

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Revisions to Cable Television Rate Regulations)	MB Docket No. 02-144
)	
Implementation of Sections of The Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation)	MM Docket No. 92-266
)	
Implementation of Sections of The Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation)	MM Docket No. 93-215
)	
Adoption of a Uniform Accounting System for the Provision of Regulated Cable Service)	CS Docket No. 94-28
)	
Cable Pricing Flexibility)	CS Docket No. 96-157

ORDER

Adopted: August 6, 2002

Released: August 14, 2002

By the Commission:

1. The Commission released a Notice of Proposed Rulemaking and Order (“NPRM/Order”) in the above-captioned proceeding.¹ On our own motion,² we issue this limited reconsideration of the NPRM/Order by revising paragraph 55 as set forth herein. In addition, we clarify the instructions for FCC Form 1240, Worksheet 4, as described herein.

2. In order to provide further guidance as to how the Commission will review BST rate adjustments that had been filed prior to the guidance provided in the NPRM/Order, we revise paragraph 55 as follows:

55. In light of the confusion created by section 76.922(g)(8) of the Commission’s rules and the intent expressed in the *Going Forward Order* that there be some mechanism for dealing with channel changes if

¹ FCC 02-177 (rel. June 19, 2002). We note that a summary of the NPRM/Order has not yet been published in the Federal Register. Therefore, our summary will include the revision and clarification described herein.

² See 47 C.F.R. § 1.108.

the incentives in paragraph (g) were not renewed,³ we clarify how channel changes should be handled pending action on this notice of proposed rulemaking. We base this clarification on the provisions in paragraphs (g) and (h) and Forms 1210 and 1240 for the BST, which are understood by cable operators and franchising authorities. We also take into consideration the sunset of CPST rate regulation. For rate adjustments filed with franchising authorities after this clarification, franchising authorities reviewing rates should accept rate adjustments for channels added to the BST using the per channel adjustment factor in section 76.922(g)(2), based on the number of channels that would have been subject to regulation if CPST rate regulation had not ended. Franchising authorities should also accept and may require rate adjustments for channel deletions and substitutions consistent with section 76.922(g)(4) and (g)(6), respectively.⁴ The calculations should be done using FCC Forms 1210 and 1240. We will review appeals of local rate orders consistent with this approach. We recognize that some operators removing channels from the BST before this clarification may have read paragraph 98 of the *Going Forward Order* to allow BST rate adjustments based on the per channel adjustment factors from the table in section 76.922(g)(2), and previously in 47 C.F.R. § 76.922(e)(1994). In reviewing any appeals of local rate orders regarding this methodology, we will consider an operator's use of this methodology before this clarification to be reasonable; provided that, for systems moving a substantial number of channels from the BST to a CPST, the resulting overall rate structure is reasonable; and further provided that this methodology is generally consistent with the system's methodology for its rate adjustments for the majority of any channels moved from the CPST to the BST on or after the January 1, 1998 sunset of paragraph (g). In reviewing appeals of local rate orders concerning rate adjustments for the movement of channels from the CPST to the BST, we will find reasonable adjustments that are consistent with section 76.922(g)(5) and the Commission's rate forms for CPST channels moved on or before March 31, 1999, the sunset of CPST rate regulation; provided that the rate adjustments are computed from CPST rates that were subject to rate regulation;⁵ and further provided that adjustments for channels moved from the BST during this same period were computed consistently with section 76.922(g)(5) and the Commission's rate forms. The provisions in section 76.922(f), (g) of the Commission's rules concerning external costs, including the permitted 7.5% mark-up on programming cost increases, continue to apply. This clarification is consistent with Commission rate forms, which have remained in effect since their

³ See 47 C.F.R. § 76.922(g); *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation* ("Going Forward Order"), 10 FCC Rcd 1226, 1260 (1994) ¶ 98.

⁴ Briefly, when an operator deletes a channel pursuant to 47 C.F.R. § 76.922(g)(4), the operator reduces the rate to reflect the net reduction in external costs and the residual associated with the dropped channel. For channels added pursuant to the caps method, the residual is the actual per channel adjustment taken for that channel when it was added to the tier. When an operator substitutes a channel pursuant to 47 C.F.R. § 76.922(g)(6), its rate must reflect the net difference in programming costs associated with the substitution.

