

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 02-144; FCC 02-177]

RIN: 4102

Revisions to Cable Television Rate Regulations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission proposes to update its cable television rate regulations to reflect the end of its jurisdiction over rates for cable programming services pursuant to the Telecommunications Act of 1996. The Commission proposes to review and update its rules governing rate regulation of basic services and associated equipment by local franchising authorities.

DATES: Comments are due on or before November 4, 2002; reply comments are due on or before December 4, 2002. Written comments by the public on the proposed information collection(s) are due November 4, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before November 4, 2002.

FOR FURTHER INFORMATION CONTACT: John Norton, Media Bureau, 202-418-7037 or via e-mail at jnorton@fcc.gov; Wanda Hardy, Media Bureau, 202-418-2129 or via e-mail at whardy@fcc.gov. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Media Bureau's *Notice of Proposed Rulemaking* ("NPRM") MB 02-144; FCC 02-177, adopted June 13, 2002 and released June 19, 2002 and revised by *Order* MB 02-144, FCC 02-228, adopted August 6, 2002 and released August 14, 2002. The complete texts of this *NPRM* and *Order* are available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY-B-402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com. Pursuant to sections 1.415 and 1.419 of

the Commission's rules, 47 CFR 1.415 and 1.419 comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998). This *NPRM* contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to OMB for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection(s) contained in this proceeding.

2. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. Although multiple docket numbers appear in the caption of this proceeding, commenters should transmit one electronic copy of the comments only to MB Docket No. 02-144, Revisions to Cable Television Rate Regulations. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Although more than one docket number appears in the caption of this proceeding, commenters should submit copies only to MB Docket No. 02-144, Revisions to Cable Television Rate Regulations. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD

20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. One copy of each filing also must be filed with Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. In addition, parties must also send four (4) copies of each paper filing to Wanda Hardy, Media Bureau, 445 12th Street, SW, Room 3-A862, Washington, DC 20554. Parties filing electronically must send one electronic copy via e-mail to whardy@fcc.gov.

Synopsis of the Notice of Proposed Rulemaking

3. This *NPRM* was initiated to reflect the March 31, 1999 sunset of Commission jurisdiction to regulate rates for cable programming services ("CPS") enacted by the Telecommunications Act of 1996 ("1996 Act"). 47 U.S.C. 543(c)(4). The *NPRM* also proposes to update the rules governing franchising authority rate regulation of the basic service tier ("BST") and associated equipment pursuant to authority in 47 U.S.C. 543(a)(2)(A), (b) for cable systems not subject to effective competition.

Background

4. The Commission carried out its ratemaking responsibility pursuant to 47 U.S.C. 543 by developing a common set of "tier neutral" benchmarks and regulations so that the same methodology was used to set rates for both the BST and the CPS tier ("CPST") and the Commission's rate rules would not create an incentive to place services in any particular rate-regulated tier. Although the sunset of CPST rate regulation has changed one of the predicates of the rate rules, the Commission proposes to concentrate on improving the existing process rather than create a new one for the BST. However, comments suggesting broader changes are solicited.

Deletion or Modification of the Rules That Address CPS Tier Rates

5. The *NPRM* proposes to eliminate all rules that pertain solely to the regulation of CPS rates. It seeks comment on what rules should be changed or eliminated and asks whether there are linkages between the BST and CPST rules or forms that might not readily be recognized and that would need to be accounted for.

6. The *NPRM* seeks comment on removing the following rule sections or

paragraphs: 47 CFR 76.901(d); 76.922(c)(4); 76.924(e)(1)(ii); 76.924(e)(2)(ii); 76.934(c)(2); 76.934(d); 76.934(h)(3)(iii); 76.934(h)(6); 76.934(h)(10); 76.950; 76.951; 76.953; 76.954; 76.955; 76.956; 76.957; 76.960; 76.961; 76.962; 76.963(b); 76.980(b), (d) through (f); 76.985 (FCC Form 329 and Instructions); 76.986; 76.987; 76.1402; 76.1605; and 76.1606. The *NPRM* seeks comment on other rules that continue to be applicable to BST ratemaking but should be updated or amended to eliminate references to CPST or to reflect the end of CPST rate regulation. These are: 47 CFR 76.922(a); 76.922(b)(5); 76.922(b)(7); 76.922(e)(2)(iii)(C); 76.922(f)(4); 76.922(f)(8); 76.922(g); 76.922(i)(1), (2); 76.922(k); 76.924(a); 76.924(e)(1)(iii); 76.933(e); 76.933(g)(5); 76.934(c)(3); 76.934(e); 76.934(f); 76.934(g)(1); 76.934(g)(2) (retaining the last sentence); 76.934(h)(2)(ii)(A); 76.934(h)(4)(i), (v); 76.934(h)(8)(ii); 76.963(a); 76.990(a); 76.990(b)(3); 76.1800. The *NPRM* also seeks comment on whether the sunset of CPST rate regulation should be reflected by changes to other rules. The *NPRM* seeks comment on eliminating the following rules as obsolete: 47 CFR 76.922(b)(6)(ii); 76.922(e)(3)(ii); 76.922(e)(4); and 76.934(h)(8)(ii) (last sentence). The *NPRM* asks whether additional rules have become obsolete and should be removed. The Commission's rules also refer to FCC Form 1211. This form is not in use and references will be deleted from the Commission's rules. See 47 CFR 6.922 and 76.934.

