treat its tax as a broad-based and uniform health care-related tax. A State application may be approved if the State established that, among other things, the tax is generally redistributive. We established in the regulation the waiver criteria under which we will determine whether a tax, that does not meet the statutory defined broad-based or uniform requirements, is generally redistributive.

As published, the regulation at 42 CFR 433.68(e)(2)(iv) contains an error in the percentage amount necessary to demonstrate that a State tax that varies, based exclusively on regional variations, and enacted and in effect prior to November 24, 1992, is generally redistributive and can be considered to meet the criteria for waiver of the uniform tax requirement.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

Accordingly, 42 CFR part 433 is corrected by making the following correcting amendment:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 continues to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1902(t), 1903(A)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), (1903(r), 1903(w), 1912, and 1919(e) of the Social Security Act (42 U.S.C. 1302, 1320b–7, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396a(t), 1396b(a)(3), 1396b(d)(2), 1396a(d)(5), 1396b(i), 1396b(o), 1396b(p), 1396b(r), 1396b(w), and 1396k.)

§ 433.68 [Corrected]

2. In § 433.68, paragraph (e)(2)(iv), remove the percentage ''0.85'' and add in its place ''0.70''.

(Catalog of Federal Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 12, 1997.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 97–27194 Filed 10–9–97; 4:00 pm]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 92–266 and 93–215; FCC 97–339]

Small Cable Television Systems; Rate Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Fourteenth Order on Reconsideration denying two petitions seeking reconsideration of the rules adopted for small cable television systems governing rates charged for regulated cable services in the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, FCC 95–195. The Commission also adopted minor clarifications to the rate rules.

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Julie Buchanan, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: The following is a synopsis of the Commission's Fourteenth Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, adopted September 24, 1997 and released October 1, 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, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Synopsis

I. Introduction

1. On May 5, 1995, the Commission adopted 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''), thereby modifying the rules governing rates charged for regulated cable services by certain smaller cable systems. In this order, we address petitions for reconsideration of the Small System Order.

II. Background

2. Section 623(i) of the Communications Act of 1934, as amended (''Communications Act''), requires that the Commission design rate regulations to reduce the administrative burdens and the cost of compliance for cable systems with 1,000 or fewer subscribers. In the Small System Order, the Commission extended small system rate relief to small cable systems owned by small cable companies. The Small System Order defines a small system as any system that serves 15,000 or fewer subscribers, and it defines a small cable company as a cable operator that serves a total of 400,000 or fewer subscribers over all of its systems.

3. In addition to adopting the new categories of small systems and small cable companies, the Small System Order introduced a form of rate regulation known as the small system cost of service methodology. This approach, which is available only to small systems owned by small cable companies, follows general principles of cost of service rate regulation. An eligible cable operator may establish a maximum permitted rate for regulated cable service equal to the amount necessary to cover its operating expenses plus a reasonable return on its prudent investment in the assets used to provide that service. The small system cost of service methodology differs both procedurally and substantively from the standard cost of service methodology available to cable operators generally.

4. To implement the small system cost of service rules, we designed FCC Form 1230, a simplified one-page form, for use exclusively by operators eligible for these rules. This form is more streamlined than Form 1220 used for cost of service showings by larger operators. To use Form 1230, the operator must calculate five items of data pertaining to the system in question: annual operating expenses, net rate base, rate of return, channel count and subscriber count. Once these variables are calculated, the form generates the maximum per channel rate the operator may charge for regulated service. Although subject to regulatory review, this rate is presumed reasonable if it is no more than $1.24 per channel.

5. When applicable, the presumption of reasonableness effectively exempts eligible cable operators from many of the proof burdens that apply under our standard cost of service rules. For example, eligible small cable companies have greater discretion than larger operators in determining how to allocate costs between regulated and unregulated services and between various levels of regulated services. Similarly, qualifying cable operators using Form 1230 are not subject to the presumption of unreasonableness that otherwise attaches when an operator seeks a rate of return higher than

11.25%. As noted, an eligible operator enjoys the presumption of reasonableness with respect to these and other factors only if the maximum permitted rate claimed on Form 1230 does not exceed $1.24 per channel. If the rate exceeds $1.24 per channel, the cable operator still may use Form 1230, but is subject to the same presumptions that apply in a standard cost of service showing. As with other rate-setting procedures, a cost of service showing involving Form 1230 is subject to review by the cable operator's local franchising authority and/or by the Commission.

