

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)	Average operating expenses before interest, taxes, depreciation and amortization (million)	Income before interest, taxes, depreciation and amortization (IBITDA) (million)	Cash flow ratios ¹ (percent)
	(A)	(B)	(A - B)	
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

on a case-by-case basis upon the Commission's finding that the cable operator's submission of a proposed uniform rate proposal and supporting justification demonstrates that the proposed rate structure is reasonable. This item fulfills Congress' preference that rates be set pursuant to competition rather than regulation.

DATES: The amendments in this final rule impose information collection requirements and shall become effective upon approval by OMB but no sooner than April 30, 1997. The Commission will publish a document at that time confirming the effective date and notifying parties that these requirements and regulations have become effective. Written comments by the public on the proposed and/or modified information collections are due on or before May 30, 1997.

ADDRESSES: A copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Larry Walke, Cable Services Bureau, (202) 418-7200. For additional information concerning the information collections contained herein, contact Dorothy Conway at 202-418-0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

This is a synopsis of the Commission's *Report and Order* in CS Docket No. 95-174, FCC No. 97-86, adopted March 13, 1997 and released March 14, 1997. 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, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1919 M Street, NW, Washington, D.C. 20554.

This *Report and Order* contains a new information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this *Report and Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public comments are due May 30, 1997. 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.

A copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov. For additional information, contact Dorothy Conway at 202-418-0217 or via the Internet at the above address.

OMB Approval Number: 3060-XXXX.
Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation; Uniform Rate-Setting Methodology.

Type of Review: New Collection.
Respondents: Businesses and other for-profit entities; state, local and tribal governments.

Number of Responses: 60 (10 rate proposals and 50 LFA reviews).

Estimated Time Per Response: 20-50 hours.

Total Annual Burden to Respondents: 1,500 hours estimated as follows: We estimate that on an annual basis, cable operators will file no more than 10 uniform rate proposals with the Commission. We estimate that each operator will undergo an average burden of 50 hours to draft the rate proposal and to reply to comments received from interested parties. 10 rate proposals \times 50 hours = 500 hours. We estimate that each rate proposal will affect an average of five local franchise areas. The average burden for each LFA to review each rate proposal and file comments is estimated to be 20 hours. 10 rates proposals \times 5 LFAs per proposal \times 20 hours = 1,000 hours.

Total Estimated Cost to Respondents: \$400, estimated as follows: Cable operators will have postage and stationery expenses of \$15 per rate proposal to serve copies of the proposal and each set of replies on the Commission and affected LFAs. 10 \times \$15 = \$150. We estimate that postage and stationery expenses for each LFA will be \$5 to file comments on each proposal. 10 proposals \times 5 LFAs per proposal \times \$5 = \$250.

Needs and Uses: The information collections contained herein are necessary to implement the statutory provisions for cable operators contained in the 1992 Cable Act. Uniform rate proposals will be filed with the Commission and served on all affected LFAs. The rate proposals, comments

received from LFAs and replies received from cable operators will be reviewed by the Commission in considering whether the interests of subscribers will be protected under the new rate proposal.

I. Introduction

1. On November 29, 1995, the Commission issued a Notice of Proposed Rulemaking ("NPRM") in which we explored the establishment of an optional rate-setting methodology where a cable operator could establish uniform rates for uniform cable service tiers offered in multiple franchise areas. *Notice of Proposed Rulemaking in CS Docket No. 95-174* (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation, Uniform Rate-Setting Methodology), 60 FR 63492 (December 11, 1995). We find that the establishment of such uniform rates would benefit both cable service subscribers and cable operators. We also find, however, that the implementation of uniform rates raises several complex case-by-case issues. Accordingly, we hereby permit the establishment of uniform rates across multiple franchise areas on a case-by-case basis upon the Commission's finding that the cable operator's submission of a proposed uniform rate proposal and supporting justification demonstrates that the proposed rate structure will be reasonable, taking into account all critical factors relevant to its implementation, and subject to one important condition. Under any uniform rates approach permitted by the Commission, rates for regulated basic service tiers ("BSTs") may not exceed the BST rates that would be established under our existing regulations; thus, BST rates will either decrease or remain the same under a uniform rates mechanism.

