substitutes Channel 293C3 for Channel 292A at Cadiz, Kentucky, and reallots Channel 293C3 from Cadiz to Oak Grove, Kentucky, and modifies Station WKDZ-FM's license accordingly. *See* 59 FR 44, January 3, 1994. Channel 293C3 can be allotted to Oak Grove in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) north at petitioner's requested site. The coordinates for Channel 293C3 at Oak Grove are North Latitude 36–45–05 and West Longitude 87–27–02. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–314, adopted September 15, 1995, and released September 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 292A from Cadiz, and adding Oak Grove, Channel 293C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–24823 Filed 10–4–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 89–597; RM–7118 and Rm–7321]

Radio Broadcasting Services; Wiggins and D'Iberville, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 250C2 from Wiggins, Mississippi, to D'Iberville, Mississippi, and modifies the license for Station WUSD to specify operation in D'Iberville in response to a proposal filed by White Broadcasting Company, Inc. *See* 56 FR 27693 and 56 FR 27725, June 17, 1991. The coordinates for Channel 250C2 at D'Iberville are 30–27–22 and 88–53–12.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order*, MM Docket No. 89–597, adopted September 21, 1995, and released September 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Wiggins, Channel 250C2 and adding D'Iberville, Channel 250C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–24822 Filed 10–4–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 76

[MM Docket No. 92–266, FCC 95–397]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Thirteenth Order on Reconsideration in MM Docket 92–266 to simplify rules affecting cable operators' rates and to provide cable operators with an additional option for adjusting their rates. This streamlined methodology encourages operators to limit rate increases to once per year rather than up to 4 times per year under the existing methodology. It will also limit delays in recovering costs that operators have experienced under the current system. This streamlined rate review process benefits all affected parties. An annual rate adjustment option could eliminate subscriber confusion and frustration because subscribers will not have to contend with numerous rate increases during a given year. Annual adjustments also benefit cable operators because filing for rate increases and providing notice to subscribers of such rate increases once per year is more efficient. Regulatory authorities benefit from an annual rate adjustment system because such a system minimizes the number of rate adjustments they have to review each year.

EFFECTIVE DATE: November 6, 1995, except that new reporting requirements shall take effect thirty (30) days after approval of the Office of Management and Budget. At a later date, the Commission will publish a document specifying the effective date.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson (202) 416–1190.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Thirteenth Order on Reconsideration in MM Docket No. 92–266, FCC 95–397, adopted September 15, 1995 and released September 22, 1995.

The complete text of this Thirteenth Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS, Inc.'') at (202) 587–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Thirteenth Order on Reconsideration

Introduction

The Cable Television Consumer Protection and Competition Act of 1992 (''the 1992 Cable Act'') required the Commission to prescribe rate regulations that protect subscribers from having to pay unreasonable rates by ensuring that basic service tier (''BST'') and cable programming service tier (''CPST'') rate levels do not exceed rates that would be charged in the presence of effective competition. The 1992 Cable Act directed the Commission to ''seek to reduce administrative burdens on subscribers, cable operators, franchising authorities and the Commission'' in meeting this mandate.

Based on information we have secured from operators, we have concluded that we should further streamline the rate review process in ways that will benefit subscribers, cable operators, local franchising authorities, and the Commission. The current process allows, and to some degree encourages, operators to file for multiple rate adjustments during each year. This process can be costly for operators because they must file Form 1210s and provide subscribers with 30 days' advance written notice each time they file for a rate adjustment. In addition, multiple rate adjustments in one year could create subscriber confusion. Multiple rate adjustments also impose administrative burdens on regulatory authorities because they must review each proposed rate adjustment.

We have found that under the current rate framework, some operators are delayed when attempting to recover their costs because they are not permitted to file for recovery of external cost increases and additions of new channels until the quarter after costs are incurred or channel changes are made. Operators may experience further delay while regulatory authorities review the proposed adjustments. Further, operators are never able to recover costs between the date they are incurred and the date a rate adjustment is permitted. Also, under the so-called ''use or lose'' provision of the current rules, operators must file for rate increases that reflect cost increases within one year of the date they first incur those additional costs, or else lose the ability to pass through those costs.

In order to address these concerns, we are adopting on our own motion a new optional rate adjustment methodology where cable operators will be permitted to make only annual rate changes to their BSTS and CPSTs. Operators that elect to use this new methodology will adjust their rates once per year to reflect reasonably certain and reasonably quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the 12 months following the rate change. Because operators will be permitted to estimate cost changes that will occur in the 12 months following the rate filing, we expect that this methodology will limit delays in recovering costs that operators may experience under the current system. Any incurred cost that is not projected may be accrued with interest and added to rates at a later time. If actual and projected costs are different during the rate year, a ''true up'' mechanism is available to correct estimated costs with actual cost changes. The ''true up'' requires operators to decrease their rates or alternatively, permits them to increase their rates to make adjustments for over- or under-estimations of these cost changes. Operators would not lose the right to make a rate increase at a later date if they choose not to implement a rate adjustment at the beginning of the next rate year. Finally, in order that operators not feel compelled to make rate filings or increase rates when they otherwise would not, we will eliminate the ''use or lose'' requirement for operators that elect this methodology.

We believe that operators will benefit from this system because it will alleviate the difficulty of delays for rate adjustments that they now experience and will permit them to utilize annual rate adjustments without the loss of revenues they now incur as a result of the current methodology. Subscriber confusion will be alleviated because rate adjustments will take place once per year. Moreover, subscribers will be protected by this system because if an operator overestimates its permitted rate increase as a result of its projections, the operator would be required to rectify the error with interest when makes its rate adjustment at the beginning of the next rate year. Finally, franchising authorities and the Commission will benefit from this methodology because they will not be required to review more than one rate adjustment per year.

We are also requiring operators that elect the annual rate adjustment methodology to file BST rate adjustment requests 90 days prior to the effective date of the proposed changes. Operators may implement rate changes as proposed in their filings 90 days after they file unless the franchising authority rejects the proposed rate as unreasonable. If the franchising authority has not issued a rate decision and the operator makes a rate adjustment after the 90-day period has expired, the franchising authority may order a prospective rate reduction and refunds at a later time, where appropriate. The franchising authority need not issue an accounting order to preserve its right to issue its rate order after the 90-day review period. However, 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 must notify the operator of its intent in this regard within 15 days of the operator's request of lose its ability to order a refund or a prospective rate reduction. If a proposed rate goes into effect before the franchising authority issues its rate order, the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within this time, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing.

An operator that has a CPST complaint pending against it or has been ordered by the Commission to reduce its CPST rates, and that elects the annual rate adjustment option, must propose the annual rate adjustment at least 30 days prior to the effective date of the rate change. The Commission can deny an increase before the end of the 30-day period, but if the Commission does not act within 30 days, the operator may implement the rate increase as proposed on the Form 1240. The increase would go into effect, subject to a prospective rate reduction and refund, where appropriate, which the Commission may order at a later time.