6. With respect to the effective date of the small system rules, we directed franchising authorities to apply the small system cost of service approach to rate cases pending as of the release date of the Small System Order because the record demonstrated that the pre-existing rules were imposing a significant burden on small systems. The Small System Order was released on June 5, 1995.

III. Petitions for Reconsideration

7. Two parties seek reconsideration of the Small System Order and a number of other parties oppose the petitions. In one petition, the Georgia Municipal Association (''GMA'') requests that we repeal the small system cost of service rules in their entirety. In the alternative, GMA urges the Commission to lower the maximum amount of $1.24 per channel at which an operator may set rates and still be entitled to a presumption of reasonableness. In support of its petition, GMA questions the accuracy of the underlying cost data that we used to set the $1.24 per channel rate. In addition, GMA claims that the new rules will increase burdens on franchising authorities and lead to unreasonable rates for regulated cable services. GMA also cites examples of what it claims are cable operators abusing the small system rules.

8. The New Jersey Board of Public Utilities (''New Jersey Board'') seeks reconsideration of the Small System Order to the extent it permits application of the small system rules to rate cases that were pending as of the release date of the order. In support of its petition, the New Jersey Board describes the possible impact of the small system rules upon a rate case that was pending before it when the Commission released the Small System Order on June 5, 1995. According to the New Jersey Board, the cable operator in that case has given notice of its intent to attempt to justify its proposed rate increase by filing FCC Form 1230. The New Jersey Board complains that the rules governing the information that a franchising authority may seek in conjunction with its review of a Form 1230 are overly restrictive. The New Jersey Board also objects to having to bear the burden of showing the unreasonableness of the rate sought by the operator if that rate does not exceed $1.24 per regulated channel. As a result of the above, the New Jersey Board contends it will be ''precluded from establishing whether the cable operator's subscribers are being charged a reasonable rate,'' assuming the operator meets the small system and small cable company definitions. The New Jersey Board also asserts the alleged unfairness of applying the small system cost of service rules to the pending case in light of the resources that the Board already has expended in the case. Along with its petition for reconsideration, the New Jersey Board also filed a motion for stay of the Small System Order to the extent it mandates application of the new rules to pending cases.

IV. Discussion

9. Neither petition challenges our determination that some measure of regulatory relief is appropriate for small systems owned by small cable companies. The petitioners do not dispute our conclusion that such systems face proportionately higher operating and capital costs than larger cable entities. Likewise, the petitioners do not contest that our standard cost of service rules may place ''an inordinate hardship'' on smaller systems ''in terms of the labor and other resources that must be devoted to ensuring compliance.'' Therefore, the petitions give us no reason to reconsider our decision to establish for eligible small systems a form of rate regulation that lessens some of the substantive and procedural burdens that otherwise would apply. Because the petitions raise separate issues, we will resolve the merits of each petition individually.

A. The GMA Petition

10. GMA challenges the presumption of reasonableness that arises when an eligible small system uses Form 1230 to justify a regulated rate that does not exceed $1.24 per channel. As noted above, we established $1.24 per channel as the appropriate cut-off based on cost data previously submitted to the Commission by small cable companies seeking to establish regulated rates for their small systems by using Form 1220 in accordance with our standard cost of service rules. GMA asserts that a careful review of the Form 1220s that we relied on to set the $1.24 per channel rate ''would probably * * * [show] that corrections should be made to the operators' calculations in a large percentage of cases.'' In support of this prediction, GMA states that ''several'' Georgia cable operators using FCC Form 1220 have overstated the value of the intangible assets in their ratebases. In addition, GMA states that the Commission found calculation or allocation errors in each of the nine cost of service cases that we had addressed as of the date GMA filed its petition. GMA cites three specific cost of service cases in which the Cable Services Bureau (''Bureau'') made adjustments to correct such errors. On this basis, GMA argues that ''there is a strong possibility that there are errors'' in the Form 1220s from which we gleaned the cost data to establish the presumptively reasonable rate of $1.24 per channel.

