

competition, may require the subscription to any tier other than the basic service tier as a condition of subscription to video programming offered on a per channel or per program charge basis. A cable operator may, however, require the subscription to one or more tiers of cable programming services as a condition of access to one or more tiers of cable programming services.

(b) A cable operator not subject to effective competition may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per-channel or per-program charge basis.

(c) With respect to cable systems not subject to effective competition, prior to October 5, 2002, the provisions of paragraph (a) of this section shall not apply to any cable system that lacks the capacity to offer basic service and all programming distributed on a per channel or per program basis without also providing other intermediate tiers of service:

(1) By controlling subscriber access to nonbasic channels of service through addressable equipment electronically controlled from a central control point; or

(2) Through the installation, non-installation, or removal of frequency filters (traps) at the premises of subscribers without other alteration in system configuration or design and without causing degradation in the technical quality of service provided.

(d) With respect to cable systems not subject to effective competition, any retiering of channels or services that is not undertaken in order to accomplish legitimate regulatory, technical, or customer service objectives and that is intended to frustrate or has the effect of frustrating compliance with paragraphs (a) through (c) of this section is prohibited.

[62 FR 6495, Feb. 12, 1997]

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

(a) *Basic and cable programming service tier rates.* Basic service tier and cable programming service rates shall be subject to regulation by the Commission and by state and local authorities,

as is appropriate, in order to assure that they are in compliance with the requirements of 47 U.S.C. 543. Rates that are demonstrated, in accordance with this part, not to exceed the "Initial Permitted Per Channel Charge" or the "Subsequent Permitted Per Channel Charge" as described in this section, or the equipment charges as specified in § 76.923, will be accepted as in compliance. The maximum monthly charge per subscriber for a tier of regulated programming services offered by a cable system shall consist of a permitted per channel charge multiplied by the number of channels on the tier, plus a charge for franchise fees. The maximum monthly charges for regulated programming services shall not include any charges for equipment or installations. Charges for equipment and installations are to be calculated separately pursuant to § 76.923. The same rate-making methodology (either the benchmark methodology found in paragraph (b) of this section, or a cost-of-service showing) shall be used to set initial rates on all rate regulated tiers, and shall continue to provide the basis for subsequent permitted charges.

(b) *Permitted charge on May 15, 1994.*

(1) The permitted charge for a tier of regulated program service shall be, at the election of the cable system, either:

(i) A rate determined pursuant to a cost-of-service showing;

(ii) The full reduction rate;

(iii) The transition rate, if the system is eligible for transition relief; or

(iv) A rate based on a streamlined rate reduction, if the system is eligible to implement such a rate reduction. Except where noted, the term "rate" in this subsection means a rate measured on an average regulated revenue per subscriber basis.

(2) *Full reduction rate.* The "full reduction rate" on May 15, 1994 is the system's September 30, 1992 rate, measured on an average regulated revenue per subscriber basis, reduced by 17 percent, and then adjusted for the following:

(i) The establishment of permitted equipment rates as required by § 76.923;

(ii) Inflation measured by the GNP-PI between October 1, 1992 and September 30, 1993;

(iii) Changes in the number of program channels subject to regulation that are offered on the system's program tiers between September 30, 1992 and the earlier of the initial date of regulation for any tier or February 28, 1994; and

(iv) Changes in external costs that have occurred between the earlier of the initial date of regulation for any tier or February 28, 1994, and March 31, 1994.

(3) *March 31, 1994 benchmark rate.* The "March 31, 1994 benchmark rate" is the rate so designated using the calculations in Form 1200.

(4) *Transition rates—(i) Termination of transition relief for systems other than low price systems.* Systems other than low-price systems that already have established a transition rate as of the effective date of this rule may maintain their current rates, as adjusted under the price cap requirements of § 76.922(d), until two years from the effective date of this rule. These systems must begin charging reasonable rates in accordance with applicable rules, other than transition relief, no later than that date.

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

(A) A low-price system is a system:

(1) Whose March 31, 1994 rate is below its March 31, 1994 benchmark rate, or

(2) Whose March 31, 1994 rate is above its March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below its March 31, 1994 benchmark rate, as defined in § 76.922(b)(2), above.

(B) The transition rate on May 15, 1994 for a system whose March 31, 1994 rate is below its March 31, 1994 benchmark rate is the system's March 31, 1994 rate. The March 31, 1994 rate is in both cases adjusted:

(1) To establish permitted rates for equipment as required by § 76.923 if such rates have not already been established; and

(2) For changes in external costs incurred between the earlier of initial date of regulation of any tier or February 28, 1994, and March 31, 1994, to the extent changes in such costs are not already reflected in the system's March 31, 1994 rate. The transition rate on May 15, 1994 for a system whose

March 31, 1994 adjusted rate is above its March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below its March 31, 1994 benchmark rate, is the March 31, 1994 benchmark rate, adjusted to establish permitted rates for equipment as required by § 76.923 if such rates have not already been established.

(iii) Notwithstanding the foregoing, the transition rate for a tier shall be adjusted to reflect any determination by a local franchising authority and/or the Commission that the rate in effect on March 31, 1994 was higher (or lower) than that permitted under applicable Commission regulations. A filing reflecting the adjusted rate shall be submitted to all relevant authorities within 30 days after issuance of the local franchising authority and/or Commission determination. A system whose March 31, 1994 rate is determined by a local franchising authority or the Commission to be too high under the Commission's rate regulations in effect before May 15, 1994 will be subject to any refund liability that may accrue under those rules. In addition, the system will be liable for refund liability under the rules in effect on and after May 15, 1994. Such refund liability will be measured by the difference in the system's March 31, 1994 rate and its permitted March 31, 1994 rate as calculated under the Commission's rate regulations in effect before May 15, 1994. The refund liability will accrue according to the time periods set forth in §§ 76.942, and 76.961 of the Commission's rules.

