

(8) After determining the maximum rate permitted by Form 1230, the system may adjust that rate in accordance with this paragraph. Electing to adjust rates pursuant to one of the options set forth below shall not prohibit the system from electing a different option when adjusting rates thereafter. The system may adjust its maximum permitted rate without adjusting the actual rate it charges subscribers.

(i) The system may adjust its maximum permitted rate in accordance with the price cap requirements set forth in § 76.922(d).

(ii) The system may adjust its maximum permitted rate in accordance with the requirements set forth in § 76.922(e) for changes in the number of channels on regulated tiers. For any system that files Form 1230, no rate adjustments made prior to the effective date of this rule shall be charged against the system's Operator's Cap and License Reserve Fee described in § 76.922(e)(3).

(iii) The system may adjust its maximum permitted rate by filing a new Form 1230 that permits a higher rate.

(iv) The system may adjust its maximum permitted rate by complying with any of the options set forth in § 76.922(b)(1) for which it qualifies or under an alternative rate agreement as provided in paragraph (g) of this section.

(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.

(10) In any proceeding before the Commission involving a cable programming services tier complaint 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 rates charged prior to the adoption of this rule and to establish new rates. For purposes of this paragraph, a decision shall not be deemed final until the operator has exhausted or is time-barred from pursuing any avenue of appeal, review, or reconsideration.

(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.

NOTE: For rules governing small cable operators, see § 76.990 of this subpart.

[60 FR 35865, July 12, 1995, as amended at 60 FR 52120, Oct. 5, 1995; 62 FR 53576, Oct. 15, 1997; 64 FR 35950, July 2, 1999; 65 FR 53617, Sept. 5, 2000; 67 FR 13235, Mar. 21, 2002]

EFFECTIVE DATE NOTE: At 60 FR 52120, Oct. 5, 1995, in § 76.934, paragraph (f) was revised. This paragraph 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.

#### **§ 76.935 Participation of interested parties.**

In order to regulate basic tier rates or associated equipment costs, a franchising authority must have procedural laws or regulations applicable to rate regulation proceedings that provide a reasonable opportunity for consideration of the views of interested parties. Such rules must take into account the 30, 120, or 180-day time periods that franchising authorities have to review rates under § 76.933.

#### **§ 76.936 Written decision.**

(a) A franchising authority must issue a written decision in a rate-making proceeding whenever it disapproves an initial rate for the basic