Although operators that elect the annual rate adjustment option generally will not be permitted to make more than one rate adjustment per year, we will permit operators to make rate adjustments for the addition of channels to BSTs that the operator is required by federal or local law to carry, i.e., new must-carry, local origination, public, educational and governmental access and leased access channels. Franchising authorities will have 60 days to review these increases prior to their going into effect. The proposed rate adjustment will go into effect 60 days after filing unless the franchising authority finds that the adjustment would be unreasonable. We also will allow operators to make one additional rate adjustment during the year to reflect channel additions to CPSTs, and to BSTs where the operator offers only one regulated tier. Operators may make this additional rate adjustment reflecting channel additions to CPSTs at any time during the year. Subject to the existing

going forward rules, which affect the amount by which an operator can increase its rates, operators will have no limit on the number of channels they may add when they make this rate adjustment during the year.

Operators that elect the annual rate adjustment system must file for rate adjustments for equipment and installations on Form 1205 on the same date that they file for their other rate adjustments on Form 1240. Therefore, for operators that elect to use the annual rate adjustment methodology, we are changing the current rule which requires operators to file 60 days after the close of their fiscal year. In addition, we will continue to require operators to base their proposed annual customer equipment and installations rate adjustments on past costs because we believe that it would be far more difficult to project reasonably certain and reasonably quantifiable changes in equipment and installation costs. We also will require that when an operator introduces a new type of equipment, the operator must file for a rate adjustment no later than 60 days before the date the operator intends to charge subscribers for the new type of equipment. The proposed rate would go into effect at the end of this 60-day period unless the franchising authority rejects the proposed rate as unreasonable or the franchising authority finds that the operator has submitted an incomplete filing.

Operators that do not elect to use the annual rate adjustment system may continue to use the existing system which allows operators to make rate adjustments up to once per calendar year quarter. With respect to the current quarterly rate adjustment system, this order affirms our decision in the *Fourth Reconsideration Order* 59 FR 53113 (10/21/94) to allow operators to pass through changes in franchise fees and Commission regulatory fees within 30 days of filing for a rate adjustment reflecting these costs unless the franchising authority finds that these rate adjustments are unreasonable before the 30-day period has expired.

This Order will also simplify the rate review process by eliminating our current practice of reviewing the entire CPST rate after receiving a CPST complaint. On the effective date of these rules, this system of rate regulation, commonly referred to as ''all rates in play,'' will be eliminated for CPSTs that have not been subject to a rate complaint. Following that date, CPST rate complaints will require a Commission determination whether the amount of the rate increase complained about is reasonable.

In addition, we clarify that for purposes of adjusting rates to reflect increases in franchise requirement costs, operators are entitled to pass through any increases in costs that are specifically required by franchise agreements, provided that the recovery of costs may not encompass costs the operator would incur in the absence of the franchise requirement. Consistent with this goal, operators are permitted to pass through to subscribers (a) cost increases associated with technical standards and customer service standards that exceed federal requirements; (b) cost increases attributable to satisfying franchise requirements to support public, educational and governmental access; (c) increases in the costs of providing institutional networks, video services, voice transmissions and data services to or from governmental institutions and educational institutions, including private schools; and (d) cost increases associated with a franchise requirement that an operator remove cable from utility poles and place the same cable underground.

Further, the Order affirms the Commission's decision to permit operators to advertise rates for regulated cable services regionally using a single tier rate plus a franchise fee. The order also permits franchising authorities to determine the method by which franchise fee overpayments are returned to cable operators. However, franchising authorities must return overpayments within a reasonable period of time.

Annual Rate Adjustments for Basic Services and Cable Programming Services

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

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

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

Annual Rate Adjustment System

In order to address these concerns, on our own motion we are adopting a new optional rate adjustment methodology that encourages cable operators to make only annual rate changes to their BSTs and CPSTs. Following the approval of the new Form 1240 by the Office of Management and Budget, operators may choose between the existing quarterly rate adjustment system and a new annual rate adjustment system. Operators that elect to use the new methodology would adjust their rates once a year to reflect changes in external costs, inflation, and the number of regulated channels that they expect to occur during the 12 months following the rate change. Because operators will be permitted to project changes that will occur in the 12 months following the rate filing, we expect that this methodology will limit delays that operators experience under the current system. Any cost that is not projected may be accrued and added to rates, with 11.25% interest, when the operator makes its next filing. Moreover, at the end of the rate year, operators ''true up'' their projected changes to correct for differences between actual and projected costs during the rate year. Operators would not lose the right to

make rate increases at a later date if they choose not to implement a rate change at the beginning of the next rate year. Moreover, if an operator overestimates its permitted rate as a result of its projections, the operator would be required to correct this overestimation, with interest, when it makes its next rate adjustment at the beginning of the next rate year.

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

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

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

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

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

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

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

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

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

Regulatory Review Period for Annual Rate Changes

a. Basic Service Tier

Operators that elect the annual rate adjustment methodology must file BST rate change requests at least 90 days prior to the date they plan to implement the proposed changes. Operators may implement rate changes as they have proposed in their filings 90 days after they file unless the franchising authority rejects the proposed rate as unreasonable. If the franchising authority has not issued a rate decision and the operator makes a rate adjustment after the 90-day period has expired, the franchising authority may order a prospective rate reduction and refunds at a later time, where appropriate. The franchising authority need not issue an accounting order to preserve its right to require a refund after the 90-day review period. However, if at the end of the 90-day review period an operator inquires as to whether the franchising authority is continuing to review the operator's filing, the franchising authority or its designee must respond to the operator within 15 days of receiving the inquiry. Failure to reply in the requisite amount of time will result in the franchising authority losing its ability to issue

refunds or to order prospective rate reductions. In its response, the franchising authority must indicate whether it is continuing to review the operator's filing. If a proposed rate goes into effect before the franchising authority issues its rate order, the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within the 12-month period, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing. We set this time constraint on franchising authorities because we believe that one year should provide ample time for review, and because operators need to have certainty with respect to their liability for refunds and whether their rates will be permitted to remain in effect.

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

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

b. Cable Programming Services Tiers

Section 76.960 of the Commission's rules provides that if the Commission has ordered an operator to make a prospective rate reduction for a CPST, the rate reduction will be binding on the operator for one year, unless the Commission specifies otherwise. Accordingly, operators that have been required to reduce their CPST rates have not been permitted to increase their rates under our price cap rules for one year without prior Commission approval.

Treatment of Franchise Fees and Commission Regulatory Fees Under Quarterly Rate Adjustment Option

We affirm our decision to permit operators that file rate adjustments under the quarterly system to pass through franchise fees within 30 days of filing unless the franchising authority finds that the rate adjustment is unreasonable before 30 days has expired. If the franchising authority does not issue a rate decision within this 30 day period, the proposed rate will go into effect, subject to subsequent refund orders. In order to issue a refund order, the franchising authority must issue a written order at the end of the 30 day period directing the operator to keep an accurate account of all amounts received by reason of the proposed rate and on whose behalf such amounts are paid.

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

As with all other rate adjustment filings, if an operator files for a rate adjustment to reflect an increase in franchise fees and fails to complete its rate justification form or to include supporting information called for by the form, the franchising authority may order the cable operator to file supplemental information. While the franchising authority is waiting to receive this information from the cable operator, the deadline for the franchising authority to rule on the reasonableness of the proposed rates is tolled. Once the supplemental information has been filed with the franchising authority, the time for determining the reasonableness of the rate by the franchising authority will recommence. We believe that this requirement is essential if franchising authorities are going to have the minimum information necessary to complete a review of an operator's rate adjustment request within 30 days of the filing.

