recorded in Account 4310, Other long-term liabilities, that were derived from above-the-line expenses from the interstate rate base. We also deny MCI's petition for reconsideration of the *Vacate Order.*

4. In the *NPRM,* we proposed that prepaid *OPEBs* recorded in Account 1410, Other noncurrent assets, should be included in the interstate rate base. In this Order, we have decided not to adopt our proposal automatically to include prepaid *OPEBs* in the interstate rate base. We find our current rules are adequate to determine what, if any, of the assets recorded in Account 1410 should be included in the rate base. Therefore, if a carrier can show that any of its assets recorded in Account 1410 (including prepaid *OPEBs*) meet the used-and-useful standard, we will allow that asset to be included in the interstate rate base. This decision is consistent with our treatment of similar costs, such as prepaid pension costs. A certain amount of prepaid pension costs are allowed in the rate base because these costs can earn a return that later reduces expenses. Thus, any prepaid *OPEB* costs that meet the used and useful standard will be included in the interstate rate base.

5. In the *NPRM,* we also proposed to amend § 65.830 to remove from the interstate rate base the interstate portion of all accrued liabilities recorded in Account 4310, Other long-term liabilities. In this Order we have decided to modify our proposal so that only those zero-cost sources of funds that result from above-the-line expenses are removed from the rate base. Thus, only those liabilities recorded in Account 4310 that are derived from the expenses specified in § 65.450(a) will be removed from the rate base.

6. In the *NPRM,* we noted that the Bureau in *RAO 20* directed carriers to remove accrued *OPEB* liabilities recorded in Account 4310, Other long-term liabilities, from their rate bases on the basis that *OPEB* benefits are similar to pension benefits, which are deducted from the rate base pursuant to part 65. The *Bureau* concluded that accrued *OPEB* costs should receive similar rate base treatment. We believe the Bureau was correct in that conclusion. Moreover, in the *NPRM,* we noted that all accrued liabilities recorded in Account 4310 represent zero-cost sources of funds including accrued pension and *OPEB* liabilities. We therefore proposed to accord to all items recorded in Account 4310 the same treatment currently accorded to pensions. After reviewing the comments in this proceeding, we conclude that, because the amounts recorded in Account 4310 are zero-cost sources of funds, rates should not provide a return on those amounts. Accordingly, we adopt our proposal except as modified in the preceding paragraph.

7. Finally, we state that the conclusion in the *Vacate Order* that the Bureau did not have the delegated authority to amend the Part 65 rules in *RAO 20* was correct. MCI's petition for reconsideration does not refute this conclusion. Accordingly, the Order denies MCI's petition for reconsideration.

Ordering Clauses

Accordingly, it is ordered, pursuant to Section 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i) and 405 that the Petition for Reconsideration filed April 8, 1996, by MCI Telecommunications Corporation is denied.

It is further ordered, that pursuant to Sections 1, 4(i), 4(j), 201 through 205, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201 through 205, 220 and 403, Part 65, Subpart G of the Commission's Rules, 47 CFR Part 65, Subpart G, is amended as shown below, effective April 30, 1997.

It is further ordered, that the Secretary shall serve a copy of this Order on each state commission.

It is further ordered, that the Secretary shall send a copy of this Report and Order including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 65

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 65 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 65 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 203, 204, 205, 218, 219, 220, 403.

2. Section 65.830 is amended by revising paragraphs (a)(3) and (c) to read as follows:

§ 65.830 Deducted items.

(a) * * *

(3) The interstate portion of other long-term liabilities (Account 4310) that were derived from the expenses specified in § 65.450(a).

* * * * *

(c) The interstate portion of other long-term liabilities (Account 4310) shall bear the same proportionate relationship as the interstate/intrastate expenses which gave rise to the liability.

[FR Doc. 97–8040 Filed 3–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 76

[MM Docket No. 92–266; FCC 97–87]

Low-Price Cable Television System Rate Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order regarding low-price system rate regulation. The Report and Order makes permanent the transition relief afforded to low-price cable television systems, and establishes final rules for low-price system rate regulation. Based on data received in a cost survey conducted in the Fall of 1995, the Report and Order finds that low-price system operators have lower cash flow ratios and receive lower profit margins for their low-price systems than operators of systems already regulated under the Commission's revised benchmark approach receive for their systems. The Report and Order, therefore, states that low-price system rates are reasonable and that low-price systems will not be required to reduce their rates by the full competitive differential or any lesser amount. Low-price systems will be able to continue charging for cable services in accordance with the current rules for such systems.

