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
	)	MM Docket No. 93-215
	)	
Adoption of Uniform Accounting System for the Provision of Regulated Cable Service	)	CS Docket No. 94-28
	)	

REPORT AND ORDER

Adopted: June 26, 2025 **Released: June 27, 2025**

By the Commission: Chairman Carr and Commissioner Trusty issuing separate statements.

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I. INTRODUCTION

1. In this Report and Order, we streamline the cable television rate regulations in Part 76 of our rules.[1] Our action today furthers the policies outlined by President Trump in Executive Orders calling

[1] 47 CFR §§ 76.901 - 76.990.

on administrative agencies to unleash prosperity through deregulation,[2] and the goals of our *Public Notice* acting to promote those policies.[3] Specifically, our action today will remove from our regulations approximately 27 pages, 11,475 words, 77 rules or requirements, and 8 forms. Many of the Commission's rules governing cable rate regulation have been rendered obsolete or unworkable due to the sunset of cable programming service tier (CPST) rate regulation and the passage of time.[4] In 2018, the Commission initiated a rulemaking to review and update its rate regulations.[5] While we are unaware of any local communities that are actively regulating cable rates at this time, we are statutorily required to maintain cable television rate regulations.[6] In this Report and Order, we eliminate unnecessary and outdated rate regulations and obsolete rate justification forms, as well as simplify and streamline the remaining regulations to reduce the administrative burdens on the cable industry, franchising authorities, and the Commission, while continuing to fulfill our statutory "obligation to subscribers" to ensure reasonable rates for cable service and equipment.[7] We also terminate several open dockets because any

[2] *See, e.g.*, *Executive Order 14192 of January 31, 2025, Unleashing Prosperity Through Deregulation*, 24 Fed. Reg. 9065 (Feb. 6, 2025). *See also Executive Order 14219 of February 19, 2025, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, 36 Fed. Reg. 10583 (Feb. 25, 2025).

[3] *See Public Notice*, *In Re: Delete, Delete, Delete*, GN Docket No. 25-133, DA 25-219 (rel. March 12, 2025), 2025 WL 820901.

[4] CPSTs include all non-basic service tier programming offered over the cable system, other than programming offered to subscribers on a per channel or per program basis. 47 U.S.C. § 543(l)(2); 47 CFR § 76.901(b).

[5] *See Modernization of Media Regulation Initiative; Revisions to Cable Television Rate Regulations*, MB Docket No. 02-144, MM Docket Nos. 92-266 and 93-215, CS Docket Nos. 94-28 and 96-157, Further Notice of Proposed Rulemaking and Report and Order, 33 FCC Rcd 10549 (2018) (*2018 FNPRM*).

[6] Nearly all, if not all, cable operators now face effective competition and are not subject to rate regulation. *See, e.g.*, *NATOA v. FCC*, 862 F.3d 18 (D.C. Cir. 2017) (upholding the FCC's rebuttable presumption that cable operators are subject to effective competition under the competing provider test); *Petition for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI*, Memorandum Opinion and Order, 34 FCC Rcd 10229 (2019), *petition for review denied*, *Mass. Dep't of Telecomms. & Cable v. FCC*, 983 F.3d 28 (1st Cir. 2020) (finding local exchange carrier (LEC) effective competition in the subject franchise areas based on the availability of a LEC affiliate's video programming service that provides live television and on-demand programs via a broadband internet connection). *See also Petitions of Comcast Cable Communications, LLC, and Coxcom, LLC d/b/a Cox Communications for a Determination of Effective Competition*, 35 FCC Rcd 14129 (MB 2020) (similar finding of LEC effective competition). Generally, LEC effective competition exists when a LEC and an unaffiliated cable operator offer comparable video services in the same area. *See* 47 U.S.C. § 543(l)(1)(D). Following a finding of effective competition, LFAs seeking recertification to regulate rates must file a "Petition for Recertification" in accordance with 47 CFR § 76.916.

[7] *See* 47 U.S.C. §§ 543(b)(1), 543(b)(2)(A). We note that in the *2018 FNPRM* we asked whether we should fundamentally change the Commission's long-standing rate regulation regime. *See 2018 FNPRM*, 33 FCC Rcd at 10554-57, paras. 10-14. MDTC recommends allowing LFAs to set rates based on the statutory factors in section 623(b)(2)(C). *See* MDTC Comments at 2, 4. These factors include, among others, the rates for competitive systems, direct and proportional costs allocable to the BST, franchise requirements, and a reasonable profit. *See* 47 U.S.C. § 543(b)(2)(C). NCTA supports allowing cable operators to justify regulated BST and equipment rates based on only one of the statutory factors, by comparing them to rates in competitive communities. NCTA Comments at i, 6. Neither proposal would satisfy the Commission's statutory obligation to ensure reasonable BST rates or reduce administrative burdens. Given the absence of a viable proposal and the fact that most, if not all, cable operators now face effective competition and are not subject to rate regulation, we agree with Hawaii that the Commission should refrain from a substantial rewrite at this time and instead we take a more targeted approach to simplify the rules. Hawaii Comments at ii, 2; Hawaii Reply at 2. *See also* Letter from Cheryl A. Leanza, Best, Best and Krieger, LLP, on behalf of the Local Government Coalition, to Marlene H. Dortch, Secretary, FCC, at 2 (filed June 6, 2025) (Local Government Coalition June 6, 2025 *Ex Parte*) ("[P]roposals to remove rate regulation must be conducted with extreme care because the Cable Act's rate regulation provisions are still in place.").

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open issues raised therein are resolved by our action today, or have become obsolete or irrelevant due to regulatory updates, technology advances, or marketplace changes, or have been addressed in other Commission orders and no longer need to be resolved.

II. BACKGROUND

2. Section 623 of the Communications Act of 1934, as amended (the Act),[8] requires the Commission to ensure, that "rates for the basic service tier are reasonable" and that regulations are implemented "to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition."[9] Section 623 also requires the Commission to establish rate regulations for the installation and lease of equipment used to receive the basic service tier (BST) on "the basis of actual cost."[10] For cable systems that are not subject to effective competition, section 623 permits local franchising authorities (LFAs)[11] to apply the Commission's rules to regulate the charges for the BST and the installation and lease of cable customer premises equipment used by subscribers to receive the BST.[12]

3. To implement section 623, the Commission adopted rate regulation rules, beginning in 1992, that continue to serve three basic functions: (1) setting initial BST rates, (2) updating those rates, and (3) setting equipment rates.[13] The Commission developed a common set of "tier-neutral" benchmarks and regulations so that the same methodology was to be used to set rates for BST and the CPST.[14] In 1996, Congress added a sunset provision applicable to the regulation of all tiers of cable service except the BST.[15]

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[8] Section 623, 47 U.S.C. § 543, adopted as part of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), and amended by the Telecommunications Act of 1996, Pub. L. No. 104-104 § 301(b)(1), 110 Stat. 115 (1996 Act), governs cable television rate regulation.

[9] 47 U.S.C. § 543(b)(1). The basic service tier includes, at a minimum, the broadcast signals distributed by the cable operator (except superstations), along with any public, educational, or government access channels required by the local franchising authority. 47 U.S.C. § 543(b)(7); 47 CFR § 76.901(a).

[10] 47 U.S.C. § 543(b)(3).

[11] The terms "franchising authority" and "local franchising authority" have the same meaning when used in the Act, the Commission's rules, and this Report and Order, and may refer to a State or a subdivision of a State when acting as a franchising authority. As used throughout this document, the acronym "LFA" encompasses both "franchising authority" and "local franchising authority" and means any governmental entity empowered by federal, State, or local law to grant a franchise. *See* 47 U.S.C. § 522(10).

[12] 47 U.S.C. § 543(a)(2) (preference for competition). *See also* 47 U.S.C. § 543(a)(2)(A) (LFA regulation of BST), (b)(1) (standard of reasonableness), and (b)(3)(A) (equipment regulation).

[13] *See* 47 CFR §§ 76.901 - 76.990. For the history of Commission rulemaking orders pertaining to rate regulation, see *Revisions to Cable Television Rate Regulations*, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 11550, 11553, n.8 (2002), *revised*, 17 FCC Rcd 15974 (2002) (*2002 Revised Order and NPRM*).

[14] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5746, 5759-60, 5881-82, paras. 171, 197, 396 (1993) (*Rate Order*).

[15] 47 U.S.C. § 543(c)(4). The Telecommunications Act of 1996 amended section 623 to provide that CPST rates would no longer be subject to regulation after March 31, 1999. Telecommunications Act of 1996, Pub. L. No. 104-104, § 301(b)(1), 110 Stat. 115 (1996) (codified as 47 U.S.C. § 543(c)(4) (subsection (c) "shall no longer apply to cable programming services offered after March 31, 1999")). The Media Bureau previously deleted rules solely pertaining to the process for filing and adjudicating complaints concerning the rates charged by a cable system for its CPST. *See Amendment of Parts 1, 73 And 76 of the Commission's Rules Regarding Practice and Procedure: Broadcast Applications and Proceedings; Radio Broadcast Services: Fairness Doctrine and Digital Broadcast Television Redistribution Control; Multichannel Video and Cable Television Service: Fairness Doctrine, Personal*

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4. The *2018 FNPRM* sought comment on how to update the Commission's rules so that they reflect the current video marketplace, industry consolidation, the passage of time, and the sunset of CPST regulation, including whether to replace the entire rate regulation framework with a new methodology.[16] As an alternative to a completely new framework, the *2018 FNPRM* sought comment on whether to greatly streamline our existing initial rate-setting methodology,[17] eliminate rate forms and rules that are no longer necessary or useful,[18] limit the equipment subject to rate regulation,[19] and end rate regulation for small cable systems owned by small operators.[20] The *2018 FNPRM* elicited responses from commenters representing the cable industry and state and local franchising authorities.[21]

III. DISCUSSION

5. To reflect both the marketplace and statutory changes that have occurred since the Commission adopted its cable television rate regulations, today we adopt measures to greatly streamline and eliminate or update rules and forms that have become obsolete or unnecessary. Specifically, in this Order, we: (1) eliminate unnecessary forms and rules;[22] (2) deregulate cable equipment not used exclusively to receive the BST; (3) deregulate small cable systems serving 15,000 or fewer subscribers that are owned by small cable companies serving 400,000 or fewer subscribers; (4) decline to extend rate regulation to commercial establishments; (5) modify sections 76.980 and 76.984 of our rules to acknowledge the sunset of CPST regulation; (6) revise and simplify the process for cable operators to establish an initial regulated rate after becoming subject to regulation; (7) modify and simplify the inter-

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Attacks, Political Editorials and Complaints Regarding Cable Programming Service Rates, Order, 26 FCC Rcd 11422, 11423, para. 6 (MB 2011) ("[T]he Commission's CPST complaint process rules, 47 CFR §§ 76.950, 76.951, 76.953, 76.954, 76.955, 76.956, 76.957, 76.960, 76.961, 76.1402, 76.1605 and 76.1606 are without current legal effect and are deleted as obsolete.").

[16] *2018 FNPRM*, 33 FCC Rcd at 10550, paras. 2, 10-15.

[17] *Id*. at 10560-66, paras. 20-31.

[18] *Id*. at 10567, para. 34.

[19] *Id*. at 10557-58, para. 17.

[20] *Id*. at 10558-59, para. 18.

[21] We received comments, reply comments, and *ex parte* correspondence from the following entities: Massachusetts Department of Telecommunications and Cable (MDTC), State of Hawaii (Hawaii), NCTA – The Internet & Television Association (NCTA), ACA Connects - America's Communications Association (ACA), National Association of Telecommunications Officers and Advisors (NATOA) and a coalition of local governments including Anne Arundel County, MD; City of Boston, MA; District of Columbia; City of Eugene, OR; Fairfax County, VA; City of Gaithersburg, MD; Howard County, MD; Los Angeles County, CA; Montgomery County, MD; City of Ontario, CA; City of Rye, NY; and Texas Coalition of Cities for Utility Issues (Local Government Coalition). In the *2018 FNPRM*, the Commission stated that "[t]hose that commented in response to that 2002 *Revised Order and NPRM* that wish to ensure their previous comments are considered in this proceeding with respect to the issues raised here should refile their comments in response to this FNPRM." No parties refiled their 2002 comments. Therefore, given the time that has elapsed since the comments were originally filed, the significant marketplace changes that have occurred since then, and the lack of any indication that those submitting their comments back in 2002 wish to pursue the positions/arguments contained therein, we will not consider those comments filed prior to the *2018 FNPRM*. Additionally, the Local Government Coalition claims it is "highly unusual" that the Commission did not seek comment to update the record before issuing the Report and Order. Local Government Coalition June 6, 2025 *Ex Parte,* at 1. The local government commenters, however, did not provide any information that would justify or warrant such action.