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

In addition, with respect to operators that elect to file rate adjustments under the quarterly system, we affirm our

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

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

External Cost Treatment of Franchise Requirements

On reconsideration, we believe that operators should be permitted to include increases in franchise requirement costs that the operator would not have incurred in the absence of the franchise requirement. Such increases include both new requirements that the franchising authority imposes and increases in the cost of complying with existing requirements. Our current rules permit external cost treatment for increases in the cost of satisfying franchise requirements for (a) PEG access channels, (b) public, educational, and governmental access programming, and (c) customer service standards and technical standards that exceed federal requirements. In our view, such increased costs would not have been incurred in the absence of a franchise agreement because we believe that the operator would not have chosen to provide such services.

We believe that operators also should be permitted to pass through increases in the costs of institutional networks and the provision of video services, voice transmissions and data transmissions to or from governmental institutions and educational institutions, including private schools, to the extent such services are required by the franchise agreement. We believe that such costs should be afforded external cost treatment because we believe that operators generally would not provide such services in the absence of a franchising requirement. Because such costs are largely beyond the control of the cable operator, we believe they should be passed on to subscribers without a cost-of-service showing.

In addition, under certain circumstances, we will permit operators to pass through to subscribers the cost of meeting franchise requirements that they remove aerial facilities and place them underground. However, the external cost pass through should be limited to cases where the operator has been required to actually remove cable from utility poles and place the same cable underground. We do not believe that external cost treatment should be afforded in cases where the franchise agreement requires the operator to place new cable facilities underground because we believe that this is a cost associated with a rebuild or an upgrade of the cable system and we have determined that we will not permit external cost treatment of upgrades or rebuilds. Moreover, costs associated with placing cable underground in these circumstances are costs that the operator could have incurred in absence of the franchise requirement as a result of the upgrade or rebuild.

We believe that increased costs resulting from normal maintenance or from a simple expansion of service within the franchise area should not be subject to external treatment. An operator may not pass through the costs associated with expanding the reach of its cable system even if such expansion is contained in the franchise documents. Accordingly, we reject NCTA's suggestion that external cost treatment should be imposed as long as the service is ''specifically required'' in the franchise agreement. Such a formulation of the rule could encompass costs that the cable operator could have incurred even in the absence of a specific franchise requirement or would be obligated to incur under pre-existing federal standards. We reject NATOA's suggestion to allow only obligations enumerated in a franchise agreement by a specific dollar amount as unduly complicating franchise negotiations. This would require parties to specify the costs of providing certain services or facilities where such costs may not be certain when the contract is negotiated.

As for the timing of the pass throughs of these costs, the operator will be required to amortize the cost of franchise imposed capital expenditures over the useful life of the items. We find such treatment appropriate because current subscribers should not be required to pay all costs associated with a service that will benefit future ratepayers as well. Consistent with interim rules governing cost-of-service showings, we find that operators will be permitted to recover an 11.25% rate of return on this investment.

Advertising of Rates

On reconsideration, we continue to believe that cable system operators covering multiple franchise areas that have different franchise fees, franchise costs, channel line-ups, or rate structures should be permitted to use the ''fee plus'' approach when they advertise their rates. We find that the ''fee plus'' approach provides operators that cover multiple franchise areas the flexibility to efficiently advertise their services to consumers. We disagree with Local Governments' assertion that the ''fee plus'' approach violates Section 622(c) of the Communications Act. Section 622(c) permits operators to itemize certain fees imposed by franchise and governmental authorities. While operators are allowed to itemize certain fees on a subscribers bill, Congress intended that cable operators only be permitted to require one payment from subscribers for services. We find that because the ''fee plus'' approach only addresses how an operator serving multiple franchise areas may advertise services, it is not related to the operator's billing practices and does not, therefore, violate the intent of Section 622(c). Moreover, we believe that the ''fee plus'' approach is consistent with the spirit of the subscriber bill itemization requirements in Section 622(c) of the 1992 Cable Act and Section 76.985 of the Commission's rules because it permits operators to inform consumers of the amount of franchise fees without confusing them as to the total cost of cable service.

We believe that operators should be permitted to advertise their rates using

either of the methods described above because both methods of advertising reasonably informs potential subscribers of the true price of cable service. This approach is consistent with the Commission's goal of enhancing industry's flexibility in making business and marketing decisions wherever reasonably possible. Therefore, we affirm our decision to allow cable systems that cover multiple franchise areas to advertise a range of fees of a ''fee plus'' rate that take account of variations in the itemized costs throughout the franchise area.

Although Local Governments are concerned that the ''fee plus'' approach may result in a reduction in the amount of franchise fees that franchising authorities may assess, we decline to address this matter in this Order. The Cable Services Bureau has issued a decision regarding the proper assessment of franchise fees, and is currently reviewing a number of petitions for reconsideration filed in response to that decision.

Franchise Fee Refunds

On reconsideration, we find that franchising authorities may determine whether a franchise fee overpayment is to be returned to the cable operator in one lump sum payment or by offsetting the overcharges against future franchise fee payments, provided that the overcharges are returned to the operator within a reasonable period of time. We recognize that in most instances, the operator holds franchise fees on behalf of the franchising authority for lump sum payment at the end of an agreed upon period. In those situations, the operator should offset the overpayments against the franchise fees it then holds. In the rare instances where the overpayments are very large, the franchising authority has the discretion to determine a reasonable repayment period plus interest. Because we have already determined that 11.25% is presumptively the cable operator's cost of capital, we find that the interest rate presumptively should be 11.25%.

We agree with NATOA that franchising authorities should have the discretion to determine the means by which overpayments are to be returned to cable operators because it would be inappropriate to permit cable operators to dictate how the franchising authority should recompense operators. Moreover, in certain cases, the franchise fee overpayment may have been spent before it has been determined that an overpayment has been made and the franchising authority may not have the funds to immediately return the overpayment. However, we also believe that operators are entitled to receive interest on any franchise fee overpayments if franchising authorities delay returning overpayments to operators and that, in any case, operators should have overpayments returned within a reasonable period of time. We find that the meaning of ''reasonable period of time'' is dependent upon the amount of the overcharge and the relationship it bears to a franchising authority's budget. That is, the larger the absolute amount of the overpayment and the larger its amount in relation to a franchising authority's budget, the longer the franchising authority may need either to credit the operator for future franchise fee payments or to make a lump sum payment to the operator. We believe that this approach balances the franchising authority's need to have discretion in determining the means by which overcharges are returned with the operator's need to have such overcharges returned within a reasonable period of time.

Regulatory Review of Existing Rates

On our own motion, we have decided to end regulatory review of the operator's entire rate structure when we receive future CPST rate complaints. Operators that have never been subject to CPST rate regulation will not face Commission review of their entire rate structure if a complaint is filed after the effective date of these rules. Complaints filed after the effective date of these rules on subsequent CPST rate changes must be field with the Commission within 45 days of the date subscribers receive a bill reflecting the operator's next CPST rate increase, and will result in Commission review of only the amount of the rate increase complained about.

Although Commission review will be so limited, in order to meet its burden of showing that its CPST rates are not unreasonable, the operator nevertheless may have to provide the Commission with details about its previous increases where no earlier filing provides those details. For example, an operator that attempts to use the new Going Forward method for channel additions in its current filing may need to demonstrate that its current increase, in conjunction with its previous rate increases, does not exceed the operator's cap. As another example, if no complaint was filed for the operator's relevant earlier rate adjustments, an operator that adjusts its rates using the annual rate adjustment method should provide the projections on which the operator's previous rates were based so that the Commission can review the operator's true up in its current filing.