7. The *NPRM* also proposes to modify or eliminate the rate forms and rate form instructions consistent with changes made to the rules in this proceeding and asks about changes needed to reflect the end of CPST rate regulation. The forms used for rate regulation are FCC Forms 1200, 1205, 1210, 1220, 1230, 1235, and 1240. FCC Forms 1215, A La Carte Channel Offerings (May 1994), and 1225, Cost of Service Filing for Regulated Cable Services for Small Systems (Apr. 1994), were dropped from the Commission's information collection budget effective April 30, 1997. The *NPRM* proposes to eliminate references to these forms from the rules, including 47 CFR 76.922(b)(6) and 76.934(g).

Rate Adjustments When Channels Are Added to or Deleted From the BST

1. Calculating Rate Adjustments

8. 47 CFR 76.922(g) governed how rates were to be adjusted when channels were added to or deleted from a tier or moved between tiers. The intent of

language in § 76.922(g)(8) providing for the sunset of this section has been debated. This provision and the sunset of CPST rate regulation, have left questions about how BST rates should be adjusted for these channel changes.

9. The *NPRM* seeks comment on the following possibilities. One possibility would be to adjust BST rates only for changes in the number of BST channels by adding or subtracting the specific "external" costs associated with the added or deleted channel and the associated 7.5% mark-up adjustment provided in 47 CFR 76.922(f). Another possible approach would be to adjust rates further for changes in the number of channels by adding or subtracting the "per-channel adjustment factor" from the table in 47 CFR 76.922(g)(2), but identifying the specific amount of adjustment not by reference to the number of "regulated channels" but by reference to the current number of channels that would be subject to regulation if CPST rate regulation had not ended.

10. Alternatively, the *NPRM* seeks comment on whether rate adjustments for changes in the number of channels on the BST should include some other adjustment to the tier residual and whether the type of adjustment should depend on whether channels are added to or deleted from the BST. The tier residual is the tier charge after external costs and other per channel adjustments have been subtracted. Paragraph (g) provided that cable systems could add channels to the BST by adjusting for external cost changes, including the 7.5% markup, and using the chart in paragraph (g)(2) to reflect the incremental change to the total tier residual from the added channel or channels, but were to adjust rates for dropped channels based on the pro rata share of the tier residual for the dropped channel or channels in addition to external cost and markup adjustments. Cable systems dropping channels that had been added using the alternative "caps" channel adjustment incentive in 47 CFR 76.922(g)(3) would adjust rates based on the actual per channel adjustment taken when the channel was added to the tier. Should this approach be reinstated or should something similar be adopted? Alternatively, if some adjustment to the residual is appropriate when channels are added to the BST, should an adjustment be made other than a per-channel adjustment like that in the chart in 47 CFR 76.922(g)(2)? If some other residual adjustment is appropriate, how should that adjustment be determined?

11. The *NPRM* also seeks comment as to whether the movement of channels to

the BST from previously regulated programming tiers is relevant in determining the BST rate adjustments associated with those channels. Section 76.922(g) provided that systems moving channels between regulated tiers would move the external costs and residual value with the channel on a revenue neutral basis. Systems moving previously unregulated channels, such as premium channels, would not move any residual value to the BST. Channels added to the CPST pursuant to the caps incentives could not be moved to the BST.

12. The *NPRM* asks whether new BST per-channel values should, instead, be established through new benchmarks based on an updated comparison of BST rates charged by competitive and non-competitive systems? If so, should the Commission look only at cable system rates, or should it also consider the rates of alternative providers, such as DBS? Could a simple formula be developed? Should the operator's base rate be recalibrated using new benchmarks or should new per-channel values be applied only to channels added to and deleted from the BST after this rulemaking? Or should the Commission consider adjusting tier rates for changes in the number of channels based on rates at competitive systems with comparable market and channel characteristics? How would comparability be evaluated? Should the Commission allow channels added to the CPST pursuant to the caps methodology to be moved to the BST?

2. "Single Tier" Systems

13. The Commission's rules currently provide that cable operators using the annual rate adjustment methodology may make an additional rate adjustment to reflect channel additions if the operator offers only a BST and does not offer a CPS tier. Should this option be retained for "single tier" systems? In determining whether a cable operator offers a single tier or multiple tiers of service, should digital service tiers be considered?

Headend Upgrades

14. The *NPRM* states that the Commission plans to modify 47 CFR 76.922(g)(7) to reflect the sunset of special incentives for single tier small systems to add channels by recovering for headend upgrade adjustments.

Digital Broadcast Television Rate Adjustment Issues

15. 47 CFR 76.922(f)(1)(vii) allows operators to recover headend equipment costs necessary for the carriage of digital broadcast television ("DTV") signals as

an external cost. 47 CFR 76.922(j)(1) also allows cable operators to recover costs of improvements necessary for carriage of digital signals through the network upgrade surcharge. So that operators cannot recover more than once for the same cost, the NPRM seeks comment on a proposal to clarify that operators may use either method for adjusting rates, but not both.