11. We believe that the rate-setting mechanism we adopted in the Small System Order reflects a reasoned judgment as to the method for establishing the rates that an eligible small system may charge for regulated services. Neither GMA nor any other party challenges this mechanism. GMA objects only to the input data that produced the standard of $1.24 per regulated channel against which the rates of eligible small systems are measured. We determined in the Small System Order, however, that a more comprehensive review of small system cost data was not necessary to ensure that our small system rules were properly tailored to the conditions faced by such systems.

12. GMA does not challenge our finding that small systems owned by small cable companies were in need of immediate relief. GMA suggests that the Form 1220 filings on which we relied were so facially inaccurate that we should have conducted a further analysis of small system cost data. We disagree. This approach would have delayed implementation of measures for which there was an immediate need and would have imposed additional administrative responsibilities (i.e., having to respond to Commission inquiries concerning small system costs) on the very entities that we found were the most burdened by regulation.

13. GMA fails to persuade us that the benefits of further analysis of small system cost data would have outweighed the administrative costs and delay that such analysis would have entailed. While GMA does not dispute that such costs and delay would have been both inevitable and extremely burdensome, it fails to factor these considerations into its discussion. GMA bases its request for reconsideration on

the fact that the Bureau found allocation or calculation errors in the cost of service cases it cites. However, the impact of the Bureau's adjustments in the cited cases are overstated by GMA and do not undermine the formulation of the $1.24 standard.

14. The Bureau decisions cited by GMA were based on general cost of service principles and not under the interim rules the Commission adopted in February 1994. As of the time of those filings, we had directed cost of service operators to justify their rates in accordance with traditional cost of service principles generally applicable in the field of utility rate regulation. After seeking and reviewing further public comment, we subsequently adopted more refined cost of service rules better tailored for use in the cable service context. At the same time, we designed Form 1220 for use in accordance with the new rules. The cost data used in the Small System Order were gleaned from Form 1220s filed by small systems pursuant to cost of service rules adapted specifically for use by cable operators. The specificity of the new rules, combined with the uniformity of presentation required by Form 1220, makes the latter submissions inherently more reliable than the earlier submissions cited by GMA. Thus, the errors in the filings relied on by GMA do not suggest the likelihood of material inaccuracies in the subsequent Form 1220 filings. This is particularly true given the nature of the errors in the cases cited by GMA. In each case, the errors were so minor that the Bureau found that the rates actually being charged by the cable operator were nevertheless justified and denied the complaint.

15. We further note that in the Small System Order, we decided that standards applicable to cable systems generally were inappropriate for small systems owned by small cable companies. In particular, we decided that eligible small systems should be given more regulatory leeway than larger cable entities because small systems face disproportionately higher operating costs, capital costs, and regulatory compliance costs. In fact, with respect to eligible small systems, we relaxed the very standards that had caused the Bureau to make the adjustments described in the cost of service cases cited by GMA.

16. GMA does not dispute that we should be less restrictive in applying cost of service principles to small systems owned by small cable companies. Yet it invites us to question cost information submitted by such systems by applying the stricter standards that we have found inappropriate for those systems. Because GMA's argument relies on overly restrictive standards, we find that it has not raised a material issue with respect to the reliability of those filings.

17. In addition to its specific challenge to the per channel rate of $1.24, GMA recites several ''experiences'' of Georgia franchising authorities that purport to show that the small system rules ''are unfair to those franchising authorities who have invested a substantial amount of time and money in the rate regulation process.'' GMA further complains that these examples prove that ''the rules are unfair to subscribers, because some cable operators will increase rates well beyond the level which subscribers would pay if competition existed.'' These conclusory allegations do not refute the specific findings or analyses set forth in the Small System Order and do not state a basis for us to reconsider that order. Furthermore, franchising authorities had no reasonable reliance interest in our rules remaining unchanged. As for practices of the individual operators identified in the GMA petition, we do not believe it is appropriate for us to make specific findings in this context regarding the propriety of those practices. To the extent cable operators fail to abide by our rules, local franchising authorities may take appropriate action.

