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Synopsis of Order

1. The Telecommunications Act of 1996 added Section 653 to the Communications Act of 1934, establishing a new framework for entry into the video programming marketplace, the open video system. The 1996 Act required that the Commission, within six months after the date of enactment of the 1996 Act, "complete all actions necessary (including any reconsideration) to prescribe regulations" to govern the operation of open video systems. The Commission issued a Notice of Proposed Rulemaking on March 11, 1996. 61 FR 10496 (March 14, 1996). On May 31, 1996, the Commission adopted a Second Report and Order implementing Section 653. Pursuant to the 1996 Act, the Commission must issue an order on reconsideration by August 8, 1996.

2. The Communications Act, and the Commission's rules, require that petitions for reconsideration of a Commission order may be filed within thirty days from the date upon which public notice is given of the order. Public notice of the Second Report and Order was given on June 5, 1996, when a summary of the order was published in the Federal Register. 61 FR 28698 (June 5, 1996). Petitions for reconsideration are due, therefore, on July 5, 1996. In order to afford the Commission sufficient time to review the issues raised in the petitions and to meet its statutory requirement to issue an order on reconsideration by August 8, 1996, we believe it is in the public interest for the Commission to waive its rules regarding the filing of oppositions to petitions for reconsideration and replies to oppositions. We are waiving Section 1.429(f) to provide that oppositions must be filed by July 15, 1996. We are also waiving Section 1.429(g) and will not accept any replies to oppositions. Finally, in order to afford the fullest consideration possible to the issues raised on reconsideration, we strongly encourage parties to file pleadings in advance of the deadlines.

List of Subjects in 47 CFR Part 76

Open video systems.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96-16106 Filed 6-24-96; 8:45 am]
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47 CFR Part 76

[CS Docket No. 96-57; FCC 96-257]

Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission issues this Report and Order to implement Section 623(a)(7)(A) of the Communications Act of 1934, as amended ("Communications Act"). The Report and Order is necessary to fulfill the statutory requirement in Section 301(j) of the Telecommunications Act of 1996 ("1996 Act") that the Commission allow cable operators to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories regardless of the equipment's level of functionality. In the Report and Order, the Commission also issues final rules.

EFFECTIVE DATE: July 25, 1996.

FOR FURTHER INFORMATION CONTACT: Tim J. Bellamy, Cable Services Bureau, (202) 418-7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Report and Order in CS Docket No. 96-57, FCC 96-257, adopted June 6, 1996 and released June 7, 1996. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street N.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS Inc.") at (202) 857-3800, 2100 M Street N.W., Suite 140, Washington, DC 20017. This Report and Order contains modified information collection requirements approved by OMB under control number 3060-0703 for use through June 30, 1999.

Synopsis of Report and Order

1. In this Report and Order, the Commission amends its rules to implement Section 301(j) of the 1996 Act which adds a new Section 623(a)(7) to the Communications Act. Section 301(j) of the 1996 Act requires the Commission to allow cable operators to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories regardless of the varying levels of functionality of the equipment within

each such broad category. That section also provides that "[s]uch aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic tier."

Discussion

A. Equipment Aggregation

2. Section 301(j) of the 1996 Act requires the Commission to allow regulated operators to aggregate "their [customer] equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category." The Commission concludes, and amends its rules accordingly, that Congress intended to permit operators to aggregate equipment costs into broad categories, limited only by the requirement that equipment so aggregated be of the same type. The language in Sections 76.923 (f) and (g) of the Commission's rules that requires separate charges for each significantly different type of remote control device, converter box, and other customer equipment was eliminated. The "primary purpose" test, proposed in the *Notice of Proposed Rulemaking* ("NPRM"), 61 FR 13803 (March 28, 1996), for categorizing equipment will not be used, nor will it be incorporated into our rules. The term "level of functionality" is not further defined.

3. Under the rules adopted in this Report and Order, there are three types of customer equipment: converter boxes, remote controls and inside wiring. Consistent with this fact, the Commission concluded that costs of equipment used in the installation of initial and additional outlets may be aggregated into the same broad category, inside wiring. In addition, the Commission will maintain a flexible approach with respect to categorization of new technology. Operators also have the flexibility to average some equipment of the same type, but not all equipment of that type. In other words, operators may choose how broadly to categorize equipment if they choose to do so at all.

4. Though the Commission tentatively concluded otherwise in the NPRM, Section 76.923(l) of the Commission's rules, which permits cost aggregation specifically for small cable systems is not eliminated. The Commission believes eliminating that section might increase regulatory burdens on some smaller cable systems, a result Congress did not intend.