EFFECTIVE DATE: April 30, 1997.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Rodney McDonald, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained in the Report and

Order, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: The main text of this decision is included below. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800, 1919 M Street, NW., Washington, DC 20554.

I. Introduction

1. In this Report and Order, we terminate the transition status of low-price systems and establish final rules for low-price system rate regulation pursuant to the provisions of the Cable Television Competition and Consumer Protection Act of 1992, Public Law 102–385, 106 Stat. 1460 (1992), 47 U.S.C. 521 *et seq.* (''1992 Cable Act''). We rely on the results of our cost survey in particular, to determine whether low-price systems should be required to reduce their rates by the full competitive differential or any lesser amount.

II. Background

2. In the Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC 93–177, 58 FR 29736 (May 21, 1993) (''Rate Order''), the Commission found that ''our initial effort to regulate rates for cable service should provide for reductions from current rates of regulated cable systems with rates above competitive levels.'' In order to simulate the rates that would be charged by comparable cable systems subject to effective competition, we adopted a ''benchmark'' approach to regulate the basic service tier and the cable programming services tier of systems not subject to effective competition. The initial benchmark formula was primarily derived by examining cable operator's revenues. The formula reflected an implicit assumption that all cable operators faced similar cost conditions, but it took into account variations in rates due to certain other economic and demographic factors. Our initial analysis revealed that the ''rates of systems not subject to effective competition (were), on average, approximately 10 percent higher than rates of comparable systems subject to effective competition.'' This 10% competitive differential was incorporated into the benchmark system, and noncompetitive systems whose rates exceeded the benchmark were deemed to be charging unreasonable rates. These systems were thus required to reduce their rates, at most by the full 10% competitive differential, but not below the benchmark.

3. In the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC 94–38, 59 FR 17943 and 59 FR 18064 (April 15, 1994) (''Second Order on Reconsideration''), the Commission adopted a 17% competitive differential based on a revised analysis of its early competitive survey of the cable industry; it concluded that the 17% differential determined by the revised model more accurately estimated the difference between effectively competitive and noncompetitive cable rates than the ten percent differential established in the Rate Order. The Commission recognized, however, that the rates developed under this revised benchmark approach might not be appropriate for all cable systems. The competitive survey used to establish the new benchmark approach included several cost-related variables, but we remained concerned that our analysis may have failed to identify unusual cost influences that might indicate whether a system was charging unreasonable rates. In particular, the Commission identified two types of systems, small systems and low-price systems, that appeared to exhibit significantly different prices and costs from most other cable systems based on the initial data gathered. The Commission granted transition relief to small systems and low-price systems finding that these systems would not be required to use the new benchmark approach until the Commission gathered further data regarding their particular price/cost profiles. We defined low-price systems as ''(i) systems whose March 31, 1994 rates are at (or) below the revised benchmark and (ii) systems whose March 31, 1994 rates are above the benchmark but whose permitted rates are at or below the benchmark.'' Pending this determination, low-price systems were placed in a ''transition'' status and were subject to ''transition relief'' as ''transition systems.''

4. The Commission established an alternate approach to rate regulation for transition systems pending completion of our price/cost analysis. During the transition period, low-price systems having March 31, 1994 rates below the new benchmark were not required to reduce their rates at all. Low-price systems having March 31, 1994 rates above the new benchmark but having permitted rates at or below the new benchmark were only required to reduce their rates to the new benchmark. We imposed a modified price cap on these transition rates that allowed systems subject to such relief to increase their rates ''to reflect increases in external costs and increases caused by channel changes that accrue after March 31, 1994.'' A transition system was not, however, allowed to increase its transition rate due to increases in inflation until its transition rate was equal to the rate that would have resulted from a full 17% rate reduction under our revised benchmark approach (i.e., their full reduction rate increased by permitted inflation, and increases due to external costs and channel changes). In this way, the transition rates of transition systems would eventually become equal to the full reduction rates these systems would have been required to charge under our new benchmark approach. The Commission reasoned that a system's full reduction rate might eventually exceed its transition rate because the full reduction rate would increase with inflation as well as external costs and channel changes. The Commission stated that transition treatment would terminate at the completion of our price/cost analysis, and that systems that had been provided transition relief would be required to apply the 17% competitive differential upon termination of transition treatment unless our analysis revealed that application of the 17% competitive differential to these systems would be inappropriate.

