do not consist of households that are temporary or permanent, single housing units or multi-dwelling units." Both "household" and "multi-dwelling unit" are terms we have defined in Commission precedent regarding cable operators. "Household" is an occupied housing unit. "Multi-dwelling unit" is a building or

buildings with two or more residences, including apartment buildings, condominiums, hotels, hospitals, universities, and trailer parks. We seek comment on this definition and any alternatives we should consider.

Setting Initial Regulated Rates (Forms 1200 and 1220). We seek comment on replacing our initial rate setting methodology, which requires using data from as far back as 1992, with one based on current, actual BST rates. This simplified practice would apply to cable operators that become regulated for the first time or that become re-regulated and would eliminate the need for Forms 1200 and 1220. For simplicity, we refer to first time or re-regulated cable operators as newly regulated cable operators throughout this document. Newly regulated cable operators may include those that are regulated for the first time, operators in communities where an LFA successfully rebuts the presumption of effective competition, or operators that lose their exemption from rate regulation because their status under our rules has changed. For all newly regulated operators, the initial or effective date of regulation would be the date that an LFA notifies the cable operator that the LFA is certified to regulate rates and that the basic service tier is subject to regulation under the generally applicable rate rules. We seek comment on whether to streamline our Form 1200 process by accepting an operator's current, actual BST rate at the time it becomes subject to rate regulation in lieu of the benchmark rate calculated using the Form 1200. Under this approach, the BST rate would include the entire amount charged for the BST on the effective date of regulation, whether or not an operator had identified individual components of the rate on its subscribers' bills. It would not include promotional or discount rates nor include charges for equipment used to receive the BST. To the extent that any equipment or installation costs were included in the BST service charge, they would be removed using an off-form attachment. The initial or effective date of regulation would be the date that an

LFA notifies the cable operator that the basic service tier is subject to regulation under the generally applicable rate rules. We seek comment on whether this approach will ensure that BST rates are kept within a reasonable range while creating a less burdensome process for cable operators and LFAs. Is it reasonable to presume under this proposal that the operator's rates in effect prior to becoming subject to regulation are reasonable? Does section 623, which prohibits rate regulation for communities that are subject to effective competition, support this presumption, at least with respect to cable operators that become newly regulated but were previously subject to effective competition? Is this presumption also reasonable in cases where an LFA decides to exercise its authority and has successfully rebutted the presumption of effective competition? In cases where an LFA previously had the authority to rate regulate, but chose not to do so, can we assume that the rates in effect before the LFA became certified to regulate were reasonable? Are there other approaches we should consider that would enable us to update and simplify our existing process for setting initial regulated cable rates? If we adopt this approach, we also seek comment on whether we should impose any restrictions on a cable operator's ability to use its actual current BST rate as its initial regulated rate. For example, should we restrict a cable operator's ability to use its actual BST rate as a starting point if there is a substantial spike in its BST rate shortly before the initial date of regulation? This approach would be consistent with our precedent and would limit an operator's incentive to substantially raise its BST rates in anticipation of becoming newly regulated. It could also account for a large rate increase during the time period between when an operator is no longer subject to effective competition and the initial date of regulation. If we adopt such a restriction, how much of a rate increase should be considered as the threshold and what would be an appropriate period of time before rate regulation commences for us to restrict substantial increases? In the interest of

uniformity and consistency, should we conform the three-month period that applies to small cable operators who lose their deregulatory status as small cable operators to any newly proposed rule? If a cable system is not permitted to use its existing rate in certain cases, how should its initial rate be determined? For example, in such cases, should we allow LFAs to review the cable operator's most recent rate increase for compliance with our rules by using the last previous rate as the initial rate? Are there other approaches we should consider? We tentatively conclude that we would no longer need to retain our methodology for determining historical permitted charges using the Form 1200 if we use an operator's actual rate for the initial regulated rate. Consequently, if we adopt this approach, we propose to amend our rules to delete references to Form 1200 and its predecessor, Form 393, and to delete rules that relate solely to this methodology. If we adopt this proposal, should we also modify and streamline our refund liability rule in § 76.942 to reflect the reduction in possible refund scenarios that could occur under our streamlined methodology for setting initial rates? Should we simplify the refund rule so that a cable operator's liability for refunds runs from the date of initial regulation until it reduces its rate in compliance with an LFA order? Are there any other rules we should delete or modify if we adopt this approach? We seek comment on eliminating the labor-intensive Form 1220 cost of service methodology as an alternative means of setting initial regulated rates and on terminating pending rulemaking proceedings related to this methodology. With the demise of CPST regulation and the revised methodology for setting initial rates discussed above, the Form 1220 cost of service alternative may no longer be necessary to ensure that an operator receives an adequate return on its investment. Is there any compelling need for the Commission to retain Form 1220 or a cost of service methodology as an alternative way to set initial regulated rates? To what extent, if any, do cable operators use this process today? Would eliminating this

alternative from our rules create any problems that we should consider? If we eliminate the Forms 1200 and 1220, should we eliminate references to the initial Form 1200 and cost of service methodologies in § 76.933, which addresses the process for filing these forms and their franchising authority review? Similarly, should we modify § 76.942 to delete references to those forms and the processes they use? What costs and benefits would result from eliminating the cost of service option for setting rates?