2. As discussed more fully below, we have concluded that permitting operators serving multiple franchise areas to establish uniform services at uniform rates in all areas would be beneficial for subscribers, franchising authorities ("LFAs"), and cable operators. Whether to seek to implement uniform rates, however, will be left to the discretion of cable operators. A uniform rates approach could facilitate an operator's ability to promote its service on a regional basis. This approach could better inform consumers and enable them to compare packages of services offered by competitors, thereby improving competition among providers. Increased competition could result in improved service and reduced rates for subscribers.

II. Background

3. As stated in the *NPRM*, under the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), Cable Television Consumer Protection and Competition Act, Public Law 102-385, 106 Stat. 1460 (1992), and the Commission's implementing regulations, 47 CFR §§ 76.901-86, a cable operator serving multiple franchise areas must establish maximum permitted rates independently in each franchise area. Rate-regulated services consist of the basic service tier ("BST"), which includes, at a minimum, all local broadcast stations and public, educational, and governmental ("PEG") access channels carried on the system, and the cable programming services tier ("CPST"), which includes all non-BST programming offered over the cable system, other than programming offered on a per channel or per program basis.

4. We noted that enforcement of the rate regulations is divided between qualified local franchising authorities ("LFAs") and the Commission. BST rate regulation is generally enforced by qualified LFAs. An operator's CPST, on the other hand, is subject to rate regulation directly by the Commission.

5. We also discussed the situation where a cable operator acquires a number of contiguous systems from other entities and seeks to establish uniform rates and services for those systems. We stated that, under the Commission's "going-forward" rules, the operator will typically have the flexibility to add channels to certain systems and delete channels from others to establish a uniform programming line-up. The operator's efforts, however, to set a uniform rate will be constrained because the going-forward rules specifically dictate permitted rate changes that must accompany changes in the level of service and do not permit regional averaging of the data used to compute rates.

6. In the *NPRM* we tentatively concluded that permitting operators serving multiple franchise areas to establish uniform services at uniform rates in all areas would be beneficial for subscribers, franchising authorities, and operators. We stated that such an approach could facilitate an operator's advertisement of a single rate for cable service over a broad geographic region, which could lower its marketing costs and enhance its ability to respond to competition from alternative service providers that may establish and market uniform services without regard to franchise area boundaries.

7. In the *NPRM* we requested suggestions for an appropriate method

for the establishment of uniform rates, and offered for comment two specific alternatives that would be revenue-neutral to an operator. Under the first approach, an operator generally would set BST rates equal to the lowest BST rate for any one franchise area as determined under our existing rate regulations and recoup the resulting foregone BST revenue in a new uniform CPST rate charged to CPST subscribers. Under the second approach, an operator would generally determine a blended average rate for BSTs and CPSTs, respectively, pursuant to a formula designed by the Commission.

8. In the context of both approaches, we sought comment on various aspects of a cable operator's establishment of uniform rates for uniform services, including: (1) How an operator would determine equipment rates; (2) the costs and benefits of requiring an operator, if it chose to set the uniform rate in unregulated franchise areas, to base the uniform rate in part on data from unregulated areas; (3) how an operator would apply our going-forward policies; (4) whether this approach would protect cable subscribers from unreasonable rates in accordance with the 1992 Cable Act, and whether an operator should be required to phase-in any resulting CPST rate increases; (5) whether a cable operator's setting of uniform rates should be restricted to franchise areas located within some level of proximity to each other, such as the Area of Dominant Influence, the same county or state, or whether a cable operator should be permitted to select the region in which to set uniform rates; and (6) how PEG and other franchise-related expenses should be addressed in the context of uniform rates.

III. Discussion

9. Much of the record submitted in response to the *NPRM* generally endorses our proposal to establish an optional approach under which a cable operator could set uniform rates for uniform services offered in multiple franchise areas, as stated in the *NPRM*. As a general matter, we believe that, under certain conditions, allowing a cable operator to establish uniform regulated cable service rates across multiple franchise areas could benefit consumers, LFAs and the cable operator. The record, however, indicates that the Commission's adoption of a specific methodology that would be applicable to all cable operators nationwide may not be the most feasible course of action, given variations in factors from system to system. We will, therefore, establish procedures to permit uniform rates across multiple franchise

areas through the Commission's case-by-case review of a cable operator's proposed uniform rate structure. These procedures will permit the Commission to take account of the variations between cable systems and of the comments of affected LFAs.

Accordingly, a cable operator seeking to establish uniform rates will be required to submit a proposal with supporting justification that states fully and precisely all pertinent facts and considerations relied on to demonstrate that the proposed rates will not be unreasonable.

10. Under the rate-setting approach adopted herein, a cable operator may submit to the Commission a proposal for establishing uniform rates for uniform services offered in multiple franchise areas. The Commission, however, will not specify a particular methodology for setting uniform rates. The only condition we place on any proposed uniform rates mechanism is that the BST rates may not exceed the BST rates that would be established under our existing regulations. In addition, below we offer general guidelines that the Commission will consider in deciding whether to approve a particular proposed mechanism.

11. A cable operator will be required to submit with its proposal a certificate of service showing that the proposal and its supporting justification have been served on all affected LFAs. The Commission will place the operator's filing on public notice. Interested persons, including the affected LFAs, may submit comments on the proposal within sixty days after the date of the public notice. The cable operator may file a reply to the comments within thirty days thereafter. The Commission will consider the justification, as well as all other submitted materials, and determine whether the proposed uniform rates will not be unreasonable. Pursuant to this *Order* and any conditions established in a Commission decision on a particular proposal, the Commission may approve uniform rates notwithstanding any differences between the uniform rates and the rates that would be determined under our existing benchmark rate formula.

12. Some LFAs express concern that a uniform rates mechanism will not protect subscribers from unreasonable cable service rates, as required under the 1992 Cable Act. On the contrary, we believe that, in any event, rates will remain reasonable under any uniform rates approach approved by the Commission. First, it is important to note that, while the benchmark formula is the most widely used method for determining rates in compliance with

our rules, we have found rates other than, or that vary from, benchmark rates to be reasonable. For example, an operator may elect to justify BST and CPST rates based on a cost-of-service showing. The Commission has also eliminated the "all rates in play" approach so that, if no complaint concerning a CPST rate or rate increase was filed before November 6, 1995, the cable operator's CPST rate as of that date would be deemed not unreasonable under our rules. This may lead to a rate being deemed not unreasonable although the rate might not be accepted under our benchmark formula. We also note that the Commission has an ongoing proceeding in which we are considering increased pricing flexibility for operators that may result in somewhat higher CPST and lower BST rates. See *Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, MM Docket No. 92-266 and CS Docket No. 96-157, 61 FR 45356 (August 29, 1996) ("Cable Pricing Flexibility NPRM"). Finally, the Commission has allowed, subject to certain conditions, agreements among LFAs and small cable operators to serve as yet another alternative method or process for establishing reasonable rates for regulated tiers of cable service.

13. We further address the concerns of LFAs regarding the reasonableness of uniform rates by placing a condition on an operator's setting of uniform rates. That is, under any uniform rates structure established pursuant to this Order, BST rates for any subscriber in the affected areas may not exceed the BST rates that would be established under our existing regulations. Thus, LFAs can be assured that, at a minimum, BST rates will either decrease or remain unchanged. For example, if an operator sought to implement uniform rates for three franchise areas where the maximum permitted BST rates are \$10.00, \$11.00 and \$12.00, respectively, any uniform rates proposal that resulted in a uniform BST rate greater than \$10.00 would be disapproved.

14. The fair implementation of a uniform rate approach is facilitated if the Commission can examine the methodology to be employed and the impact of that methodology on subscribers in advance of its implementation. Our approach will provide the Commission with the ability to render an informed and accurate decision on whether an operator's proposed uniform rates are not unreasonable. An operator's supporting justification must include a specific, detailed description of all relevant financial and economic data, and other

factors (including particularly local factors) that demonstrate the impact of the proposal on subscriber rates, and that justify the uniform rates as not unreasonable. This approach also will allow the Commission to consider the views of LFAs and consider whether the interests of subscribers will be protected under the new rate structure.