B. Organizational Levels

5. Section 76.923(c) of the Commission's rules is amended to specifically permit operators to aggregate its customer equipment costs at the organizational level of its choosing, namely, the franchise, system, regional, or company level. To the extent that current Commission rules permit cost aggregation of equipment only in a manner consistent with an operator's practices on April 3, 1993, that date restriction is eliminated. Such a restriction might have improperly prevented an operator from aggregating costs at higher organizational levels, as specifically permitted in the 1996 Act.

6. The Commission concludes that Congress intended that installation be subsumed under its general statutory reference to equipment and that the same cost aggregation rules apply to both. Cable operators are therefore permitted to aggregate installation costs at the same organizational level at which the operator aggregates its equipment costs. In addition, because Commission rules require equipment rates to be based on actual cost, those rules are amended to state that equipment and installation rates must be set at the same organizational level at which an operator chooses to aggregate its costs.

C. Basic-Only Subscriber Equipment

7. The 1996 Act prohibits "[s]uch aggregation * * * with respect to equipment used by subscribers who receive only a rate regulated basic service tier." The Commission concludes that Congress was concerned that basic-only subscribers not subsidize the costs of equipment used by subscribers taking services in addition to basic. The Commission further concludes that costs of equipment used by basic-only subscribers may not be aggregated into broad categories. An operator is permitted, however, to aggregate the costs of equipment used by basic service-only customers at the same organizational level at which the operator chooses to aggregate its other costs. Section 76.923(c) of the Commission's rules is amended accordingly. As an alternative, for purposes of establishing equipment rates for basic-only subscribers, an operator may assume that all basic-only subscribers use equipment that is the lowest level and least expensive model of equipment offered by the operator, even if some basic-only subscribers actually have higher level, more expensive equipment. Because there is not always one type of equipment which may be deemed "basic-only

equipment," the Commission shall also permit an operator to aggregate costs of types of equipment used by non-basic-only subscribers with other non-basic-only equipment when setting rates for non-basic-only subscribers, even if the same type of equipment is also used by basic-only subscribers.

D. Equipment Rates Jurisdiction and Review

8. Local franchising authorities affected by the new cost aggregation rules will continue to review the equipment and installation rates and supporting aggregated cost data as part of the review of the cable operators' rate justifications for basic rates, with the operator retaining the right to appeal the local rate order to the Commission.

E. FCC Form 1205

9. Because of the Commission's conclusions and revisions to its rules, FCC Form 1205 is modified accordingly.

Procedural Provisions

A. Final Regulatory Flexibility Analysis

10. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following final regulatory flexibility analysis ("FRFA") of the expected impact of these proposed policies and rules on small entities. The Commission's final regulatory flexibility analysis under the Regulatory Flexibility Act indicates that the rule changes adopted in the Report and Order will not cause a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act and that any impact will be to give operators new, less burdensome options to comply with our rules. The Commission is committed to reducing the regulatory burdens on small cable operators whenever possible, consistent with our other public interest responsibilities. The Secretary shall send a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. Sections 601, *et seq.* (1981).

11. The Commission issues this Report and Order to effectuate the changes needed to permit cable operators to aggregate equipment costs into broad categories and at the organizational level of their choice, as required by Section 301(j) of the 1996 Act.

12. Objective. To implement Section 301(j) of the 1996 Act.

13. Legal Basis. Action adopted in this Report and Order is contained in Section 301(j) of the 1996 Act.

14. Description, Potential Impact and Number of Small Entities Affected. The rule changes in this Report and Order will not have a significant effect on a substantial number of small entities. The rule changes provide all regulated entities with new options and do not require them to change the methodology by which they currently justify equipment rates. Thus, any economic impact of the rule changes will be positive.

15. Reporting, Recordkeeping and Other Compliance Requirements. None.

16. Federal Rules which Overlap, Duplicate or Conflict with these Rules. None

17. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives. None.

C. Paperwork Reduction Act

18. Final Paperwork Reduction Act of 1995 Analysis. This Report and Order has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain modified information collection requirements on the public. The information collection requirements contained herein have been approved by the Office of Management and Budget under control number 3060-0703 for use through June 30, 1999.

Ordering Clauses

19. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j) and 623(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 543, the rules, requirements and policies discussed in this Report and Order are adopted and Sections 76.923(a), (c), (f), (g) and (m) of the Commission's rules, 47 CFR §§ 76.923(a), (c), (f), (g) and (m), are amended as set forth below.