(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:

(A) Small systems that are owned by small cable companies and that have not already restructured their rates to comply with the Commission's rules may establish rates for regulated program services and equipment by making a streamlined rate reduction. Small systems owned by small cable companies shall not be eligible for streamlined rate reductions if they are

owned or controlled by, or are under common control or affiliated with, a cable operator that exceeds these subscriber limits. For purposes of this rule, a small system will be considered "affiliated with" such an operator if the operator has a 20 percent or greater equity interest in the small system.

(B) The streamlined rate for a tier on May 15, 1994 shall be the system's March 31, 1994 rate for the tier, reduced by 14 percent. A small system that elects to establish its rate for a tier by implementing this streamlined rate reduction must also reduce, at the same time, each billed item of regulated cable service, including equipment, by 14 percent. Regulated rates established using the streamlined rate reduction process shall remain in effect until:

(1) Adoption of a further order by the Commission establishing a schedule of average equipment costs;

(2) The system increases its rates using the calculations and time periods set forth in FCC Form 1211; or

(3) The system elects to establish permitted rates under another available option set forth in paragraph (b)(1) of this section.

(C) *Implementation and notification.* An eligible small system that elects to use the streamlined rate reduction process must implement the required rate reductions and provide written notice of such reductions to subscribers, the local franchising authority and the Commission according to the following schedule:

(1) Within 60 days from the date it receives the initial notice of regulation from the franchising authority or the Commission, the small system must provide written notice to subscribers and the franchising authority, or to the Commission if the Commission is regulating the basic tier, that it is electing to set its regulated rates by the streamlined rate reduction process. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided to subscribers and the local franchise authority or Commission.

(2) If a cable programming services complaint is filed against the system, the system must provide the required written notice, described in paragraph

(b)(5)(iii)(C)(1) of this section, to subscribers, the local franchising authority or the Commission within 60 days after the complaint is filed. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided.

(3) A small system is required to give written notice of, and to implement, the rates that are produced by the streamlined rate reduction process only once. If a system has already provided notice of, and implemented, the streamlined rate reductions when a given tier becomes subject to regulation, it must report to the relevant regulator (either the franchising authority or the Commission) in writing within 30 days of becoming subject to regulation that it has already provided the required notice and implemented the required rate reductions.

(ii) The streamlined rate for a tier on May 15, 1994 shall be the system's March 31, 1994 rate for the tier, reduced by 14 percent. A small system that elects to establish its rate for a tier by implementing this streamlined rate reduction must also reduce, at the same time, each billed item of regulated cable service, including equipment, by 14 percent. Regulated rates established using the streamlined rate reduction process shall remain in effect until:

(A) Adoption of a further order by the Commission establishing a schedule of average equipment costs;

(B) The system increases its rates using the calculations and time periods set forth in FCC Form 1211; or

(C) The system elects to establish permitted rates under another available option set forth in paragraph (b)(1) of this section.

(iii) *Implementation and notification.* An eligible small system that elects to use the streamlined rate reduction process must implement the required rate reductions and provide written notice of such reductions to subscribers, the local franchising authority and the Commission according to the following schedule:

(A) Where the franchising authority has been certified by the Commission to regulate the small system's basic service tier rates as of May 15, 1994, the system must notify the franchising authority and its subscribers in writing

that it is electing to set its regulated rates by the streamline rate reduction process. Such notice must be given by June 15, 1994, and must also describe the new rates that will result from the streamlined rate reduction process. Those rates must then be implemented within 30 days after the written notification has been provided to subscribers and the local franchising authority.

(B) Where the franchising authority has not been certified to regulate basic service tier rates by May 15, 1994, the small system must provide the written notice to subscribers and the franchising authority, described in paragraph (b)(5)(iii)(A) of this section, within 30 days from the date it receives the initial notice of regulation from the franchising authority. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided to subscribers and the local franchise authority.

(C) Where the Commission is regulating the small system's basic service tier rates as of May 15, 1994, the system must notify the Commission and its subscribers in writing that it is electing to set its regulated rates by the streamlined rate reduction process. Such notice must be given by June 15, 1994, and must also describe the new rates that will result from the streamlined rate reduction process. Those rates must then be implemented within 30 days after the written notification has been provided to subscribers and the Commission.

(D) Where the Commission begins regulating basic service rates after May 15, 1994, the small system must provide the written notice to subscribers and the Commission, described in paragraph (b)(5)(iii)(C) of this section, within 30 days from the date it receives an initial notice of regulation. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided to subscribers and the Commission.

(E) If a complaint about its cable programming service rates has been filed with the Commission on or before May 15, 1994, the small system must provide the written notice described in paragraph (b)(5)(iii)(A) of this section, to

subscribers, the local franchising authority and the Commission by June 15, 1994. If a cable programming services complaint is filed against the system after May 15, 1994, the system must provide the required written notice to subscribers, the local franchising authority or the Commission within 30 days after the complaint is filed. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided.

(F) A small system is required to give written notice of, and to implement, the rates that are produced by the streamlined rate reduction process only once. If a system has already provided notice of, and implemented, the streamlined rate reductions when a given tier becomes subject to regulation, it must report to the relevant regulator (either the franchising authority or the Commission) in writing within 30 days of becoming subject to regulation that it has already provided the required notice and implemented the required rate reductions.

(6) *Establishment of initial regulated rates.* (i) Cable systems, other than those eligible for streamlined rate reductions, shall file FCC Forms 1200, 1205, and 1215 for a tier that is regulated on May 15, 1994 by June 15, 1994, or thirty days after the initial date of regulation for the tier. A system that becomes subject to regulation for the first time on or after July 1, 1994 shall also file FCC Form 1210 at the time it files FCC Forms 1200, 1205 and 1215.

(ii) A cable system will not incur refund liability under the Commission's rules governing regulated cable rates on and after May 15, 1994 if:

(A) Between March 31, 1994 and July 14, 1994, the system does not change the rate for, or restructure in any fashion, any program service or equipment offering that is subject to regulation under the 1992 Cable Act; and

(B) The system establishes a permitted rate defined in paragraph (b) of this section by July 14, 1994. The deferral of refund liability permitted by this subsection will terminate if, after March 31, 1994, the system changes any rate for, or restructures, any program service or equipment offering subject

to regulation, and in all events will expire on July 14, 1994. Moreover, the deferral of refund liability permitted by this paragraph does not apply to refund liability that occurs because the system's March 31, 1994 rates for program services and equipment subject to regulation are higher than the levels permitted under the Commission's rules in effect before May 15, 1994.

(7) For purposes of this section, the initial date of regulation for the basic service tier shall be the date on which notice is given pursuant to § 76.910, that the provision of the basic service tier is subject to regulation. For a cable programming services tier, the initial date of regulation shall be the first date on which a complaint on the appropriate form is filed with the Commission concerning rates charged for the cable programming services tier.

(8) For purposes of this section, rates in effect on the initial date of regulation or on September 30, 1992 shall be the rates charged to subscribers for service received on that date.

(9) *Updating data calculations.* (i) For purposes of this section, if:

(A) A cable operator, prior to becoming subject to regulation, revised its rates to comply with the Commission's rules; and

(B) The data on which the cable operator relied was current and accurate at the time of revision, and the rate is accurate and justified by the prior data; and

(C) Through no fault of the cable operator, the rates that resulted from using such data differ from the rates that would result from using data current and accurate at the time the cable operator's system becomes subject to regulation; then the cable operator is not required to change its rates to reflect the data current at the time it becomes subject to regulation.

(ii) Notwithstanding the above, any subsequent changes in a cable operator's rates must be made from rate levels derived from data [that was current as of the date of the rate change].

(iii) For purposes of this subsection, if the rates charged by a cable operator are not justified by an analysis based on the data available at the time it initially adjusted its rates, the cable operator must adjust its rates in accord-

ance with the most accurate data available at the time of the analysis.

(c) *Subsequent permitted charge.* (1) The permitted charge for a tier after May 15, 1994 shall be, at the election of the cable system, either:

(i) A rate determined pursuant to a cost-of-service showing,

(ii) A rate determined by application of the Commission's price cap requirements set forth in paragraph (d) of this section to a permitted rate determined in accordance with paragraph (b) of this section, or

(iii) A rate determined by application of the Commission's price cap requirements set forth in paragraph (e) of this section to a permitted rate determined in accordance with paragraph (b) of this section.

(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.

(3) An operator may switch between the quarterly rate adjustment option contained in paragraph (d) of this section and the annual rate adjustment option contained in paragraph (e) of this section, provided that:

(i) Whenever an operator switches from the current quarterly system to the annual system, the operator may not file a Form 1240 earlier than 90 days after the operator proposed its last rate adjustment on a Form 1210; and

(ii) When an operator changes from the annual system to the quarterly system, the operator may not return to a quarterly adjustment using a Form 1210 until a full quarter after it has

filed a true up of its annual rate on a Form 1240 for the preceding filing period.

(4) An operator that does not set its rates pursuant to a cost-of-service filing must use the quarterly rate adjustment methodology pursuant to paragraph (d) of this section or annual rate adjustment methodology pursuant to paragraph (e) of this section for both its basic service tier and its cable programming services tier(s).

(d) *Quarterly rate adjustment method—*

(1) *Calendar year quarters.* All systems using the quarterly rate adjustment methodology must use the following calendar year quarters when adjusting rates under the price cap requirements. The first quarter shall run from January 1 through March 31 of the relevant year; the second quarter shall run from April 1 through June 30; the third quarter shall run from July 1 through September 30; and the fourth quarter shall run from October 1 through December 31.

(2) *Inflation adjustments.* The residual component of a system's permitted charge may be adjusted annually for inflation. The annual inflation adjustment shall be used on inflation occurring from June 30 of the previous year to June 30 of the year in which the inflation adjustment is made, except that the first annual inflation adjustment shall cover inflation from September 30, 1993 until June 30 of the year in which the inflation adjustment is made. The adjustment may be made after September 30, but no later than August 31, of the next calendar year. Adjustments shall be based on changes in the Gross National Product Price Index as published by the Bureau of Economic Analysis of the United States Department of Commerce. Cable systems that establish a transition rate pursuant to paragraph (b)(4) of this section may not begin adjusting rates on account of inflation before April 1, 1995. Between April 1, 1995 and August 31, 1995 cable systems that established a transition rate may adjust their rates to reflect the net of a 5.21% inflation adjustment minus any inflation adjustments they have already received. Low price systems that had their March 31, 1994 rates above the benchmark, but their full reduction

rate below the benchmark will be permitted to adjust their rates to reflect the full 5.21% inflation factor unless the rate reduction was less than the inflation adjustment received on an FCC Form 393 for rates established prior to May 15, 1994. If the rate reduction established by a low price system that reduced its rate to the benchmark was less than the inflation adjustment received on an FCC Form 393, the system will be permitted to receive the 5.21% inflation adjustment minus the difference between the rate reduction and the inflation adjustment the system made on its FCC Form 393. Cable systems that established a transition rate may make future inflation adjustments on an annual basis with all other cable operators, no earlier than October 1 of each year and no later than August 31 of the following year to reflect the final GNP-PI through June 30 of the applicable year.

(3) *External costs.* (i) Permitted charges for a tier may be adjusted up to quarterly to reflect changes in external costs experienced by the cable system as defined by paragraph (f) of this section. In all events, a system must adjust its rates annually to reflect any decreases in external costs that have not previously been accounted for in the system's rates. A system must also adjust its rates annually to reflect any changes in external costs, inflation and the number of channels on regulated tiers that occurred during the year if the system wishes to have such changes reflected in its regulated rates. A system that does not adjust its permitted rates annually to account for those changes will not be permitted to increase its rates subsequently to reflect the changes.

(ii) A system must adjust its rates in the next calendar year quarter for any decrease in programming costs that results from the deletion of a channel or channels from a regulated tier.

(iii) Any rate increase made to reflect an increase in external costs must also fully account for all other changes in external costs, inflation and the number of channels on regulated tiers that occurred during the same period. Rate adjustments made to reflect changes in external costs shall be based

on any changes in those external costs that occurred from the end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable). A system may adjust its rates after the close of a quarter to reflect changes in external costs that occurred during that quarter as soon as it has sufficient information to calculate the rate change.

(e) *Annual rate adjustment method—(1) Generally.* Except as provided for in paragraphs (e)(2)(iii)(B) and (e)(2)(iii)(C) of this section and Section 76.923(o), operators that elect the annual rate adjustment method may not adjust their rates more than annually to reflect inflation, changes in external costs, changes in the number of regulated channels, and changes in equipment costs. Operators that make rate adjustments using this method must file on the same date a Form 1240 for the purpose of making rate adjustments to reflect inflation, changes in external costs and changes in the number of regulated channels and a Form 1205 for the purpose of adjusting rates for regulated equipment and installation. Operators may choose the annual filing date, but they must notify the franchising authority of their proposed filing date prior to their filing. Franchising authorities or their designees may reject the annual filing date chosen by the operator for good cause. If the franchising authority finds good cause to reject the proposed filing date, the franchising authority and the operator should work together in an effort to reach a mutually acceptable date. If no agreement can be reached, the franchising authority may set the filing date up to 60 days later than the date chosen by the operator. An operator may change its filing date from year-to-year, but except as described in paragraphs (e)(2)(iii)(B) and (e)(2)(iii)(C) of this section, at least twelve months must pass before the operator can implement its next annual adjustment.

(2) *Projecting inflation, changes in external costs, and changes in number of regulated channels.* An operator that elects the annual rate adjustment

method may adjust its rates to reflect inflation, changes in external costs and changes in the number of regulated channels that are projected for the 12 months following the date the operator is scheduled to make its rate adjustment pursuant to Section 76.933(g).

(i) *Inflation Adjustments.* The residual component of a system's permitted charge may be adjusted annually to project for the 12 months following the date the operator is scheduled to make a rate adjustment. The annual inflation adjustment shall be based on inflation that occurred in the most recently completed July 1 to June 30 period. Adjustments shall be based on changes in the Gross National Product Price Index as published by the Bureau of Economic Analysis of the United States Department of Commerce.

(ii) *External costs.* (A) Permitted charges for a tier may be adjusted annually to reflect changes in external costs experienced but not yet accounted for by the cable system, as well as for projections in these external costs for the 12-month period on which the filing is based. In order that rates be adjusted for projections in external costs, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. Projections involving copyright fees, retransmission consent fees, other programming costs, Commission regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. Operators may project for increases in franchise related costs to the extent that they are reasonably certain and reasonably quantifiable, but such changes are not presumed reasonably certain and reasonably quantifiable. Operators may pass through increases in franchise fees pursuant to Section 76.933(g).

(B) In all events, a system must adjust its rates every twelve months to reflect any net decreases in external costs that have not previously been accounted for in the system's rates.

(C) Any rate increase made to reflect increases or projected increases in external costs must also fully account for all other changes and projected changes in external costs, inflation and the number of channels on regulated tiers that occurred or will occur during

the same period. Rate adjustments made to reflect changes in external costs shall be based on any changes, plus projections, in those external costs that occurred or will occur in the relevant time periods since the periods used in the operator's most recent previous FCC Form 1240.

(iii) *Channel adjustments.* (A) Permitted charges for a tier may be adjusted annually to reflect changes not yet accounted for in the number of regulated channels provided by the cable system, as well as for projected changes in the number of regulated channels for the 12-month period on which the filing is based. In order that rates be adjusted for projected changes to the number of regulated channels, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable.

(B) An operator may make rate adjustments for the addition of required channels to the basic service tier that are required under federal or local law at any time such additions occur, subject to the filing requirements of Section 76.933(g)(2), regardless of whether such additions occur outside of the annual filing cycle. Required channels may include must-carry, local origination, public, educational and governmental access and leased access channels. Should the operator elect not to pass through the costs immediately, it may accrue the costs of the additional channels plus interest, as described in paragraph (e)(3) of this section.

(C) An operator may make one additional rate adjustment during the year to reflect channel additions to the cable programming services tiers or, where the operator offers only one regulated tier, the basic service tier. Operators may make this additional rate adjustment at any time during the year, subject to the filing requirements of Section 76.933(g)(2), regardless of whether the channel addition occurs outside of the annual filing cycle. Should the operator elect not to pass through the costs immediately, it may accrue the costs of the additional channels plus interest, as described in paragraph (e)(3) of this section.

(3) *True-up and accrual of charges not projected.* As part of the annual rate adjustment, an operator must "true up"

its previously projected inflation, changes in external costs and changes in the number of regulated channels and adjust its rates for these actual cost changes. The operator must decrease its rates for overestimation of its projected cost changes, and may increase its rates to adjust for underestimation of its projected cost changes.

(i) Where an operator has underestimated costs, future rates may be increased to permit recovery of the accrued costs plus 11.25% interest between the date the costs are incurred and the date the operator is entitled to make its rate adjustment.