Calculating Rate Increases (Forms 1210, 1240 and 1235). Under our current rules, once a regulated operator sets an initial BST rate, it justifies rate increases based on changes in external costs, changes in the number of channels on the BST, and inflation. In this section, we seek comment on ways to simplify the process for calculating these rate increases. We seek comment on the costs and benefits of these proposals or any alternatives that commenters may identify. Commenters should quantify costs and benefits to the extent possible, provide supporting information, and identify any limitations or uncertainties in their assessments. Currently, cable operators are permitted to justify changes to their rates either on a quarterly basis using Form 1210 or an annual basis using Form 1240. We seek comment on whether there is any benefit to retaining the Form 1210 quarterly adjustment option. We also seek input on whether the quarterly methodology should be removed from our rules. Is there any compelling reason for the Commission to retain the quarterly rate form? To what extent, if at all, do cable operators continue to use the Form 1210 and will eliminating it create any problems or disadvantages that we should consider? If we eliminate the Form 1210, should we eliminate references to this quarterly process in Sections 76.933 and 76.942, as discussed above? We seek comment on modifications to our Form 1240 instructions for adjusting rates when channels are added to or deleted from the BST. With the sunset of CPST regulation, we seek comment on

whether we should eliminate two components of channel movement rate adjustment calculations: the "residual" component and the "channel number" component. We seek comment on simplifying our rule so that (1) no per channel residual is moved to the BST along with a CPST channel and (2) no per channel residual is removed from the BST when a channel is removed from the BST unless the total number of channels on the BST falls below the total number of channels included in the initial regulated BST rate. We seek comment on eliminating from our rules the movement of CPST residual to the BST and on restricting the removal of BST residual and whether there are alternative mechanisms we should consider. With regard to the channel number component, our rules currently allow for a rate adjustment based on changes in the total number of channels on all regulated tiers. This "per channel adjustment factor" is calculated using a "markup table," which is premised on having a regulated CPST and a system with fewer than 100 channels. Neither of those factors are valid today, so we seek comment on eliminating this adjustment and the accompanying table. Will this approach result in reasonable rate changes based on changes in the number of channels, and if not, what other methodologies should we consider? As noted above, the Form 1240 allows an operator to calculate a maximum permitted rate using projected costs. The operator is then required to "true up" its rate by comparing the projected costs with actual costs once they are known. The operator is not required to pass through all of its costs to subscribers in its actual rate and may accrue costs to pass through at a later date. The Commission has stated that interest should not continue to accrue on these unrecovered costs, but subsequent decisions have created confusion in this area. When interest continues to accrue on these costs, it can result in excessive maximum permitted rates calculated on the Form 1240. We tentatively conclude that we should clarify our Form 1240 instructions to prevent cable operators from using the form to accrue interest on costs not passed through to

subscribers when they are first entitled to recover those costs. We seek comment on our tentative conclusion. We seek comment on modifications to the Form 1235 instructions for calculating significant network upgrade costs to account for substantial changes in a system's channel count or number of subscribers. Through the Form 1235, cable operators are permitted to allocate a portion of their network upgrade costs to the BST based on the system channel capacity devoted to the BST. The cable operator then determines a per subscriber surcharge based on the number of subscribers to the BST. Under our current instructions, the Form 1235 is filed only once and, if there is a subsequent substantial change in the number of subscribers or the number of channels allocated to the BST, the surcharge remains the same. This fails to account for system changes over time and could result in either over-inflated or under-inflated surcharges. Accordingly, we seek comment on whether to allow an LFA to require the cable operator to refile an updated Form 1235 using the new channel ratio or subscriber count, when the change is substantial. If so, we seek comment on how we should define "substantial" or otherwise establish a threshold upon which an LFA could require the operator to file a Form 1235 update. We also seek comment on modifying the Form 1235 instructions to prevent the double recovery of depreciation expense. Currently, Form 1235 calculates a rate of return on the initial net investment rather than calculating a return based on the average net investment, which would include a reduction for depreciation expense. At the same time, operators fully recover the upgrade investment over time as depreciation expense. As a result, operators have been able to recover a return on investment that has also been recovered through depreciation expense. Would a modification to the Form 1235 instructions, requiring operators to use the average net upgrade investment over the life of the upgrade rather than the initial net investment, prevent this double recovery? Would it allow the cable operator to earn a return on its investment and

recover its network upgrade costs, while preventing subscribers from overpaying for network upgrade costs? If not, what other alternatives should be considered to address this issue?

Elimination of Additional Forms. We seek comment on whether to eliminate a number of inactive or obsolete rate forms and delete references to them in our rules. These include: (1) Form 1211 (small system alternative to FCC Form 1210), which would be obsolete if we eliminate the Form 1210; (2) Form 1215 (a la carte channel offerings), which is a vestige of CPST regulation and is therefore no longer relevant; (3) Form 1225 (small systems cost of service form), which was superseded by the Form 1230; and (4) Form 329, an obsolete CPST complaint form. We seek comment on whether there is any reason to retain any of these forms.

CPST Sunset Issues. In this Section, we seek comment on issues related to the sunset of CPST regulation. Commenters in the media modernization proceeding question whether specific rules have been rendered moot by the sunset of CPST regulation or by the passage of time. These rules include § 76.980 (charges for customer changes in service tiers) and § 76.984 (requiring a geographically uniform rate structure). In addition, we seek comment on whether there is any reason to retain § 76.922(e)(2)(iii)(C) (mid-year rate adjustments) and § 76.963 (forfeiture exceptions) in light of CPST deregulation. Additionally, we seek comment on the continued relevance of § 76.982 (continuation of certain types of rate agreements). We seek comment on how these rules might be affected by the sunset of CPST regulation and whether the rules continue to serve the public interest. We seek comment on eliminating our rule that allows cable operators using the annual rate adjustment methodology to make an additional rate adjustment to their CPST to reflect mid-year channel additions. Since the Commission adopted § 76.922(e)(2)(iii)(C), both the CPST and most single tier systems have been deregulated. We seek comment on whether the rule including the single tier aspect of the rule, became