16. In *Carriage of Digital Television Broadcast Signals*, CS Docket No. 98-120, 66 FR 16533 (March 26, 2001), the Commission proposed to allow cable operators adding digital broadcast signals to their channel line-ups to increase rates for each 6 MHz of capacity devoted to such carriage and solicited comment on the proper adjustment methodology. The NPRM asks commenters to update the record with comments in this proceeding regarding rate adjustments for carrying digital broadcast services on a rate regulated BST.

Initial Regulated Rates

17. The Notice also seeks comment on how initial rate levels should be determined for systems first becoming subject to regulation. Under the current rules, the initial regulated rate, if the system was in operation in 1992, would be calculated using rate and subscribership data from 1992 and 1994 and external cost data from 1994 and adjusted to a current permissible rate level using the price caps methodology. Should the Commission consider alternatives to this process? One option would be to eliminate franchising authority review of the operator's entire rate structure and, instead, limit review to the operator's most recent rate increase or its next rate increase after the franchising authority becomes certified to regulate rates. Should the Commission be concerned that the policy of reviewing an operator's entire rate structure at this point could create an uncertain business environment for affected cable operators and could discourage the investment necessary for upgrading networks and adding new services? Would limiting review be consistent with the statutory directive in section 623(b)(1) that regulations be designed to protect subscribers from BST rates that exceed rates that would be charged if the system were subject to effective competition? Another option would be to impute a rate from another regulated system with as nearly comparable characteristics as possible. The Notice asks how comparability should be evaluated and how disputes should be resolved under this option. For systems subject to effective competition in the past, another option

would be to use the last "competitive" rate as the starting point for regulation with the price caps methodology followed thereafter. Are there other ways to determine initial regulated rates when unregulated systems are brought under rate regulation? If the approach in the current rules is no longer required, is there any reason to retain the methods for determining the permitted rate for a tier on May 15, 1994, as set forth in 47 CFR 76.922(b) of the Commission's rules and referred to in the last five sentences of § 76.922(d)(2)? Can other rules or paragraphs also be eliminated if the current approach is no longer required?

18. If the Commission were to retain the current approach to establishing initial regulated rates, can the Commission continue to use the current Form 1200? Form 1200 applies the competitive differential to the operator's total revenues from sources that were subject to regulation when the form was developed, including the CPST. The NPRM seeks comment as to whether the end of CPST rate regulation requires any revision to Form 1200 when that form is used as the first step in determining the current maximum permitted BST rate.

Rate Structures and Uniform Regional Rates

19. The Commission has previously explored techniques of permitting greater rate structure flexibility. In *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation, Uniform Rate Setting Methodology*, CS Docket No. 95-174, 62 FR 15121 (March 31, 1997), the Commission adopted rule changes to facilitate operators having rates that could be uniform on a regional basis. See 47 CFR 76.922(n). In *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Cable Pricing Flexibility*, CS Docket No. 96-157, 61 FR 45387 (August 29, 1996) (docket remains open), comment was sought on techniques allowing operators, on a revenue neutral basis, to adjust BST and CPST prices on a more flexible basis when both tiers were subject to rate regulation. Has Docket 96-157 been bypassed by the sunset of CPST tier rate regulation? The NPRM asks whether there are other changes in the rules that might be useful in order to create greater flexibility in rate structures or more uniform regional rates while continuing to maintain rules designed to keep BST rates reasonable.

Rates for Commercial Subscribers

20. Issues relating to the establishment of commercial rates in the Commission's 5th NPRM in MM Docket No. 92-266, 59 FR 51869 (October 13, 1994), are unresolved. See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 60 FR 54815 (October 26, 1995). That proceeding generally explored three basic questions. First, to what extent was 47 U.S.C. 543 intended to apply to commercial rates? Second, how should commercial rates be defined in the cable context? And third, because commercial subscribers may have greater access to competitive sources of supply, are market forces sufficient to ensure that rates are reasonable in the absence of direct regulation? Interested parties are invited to update the record on these or related issues regarding commercial rates.

Small System Issues

21. Recognizing the continuing difficulties faced by operators of smaller systems, the NPRM seeks comment on any changes in the rate rules that might address the problems associated with the simultaneous growth in competition and the need for additional investment to upgrade facilities. Will changes proposed in this NPRM, such as elimination of consideration of the CPST from our rules and rate forms, have an untoward effect on small systems? Should the presumptively reasonable per channel rate in 47 CFR 76.934(h)(5) be reexamined if CPST channels, expenses, and rate base are no longer included on FCC Form 1230?

22. The Commission has asked for comment about the process for setting initial regulated rates. 47 CFR 76.922(b)(5) allows small systems owned by small cable companies to use streamlined rate reductions for setting initial regulated rates. Do small systems have need for streamlined rate reductions in light of the availability of small system rate relief in 47 CFR 76.934, including the small system cost-of-service methodology in § 76.934(h) and FCC Form 1230?