We are eliminating review of an operator's entire rate structure because we find that continuing this policy creates an uncertain business environment for cable operators that have not had their CPSTs subject to rate regulation. We are concerned about this because an uncertain business environment may generally discourage investment, without which operators may lack the resources to upgrade their networks, add new programming services, and provide new innovative services.

We find that, if no rate complaint is filed prior to the effective date of these rules, the operator's initial CPST rates under regulation are not unreasonable. In our view, subscribers and franchising authorities have had ample opportunity to file a complaint that would result in Commission review of operators' entire rate structure. It has been nearly two years since subscribers and franchising authorities first had the opportunity to complain about their CPST rates. Since September 1, 1993, subscribers had an initial 180 day period to complain about initial CPST rates. If they missed the opportunity to complain during this initial 180 day period, they could have complained about any subsequent rate increase and that would have triggered a review of the operator's entire rate structure. We believe that if subscribers and the franchising authority have not filed a CPST rate complaint, it indicates a level of satisfaction with their current rates that would not exist if they believe CPST rates were unreasonable. We also believe that the Commission can fulfill its responsibility to ensure that CPST rates are not unreasonable when only reviewing rate changes.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601–612, the Commission's final analysis with respect to the *Thirteenth Order on Reconsideration* is as follows:

Need and purpose of this action. The Commission, in compliance with section 3 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 543 (1992), pertaining to rate regulation, adopts revised rules and procedures intended to ensure that cable services are offered at reasonable rates with minimum regulatory and administrative burdens on cable entities.

Summary of issues raised by the public in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory

Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in the original rulemaking order. The Commission addressed the concerns raised by the Office of Advocacy in the *Rate Order* 58 FR 29736 (5/21/93). The SBA also filed reply comments in response to the *Fifth Notice* 59 FR 18064 (4/15/94). The Commission addressed those comments in the *Fifth Report and Order* 59 FR 62614 (12/6/94).

Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. In this proceeding, the Commission has attempted to accommodate the concerns expressed by these parties. For example, the revised rules permitting the expedited pass through of certain external costs are designed to reduce administrative burdens on industry. In addition, the revised rules permitting operators to recover the full portion of previously incurred increases in external costs are designed to maintain and enhance incentives for cable operators to achieve efficiency cost savings and reduce administrative burdens on both industry and regulators. Finally, the *Order* further reduces burdens by clarifying rules concerning the advertising of rates, the refunds of franchise fees, and the costs related to franchise requirements.

Paperwork Reduction Act

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 303(r), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, 542(c) and 543, the rules, requirements and policies discussed in this Thirteenth Order on Reconsideration, are adopted and part 76 of the Commission's rules, 47 CFR part 76, is amended as set forth below.

It is further ordered that the Secretary shall send a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

It is further ordered that the requirements and regulations established in this decision shall become effective thirty (30) days after publication in the Federal Register, except that new reporting requirements shall take effect thirty (30) days after approval by the Office of Management and Budget.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

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

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309; Secs. 612, 614–615, 623, 632 as amended, 106 Stat. 1460, 47 U.S.C. 532; Sec. 623, as amended, 106 Stat. 1460; 47 U.S.C. 532, 533, 535, 543, 552.

2. Section 76.922 is amended by redesignating paragraphs (e) through (k) as paragraphs (g) through (m), respectively, revising paragraphs (c) and (d), and newly redesignated paragraphs (g), (h), (i), (j), (k), (l), (m) and adding new paragraphs (e) and (f), to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(c) *Subsequent permitted charge.* (1) The permitted charge for a tier after May 15, 1994 shall be, at the election of the cable system, either:

(i) A rate determined pursuant to a cost-of-service showing,

(ii) A rate determined by application of the Commission's price cap requirements set forth in paragraph (d) of this section to a permitted rate determined in accordance with paragraph (b) of this section, or

(iii) A rate determined by application of the Commission's price cap requirements set forth in paragraph (e) of this section to a permitted rate determined in accordance with paragraph (b) of this section.

(2) The Commission's price cap requirements allow a system to adjust its permitted charges for inflation, changes in the number of regulated channels on tiers, or changes in external costs. After May 15, 1994, adjustments for changes in external costs shall be calculated by subtracting external costs from the system's permitted charge and making changes to that ''external cost component'' as necessary. The remaining charge, referred to as the ''residual component,'' will be adjusted annually for inflation. Cable systems may adjust their rates by using the price cap rules contained in either paragraphs (d) or (e) of this section.

(3) An operator may switch between the quarterly rate adjustment option contained in paragraph (d) of this section and the annual rate adjustment option contained in paragraph (e) of this section, provided that:

(i) Whenever an operator switches from the current quarterly system to the annual system, the operator may not file a Form 1240 earlier than 90 days after the operator proposed its last rate adjustment on a Form 1210; and

(ii) When an operator changes from the annual system to the quarterly system, the operator may not return to a quarterly adjustment using a Form 1210 until a full quarter after it has filed a true up of its annual rate on a Form 1240 for the preceding filing period.

(4) An operator that does not set its rates pursuant to a cost-of-service filing must use the quarterly rate adjustment methodology pursuant to paragraph (d) of this section or annual rate adjustment methodology pursuant to paragraph (e) of this section for both its basic service tier and its cable programming services tier(s).

(d) *Quarterly rate adjustment method*—(1) *Calendar year quarters.* All systems using the quarterly rate adjustment methodology must use the following calendar year quarters when adjusting rates under the price cap requirements. The first quarter shall run from January 1 through March 31 of the relevant year; the second quarter shall run from April 1 through June 30; the third quarter shall run from July 1 through September 30; and the fourth quarter shall run from October 1 through December 31.

(2) *Inflation Adjustments.* The residual component of a system's permitted charge may be adjusted annually for inflation. The annual inflation adjustment shall be used on inflation occurring from June 30 of the previous year to June 30 of the year in which the inflation adjustment is made, except that the first annual inflation adjustment shall cover inflation from September 30, 1993 until June 30 of the year in which the inflation adjustment

is made. The adjustment may be made after September 30, but no later than August 31, of the next calendar year. 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. Cable systems that establish a transition rate pursuant to paragraph (b)(4) of this section may not begin adjusting rates on account of inflation before April 1, 1995. Between April 1, 1995 and August 31, 1995 cable systems that established a transition rate may adjust their rates to reflect the net of a 5.21% inflation adjustment minus any inflation adjustments they have already received. Low price systems that had their March 31, 1994 rates above the benchmark, but their full reduction rate below the benchmark will be permitted to adjust their rates to reflect the full 5.21% inflation factor unless the rate reduction was less than the inflation adjustment received on an FCC Form 393 for rates established prior to May 15, 1994. If the rate reduction established by a low price system that reduced its rate to the benchmark was less than the inflation adjustment received on an FCC Form 393, the system will be permitted to receive the 5.21% inflation adjustment minus the difference between the rate reduction and the inflation adjustment the system made on its FCC Form 393. Cable systems that established a transition rate may make future inflation adjustments on an annual basis with all other cable operators, no earlier than October 1 of each year and no later than August 31 of the following year to reflect the final GNP–PI through June 30 of the applicable year.