[22] For the reasons discussed below, we choose to adopt targeted modifications to the Commission's existing rules rather than adopt a new regulatory framework. *See infra* para. 8. *See also 2018 FNPRM*, 33 FCC Rcd at 10554-57, paras. 11-14.

tier channel movement rules to account for the sunset of CPST regulation;[23] and (8) clarify the instructions for calculating interest in Module H of Form 1240.

6. As an initial matter, we recognize our continuing statutory mandate to update our cable rate regulations.[24] Comments filed in response to the *2018 FNPRM* reflect a disagreement about the role of cable rate regulation in today's marketplace. Cable industry commenters like ACA claim that rate regulation has no "meaningful benefit in today's highly competitive market" and that continued regulation is no longer necessary.[25] LFAs argue in support of the continued need for cable rate regulation to protect consumers.[26] Though we acknowledge the increased competition in the video marketplace, the Commission has a continuing statutory obligation to ensure reasonable BST rates in circumstances where the LFA opts to regulate and the cable system is not subject to effective competition in that community.[27]

A. Equipment Regulation

7. We update our rules to limit cable equipment rate regulation to equipment that is used by BST-only subscribers to receive the regulated BST and any additional per channel or per program services, but that is not used for any unregulated tiers of cable service.[28] Section 623(b)(3) of the Act directs the Commission to adopt rules regulating the rates for "installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming" offered on a per channel or per program basis.[29] On the other hand, equipment used

[23] 47 CFR § 76.922(g).

[24] *See* 47 U.S.C. § 543(b)(2).

[25] Comments of ACA Connects – America's Communications Association (f/k/a American Cable Association) at 2 (ACA Comments). On the other hand, NCTA acknowledges that "Congress expressly instructed the Commission to 'prescribe, and periodically thereafter revise, regulations . . . to ensure that the rates for the basic service tier are reasonable,'" citing 47 U.S.C. § 543(b)(2). Comments of NCTA – The Internet & Television Association at 4 (NCTA Comments).

[26] Reply Comments of the National Association of Telecommunications Officers and Advisors at 2 (NATOA Reply) (asserting that basic cable rates are increasing and not being restrained by effective competition, and that basic tier service subscribers may be on a fixed income or using the BST for local channels only); Comments of the Massachusetts Department of Telecommunications and Cable at 2 (MDTC Comments) (asserting that rate oversight is not outdated or obsolete because cable rates are rising faster than inflation and are the most common source of complaint received by MDTC); Reply Comments of the Massachusetts Department of Telecommunications and Cable at 2 (MDTC Reply) (offering numerous examples of incorrect charges to subscribers that were discovered because of the rate oversight process); Reply Comments of the State of Hawaii at 1-2 (Hawaii Reply) (contending that "[c]able rate regulation remains an important government function to ensure that consumers have effective and affordable access to multichannel video programming services in communities that continue to lack effective competition," and noting that the BST is purchased primarily by low income consumers that are "very sensitive to unreasonable rates").

[27] 47 U.S.C. § 543(b)(1) ("The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable.").

[28] The addition of non-tiered cable services to a BST subscription will not affect the regulatory status of the equipment used to receive the BST. Non-tiered cable services include programming offered on a per channel or per program basis. The statutory description of regulated equipment includes equipment used to access video programming offered on a per channel or per program basis in addition to the BST. *See* 47 U.S.C. § 543(b)(3), (8).

[29] 47 U.S.C. § 543(b)(3) ("The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for--(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and (B) installation and monthly use of connections for additional television receivers.").

to receive a CPST was regulated pursuant to section 623(c) of the Act, which sunset on March 31, 1999.[30] The Act imposed an "actual cost" standard for the regulation of BST equipment[31] and an unreasonableness standard for CPST equipment.[32] At the time it adopted section 76.923 of its rules regulating cable equipment rates, the Commission reasoned that the actual cost standard should apply to all equipment used to receive the BST, even if the equipment was also used to receive additional tiers of regulated service, so that a single standard would apply to all equipment.[33] The Commission acknowledged that its interpretation was an "expansive reading" of the Act.[34] While we retain the requirement to apply the actual cost standard to equipment used to receive the BST, we no longer believe the statute supports continued rate regulation of equipment used by subscribers to receive CPSTs, in light of the statutorily mandated sunset of CPST regulation, which includes equipment used to receive a CPST by definition. The 2018 *FNPRM* sought comment on this proposal to narrow the Commission's equipment regulation rule in light of the sunset of CPST regulation.[35]

8. NCTA supports this revision to the Commission's rules to limit rate regulation to cable equipment used by a BST-only subscriber.[36] Hawaii expresses concern that the change could result in all equipment being deregulated.[37] However, as MDTC and NCTA point out, respectively, the proposal

[30] *See* 47 U.S.C. § 543 (c)(4) ("This subsection shall not apply to cable programming services provided after March 31, 1999."). Cable programming service is defined as "including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis." 47 U.S.C. § 543(l)(2).

[31] NCTA proposes that equipment rates be based on estimated "capital, maintenance, and installation costs" and be presumed reasonable if they are "no higher than the corresponding rates charged in the operator's communities that are subject to effective competition." *See* Letter from Mary Beth Murphy, Vice President and Deputy General Counsel, NCTA, to Marlene H. Dortch, Esq., Secretary, FCC, at 3 (filed June 23, 2025) (NCTA June 20, 2025 *Ex Parte*). However, the statute requires that regulated equipment rates be based on actual costs. *See* 47 U.S.C. § 543(b)(3).

[32] 47 U.S.C. § 543(c).

[33] *See* 47 CFR § 76.923(a)(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."). *See also Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5802, para. 276 and 5806-07, para. 283 (1993) (*Rate Order*); *id*. at 5800, para. 273 ("We further conclude that Congress intended these actual cost regulations to cover all installations and equipment used by subscribers to receive the basic service tier in systems not subject to effective competition, even if the installation or equipment is also used for other cable services.").

[34] *See Rate Order*, 8 FCC Rcd at 5806-07, paras 282-83. Although sections 623(b)(3) and 623(1)(2) of the Act suggest that equipment might be associated with a specific tier of service, the Commission decided to give an expansive reading to the basic tier definition so that only one rate standard (actual cost) would apply to all equipment. *See* 47 U.S.C. § 543(b)(3), (l)(2). *See also Time Warner Entertainment v. FCC*, 56 F.3d 151, 177 (D.C. Cir. 1995).

[35] *2018 FNPRM*, 33 FCC Rcd at 10557-58, para. 17.

[36] NCTA Comments at 13; NCTA Reply at iii, 8-10.

[37] Hawaii Comments at iii, 7. Hawaii disagrees that the Commission has justification for the proposed change and asserts that the deregulation of the CPST requires no update to the existing rule. *Id*. at 7-8; Hawaii Reply at 5. Hawaii asserts that under the proposal, equipment that could be used to receive multiple tiers of service would be deregulated, even if it was used by a BST-only subscriber. *Id.* On the contrary, the proposal shifts the basis for rate regulation to the type of service a subscriber has subscribed to, not the capability of equipment used. *See 2018 FNPRM*, 33 FCC Rcd at 10558, para. 17, n.64 ("Equipment used to receive only the BST plus any non-tiered programming such as programming offered on a per channel or per program basis would remain subject to our rate regulation rules as the Act requires. 47 U.S.C. § 543(b)(3), (8)."). Thus, in communities that rate regulate, BST-

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merely limits rate regulation to equipment rates charged to BST-only subscribers, and any equipment used by a BST-only subscriber remains subject to rate regulation regardless of its capability.[38] While the Commission's original expansive interpretation of section 623(b)(3) may have been appropriate when both the BST and CPST were rate regulated, application of the existing rule, without modifying it to remove the CPST reference, would have the effect of requiring regulation of equipment that has been deregulated per the sunset provision.[39] Now that regulation of the CPST has sunset, we agree with commenters who assert that we should limit rate regulation to equipment used by BST-only subscribers and not by subscribers to additional tiers of cable service beyond the BST.[40] The result is that BST-only subscribers will continue to pay a regulated price for equipment whereas subscribers to the non-regulated CPST will receive an unregulated price for equipment.[41] Any equipment used to receive the BST, no matter its capability, will have a regulated price if it is being leased to a BST-only subscriber, and thus our rules will fulfill the statutory requirement that equipment rate regulation will apply to "installation and lease of equipment *used by subscribers* to receive the basic service tier" and will maintain the statutory mandated protection for BST-only subscribers in rate regulated communities.[42] At the same time, the change we adopt today will better meet Congress's "competition preference" with respect to rates for cable equipment because most subscribers receive a CPST.[43]

B. Small System Deregulation

9. We next adopt the 2018 *FNPRM* proposal to exempt from rate regulation small cable systems serving 15,000 or fewer subscribers that are owned by small cable companies serving 400,000 or fewer subscribers.[44] Consequently, we also adopt the proposal to eliminate rules establishing alternate

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only subscribers will continue to pay a regulated rate for equipment regardless of the capability of the equipment. We believe this change to our rules will better satisfy statutory requirements. *See* 47 U.S.C. §§ 543(b)(3) (equipment rate regulation applies to installation and lease of the equipment used by subscribers to receive the BST); (c)(4) (sunset of upper tier rate regulation); (l)(2) (defining "cable programming service" to include installation or rental of equipment used for the receipt of such video programming other than video programming carried on the BST or offered on a per channel or per program basis).

[38] MDTC Comments at 13; NCTA Reply at 8, n.24.

[39] *See* 47 U.S.C. §§ 543(c)(4), (l)(2).

[40] We reiterate that the statutory language requires rate regulation of equipment used to receive the BST and additional non-tiered programming, such as programming offered on a per channel or per program basis. *See* 47 U.S.C. § 543(b)(3), (8).

[41] MDTC points out that this could lead to different prices for the same equipment. MDTC Comments at 13. We agree and note that this is a natural consequence of having rate regulation applicable to some services and not others. This is a direct result of Congress creating a statute that regulates one tier of service and not another. When Congress deregulated equipment used to receive CPSTs, it created this dichotomy. However, Congress anticipated a similar outcome when it approved the aggregation of equipment rates but excluded aggregation of rates for equipment used to receive only a rate regulated basic tier. *See* 47 U.S.C. § 543(a)(7)(A).

[42] 47 U.S.C. § 543(b)(3) (emphasis added). This regulated price applies to BST-only subscribers even if additional non-tiered programming, such as programming offered on a per channel or per program basis, is subscribed to as well, but not if a customer subscribes to additional tiers of service. *See* 47 U.S.C. § 543(l)(2).

[43] *See* limiting language added to section 76.923 in Appendix A attached hereto ("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 and video programming offered on a per channel or per program basis, if any, *except if such equipment is additionally used by that subscriber to receive other tiers of programming service*.") (emphasis added).

[44] *See 2018 FNPRM*, 33 FCC Rcd at 10558-59, para. 18. *See also* 47 CFR § 76.901(c) ("small system" defined), *id*. § 76.901(d) ("small cable company" defined); *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Sixth Report and Order and (continued….)

methodologies for small systems as well as the Form 1230.[45] No commenter contended that we should retain rate regulation rules for these small cable systems.

10. In the *Small System Order*,[46] the Commission identified unique qualitative characteristics of small systems owned by small cable companies that differed from larger systems, including the "(1) average monthly regulated revenues per channel per subscriber; (2) average number of subscribers per mile; and (3) average annual premium revenues per subscriber."[47] The Commission found that the larger cable companies had higher revenue and a greater number of subscribers per mile, making it easier to attract the financing and investment necessary to maintain and improve service. The larger systems also were better able to absorb the costs and burdens of regulation due to their expanded administrative and technical resources.[48] After identifying these small systems that were in need of regulatory relief, the Commission developed alternative and simplified regulations for determining pricing reasonableness.[49]

11. Shortly thereafter, Congress, being concerned as well with the effect of cable rate regulations on small systems, provided further relief to certain small cable systems in the 1996 Act by exempting them completely from rate regulation.[50] Specifically, section 301(c) of the 1996 Act amended section 623 of the Communications Act by adding subsection (m), "Special Rules For Small Companies," which exempted these small cable operators from rate regulation with respect to the CPST and also the BST, if the BST was the only service tier subject to regulation as of December 31, 1994.[51] Congress defined this small cable operator as a cable "operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[52] As the Commission explained, many of the small systems that were deregulated under the 1996 Act had also qualified under the Commission's small system streamlining rules that had been adopted the year before.[53]

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Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7418, paras. 25-36, 49-50 (1995) (*Sixth Report and Order*) (developing Commission size standards for "small system" and "small cable company").