Cost-of-Service Rate Process

23. Another rate issue concerns the information and labor intensive "cost-of-service" rate setting process available for high cost systems that could not receive a constitutionally adequate rate of return under the benchmark system. The Commission adopted interim cost rules to permit operators to recover operating expenses and a fair return on investment for regulated services, while

protecting subscribers from unreasonable rates. It finalized the rules with adjustments in *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, and Adoption of a Uniform Accounting System for Provision of Regulated Cable Service ("Final Cost Order")*, 61 FR 9411 (March 8, 1996). The Commission addressed issues concerning the rate base, including used and useful plant, intangible assets, start-up losses, and tangible assets. It also addressed issues concerning a presumptive rate of return, depreciation, taxes, cost allocation, accounting requirements, affiliate transactions, and hardship relief. At the same time, it issued a *Further Notice of Proposed Rulemaking ("FNPRM")*, 59 FR 51869 (October 13, 1994), to explore an optional alternative to the presumptive unitary rate of return for cost-of-service filings. This *FNPRM* as well as petitions for reconsideration of the *Final Cost Order* remain pending. (See Jones Intercable, Inc. and Benchmark Communications, Inc., Petition for Reconsideration (filed April 8, 1996) (addressing the straight channel allocator for allocating the cost of commonly used plant, the treatment of unactivated channels, and distributions by non-subchapter C corporations; seeking clarification that adjustments for depreciation expense also be made to accumulated depreciation; and advocating application of a First Amendment intermediate scrutiny test to the rate-setting process); Petition by the Southern New England Telephone Company for Partial Reconsideration of the *Second Report and Order* (filed February 26, 1996) (addressing affiliate transactions). An appeal of the adopted rules in *Comcast Cable Communications, Inc. v. FCC* (D.C. Cir. Case No. 96-1148), has been held in abeyance.)

24. With the demise of CPST regulation, is the cost-of-service process no longer needed as an alternative for BST regulation? What further actions should be taken in the pending "COS" docket in light of the end of CPST rate regulation? We also seek comment on any impact these questions will have on determinations of equipment and installation rates pursuant to 47 CFR 76.923 and FCC Form 1205, Determining Regulated Equipment and Installation Costs (June 1996), and on determinations of rate increases for network upgrade surcharges pursuant to 47 CFR 76.922(j) and FCC Form 1235, Abbreviated Cost of Service Filing For Cable Network Upgrades (February, 1996). Both incorporate cost-of-service

components and cost allocation categories from 47 CFR 76.924.

Abbreviated Cost-of-Service Showing on FCC Form 1235

25. The *NPRM* seeks comment as to whether the abbreviated cost-of-service option, which is permitted for significant network upgrades, continues to meet a need in light of the breadth of unregulated services that can now be delivered over cable systems, including CPST. Should the Commission continue to allow operators to file abbreviated cost-of-service showings? Even if the option is eliminated for most cable systems, should the option continue to be available for systems that meet the definition of "small system" under the Commission's rules?

26. If the Commission retains the abbreviated cost-of-service option for the BST, the *NPRM* proposes to modify FCC Form 1235 to remove the requirement that cost assignments to the CPST and a CPST revenue requirement be shown. The *NPRM* also proposes to modify FCC Form 1235 so that rate base recoveries will be limited to an operator's average upgrade investment over the life of the upgrade rather than its total investment over the life of the upgrade. The *NPRM* also asks whether other adjustments to the abbreviated cost-of-service showing are needed.

Rates of Interest

27. Operators using the annual rate adjustment methodology calculated on FCC Form 1240 must correct for over- and underestimations of projected costs, with interest at 11.25%. The *NPRM* seeks comment as to whether the Commission should revise the rate of interest in 47 CFR 76.922(e)(3)(i) and the Instructions for Form 1240, Module H, Lines H4 and H8, and what an appropriate rate of interest should be. Should it be fixed in the rules and rate form calculation or tied to some kind of indicator? If the latter, what should the indicator be? If the rate of interest in § 76.922(e)(3)(i) is revised, should that revised rate of interest be used for the interest on franchise fee refunds owed by the franchising authority to the cable operator pursuant to 47 CFR 76.942(f)? The interest rate currently specified in § 76.942(f) is 11.25%.

28. 47 CFR 76.942(e) currently provides that refunds for subscriber rate overcharges shall be "computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments." Should the rule specify which rate should be used or whether the higher (or lower) of the two rates is to be used?

Unbundling

29. Operators setting initial regulated rates were required to unbundle equipment costs from programming rates. The Commission has expressed concern about evasions of rate regulation, such as charging for services previously provided without extra charge, unless the value of that service, as reflected in new charges, "was removed from the base rate number when calculating the reduction in rates necessary to establish reasonable [programming service] rates." *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Third Order on Reconsideration*, MM Docket No. 92-266, 59 FR 17961 (April 15, 1994). Questions have been raised about the continued applicability or the appropriate response to this Commission concern. The *NPRM* requests comment on this matter.

Refunds

30. 47 CFR 76.942 addresses refunds of previously paid rates in excess of maximum permitted rates. The *NPRM* asks whether and, if so, how this rule should be updated.