meaningless after CPST deregulation because (1) there is no longer a need for a rule governing CPST rate adjustments and (2) in effect, all regulated systems now have only a single regulated tier, so the single-tier exception (as written) would seem to be applicable to all regulated operators, undermining the policy of limiting BST rate adjustments to an annual event. We seek comment on whether there are any single tier systems still operating. Although we recognize that subscriber and market demand for channel line-ups may change during the course of a year, operators under the annual system can either project these changes to the BST at the time of their annual filing or accrue these costs and reflect them in their next annual filing. Section 76.980. Section 623(b)(5)(C) of the Act requires that Commission regulations include "standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section . . ." Section 76.980, which limits charges cable operators may impose for changes in service tiers, was adopted pursuant to this statutory directive. This rule protects subscribers from paying excessive service charges just for dropping or adding tiers of service. NCTA argues that § 76.980 is a rule that "should be eliminated as a matter of regulatory clean-up." We seek comment on NCTA's claim. Did Congress provide for a sunset of the statutory requirement when it sunset CPST rate regulation, as NCTA suggests, or does the sunset apply only to regulations adopted under subsection (c) of section 623? Even if Congress did not sunset the statutory authority for § 76.980, we seek comment on whether the rule is still necessary to implement section 623(b)(5)(C) of the Act. If not, should we eliminate or narrow the rule, or are there policy reasons to retain it?

Section 76.982. Section 76.982 implements section 623(j) of the Act, which allows franchise agreements entered into before July 1, 1990 to supersede section 623 of the Act and our implementing rules. Section 76.982 requires a cable operator to notify the Commission of its

intent to continue regulating basic cable rates in accordance with this exemption to our rules. Any such franchise agreements would be more than 28 years old and thus this notice requirement has very limited, if any, relevance today. In the unlikely event that this issue arises, section 623(j) of the Act would still allow the regulatory exemption. Accordingly, we seek comment on whether we should eliminate § 76.982.

Section 76.984. Section 76.984 was adopted to carry out the mandate of section 623(d) of the Act, which prohibits cable operators from selling the same cable service at different prices in different parts of a given franchise area unless the franchise area as a whole faces effective competition. Although commenters claim that § 76.984 should no longer be in effect, we tentatively disagree and believe that this provision continues to prevent anti-competitive behavior and promote competition. As discussed above, the 1996 Act amended section 623(c) to provide for the sunset of CPST rate regulation, but the requirement for uniform rates is found in section 623(d). Accordingly, we do not believe § 76.984 is subject to the sunset provision, and we seek comment on this issue as well as on whether the rule continues to serve the public interest.

Section 76.963. Section 76.963 was adopted to limit the Commission's existing forfeiture authority from being applied to Commission orders resolving complaints regarding CPST service and equipment rates. In implementing this rule, the Commission stated that it "will not impose forfeitures on a cable operator simply because a rate for cable programming service is found to be unreasonable." It appears that this rule is no longer needed due to the sunset of CPST regulation. Eliminating this rule does not affect the Commission's general authority to impose forfeitures for violations of specific rules or statutory provisions. We seek comment on eliminating this rule.

Initial Regulatory Flexibility Act Analysis.—As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this *FNPRM*. The IRFA is set forth below.

Paperwork Reduction Act.—The FNPRM may result in new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501 through 3520). If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees." In this present FNPRM, we have assessed the effects of the proposed changes to the Commission's rate regulations, including the modification of channel addition and deletion rules, the adoption of a streamlined process for establishing initial regulated rates, the sunset of a separate streamlined process for small systems, the sunset of the unabbreviated cost of service methodology, the modification of the Form 1235 methodology, and the clarification and or elimination of obsolete rules and forms and find that the policy changes are either neutral or reduce the burden on businesses with fewer than 25 employees.

Ex Parte Rules.—This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any

oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with Section 1.1206(b) of the rules. In proceedings governed by Section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Filing Requirements.—Comments and Replies. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be

filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Availability of Documents. Comments and reply comments will be publicly available online via ECFS. These documents will also be available for public inspection during regular

business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.

Need for, and Objectives of, the Proposed Rules. This FNPRM addresses ways to modernize, update and streamline the cable rate regulations in Part 76 of the Federal Communications Commission's rules governing multichannel video and cable television service. The FNPRM seeks comment on whether to replace the existing rate regulation framework and seeks proposals for that. Alternatively, if the Commission keeps the existing rate regulation framework in place, the FNPRM seeks comment on a number of proposals to update and simplify it. The FNPRM proposes to simplify the cable rate regulatory scheme by streamlining the initial rate-setting methodology, clarify how cable operators may adjust their rates every year, and eliminate rate regulation of some equipment used to receive cable signals and small systems owned by small cable companies. This would enable the Commission to eliminate

several rate forms that would no longer be necessary. These changes would relieve regulatory burdens, modernize and streamline cable rate regulations, and update regulations to account for the deregulation of cable programming service tier rates.

Legal Basis. The proposed action is authorized pursuant to sections 1, 2(a), 3, 4(i), 4(j), 303(r), 601(3), 602, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 153, 154(i), 154(j), 303(r), 521, 522, 543.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

Cable Companies and Systems (Rate Regulation Standard). The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but 11 are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have

10,000-19,999 subscribers. Thus, under this second size standard, the Commission believes that most cable systems are small.