(3) *External costs.* (i) Permitted charges for a tier may be adjusted up to quarterly to reflect changes in external costs experienced by the cable system as defined by paragraph (f) of this section. In all events, a system must adjust its rates annually to reflect any decreases in external costs that have not previously been accounted for in the system's rates. A system must also adjust its rates annually to reflect any changes in external costs, inflation and the number of channels on regulated tiers that occurred during the year if the system wishes to have such changes reflected in its regulated rates. A system that does not adjust its permitted rates annually to account for those changes will not be permitted to increase its rates subsequently to reflect the changes.

(ii) A system must adjust its rates in the next calendar year quarter for any decrease in programming costs that results from the deletion of a channel or channels from a regulated tier.

(iii) Any rate increase made to reflect an increase in external costs must also fully account for all other changes in external costs, inflation and the number of channels on regulated tiers that occurred during the same period. Rate adjustments made to reflect changes in external costs shall be based on any changes in those external costs that occurred from the end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable). A system may adjust its rates after the close of a quarter to reflect changes in external costs that occurred during that quarter as soon as it has sufficient information to calculate the rate change.

(e) *Annual rate adjustment method—(1) Generally.* Except as provided for in paragraphs (e)(2)(iii)(B) and (e)(2)(iii)(C) of this section and Section 76.923(o), operators that elect 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 that make rate adjustments using this method 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, but except as described in paragraphs (e)(2)(iii)(B) and (e)(2)(iii)(C) 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 that elects 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 Section 76.933(g).

(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 July 1 to June 30 period. 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 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 Section 76.933(g).

(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 Section 76.933(g)(2), 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 (e)(3) of this section.

(C) An operator may make one additional rate adjustment during the year to reflect channel additions to the cable programming services tiers or, where the operator offers only one regulated tier, the basic service tier. Operators may make this additional rate adjustment at any time during the year, subject to the filing requirements of Section 76.933(g)(2), regardless of whether the channel addition occurs outside of the annual filing cycle. 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 (e)(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) Where there is an overestimation of these costs, future rates will be reduced or the amount of the increase will be reduced to reflect the accrued amount of the overcharge plus 11.25% interest. The operator must make such adjustments within 12 months of the date the operator implemented its rates based on the projections.

(iii) 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.

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

(4) *Sunset Provision.* The Commission will review paragraph (e) of this section prior to December 31, 1998 to determine whether the annual rate adjustment methodology should be kept, and whether the quarterly system should be eliminated and replaced with the annual rate adjustment method.

(f) *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; and

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

(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) The permitted charge shall not be adjusted for costs of retransmission consent fees or changes in those fees incurred prior to October 6, 1994.

(4) The starting date for adjustments on account of external costs for a tier of regulated programming service shall be the earlier of the initial date of regulation for any basic or cable service tier or February 28, 1994.

(5) 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.

(6) 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.

(7) 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.

(8) In calculating programming expense, operators may add a mark-up of 7.5% for increases in programming costs occurring after March 31, 1994, except that operators may not file for or take the 7.5% mark-up on programming costs for new channels added on or after May 15, 1994 for which the operator has used the methodology set forth in paragraph (g)(3) of this section for adjusting rates for channels added to cable programming service tiers. Operators shall reduce rates by decreases in programming expense plus an additional 7.5% for decreases occurring after May 15, 1994 except with respect to programming cost decreases on channels added after May 15, 1994 for which the rate adjustment methodology in paragraph (g)(3) of this section was used.

(g) *Changes in the number of channels on regulated tiers.*—(1) *Generally.* A system may adjust the residual component of its permitted rate for a tier to reflect changes in the number of channels offered on the tier on a quarterly basis. Cable systems shall use FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240 to justify rate changes made on account of changes in the number of channels on a basic service tier (''BST'') or a cable programming service tier (''CPST''). Such rate adjustments shall be based on any changes in the number of regulated channels that occurred from the end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240.

However, when a system deletes channels in a calendar quarter, the system must adjust the residual component of the tier charge in the next calendar quarter to reflect that deletion. Operators must elect between the channel addition rules in paragraphs (g)(2) and (g)(3) of this section the first time they adjust rates after December 31, 1994, to reflect a channel addition to a CPST that occurred on or after May 15, 1994, and must use the elected methodology for all rate adjustments through December 31, 1997. A system that adjusted rates after May 15, 1994, but before January 1, 1995 on account of a change in the number of channels on a CPST that occurred after May 15, 1994, may elect to revise its rates to charge the rates permitted by paragraph (g)(3) of this section on or after January 1, 1995, but is not required to do so as a condition for using the methodology in paragraph (g)(3) of this section for rate adjustments after January 1, 1995. Rates for the BST will be governed exclusively by paragraph (g)(2) of this section, except that where a system offered only one tier on May 14, 1994, the cable operator will be allowed to elect between paragraphs (g)(2) and (g)(3) of this section as if the tier was a CPST.

(2) *Adjusting Rates for increases in the number of channels offered between May 15, 1994, and December 31, 1997, on a basic service tier and at the election of the operator on a cable programming service tier.* The following table shall be used to adjust permitted rates for increases in the number of channels offered between May 15, 1994, and December 31, 1997, on a basic service tier and subject to the conditions in paragraph (g)(1) of this section at the election of the operator on a CPST. The entries in the table provide the cents per channel per subscriber per month by which cable operators will adjust the residual component using FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240.

Average No. of regulated channels	Per-channel adjustment factor
7	$0.52
7.5	0.45
8	0.40
8.5	0.36
9	0.33
9.5	0.29
10	0.27
10.5	0.24
11	0.22
11.5	0.20
12	0.19
12.5	0.17
13	0.16
13.5	0.15
14	0.14
14.5	0.13
15–15.5	0.12
16	0.11
16.5–17	0.10
17.5–18	0.09
18.5–19	0.08
19.5–21.5	0.07
22–23.5	0.06
24–26	0.05
26.5–29.5	0.04
30–35.5	0.03
36–46	0.02
46.5–99.5	0.01

In order to adjust the residual component of the tier charge when there is an increase in the number of channels on a tier, the operator shall perform the following calculations:

(i) Take the sum of the old total number of channels on tiers subject to regulation (*i.e.,* tiers that are, or could be, regulated but excluding New Product Tiers) and the new total number of channels and divide the resulting number by two;

(ii) Consult the above table to find the applicable per channel adjustment factor for the number of channels produced by the calculations in step (1). For each tier for which there has been an increase in the number of channels, multiply the per-channel adjustment factor times the change in the number of channels on that tier. The result is the total adjustment for that tier.

(3) *Alternative methodology for adjusting rates for changes in the number of channels offered on a cable programming service tier or a single tier system between May 15, 1994, and December 31, 1997.* This paragraph at the Operator's discretion as set forth in paragraph (g)(1) of this section shall be used to adjust permitted rates for a CPST after December 31, 1994, for changes in the number of channels offered on a CPST between May 15, 1994, and December 31, 1997. For purposes of paragraph (g)(3) of this section, a single tier system may be treated as if it were a CPST.