18. For the reasons stated above, we hereby deny GMA's petition for reconsideration.

B. The New Jersey Board Petition

19. The New Jersey Board objects to the Small System Order to the extent it requires local franchising authorities to permit eligible systems to use the small system cost of service methodology in cases pending as of the date the Small System Order was released. In support of its petition, the New Jersey Board describes the potential impact of the Small System Order upon a rate case pending before it. That case involves the rates charged by Service Electric Cable TV of Hunterdon (''Service Electric''). Service Electric filed a standard cost of service showing with the New Jersey Board on July 14, 1994. Pursuant to that showing, Service Electric sought to increase its monthly rates from $21.00 to $26.31 for its 60-channel basic service tier. That case was pending when the Commission released the Small System Order on June 5, 1995, although the staff of the New Jersey Board had negotiated a tentative settlement with Service Electric that was subject to the approval of the New Jersey Board. Before such approval occurred, Service Electric gave notice of its intent to attempt to justify its proposed rate increase by filing FCC Form 1230.

20. The New Jersey Board contends that under the small system cost of service rules, Service Electric might be able to justify the rate increase it sought in its initial showing to the Board or, potentially, an even greater increase. According to the New Jersey Board, the rules governing the information that a franchising authority may seek in conjunction with its review of Form 1230 are so restrictive that it will be ''difficult if not impossible to challenge'' the rate the operator seeks to justify. The New Jersey Board also notes that under the small system cost of service rules, the burden is on the franchising authority to show the unreasonableness of the rate sought by an eligible small system if that rate does not exceed $1.24 per regulated channel. The New Jersey Board asserts that this ''unprecedented'' shift in the burden of proof will ''necessitate the use of Board and State resources not usually required'' in order to establish the unreasonableness of the rate sought by the cable operator.

21. Based on the above, the New Jersey Board argues that it will be ''precluded from establishing whether Service Electric's subscribers are being charged a reasonable rate,'' assuming the operator meets the small system and small cable company definitions. The New Jersey Board also asserts the alleged unfairness of applying the small system cost of service rules to the pending case in light of the resources that it already has expended in the case.

22. As an initial matter, we note that the petition seeks reconsideration of a Commission rule of general applicability based solely on the potential effect of that rule on a single rate case affecting approximately 3,000 cable subscribers. The Commission is charged with structuring a national framework of rate regulation. A broader and more representative showing of the rule's impact is necessary for us to review the merits of a particular rule or regulatory approach.

23. Further, the New Jersey Board fails to refute the underlying analysis supporting our decision to apply the new rules to pending cases. We adopted this approach based upon our balancing of various factors. With respect to rate regulation, Congress specifically directed us to reduce the administrative burdens and ease the costs of compliance for smaller systems. In the Small System Order, we concluded that our then existing rules ''have significantly burdened small systems.'' We designed the small system cost of service rules to remedy this problem.

Having determined small systems' need for immediate relief, we deemed it in the public interest to provide such relief accordingly. We believe that it is appropriate to apply a new rule to pending cases where the new rule serves to alleviate an existing restriction on regulated parties, as the small system cost of service rules did by creating an additional method for eligible systems to justify their rates. In addition, were pending cases not made subject to the new rules, subscribers in some areas might have received refunds when the pending cases were decided, followed immediately by rate hikes when the systems put new rates into effect prospectively in accordance with the small system cost of service methodology. Applying the new small system rules to pending cases avoids this confusing ''roller-coaster'' result.

24. We decided that the small system cost of service rules would not affect final decisions of local franchising authorities made before the release of the Small System Order. In these cases, the public interest, and in particular the interests of administrative finality, dictated that the final decision of a local franchising authority should not be subject to reconsideration or appeal under the small system rules.

25. By seeking reconsideration, the New Jersey Board suggests, implicitly, that we erred in finding a need for immediate relief. Yet it offers no arguments or evidence to refute this finding and thus presents no basis to reconsider it. The New Jersey Board's statement of a policy preference cannot overcome the evidence concerning the plight of smaller systems that was before us when we adopted the Small System Order. As James Cable Partners and Rifkin and Associates, Inc. argues, it makes no sense ''to complete pending cases under pre-existing criteria that do not embody the policy and statutory concerns that led to the adoption of the Small System Order in the first place.'' Likewise, the New Jersey Board does not dispute the ''roller-coaster'' effect on rates that would result if the new rules were not applied to pending cases.