20. It is further ordered that the requirements and regulations established in this decision shall become effective July 25, 1996.

21. It is further ordered that the Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ *et seq.* (1981).

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.923 is amended by revising paragraphs (a), (c), (f), (g) and (m) to read as follows:

§ 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 tier, regardless of whether such equipment is additionally used to receive other tiers of regulated programming service and/or unregulated service. Such equipment shall include, but is not limited to:

- (i) Converter boxes;
- (ii) Remote control units; and
- (iii) Inside wiring.

(2) Subscriber charges for such equipment shall not exceed charges based on actual costs in accordance with the requirements set forth in this section.

* * * * *

(c) *Equipment basket.* A cable operator shall establish an Equipment Basket, which shall include all costs associated with providing customer equipment and installation under this section. Equipment Basket costs shall be limited to the direct and indirect material and labor costs of providing, leasing, installing, repairing, and servicing customer equipment, as determined in accordance with the cost accounting and cost allocation requirements of § 76.924, except that operators do not have to aggregate costs in a manner consistent with the accounting practices of the operator on April 3, 1993. The Equipment Basket shall not include general administrative overhead including marketing expenses. The Equipment Basket shall include a reasonable profit.

(1) *Customer equipment.* Costs of customer equipment included in the

Equipment Basket may be aggregated, on a franchise, system, regional, or company level, into broad categories. Except to the extent indicated in paragraph (c)(2) of this section, such categorization may be made, provided that each category includes only equipment of the same type, regardless of the levels of functionality of the equipment within each such broad category. When submitting its equipment costs based on average charges, the cable operator must provide a general description of the averaging methodology employed and a justification that its averaging methodology produces reasonable equipment rates. Equipment rates should be set at the same organizational level at which an operator aggregates its costs.

(2) *Basic service tier only equipment.* Costs of customer equipment used by basic-only subscribers may not be aggregated with the costs of equipment used by non-basic-only subscribers. Costs of customer equipment used by basic-only subscribers may, however, be aggregated, consistent with an operator's aggregation under paragraph (c)(1) of this section, on a franchise, system, regional, or company level. The prohibition against aggregation applies to subscribers, not to a particular type of equipment. Alternatively, operators may base its basic-only subscriber cost aggregation on the assumption that all basic-only subscribers use equipment that is the lowest level and least expensive model of equipment offered by the operator, even if some basic-only subscribers actually have higher level, more expensive equipment.

(3) *Installation costs.* Installation costs, consistent with an operator's aggregation under paragraph (c)(1) of this section, may be aggregated, on a franchise, system, regional, or company level. When submitting its installation costs based on average charges, the cable operator must provide a general description of the averaging methodology employed and a justification that its averaging methodology produces reasonable equipment rates. Installation rates should be set at the same organizational level at which an operator aggregates its costs.

* * * * *

(f) *Remote charges.* Monthly charges for rental of a remote control unit shall consist of the average annual unit purchase cost of remotes leased, including acquisition price and incidental costs such as sales tax, financing and storage up to the time it is provided to the customer, added to

the product of the HSC times the average number of hours annually repairing or servicing a remote, divided by 12 to determine the monthly lease rate for a remote according to the following formula:

$$\text{Monthly Charge} = \frac{\text{UCE} + (\text{HSC} \times \text{HR})}{12}$$

Where, HR=average hours repair per year; and UCE=average annual unit cost of remote.

(g) *Other equipment charges.* The monthly charge for rental of converter boxes and other customer equipment shall be calculated in the same manner as for remote control units. Separate charges may be established for each category of other customer equipment.

* * * * *

(m) Cable operators shall set charges for equipment and installations to recover Equipment Basket costs. Such charges shall be set, consistent with the level at which Equipment Basket costs are aggregated as provided in § 76.923(c). Cable operators shall maintain adequate documentation to demonstrate that charges for the sale and lease of equipment and for installations have been developed in accordance with the rules set forth in this section.

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[FR Doc. 96-16104 Filed 6-24-96; 8:45 am]

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47 CFR Part 90

[PR Docket No. 93-144; PP Docket No. 93-253; FCC 95-501]

The Future Development of SMR Systems in the 800 MHz Frequency Band; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule, which was published Friday, February 16, 1996, (61 FR 6138). The rule related to the special limitations on amendment of applications for assignment and transfer of authorizations for radio systems above 800 MHz in § 90.609 paragraphs (c) and (d).

EFFECTIVE DATE: June 25, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa Warner, Wireless Telecommunications Bureau, at (202) 418-0620.