15. On a going-forward basis, we will require operators that establish initial uniform rates under the regulations we set forth here to adjust future rates on an annual basis, pursuant to FCC Form 1240. We believe that allowing rate changes no more frequently than annually will enhance the efficiency of rate review by LFAs. As under our current rules, review of adjustments to BST rates will be the responsibility of LFAs while the Commission will be responsible for review of CPST rates.

16. We seek to provide guidance in this Order to cable operators that propose uniform rates. First, as we already have indicated, implementing any uniform rate approach across multiple franchise areas inevitably raises issues that do not lend themselves to a global resolution. The most difficult and common issue arises when a cable operator is regulated by multiple LFAs, as compared to a single state-level or regional regulatory body. A methodology that would produce uniform rates throughout multiple franchise areas and would be applicable in one particular franchise area, for example, would be based in part on information that is particular to other franchise areas.

17. The *NPRM* sought comment on how review by one LFA of a proposed uniform rate may affect implementation of that rate in other franchise areas. First, some LFAs contend that a uniform rate approach could increase their administrative burden by requiring them to review the underlying data and rates for all local franchising areas where the uniform rate is charged in order to review the uniform rate charged in its local franchising area. We disagree. The condition specified above, that requires that BST rates determined under a uniform rate approach may not exceed those established under our existing regulations, will ease LFAs' regulatory burdens by ensuring LFAs that any BST rates they must review will either decrease or remain unchanged. LFAs' administrative burdens therefore will not significantly increase.

18. Other LFAs responded to this inquiry by arguing that their jurisdiction over basic cable rates could be compromised under a uniform rates approach. We also reject these

arguments. First, we note the discussion above concerning an LFA's option to participate vigorously in the Commission's review of an operator's proposed uniform rates approach. Second, an LFA's authority will not be undermined because the overall process for establishing and regulating uniform rates will be parallel to that of our current regulatory framework. In the development of the benchmark formula, for example, the Commission, after notice and comment and the participation of LFAs, established and approved the regulatory methodology that sets forth reasonable rates for the BST. Using the benchmark formula, the operator then submits proposed initial BST rates for review by each affected LFA. If the BST rate is rejected by an LFA, the operator may appeal to the Commission, where the relevant LFA receives ample opportunity to defend its calculations and review of the operator's proposed BST rates. With respect to the optional rate-setting approach adopted herein, and as with our existing regulations, the Commission merely approves the general methodology to be employed by an operator, while jurisdiction over an operator's implementation of a BST rate remains the exclusive responsibility of LFAs. Thus, contrary to some commenting LFAs' arguments, LFAs' statutory responsibility and obligation with respect to BSTs will not be hindered under a uniform approach.

19. Commenters suggest a variety of approaches for resolving conflicts that could arise if one LFA tolled the effectiveness of the proposed uniform rate in its franchise area while another LFA permitted the rate to take effect in its area. Generally, commenting LFAs seek to maintain their existing authority over BST rates. Although they do not specifically address the tolling of proposed uniform rates, presumably these parties might argue that uniform rates could be disapproved by any one of the affected LFAs, and that rates would be tolled in all the franchise areas until an appeal of the relevant rate decision was resolved. Cable operators, on the other hand, support allowing the proposed uniform rate to take effect immediately, subject to a later "true-up" of any discrepancies which the Commission subsequently finds to exist. We believe that the current authority of LFAs should be preserved, and that subscribers must remain fully protected from unreasonable rate increases. Moreover, an operator seeking to take advantage of the benefits of establishing (or adjusting) uniform rates must also shoulder the risks of implementing

uniform rates. We therefore will prohibit a proposed uniform rate to take effect subject only to a subsequent true-up. Rather, an LFA that rejects a proposed uniform rate may toll the effectiveness of that rate in that particular franchise area. Alternatively, if the LFA so chooses, the rate may take effect, however, but only subject to refunds as later determined by the LFA. An LFA's decision with respect to proposed rates will only have effect within the LFA's particular local franchise area, and not the implementation of rates in other franchise areas.