[45] *See 2018 FNPRM*, 33 FCC Rcd at 10558-59, para. 18. In addition to the option of filing a Form 1230 (abbreviated cost of service), small systems owned by small cable operators are permitted to use a 14 percent reduction streamlined methodology for setting their initial rates. This option allows an eligible operator to reduce its March 31, 1994 rates by 14 percent in lieu of setting initial regulated rates using another methodology. *See* 47 CFR § 76.922(b)(5).

[46] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket Nos. 92-966 and 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995) ("*Small System Order*").

[47] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket Nos. 92-966 and 93-215, *Fourteenth Reconsideration Order*, 12 FCC Rcd 15554, 15555, para. 3 (1997) (*Fourteenth Reconsideration Order*) ("The magnitude of the differences between the two classes of systems as to these characteristics indicated that the 15,000 subscriber threshold was an appropriate point of demarcation for purposes of providing for substantive and procedural regulatory relief.").

[48] *Id*. at 15555-56, para. 4.

[49] *See Small System Order*, 10 FCC Rcd at 7425-26, para. 68 ("Using the $.93 figure for purposes of establishing presumptions of reasonableness would have imposed an unfair burden on many systems for whom a higher rate is well justified. Therefore, one standard deviation was added to the $.93 per channel rate, producing a per channel rate of $1.24.").

[50] *See* 1996 Act, § 301(c), codified at Communications Act, § 623(m); 47 U.S.C. § 543(m).

[51] *Id*.

[52] *See* 47 U.S.C. § 543(m).

[53] *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, CS Docket No. 96-85, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 5937, 5950, para. 32, n. 48 (1996) ("Obviously, a large (continued….)

12. Following the adoption of the 1996 Act, the Commission addressed its streamlining rules for small systems, i.e., those systems serving 15,000 or fewer subscribers that are owned by small cable companies serving 400,000 or fewer subscribers, and stated that "[o]ur small system rules are unaffected by the 1996 Act."[54] This is because the 1996 Act delayed the sunset of CPST regulation until 1999, so the abbreviated cost of service methodology found in Form 1230 could still validly be used to calculate regulated BST and CPST rates of small systems. However, following the deregulation of the CPST in 1999, the Form 1230 that small cable operators use to calculate their rates became difficult to use because the Form 1230 relies on both regulated BST and CPST data in its calculations.[55] The Form 1230 presumes that $1.24 per channel is a reasonable rate and that includes both the CPST and BST and equipment, all of which the Form 1230 presumes to be regulated.[56] The presumptively reasonable rate of $1.24 per channel is now unusable in light of the exclusion of the CPST channels, expenses, and rate base (and now CPST equipment) from the Form 1230 calculations. Faced with the prospect of developing an updated methodology for determining the reasonableness of BST rates charged by small cable systems owned by small cable companies, we find little justification for doing so. First, the administrative burden would be substantial to collect the data necessary to develop a new process for determining reasonable rates for this class of systems. Second, any such methodology would be without any likely immediate effect on consumers because no franchise areas currently regulate rates.[57] Third, no parties supported continued regulation of this class of operators. Finally, as noted above, a large number of small systems owned by small cable operators would be included in the 1996 Act definition of deregulated small cable companies.[58] To regulate these systems now would require an inquiry into whether or not they provided a single tier of service as of December 31, 1994, over 30 years ago.

13. We also find that the benefits of regulating small systems owned by small cable companies do not outweigh "the potential of placing an inordinate hardship upon smaller cable companies in terms of labor and other resources that must be devoted to ensuring compliance."[59] Indeed, in the long run, we think consumers will benefit from deregulation by allowing these small systems to better attract the financing and investment necessary to maintain and improve service. We find ACA's assertion that

(Continued from previous page)
number of systems in this category [that qualify under Commission rules] will qualify for partial or total deregulation under the small cable operator provisions of the 1996 Act.").

[54] *Id*.

[55] *See* Form 1230 Instructions at 1 ("The term 'regulated channel' refers to any channel found on a basic or cable programming service tier.").

[56] *See Small Systems Order*, MM Docket Nos. 92-266 and 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7423, para. 63 (1995) (*Small Systems Order*) ("Because it takes into account all operating expenses and the net rate base, the formula will generate a rate that covers the cost of providing all regulated services and all equipment necessary to receive those services."). *See also* Form 1230 Instructions at 3 ("Line A10 Maximum Permitted Rate (*Bundled Programming and Equipment Costs*) . . . This is the maximum per subscriber, per channel amount your costs allow you to charge" (emphasis added)).

[57] Recent industry data indicate that there are 5 cable companies in the U.S. that have more than 400,000 video subscribers and 256 cable systems (by headend) in the U.S. that have more than 15,000 video subscribers. *See* S&P Global Market Intelligence, S&P Capital IQ Pro, *Broadband & Video Subscribers by Geography* (last visited Feb. 10, 2025); S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 9/24Q* (last visited Feb. 10, 2025). However, as the Commission observed in the *2018 FNPRM*, "it does not appear that any such small cable systems currently are subject to rate regulation." *2018 FNPRM*, 33 FCC Rcd at 10559, para. 18 (relying on a review of Form 328 data, information contained in pending applications for review of an effective competition decision, and information from our COALS database). No commenter disagreed with that observation.

[58] *See* n. 53, *supra*.

[59] *See Fourteenth Reconsideration Order*, 12 FCC Rcd at 15556, para 5.

small cable operators "will be less inclined to invest in deploying their video service" to be persuasive.[60] As ACA points out, "the administrative burdens of being rate regulated would be significant"[61] for small systems owned by small cable companies, as opposed to larger companies and systems with expanded administrative and technical resources.

14. We also agree with ACA that the Commission has ample legal authority to grant relief to small systems.[62] Specifically, we find that our decision today is consistent with the Act, including section 623(i), which requires the Commission to "reduce the administrative burdens and costs of compliance" for small cable systems,[63] and section 623(m), discussed above.[64] Indeed, the Commission determined in the *Small Systems Order* that extending additional regulatory relief to small systems is consistent with the 1992 Cable Act, and in particular with the Statement of Policy in section 2(b)(1-3), which states its intention to rely on the marketplace when feasible, and ensure the ability of cable operators to expand.[65]

15. Our action today will encourage investment in small companies, rely on the marketplace for setting rates for small systems owned by small cable companies for the foreseeable future, and ensure small systems owned by small cable companies will be able to fully recoup investment in expanding their systems. Thus, exemption from rate regulation for these small systems, and elimination of associated forms, provides needed regulatory certainty and reduces potential significant administrative costs. At the same time, our rules will continue to protect subscribers once an entity exceeds the small size standards under our rules, because the system will no longer be exempt.[66]

C. Non-Residential Service Regulation

16. After careful consideration of the Act and our precedent, we conclude that the Commission's rate regulation rules apply only to residential customers.[67] Thus, cable services offered to non-residential subscribers, such as retail stores and restaurants, are not subject to the Commission's rate regulations. Both MDTC and NCTA support this conclusion.[68] Since the onset of cable rate regulation, the Commission has never applied its rate regulation rules to non-residential subscribers.[69] Although section 623(b)(1) of the Act refers to the Commission's obligations to "subscribers," including to "ensure

[60] ACA Comments at 9.

[61] ACA Comments at 5. ACA asserts that "small providers are unlikely to have the detailed books and records (not to mention staff expertise) necessary to easily complete the required filings. They would almost certainly have to hire expensive outside consultants to compile the supporting data and prepare the required forms for filing." *Id*. at 9.

[62] *Id*. at 10.

[63] 47 U.S.C. § 543(i).

[64] 47 U.S.C. § 543(m).

[65] *Small Systems Order*, 10 FCC Rcd 7393, 7407, para. 26 (*citing* 1992 Cable Act, § 2(b)(1)-(3)).

[66] Once a small cable system owned by a small cable company exceeds 15,000 subscribers or is no longer owned by a small company, then its eligibility for small system relief will terminate. *Compare Small System Order*, 10 FCC Rcd at 7413, para. 38 and 7427, para. 73. If an operator loses its deregulated status, we require that it notify the LFA within 30 days. *See* Appendix A, section 76.934(e).

[67] In the *2018 FNPRM*, the Commission tentatively concluded that cable services offered to commercial subscribers are not subject to the Commission's rate regulations, and it sought comment on its interpretation that Congress did not intend to include cable service offered to commercial subscribers within the scope of rate regulation. *See 2018 FNPRM*, 33 FCC Rcd at 10559-60, para. 19. The Commission also sought comment on how commercial service should be defined. *Id*.

[68] MDTC Comments at 13 ("MDTC does not object to the Commission's proposal to make clear that rates for cable services to commercial subscribers including bars and restaurants are not regulated."); NCTA Comments at 15 ("NCTA agrees with this sensible interpretation of the 1992 Cable Act.").

[69] *See 2018 FNPRM*, 33 FCC Rcd at 10559, para 19, n.70.

that the rates for the basic service tier are reasonable," the term "subscriber" is not defined in section 623.[70] While section 623(b)(1) does not expressly provide that cable services offered to non-residential subscribers are exempt from rate regulation, sections 623(a)(2) and (b)(1) both specify that rate regulation shall not be imposed on a cable system that is subject to effective competition.[71] Section 623(l)(1) in turn defines "effective competition" based on the percentage of "households" subscribing to cable or the percentage of "households" to which competing service is available.[72] Given that section 623(b)(1) by way of sections 623(a)(2) and 623(l)(1) references rate regulation in terms of "households," we interpret section 623(b)(1) to apply only to subscribers in households. We therefore conclude that Congress did not intend to include cable service offered to non-residential subscribers within the scope of section 623(b)(1).[73]

17. In limiting rate regulation to cable service and equipment provided to subscribers in households and not non-residential establishments, we note that the Commission, in applying the test for effective competition, has determined that the term "household" means "occupied housing units."[74] We find that using the term "occupied housing unit," as the Commission has interpreted it in the "effective competition" context, to distinguish residential from non-residential subscribers provides a bright line and allows a clear distinction between regulated and unregulated services.[75] We disagree, however, with MDTC that hotels and motels should be excluded from the category of non-residential subscribers just because they may at times act as residences.[76] Instead, we agree with NCTA and conclude that, unless a

[70] 47 U.S.C. § 543(b)(1).

[71] 47 U.S.C. § 543(a)(2), (b)(1).

[72] 47 U.S.C. § 543(a), (l).

[73] Hawaii argues that cable services offered to commercial subscribers are subject to the Commission's rate regulations because the Act does not specifically exclude commercial entities in its language, though Hawaii does not offer any practical suggestions for how commercial service might be regulated. Hawaii Comments at 9-11. However, for the reasons explained above, we disagree. In addition, as NCTA points out, the legislative history of the Act suggests that Congress was concerned with the effect of excessive rates on residential subscribers. *See* NCTA Reply at 11. Hawaii also expresses concern that a decision not to regulate commercial service rates would undermine other provisions of the Act, such as the requirement to offer a BST (section 623(b)(7)(A)), prohibitions on discrimination (section 623(e)), and negative option billing (section 623(f)). *See* Hawaii Comments at 9-11; Hawaii Reply at 6. In response to this concern, we note that our decision today is limited to our rate regulation rules only. That is, we interpret the term "subscriber" in section 623(b)(1) as applying to subscribers in households only in light of the fact that section 623(b)(1) by way of sections 623(a)(2) and 623(l)(1) reference rate regulation in terms of "households." We take no position here on the meaning of "subscriber" in the other provisions cited by Hawaii, the interpretation of which necessarily depends on the context in which that term is used. *See United States v. Cleveland Indians Baseball Co.,* 532 U.S. 200, 213 (2001) ("'the meaning [of the same words] well may vary to meet the purposes of the law'") (citations omitted).