Cable System Operators. The Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but 10 are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

Small Governmental Jurisdictions. The small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of

governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions." As discussed in the FNPRM, however, local governments are certified to rate regulate in only about 100 jurisdictions, and that includes governmental jurisdictions that are not small. Therefore, we expect the number of small governmental jurisdictions to which these rule changes would apply is likely under 100.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. As indicated above, this FNPRM addresses ways to modernize, update and streamline the cable rate regulations in Part 76 of the Federal Communications Commission's rules governing multichannel video and cable television service. The FNPRM proposes to modify channel addition and deletion rules, streamline the process for establishing initial regulated rates, sunset a separate streamlined process for small systems and further deregulate small entities, sunset the single tier system headend surcharge methodology, sunset the unabbreviated cost of service methodology, modify the FCC Form 1235 methodology, clarify Commission jurisdiction over basic service tier rates, and the clarify and or eliminate obsolete rules and forms. These changes are necessary to relieve regulatory burdens, modernize and streamline cable rate regulations, and update regulations to account for the deregulation of cable programming service tier rates. All of the proposed rule changes are either neutral or reduce existing reporting, recordkeeping or other compliance requirements. Specifically, changes to the initial rate calculation methodology remove requirements that cable operators go back to 1992 records to justify their rate and systems serving 15,000 or fewer subscribers that are owned by small cable companies of 400,000 or fewer subscribers are relieved from all rate regulation.

Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities." The Commission expects to more fully consider the economic impact on small entities following its review of comments filed in response to the FNPRM and this IRFA. Generally, the FNPRM seeks comment on: ways to modernize, update and streamline the cable rate regulations in Part 76 of the Federal Communications Commission's rules governing multichannel video and cable television service. The FNPRM proposes to modify channel addition and deletion rules, streamline the process for establishing initial regulated rates, sunset of a separate streamlined process for small systems and further deregulate small entities, sunset the single tier system headend surcharge methodology, sunset the unabbreviated cost of service methodology, modify the FCC Form 1235 methodology, clarify Commission jurisdiction over basic service tier rates, and the clarify and or eliminate obsolete rules and forms. These changes are necessary to relieve regulatory burdens, modernize and streamline cable rate regulations, and update regulations to account for the deregulation of cable programming service tier rates. All of the proposed rule changes are either neutral or reduce existing reporting, recordkeeping or other compliance requirements. Specifically, changes to the initial rate calculation methodology remove requirements that cable operators go back to 1992 records to justify their rate and systems

serving 15,000 or fewer subscribers that are owned by small cable companies of 400,000 or fewer subscribers are relieved from all rate regulation.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule. None.

IT IS ORDERED that, pursuant to the authority found in sections 1, 2(a), 3, 4(i), 4(j), 303(r), 601(3), 602, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 153, 154(i), 154(j), 303(r), 521, 522, 543, this Further Notice of Proposed Rulemaking IS ADOPTED. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television; Reporting and recordkeeping requirements.

FEDERAL COMMUNICATIONS COMMISSION

Cecilia Sigmund,
Federal Register Liaison Officer,
Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Amend § 76.911 by revising paragraph (b)(3) to read as follows:

§ 76.911 Petition for reconsideration of certification.

* * * * *

(b) * * *

(3) In any case in which a stay of rate regulation has been granted, if the petition for reconsideration is denied, the cable operator may be required to refund any rates or portion of rates above the permitted tier charge or permitted equipment charge in accordance with § 76.942.

* * * * *

3. Revise § 76.922 to read as follows:

§ 76.922 Rates for the basic service tier.

(a) *Basic service tier rates.* Basic service tier rates shall be subject to regulation by the Commission and by state and local authorities, as is appropriate, in order to assure that they are in compliance with the requirements of 47 U.S.C. 543. Rates that are demonstrated, in accordance with this part, not to exceed the permitted charge as described in this section, plus a

charge for franchise fees, will be accepted as in compliance. The maximum monthly charges for regulated programming services shall not include any charges for equipment or installations. Charges for equipment and installations are to be calculated separately pursuant to § 76.923. Equipment and installation rates that are demonstrated not to exceed the maximum permitted rates as specified in § 76.923, will be accepted as in compliance. The initial rate-setting methodology used to set basic service tier rates shall continue to provide the basis for subsequent permitted charges.

(b) *Permitted charge.* (1) The permitted charge for a tier of regulated program service shall be the maximum permitted rate calculated using FCC Forms 1240 and 1235. Permitted charges established prior to the effective date of this rule will be reviewed for conformance with the rules in effect at the time the permitted charges were established.

(2) *Establishment of newly regulated rates.* (i) Cable systems shall use FCC Form 1240 to establish initial regulated rates.

(ii) For newly regulated cable systems, including cable systems that are re-regulated following a change in regulatory status, the initial date of regulation for the basic service tier shall be the date on which notice is given by the local franchising authority that the basic service tier is subject to regulation under the generally applicable rate rules.

(iii) For purposes of this section, rates in effect on the initial date of regulation shall be the rates charged to subscribers for service received on that date.

(c) *Annual rate adjustment method* -- (1) *Generally.* Except as provided for in paragraph (c)(2)(iii)(B) of this section and § 76.923(o), operators using the annual rate adjustment method may not adjust their rates more than annually to reflect inflation, changes in external costs, changes in the number of regulated channels, and changes in equipment costs. Operators must

file on the same date a Form 1240 for the purpose of making rate adjustments to reflect inflation, changes in external costs and changes in the number of regulated channels and a Form 1205 for the purpose of adjusting rates for regulated equipment and installation. Operators may choose the annual filing date, but they must notify the franchising authority of their proposed filing date prior to their filing. Franchising authorities or their designees may reject the annual filing date chosen by the operator for good cause. 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 than the date chosen by the operator. An operator may change its filing date from year to year, except, as described in paragraphs (c)(2)(iii)(B) of this section, at least twelve months must pass before the operator can implement its next annual adjustment.

(2) *Projecting inflation, changes in external costs, and changes in number of regulated channels.* An operator using the annual rate adjustment method may adjust its rates to reflect inflation, changes in external costs and changes in the number of regulated channels that are projected for the 12 months following the date the operator is scheduled to make its rate adjustment pursuant to § 76.933.