26. The New Jersey Board contends that application of the small system rules to the pending Service Electric case will result in a waste of the resources it already has expended in that case. It objects to our decision to place on the franchising authority the burden of proving the unreasonableness of a proposed rate that does not exceed $1.24 per regulated channel. The New Jersey Board suggests that the presumption of reasonableness that will attach to such a rate, coupled with the limitations on the information it can demand from the operator, effectively will preclude it from determining whether a particular rate is reasonable. We disagree.

27. We understand the frustration of the New Jersey Board with respect to its prior expenditure of resources in accordance with the standard cost of service rules. We note, however, that those expenditures were made with notice of the possibility that we would modify the rules governing small systems. Unfortunately, rule changes and rule modifications sometimes lead to inefficiencies and disruptions for both the regulator and the regulated. We are forced to balance these factors against the impact of delaying implementation of the new rule. Since the Service Electric case is the only matter in which a franchising authority has articulated this concern, we cannot conclude that the problem is so significant to require us to reconsider our prior decision. We do not believe that the Small System Order will result in squandered resources even in the Service Electric case. The efforts already expended by the New Jersey Board in amassing data and making factual determinations will not have been wasted since they are relevant when the New Jersey Board decides the rate case in accordance with the small system rules.

28. More generally, we disagree with the New Jersey Board's characterization of the permissible scope of information requests that a franchising authority may make when reviewing Form 1230. The Small System Order expressly recognizes the right of franchising authorities to obtain ''the information necessary for judging the validity'' of the filing. No information has been submitted to indicate that anything more than what this rule permits is necessary.

29. We further find that the New Jersey Board has failed to raise a valid argument against imposing the burden of proof on the franchising authority when the rate in question does not exceed $1.24 per channel. What it terms an ''unprecedented shift in the burden of proof'' is the logical extension of our determination that rates at or below $1.24 per regulated channel appear reasonable. The New Jersey Board does not challenge the analysis by which we arrived at the rate of $1.24 per channel. While not disputing that rates at or below $1.24 per channel can be presumed reasonable, the New Jersey Board would ignore this finding in individual rate proceedings and continue to place upon the cable operator the burden of establishing the reasonableness of its requested rate, regardless of the amount. We believe that having made the determination that rates at or below $1.24 per channel may by presumed reasonable, we should shift the burden of proof to the franchising authority when the operator seeks to justify rates that do not exceed that amount. The New Jersey Board does not contest this analysis and therefore we have no basis to reconsider our decision.

30. For these reasons, we hereby deny the New Jersey Board's Petition. The New Jersey Board presents the same arguments in its Motion for Stay as it does in its Petition. Therefore, for the same reasons that we deny its Petition, we also deny the New Jersey Board's Motion for Stay.

C. Other Matters

31. On our own motion, we clarify one aspect of our rule that allocates the burden of establishing whether the rate claimed by a cable operator under the small system cost of service methodology is reasonable. As discussed above, the current rule states: ''If the maximum rate established on Form 1230 does not exceed $1.24 per channel, the rate shall be rebuttably presumed reasonable.'' Thus, the current wording of the rule suggests that the burden depends on the maximum rate permitted by Form 1230, not on the rate that the operator intends to charge. Such an interpretation would create an anomaly where an operator determines that its maximum permitted rate is above $1.24 per regulated channel, but does not actually intend to charge more than $1.24. We did not intend for the operator to have the burden of overcoming all of the presumptions we generally found to be inappropriate for eligible small systems, if the actual rate the operator seeks to charge is within the zone of what we presume to be reasonable. To eliminate this potential confusion, we hereby clarify that the presumption of reasonableness shall apply as long as the actual rate to be charged does not exceed $1.24 per regulated channel, regardless of whether the maximum permitted rate, as calculated on Form 1230, exceeds that amount. The burden shall shift back to the operator once it seeks to actually raise rates above the $1.24 per channel threshold.