[74] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Buy Through Prohibition, MM Docket Nos. 92-266 and 92-262, Third Order on Reconsideration, 9 FCC Rcd 4316, 4324, para. 17 (1994) (Third Reconsideration Order) ("[T]he operator should measure its penetration rate of full-time subscribers as a percentage of full-time households, i.e., by excluding housing units used for seasonal, occasional, or recreational use."). See also Americable International Arizona, Inc., Memorandum Opinion and Order, 11 FCC Rcd 11588, 11591 (1996); American Cable Systems of California, Inc., et al., Memorandum Opinion and Order, 23 FCC Rcd 638 (2008).

[75] We note that NCTA supports using a standard based on the effective competition standard. *See* Letter from Mary Beth Murphy, Vice President and Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105, et al., at 2 (filed Sept. 28, 2020) (NCTA September 28, 2020 *Ex Parte*).

[76] MDTC Comments at 14. NCTA contends that, although in some limited circumstances a hotel or motel might function as a person's "usual place of residence," that does not make an otherwise commercial establishment residential. *See* NCTA September 28, 2020 *Ex Parte* at 2, n.6 (quoting the Census Bureau definition of housing unit as follows: "According to the Census Bureau, '[l]iving quarters of the following types are excluded from the

(continued….)

particular specific multi-tenant unit is a hotel or motel in name only and is otherwise indistinguishable from an apartment or other included residential housing unit, it should be considered a non-residential subscriber.[77] We therefore conclude that the Commission's BST rate regulations apply only to cable service provided to residential subscribers. For purposes of clarity, we will include a definition in our rules to explain the types of subscribers that are covered under the Commission's rate regulations.[78] We define residential subscribers as subscribers residing in an occupied housing unit, such as a house, an apartment, a mobile home or trailer, a group of rooms, or a single room occupied as separate living quarters.[79]

D. Modification of Sections 76.980 and 76.984

18. We next modify, but do not eliminate, sections 76.980, the rule for charges for customer changes, and 76.984, the rule requiring geographically uniform rates, to reflect the sunset of CPST rate regulation.[80] The 2018 *FNPRM* asked whether these sections should be eliminated or retained, given the sunset of the CPST.[81] NCTA proposes eliminating these sections, but LFAs disagree.[82] We find that both sections continue to fulfill statutory requirements as well as serve important public policy goals with regard to BST regulation and are not required to be eliminated by the statutory language sunsetting CPST regulation. However, as discussed below, we modify them to reflect the sunset of CPST regulation by limiting their application solely to the BST.

19. *Section 76.980.* This section limits charges cable operators may impose when a customer changes its service tier subscription.[83] The rule was adopted pursuant to section 623(b)(5)(C) of the Act, which requires that the Commission impose "standards and procedures to prevent unreasonable charges

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housing unit inventory: Dormitories, bunkhouses, and barracks; quarters in predominantly transient hotels, motels, and the like, *except those occupied by persons who consider the hotel their usual place of residence* . . .'").

[77] Regarding instances where a hotel or motel may be indistinguishable from an apartment or residential housing unit, we expect this to be a case-specific inquiry. In such instances, the LFA may request an operator to provide evidence of the property's non-residential status.

[78] Although the *2018 FNPRM* sought comment on a definition phrased in the negative (i.e., the types of residential subscribers that are not "commercial subscribers"), after further consideration and for the sake of clarity, we think it is better to formulate our definition in terms of the types of subscribers that are categorized as "residential subscribers" for purposes of our rate regulation rules. *2018 FNPRM*, 33 FCC Rcd at 10559-60, para. 19.

[79] We use the definition of housing unit as found in the U.S. Census glossary ("A house, an apartment, a mobile home or trailer, a group of rooms, or a single room occupied as separate living quarters . . ."). *See* https://www.census.gov/glossary/?term=Housing+unit. Accordingly, we modify our rule, 47 CFR § 76.922(a), to reflect the limitation of rate regulation to service provided to residential subscribers as defined therein. *See* Appendix A, attached hereto.

[80] 47 CFR §§ 76.980, 76.984.

[81] *See 2018 FNPRM*, 33 FCC Rcd at 10568-69, paras. 37, 39. We address elimination of other rule sections that were raised in this part of the *2018 FNPRM* in Section III.I below. *See infra* Section III.I; *2018 FNPRM*, 33 FCC Rcd at 10568-69, paras. 36, 38, 40, 10567-69.

[82] *See* NCTA Comments in MB Docket No. 17-105, at 23, n.72; NCTA Comments at 11, n.37; NCTA September 28, 2020 *Ex Parte* at 3; MDTC Comments at 16-17; Hawaii Comments at v, 18.

[83] *See* 47 CFR § 76.980. Specifically, this rule requires that charges for customer changes in service tiers effected solely by coded entry on a computer terminal or by other similarly simple methods shall be a nominal amount, not exceeding actual costs, 47 CFR § 76.980(b); that charges that involve more than coded entry shall be based on actual cost, 47 CFR § 76.980(c); and that for 30 days after notice of retiering or rate increases, a customer may obtain changes in service tiers at no additional charge, 47 CFR § 76.980(f).

for changes in the subscriber's selection of services or equipment. . . ."[84] NCTA asserts that section 76.980 is a rule that "should be eliminated as a matter of regulatory clean-up," arguing that Congress provided for the sunset of this statutory requirement when it sunset CPST rate regulation.[85] MDTC responds that this section was not intended to sunset and is necessary to protect "low-income or cost-conscious consumers" who find it necessary to change to a less expensive tier or service.[86] We conclude that because section 76.980 implements section 623(b)(5)(C) establishing BST rate regulations, and not the CPST requirements in section 623(c), the rule has not sunset.[87] Specifically, we note that section 623(b)(5)(C) falls under subsection (b) of the statute, entitled "Establishment of Basic Service Tier Rate Regulations,"[88] and within subsection (b)(5), which directs the Commission to adopt "additional standards, guidelines, and procedures concerning the implementation and enforcement of *such regulations*."[89] Subsection (b)(5)(C) directs Commission regulations to include standards and procedures to prevent unreasonable charges for subscriber changes of "services or equipment subject to regulation *under this section*."[90] Given the language of the statute and the section's placement and purpose in the statutory scheme, we believe the best reading of section 623(b)(5)(C) is that it was intended to ensure that the rates of the BST are reasonable. Accordingly, we find that section 76.980, which was adopted pursuant to this statutory section, is not required to sunset along with other CPST regulations. NCTA also asserts that the statutory language limits its application to regulated services only and all additions or subtractions from the BST are unregulated.[91] We disagree. By definition, a subscription to multiple tiers of service must include the BST.[92] Therefore, any changes to a subscriber's selection of services or equipment necessarily involves the BST, which is subject to regulation. We find the purpose of the statute and our rule – to "prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section" – is still valid today with respect to the BST.[93]

20. We are persuaded, however, to modify section 76.980 so that it applies only to changes in service tiers that result in a selection of a BST-only service. Both NCTA and Hawaii support this

[84] 47 U.S.C. § 543(b)(5)(C) (the standards "shall require that charges for changing the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method. . . .").

[85] *See* NCTA Comments in MB Docket No. 17-105, at 23, n.72; NCTA Comments at 11, n.37; NCTA September 28, 2020 *Ex Parte* at 3.

[86] MDTC Comments at 16-17. MDTC suggests alternatives to address specific abuses, such as a deposit held for a specified time. *Id*. Hawaii asserts that this rule should be retained at least in part. Hawaii Comments at v, 18.

[87] *See* 47 U.S.C. § 543(b)(5)(C); 47 U.S.C. § 543(c)(4) ("SUNSET OF UPPER TIER RATE REGULATION.—This *subsection* shall not apply to cable programming services provided after March 31, 1999.") (emphasis added).

[88] 47 U.S.C. § 543(b).

[89] 47 U.S.C. § 543(b)(5) (emphasis added).

[90] 47 U.S.C. § 543(b)(5)(C) (emphasis added).

[91] NCTA Reply at 12 ("This provision thus was intended to apply only when a subscriber added or dropped a regulated service. Because BST is the only regulated service, whenever a subscriber adds a new service, the subscriber is selecting an unregulated service. And whenever a subscriber drops a service, that service also is an unregulated service.").

[92] *See* 47 U.S.C. § 543(b)(7) ("Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service.").

[93] 47 U.S.C. § 543(b)(5)(C).

modification.[94] Operators may have little incentive to tack on excessive service change charges when a subscriber seeks to upgrade service tiers because such charges could discourage subscribers from purchasing additional tiers of service. In any event, service change charges for upgrading service tiers implicates CPST rates and, thus, are more properly considered subject to the CPST sunset provision.[95] On the other hand, section 76.980 will continue to protect subscribers from being penalized for downgrading their service to a BST-only tier, which is particularly important for subscribers who are facing financial challenges.[96]

21. *Section 76.984*. We also retain, but modify, section 76.984 of the Commission's rules, which requires uniformity of rates throughout a franchise area.[97] This rule was adopted pursuant to section 623(d) of the Act to prohibit cable operators from selling the same cable service at different prices in different parts of a given franchise area unless the franchise area as a whole faces effective competition.[98] We agree with Hawaii that this rule continues to further the public interest by preventing anticompetitive price variations or excessive charges in low income areas and should be retained.[99] Although NCTA claims that section 76.984 should no longer be in effect due to the sunset of CPST rate regulation in section 623(c),[100] we note that section 623(d) is not subject to the CPST sunset provision in section 623(c), and thus, neither is section 76.984 of the Commission's rules.[101] Nevertheless, we modify the rule to eliminate reference to the CPST, which is no longer regulated. The statute includes limiting language to exclude unregulated services from its reach.[102] At the time Congress added this limiting

[94] *See* Letter from Mary Beth Murphy, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105, et al., at 2 (filed Oct. 22, 2020) (NCTA October 22, 2020 *Ex Parte*) at 2 ("At a minimum, the Commission should revise the rule to apply only when a subscriber chooses to downgrade its service to BST-only."); Hawaii Comments at 18 ("Therefore, the Commission may want to consider additions to the language of the rule that clarifies that any decision by a subscriber to downgrade from a combination of CPST and BST offerings to solely the BST offering is subject to the restrictions on unreasonable charges. In contrast, it may no longer be necessary to enforce the Section 76.980 restrictions with respect to a subscriber that adds one or more CPST offerings.").

[95] 47 U.S.C. § 543(c)(4).

[96] *See* limiting language added to section 76.980 in Appendix A attached hereto ("(a) This section shall govern charges for any changes in service tiers or equipment provided to the subscriber that are initiated at the request of a subscriber after initial service installation *and that result in the subscriber receiving only a basic tier of service, with or without additional non-tier services, and no additional tier of service*.") (emphasis added).

[97] *See* 47 CFR § 76.984 (requiring that "[t]he rates charged by cable operators for basic service, cable programming service, and associated equipment and installation . . . be provided pursuant to a rate structure that is uniform throughout each franchise area in which cable service is provided," but stating that the requirement does not apply to a cable operator's cable service over a cable system in any geographic area that is subject to effective competition).

[98] S*ee* 47 U.S.C. § 543(d) ("A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system."). The uniform rate requirement expressly does not apply to cable systems about which the Commission has made a finding of effective competition. *Id.*

[99] Hawaii Comments at iv, 19. We disagree, however, that the statute continues to apply to the CPST following its deregulation.

[100] NCTA Comments at 11, n.37. NCTA believes this rule should be "eliminated as a matter of regulatory clean-up." NCTA Comments in MB Docket No. 17-105 at 23, n.72 (filed July 5, 2017). *See also* ITTA Reply in MB Docket No. 17-105, at 13, n.51 (filed Aug. 4, 2017).

[101] 47 U.S.C. § 543(c)(4) ("SUNSET OF UPPER TIER RATE REGULATION. This subsection shall not apply to cable programming services provided after March 31, 1999."). *See also* 47 U.S.C. § 543(d).

[102] 47 U.S.C. § 543(d) ("This subsection 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.").

language, it expressed its intent that "a cable operator must comply with the uniform rate structure requirement in section 623(d) of the 1992 Cable Act only with respect to regulated services."[103] The CPST sunset provision became effective three years later in 1999, moving the CPST from regulated to unregulated status. In light of the congressional intent not to apply the uniform rate requirement to unregulated services, we conclude that the statutory provision no longer applies to the CPST and we eliminate the reference to CPST in section 76.984 of our rules.[104] Our rule will continue to prevent discriminatory and anti-competitive behavior and promote competition in areas where the cable system is not subject to effective competition, but will be limited to rate-regulated BST services and equipment.