Re-evaluation of the BST Rate Regulation Process

31. The foregoing discussion has addressed adjustments to the Commission's rate rules based on the assumption that the current benchmark/price cap process should continue. The *NPRM* seeks comment as to whether a more fundamental change to the rate regulations should be enacted, for example, by recalibrating the "competitive differential" between monopoly systems (those subject to regulation) and competitive systems (those not subject to regulation because of the presence of effective competition) focusing specifically on basic tier service. The initial process of attempting to calculate the competitive differential was based on 1992 data for a relatively small sample of competitive systems and did not focus on basic tier service separate from CPST service. Would there now be significant value in attempting to recalibrate the whole process through a new rate comparison? Would it be possible to find appropriate samples, and how should the resulting differential be used in the resulting rate setting process? Should the Commission consider data from all four types of systems reflected in the statutory effective competition test in 47 U.S.C. 543(l) or focus on particular types of systems? Should the Commission take

upgrades into account as a separate factor? This task could conceivably be accomplished (although with some considerable effort) by expanding the annual price survey process pursuant to 47 U.S.C. 543(g), (k), and 47 CFR 76.1800 Note 2.

32. Is there another method for regulating BST rates that will ensure reasonable rates for basic service through a simplified regulatory process? For any alternatives proposed, commenters should discuss how the alternative would be implemented. Commenters should also address the regulatory costs to cable operators and franchising authorities from implementing a proposed alternative, and how the Commission would review the reasonableness of a franchising authority's rate action. If an alternative is adopted, should it replace the traditional approach to rate regulation or be available as an alternative to traditional rate regulation?

Equipment and Inside Wiring Rate Regulation

33. Associated with basic service tier rate regulation is the regulation of certain charges for equipment that is used with the provision of basic service. The Commission has regarded virtually all equipment used for the receipt of video service as associated with the basic tier of service. See 47 CFR 76.923(a). Two changes warrant a new look at this issue. One is the introduction of tiers of digital video service that involve the use of a digital set-top box, the functions and cost of which are largely associated with non-basic service offerings. The other is the adoption of 47 U.S.C. 549, entitled "Competitive Availability of Navigation Devices," which is intended to create a competitive market for equipment used to access cable and other MVPD services. In light of these changes, should the categorization of equipment be reconsidered? In particular, would it be appropriate to associate digital equipment or other equipment that involves investments very largely used to receive CPST or other unregulated services with the non-regulated tiers for rate regulation purposes? If it is appropriate, should this association be discretionary or mandatory for the cable operator?

34. Alternatively, the *NPRM* seeks comment on whether a process should be established so that when a competitive market for equipment or wiring can be demonstrated to exist, governmental rate setting should cease and the presence of competitive alternatives allowed to ensure that the rates in question meet the statutory

"actual cost" standard. Would this be consistent with existing precedent, such as the treatment of "new product" CPS tiers and an inside wire maintenance service plan covering both cable television and telephone wiring? Are there other changes in the equipment rate regulation rules that might be used to assist in the creation of a more competitive market for equipment in a manner consistent with 47 U.S.C. 549? Operators might, it has been suggested, avoid regulation of a type of equipment by certifying that a particular type of equipment is available for sale or lease from third party sources and that subscribers have been advised of that fact. Would or should substitution of marketplace regulation for direct regulation of equipment rates affect the regulation of rates for installing or maintaining the affected equipment and charges for customer-initiated changes in equipment pursuant to 47 CFR 76.923, 76.980(c)?

35. The *NPRM* also seeks comment on whether FCC Form 1205 can be simplified in any way to ease the burden of regulation on both cable operators and franchising authorities. Once an operator has established equipment rates based on its costs, is there a less burdensome way to adjust equipment or installation rates that would be consistent with the statutory actual cost standard in 47 U.S.C. 543(b)(3)? Can any information used in setting rates be standardized based on industry-wide information? If so, how would that process work?

Recovery of Lost Revenues for Equipment and Installation Due to Subsequently Reversed Rate Orders

36. If a franchising authority disallows any or all of a proposed increase for equipment and installation rates and the local rate order is reversed on appeal to the Commission, the cable operator may be unable to recoup revenues lost or refunds paid pursuant to the erroneous rate order. Should the Commission allow cable operators to recover the amount of revenues lost or excess refunds paid due to local rate orders subsequently reversed by the Commission through an entry on Form 1205, perhaps as an "other" expense on Form 1205, Schedule B? The Notice does not propose to allow operators voluntarily setting rates below the permitted rate to recover the shortfall.

Charges for Changes in Service Tiers

37. Charges for changes in service tiers initiated by the subscriber have been limited to actual costs by 47 CFR 76.980. What is the effect of the end of

CPST rate regulation on regulation of rates for service tier changes?

Effective Competition Showings

38. 47 U.S.C. 543(a) provides that rate regulation in a community ends when effective competition is present. 47 CFR 76.906 states that cable systems are presumed not to be subject to effective competition, and 47 CFR 76.907(b) gives the cable operator the burden of rebutting this presumption. The *NPRM* seeks comment on whether there are techniques consistent with the Communications Act to improve and expedite effective competition showings and review as competition, particularly from satellite service, becomes more prevalent.