32. We also take this opportunity to correct three editing errors that appeared in the rules appendix to the Small System Order. These corrections do not amend the substance of the rules in any way.

33. In the Small System Order, we provided for the treatment of a small system that properly sets its rates in

accordance with the small system cost of service methodology, but later experiences a change in its status, either because the system exceeds the 15,000-subscriber cap for a small system or because the operator exceeds the 400,000-subscriber threshold for a small cable company. While the text of the order explained the regulatory effect of such a transition, the accompanying rules did not. Here we amend the rules consistent with the text of the Small System Order.

34. As discussed above, the Small System Order provided for the application of the small system cost of service rules to cases pending as of the release date of the order if the cable operator in question met the subscriber threshold criteria as of the release date and as of the date the system became subject to rate regulation. The rules appendix inadvertently referred to the effective date, instead of the release date, of the Small System Order for purposes of this rule. We hereby revise the text of § 76.934(h)(9) of our rules to conform it with our intent as set forth in the Small System Order.

35. Due to an editing error, the rules appendix to the Small System Order did not accurately indicate that we were revising the eligibility criteria for streamlined rate reduction to incorporate the new small system and small cable company definitions established in the Small System Order. We hereby amend § 76.922(b)(5) of our rules to conform it with our intent as set forth in the Small System Order.

V. Final Regulatory Flexibility Certification

36. As permitted by Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), (''RFA''), we certify that a regulatory flexibility analysis is not necessary because the amendments to the rules adopted in this order will not impose a significant economic impact on a substantial number of small entities as defined by statute, by our rules, or by the Small Business Administration. 5 U.S.C. 605(b). Three of the amendments merely correct the rules and have no substantive effect. In addition, we clarified that the operator's presumption of reasonableness is preserved when the operator's actual rate charged does not exceed $1.24 per regulated channel, regardless of the maximum permitted rate calculated on Form 1230. Because this clarification will benefit small systems owned by small cable companies, we believe a regulatory flexibility analysis is unnecessary. This certification conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

37. The Commission will send a copy of this certification, along with this 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).

VI. Ordering Clauses

38. 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, the petitions for reconsideration filed by the Georgia Municipal Association and the New Jersey Board of Public Utilities, and the Motion for Stay filed by the New Jersey Board of Public Utilities, *are denied*.

39. *It Is Further 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, 76.922 and 76.934 of the Commission's rules, 47 CFR 76.922 and 76.934, *are amended* as set forth below.

40. *It Is Further Ordered* that the Commission *shall send* a copy of this Fourteenth Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

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)(5)(i) introductory text to read as follows.

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

* * * * *

(b) * * *

(5) *Streamlined rate reductions.* (i) Upon becoming subject to rate regulation, a small system owned by a small cable company may make a streamlined rate reduction, subject to the following conditions, in lieu of establishing initial rates pursuant to the other methods of rate regulation set forth in this subpart:

* * * * *

3. Section 76.934 is amended by revising paragraphs (h)(5)(i) and (h)(9) and by adding paragraph (h)(11) to read as follows:

§ 76.934 Small systems and small cable companies.

* * * * *

(h) * * *

(5) * * *

(i) If the maximum rate established on Form 1230 does not exceed $1.24 per channel, the rate shall be rebuttably presumed reasonable. To disallow such a rate, the franchising authority shall bear the burden of showing that the operator did not reasonably interpret and allocate its cost and expense data in deriving its annual operating expenses, its net rate base, and a reasonable rate of return. If the maximum rate established on Form 1230 exceeds $1.24 per channel, the franchising authority shall bear such burden only if the rate that the cable operator actually seeks to charge does not exceed $1.24 per channel.

* * * * *

(9) In any rate proceeding before a franchising authority in which a final decision had not been issued as of June 5, 1995, a small system owned by a small cable company may elect the form of rate regulation set forth in this section to justify the rates that are the subject of the proceeding, if the system and affiliated company were a small system and small company respectively as of the June 5, 1995 and as of the period during which the disputed rates were in effect. However, the validity of a final rate decision made by a franchising authority before June 5, 1995 is not affected.