E. Establishing Initial Rates

22. In this Order, we revise our methodology for newly regulated cable operators to establish initial regulated BST rates.[105] Specifically, we require a cable operator to use, as its initial regulated BST rate, the BST rate[106] in effect 60 days prior to the date an LFA files its certification to regulate BST rates.[107] This methodology replaces the existing methodology that requires initial rates to be calculated using historical financial and rate data from the 1990s, when the Commission adopted rules establishing initial rates.[108] We also modify our transition rules for entities losing their rate regulation exemption status to conform with the rules for other newly regulated operators.[109]

23. Under the Commission's existing rate regulation rules, the process for setting an initial BST rate when a cable system becomes regulated is complicated and requires using data from as far back as 1992.[110] The existing rules are based primarily on an approach where existing rates are compared to a benchmark that reflects rates charged by cable systems subject to effective competition with the same number of subscribers and channels.[111] After LFAs and cable operators set initial regulated rates,

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[103] *Id.* S. Rep No. 104-230 at 150 (1996).

[104] *See* section 76.984 in Appendix A attached hereto ("(a) The rates charged by cable operators for basic service and associated equipment and installation shall be provided pursuant to a rate structure that is uniform throughout each franchise area in which cable service is provided.").

[105] For simplicity, we refer to first time or re-regulated cable operators as newly regulated cable operators throughout this document. Newly regulated cable operators may include those that are regulated for the first time, operators in communities where an LFA successfully rebuts the presumption of effective competition, or operators that lose their exemption from rate regulation because their status under our rules has changed. The statutory definition of BST remains unchanged. *See* 47 U.S.C. §522(3) ("the term "basic cable service" means any service tier which includes the retransmission of local television broadcast signals").

[106] To the extent this initial BST rate includes charges for equipment and installation, the equipment and installation charges must be removed from the BST rate. Regulated equipment rates are based on a different statutory standard of actual cost. *See* 47 U.S.C § 543(b)(3). They are calculated separately from service rates using Form 1205.

[107] For LFA certification requirements, *see* 47 CFR § 76.910.

[108] *See 2018 FNPRM*, 33 FCC Rcd at 10560, para. 21.

[109] *See* 47 CFR §§ 76.934, 76.990.

[110] *2018 FNPRM*, 33 FCC Rcd at 10560-63, paras. 20-25.

[111] *See Rate Order*, 8 FCC Rcd at 5747, para. 173. Initial regulated rates are based on the higher of either (i) the benchmark adjusted for changes in external costs through March 31, 1994, or (ii) the operator's rates in effect on September 30, 1992, reduced by the general differential between competitive and non-competitive systems and adjusted for certain intervening changes in inflation, external costs, and the number of regulated channels. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119, 4166-68, paras. 105-10 (1994) (*Second Reconsideration*), *reconsidering Rate Order*, 8 FCC Rcd at 5770-74, paras. 213-22. The competitive differential was initially found to be 10 percent but, on reconsideration, was found to be 17 percent, with various other adjustments in the rules. *Rate Order*, 8 FCC Rcd at 5644, para. 14, 6146 (Appendix E); *Second Reconsideration*, 9 FCC Rcd at 4166, para. 105. Initially

(continued….)

increases are governed on a going-forward basis by a price cap mechanism.[112] The price cap permits periodic adjustments for inflation, changes in the number of regulated channels on tiers, and changes in external costs.[113] Regulated rates are expected to allow cable operators to recover their costs and obtain a reasonable profit.[114]

24. Under our current rules, a newly regulated cable operator choosing the benchmark methodology must use Form 1200 to calculate its initial regulated rates and Form 1240 to justify subsequent rate increases.[115] The Form 1200 requires newly regulated cable operators to use financial data from the early 1990s to establish an initial regulated rate, which is then brought up to the current date using the Form 1240. Our revisions today will eliminate the Form 1200 calculation and change the starting rate entered on the Form 1240.

25. The 2018 *FNPRM* sought comment on a proposal to update and streamline the existing process, which has become increasingly time-consuming, burdensome, and impractical. The changes we adopt today replace the rate calculated using the Form 1200 with an operator's actual BST rate in effect 60 days prior to an LFA's filing a certification to regulate rates as its initial regulated rate to be entered on the Form 1240.[116] As noted in the 2018 *FNPRM,* choosing the cable operator's actual unregulated rate as a starting point presumes that an operator has set its unregulated rates to sufficiently recover its costs and earn a reasonable profit.[117] No commenter supports retaining our current Form 1200 methodology. NCTA agrees with this proposal to eliminate the Form 1200 and using the actual rate as the initial starting rate to calculate permissible rate increases on the Form 1240.[118] MDTC provides examples of when the Form 1200 has been impractical to use and points out that "[g]iven the consolidation of the cable TV industry since 1994, the information necessary to complete the existing FCC Form 1200, which requires

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comparisons were based on per channel rates. *See* FCC Form 393, Determination of Maximum Initial Permitted Rates for Regulated Cable Programming Services and Equipment (Aug. 1993). On reconsideration, comparisons were based on per subscriber per tier revenues from regulated sources. *See* FCC Form 1200, Setting Maximum Initial Permitted Rates for Regulated Cable Services Pursuant to Rules Adopted February 22, 1994, "First-Time Filers Form" (May 1994).

[112] *See Rate Order*, 8 FCC Rcd at 5747, para. 174.

[113] *See* 47 CFR § 76.922(c)(2) ("The Commission's price cap requirements allow a system to adjust its permitted charges for inflation, changes in the number of regulated channels on tiers, or changes in external costs.").

[114] 47 U.S.C. § 543(b)(2)(C).

[115] The Commission initially developed the Form 393 and associated instructions for cable operators and LFAs to compute benchmark comparisons and rate reductions and for unbundling equipment and installation costs from programming rates. The Form 393 was replaced by Forms 1200 (for calculating BST rates) and 1205 (for calculating equipment rates) after May 15, 1994. *Second Reconsideration*, 9 FCC Rcd at 4188, para. 145. Equipment rates are based on actual costs and are unaffected by the BST rate rule changes we adopt today.

[116] *See 2018 FNPRM*, 33 FCC Rcd at 10560, para. 21.

[117] *See 2018 FNPRM*, 33 FCC Rcd at 10562-63, para. 25. *See also* 47 U.S.C. §§ 543(a)(2) ("If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this Section."); 543(b)(2)(C)(i) (noting a "preference for competition" over rate regulation, and directing the Commission to adopt regulations that consider "the rates for cable systems . . . that are subject to effective competition").

[118] *See* NCTA Comments at 10-12. NCTA states that there "is consensus that an updated and simplified version of the Form 1240 methodology should be available as an alternative means for a regulated cable system to establish its permitted BST rate." NCTA Reply at 5.

looking back to an operator's 1994 finances, is simply not available in many cases."[119]

26. While unsupportive of the current system, MDTC and Hawaii raise concerns regarding using unregulated rates as a starting point. MDTC objects to setting an initial rate based solely on unregulated rates in effect prior to certification.[120] Hawaii asserts that current rates may reflect "insufficiently competitive conditions."[121] While we understand MDTC's and Hawaii's concerns regarding unregulated rates and competitive conditions, we are constrained by the definition of effective competition found in the Act.[122] Congress made a determination that the presence of effective competition bars the imposition of rate regulation. This supports the presumption that rates in a competitive system, defined by the Act as a system subject to effective competition, are reasonable.

27. In light of the fact that our current system is based on data collected in 1992[123] and requires "detailed back-up on rates and channel line-up changes made years or even decades earlier (often by a prior system owners),"[124] we find that basing initial regulated rates on unregulated rates in effect 60 days prior to the date an LFA files its certification to regulate the BST is a reasonable update consistent with our statutory requirements. Indeed, our action today is consistent with the Commission's decision in 1995 to similarly limit the amount of historical data necessary to establish regulated CPST rates.[125] We therefore decide to use an operator's BST rate in effect 60 days prior to the date an LFA files its certification to regulate BST rates as the initial regulated rate and as the starting point for Form 1240 updates.

28. More specifically, a regulated cable operator will identify to the LFA its BST rate that was in effect 60 days prior to the date the LFA filed its certification to regulate BST rates and file supporting documentation such as a rate card. This rate will be inserted as the Current Maximum Permitted Rate on Line A1 of operator's initial Form 1240 when justifying a subsequent rate increase. This rate will include the entire amount charged for the BST, whether or not an operator has broken out individual components of the rate as separate line items on its subscribers' bills. It will not include promotional or discount rates nor include charges for equipment used to receive the BST.[126] After this

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[119] *See* MDTC Comments at 14-15. MDTC agrees that Forms 1240 and 1205 are still useful for setting reasonable rates. MDTC Comments at 3 (asserting that the process is "fairly predictable and uncontroversial" so compliance costs are at an "all-time low" for LFAs and operators). MDTC also supports the retention of Forms 1205 and 1240 as the "exclusive method for rate oversight." MDTC Reply at 5.

[120] MDTC Comments at 14-15; MDTC Reply at 9.

[121] Hawaii Comments at ii-iii, 12.

[122] *See* 47 U.S.C. § 543 (l)(1).

[123] *See Rate Order*, 8 FCC Rcd at 5641, para. 11.

[124] *See* NCTA Comments at 12.

[125] *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Thirteenth Order on Reconsideration, 11 FCC Rcd 388, 450-52, paras. 161-64 (1995) (*Thirteenth Reconsideration Order*). In the *Thirteenth Reconsideration Order*, the Commission, on its own motion, decided to end regulatory review of an operator's entire rate structure when a CPST rate complaint was filed. Instead, the Commission decided to review only the amount of the rate increase. *Id*. at 451, para. 163.

[126] *See 2018 FNPRM*, 33 FCC Rcd at 10560-61, para. 21, n.78. Equipment charges will continue to be unbundled from service rates to the extent they have been included and permitted charges for equipment will continue to be based on actual costs and calculated using Form 1205. *See* 47 CFR § 76.923. To the extent that any equipment or installation costs were included in the BST service charge, they can be removed using an off-form attachment and included in the Form 1205. There is no longer a requirement to review historical rates. *See* NCTA Comments at 14; NCTA Reply at 9, n. 28. ("[T]he Commission should clarify that cable operators filing a Form 1205 are not required to affirmatively establish whether the cost categories taken into account in calculating an operator's current equipment rates were "unbundled" from service rates in 1993. It simply is unreasonable, more than twenty-five (continued….)

initial rate is entered on the Form 1240, the Form 1240 will be used to account for subsequent changes in external costs and inflation and, to a limited extent which we describe below, changes in the number of channels on the BST that have occurred since the operator implemented its most recent unregulated BST rate or subsequent regulated BST rates.

29. To address concerns regarding the use of an unregulated rate as a starting point, we conclude that a newly regulated cable operator shall establish an initial regulated rate by using the BST rate in effect 60 days prior to the date an LFA files its certification to regulate BST rates.[127] The 2018 *FNPRM* sought comment on whether the Commission should impose restrictions on a cable operator's ability to use its actual current BST rate as its initial regulated rate.[128] With regard to the date for determining the initial regulated rate, MDTC supports some form of rate freeze or look back period,[129] and Hawaii also supports a reach back period.[130] NCTA requests that any look back period be limited to 60 days, but would prefer using the rate in effect when the LFA files its certification.[131] We believe that adopting a look back period is appropriate to prevent a cable operator from unreasonably raising its rates in anticipation of an LFA certifying to regulate rates.[132] We find that accepting the BST rate in effect 60 days prior to the date an LFA files its certification allows a reasonable period for an LFA to prepare and file its certification, is a rational compromise between cable operators and LFAs, and is consistent with our precedent.[133] Therefore, the BST rate in effect 60 days prior to the LFA's certification filing date will be deemed reasonable and will be used as the initial regulated rate and the starting rate for future rate increases that are subject to regulation.

30. In the interest of uniformity and consistency, we also modify the three-month period that applies to small cable operators who lose their deregulatory status to conform with the new 60 day rule

(Continued from previous page)
years after the fact, and in many cases after systems have changed hands one or more times, to expect a cable operator to be able to make such a showing.").