(i) *Operators Cap Attributable to New Channels on All CPSTs Through December 31, 1997.* Operators electing to use the methodology set forth in this paragraph may increase their rates between January 1, 1995, and December 31, 1997, by up to 20 cents per channel, exclusive of programming costs, for new channels added to CPSTs on or after May 15, 1994, except that they may not make rate adjustments totalling more than $1.20 per month, per subscriber through December 31, 1996, and by more than $1.40 per month, per subscriber through December 31, 1997 (the ''Operator's Cap''). Except to the extent that the programming costs of such channels are covered by the License Fee Reserve provided for in paragraph (g)(3)(iii) of this section, programming costs associated with channels for which a rate adjustment is made pursuant to this paragraph (g)(3) of this section must fall within the Operators' Cap if the programming costs (including any increases therein) are reflected in rates before January 1, 1997. Inflation adjustments pursuant to paragraph (d)(2) or (e)(2) of this section are not counted against the Operator's Cap.

(ii) *Per Channel Adjustment.* Operators may increase rates by a per channel adjustment of up to 20 cents per subscriber per month, exclusive of programming costs, for each channel added to a CPST between May 15, 1994, and December 31, 1997, except that an operator may take the per channel adjustment only for channel additions that result in an increase in the highest number of channels offered on all CPSTs as compared to May 14, 1994, and each date thereafter. Any revenues received from a programmer, or shared by a programmer and an operator in connection with the addition of a channel to a CPST shall first be deducted from programming costs for that channel pursuant to paragraph (f)(7) of this section and then, to the extent revenues received from the programmer are greater than the programming costs, shall be deducted from the per channel adjustment. This deduction will apply on a channel by channel basis.

(iii) *License Fee Reserve.* In addition to the rate adjustments permitted in paragraphs (g)(3)(i) and (g)(3)(ii) of this section, operators that make channel additions on or after May 15, 1994 may increase their rates by a total of 30 cents per month, per subscriber between January 1, 1995, and December 31, 1996, for license fees associated with such channels (the ''License Fee Reserve''). The License Fee Reserve may be applied against the initial license fee and any increase in the license fee for such channels during this period. An operator may pass-through to subscribers more than the 30 cents between January 1, 1995, and December 31, 1996, for license fees associated with channels added after May 15, 1994, provided that the total amount recovered from subscribers for such channels, including the License Fee Reserve, does not exceed $1.50 per subscriber, per month. After December 31, 1996, license fees may be passed through to subscribers pursuant to

paragraph (f) of this section, except that license fees associated with channels added pursuant to this paragraph (3) will not be eligible for the 7.5% mark-up on increases in programming costs.

(iv) *Timing.* For purposes of determining whether a rate increase counts against the maximum rate increases specified in paragraphs (g)(3)(i) through (g)(3)(ii) of this section, the relevant date shall be when rates are increased as a result of channel additions, not when the addition occurs.

(4) *Deletion of Channels.* When dropping a channel from a BST or CPST, operators shall reflect the net reduction in external costs in their rates pursuant to paragraphs (d)(3)(i) and (d)(3)(ii) of this section, or paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section. With respect to channels to which the 7.5% mark-up on programming costs applied pursuant to paragraph (f)(8) of this section, the operator shall treat the mark-up as part of its programming costs and subtract the mark-up from its external costs. Operators shall also reduce the price of that tier by the ''residual'' associated with that channel. For channels that were on a BST or CPST on May 14, 1994, or channels added after that date pursuant to paragraph (g)(2) of this section, the per channel residual is the charge for their tier, minus the external costs for the tier, and any per channel adjustments made after that date, divided by the total number of channels on the tier minus the number of channels on the tier that received the per channel adjustment specified in paragraph (g)(3) of this section. For channels added to a CPST after May 14, 1994, pursuant to paragraph (g)(3) of this section, the residuals shall be the actual per channel adjustment taken for that channel when it was added to the tier.

(5) *Movement of Channels Between Tiers.* When a channel is moved from a CPST or a BST to another CPST or BST, the price of the tier from which the channel is dropped shall be reduced to reflect the decrease in programming costs and residual as described in paragraph (g)(4) of this section. The residual associated with the shifted channel shall then be converted from per subscriber to aggregate numbers to ensure aggregate revenues from the channel remain the same when the channel is moved. The aggregate residual associated with the shifted channel may be shifted to the tier to which the channel is being moved. The residual shall then be converted to per subscriber figures on the new tier, plus any subsequent inflation adjustment. The price of the tier to which the channel is shifted may then be increased to reflect this amount. The price of that tier may also be increased to reflect any increase in programming cost. An operator may not shift a channel for which it received a per channel adjustment pursuant to paragraph (g)(3) of this section from a CPST to a BST.

(6) *Substitution of Channels on a BST or CPST.* If an operator substitutes a new channel for an existing channel on a CPST or a BST, no per channel adjustment may be made. Operators substituting channels on a CPST or a BST shall be required to reflect any reduction in programming costs in their rates and may reflect any increase in programming costs pursuant to paragraphs (d)(3)(i) and (d)(3)(ii), or paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section. If the programming cost for the new channel is greater than the programming cost for the replaced channel, and the operator chooses to pass that increase through to subscribers, the excess shall count against the License Fee Reserve or the Operator Cap when the increased cost is passed through to subscribers. Where an operator substitutes a new channel for a channel on which a 7.5% mark-up on programming costs was taken pursuant to paragraph (f)(8) of this section, the operator may retain the 7.5% mark-up on the license fee of the dropped channel to the extent that it is no greater than 7.5% of programming cost of the new service.

(7) *Headend upgrades.* When adding channels to CPSTs and single-tier systems, cable systems that are owned by a small cable company and incur additional monthly per subscriber headend costs of one full cent or more for an additional channel may choose among the methodologies set forth in paragraphs (g)(2) and (g)(3) of this section. In addition, such systems may increase rates to recover the actual cost of the headend equipment required to add up to seven such channels to CPSTs and single-tier systems, not to exceed $5,000 per additional channel. Rate increases pursuant to this paragraph may occur between January 1, 1995, and December 31, 1997, as a result of additional channels offered on those tiers after May 14, 1994. Headend costs shall be depreciated over the useful life of the equipment. The rate of return on this investment shall not exceed 11.25 percent. In order to recover costs for headend equipment pursuant to this paragraph, systems must certify to the Commission their eligibility to use this paragraph, and the level of costs they have actually incurred for adding the headend equipment and the depreciation schedule for the equipment.

(8) *Sunset Provision.* Paragraph (g) of this section shall cease to be effective on January 1, 1998 unless renewed by the Commission.

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

(i) *Cost of Service Charge.* (1) For purposes of this section, a monthly cost-of-service charge for a basic service tier or a cable programming service tier is an amount equal to the annual revenue requirement for that tier divided by a number that is equal to 12 times the average number of subscribers to that tier during the test year, except that a monthly charge for a system or tier in service less than one year shall be equal to the projected annual revenue requirement for the first 12 months of operation or service divided by a number that is equal to 12 times the projected average number of subscribers during the first 12 months of operation or service. The calculation of the average number of subscribers shall include all subscribers, regardless of whether they receive service at full rates or at discounts.

(2) A test year for an initial regulated charge is the cable operator's fiscal year preceding the initial date of regulation. A test year for a change in the basic service charge that is after the initial date of regulation is the cable operator's fiscal year preceding the mailing or other delivery of written notice pursuant to Section 76.932. A test year for a change in a cable programming service charge after the initial date of regulation is the cable operator's fiscal year preceding the filing of a complaint regarding the increase.