(i) *Inflation adjustments.* The residual component of a system's permitted charge may be adjusted annually to project for the 12 months following the date the operator is scheduled to make a rate adjustment. The annual inflation adjustment shall be based on inflation that occurred in the most recently completed quarter, converted to an annual factor. Adjustments shall be based on changes in the Gross National Product Price Index as published by the Bureau of Economic Analysis of the United States Department of Commerce.

(ii) *External costs.* (A) Permitted charges for a tier may be adjusted annually to reflect actual changes in external costs experienced but not yet accounted for by the cable system, as well as for projections in these external costs for the 12-month period on which the filing is based. In order that rates be adjusted for projections in external costs, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. Projections involving copyright fees, retransmission consent fees, other programming costs, Commission regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. Operators may project for increases in franchise related costs to the extent that they are reasonably certain and reasonably quantifiable, but such changes are not presumed reasonably certain and reasonably quantifiable. Operators may pass through increases in franchise fees pursuant to § 76.933.

(B) In all events, a system must adjust its rates every twelve months to reflect any net decreases in external costs that have not previously been accounted for in the system's rates.

(C) Any rate increase made to reflect increases or projected increases in external costs must also fully account for all other changes and projected changes in external costs, inflation and the number of channels on regulated tiers that occurred or will occur during the same period. Rate adjustments made to reflect changes in external costs shall be based on any changes, plus projections, in those external costs that occurred or will occur in the relevant time periods since the periods used in the operator's most recent previous FCC Form 1240.

(iii) *Channel adjustments.* (A) Permitted charges for a tier may be adjusted annually to reflect changes not yet accounted for in the number of regulated channels provided by the cable system, as well as for projected changes in the number of regulated channels for the 12-month period on which the filing is based. In order that rates be adjusted for projected changes to the number of

regulated channels, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable.

(B) An operator may make rate adjustments for the addition of required channels to the basic service tier that are required under federal or local law at any time such additions occur, subject to the filing requirements of § 76.933(c)(5), regardless of whether such additions occur outside of the annual filing cycle. Required channels may include must-carry, local origination, public, educational and governmental access and leased access channels. 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 paragraph (c)(3) of this section.

(3) *True-up and accrual of charges not projected.* As part of the annual rate adjustment, an operator must "true up" its previously projected inflation, changes in external costs and changes in the number of regulated channels and adjust its rates for these actual cost changes. The operator must decrease its rates for overestimation of its projected cost changes, and may increase its rates to adjust for underestimation of its projected cost changes.

(i) Where an operator has underestimated costs, future rates may be increased to permit recovery of the accrued costs plus 11.25% interest between the date the costs are incurred and the date the operator is entitled to make its rate adjustment.

(ii) If an operator has underestimated its cost changes and 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. An operator may recover accrued costs between the date such costs are incurred and the date the operator actually implements its rate adjustment.

(d) *External costs.* (1) External costs shall consist of costs in the following categories:

(i) State and local taxes applicable to the provision of cable television service;

(ii) Franchise fees;

(iii) Costs of complying with franchise requirements, including costs of providing public, educational, and governmental access channels as required by the franchising authority;

(iv) Retransmission consent fees and copyright fees incurred for the carriage of broadcast signals;

(v) Other programming costs;

(vi) Commission cable television system regulatory fees imposed pursuant to 47 U.S.C. 159; and

(vii) Headend equipment costs necessary for the carriage of digital broadcast signals.

(2) The permitted charge for a regulated tier shall be adjusted on account of programming costs, copyright fees and retransmission consent fees only for the program channels or broadcast signals offered on that tier.

(3) Adjustments for external costs in the true-up portion of the FCC Form 1240 may be made on the basis of actual changes in external costs only. The starting date for adjustments to external costs for newly regulated or re-regulated systems shall be the implementation date of the actual rate in effect as of the initial date of regulation or re-regulation.

(4) Changes in franchise fees shall not result in an adjustment to permitted charges, but rather shall be calculated separately as part of the maximum monthly charge per subscriber for a tier of regulated programming service.

(5) Adjustments to permitted charges to reflect changes in the costs of programming purchased from affiliated programmers, as defined in § 76.901, shall be permitted as long as the price charged to the affiliated system reflects either prevailing company prices offered in the

marketplace to third parties (where the affiliated program supplier has established such prices) or the fair market value of the programming.

(i) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(ii) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(A) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(B) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(6) Adjustments to permitted charges on account of increases in costs of programming shall be further adjusted to reflect any revenues received by the operator from the programmer. Such adjustments shall apply on a channel by channel basis.

(7) In calculating programming expense, operators may add a mark-up of 7.5% for increases in programming costs. Operators shall reduce rates to reflect decreases in programming costs and remove the 7.5% mark-up, if any, taken on the removed costs.

(e) *Changes in the number of channels on the regulated basic service tier.*--(1) *Generally.* A system must adjust annually the residual component of its permitted rate for the basic service tier ("BST") to reflect any decreases in the number of channels that were on the BST as of the initial date of regulation or May 14, 1994, whichever is later. Cable systems shall use FCC Form 1240 to justify rate changes made on account of changes in the number of channels on the BST.

(2) *Deletion of channels.* (i) When dropping a channel from a BST, operators shall reflect the net reduction in external costs in their rates. With respect to channels to which the 7.5% markup

on programming costs was applied, the operator shall treat the markup as part of its programming costs and subtract the markup from its external costs.

(ii) For channels added to the BST after the initial date of regulation or May 14, 1994, whichever is later, operators shall remove the actual per channel adjustment taken for that channel when it was added to the BST.

(iii) When removing channels results in a total BST channel count that is less than the number of channels that were on the BST as of the initial date of regulation or May 14, 1994, whichever is later, operators shall also reduce the price of the BST by any "residual" associated with the channel removal. For purposes of this calculation, the per channel residual is the permitted charge for the BST, minus the external costs and any per channel adjustments included in the permitted charge, divided by the total number of channels on the BST as of the initial date of regulation or May 14, 1994, whichever is later.