Procedures for Commission Review of Local Rate Decisions

39. The *NPRM* seeks comment on whether there are procedural aspects of the Commission's review of local rate decisions that might be improved. In particular, should the deference already given to these local rate decisions be increased so that the Commission would intervene only when there were significant deviations from the established rules?

Interim Rate Adjustments for BST Channel Changes

40. At the conclusion of the rulemaking proceeding, the Commission will consider whether BST rates should be adjusted to conform to the structure adopted by the Commission.

Initial Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, as amended ("RFA"), the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by November 4, 2002. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").

42. *Need for, and Objectives of, the Proposed Rules.* The Commission developed rules and forms for the regulation of cable television rates when both the basic service tier ("BST") and the cable programming service tiers ("CPST") were subject to rate regulation. The Commission proposes to update these regulations and rate forms. Updating is needed so that the rules and

rate forms will reflect the end of CPST rate regulation pursuant to 47 U.S.C. 543(c)(4). Updating is also needed because 47 CFR 76.922(g), the Commission's rule for adjusting rates for changes in the number of channels on the BST has sunset, and cable operators and franchising authorities need guidance about how to adjust rates when the number of BST channels changes. Updating would be needed for rules and rate forms available specifically to small cable systems owned by small cable operators as well as for rules and rate forms used by large systems.

43. The Commission also proposes changes in the regulation of both BST and equipment rates with the objective of improving the existing regulatory structure for all cable systems. For small cable systems owned by small cable operators, the Commission proposes to consider rule changes with the additional objectives of: (1) Ensuring that the regulatory process does not impede the ability of small systems to raise capital and respond to competitive challenges, and (2) avoiding an untoward effect on small systems from other changes being considered for the rate rules generally. The Commission also proposes to discontinue the streamlined rate reduction ratemaking method that may no longer be useful for small systems in order to eliminate unneeded requirements.

44. For cable systems in general, including small cable systems, the Commission proposes changes to its rules and rate forms with the objectives of: resolving whether the rates charged to commercial subscribers are regulated rates; eliminating some of the regulatory burdens associated with equipment and inside wiring rates; and reducing the regulatory burden associated with showings that a cable system is no longer subject to rate regulation. The Commission also proposes changes that would streamline the setting of initial regulated rates for previously unregulated systems, which would be available to small systems not choosing to use one of the special small system ratemaking options.

45. In addition, the Commission proposes broader changes to the regulatory process with the objective of ensuring reasonable BST rates through a simplified regulatory process. Change could be accomplished by recalibrating the competitive differential that forms the basis for determining regulated rates or by another alternative proposed by commenters.

46. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in §§ 1, 2(a), 3, 4(i), 4(j),

303(r), 601(3), 602, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 153, 154(i), 154(j), 303(r), 521, 522, and 543.

47. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). Section 601(6) generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." Section 601(3) provides that the term "small business" has the same meaning as the term "small business concern" under the Small Business Act., 15 U.S.C. 632, unless the agency has a more appropriate definition of the term. A "small business concern" under 15 U.S.C. 632 is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

48. The SBA has developed a small business size standard for cable and other program distribution, which includes all such companies generating \$11 million or less in revenue annually. 13 CFR 121.201. The IRFA invites cable operators to provide a more precise estimate of the affected small cable entities.

49. The Commission has developed its own small business size standard for a small cable operator for the purposes of rate regulation. Under 47 CFR 76.901(e), a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on the Commission's most recent information, it estimates that there were 1,439 cable operators that qualified as small cable companies at the end of 1995 and that the number has decreased since then. A "small system" under the Commission's rules is one serving "15,000 or fewer subscribers. The service area of a small system shall be determined by the number of subscribers that are served by the system's principal headend, including any other headends or microwave receive sites that are technically integrated to the principal headend." 47 CFR 76.901(c).

50. 47 U.S.C. 543(m)(2) also contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed

\$250,000,000." The Commission has determined that the number of systems meeting the subscribership limit totals approximately 1,450. The Commission does not have information gross annual revenues, and therefore is unable to estimate accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

51. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities.* Cable operators whose basic service tier rates are regulated must justify their basic service tier and associated equipment and installation rates using FCC Forms 1200, 1205, 1210, 1220, 1230, 1235, and/or 1240. (The Commission's rules also reference FCC Forms 1211, 1215, and 1225. Form 1211 is not in use and references will be deleted from the Commission's rules. The Commission advised the Office of Management and Budget that it would no longer support use of FCC Forms 1215 and 1225, and dropped these forms from its information collection budget effective April 30, 1997. The Commission proposes to drop references to these forms from its rules.) When changes to the rate rules are determined, rate forms will be modified accordingly. Elimination of information regarding the CPST is anticipated, because CPST is no longer subject to rate regulation. One of the affected forms would be FCC Form 1230 used for small system cost-of-service showings pursuant to 47 CFR 76.934(h). Entities using FCC Form 1230 have previously aggregated data for CPST and BST. If CPST data is no longer included, they would bear the burden of excluding CPST data from the data included on the rate form. In addition, the presumptively reasonable rate in 47 CFR 76.934(h) of the Commission's rules may change to reflect the elimination of CPST data from the relevant data on FCC Form 1230.