(3) The annual revenue requirement for a tier is the sum of the return component and the expense component for that tier.

(4) The return component for a tier is the average allowable test year ratebase allocable to the tier adjusted for known and measurable changes occurring between the end of the test year and the effective date of the rate multiplied by the rate of return specified by the Commission or franchising authority.

(5) The expense component for a tier is the sum of allowable test year expenses allocable to the tier adjusted for known and measurable changes occurring between the end of the test year and the effective date of the rate.

(6) The ratebase may include the following:

(i) Prudent investment by a cable operator in tangible plant that is used and useful in the provision of cable

services less accumulated depreciation. Tangible plant in service shall be valued at the actual money cost (or the money value of any consideration other than money) of property at the time it was first used to provide cable service. The actual money cost of plant may include an allowance for funds used during construction at the prime rate or at the operator's actual cost of funds used during construction. Cost overruns are presumed to be imprudent investment in the absence of a showing that the overrun occurred through no fault of the operator.

(ii) An allowance for start-up losses, if any, that is equal to the lesser of the first two years of operating costs or accumulated losses incurred until the system reached the end of its prematurity stage as defined in Financial Accounting Standards Board Standard 51 (''FASB 51'') less straight-line amortization over a reasonable period not exceeding 15 years that commences at the end of the prematurity phase of operation.

(iii) Intangible assets less amortization that reflect the original costs prudently incurred by a cable operator in organizing and incorporating a company that provides regulated cable services, obtaining a government franchise to provide regulated cable services, or obtaining patents that are used and useful in the provision of cable services.

(iv) The cost of customer lists if such costs were capitalized during the prematurity phase of operations less amortization.

(v) An amount for working capital to the extent that an allowance or disallowance for funds needed to sustain the ongoing operations of the regulated cable service is demonstrated.

(vi) Other intangible assets to the extent the cable operator demonstrates that the asset reflects costs incurred in an activity or transaction that produced concrete benefits or savings for subscribers to regulated cable services that would not have been realized otherwise and the cable operator demonstrates that a return on such an asset does not exceed the value of such a subscriber benefit.

(vii) The portion of the capacity of plant not currently in service that will be placed in service within twelve months of the end of the test year.

(7) Deferred income taxes shall be deducted from items included in the ratebase.

(8) Allowable expenses may include the following:

(i) All regular expenses normally incurred by a cable operator in the provision of regulated cable service, but not including any lobbying expense, charitable contributions, penalties and fines paid on account of violations of statutes or rules, or membership fees in social, service, recreational or athletic clubs or organizations.

(ii) Reasonable depreciation expense attributable to tangible assets allowable in the ratebase.

(iii) Reasonable amortization expense for prematurely abandoned tangible assets formerly includable in the ratebase that are amortized over the remainder of the original expected life of the asset.

(iv) Reasonable amortization expense for start-up losses and capitalized intangible assets that are includable in ratebase.

(v) Taxes other than income taxes attributable to the provision of regulated cable services.

(vi) An income tax allowance.

(j) *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 by demonstrating that the capital investment will benefit subscribers.

(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.

(k) *Hardship rate relief.* A cable operator may adjust charges by an amount specified by the Commission for the cable programming service tier 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.

(l) *Cost of service showing.* A cable operator that elects to establish a charge, or to justify an existing or changed charge for regulated cable service, based on a cost-of-service showing must submit data to the Commission or the franchising authority in accordance with forms established by the Commission. The cable operator must also submit any additional information requested by franchising authorities or the Commission to resolve questions in cost-of-service proceedings.

(m) *Subsequent Cost of Service Charges.* No cable operator may use a cost-of-service showing to justify an increase in any charge established on a cost-of-service basis for a period of 2 years after that rate takes effect, except that the Commission or the franchising authority may waive this prohibition upon a showing of unusual circumstances that would create undue hardship for a cable operator.

3. Section 76.923 is amended by adding paragraphs (n) and (o), to read as follows:

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

* * * * *

(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 rates under either the benchmark system or through a cost-of-service showing;

(2) Within 60 days of the end of its fiscal year, for an operator that adjusts its rates under the system described in Section 76.922(d) that allows it to file up to quarterly;

(3) On the same date it files its FCC Form 1240, for an operator that adjusts its rates under the annual rate adjustment system described in Section 76.922(e). 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

(4) 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.

(o) *Introduction of new equipment.* In setting the permitted charge for a new

type of equipment at a time other than at its annual filing, an operator shall only complete Schedule C and the relevant step of the Worksheet for Calculating Permitted Equipment and Installation Charges of a Form 1205. The operator shall rely on entries from its most recently filed FCC Form 1205 for information not specifically related to the new equipment, including but not limited to the Hourly Service Charge. In calculating the annual maintenance and service hours for the new equipment, the operator should base its entry on the average annual expected time required to maintain the unit, i.e., expected service hours required over the life of the equipment unit being introduced divided by the equipment unit's expected life.

4. Section 76.925 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, adding new paragraph (a), and revising newly redesignated paragraph (c), to read as follows:

§ 76.925 Costs of franchise requirements.

(a) Franchise requirement costs may include cost increases required by the franchising authority in the following categories:

(1) Costs of providing PEG access channels;

(2) Costs of PEG access programming;

(3) Costs of technical and customer service standards to the extent that they exceed federal standards;

(4) Costs of institutional networks and the provision of video services, voice transmissions and data transmissions to or from governmental institutions and educational institutions, including private schools, to the extent such services are required by the franchise agreement; and

(5) When the operator is not already in the process of upgrading the system, costs of removing cable from utility poles and placing the same cable underground.

(b) The costs of satisfying franchise requirements to support public, educational, and government channels shall consist of the sum of:

(1) All per channel costs for the number of channels used to meet franchise requirements for public, educational, and governmental channels;

(2) Any direct costs of meeting such franchise requirements; and

(3) A reasonable allocation of general and administrative overhead.

(c) The costs of satisfying any requirements under the franchise other than PEG access costs shall consist of the direct and indirect costs including a reasonable allocation of general and administrative overhead.

5. Section 76.933 is amended by revising paragraphs (a), (b), (e), and (f), and adding paragraphs (g) and (h), to read as follows:

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

(a) After a cable operator has submitted for review its existing rates for the basic service tier and associated equipment costs, or a proposed increase in these rates (including increases in the baseline channel change that results from reductions in the number of channels in a tier) under the quarterly rate adjustment system pursuant to Section 76.922(d), the existing rates will remain in effect or the proposed rates will become effective after 30 days from the date of submission; *Provided, however,* that the franchising authority may toll this 30-day deadline for an additional time by issuing a brief written order as described in paragraph (b) within 30 days of the rate submission explaining that it needs additional time to review the rates.

(b) If the franchising authority is unable to determine, based upon the material submitted by the cable operator, that the existing, or proposed rates under the quarterly adjustment system pursuant to Section 76.922(d), are within the Commission's permitted basic service tier charge or actual cost of equipment as defined in §§ 76.922 and 76.923, or if a cable operator has submitted a cost-of-service showing pursuant §§ 76.937(c) and 76.924, seeking to justify a rate above the Commission's basic service tier charge as defined in §§ 76.922 and 76.923, the franchising authority may toll the 30-day deadline in paragraph (a) of this section to request and/or consider additional information or to consider the comments from interested parties as follows:

(1) For an additional 90 days in cases not involving cost-of-service showings; or

(2) For an additional 150 days in cases involving cost-of-service showings.