20. As indicated above, an operator may elect to implement a uniform rates structure in a region that covers both regulated and unregulated local franchise areas. Under this approach, an operator would include data from both the unregulated and regulated areas, and determine a uniform rate applicable in all such areas. We believe that permitting uniform rates to include unregulated franchise areas could benefit subscribers living in the uniform rate region. With respect to systems subject to effective competition, Congress determined that rate regulation was not necessary to ensure reasonable rates. With respect to cable systems potentially subject to regulation, but which are currently unregulated because no complaint has been filed, there is no evidence to suggest that these systems have unreasonable rates. Indeed, we would expect that if rates were unreasonable in these franchise areas, complaints would have been filed (especially prior to passage of the Telecommunications Act of 1996 when a single complaint was enough to trigger CPST rate review). Accordingly, we do not believe that including unregulated systems for purposes of determining uniform rates is more likely to lead to unreasonable rates than using exclusively regulated systems to determine uniform rates.

21. With respect to the BST in regulated local franchise areas, the operator would submit to the LFA its proposed initial rates, and the regulating LFA would have authority to review and approve or disapprove the proposed rates. If the LFA determined that a reduction in BST rates is necessary to comply with the rules, the operator would be required to reflect this reduction in the rate charged in the region, if necessary. Again, nothing in this Order is intended to compromise LFAs' authority to regulate BST rates. With respect to CPST rates, we emphasize that, in reviewing a uniform rates proposal, we will closely examine the impact of the proposal on

subscribers' rates, and would be disinclined to approve any scheme that results in a more than minimal increase in CPST rates for a large proportion of the affected subscribers.

22. Commenting cable operators argue that they will require broad discretion with respect to several aspects of setting uniform rates, including: (1) the size of the region in which to establish uniform rates; (2) whether all franchise areas located within the uniform rate region must be included for purposes of calculating and offering the uniform rate; (3) which tiers of regulated cable service should be offered at a uniform rate; (4) the methodology employed to determine the uniform rate; (5) how to address variances in the numbers of channels offered in various franchise areas; and (6) how and whether to establish uniform rates for the installation or maintenance of equipment. Below we offer some general guidance regarding what a cable operator should follow to accomplish these goals.

23. First, we anticipate that an operator's uniform rates proposal will be based on some meaningful neutral geographic measure, such as the Area of Dominant Influence (ADI), the Designated Market Area, the Basic Trading Area, or the Standard Metropolitan Statistical Area. Where the operator proposes to include additional franchise areas outside of such a region or measure, our case-by-case review will examine the operator's proposal and justification.

24. Second, with respect to which franchise areas should be included in a uniform rate structure, we would be disinclined to approve a scheme in which an operator selects some of its franchise areas in a contiguous geographic region, but excludes others, unless compelling circumstances were shown to justify such an approach. An example of a situation presenting such circumstances could be one in which an upgrade was in progress and the uniform rates became applicable as the upgrade progressed. In this vein, we note that some commenting LFAs argue that a uniform rate structure may result in cross-subsidization among subscribers living in franchise areas where a cable operator's costs of providing service are relatively low costs and those subscribers in franchise areas where costs are higher. Any cross-subsidization that may occur under a uniform rates structure, however, will be neither significant nor unique. In addition, as stated above, we will be disinclined to approve any proposal that results in a more than minimal increase

in CPST rates for a significant proportion of the affected subscribers.

25. Third, with respect to which tiers of regulated service should be offered at uniform rates, we would be inclined generally to ratify a uniform rate proposal that covers all of an operator's BSTs within the proposed uniform rate region. Furthermore, any uniform rate proposal in which BST rates decrease likely will include offsetting CPST rate increases, assuming an operator's overall rates and revenues remain close to neutral under the uniform rate scheme. We believe that in light of the high penetration of at least one CPST in most multi-tiered systems, it will be possible to effect these offsets with minimal CPST rate increases. We also would entertain proposals to offer uniform rates on CPSTs generally, regardless of their penetration.

26. Fifth, we note that in the *NPRM* we sought comment on whether the particular packages of programming services offered at a uniform rate in multiple franchise areas must be identical. In response, cable operators urge the Commission to allow an operator broad discretion in dealing with variances among numbers of channels offered in various areas. With respect to the cable operators' comments, we believe generally that the establishment of uniform rates across multiple franchise areas should be permitted where the cable operator is offering the same number of channels on its regulated tiers of programming services. Generally, subscribers in one franchise area should not pay the same rates as those in another franchise area if the amount of programming services received are not the same. Therefore, we would be inclined to accept uniform rate proposals that apply only to franchise areas that have identical numbers of channels on the respective BSTs and CPSTs.

