

Federal Communications Commission

§ 76.944

that an operator that fails to comply with a valid rate order issued by a franchising authority or the Commission shall be liable for refunds commencing from the effective date of such order until such time as it complies with such order.

(c) The refund period shall run as follows:

(1) From the date the operator implements a prospective rate reduction back in time to September 1, 1993, or one year, whichever is shorter.

(2) From the date a franchising authority issues an accounting order pursuant to § 76.933(c), to the date a prospective rate reduction is issued, then back in time from the date of the accounting order to the effective date of the rules; however, the total refund period shall not exceed one year from the date of the accounting order.

(3) Refund liability shall be calculated on the reasonableness of the rates as determined by the rules in effect during the period under review by the franchising authority or the Commission.

(d) The cable operator, in its discretion, may implement a refund in the following manner:

(1) By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified credit to those subscribers' bills; or

(2) By means of a prospective percentage reduction in the rates for the basic service tier or associated equipment to cover the cumulative overcharge. This shall be reflected as a specifically identified, one-time credit on prospective bills to the class of subscribers that currently subscribe to the cable system.

(e) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments.

(f) Once an operator has implemented a rate refund to subscribers in accordance with a refund order by the franchising authority (or the Commission, pursuant to paragraph (a) of this section), the franchising authority must return to the cable operator an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The fran-

chising authority must promptly return the franchise fee overcharge either in an immediate lump sum payment, or the cable operator may deduct it from the cable system's future franchise fee payments. The franchising authority has the discretion to determine a reasonable repayment period, but interest shall accrue on any outstanding portion of the franchise fee starting on the date the operator has completed implementation of the refund order. In determining the amount of the refund, the franchise fee overcharge should be offset against franchise fees the operator holds on behalf of the franchising authority for lump sum payment. The interest rate on any refund owed to the operator presumptively shall be 11.25%.

[58 FR 29753, May 21, 1993, as amended at 58 FR 46736, Sept. 2, 1993; 59 FR 17974, Apr. 15, 1994; 60 FR 52120, Oct. 5, 1995]

§ 76.943 Fines.

(a) A franchising authority may impose fines or monetary forfeitures on a cable operator that does not comply with a rate decision or refund order directed specifically at the cable operator, provided the franchising authority has such power under state or local laws.

(b) If a cable operator willfully fails to comply with the terms of any franchising authority's order, decision, or request for information, as required by § 76.939, the Commission may, in addition to other remedies, impose a forfeiture pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b).

(c) A cable operator shall not be subject to forfeiture because its rate for basic service or equipment is determined to be unreasonable.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17974, Apr. 15, 1994]

§ 76.944 Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.

(a) The Commission shall be the sole forum for appeals of decisions by franchising authorities on rates for the basic service tier or associated equipment involving whether or not a franchising authority has acted consistently with the Cable Act or §§ 76.922 and

76.923. Appeals of ratemaking decisions by franchising authorities that do not depend upon determining whether a franchising authority has acted consistently with the Cable Act or §§ 76.922 and 76.923, may be heard in state or local courts.

(b) Any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with the Commission within 30 days of release of the text of the franchising authority's decision as computed under § 1.4(b) of this chapter. Appeals shall be served on the franchising authority or other authority that issued the rate decision. Where the state is the appropriate decisionmaking authority, the state shall forward a copy of the appeal to the appropriate local official(s). Oppositions may be filed within 15 days after the appeals is filed, and must be served on the party(ies) appealing the rate decision. Replies may be filed 7 days after the last day for oppositions and shall be served on the parties to the proceeding.

(c) An operator that uses the annual rate adjustment method under Section 76.922(e) may include in its next true up under Section 76.922(e)(3) any amounts to which the operator would have been entitled but for a franchising authority decision that is not upheld on appeal.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17974, Apr. 15, 1994; 60 FR 52121, Oct. 5, 1995]

§ 76.945 Procedures for Commission review of basic service rates.

(a) Upon assumption of rate regulation authority, the Commission will notify the cable operator and require the cable operator to file its basic rate schedule with the Commission within 30 days, with a copy to the local franchising authority.

(b) Basic service and equipment rate schedule filings for existing rates or proposed rate increases (including increases in the baseline channel change that results from reductions in the number of channels in a tier) must use the official FCC form, a copy thereof, or a copy generated by FCC software. Failure to file on the official FCC form or a copy may result in the imposition of sanctions specified in § 76.937(d).

Cable operators seeking to justify the reasonableness of existing or proposed rates above the permitted tier rate must submit a cost-of-service showing sufficient to support a finding that the rates are reasonable.

(c) Filings proposing annual adjustments or rates within the rates regulation standards in §§ 76.922 and 76.923, must be made 30 days prior to the proposed effective date and can become effective on the proposed effective date unless the Commission issues an order deferring the effective date or denying the rate proposal. Petitions opposing such filings must be filed within 15 days of public notice of the filing by the cable operator and be accompanied by a certificate that service was made on the cable operator and the local franchising authority. The cable operator may file an opposition within five days of filing of the petition, certifying to service on both the petitioner and the local franchising authority.

(d) Filings proposing a rate not within the rate regulation standards of §§ 76.922 and 76.923, must be made 90 days before the requested effective date. Petitions opposing such filings must be filed within 30 days of public notice of the filing, and be accompanied by a certificate that service was made on the cable operator and the local franchising authority. The cable operator may file an opposition within 10 days of the filing of the petition, and certifying that service was made on the petitioner and the local franchising authority.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17974, Apr. 15, 1994]

§ 76.946 Advertising of rates.

Cable operators that advertise rates for basic service and cable programming service tiers shall be required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a "fee plus" rate that indicates the core rate plus