* * * * *

(11) A system that is eligible to establish its rates in accordance with the small system cost-of-service approach shall remain eligible for so long as the system serves no more than 15,000 subscribers. When a system that has established rates in accordance with the small system cost-of-service approach exceeds 15,000 subscribers, the system

may maintain its then existing rates. After exceeding the 15,000 subscriber limit, any further rate adjustments shall not reflect increases in external costs, inflation or channel additions until the system has re-established initial permitted rates in accordance with some other method of rate regulation prescribed in this subpart.

[FR Doc. 97–27151 Filed 10–14–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 100797B]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna General Category

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

ACTION: Opening of the New York Bight fishery.

SUMMARY: NMFS opens the Atlantic bluefin tuna (ABT) General category New York Bight fishery. This action is being taken to extend the season for the General category, provide for fishing opportunities in the New York Bight area, and ensure additional collection of biological assessment and monitoring data.

DATES: Effective October 9, 1997, 1 a.m. local time until December 31, 1997, or until the date, published in the **Federal Register**, that the set-aside quota is determined to have been taken.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301-713-2347, or Pat Scida, 508-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a subquota of 72 mt of large medium and giant ABT to be harvested from the regulatory area by vessels permitted in the General category during the period beginning October 1 and ending December 31. Due to an overharvest of 1 mt in the September period subquota, and the transfer of 70 mt from other categories (62 FR 51608, October 2, 1997), the October-December period subquota was adjusted to 141 mt. The October-December subquota is divided into a coastwide subquota of 131 mt and 10 mt for the traditional fall New York Bight set-aside area, defined as the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. (Delaware Bay).

NMFS previously announced the closure of the General category fishery for the October-December time period effective October 5, 1997, which published in the **Federal Register** on October 9, 1997. After tallying the landings following the closure, NMFS has determined the remaining unharvested coastwide quota (approximately 10 mt) is insufficient to warrant a reopening of the coastwide General category because daily catch rates in September and October have averaged 30 mt.

The New York Bight set-aside of 10 mt will open effective Thursday, October 9, at 1 a.m. local time. Upon the effective date of the New York Bight set-aside, persons aboard vessels permitted in the General category may fish for, retain, possess, or land large medium and giant ABT only in the New York Bight set-aside area specified above, until the set-aside quota for that area has been harvested. ABT harvested from waters outside the defined set-aside area may not be brought into the set-aside area. Vessels permitted in the Charter/Headboat category, when fishing for large medium and giant ABT, are subject to the same rules as General category vessels when the General category is open.

The announcement of the closure date will be filed with the Office of the Federal Register, and further communicated through the Highly Migratory Species (HMS) Fax Network, the HMS Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the HMS Information Line to check the status of the fishery before leaving for a fishing trip. The phone numbers for the HMS Information Line are (301) 713-1279 and (508) 281-9305. Information regarding the Atlantic tuna fisheries is also available toll-free through NextLink Interactive, Inc., at (888) USA-TUNA.

Classification

This action is taken under 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: October 8, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 961227373–6373–01; I.D. 092497C]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Nontrawl Sablefish Mop-Up Fishery; Announcement of Extension

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

ACTION: Nontrawl sablefish mop-up fishery and delay of the limited entry daily trip limit fishery; announcement of extension.

SUMMARY: NMFS announces the extension of and new ending date for the mop-up fishery for nontrawl limited entry sablefish. This action will delay the beginning of the October limited entry daily trip limit fishery. This action is taken in response to unusually bad coastwide weather during the first week of the mop-up fishery. This action is intended to increase safety while providing for harvest of the remainder of the 1997 limited entry nontrawl allocation for sablefish.

DATES: This action is effective on October 9, 1997. The nontrawl sablefish mop-up fishery began at 1201 hours local time (l.t.), October 1, 1997, and will end at 1200 hours l.t., October 22, 1997, at which time the limited entry daily trip limit fishery resumes. The daily trip limits for the nontrawl sablefish fishery will remain in effect until the effective date of the 1998 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through October 22, 1997.

ADDRESSES: Comments on these actions should be sent to William Stelle, Jr.,