27. However, with respect to whether the packages of services need be identical, we recognize that there may be circumstances beyond the operator's control that cause dissimilarities among tiers of programming services. For instance, differences in PEG access and must-carry requirements or leased access use are factors that might create deviations in the channel line-ups received by subscribers in a contiguous geographic area. Indeed, because of these circumstances, certain LFAs argue that any uniform rates mechanism implemented pursuant to this *Order* will not result in truly uniform rates, and thus will not succeed in reducing confusion for a subscriber moving between different parts of the same uniform rates region. In order to address

these concerns, as well as provide operators with a measure of flexibility in implementing a uniform rates structure, we will take care when evaluating a proposal for uniform rates across franchise areas that do not receive identical programming services to consider the extent and nature of the deviation in programming services, and whether the deviation's impact on subscriber rates is significant. In the event that a deviation based on PEG access costs or other external costs (including franchise-related external costs) is significant, we would consider a requirement that an operator's uniform rates be determined exclusive of such costs; in which case the operator likely would be permitted to add these costs onto the uniform rate on a franchise-by-franchise basis. In this vein, we note that our existing regulations have always permitted cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs to advertise a "fee plus" rate that indicates the core rate plus the range of possible additions, depending on the particular location of the subscriber.

28. Finally, we note that, under the Telecommunications Act of 1996, cable operators may aggregate their equipment costs on a franchise, system, regional, or company level. The Commission has adopted regulations implementing this provision that, among other things, ease the burden of cable rate regulation on operators and increase administrative efficiency for both LFAs and cable operators. Cable operators seeking to implement uniform rates may avail themselves of those rules to bring uniformity to their equipment rates.

29. Accordingly, we find that implementation of any uniform rate approach as offered in the *NPRM* requires resolving several issues, including those of a local nature, that do not lend themselves to global resolution. We find that it is preferable to base our approval of any uniform rate approach on data that accurately reflects the situation of a particular cable operator seeking to establish uniform rates, and the predicted impact on consumers of the operator's proposal. We therefore decline to specify a particular methodology for implementing uniform rates. Rather, as described above, cable operators may submit information in accordance with the procedures outlined above demonstrating that the proposed uniform rates will not be unreasonable. In light of this finding, we decline to reach the arguments presented by the commenters with respect to the appropriate methodology,

region, and other aspects of uniform rates offered for comment in the *NPRM*.

IV. Regulatory Flexibility Act Certification

30. As required by the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* in CS Docket 95-174 (the "*NPRM*"). The Commission sought written public comments on the proposals in the *NPRM* including comments on the IRFA. No Comments were received.

31. Although we performed an IRFA in the *NPRM*, there were no comments received in response to the IRFA and we believe that we can certify that no Regulatory Flexibility Act Analysis is now necessary.

32. We do not believe that the final rule adopted in the *Report and Order* will have a significant economic impact on a substantial number of small entities, 5 U.S.C. § 605(b). The uniform rate option described in this *Report and Order* gives cable operators an additional option when setting rates, and is not mandatory. This rate adjustment option will not force operators to forgo revenues as it is designed to be revenue neutral to cable operators. The Communications Act at 47 U.S.C. § 543(m)(2) defines a small cable operator as "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." Under the Communications Act, at 47 U.S.C. § 543(m)(1), a small cable operator is not subject to the rate regulation requirements of Sections 543(a), (b) and (c) on cable programming services tiers ("CPSTs") in any franchise area in which it serves 50,000 or fewer subscribers.