52. The Commission's rules currently offer regulatory options to small systems owned by small cable operators that are less burdensome than the regulations applicable to larger cable systems and operators. One option, the streamlined rate reduction for systems first becoming subject to rate regulation in 47 CFR 76.922(b)(5), could be eliminated as unnecessary pursuant to proposals in the *NPRM*. Form 1230 will continue to be available.

53. *Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has

considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.” 5 U.S.C. 603(c)(1)–(c)(4).

54. The Commission will consider potential revisions to cable television rate regulations in order to conform the rules to the sunset of CPST rate regulation and to improve the existing regulatory structure. Alternatively, the Commission will consider broader changes.

55. The Commission will consider amending 47 CFR 76.934, the rule addressing small system cost of service showings, to reflect the end of CPST rate regulation, and making conforming changes to its FCC Form 1230, which is used for establishing permitted rates on small systems. Except for possibly requiring elimination of CPST data from the data used to complete the form, these changes should not increase the regulatory burden small systems face as a result of rate regulation, but eliminating CPST-associated costs and expenses from the rate base could have an impact on the resulting BST per channel rate. An alternative is to consider changes in the rate rules that might address continuing difficulties faced by operators of small systems, such as the problems associated with the simultaneous growth in competition and the need for additional investment to upgrade facilities.

56. Small systems owned by small cable companies can choose to adjust their regulated rates using the price cap methodology included in 47 CFR 76.922(d), (e), 76.934(h)(8). 47 CFR 76.922(g), the rule governing changes in the number of channels has sunset and is under review in the *NPRM*. The approach ultimately adopted in this proceeding could require revisions to FCC Forms 1210 and 1240. While an increase in the burden of computing rate adjustments on rate forms is not anticipated, the approach adopted in the rulemaking proceeding could affect the maximum permitted rate computed on the rate forms, particularly for systems moving a large number of channels from or to the BST. A corollary issue is the appropriate adjustment to rates for

adding or removing digital television broadcast signals from the BST.

57. The Commission also has under consideration a less burdensome way to set initial regulated rates than the way currently provided in the rules when a previously unregulated system first becomes subject to rate regulation. Options include limiting the period addressed in the rate review and looking to the rates of comparable systems. These changes would apply to large systems, but any changes made by the Commission would be available to small systems. The Commission will consider whether there is a continued need for the streamlined rate reduction method in 47 CFR 76.922(b)(5) that is available only to small systems setting initial regulated rates.

58. With respect to equipment rates, the Commission has three matters under consideration: the definition of equipment that is subject to regulation; whether reliance can be placed on competitive forces to ensure reasonable rates; and the rate form used primarily by large cable companies. Because small cable systems owned by small cable companies have the option of using the small cable cost of service ratemaking methodology on FCC Form 1230, the regulatory burden of equipment rate regulation is currently less than that experienced by large cable systems. The regulatory approaches addressed in the *NPRM* with respect to equipment look toward easing the regulatory burden on cable operators generally and, if adopted, should not result in increased burdens on small cable systems.

59. Finally, the Commission is considering the showing needed to establish effective competition. Only cable systems that are not subject to effective competition are subject to rate regulation by franchising authorities. Small systems would benefit from any efficiencies in demonstrating effective competition.

60. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposed Rules*. None.

Procedural Provisions

Ex Parte Rules

61. This proceeding will be treated as a “permit-but-disclose” proceeding, subject to the “permit-but-disclose” requirements under 47 CFR 1.1206(b) of the Commission’s rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded

that a memorandum summarizing a presentation must contain a summary of the substance and not merely a listing of the subjects discussed. Pursuant to 47 CFR 1.1206(b)(2), more than a one or two sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission’s rules. Finally, one copy of each disclosure filing also must be filed with other offices, as follows: (1) Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554; (2) John Norton, Media Bureau, 445 12th Street, SW, Room 4–C764, Washington, DC, 20554; (3) Wanda Hardy, Media Bureau, 445 12th Street, SW., Room 3–A862, Washington, DC, 20554.

62. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418–7426, TTY (202) 418–7365, or send an email to access@fcc.gov.

Paperwork Reduction Act

Initial Paperwork Reduction Act of 1995 Analysis

63. This *NPRM* contains proposed information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (“PRA”). Public and agency comments are due at the same time as other comments on this *NPRM*; OMB notification of action is due 60 days from date of publication of this *NPRM* in the **Federal Register**.

64. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

FCC Forms: Individual Information

65. *OMB Control Number*: 3060–0601.
Title: Setting Maximum Initial Permitted Rates for Regulated Cable

Services Pursuant to Rules Adopted February 22, 1994, "First Time Filers Form".

Form Number: FCC Form 1200.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 20.

Estimated Time per Response: 6–10 hours.

Frequency of Response: One-time reporting requirement; third party disclosure.

Total Annual Burden: 200 hours.

Total Annual Costs: \$30,000.

Needs and Uses: The FCC Form 1200 is used by cable operators when they first become subject to rate regulation in order to establish the cable system's maximum initial permitted rate based on the Commission's benchmark methodology. This rate is adjusted for subsequent changes in external costs, inflation, and channel changes. On average, only about 15–20 franchising authorities file for certification to regulate rates each year, so we expect that FCC Form 1200 will be required for about the same number of systems each year. The form is filed with and reviewed by local franchising authorities that have exercised jurisdiction over BST rates.