5. Specifically, we said that we needed to further study whether below-benchmark rates are more likely to be reasonable than above-benchmark rates, because they are comparatively lower, and that in light of this inquiry, it would not be appropriate, at the time, to require regulated systems to reduce their rates below the benchmark level. In addition, we stated that ''requiring any systems whose rates are currently slightly above the benchmark to reduce their rate levels to the full reduction levels, but not requiring below-benchmark systems to reduce their rates at all, would result in inequitable treatment of systems that may be fairly similarly situated.'' Therefore, we stated that upon completion of our collection and analysis of low price system prices and costs ''the regulated rates of such systems [would] be set to reflect the full 17 percent differential if our analysis [did] not show that the resulting rates would be unreasonably low—that is, the rates would be lower than they would be if set by competitive pressures as

determined by cost comparisons between noncompetitive systems and systems subject to effective competition.''

6. The Commission subsequently made adjustments to the transition relief initiated in the Second Order on Reconsideration. In the Ninth Order on Reconsideration in MM Docket No. 92–266, FCC 95–43, 60 FR 10512 (February 27, 1995), the Commission allowed all systems subject to transition relief to further adjust their rates based on inflation. In the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, FCC 95–196, 60 FR 35854 (July 12, 1995) (''Small System Order'') we initiated ''the gradual termination of transition relief for all but low-price systems,'' by limiting transition relief for small systems to two years from the effective date of the new rule. Consistent with our statements in the Second Order on Reconsideration, however, we have continued transition relief for low-price systems until the completion of our collection and analysis of necessary cost data.

7. When the Second Order on Reconsideration was adopted, the Commission noted that we lacked sufficient data regarding the costs faced by low-price systems to establish whether these systems were charging reasonable rates despite the fact that they were charging relatively low rates as compared to the rates of other noncompetitive cable systems. Therefore, the Commission delegated authority to the Chief, Cable Services Bureau to conduct general cost studies of the cable industry. Report and Order and Further Notice of Proposed Rulemaking, in MM Docket No. 93–215 and CS Docket No. 94–28, FCC 94–39, 59 FR 18066 (April 15, 1994). A cable industry cost survey was commenced pursuant to this authority in the Fall of 1995. *See* Order, in MM Docket No. 92–266, 11 FCC Rcd 4003 (released September 29, 1995). This Report and Order analyzes data from our cost survey, and compares the cost and revenue data of noncompetitive low-price systems with the cost and revenue data received for non-low-price systems that are already regulated by the Commission under the revised benchmark approach.

III. Discussion

A. Data

8. The cost survey we initiated in September of 1995 was based upon a random sample of cable systems. Specifically, the survey was mailed to cable operators owning 660 of the total 2,271 non-small cable systems in the U.S. Small systems were not included in our survey because their treatment was previously determined in the Small System Order. The Commission received 359 usable questionnaires from the cable operators surveyed. Of these 359 questionnaires, 40 were received for low-price systems (''low-price group'') and 38 were received for systems regulated by the Commission under the revised benchmark approach (''non-low-price group''). Of the remaining 281 usable questionnaires, two were received for systems facing effective competition as defined in the 1992 Cable Act, and the remaining 279 were received for several categories of cable systems including those regulated only at the local level, those for which a cost-of-service showing was filed, those unregulated, and those subject to social contracts.

9. Data provided in response to the cost survey included information regarding system plant and equipment costs, intangible assets, operating revenues and expenses, and capital structure as of year end 1992 and year end 1994. We also received information regarding system characteristics.

B. Analysis

10. The data received from our cost survey was analyzed to determine the relative profitability of the low-price group compared with the non-low-price group. In our analysis, we used a standard measure of ''accounting'' profitability as a means of determining the relative profitability of these two groups. Specifically, we used cash flow ratios, which are commonly used in financial analyses of the cable industry. One of the more frequently used cash flow measures is income before interest, taxes, depreciation and amortization (''IBITDA''). We applied this measure in the form of the following ratio: operating revenues minus operating expenses before interest, taxes, depreciation, and amortization divided by operating revenues.

11. We compared the average cash flow ratio of our low-price group with the average cash flow ratio of our non-low-price group. We found that the average cash flow ratio of our low-price group was 36.5% and the average cash flow ratio of our non-low-price group was 39.7%. These findings indicate that, on average, the operators of systems in our low-price group received lower profit margins for their low-price systems than the operators of systems in our non-low-price group received for their non-low-price systems. Based on these findings, we believe that the operators of low-price systems generally receive lower profit margins for their low-price systems than the operators of systems already regulated under the Commission's revised benchmark approach. Under these conditions we believe that rates charged by low-price systems are reasonable. We therefore find it unnecessary for the operators of these systems to reduce the rates on these systems by the full competitive differential or by any lesser amount.