(3) *Movement of channels to the BST.* When a channel is moved from another tier of service to the BST, the moved channel shall be treated as a new channel.

(4) *Substitution of channels on a BST.* An operator may substitute a new channel for an existing channel on a BST to prevent a reduction in the total BST channel count to less than the number of channels that were on the BST as of the initial date of regulation or May 14, 1994, whichever is later. The substituted channel will carry the same residual as the original channel for which it was substituted. Operators substituting channels on a BST shall be required to reflect any reduction in programming costs in their rates and may reflect any increase in programming costs, including the 7.5% markup.

(f) Permitted charges for a tier shall be determined in accordance with forms and associated instructions established by the Commission.

(g) *Network upgrade rate increase.* (1) Cable operators that undertake significant network upgrades requiring added capital investment may justify an increase in rates for regulated services on FCC Form 1235 by demonstrating that the capital investment will benefit subscribers, including providing television broadcast programming in a digital format.

(2) A rate increase on account of upgrades shall not be assessed on customers until the upgrade is complete and providing benefits to customers of regulated services.

(3) Cable operators seeking an upgrade rate increase have the burden of demonstrating the amount of the net increase in costs, taking into account current depreciation expense, likely changes in maintenance and other costs, changes in regulated revenues and expected economies of scale.

(4) Cable operators seeking a rate increase for network upgrades shall allocate net cost increases in conformance with the cost allocation rules as set forth in § 76.924.

(5) Cable operators that undertake significant upgrades shall be permitted to increase rates by adding the benchmark/price cap rate to the rate increment necessary to recover the net increase in cost attributable to the upgrade.

(h) *Hardship rate relief.* A cable operator may adjust charges by an amount specified by the Commission or the franchising authority for the basic service tier if it is determined that:

(1) Total revenues from cable operations, measured at the highest level of the cable operator's cable service organization, will not be sufficient to enable the operator to attract capital or maintain credit necessary to enable the operator to continue to provide cable service;

(2) The cable operator has prudent and efficient management; and

(3) Adjusted charges on account of hardship will not result in total charges for regulated cable services that are excessive in comparison to charges of similarly situated systems.

4. Amend § 76.923 by revising paragraphs (a)(1) and (n) to read as follows:

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

(a) * * *

(1) The equipment regulated under this section consists of all equipment in a subscriber's home, provided and maintained by the operator, that is used to receive the basic service tier and video programming offered on a per channel or per program basis, if any, except if such equipment is additionally used to receive other tiers of programming service. Such equipment shall include, but is not limited to:

(i) Converter boxes;

(ii) Remote control units; and

(iii) Inside wiring.

* * * * *

(n) *Timing of filings.* An operator shall file FCC Form 1205 in order to establish its maximum permitted rates at the following times:

(1) When the operator sets its initial regulated equipment rates;

(2) On the same date it files its FCC Form 1240. If an operator elects not to file an FCC Form 1240 for a particular year, the operator must file a Form 1205 on the anniversary date of its last Form 1205 filing; and

(3) When seeking to adjust its rates to reflect the offering of new types of customer equipment other than in conjunction with an annual filing of Form 1205, 60 days before it seeks to adjust its rates to reflect the offering of new types of customer equipment.

5. Amend § 76.924 by:

a. Revising paragraphs (a), (c), and (d)(1) introductory text;

b. Removing and reserving paragraph (d)(2); and

c. Revising paragraph (e).

The revisions read as follows:

§ 76.924 Allocation to service cost categories.

(a) *Applicability*. The requirements of this section are applicable to cable operators for which the basic service tier is regulated by local franchising authorities or the Commission. The requirements of this section are applicable for purposes of rate adjustments on account of external costs and for cost of service showings such as the FCC Form 1235.

* * * * *

(c) *Accounts level*. Cable operators making cost of service showings or seeking adjustments due to changes in external costs shall identify investments, expenses and revenues at the franchise, system, regional, and/or company level(s) in a manner consistent with the accounting practices of the operator on its initial date of regulation or re-regulation. However, in all events, cable operators shall identify at the franchise level their costs of franchise requirements, franchise fees, local taxes and local programming.

(d) * * * (1) Cable operators making cost of service showings shall report all investments, expenses, and revenue and income adjustments accounted for at the franchise, system, regional and/or company level(s) to the summary accounts listed below.

* * * * *

(2) [Removed and Reserved]

(e) *Allocation to service cost categories.* (1) For cable operators making cost of service showings, investments, expenses, and revenues contained in the summary accounts identified in paragraph (d) of this section shall be allocated among the Equipment Basket, as specified in §

76.923, and the following service cost categories:

(i) Basic service cost category. The basic service category, shall include the cost of providing basic service as defined by § 76.901(a). The basic service cost category may only include allowable costs as defined by § 76.922.

(ii) Cable programming services cost category. The cable programming services category shall include the cost of providing cable programming services as defined by § 76.901(b). The cable programming service cost category may include only allowable costs as defined in § 76.922.

(iii) All other services cost category. The all other services cost category shall include the costs of providing all other services that are not included in the basic service or cable programming services cost categories as defined in paragraphs (e)(1)(i) and (ii) of this section.

(2) Cable operators seeking an adjustment due to changes in external costs identified in FCC Form 1240 shall allocate such costs among the equipment basket, as specified in § 76.923, and the following service cost categories:

(i) The basic service category as defined by paragraph (e)(1)(i) of this section;

(ii) The cable programming services category as defined by paragraph (e)(1)(ii) of this section;

(iii) The all other services cost category as defined by paragraph (e)(1)(iii) of this section.

* * * * *

6. Revise § 76.930 to read as follows:

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

A cable operator shall file its rate justifications for the basic service tier and associated equipment with a franchising authority within 30 days of receiving written notification from the franchising authority that the franchising authority has been certified by the Commission to regulate rates for the basic service tier, or within 30 days from the date the franchising authority

notifies the operator that the operator will be subject to the generally applicable rate rules because the operator's regulatory status has changed. Basic service and equipment rate filings for existing rates or proposed rate increases (including increases that result from reductions in the number of channels on a tier) must use the appropriate official FCC form, a copy thereof, or a copy generated by FCC software. Failure to file on the official FCC form, a copy thereof, or a copy generated by FCC software, may result in the imposition of sanctions specified in § 76.937(d). A cable operator shall include rate cards and channel line-ups with its filing and include an explanation of any discrepancy in the figures provided in these documents and its rate filing.

7. Revise § 76.933 to read as follows:

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

(a) A cable operator that submits for review its existing rates for the basic service tier and associated equipment costs may continue the existing rates in effect pending franchising authority review and subject to the refund liability provisions of § 76.942.

(b) A cable operator that submits for review a proposed change in its existing rates for the basic service tier and associated equipment costs, including a rate increase resulting from a network upgrade pursuant to § 76.922(g), shall do so no later than 90 days prior to the effective date of the proposed rates.

(c)(1) The franchising authority will have 90 days from the date of the rate filing to review it. However, if the franchising authority or its designee concludes that the operator has submitted a facially incomplete filing, the franchising authority's deadline for issuing a decision, the date on which a rate increase may go into effect if no decision is issued, and the period for which refunds are payable will be tolled while the franchising authority is waiting for this information, provided

that, in order to toll these effective dates, the franchising authority or its designee must notify the operator of the incomplete filing within 45 days of the date the filing is made.

(2) 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 filing, the operator may file an amendment to its rate filing prior to the end of the 90 day review period. If the operator files such an amendment, 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.

(3) If a franchising authority has taken no action within the 90 day review period, then the existing rates may continue in effect or the proposed rates may go into effect at the end of the review period, subject to a prospective rate reduction and refund if the franchising authority subsequently issues a written decision disapproving any portion of such rates, provided, however, that in order to order a prospective rate reduction and refund, if an operator inquires as to whether the franchising authority intends to issue a rate order after the 90 day review period, the franchising authority or its designee must notify the operator of its intent in this regard within 15 days of the operator's inquiry. If the franchising authority has not issued its rate order by the end of the 90 day review period, the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within 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.

(4) At the time an operator files its rate justifications with the franchising authority, the operator may give customers notice of the proposed rate changes. 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 within 60 days of the date of the franchising authority's decision. Additional advance notice is required if the rate to be implemented exceeds the previously noticed rate.

(5) If an operator files for a rate adjustment for the addition of channels to the basic service tier that the operator is required by federal or local law to carry, 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. The franchising authority shall be subject to the requirements described in paragraph (c)(1)-(3) of this section for ordering refunds and prospective rate reductions, except that the initial review period is 60 rather than 90 days.

(6) When the franchising authority is regulating basic service tier rates, a cable operator may increase its rates for basic service to reflect the imposition of, or increase in, franchise fees or cable television system regulatory fees imposed pursuant to 47 U.S.C. 159. The increased rate attributable to Commission cable television system regulatory fees or franchise fees shall be subject to 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 § 76.944. When

the Commission is regulating basic service tier rates pursuant to § 76.945, 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 § 76.945.

(d) If an operator files an FCC Form 1205 for the purpose of setting the rate for a new type of equipment under § 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. The franchising authority shall be subject to the requirements described in paragraph (c)(1)-(3) of this section for ordering refunds and prospective rate reductions, except that the initial review period is 60 rather than 90 days.

8. Revise § 76.934 to read as follows:

§ 76.934 Small systems and small cable companies.

(a) For purposes of rules governing the regulatory status of small systems, the size of a system or company shall be determined by reference to its size as of the date the system files with its franchising authority or the Commission the documentation necessary to qualify for the relief sought. Where relief is dependent upon the size of both the system and the company, the operator must measure the size of both the system and the company as of the same date. A small system shall be considered affiliated with a cable company if the company holds a 20 percent or greater equity interest in the system or exercises *de jure* control over the system.

(b) A franchising authority that has been certified, pursuant to § 76.910, to regulate rates for basic service and associated equipment may permit a small system as defined in § 76.901 to certify that the small system's rates for basic service and associated equipment comply with § 76.922, the Commission's substantive rate regulations.

(c) *Regulation of small systems*. A small system, as defined by § 76.901(c), that receives a notice

of regulation from its local franchising authority must respond within the time periods prescribed in § 76.930.

(d) *Petitions for extension of time*. Small systems may obtain an extension of time to establish compliance with rate regulations provided they can demonstrate that timely compliance would result in severe economic hardship. Requests for extension of time should be addressed to the local franchising authority. The filing of a request for an extension of time to comply with the rate regulations will not toll the effective date of rate regulation for small systems or alter refund liability for rates that exceed permitted levels.

(e) *Small Systems Owned by Small Cable Companies*. Small systems owned by small cable companies are not subject to rate regulation as long as they meet the definitions of small system and small cable company. When a system no longer qualifies for deregulatory status, the system must give the franchising authority notice of its change in status. The system may maintain the actual rates it charged prior to its loss of small system status, but future rate adjustments will be subject to generally applicable rate regulations. After receiving notice of regulation from the franchising authority, the system shall file its schedule of rates consistent with § 76.930 of this subpart.

(f) For rules governing small cable operators, see § 76.990 of this subpart.

9. Revise § 76.935 to read as follows:

§ 76.935 Participation of interested parties.

In order to regulate basic tier rates or associated equipment costs, a franchising authority must have procedural laws or regulations applicable to rate regulation proceedings that provide a reasonable opportunity for consideration of the views of interested parties. Such rules must take into account the time periods that franchising authorities have to review rates under § 76.933.

10. Amend § 76.937 by:

a. Removing paragraph (c);

b. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d); and

c. Revising newly redesignated paragraph (d).

The revision reads as follows:

§ 76.937 Burden of proof.

* * * * *

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

11. Revise § 76.938 to read as follows:

§ 76.938 Proprietary information.

A franchising authority may require the production of proprietary information to make a rate determination in those cases where cable operators have submitted initial rates for review, or have proposed rate increases. The franchising authority shall state a justification for each item of information requested and, where related to an FCC form filing, indicate the question or section of the form to which the request specifically relates. Upon request to the franchising authority, the parties to a rate proceeding shall have access to such information, subject to the franchising

authority's procedures governing non-disclosure by the parties. Public access to such proprietary information shall be governed by applicable state or local law.

12. Revise § 76.939 to read as follows:

§ 76.939 Truthful written statements and responses to requests of franchising authority. Cable operators shall comply with franchising authorities' and the Commission's requests for information, orders, and decisions. Any information submitted to a franchising authority or the Commission in making a rate determination pursuant to an FCC form filing is subject to the provisions of § 1.17 of this chapter.

13. Revise § 76.942 to read as follows:

§ 76.942 Refunds.

(a) A franchising authority (or the Commission, pursuant to § 76.945) may order a cable operator to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted tier charge or above the actual cost of equipment. Before ordering a cable operator to refund previously paid rates to subscribers, a franchising authority (or the Commission) must give the operator notice and opportunity to comment.

(b) The refund period shall run as follows:

(1) From the date the operator implements the rate under review until it reduces the rate in compliance with a valid rate order or justifies that rate or a higher rate in its next rate filing, whichever is sooner, however, the refund period shall not begin before the initial date of regulation.

(2) For rates in effect and justified on rate forms filed before the effective date of this rule, as amended, the refund period shall be determined by the rules in effect at the time of filing.

(3) Refund liability shall be calculated on the reasonableness of the rates as determined by the

rules in effect during the period under review by the franchising authority or the Commission.

(c) The cable operator, in its discretion, may implement a refund in the following manner:

(1) By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified credit to those subscribers' bills; or

(2) By means of a prospective percentage reduction in the rates for the basic service tier or associated equipment to cover the cumulative overcharge. The refund shall be reflected as a specifically identified, one-time credit on prospective bills to the class of subscribers that currently subscribe to the cable system.

(d) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments.

(e) 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%.

14. Amend § 76.944 by revising 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 § 76.922(c) may include in its next true up under § 76.922(c)(3) any amounts to which the operator would have been entitled but for a franchising authority decision that is not upheld on appeal.

15. Revise § 76.945 to read as follows:

§ 76.945 Procedures for Commission review of basic service rates.

(a) Upon assumption of rate regulation authority, the Commission will notify the cable operator and require the cable operator to file its basic rate schedule with the Commission within 30 days, with a copy to the local franchising authority.

(b) Basic service and equipment rate schedule filings for existing rates or proposed rate increases or adjustments (including increases that result from reductions in the number of channels in a tier) must use the official FCC form, a copy thereof, or a copy generated by FCC software. Failure to file on the official FCC form or a copy may result in the imposition of sanctions specified in § 76.937(c).

(c) Filings for existing rates or proposed rate increases or adjustments must be made 90 days prior to the proposed effective date and can become effective on the proposed effective date unless the Commission issues an order deferring the effective date or denying the rate proposal. Petitions opposing such filings must be filed within 15 days of public notice of the filing by the cable operator and be accompanied by a certificate that service was made on the cable operator and the local franchising authority. The cable operator may file an opposition within five days of

the filing of the petition, certifying to service on both the petitioner and the local franchising authority.

§ 76.963 [Removed]

16. Remove § 76.963.

§ 76.982 [Removed]

17. Remove § 76.982.

18. Amend § 76.990 by:

a. Revising paragraphs (a) and (b)(2);

b. Removing paragraph (b)(3); and

c. Revising paragraph (c).

The revisions read as follows:

§ 76.990 Small cable operators.

(a) A small cable operator is exempt from rate regulation on its basic service tier if that tier was the only service tier subject to rate regulation as of December 31, 1994, in any franchise area in which that operator services 50,000 or fewer subscribers.

(b) * * *

(2) Once the operator has certified its eligibility for deregulation on the basic service tier, the local franchising authority shall not prohibit the operator from taking a rate increase and shall not order the operator to make any refunds unless and until the local franchising authority has rejected the certification in a final order that is no longer subject to appeal or that the Commission has affirmed. The operator shall be liable for refunds for revenues gained (beyond revenues that could be gained under regulation) as a result of any rate increase taken during the period in which it erroneously claimed to be deregulated, plus interest, in the event the operator

is later found not to be deregulated. The limits on refund liability will not be applicable during that period to ensure that the filing of an invalid small operator certification does not reduce any refund liability that the operator would otherwise incur.

(c) *Transition from small cable operator status.* If a small cable operator subsequently becomes ineligible for small operator status, the operator will become subject to regulation but may maintain the rates it charged prior to losing small cable operator status if such rates were in effect for three months preceding the initial date of regulation. Upon regulation, actual rates and subsequent rate increases will be subject to generally applicable regulations governing rates and rate increases. A cable operator must give its franchising authority notice of its change in status. The system shall file its rate justifications consistent with § 76.930. For rules governing small cable systems and small cable companies, see § 76.934.

§ 76.1805 [Removed]

19. Remove § 76.1805.

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