⁵ 47 C.F.R. § 76.922(g)(5) provides for the revenue-neutral movement of residual associated with a channel when the channel is moved between rate regulated tiers of service.

adoption, and with the Commission's handling of rate complaints and stays of local rate appeals. Without this clarification, subscribers may experience a decrease or change in BST service without a corresponding adjustment to their rates. The clarification with respect to the movement of channels between tiers maintains the balance between regulated revenue sources, which has been a consistent part of our rate regulations, for the period that the CPST was subject to rate regulation. Because of our concern about determining the CPST residual from unregulated rates, we will not find franchising authority orders unreasonable for disallowing the movement of an unregulated residual amount for channels moved from the CPST to the BST after the sunset of CPST rate regulation. However, franchising authorities that have accepted such a residual movement from the CPST to the BST either in orders or by inaction within the period for reviewing a Form 1240 should not change that determination in the true-up process. Our intent with these interim guidelines is to create some stability in the rate-making process pending resolution of this proceeding, not to overturn rate adjustments previously accepted based on a good faith interpretation of our rules and rate forms. At the conclusion of the rulemaking proceeding, we will consider whether BST rates should be adjusted to conform to the structure adopted by the Commission.

3. In addition, it has come to our attention that the instructions for FCC Form 1240, Worksheet 4, Channel Residual, are not clear about how operators should compute the residual associated with channel deletions or movement in the projected period, particularly for operators restructuring single tier systems into separate BST and CPST offerings.⁶ FCC Form 1240, including Worksheet 4, is one of the forms used for computing rate adjustments. We clarify how operators using FCC Form 1240 and Worksheet 4 of that form may compute the channel residual during the interim period.

4. The instructions for Worksheet 4 direct operators projecting their next maximum permitted rate to compute the residual using their previous average permitted charge, which is the charge projected in the previous rate form and entered on Line A1 of the current rate form. The instructions then direct the operator to subtract average external costs and average total per channel adjustments for "Caps Method" channels using figures from Line 710 of Worksheet 7 and Line 214 of Worksheet 2 for "the appropriate period."⁷ The instructions also direct the operator to use the average number of channels on the system for "the appropriate period." We clarify that, when computing the channel residual for the new projected period, operators may use the projected period from the previous Form 1240 as the appropriate period. In this way, the projected external costs, per channel adjustment, and channel count used to calculate the permitted charge shown on Line 401 for the projected period would be used to adjust it for computing the residual. The external costs from Line 710 of Worksheet 7 and Line I7 of the previous Form 1240 are entered on Line D2 of the current Form 1240 and would be entered on Line 402 of the current projected period Worksheet 4. The per channel adjustment from Line 214 of Worksheet 2 and Line I1 of the previous Form 1240 are entered on Line D3 of the current Form 1240 and would be entered on Line 403 of the current projected period Worksheet 4. The channel count entered on Line 405 of the current projected period Worksheet 4 would be the average number of channels on the system during the previous projected period. The "Caps Method" channels entered on Line 406 of the current projected

⁶ See Letter from Peter H. Feinberg, Esq., Dow, Lohnes & Albertson, PLLC, to Marlene H. Dortch, Secretary, FCC (June 26, 2002).

⁷ Instructions for FCC Form 1240, Annual Updating of Maximum Permitted Rates for Regulated Cable Services (July 1996) at 32.

period Worksheet 4 would be the average number of channels on the system during the previous projected period that were added using the "Caps Method."

5. The action contained herein has not changed our Initial Regulatory Flexibility Analysis (IRFA) which was set forth in the NPRM/Order at paragraphs 56-75. Thus, no supplemental IRFA is necessary. In addition, the action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting and/or recordkeeping requirements or burdens on the public.

6. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 623 of the Communications Act of 1934 as amended, 47 U.S.C. 4(i), 543, and 47 C.F.R. 1.108, our interim rate adjustment order is revised as set forth herein.

7. It is FURTHER ORDERED that pursuant to sections 4(i) and 623 of the Communications Act of 1934 as amended, 47 U.S.C. 4(i), 543, and 47 C.F.R. 1.108, the instructions to FCC Form 1240, Worksheet 4, are clarified as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary