

## § 76.981

average number of persons hours involved in implementing customer changes.

(d) A cable operator may establish a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, subject to approval by the franchising authority, for a subscriber changing service tiers more than two times in a twelve month period, except for such changes ordered in response to a change in price or channel line-up.

(e) Downgrade charges that are the same as, or lower than, upgrade charges are evidence of the reasonableness of such downgrade charges.

(f) For 30 days after notice of retiering or rate increases, a customer may obtain changes in service tiers at no additional charge.

NOTE 1 TO § 76.980: Cable operators must also notify subscribers of potential charges for customer service changes, as provided in § 76.1604.

[58 FR 29753, May 21, 1993, as amended at 65 FR 53617, Sept. 5, 2000]

## § 76.981 Negative option billing.

(a) A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. A subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A subscriber's affirmative request for service or equipment may be made orally or in writing.

(b) The requirements of paragraph (a) of this section shall not preclude the adjustment of rates to reflect inflation, cost of living and other external costs, the addition or deletion of a specific program from a service offering, the addition or deletion of specific channels from an existing tier or service, the restructuring or division of existing tiers of service, or the adjustment of rates as a result of the addition, deletion or substitution of channels pursuant to § 76.922, provided that such changes do not constitute a fundamental change in the nature of an existing service or tier of service and are otherwise consistent with applicable regulations.

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(c) State and local governments may not enforce state and local consumer protection laws that conflict with or undermine paragraph (a) or (b) of this section or any other sections of this Subpart that were established pursuant to Section 3 of the 1992 Cable Act, 47 U.S.C. 543.

[59 FR 62625, Dec. 6, 1994]

## § 76.982 Continuation of rate agreements.

During the term of an agreement executed before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, the franchising authority may regulate basic cable rates without following section 623 of the 1992 Cable Act or §§ 76.910 through 76.942. A franchising authority regulating basic cable rates pursuant to such a rate agreement is not required to file for certification during the remaining term of the agreement but shall notify the Commission of its intent to continue regulating basic cable rates.

## § 76.983 Discrimination.

(a) No Federal agency, state, or local franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or to economically disadvantaged groups.

(1) Such discounts must be offered equally to all subscribers in the franchise area who qualify as members of these categories, or any reasonable subcategory thereof.

(2) For purposes of this section, members of economically disadvantaged groups are those individuals who receive federal, state or local welfare assistance.

(b) Nothing herein shall preclude any Federal agency, state, or local franchising authority from requiring and regulating the reception of cable service by hearing impaired individuals.

## § 76.984 Geographically uniform rate structure.

(a) The rates charged by cable operators for basic service, cable programming service, and associated equipment and installation shall be provided

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pursuant to a rate structure that is uniform throughout each franchise area in which cable service is provided.

(b) This section does not prohibit the establishment by cable operators of reasonable categories of service and customers with separate rates and terms and conditions of service, within a franchise area.

(c) This section does not apply to:

(1) A cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or

(2) Any video programming offered on a per channel or per program basis.

(3) Bulk discounts to multiple dwelling units shall not be subject to this section, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

NOTE 1 TO PARAGRAPH (c)(3): Discovery procedures for predatory pricing complaints. Requests for discovery will be addressed pursuant to the procedures specified in §76.7(f).

NOTE 2 TO PARAGRAPH (c)(3): Confidential information. Parties submitting material believed to be exempt from disclosure pursuant to the Freedom of Information Act (FOIA), 5

U.S.C. 552(b), and the Commission's rules, §0.457 of this chapter, should follow the procedures in §0.459 of this chapter and §76.9.

[59 FR 17975, Apr. 15, 1994, as amended at 61 FR 18979, Apr. 30, 1996; 64 FR 35951, July 2, 1999]

### § 76.985 Subscriber bill itemization.

(a) Cable operators may identify as a separate line item of each regular subscriber bill the following:

(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. In order for a governmental fee or assessment to be separately identified under this section, it must be directly imposed by a governmental body on a transaction between a subscriber and an operator.

(b) The charge identified on the subscriber bill as the total charge for cable service should include all fees and costs itemized pursuant to this section.

(c) Local franchising authorities may adopt regulations consistent with this section.