33. The Regulatory Flexibility Act defines at 5 U.S.C. § 601(5) "small governmental jurisdictions" as "governments of cities, counties, towns, townships, villages, school districts or special districts with populations of less than 50,000." Under the Commission's current rules, if a local franchising authority ("LFA") has elected to rate regulate the basic service tier ("BST"), a cable operator must submit rate justifications to the LFA on FCC Forms. We do not believe that small LFAs will face a significant economic impact due to this *Report and Order*. The change in our rules adopted herein would not have a significant economic effect on small LFAs because the burden associated with reviewing a uniform

rate approach should be no more than the burden under the current regulations. If other rate adjustments are made to the BST at the time of the uniform rate adjustment, or at some time thereafter, the cable operator will be required to submit a rate justification to the LFA that is based on the operator's "underlying rate," *i.e.*, the rate the operator would be charging in the absence of the uniform rate adjustment. The LFA will engage in the same rate review process as would have otherwise occurred for these other rate adjustments. LFA review of the underlying rate entails the same rate review process that would occur normally, without the uniform pricing option adopted herein. Responsibility for the determination of the correctness of the uniform rate adjustment to CPST rates will rest with the Commission because the Commission, and not LFAs, is responsible for insuring that CPST rates are not unreasonable.

34. 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 Administration. A copy of this certification will also be published in the **Federal Register**.

V. Final Paperwork Reduction Act of 1995 Analysis

35. This *Report and Order* contains a new information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this *Report and Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public comments are due May 30, 1997. 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.

36. A copy of any comments on the information collection 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. For

additional information, contact Dorothy Conway at 202-418-0217 or via the Internet at the above address.

VI. Ordering Clauses

37. Accordingly, it is ordered that, pursuant to the authority granted in 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, part 76 of the Commission's rules is amended as set forth below. The amendments impose information collection requirements and shall become effective upon approval of the Office of Management and Budget ("OMB") but no sooner than April 30, 1997. The Commission will issue a document at that time notifying parties that the regulations adopted herein have become effective.

38. 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).

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of the 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, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.922 is amended by revising paragraph (c)(2) and adding a new paragraph (n) to read as follows:

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

* * * * *

(c) * * *

(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 paragraph (d) or (e) of this section. In addition, cable systems may further adjust their rates using the methodologies set forth in paragraph (n) of this section.

* * * * *

(n) *Further rate adjustments—Uniform rates.* A cable operator that has established rates in accordance with this section may then be permitted to establish a uniform rate for uniform services offered in multiple franchise areas. This rate shall be determined in accordance with the Commission's procedures and requirements set forth in CS Docket No. 95-174.

[FR Doc. 97-8041 Filed 3-28-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960531152-7062-03; I.D. 031297C]

RIN 0648-A118

Fisheries of the Exclusive Economic Zone Off Alaska; Technical Amendment; Correction

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS is correcting regulations that contain inadvertent omissions that resulted from NMFS' consolidation of six parts in title 50 of the CFR, related to the Alaska regulations, into one CFR part in response to the President's Regulatory Reform Initiative. This action corrects regulations that authorize the release of pollock, flatfish, and Pacific cod reserves in the Gulf of Alaska.

EFFECTIVE DATE: March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7228.

SUPPLEMENTARY INFORMATION: When the consolidated rule was published in the *Federal Register* on June 19, 1996 (61 FR 31228), it was intended to contain no substantive changes to the existing regulations. Inadvertently, text that had

existed at § 672.20(d)(1)(ii) was omitted. This technical amendment is reinstating the omitted text into the regulation.

NMFS is correcting the regulations as follows:

(1) Section 679.20(b)(2) is revised by changing the word "flounder" to read "flatfish."

(2) Section 679.20(b)(2)(i) and (ii) are added to include inshore/offshore pollock and Pacific cod provisions to the Gulf of Alaska (GOA) reserves.

(3) Section 679.20(3) is revised by adding text that was inadvertently omitted to include the GOA in the apportionment text.

Classification

Because this technical amendment makes only non-substantive corrections to an existing rule, notice and public procedure thereon and a delay in effective date would serve no purpose. Accordingly, under 5 U.S.C. 553(b)(B) and (d), notice and public procedure thereon and a delay in effective date are unnecessary.

Because this rule is being issued without prior comment, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

This rule makes minor technical changes to a rule that has been determined to be not significant under E.O. 12866. No changes in the regulatory impact previously reviewed and analyzed will result from implementation of this technical amendment.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: March 24, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.20, paragraphs (b)(2)(i) and (ii) are added, the introductory text of (b)(2), the heading for (b)(3), paragraphs (b)(3)(i)(A), and (b)(3)(ii)(A) and (B) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *