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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 17-105, 02-144; MM Docket Nos. 92-266, 93-215; CS Docket Nos. 94-28, 96-157; FCC 18-148]

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

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) eliminate or revise expired and outdated cable rate regulation rules and close a related dormant docket.

DATES: *Effective date:* **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Katie Costello, katie.costello@fcc.gov, of the Media Bureau, (202) 418-2233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, 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 97, 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 the Report and Order, we eliminate and revise rules that have become obsolete due to the sunset of rate regulation for cable programming service tiers, are unnecessary given changes in industry practices, or have become obsolete due to changes in Commission policy. For the reasons stated below, we find good cause to modify § 76.923(i) without notice and comment because the modification in question merely codifies an existing uncodified rule. We also eliminate the hard copies of Forms 328 and 329 located at the end of § 76.985 of our rules. We are not changing the text of § 76.985 by deleting these hard copies, and they are unnecessary because Form 329 is no longer in use and Form 328 is available electronically. Finally, we eliminate §§ 76.986, 76.987, 76.922(g)(7) and 76.922(n) of the rules and close proceedings related to uniform regional rate structures, which are moot due to the sunset of cable programming service tier (CPST) regulation.

A la Carte Packages and New Product Tiers. We eliminate §§ 76.986 and 76.987 because they are vestiges of CPST regulation. These rule sections address “a la carte” packages and “new product tiers,” both of which are types of CPSTs. Therefore, because of the sunset of CPST regulation we remove these two sections from our rules.

Equipment Leasing. We modify § 76.923(i) to codify our previously adopted uncodified rule that, where an operator offers its equipment for sale as well as for lease, the sales price is unregulated. The lease price offers the safety of a cost-based regulated rate to subscribers and

the operator's sales price for the same equipment is regulated by the market.

Single Tier Small System Headend Upgrades. We remove § 76.922(g)(7) to reflect the sunset of the opportunity for single tier small systems to make headend upgrade adjustments. The time period for taking this rate increase, January 1, 1995 to December 31, 1997, has expired, and we see no continued need for this rule section.

Uniform Regional Rate Structures. The *Notice of Proposed Rulemaking* in the *Cable Pricing Flexibility Order*, 61 FR 45387, and our interpretation in the *Uniform Rate Order*, 62 FR 15121, of § 76.922(n) of our rules are both moot due to the deregulation of the CPST. In the *Cable Pricing Flexibility Order*, we proposed exceptions to the CPST rate rules to allow operators to reduce BST prices and offset those reductions with increased CPST rates. Section 76.922(n) permits similar offsets for CPST rates in order to permit cable operators to establish uniform rates across multiple franchise areas. Now that CPST rates are no longer regulated, an operator may increase CPST rates without Commission approval so the exceptions to the CPST rate rules are no longer needed. Accordingly, we terminate CS Docket No. 96-157 and remove § 76.922(n) from our rules.

Forms 328 and 329. Two hard copy FCC forms are located at the end of § 76.985 of our rules in the Code of Federal Regulations. Form 329 is an obsolete CPST complaint form. Form 328 is now available electronically. We delete these hard copy forms, including instructions, from § 76.985 and modify § 76.910 to direct interested parties to the electronic Form 328 and instructions.

Paperwork Reduction Act.—The *Report and Order* eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, therefore, it does not contain any

new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4).

Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”), an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Notice of Proposed Rulemaking and Order, Revisions to Cable Television Rate Regulations (“NPRM”)*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments on the IRFA were received. This present Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.

Need for, and Objectives of, the Revised Rules. In the past, the Commission developed rules and forms for the regulation of cable television rates when both the basic service tier (“BST”) and the cable programming service tiers (“CPST”) were subject to rate regulation. In this *Report and Order*, the Commission updates some of these regulations. Updating is needed so that the rules and rate forms will reflect the March 1999 sunset of cable programming services tier (“CPST”) rate regulation pursuant to the Telecommunications Act of 1996. Finally, updating is required to address issues which have arisen over time. This *Report and Order* makes changes to remove rule sections that are obsolete due to the sunset of upper tier regulation. For cable systems in general, including small cable systems, in this Report and Order the Commission deletes or modifies rules relating solely to CPST regulation and modifies a rule to codify existing policy. All of these changes have the effect of eliminating or reducing regulatory burdens.

Legal Basis. The authority for this action is contained 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, and 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 modified rules. 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.

The SBA has developed a small business size standard for Cable and Other Program Distribution, which consists of all such firms having \$12.5 million or less in annual receipts. This category includes, among others, cable operators, closed circuit television services, direct broadcast satellite services, multipoint distribution services, open video systems, satellite master antenna television systems, and subscription television services. According to Census Bureau data for 1997, in this category, there was a total of 1,311 firms that operated for the entire year, of which 1180 have less than \$10 million in revenue and an additional 52 firms had revenue of \$10 million or more but less than \$25 million. Thus, under this size standard, the majority of firms can be considered small. In this category, only cable system operators are affected by this *Report and Order* and we address them below to provide a more precise estimate of the affected small entities.

Cable Systems. The Commission has developed its own small business size standard for a small cable operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most

recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small cable companies that may be affected by the proposed rules. A "small system" under the Commission's rules, is one serving "15,000 or fewer subscribers. The service area of a small system shall be determined by the number of subscribers that are served by the system's principal headend, including any other headends or microwave receive sites that are technically integrated to the principal headend." The Communications Act of 1934, as amended, also contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one 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 there are 67,700,000 cable subscribers in the United States. Therefore, 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 of its affiliates, do not exceed \$250 million in the aggregate. Based on this available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. We do not request or collect information on whether cable operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and therefore are unable to estimate accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

for Small Entities. No increase in the regulatory burden on small systems or small governmental entities is expected to result from this proceeding.

Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its 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 such small entities." In general, this item does not impose any new regulatory burdens on large or small entities. Rather, it serves to streamline and update rules, thereby relieving burdens in general. Although the Commission requested comment on any changes in the rate rules that might address continuing difficulties faced by operators of small systems, such as the problems associated with the simultaneous growth in competition and the need for additional investment to upgrade facilities, no comments were received. The changes do not increase the regulatory burden small systems face as a result of rate regulation and may lessen it by reducing the amount of information required to be reported.

Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Rules.

None.

For the reasons stated above, 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 Report and Order

IS ADOPTED. IT IS FURTHER 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, the Commission's rules ARE AMENDED as set forth below. IT IS FURTHER ORDERED that CS Docket No. 96-157 IS TERMINATED. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

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.

Final Rules

For the reasons set forth in the preamble, the Federal Communications Commission amends 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 § 76.901 by removing paragraph (d), redesignating paragraphs (e) and (f) as paragraphs (d) and (e), and revising the newly designated paragraph (e) to read as follows:

§ 76.901 Definitions.

* * * * *

(e) *Small cable operator.* A small cable operator is an 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. For purposes of this definition, an operator shall be deemed affiliated with another entity if that entity holds a 20 percent or greater equity interest (not including truly passive investment) in the operator or exercises de jure or de facto control over the operator.

(1) Using the most reliable sources publicly available, the Commission periodically will determine and give public notice of the subscriber count that will serve as the 1 percent threshold until a new number is calculated.

(2) For a discussion of passive interests with respect to small cable operators, see Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report

and Order in CS Docket No. 96–85, FCC 99–57 (released March 29, 1999).

(3) If two or more entities unaffiliated with each other each hold an equity interest in the small cable operator, the equity interests of the unaffiliated entities will not be aggregated with each other for the purpose of determining whether an entity meets or passes the 20 percent affiliation threshold.

3. Amend § 76.910 by revising the first sentence and adding a second sentence to paragraph (c) to read as follows:

§76.910 Franchising authority certification.

* * * * *

(c) The written certification described in paragraph (b) of this section shall be made by completing and filing FCC Form 328. FCC Form 328 can be obtained from the Internet at <http://www.fcc.gov/Forms/Form328/328.pdf> or by calling the FCC Forms Distribution Center at 1-800-418-3676. * * *

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§ 76.922 [Amended]

4. Amend § 76.922 by removing and reserving paragraph (g)(7) and removing paragraph (n).

5. Amend § 76.923 by adding a final sentence to paragraph (i) to read as follows:

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

* * * * *

(i) * * * Equipment sales by an operator will be unregulated where the operator offers subscribers the same equipment under regulated leased rates.

* * * * *

§ 76.985 [Amended]

6. Amend § 76.985(c) by removing forms entitled “FCC329”, “INSTRUCTIONS FOR FCC 328” and “FCC328”.

§§ 76.986 and 76.987 [Removed]

7. Remove §§ 76.986 and 76.987.

[FR Doc. 2018-25326 Filed: 11/26/2018 8:45 am; Publication Date: 11/27/2018]