[127] An LFA must be certified by the Commission in order to regulate rates. *See* 47 CFR § 76.910.

[128] *See 2018 FNPRM*, 33 FCC Rcd at 10561-62, para. 23.

[129] MDTC Comments at 14-15; MDTC Reply at 9.

[130] Hawaii Comments at iii, 12. Although Hawaii suggests that the Commission use previously regulated rates as a starting point, for the reasons previously stated, we are rejecting using historical rate data for setting initial rates.

[131] NCTA Comments at 11, n.34; NCTA Reply at iii; NCTA August 28, 2020 *Ex Parte* at 2; NCTA September 28, 2020 *Ex Parte* at 1-2.

[132] In order to be certified, the franchising authority must file with the Commission a written certification and submit evidence rebutting the presumption that competing provider effective competition exists in the franchise area. Generally, the certification will become effective 30 days after the date filed and the franchising authority must notify the cable operator that it has been certified to regulate. *See* 47 CFR § 76.910(e) ("Unless the Commission notifies the franchising authority otherwise, the certification will become effective 30 days after the date filed, provided, however, That the franchising authority may not regulate the rates of a cable system unless it: (1) Adopts regulations: (i) Consistent with the Commission's regulations governing the basic tier; and (ii) Providing a reasonable opportunity for consideration of the views of interested parties, within 120 days of the effective date of certification; and (2) Notifies the cable operator that the authority has been certified and has adopted the regulations required by paragraph (e)(1) of this section.").

[133] At the onset of rate regulation, the Commission imposed a three-month freeze on rate increases. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket 92–266, Order, 8 FCC Rcd 2921 (1993). The rate freeze afforded LFAs an opportunity to become certified to regulate the basic service tier. *Id*. at 2921-22, paras. 3-4, 12. *See C-Tec Cable Systems, et al., Letters of Inquiry*, Memorandum Opinion and Order, 10 FCC Rcd 3358 (CSB 1995); *TCI of Southeast Mississippi, Appeal of Local Rate Order*, 10 FCC Rcd 8728 (CSB 1995). That timeframe was chosen when the regulation of rates was an unknown process, whereas affected entities are now likely familiar with rate regulation, therefore we find it reasonable to conclude that less time is needed.

applicable to other newly regulated operators.[134] Under our existing rules, if a small cable operator subsequently becomes ineligible for small operator status, the operator may maintain the rates it charged prior to losing small cable operator status if such rates were in effect for the three months preceding the loss of small cable operator status.[135] Our revised rule now states that upon regulation, actual rates and subsequent rate increases will be subject to generally applicable regulations governing rates and rate increases, which includes the newly adopted 60 day rule.[136]

31. We note that the date used for establishing the initial regulated rate and the "effective date of regulation" are not the same. As discussed above, we use the date 60 days before an LFA files its certification to establish initial regulated rates. However, the "effective date of regulation" is the date an LFA notifies a cable operator that it has been certified and adopted regulations.[137] For purposes of refund liability, and consistent with NCTA's request,[138] we simplify the refund rule so that a cable operator's liability for refunds runs from the effective date of regulation until the operator reduces its rate in compliance with an LFA order.[139] The "effective date of regulation" for a cable operator remains the date that an LFA notifies the cable operator that the BST is subject to regulation; a cable operator will not be required to refund overcharges prior to that date.

F. Channel Movement Calculation

32. We next modify our channel movement rules to account for the sunset of CPST regulation and to simplify the process. Under our current rules, once a regulated operator sets an initial regulated service tier rate, it justifies rate increases based on changes in external costs, inflation, and changes in the number of channels on that tier.[140] When the Commission adopted rules pertaining to the addition and deletion of channels from a regulated tier of service, or channel movement, both the BST and CPST were subject to rate regulation, and the Commission indicated its intention to provide a rate

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[134] *See 2018 FNPRM*, 33 FCC Rcd at 10561-62, para. 23, n.82; *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, CS Docket No. 96-85, Report and Order, 14 FCC Rcd 5296, 5334-35, paras. 88-89 (1999) (Commission regulations should not "act as an incentive for an operator to raise rates dramatically as a means of protecting those rates from regulatory review, when it becomes apparent that the operator is about to lose its deregulatory status."); *id*. at 5335, para 89. *See also* 47 U.S.C. § 543(m); 47 CFR § 76.990.

[135] *See* 47 CFR § 76.990(c).

[136] *See* Appendix A, section 76.990(c).

[137] *See* 47 CFR § 76.910(e) (". . . [T]he franchising authority may not regulate the rates of a cable system unless it . . . [n]otifies the cable operator that the authority has been certified and has adopted the regulations required by paragraph (e)(1) of this section.").

[138] NCTA August 28, 2020 *Ex Parte* at 2 ("If the Commission concludes the starting point should be a date prior to the date of certification (which we recommend against, as introducing unwarranted complexity), we urged the Commission to limit the look-back to no more than 60 or 90 days before certification (*with no refund exposure for any pre-certification period*).") (emphasis added). No objections to this specific *ex parte* request were filed with the Commission.

[139] *See* 47 CFR § 76.942. Section 76.942 of the Commission's rules addresses refunds of overcharges to subscribers, including the LFA's authority to order refunds, the refund period, and how refunds may be implemented.

[140] We note that the language in the inflation adjustment rule set forth in section 76.922(e)(2)(i) inadvertently refers to the quarterly calculation rather than the annual calculation. *2018 FNPRM*, 33 FCC Rcd at 10563-64, para. 27, n.94; *compare* 47 CFR § 76.922(e)(2)(i) with *Instructions for FCC Form 1240* at pp. 13, 24 (or electronic version at https://transition.fcc.gov/Forms/Form1240/1240inst.pdf at pp. 9, 17). The *2018 FNPRM* proposed a correction to the regulatory language, and no objections to the proposal were filed with the Commission. Therefore, we take this opportunity to conform section 76.922(e)(2)(i) to the annual methodology adopted in Form 1240, as consistently applied since 1996. *See, e.g*., *Inflation Adjustment Figures for Cable Operators Using FCC Forms 1210 and 1240 Now Available*, Public Notice, 32 FCC Rcd 7337 (2017). *See also* Appendix A at section 76.922(c)(2)(i).

adjustment mechanism for channel movement between regulated BST and CPST tiers.[141] The 2018 *FNPRM* sought comment on what effect the sunset of CPST regulation has on two components of the channel movement rate adjustment calculations: the "channel number" component[142] and the "residual" component,[143] and what modifications to our rules should be considered for adjusting rates when channels are added to or deleted from the BST.[144] Commenters assert that our channel movement rules are confusing and in need of reform.[145] We address each of these issues below.

33. *"Channel Number" Component*. We adopt the 2018 *FNPRM* proposal to eliminate the requirement that rates be adjusted based on changes in the total number of regulated channels on the system when channels are added to or deleted from the BST.[146] Among other ways, the rate regulation rules currently allow for a rate adjustment based on changes in the total number of channels on all regulated tiers.[147] This "per channel adjustment factor" is calculated using a "markup table," which is

[141] The Commission's rate regulations were designed to be "tier-neutral," so the same methodology was used to set rates for the BST and CPST. Channels could be moved between tiers on a revenue neutral basis. *Rate Order*, 8 FCC Rcd at 5746, 5759-60, 5881-82, paras. 171, 197, 396; *reconsideration denied on this issue*, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, 9 FCC Rcd 1164, 1182-85, paras. 31-36 (1993) (*First Reconsideration Order*). The Commission previously adopted interim instructions to implement the end of CPST regulation and the sunset provision in 47 CFR § 76.922(g)(8). *See 2002 Revised Order and NPRM*, 17 FCC Rcd at 11569-70, para. 55; *Revised 2002 Order*, 17 FCC Rcd at 15974-76, para. 2.

[142] The term "channel number component" refers to a per channel amount that accounts for changes in the total number of regulated channels on the system when channels are added or deleted. *See Second Reconsideration*, 9 FCC Rcd at 4243-44, 4303-07, paras. 247-48 and Technical Appendix; 47 CFR § 76.922(g)(2). For example, if a cable operator adds one channel to its BST and four channels to its CPST, the total channel count increases by 5. The channel number component requires the operator to use a formula and a chart to determine if that increase should result in a higher maximum permitted rate. This method assumes both the BST and CPST are regulated.

[143] The term "residual component" refers to the portion of a permitted charge that remains after subtracting external costs and any other per channel adjustments. The total tier residual is divided by the number of channels on the tier to determine a per channel residual amount. *See* 47 CFR § 76.922; Form 1240 Instructions at p. 3 and Worksheets 4 and 5. For example, if a cable operator deletes four channels from its BST and does not replace them, there would be a deduction in external costs but a portion of the rate which is not attributable to external costs and is otherwise not easily calculable would remain in the rate and charged to customers that now receive four less channels. The residual component reflects that portion of the rate which is attributable to those non-external costs.

[144] *See 2018 FNPRM*, 33 FCC Rcd at 10564-65, paras. 28-30. Our current process for adding or deleting channels to or from the BST is set forth in section 76.922(g) of our rules, as modified by order in 2002. *See* 47 CFR § 76.922(g)(2); *2002 Revised Order and NPRM*, 17 FCC Rcd at 11569-70, para. 55; *revised*, 17 FCC Rcd 15974, 15974-76, para. 2 (2002) (stating that although section 76.922(g)(8) of the rules sunset paragraph (g), LFAs should continue to accept rate adjustments based on the markup table in section 76.922(g)(2)). Operators may also recover the full amount of programming cost increases due to added channels, plus a markup on new programming expenses of 7.5 percent. *Second Reconsideration*, 9 FCC Rcd at 4139-40, para. 40.

[145] *See* Letter from Mary Beth Murphy, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105, et al., at 1 (filed Oct. 22, 2020) (NCTA October 22, 2020 *Ex Parte*) (arguing that the rules are confusing, difficult to administer and produce illogical results). *See also Revisions to Cable Television Rate Regulations*, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 11550 (2002), *revised*, 17 FCC Rcd 15974 (2002). NCTA suggests that the Commission take channel changes out of the equation entirely. NCTA Comments at 10, n.33, 12; NCTA Reply at iii, 6-8; NCTA August 28, 2020 *Ex Parte* at 2-3; NCTA September 28, 2020 *Ex Parte* at 2-3. MDTC believes that, in general, the forms "would benefit from simplification of language and clarification of instructions" as well as the removal of unnecessary worksheets. MDTC Comments at 3. Hawaii wants to retain the BST per channel residual adjustment and markup table. Hawaii Comments at iv, 14.

[146] *See 2018 FNPRM*, 33 FCC Rcd at 10565, para. 30. Our rules do not apply to CPST changes because that tier is no longer regulated.

premised on having a regulated CPST and a system with fewer than 100 channels.[148] NCTA supports eliminating this calculation as part of streamlining the initial rate-setting process.[149] Hawaii suggests that the table could be modified or updated to apply to the BST but does not provide any recommendations for how to do so.[150] Because (1) the table calculation includes now-deregulated CPST channels, and (2) the table maxes out at 99.5 channels with a rate adjustment of one cent for each additional channel, an updated table would likely have no effect on maximum permitted rates, let alone actual rates, which are generally lower than the calculated maximum permitted rates.[151] For these reasons, and with no viable alternative proposed, we see no reasonable way to make this outdated system workable. We therefore eliminate this adjustment and the accompanying table.[152] Regulated BST rates will no longer include adjustments based solely on a change in the total number of regulated channels. We find there is sufficient basis to instead rely upon the additional adjustment components, including the removal of the residual component discussed below.

34. *"Residual" Component*. We adopt the proposal to simplify our methodology to account for a reduction in BST channels.[153] The "residual" amount can be roughly analogized to the cost of providing and maintaining the network and offering the service. Under our current rules,[154] when a channel is removed from the CPST or BST, a per channel "residual" amount is removed as well and moves with the channel to its new tier location.[155] Now that the CPST is no longer regulated, there is not a regulated residual calculation available to move with a channel that is moved to the BST from a CPST.[156] However, when a channel is removed from the BST, our current rules continue to require the removal of the per channel share of the residual portion of the BST permitted charge.[157] Without a regulated CPST, this sets up an imbalance between the tiers because a regulated per channel residual can

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[147] When this rule was adopted in 1994, both the BST and CPST were regulated.