* * * * *

(e) Notwithstanding the foregoing, when the franchising authority is regulating basic service tier rates, a cable operator that sets its rates pursuant to the quarterly rate adjustment system pursuant to Section 76.922(d) may increase its rates for basic service to reflect the imposition of, or increase in, franchise fees or Commission cable television system regulatory fees imposed pursuant to 47 U.S.C. § 159, upon 30 days' notice to subscribers and the franchising authority and, where required by Section 76.958, to the Commission. For the purposes of paragraphs (a) through (c) of this section, the increase rate attributable to Commission regulatory fees or franchise fees shall be treated as an ''existing rate, 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 Section 76.944. When the Commission is regulating basic service tier rates pursuant to Section 76.945 or cable programming service rates pursuant to Section 76.960, an increase in those rates resulting from franchise fees or Commission regulatory fees shall be reviewed by the Commission pursuant to the mechanisms set forth in Section 76.945. A cable operator must adjust its rates to reflect decreases in franchise fees or Commission regulatory fees within the periods set forth in Section 76.922(d)(3)(i) and (iii).

(f) For an operator that sets its rates pursuant to the quarterly rate adjustment system pursuant to Section 76.922(d), cable television system regulatory fees assessed by the Commission pursuant to 47 U.S.C. § 159 shall be recovered in monthly installments during the fiscal year following the year for which the payment was imposed. Payments shall be collected in equal monthly installments, except that for so many months as may be necessary to avoid fractional payments, an additional $0.01 payment per month may be collected. All such additional payments shall be collected in the last month or months of the fiscal year, so that once collections of such payments begin there shall be no month remaining in the year in which the operator is not entitled to such an additional payment. Operators may not assess interest. Operators may provide notice of the entire fiscal year's regulatory fee pass-through in a single notice.

(g) A cable operator that submits for review a proposed change in its existing rates for the basic service tier and associated equipment costs using the annual filing system pursuant to Section 76.922(e) shall do so no later than 90 days from the effective date of the proposed rates. The franchising authority will have 90 days from the date of the 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

rates 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.

(1) If there is a material change in an operator's circumstances during the 90-day review period and the change affects the operator's rate change filing, the operator may file an amendment to its Form 1240 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.

(2) If a franchising authority has taken no action within the 90-day review period, then 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 initial 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 a proposed rate goes into effect before the franchising authority issues its rate order, the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within this 12-month period, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing.

(3) At the time an operator files its rates 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 only required in the unlikely event that the rate exceeds the previously noticed rate.

(4) If an operator files for a rate adjustment under Section 76.922(e)(2)(iii)(B) for the addition of required channels to the basic service tier that the operator is required by federal or local law to carry, or, if a single-tier operator files for a rate adjustment based on a mid-year channel addition allowed under Section 76.922(e)(2)(iii)(C), 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. In order to order refunds and prospective rate reductions, the franchising authority shall be subject to the requirements described in paragraph (g)(1) of this section.

(5) Notwithstanding the foregoing, 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 upon 30 days' notice to subscribers and the franchising authority and, where required by Section 76.958, to the Commission. The increased rate attributable to Commission 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 Section 76.944. When the Commission is regulating basic service tier rates pursuant to Section 76.945 or cable programming service rates pursuant to Section 76.960, an increase in those rates resulting from franchise fees or Commission regulatory fees shall be reviewed by the Commission pursuant to the mechanisms set forth in Section 76.945.

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

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

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

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

§ 76.934 Small systems and small cable companies.

* * * * *

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

* * * * *

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

§ 76.942 Refunds.

* * * * *

(f) Once an operator has implemented a rate refund to subscribers in accordance with a refund order by the franchising authority (or the Commission, pursuant to paragraph (a) of this section), the franchising authority must return to the cable operator an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The franchising authority must promptly return the franchise fee overcharge either in an immediate lump sum payment, or the cable operator may deduct it from the cable system's future franchise fee payments. The franchising authority has the discretion to determine a reasonable repayment period, but interest shall accrue on any outstanding portion of the franchise fee starting on the date the operator has

completed implementation of the refund order. In determining the amount of the refund, the franchise fee overcharge should be offset against franchise fees the operator holds on behalf of the franchising authority for lump sum payment. The interest rate on any refund owed to the operator presumptively shall be 11.25%.

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

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

* * * * *

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

9. Section 76.957 is revised to read as follows:

§ 76.957 Commission adjudication of the complaint.

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

10. Section 76.960 is revised to read as follows:

§ 76.960 Prospective rate reductions.

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

(a) For an operator that adjusts its rates using the quarterly rate adjustment system pursuant to Section 76.922(d), the Commission's decision regarding a prospective rate reduction shall remain binding on the cable operator for one year unless the Commission specifies otherwise.

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

[FR Doc. 95–24756 Filed 10–4–95; 8:45 am]
BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1822

Acquisition Regulation; Approval of Contractor Overtime

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends NASA's acquisition regulation in order to authorize the Contracting Officer to approve contractor requests for overtime. This change will allow NASA to give approvals more quickly when overtime is needed.

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

Under 48 CFR 1822.103–4, contractor requests for overtime are approved by the chief of the contracting office, or one level of supervision below. This change authorizes the contracting officer to approve overtime requests.

Impact

The rule was reviewed under the Regulatory Flexibility Act of 1980. NASA certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule imposes no paperwork burden subject to OMB review under the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1822

Government Procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1822 is amended as follows:

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1. The authority citation for 48 CFR Part 1822 continues to read as follows:

Authority: 42 U.S.C. 2473 (c)(1).

Subpart 1822.1—Basic Labor Policies

2. Section 1822.103–4 is revised to read as follows:

1822.103–4 Approvals.

The contracting officer is authorized to approve overtime premiums at Government expense. If two or more contracting offices have current contracts at a single facility and approval of overtime by one will affect the performance or cost of contracts of another, the approving contracting officer shall obtain the concurrence of affected contracting officers. If the approving contracting officer cannot obtain agreement within a reasonable time, a decision shall be obtained through the installation's normal management channels. In the absence of evidence to the contrary, a contracting officer may rely on the contractor's statement that approval will not affect performance or payments under any contract of another contracting office.

[FR Doc. 95–24791 Filed 10–4–95; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[I.D. 060995B]

Endangered and Threatened Wildlife; Revised Sea Turtle/Shrimp Fishery Emergency Response Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: General statement of policy; request for comments.

SUMMARY: NMFS has revised, and is publishing herein, the Sea Turtle/ Shrimp Fishery Emergency Response Plan (ERP) that describes NMFS' policy to ensure compliance with the sea turtle conservation regulations promulgated under the Endangered Species Act (ESA) and provides guidance for the use of future rulemaking in response to elevated sea turtle strandings associated with shrimping in the southeastern United States. The ERP has been revised in response to comments on the ERP and the receipt of new technical information. This notice contains a revised ERP in its entirety and invites public review and comment.

DATES: The revised ERP describes NMFS' policy effective October 4, 1995.