12. We believe that the transition relief afforded low-price systems was appropriate, however, we see no need to maintain the transition status of low-price systems now that we have completed an analysis of the necessary cost data particular to these systems. Therefore, we make that relief permanent. We will allow low-price systems to continue charging the rates they established under transition relief and making appropriate rate increases in accordance with our current rules. 47 CFR 76.922.

IV. Final Regulatory Flexibility Certification

13. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) for the Fifth Notice of Proposed Rulemaking was incorporated in the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket 92–266, FCC 94–38. The Commission therein provided notice of its intent to establish further requirements concerning the rates permitted for systems subject to transition treatment, and sought written public comments on the IRFA. Comments regarding the treatment of ''small'' transition systems were received by the Commission and addressed in a previous order. Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, FCC 95–196. No comments, however, were received regarding the matter of ''low-price'' transition cable systems.

14. Although we performed an IRFA in the Fifth Notice of Proposed Rulemaking, we received no comments in response to the IRFA with respect to ''low-price'' transition systems and upon further consideration we now believe that we can certify that no regulatory flexibility analysis is necessary. This certification conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). *See* Title II of the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847, 857 (1996), codified at 5 U.S.C. 601 *et seq.*

15. We do not believe that the amendments to the rules adopted in this Report and Order will have a significant economic impact on a substantial number of small entities as defined by statute, by our rules, or by the Small Business Administration (SBA). *See* 47 U.S.C. 543(m)(2); 47 CFR 76.901(e); 13 CFR 121.201 (SIC 4841); 5 U.S.C. 605(b).

16. Our rules for regulating the rates of small systems owned by small cable companies were established in a previous order, so this Report and Order only concerns the permitted rates for low-price systems. Based on the rule changes adopted here, low-price systems will be permitted to maintain the rates originally established pursuant to their status as systems subject to transition relief. Further, the rules adopted in this Report and Order will allow low-price systems to increase their rates in the same manner as our previous transition rules for low-price systems. The rules adopted herein do not alter the method by which low-price cable system rates currently are regulated, and for this reason these amendments will not have a significant economic impact on a substantial number of small cable operators, and will not change the treatment of low-price systems.

17. The Commission will send a copy of this certification, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Association, 5 U.S.C. 605(b). A copy of this certification will also be published in the **Federal Register**. *Id.*

V. Ordering Clauses

18. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 543, the rules, requirements and policies discussed in this Report and Order are adopted and § 76.922 of the Commission's rules, 47 CFR 76.922, is amended as set forth below.

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

20. It is further ordered that the requirements and regulations established in this decision shall become effective April 30, 1997.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

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: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.922 is amended by revising paragraph (b)(4)(ii) to read as follows:

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

* * * * *

(b) * * *

(4) * * *

(ii) *Low-price systems.* Low-price systems shall be eligible to establish a transition rate for a tier.

* * * * *

Note: This attachment will not be published in the Code of Federal Regulations.

Attachment

CASH FLOW RATIOS

Category	Average operating revenues (million) (A)	Average operating expenses before interest, taxes, depreciation and amortization (million) (B)	Income before interest, taxes, depreciation and amortization (IBITDA) (million) (A – B)	Cash flow ratios [1] (percent)
Low-price group (40 systems)	$15.1	$9.6	$5.5	36.5
Non-low-price group (38 systems)	12.5	7.5	5	39.7
Competitive group (2 systems)	76.4	46.2	30.2	39.5
All other [2] (279 systems)	8.3	5.3	3	36.7

[1] Calculated on totals for each group prior to averaging (i.e., cash flow ratios equal total operating revenues minus total operating expenses before interest, taxes, depreciation and amortization divided by total operating revenues).

[2] Includes systems for which a cost-of-service showing was filed, systems regulated only at the local level, unregulated systems, and systems subject to social contracts.

[FR Doc. 97–7976 Filed 3–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 76

[CS Docket No. 95–174; FCC 97–86]

Uniform Cable Price-Setting Methodology

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Report and Order* modifies rules and policies concerning cable systems. The *Report and Order* amends our regulations to permit the establishment by a cable operator of uniform rates for uniform services offered across multiple franchise areas