(ii) *Per channel adjustment.* Operators may increase rates by a per channel adjustment of up to 20 cents per subscriber per month, exclusive of programming costs, for each channel added to a CPST between May 15, 1994, and December 31, 1997, except that an operator may take the per channel adjustment only for channel additions that result in an increase in the highest number of channels offered on all CPSTs as compared to May 14, 1994, and each date thereafter. Any revenues received from a programmer, or shared by a programmer and an operator in connection with the addition of a channel to a CPST shall first be deducted from programming costs for that channel pursuant to paragraph (d)(3)(x) of this section and then, to the extent revenues received from the programmer are greater than the programming costs, shall be deducted from the per channel adjustment. This deduction will apply on a channel by channel basis. With respect to the per channel adjustment only, this deduction shall not apply to revenues received by an operator from a programmer as commissions on sales of products or services offered through home shopping services.

(iii) If an operator has underestimated its cost changes and elects not to recover these accrued costs with interest on the date the operator is entitled to make its annual rate adjustment, the interest will cease to accrue as of the date the operator is entitled to make the annual rate adjustment, but the operator will not lose its ability to recover such costs and interest. An operator may recover accrued costs

between the date such costs are incurred and the date the operator actually implements its rate adjustment.

(iv) Operators that use the annual methodology in their next filing after the release date of this Order may accrue costs and interest incurred since July 1, 1995 in that filing. Operators that file a Form 1210 in their next filing after the release date of this Order, and elect to use Form 1240 in a subsequent filing, may accrue costs incurred since the end of the last quarter to which a Form 1210 applies.

(4) *Sunset provision.* The Commission will review paragraph (e) of this section prior to December 31, 1998 to determine whether the annual rate adjustment methodology should be kept, and whether the quarterly system should be eliminated and replaced with the annual rate adjustment method.

(f) *External costs.* (1) External costs shall consist of costs in the following categories:

(i) State and local taxes applicable to the provision of cable television service;

(ii) Franchise fees;

(iii) Costs of complying with franchise requirements, including costs of providing public, educational, and governmental access channels as required by the franchising authority;

(iv) Retransmission consent fees and copyright fees incurred for the carriage of broadcast signals;

(v) Other programming costs; and

(vi) Commission cable television system regulatory fees imposed pursuant to 47 U.S.C. § 159.

(vii) Headend equipment costs necessary for the carriage of digital broadcast signals.

(2) The permitted charge for a regulated tier shall be adjusted on account of programming costs, copyright fees and retransmission consent fees only for the program channels or broadcast signals offered on that tier.

(3) The permitted charge shall not be adjusted for costs of retransmission consent fees or changes in those fees incurred prior to October 6, 1994.

(4) The starting date for adjustments on account of external costs for a tier of regulated programming service shall be the earlier of the initial date of regulation for any basic or cable service

tier or February 28, 1994. Except, for regulated FCC Form 1200 rates set on the basis of rates at September 30, 1992 (using either March 31, 1994 rates initially determined from FCC Form 393 Worksheet 2 or using Form 1200 Full Reduction Rates from Line J6), the starting date shall be September 30, 1992. Operators in this latter group may make adjustment for changes in external costs for the period between September 30, 1992, and the initial date of regulation or February 28, 1994, whichever is applicable, based either on changes in the GNP-PI over that period or on the actual change in the external costs over that period. Thereafter, adjustment for external costs may be made on the basis of actual changes in external costs only.

(5) Changes in franchise fees shall not result in an adjustment to permitted charges, but rather shall be calculated separately as part of the maximum monthly charge per subscriber for a tier of regulated programming service.

(6) Adjustments to permitted charges to reflect changes in the costs of programming purchased from affiliated programmers, as defined in § 76.901, shall be permitted as long as the price charged to the affiliated system reflects either prevailing company prices offered in the marketplace to third parties (where the affiliated program supplier has established such prices) or the fair market value of the programming.

(i) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(ii) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(A) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(B) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(7) Adjustments to permitted charges on account of increases in costs of programming shall be further adjusted to reflect any revenues received by the

operator from the programmer. Such adjustments shall apply on a channel-by-channel basis.

(8) In calculating programming expense, operators may add a mark-up of 7.5% for increases in programming costs occurring after March 31, 1994, except that operators may not file for or take the 7.5% mark-up on programming costs for new channels added on or after May 15, 1994 for which the operator has used the methodology set forth in paragraph (g)(3) of this section for adjusting rates for channels added to cable programming service tiers. Operators shall reduce rates by decreases in programming expense plus an additional 7.5% for decreases occurring after May 15, 1994 except with respect to programming cost decreases on channels added after May 15, 1994 for which the rate adjustment methodology in paragraph (g)(3) of this section was used.

(g) *Changes in the number of channels on regulated tiers*—(1) *Generally*. A system may adjust the residual component of its permitted rate for a tier to reflect changes in the number of channels offered on the tier on a quarterly basis. Cable systems shall use FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240 to justify rate changes made on account of changes in the number of channels on a basic service tier (“BST”) or a cable programming service tier (“CPST”). Such rate adjustments shall be based on any changes in the number of regulated channels that occurred from the end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240. However, when a system deletes channels in a calendar quarter, the system must adjust the residual component of the tier charge in the next calendar quarter to reflect that deletion. Operators must elect between the channel addition rules in paragraphs (g)(2) and (g)(3) of this section the first time they adjust rates after December 31, 1994, to reflect a channel addition to a CPST that occurred on or after May 15, 1994, and must use the elected methodology for all rate adjustments through De-

ember 31, 1997. A system that adjusted rates after May 15, 1994, but before January 1, 1995 on account of a change in the number of channels on a CPST that occurred after May 15, 1994, may elect to revise its rates to charge the rates permitted by paragraph (g)(3) of this section on or after January 1, 1995, but is not required to do so as a condition for using the methodology in paragraph (g)(3) of this section for rate adjustments after January 1, 1995. Rates for the BST will be governed exclusively by paragraph (g)(2) of this section, except that where a system offered only one tier on May 14, 1994, the cable operator will be allowed to elect between paragraphs (g)(2) and (g)(3) of this section as if the tier was a CPST.

(2) *Adjusting rates for increases in the number of channels offered between May 15, 1994, and December 31, 1997, on a basic service tier and at the election of the operator on a cable programming service tier*. The following table shall be used to adjust permitted rates for increases in the number of channels offered between May 15, 1994, and December 31, 1997, on a basic service tier and subject to the conditions in paragraph (g)(1) of this section at the election of the operator on a CPST. The entries in the table provide the cents per channel per subscriber per month by which cable operators will adjust the residual component using FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240.

Average No. of regulated channels	Per-channel adjustment factor
7	\$0.52
7.5	0.45
8	0.40
8.5	0.36
9	0.33
9.5	0.29
10	0.27
10.5	0.24
11	0.22
11.5	0.20
12	0.19
12.5	0.17
13	0.16
13.5	0.15
14	0.14
14.5	0.13
15–15.5	0.12
16	0.11
16.5–17	0.10
17.5–18	0.09
18.5–19	0.08
19.5–21.5	0.07
22–23.5	0.06

Average No. of regulated channels	Per-channel adjustment factor
24-26	0.05
26.5-29.5	0.04
30-35.5	0.03
36-46	0.02
46.5-99.5	0.01

In order to adjust the residual component of the tier charge when there is an increase in the number of channels on a tier, the operator shall perform the following calculations:

(i) Take the sum of the old total number of channels on tiers subject to regulation (*i.e.*, tiers that are, or could be, regulated but excluding New Product Tiers) and the new total number of channels and divide the resulting number by two;

(ii) Consult the above table to find the applicable per channel adjustment factor for the number of channels produced by the calculations in step (1). For each tier for which there has been an increase in the number of channels, multiply the per-channel adjustment factor times the change in the number of channels on that tier. The result is the total adjustment for that tier.

(3) *Alternative methodology for adjusting rates for changes in the number of channels offered on a cable programming service tier or a single tier system between May 15, 1994, and December 31, 1997.* This paragraph at the Operator's discretion as set forth in paragraph (g)(1) of this section shall be used to adjust permitted rates for a CPST after December 31, 1994, for changes in the number of channels offered on a CPST between May 15, 1994, and December 31, 1997. For purposes of paragraph (g)(3) of this section, a single tier system may be treated as if it were a CPST.

(i) *Operators cap attributable to new channels on all CPSTs through December 31, 1997.* Operators electing to use the methodology set forth in this paragraph may increase their rates between January 1, 1995, and December 31, 1997, by up to 20 cents per channel, exclusive of programming costs, for new channels added to CPSTs on or after May 15, 1994, except that they may not make rate adjustments totalling more than \$1.20 per month, per subscriber through December 31, 1996, and by more than \$1.40 per month, per subscriber

through December 31, 1997 (the "Operator's Cap"). Except to the extent that the programming costs of such channels are covered by the License Fee Reserve provided for in paragraph (g)(3)(iii) of this section, programming costs associated with channels for which a rate adjustment is made pursuant to this paragraph (g)(3) of this section must fall within the Operators' Cap if the programming costs (including any increases therein) are reflected in rates before January 1, 1997. Inflation adjustments pursuant to paragraph (d)(2) or (e)(2) of this section are not counted against the Operator's Cap.

(ii) *Per channel adjustment.* Operators may increase rates by a per channel adjustment of up to 20 cents per subscriber per month, exclusive of programming costs, for each channel added to a CPST between May 15, 1994, and December 31, 1997, except that an operator may take the per channel adjustment only for channel additions that result in an increase in the highest number of channels offered on all CPSTs as compared to May 14, 1994, and each date thereafter. Any revenues received from a programmer, or shared by a programmer and an operator in connection with the addition of a channel to a CPST shall first be deducted from programming costs for that channel pursuant to paragraph (f)(7) of this section and then, to the extent revenues received from the programmer are greater than the programming costs, shall be deducted from the per channel adjustment. This deduction will apply on a channel by channel basis.

(iii) *License fee reserve.* In addition to the rate adjustments permitted in paragraphs (g)(3)(i) and (g)(3)(ii) of this section, operators that make channel additions on or after May 15, 1994 may increase their rates by a total of 30 cents per month, per subscriber between January 1, 1995, and December 31, 1996, for license fees associated with such channels (the "License Fee Reserve"). The License Fee Reserve may be applied against the initial license fee and any increase in the license fee for such channels during this period. An operator may pass-through to subscribers more than the 30 cents between January 1, 1995, and December

31, 1996, for license fees associated with channels added after May 15, 1994, provided that the total amount recovered from subscribers for such channels, including the License Fee Reserve, does not exceed \$1.50 per subscriber, per month. After December 31, 1996, license fees may be passed through to subscribers pursuant to paragraph (f) of this section, except that license fees associated with channels added pursuant to this paragraph (3) will not be eligible for the 7.5% mark-up on increases in programming costs.

(iv) *Timing.* For purposes of determining whether a rate increase counts against the maximum rate increases specified in paragraphs (g)(3)(i) through (g)(3)(ii) of this section, the relevant date shall be when rates are increased as a result of channel additions, not when the addition occurs.

(4) *Deletion of channels.* When dropping a channel from a BST or CPST, operators shall reflect the net reduction in external costs in their rates pursuant to paragraphs (d)(3)(i) and (d)(3)(ii) of this section, or paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section. With respect to channels to which the 7.5% mark-up on programming costs applied pursuant to paragraph (f)(8) of this section, the operator shall treat the mark-up as part of its programming costs and subtract the mark-up from its external costs. Operators shall also reduce the price of that tier by the "residual" associated with that channel. For channels that were on a BST or CPST on May 14, 1994, or channels added after that date pursuant to paragraph (g)(2) of this section, the per channel residual is the charge for their tier, minus the external costs for the tier, and any per channel adjustments made after that date, divided by the total number of channels on the tier minus the number of channels on the tier that received the per channel adjustment specified in paragraph (g)(3) of this section. For channels added to a CPST after May 14, 1994, pursuant to paragraph (g)(3) of this section, the residuals shall be the actual per channel adjustment taken for that channel when it was added to the tier.

(5) *Movement of Channels Between Tiers.* When a channel is moved from a

CPST or a BST to another CPST or BST, the price of the tier from which the channel is dropped shall be reduced to reflect the decrease in programming costs and residual as described in paragraph (g)(4) of this section. The residual associated with the shifted channel shall then be converted from per subscriber to aggregate numbers to ensure aggregate revenues from the channel remain the same when the channel is moved. The aggregate residual associated with the shifted channel may be shifted to the tier to which the channel is being moved. The residual shall then be converted to per subscriber figures on the new tier, plus any subsequent inflation adjustment. The price of the tier to which the channel is shifted may then be increased to reflect this amount. The price of that tier may also be increased to reflect any increase in programming cost. An operator may not shift a channel for which it received a per channel adjustment pursuant to paragraph (g)(3) of this section from a CPST to a BST.

(6) *Substitution of channels on a BST or CPST.* If an operator substitutes a new channel for an existing channel on a CPST or a BST, no per channel adjustment may be made. Operators substituting channels on a CPST or a BST shall be required to reflect any reduction in programming costs in their rates and may reflect any increase in programming costs pursuant to paragraphs (d)(3)(i) and (d)(3)(ii), or paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section. If the programming cost for the new channel is greater than the programming cost for the replaced channel, and the operator chooses to pass that increase through to subscribers, the excess shall count against the License Fee Reserve or the Operator Cap when the increased cost is passed through to subscribers. Where an operator substitutes a new channel for a channel on which a 7.5% mark-up on programming costs was taken pursuant to paragraph (f)(8) of this section, the operator may retain the 7.5% mark-up on the license fee of the dropped channel to the extent that it is no greater than 7.5% of programming cost of the new service.

(7) *Headend upgrades.* When adding channels to CPSTs and single-tier systems, cable systems that are owned by a small cable company and incur additional monthly per subscriber headend costs of one full cent or more for an additional channel may choose among the methodologies set forth in paragraphs (g)(2) and (g)(3) of this section. In addition, such systems may increase rates to recover the actual cost of the headend equipment required to add up to seven such channels to CPSTs and single-tier systems, not to exceed \$5,000 per additional channel. Rate increases pursuant to this paragraph may occur between January 1, 1995, and December 31, 1997, as a result of additional channels offered on those tiers after May 14, 1994. Headend costs shall be depreciated over the useful life of the equipment. The rate of return on this investment shall not exceed 11.25 percent. In order to recover costs for headend equipment pursuant to this paragraph, systems must certify to the Commission their eligibility to use this paragraph, and the level of costs they have actually incurred for adding the headend equipment and the depreciation schedule for the equipment.

(8) *Sunset provision.* Paragraph (g) of this section shall cease to be effective on January 1, 1998 unless renewed by the Commission.

(h) Permitted charges for a tier shall be determined in accordance with forms and associated instructions established by the Commission.

(i) *Cost of Service Charge.* (1) For purposes of this section, a monthly cost-of-service charge for a basic service tier or a cable programming service tier is an amount equal to the annual revenue requirement for that tier divided by a number that is equal to 12 times the average number of subscribers to that tier during the test year, except that a monthly charge for a system or tier in service less than one year shall be equal to the projected annual revenue requirement for the first 12 months of operation or service divided by a number that is equal to 12 times the projected average number of subscribers during the first 12 months of operation or service. The calculation of the average number of subscribers shall include all subscribers, regardless

of whether they receive service at full rates or at discounts.

(2) A test year for an initial regulated charge is the cable operator's fiscal year preceding the initial date of regulation. A test year for a change in the basic service charge that is after the initial date of regulation is the cable operator's fiscal year preceding the mailing or other delivery of written notice pursuant to Section 76.932. A test year for a change in a cable programming service charge after the initial date of regulation is the cable operator's fiscal year preceding the filing of a complaint regarding the increase.

(3) The annual revenue requirement for a tier is the sum of the return component and the expense component for that tier.

(4) The return component for a tier is the average allowable test year ratebase allocable to the tier adjusted for known and measurable changes occurring between the end of the test year and the effective date of the rate multiplied by the rate of return specified by the Commission or franchising authority.

(5) The expense component for a tier is the sum of allowable test year expenses allocable to the tier adjusted for known and measurable changes occurring between the end of the test year and the effective date of the rate.

(6) The ratebase may include the following:

(i) Prudent investment by a cable operator in tangible plant that is used and useful in the provision of regulated cable services less accumulated depreciation. Tangible plant in service shall be valued at the actual money cost (or the money value of any consideration other than money) at the time it was first used to provide cable service, except that in the case of systems purchased before May 15, 1994 shall be presumed to equal 66% of the total purchase price allocable to assets (including tangible and intangible assets) used to provide regulated services. The 66% allowance shall not be used to justify any rate increase taken after the effective date of this rule. The actual

money cost of plant may include an allowance for funds used during construction at the prime rate or the operator's actual cost of funds during construction. Cost overruns are presumed to be imprudent investment in the absence of a showing that the overrun occurred through no fault of the operator.

(ii) An allowance for start-up losses including depreciation, amortization and interest expenses related to assets that are included in the ratebase. Capitalized start-up losses, may include cumulative net losses, plus any unrecovered interest expenses connected to funding the regulated ratebase, amortized over the unexpired life of the franchise, commencing with the end of the loss accumulation phase. However, losses attributable to accelerated depreciation methodologies are not permitted.

(iii) An allowance for start-up losses, if any, that is equal to the lesser of the first two years of operating costs or accumulated losses incurred until the system reached the end of its prematurity stage as defined in Financial Accounting Standards Board Standard 51 ('FASB 51') less straight-line amortization over a reasonable period not exceeding 15 years that commences at the end of the prematurity phase of operation.

(iv) Intangible assets less amortization that reflect the original costs prudently incurred by a cable operator in organizing and incorporating a company that provides regulated cable services, obtaining a government franchise to provide regulated cable services, or obtaining patents that are used and useful in the provision of cable services.

(v) The cost of customer lists if such costs were capitalized during the prematurity phase of operations less amortization.

(vi) An amount for working capital to the extent that an allowance or disallowance for funds needed to sustain the ongoing operations of the regulated cable service is demonstrated.

(vii) Other intangible assets to the extent the cable operator demonstrates that the asset reflects costs incurred in an activity or transaction that produced concrete benefits or savings for

subscribers to regulated cable services that would not have been realized otherwise and the cable operator demonstrates that a return on such an asset does not exceed the value of such a subscriber benefit.

(viii) The portion of the capacity of plant not currently in service that will be placed in service within twelve months of the end of the test year.

(7) Deferred income taxes accrued after the date upon which the operator became subject to regulation shall be deducted from items included in the ratebase.

(8) Allowable expenses may include the following:

(i) All regular expenses normally incurred by a cable operator in the provision of regulated cable service, but not including any lobbying expense, charitable contributions, penalties and fines paid on account of violations of statutes or rules, or membership fees in social, service, recreational or athletic clubs or organizations.

(ii) Reasonable depreciation expense attributable to tangible assets allowable in the ratebase.

(iii) Reasonable amortization expense for prematurely abandoned tangible assets formerly includable in the ratebase that are amortized over the remainder of the original expected life of the asset.

(iv) Reasonable amortization expense for start-up losses and capitalized intangible assets that are includable in ratebase.

(v) Taxes other than income taxes attributable to the provision of regulated cable services.

(vi) An income tax allowance.

(j) *Network upgrade rate increase.* (1) Cable operators that undertake significant network upgrades requiring added capital investment may justify an increase in rates for regulated services by demonstrating that the capital investment will benefit subscribers, including providing television broadcast programming in a digital format.

(2) A rate increase on account of upgrades shall not be assessed on customers until the upgrade is complete and providing benefits to customers of regulated services.

(3) Cable operators seeking an upgrade rate increase have the burden of

demonstrating the amount of the net increase in costs, taking into account current depreciation expense, likely changes in maintenance and other costs, changes in regulated revenues and expected economies of scale.

(4) Cable operators seeking a rate increase for network upgrades shall allocate net cost increases in conformance with the cost allocation rules as set forth in § 76.924.

(5) Cable operators that undertake significant upgrades shall be permitted to increase rates by adding the benchmark/price cap rate to the rate increment necessary to recover the net increase in cost attributable to the upgrade.

(k) *Hardship rate relief.* A cable operator may adjust charges by an amount specified by the Commission for the cable programming service tier or the franchising authority for the basic service tier if it is determined that:

(1) Total revenues from cable operations, measured at the highest level of the cable operator's cable service organization, will not be sufficient to enable the operator to attract capital or maintain credit necessary to enable the operator to continue to provide cable service;

(2) The cable operator has prudent and efficient management; and

(3) Adjusted charges on account of hardship will not result in total charges for regulated cable services that are excessive in comparison to charges of similarly situated systems.

(l) *Cost of service showing.* A cable operator that elects to establish a charge, or to justify an existing or changed charge for regulated cable service, based on a cost-of-service showing must submit data to the Commission or the franchising authority in accordance with forms established by the Commission. The cable operator must also submit any additional information requested by franchising authorities or the Commission to resolve questions in cost-of-service proceedings.

(m) *Subsequent cost of service charges.* No cable operator may use a cost-of-service showing to justify an increase in any charge established on a cost-of-service basis for a period of 2 years after that rate takes effect, except that the Commission or the franchising au-

thority may waive this prohibition upon a showing of unusual circumstances that would create undue hardship for a cable operator.

(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.

[58 FR 29753, May 21, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 76.922 see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTES: 1. At 60 FR 62633, Dec. 6, 1994, in § 76.922, paragraph (e) was revised. Paragraphs (e)(1) and (e)(2) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 60 FR 52113, Oct. 5, 1995, in § 76.922, paragraphs (e) through (k) were redesignated as (g) through (m); (c), (d), and new (g) through new (m) were revised; a new (e) and a new (f) were added. This amendment contains information collection and recordkeeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

3. At 61 FR 9367, Mar. 8, 1996, in § 76.922, paragraphs (i)(6)(i) and (i)(7) were revised; (i)(6)(ii) through (vii) were redesignated as (i)(6)(iii) through (viii); a new (i)(6)(ii) was added. This amendment contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

4. At 62 FR 6495, Feb. 12, 1997, in § 76.922, paragraph (f)(4) was revised. This amendment contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.923 Rates for equipment and installation used to receive the basic service tier.

(a) *Scope.* (1) The equipment regulated under this section consists of all equipment in a subscriber's home, provided and maintained by the operator, that is used to receive the basic service