

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 76****[MB Docket No. 02-144; FCC 02-177]****RIN: 4102****Revisions to Cable Television Rate Regulations****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: This document clarifies how the Commission will review appeals of local rate orders regarding adjustments to cable television rates for the basic service tier pending resolution of the issues in the *Notice of Proposed Rulemaking* published elsewhere in this issue.

EFFECTIVE DATE: September 5, 2002.

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SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Order for Interim Rate Adjustments for BST Channel Charges* ("Order") MB 02-144, FCC 02-177, adopted June 13, 2002 and released June 19, 2002, as corrected by *Order* MB-02-144, FCC 02-228 adopted August 6, 2002 and released August 14, 2002. The complete texts of these orders are available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY-B-402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com.

Synopsis of Order*Interim Rate Adjustments for BST Channel Changes*

1. In light of the confusion created by section 76.922(g)(8) of the Commission's rules and the intent expressed in the *Going Forward Order* that there be some mechanism for dealing with channel changes if the incentives in paragraph (g) were not renewed, we clarify how channel changes should be handled pending action on the Notice of Proposed Rule Making. See 47 CFR 76.922(g); *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation* ("Going Forward Order"), 59 FR 62614, December 6,

1994. We base this clarification on the provisions in paragraphs (g) and (h) and Forms 1210 and 1240 for the basic service tier ("BST"), which are understood by cable operators and franchising authorities. We also take into consideration the sunset of cable programming service tier ("CPST") rate regulation. For rate adjustments filed with franchising authorities after this clarification, franchising authorities reviewing rates should accept rate adjustments for channels added to the BST using the per channel adjustment factor in § 76.922(g)(2), based on the number of channels that would have been subject to regulation if CPST rate regulation had not ended. Franchising authorities should also accept and may require rate adjustments for channel deletions and substitutions consistent with § 76.922(g)(4) and (g)(6), respectively. The calculations should be done using FCC Forms 1210 and 1240. We will review appeals of local rate orders consistent with this approach. We recognize that some operators removing channels from the BST before this clarification may have read paragraph 98 of the *Going Forward Order* to allow BST rate adjustments based on the per channel adjustment factors from the table in § 76.922(g)(2), and previously in 47 CFR 76.922(e)(1994).

2. In reviewing any appeals of local rate orders regarding this methodology, we will consider an operator's use of this methodology before this clarification to be reasonable; provided that, for systems moving a substantial number of channels from the BST to a CPST, the resulting overall rate structure is reasonable; and further provided that this methodology is generally consistent with the system's methodology for its rate adjustments for the majority of any channels moved from the CPST to the BST on or after the January 1, 1998 sunset of paragraph (g). In reviewing appeals of local rate orders concerning rate adjustments for the movement of channels from the CPST to the BST, we will find reasonable adjustments that are consistent with § 76.922(g)(5) and the Commission's rate forms for CPST channels moved on or before March 31, 1999, the sunset of CPST rate regulation; provided that the rate adjustments are computed from CPST rates that were subject to rate regulation; and further provided that adjustments for channels moved from the BST during this same period were computed consistently with § 76.922(g)(5) and the Commission's rate forms.

3. The provisions in § 76.922(f), (g) of the Commission's rules concerning

external costs, including the permitted 7.5% mark-up on programming cost increases, continue to apply. This clarification is consistent with Commission rate forms, which have remained in effect since their adoption, and with the Commission's handling of rate complaints and stays of local rate appeals. Without this clarification, subscribers may experience a decrease or change in BST service without a corresponding adjustment to their rates. The clarification with respect to the movement of channels between tiers maintains the balance between regulated revenue sources, which has been a consistent part of our rate regulations, for the period that the CPST was subject to rate regulation. Because of our concern about determining the CPST residual from unregulated rates, we will not find franchising authority orders unreasonable for disallowing the movement of an unregulated residual amount for channels moved from the CPST to the BST after the sunset of CPST rate regulation. However, franchising authorities that have accepted such a residual movement from the CPST to the BST either in orders or by inaction within the period for reviewing a Form 1240 should not change that determination in the true-up process. Our intent with these interim guidelines is to create some stability in the rate-making process pending resolution of this proceeding, not to overturn rate adjustments previously accepted based on a good faith interpretation of our rules and rate forms.

4. At the conclusion of the rulemaking proceeding, we will consider whether BST rates should be adjusted to conform to the structure adopted by the Commission. In addition, in the *Order* we clarify how operators using FCC Form 1240 and Worksheet 4 of that form may compute the channel residual during the interim period. The instructions for Worksheet 4 direct operators projecting their next maximum permitted rate to compute the residual using their previous average permitted charge, which is the charge projected in the previous rate form and entered on Line A1 of the current rate form. The instructions then direct the operator to subtract average external costs and average total per channel adjustments for "Caps Method" channels using figures from Line 710 of Worksheet 7 and Line 214 of Worksheet 2 for "the appropriate period." The instructions also direct the operator to use the average number of channels on the system for "the appropriate period." We clarify that, when computing the

channel residual for the new projected period, operators may use the projected period from the previous Form 1240 as the appropriate period. In this way, the projected external costs, Caps Method per channel adjustment, and channel count used to calculate the permitted charge shown on Line 401 for the projected period would be used to adjust it for computing the residual.

Ordering Clause

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

U.S.C. 154(i), and 543, and § 1.108 of the Commission's Rules, 47 CFR 1.108.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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