66. *OMB Control Number:* 3060–0703.

Title: Determining Regulated Equipment and Installation Costs, "Equipment Form".

Form Number: FCC Form 1205.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,000. 47 U.S.C. 543(a)(7) allows cable operators to aggregate equipment costs into broad categories on a company, regional, system, or franchise level, so the number of forms prepared by an operator with multiple systems may be substantially less than the number of copies of the completed form that the operator files with franchising authorities. Thus, the estimate of the number of respondents and the total annual burden and costs may be high.

Estimated Time per Response: 4–12 hours.

Frequency of Response: Annual reporting requirements; third party disclosure.

Total Annual Burden: 48,000 hours.

Total Annual Costs: \$7,200,000.

Needs and Uses: Cable operators use FCC Form 1205 to justify their equipment and installation rates. The form is filed with and reviewed by local franchising authorities that have exercised regulatory jurisdiction over

those rates. The form is to be completed using financial data from the company's general ledger and subsidiary records maintained in accordance with generally acceptable accounting principles.

67. *OMB Control Number:* 3060–0595.

Title: Updating Maximum Permitted Rates for Regulated Cable Services.

Form Number: FCC Form 1210.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1500.

Estimated Time per Response: 8–10 hours.

Frequency of Response: Quarterly and annual reporting requirements; third party disclosure.

Total Annual Burden: 15,000 hours.

Total Annual Costs: \$2,250,000.

Needs and Uses: Cable operators use FCC Form 1210 for justifying BST rate adjustments due to changes in external costs, inflation, and the number of channels on the BST. The form is filed with and reviewed by franchising authorities that have exercised jurisdiction over BST rates. Operators may elect to use FCC Form 1240 instead of FCC Form 1210.

68. *OMB Control Number:* 3060–0594.

Title: Cost of Service Filing for Regulated Cable Services.

Form Number: FCC Form 1220.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 30.

Estimated Time per Response: 40 hours.

Frequency of Response: Once and on occasion reporting requirements after 2 years; third party disclosure.

Total Annual Burden: 1200 hours.

Total Annual Costs: \$180,000.

Needs and Uses: Operators may elect to use the cost-of-service methodology computed on FCC Form 1220 in lieu of FCC Forms 1200, 1210, or 1240 when setting the maximum initial permitted BST rate or adjusting the BST rate in order to justify a rate above the levels determined by the Commission's benchmark and price cap methodologies. The form is filed with and reviewed by franchising authorities that have exercised jurisdiction over BST rates.

69. *OMB Control Number:* 3060–0644.

Title: Establishing Maximum Permitted Rates for Regulated Cable Services on Small Cable Systems.

Form Number: FCC Form 1230.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5.

Estimated Time per Response: 2.25 hours.

Frequency of Response: On occasion reporting requirements; third party disclosure.

Total Annual Burden: 11.25 hours.

Total Annual Costs: \$16,875.

Needs and Uses: The Commission's rules allow a small cable system (15,000 or fewer subscribers) owned by a small cable company (no more than 400,000 subscribers) to use a very simplified cost-of-service method to set its maximum permitted rate. The form for this, FCC Form 1230, is filed with and reviewed by franchising authorities that have exercised jurisdiction over BST rates.

70. *OMB Control Number:* 3060–0688.

Title: Abbreviated Cost of Service Filing for Cable Network Upgrades.

Form Number: FCC Form 1235.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 10–20 hours.

Frequency of Response: On occasion reporting requirements; third party disclosure.

Total Annual Burden: 4000 hours.

Total Annual Costs: \$600,000.

Needs and Uses: Operators that have undertaken significant network upgrades may use FCC Form 1235 to justify a surcharge to the BST rate to recover the costs of the upgrade. The form is filed with and reviewed by franchising authorities that have exercised jurisdiction over BST rates.

71. *OMB Control Number:* 3060–0685.

Title: Updating Maximum Permitted Rates for Regulated Cable Services.

Form Number: FCC Form 1240.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5500.

Estimated Time per Response: 8–10 hours.

Frequency of Response: Annual reporting requirements; third party disclosure.

Total Annual Burden: 55,000 hours.

Total Annual Costs: \$8,250,000.

Needs and Uses: FCC Form 1240 is used by cable operators as an alternative to FCC Form 1210 to compute annual BST rate adjustments for changes in external costs, inflation, and the number of channels. Because it enables cable operators to project cost changes and include past unrecovered costs in a true-up, it is substantially more popular with cable operators than FCC Form 1210.

The form is filed with and reviewed by franchising authorities that have exercised jurisdiction over BST rates.

Contact For Further Information

72. For additional information concerning the information collections contained in this document, contact Judith B. Herman at (202) 418-0214, or via the Internet at *jboley@fcc.gov*.

Ordering Clause

73. This *NPRM* is issued pursuant to the authority contained in sections 1, 2(a), 3, 4(i), 4(j), 303(r), 601(3), 602, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 153, 154(i), 154(j), 303(r), 521, 522, and 543.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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