[148] The markup table calculates a per channel amount that cable operators may use to adjust their rates when they add a channel to or delete a channel from the BST; the amount is dependent on the total number of regulated channels on both tiers of service. *See Second Reconsideration*, 9 FCC Rcd at 4243-44, paras. 247-48; Technical Appendix at 4303-07 (per channel adjustment factors based on benchmark equation). *See also* 47 CFR § 76.922(g)(2).

[149] NCTA Comments at 10 (asserting that "rates should be adjusted based on any changes in programming costs for the programming on the channel, but not for changes in the number of channels").

[150] Hawaii Comments at 14.

[151] *See Second Reconsideration*, 9 FCC Rcd at 4243-44, 4303-07, paras. 247-48 and Technical Appendix for an explanation of how the table was created. *See also Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, MB Docket No. 92-266, Report on Cable Industry Prices, 33 FCC Rcd 1268, 1281, Table 5 (MB 2018) (reporting that, on average, cable systems carry more than 400 channels).

[152] *See* 47 CFR § 76.922(g)(2).

[153] This adjustment and table appear in section 76.922(g)(2) of our rules, and we eliminate them consistent with this Order. *Compare 2018 FNPRM*, 33 FCC Rcd at 10564-65, para. 29 *with* Appendix A, para. 3.

[154] 47 CFR § 76.922(g).

[155] This amount is calculated by subtracting external costs and any other per channel adjustments from a permitted charge for the tier and then dividing the remainder by the number of channels on the tier. *See 2002 Revised Order and NPRM*, 17 FCC Rcd at 11557, para. 12.

[156] *See 2002 Revised Order and NPRM*, 17 FCC Rcd at 11569-70, para. 55; *Revised 2002 Order*, 17 FCC Rcd at 15974-76, para. 2 ("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."). *See also Going Forward Order*, 10 FCC Rcd at 1256, para. 84.

[157] *See* 47 CFR § 76.922; Form 1240 Instructions at p. 3 and Worksheets 4 and 5.

no longer move from the CPST to the BST.[158]

35. The 2018 *FNPRM* sought comment on a proposal to simplify our rule so that (1) no per channel residual is moved to the BST when the cable operator moves a CPST channel to the BST, and (2) no per channel residual is removed from the BST when a channel is removed from the BST, unless the total number of channels on the BST falls below the total number of channels included in the initial regulated BST rate, in which case the residual is removed.[159] Hawaii supports our decision to retain the BST per channel residual adjustment to reduce rates when channels are removed from the BST, arguing that it is "equitable and necessary."[160] Hawaii asserts that BST subscribers should not be required to pay the residual costs for channels that are removed from the basic tier.[161] On the other hand, NCTA suggests the Commission take channel changes out of the equation completely because they are confusing and lead to asymmetric rate adjustments.[162] NCTA also expresses concern that in the current competitive marketplace, channel counts are no longer a determinative factor in establishing BST rates.[163] We understand that cable operators have made pricing decisions that are unrelated to channel count, but find too little evidence in the record to challenge the factual underpinnings of our channel movement regulations in their entirety.[164] As set forth below, we adopt the proposed solution, which addresses the sunset of CPST regulation while seeking to maintain the integrity of our process for determining reasonable maximum permitted BST rates in regulated communities.

36. We adopt the proposed changes to the process for calculating and removing the per channel residual component from the BST.[165] The per channel residual is the permitted charge for the BST, minus the external costs, divided by the total number of channels on the BST. Rather than requiring cable operators to complete the existing complicated and time-consuming worksheets, cable operators will be required to simply record the number of channels included on the BST at the time the initial regulated rate was established (Initial Channel Count) and at each Form 1240 update. If the total number of channels on the BST falls below the Initial Channel Count, then the cable operator should perform the residual calculation and remove the residual amount associated with the number of removed channels from the BST rate.[166] Any other channel movement to or from the BST that does not cause a drop in channels below the Initial Channel Count will not require the removal of any residual or otherwise change

[158] For example, an exchange of channels between the tiers would result in a residual portion of the BST rate being removed but no residual portion of the CPST rate added to the BST.

[159] *See 2018 FNPRM*, 33 FCC Rcd at 10564-65, para. 29.

[160] Hawaii Comments at iv.

[161] *Id*. at 13-14. Hawaii asserts that the Commission "should not under any circumstances consider the elimination of the current requirement that the per channel residual of a channel that is removed from the BST must also be removed from the BST rate." *Id*. at 14. However, because we eliminate the addition of a residual component to channels added to the BST after the initial rate is set (*see* para. 27, *supra*), we limit the residual removal requirement to those circumstances when the total number of BST channels falls below the number of channels existing at the time the initial rates are calculated.

[162] NCTA Comments at 10, n. 33; NCTA Reply at 7-8.

[163] *See* NCTA September 28, 2020 *Ex Parte* at 2. For example, Charter's BST channel count ranged from 24 to 119 for BSTs that were priced the same. *See* NCTA August 28, 2020 *Ex Parte* at 2.

[164] The Commission's previous analysis showed that "the price of cable service increases only a small amount as the number of channels included in regulated tiers of service increases" and that "subscribers actually purchase regulated service not on a per-channel basis, but in tiers consisting of several channels." *Second Reconsideration*, 9 FCC Rcd at 4115, para. 78.

[165] *See 2018 FNPRM*, 33 FCC Rcd at 10564-65, para. 29.

[166] This calculation can be done using an off-form attachment to the Form 1240.

the Initial Channel Count.[167] This updated methodology is both simple and equitable, and will ensure that unregulated CPST residual amounts are not added to the BST and that excessive amounts of residual are not removed from the BST.

37. Although NCTA argues that, in some circumstances, a cable operator should be able to remove an insignificant percentage of channels from the BST without triggering a calculation and removal of the residual component,[168] because we greatly simplify our channel movement rules in this Order, we think it unlikely in most cases that the burden of calculating and removing the residual will outweigh the benefit to subscribers of removing the excess residual costs. Indeed, the record lacks sufficient data to help us define a bright-line rule that would let cable operators remove a specific percentage of channels from the Initial Channel Count without triggering the removal of the accompanying residual.[169] Instead, we note that cable operators and LFAs have the flexibility to agree that a residual for a small number of channels would be so insignificant that its removal should be waived.[170] In those cases, we will defer to their judgment and waive our requirement to remove the residual component.[171] Overall, the modifications we adopt today will greatly simplify and balance our channel movement rules.

G. Form 1240 True-Up Accrual of Interest

38. We hereby adopt the tentative conclusion as stated in the 2018 *FNPRM* that we should clarify our Form 1240 instructions to prevent cable operators from accruing interest on costs not passed through to subscribers when they are first entitled to recover those costs.[172] The Form 1240 allows an operator to calculate a maximum permitted rate using projected costs.[173] The operator is then required to "true up" its rate by comparing the projected costs with actual costs once they are known. The operator is not required to pass through all of its costs to subscribers in the rate it chooses to implement but may accrue costs to pass through at a later date.[174]

39. When interest continues to accrue on these costs, it can result in excessive maximum permitted rates calculated on the Form 1240. The Commission has stated in numerous decisions, and our

[167] As with our existing rules, an operator may substitute a channel for a removed channel, preserving the residual amount in the BST calculation. We agree with NCTA that our channel substitution rules allow removed residual to be restored if the channels removed are restored or replaced. *See* NCTA October 22, 2020 *Ex Parte* at 2, n.5.

[168] NCTA supports limiting a residual calculation to when an operator changes the number of channels it carries on the BST by more than 20 percent. *See* NCTA September 28, 2020 *Ex Parte* at 3. On the other hand, Hawaii argues that any reduction in channels should trigger a change to the residual. Hawaii Comments at 13-14.

[169] *See* NCTA October 22, 2020 *Ex Parte* at 1-2 ("[A] regulated rate reduction would only be triggered if: (1) the channel count falls more than a set percentage below the "starting" channel count level and (2) the channel count is reduced by more than the set percentage on an annual basis.") (footnotes omitted).

[170] Indeed, in the CPST rate regulation context, the Commission has determined on numerous occasions that a calculated refund liability for excessive rate charges may be so *de minimis* as to be in the public interest to ignore. *See, e.g*., *Comcast Cablevision of Little Rock, Inc*., 13 FCC Rcd 17442, 17444, para. 5 (CSB 1998) (finding the total overcharge per subscriber for the period under review to be *de minimis* and stating "it would not be in the public interest to order a refund").

[171] If parties are unable to reach an agreement, cable operators may pursue their appeal rights in accordance with our rules. *See* 47 CFR § 76.944.

[172] *See 2018 FNPRM*, 33 FCC Rcd at 10565-66, para. 31.

[173] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Thirteenth Order on Reconsideration, 11 FCC Rcd 388, 413-14, paras. 55-58 (1995) (*Thirteenth Reconsideration Order*).

[174] *Id*. at 415, para. 62.

rules state, that interest should not continue to accrue on these unrecovered costs.[175] However, the Commission's decision in *CoxCom, Inc*. has been interpreted by cable operators to allow the continued accrual of interest on unrecovered costs.[176] Cable operators made this argument in a number of local rate appeals filed with the Commission, but the Media Bureau dismissed these appeals citing the *Thirteenth Order on Reconsideration*, in which the Commission promulgated the rule prohibiting this type of recovery.[177] MDTC supports our proposal "to clarify the instructions for Form 1240 to make more explicit the principle that an operator may not accrue interest on costs that the operator opts not to pass through to subscribers when it is first entitled to do so" because this "is an error that the MDTC encounters frequently in operators' Forms 1240."[178]

40. We agree and we now adopt such instruction to resolve the perceived inconsistency between the *Thirteenth Reconsideration Order* and the operation of the Form 1240 as interpreted in *CoxCom, Inc.* We hereby supplement our Form 1240, Module H instructions as follows: when calculating interest in Module H of Form 1240, operators will not include unrecovered costs for which interest has previously been calculated. This will prevent cable operators from using the form to continue to accrue interest on costs not passed through to subscribers when they are first entitled to recover those costs. Hawaii and MDTC agree with this proposal, which will prevent the continued accrual of interest on unrecovered costs.[179] NCTA suggests that this clarification would remove any regulatory incentive an operator might have to defer increasing its rates to the maximum permitted level.[180] However, we are not persuaded that providing an incentive to defer rate increases is more important than avoiding excessive rate increases. We find that this clarification is consistent with the Commission's prior conclusion that if an operator elects not to recover its accrued costs with interest on the date the operator is entitled to make its annual rate adjustment, the interest will cease to accrue.[181] We note that this clarification does not take away an operator's ability to recover accrued costs and allowable accrued interest at a later date.[182]

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[175] *See* 47 CFR §76.922 (e)(3)(iii); *Thirteenth Reconsideration Order*, 11 FCC Rcd at 421, para 80 (1995). *See also Comcast Cablevision of Dallas, et al.*, Order Setting Basic Equipment and Installation Rates, 19 FCC Rcd 10628, 10640, para. 30 (MB 2005) ("The import of the decisions . . ., at least for the present case, is that a cable operator is not entitled to earn interest on rate increases that it chose voluntarily not to take.").

[176] *See CoxCom, Inc. d/b/a Cox Communications New England*, 17 FCC Rcd 7931 (MB 2002) (*CoxCom, Inc*.), *application for review denied*, 18 FCC Rcd 6941 (2003); *see also AT&T Broadband, et al*., 18 FCC Rcd 11279 (MB 2003).

[177] *See Comcast Cablevision of Dallas, et al.*, Order Setting Basic Equipment and Installation Rates, 19 FCC Rcd 10628, 10640, para. 30 (MB 2004).

[178] MDTC Comments at 15-16.

[179] Hawaii Comments at iv, 15; MDTC Comments at 15-16; MDTC Reply at 9-10. MDTC further argues for a updated interest rate. *See* MDTC Comments at 17. However, that issue was not raised in the *2018* FNPRM and we decline to address it here.

[180] NCTA Reply at 6, n.18.

[181] *See Thirteenth Reconsideration Order*, 11 FCC Rcd at 421, para. 80 ("This policy will give operators the flexibility to delay rate increases without losing the opportunity to recover interest on costs that accrued due to circumstances beyond their control. At the same time, this policy ensures that where an operator makes a business decision to delay recovery of its costs, subscribers are not required to pay for the cost of the delay."). *See also* Letter from JoAnn Lucanick, Chief, Policy and Rules Division, Cable Services Bureau, to Richard D. Treich, Vice President, Franchising and Regulatory Affairs, TCI Communications, Inc, 12 FCC Rcd 10340 (CSB 1997).

[182] *See* 47 CFR § 76.922(e)(3). *See also* Appendix A, attached hereto, at § 76.922(c)(3)(ii). We find it unnecessary to modify our existing rule, which states plainly that "[i]f an operator has underestimated its cost changes and elects not to recover these accrued costs with interest on the date the operator is entitled to make its annual rate adjustment, *the interest will cease to accrue* as of the date the operator is entitled to make the annual rate adjustment, but the operator will not lose its ability to recover such costs and interest." *Id.* (emphasis added).

H. Elimination of Unnecessary Forms and Rules

41. Finally, we adopt the tentative conclusion to eliminate or update certain forms and rules that have become obsolete due to our action today or to previous Commission action and are no longer necessary. These include forms and rules related to our now obsolete benchmark methodology for establishing initial rates, forms and rules related to our now obsolete cost of service alternative methodologies, and forms and rules that have simply become unnecessary due to the passage of time and the sunset of CPST regulation.

42. *Initial rate-setting forms and rules*. As a consequence of our decision today to use an operator's BST rate in effect 60 days prior to the date an LFA files its certification to regulate BST rates for the initial regulated rate, we eliminate Form 1200 (*Setting Maximum Permitted Rates for Regulated Cable Systems for First Time Filers*) and its related rules.[183] In the 2018 *FNPRM*, the Commission tentatively concluded that the methodology for determining permitted charges using the Form 1200, which requires looking back at decades of historic rates,[184] would no longer need to be retained if we use an operator's actual rate for the initial regulated rate.[185] Consequently, the Commission proposed to amend the rules to delete references to Form 1200 and its predecessor, Form 393, and to delete rules that relate solely to this historic methodology and we do so here. No commenter objected to the elimination of these forms.[186]

43. *Cost of service forms and rules*. The 2018 *FNPRM* sought comment on eliminating the labor-intensive and infrequently used Form 1220 (*Cost of Service Filing for Regulated Cable Systems*) and the concomitant cost of service methodology, which is an alternative means to the Form 1200 for

[183] We eliminate, for example, section 76.922(f)(4), which addresses adjustments for increases in external costs incurred during the period between September 1992 and the initial date of regulation. 47 CFR § 76.922(f)(4). *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation*, Memorandum Opinion and Order, 11 FCC Rcd 20206 (1996); *Time Warner Entertainment Co., LP v. FCC*, 144 F.3d 75 (D.C. Cir. 1998). This rule is no longer necessary upon the elimination of the Form 1200. *See, e.g.*, *Falcon Cablevision*, 17 FCC Rcd 3560 (CSB 2002) (unregulated operators filing FCC Form 1240s not entitled to section 76.922(f)(4) adjustment). We also remove any references in the Commission's rules to the Form 393, the predecessor form to the Form 1200. *See* Appendix A for all rule changes which include the following: § 76.911(b)(3) (refers to the simplified refund rule); § 76.922 (incorporates changes to the rate calculations, removes references to the CPST and obsolete forms and methodologies); § 76.923 (limits equipment regulation); § 76.924 (removes references to the CPST, 1993 accounting practices and small system regulation); § 76.930 (refers to the new 60 day rule); § 76.933 (streamlines the process for LFA review of rate filings); § 76.934 (adds deregulation of small systems owned by small cable companies and removes alternative methodologies); § 76.935 (removes references to obsolete time periods for rate review by LFAs); § 76.937 (removes reference to cost of service methodology); § 76.938 (removes references to obsolete forms); § 76.939 (removes references to obsolete forms); § 76.942 (streamlines refund rules); § 76.944 (conforms citation to revised § 76.922); § 76.945 (removes reference to cost of service); §76.963 (removes rule only applicable to CPST); § 76.980 (limits rule to BST); §76.982 (removes rule applicable to pre-1990 agreements); § 76.984 (removes reference to CPST); §76.990 (conforms to 60 day rule); § 76.1805 (removes the provision regarding alternative agreements based on deregulation of small systems owned by small cable companies).

[184] *See supra* Section III.F. The Form 1200 requires newly regulated cable operators to use financial data from the early 1990s to establish an initial rate by comparison to a benchmark based on then current data, which is then brought forward to the current date. For a summary of the history of rate regulation, *see 2002 Revised Order and NPRM*, 17 FCC Rcd at 11553, n.8.

[185] *See 2018 FNPRM*, 33 FCC Rcd at 10560-62, paras. 21-24.

[186] MDTC proposed additional rules related to BST advertising, *see* MDTC Comments at 18, to which NCTA objected, *see* NCTA Reply at 11-12. This issue was not raised in the *2018* FNPRM and we decline to address it here.

setting initial regulated rates.[187] The cost of service methodology was adopted as a safety valve for high cost systems that might not receive an adequate rate of return using the benchmark system methodology to establish initial rates.[188] Now that initial rates will be determined based on the BST rate in effect 60 days prior to the date an LFA files its certification to regulate BST rates, which we presume cable operators set to recover costs and earn a reasonable profit when not rate regulated, there is no longer a need to provide this under-utilized safety valve.[189] No parties disagreed with the proposed elimination of this form or methodology.[190] For these reasons, we eliminate Form 1220 and accompanying rules.[191] Likewise, instead of adopting the changes to Form 1235 (*Abbreviated Cost of Service Filing for Cable Network Upgrades*) proposed by the 2018 *FNPRM*, we are persuaded by the record to eliminate the form altogether.[192] Under our existing rules, cable operators may recover significant network upgrade costs through a surcharge on regulated rates, by filing a Form 1235 with LFAs.[193] Cable operators, who are the beneficiaries of the Form 1235 abbreviated cost of service methodology and associated rules, proposed eliminating the form.[194] The Form 1235 benefits cable operators by allowing them to justify rate increases for system upgrades without having to file a full cost of service showing.[195] MDTC commented

[187] *See 2018 FNPRM*, 33 FCC Rcd at 10562-63, para. 25.

[188] *Second Reconsideration*, 9 FCC Rcd at 4196, para. 162.

[189] *2018 FNPRM*, 33 FCC Rcd at 10562-63, para. 2525. Indeed, with the elimination of CPST rate regulation, cable operators were given greater flexibility to recover costs, and few, if any, have resorted to using a cost of service methodology since then.

[190] *See* NCTA Comments at 12, n.39 ("NCTA believes that the Commission could eliminate Forms 1220 and 1230 and the regulations associated with those forms, so long as it makes clear that cable operators may always petition for special relief if circumstances warrant and make an appropriate showing under Section 76.7 of the Commission's rules."). We agree with NCTA that Section 76.7 provides the opportunity to petition for special relief, as warranted.

[191] We note that our elimination of the Form 1220 and cost of service methodology does not affect cost rules, methodologies, and policies that are applicable to the cost calculations on Form 1205 (equipment form) and Form 1240 (annual rate adjustment form), as these forms are still necessary to fulfill the purposes of section 623 and our rules. For example, our cost rules are used in determining equipment and installation rates pursuant to section 76.923 of the Commission's rules and Form 1205. Cost allocation categories are found in section 76.924. *See* 47 CFR § 76.924.

[192] *See 2018 FNPRM*, 33 FCC Rcd at 10566-67, paras. 32-33.

[193] *See* 47 CFR § 76.922(j).

[194] NCTA Comments at 11 ("Indeed, the Commission could eliminate multiple forms used to set rates under the original benchmark methodology, including . . . Form 1235 (the "network upgrade" form). . . ."). *See also* Letter from Mary Beth Murphy, Vice President and Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105, et al., at 3 (filed Aug. 28, 2020) (NCTA August 28, 2020 *Ex Parte*) ("NCTA would support the Commission eliminating the detailed forms and regulations associated with formal cost-of-service filings (including for system upgrades), so long as it makes clear that cable operators may always petition for special relief if circumstances warrant and make an appropriate showing under Section 76.7 of the Commission's rules."). In *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation and Adoption of Uniform Accounting System for Provision of Regulated Cable Service*, the Commission concluded that cable operators making significant upgrades should be allowed to establish the upgrade costs through an abbreviated cost of service showing and add an upgrade surcharge to their rates otherwise determined pursuant to the Commission's benchmark and price cap methodology. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation and Adoption of Uniform Accounting System for Provision of Regulated Cable Service*, Report and Order and Further Notice of Proposed Rulemaking, 9 FCC Rcd 4527, 4674, para. 285 (1994) (*Cost Order*).

[195] *See Cost Order*, 9 FCC Rcd at 4674, para. 286 ("[T]here may be cases where the benchmark rates do not provide sufficient revenue to attract capital for upgrades because of unusual costs associated with capital improvements. For these cases the abbreviated cost-of-service showing should provide the ability to attract the capital needed for the upgrade."). The recoverable costs of the upgrade are added to the rates permitted under the benchmark and price

(continued….)

that Massachusetts cable operators no longer use the Form 1235 and it does not oppose elimination of the form.[196] We find no justification to retain this form. Its beneficiaries find it to be unnecessary and, as with our other cost of service alternatives, we can assume that unregulated rates are set to include a return adequate for system upgrades. We therefore eliminate Form 1235 and its accompanying rules.[197]

44. While no parties disagreed with the elimination of the Commission's cost of service rules and forms (Forms 1220, 1230 and 1235), cable operators sought to reaffirm their ability to seek redress if facing severe economic hardship as a result of compliance with our rules.[198] Because of the greater flexibility cable operators now have in setting rates for cable services, we are skeptical that such redress will be necessary. However, we reiterate that a cable television system operator may file a petition asking the Commission to find it in the public interest to waive any provision of part 76 of our rules or impose additional or different requirements.[199]

45. *Miscellaneous obsolete forms and rules*. We also eliminate other inactive or obsolete rate forms and delete references to them in our rules, as proposed in the 2018 *FNPRM*.[200] The eliminated forms are: FCC Form 1210 (*Updating Maximum Permitted Rates for Regulated Cable Systems*);[201] Form 1211 (a small system alternative to FCC Form 1210);[202] Form 1215 (a la carte channel offerings)[203]; Form 1225 (a small systems cost of service form);[204]; and Form 329 (an obsolete CPST complaint form).[205] Likewise, the 2018 *FNPRM* proposed eliminating rules that are obsolete due to the sunset of CPST regulation.[206] As proposed, we eliminate section 76.922(e)(2)(iii)(C) (allows an adjustment to the CPST

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cap approach. *See FCC Form 1235 Instructions for Completion of Abbreviated Cost of Service Filing for Cable Network Upgrades* at 1.

[196] MDTC Comments at 4, n.6.

[197] *See* 47 CFR § 76.922(j).

[198] NCTA Comments at 12, n.39; NCTA August 28, 2020 *Ex Parte* at 3.

[199] *See* 47 CFR § 76.7.

[200] *See 2018 FNPRM*, 33 FCC Rcd at 10563-64, para. 27 and 10567-69, paras. 34, 36, 38, and 40. *See also* 47 CFR §§ 76.922 and 76.934.

[201] This is a quarterly update form that has remained unused by cable operators since the Commission's adoption of the annual Form 1240.

[202] This was designed for small systems as an alternative to the Form 1215 which we are eliminating. There is no indication that this has ever been used.

[203] There are no longer any rules pertaining to a la carte channels and the form is not in use.

[204] This form is a possible precursor to the Form 1230, which we are eliminating, and is not in use.

[205] There is no avenue of complaint left, so there is no need for this form. *See Amendment of Parts 1, 73 And 76 of the Commission's Rules Regarding Practice and Procedure: Broadcast Applications and Proceedings; Radio Broadcast Services: Fairness Doctrine and Digital Broadcast Television Redistribution Control; Multichannel Video and Cable Television Service: Fairness Doctrine, Personal Attacks, Political Editorials and Complaints Regarding Cable Programming Service Rates*, Order, 26 FCC Rcd 11422 (MB 2011) ("[T]he Commission's CPST complaint process rules, 47 CFR §§ 76.950, 76.951, 76.953, 76.954, 76.955, 76.956, 76.957, 76.960, 76.961, 76.1402, 76.1605 and 76.1606 are without current legal effect and are deleted as obsolete."). We also delete references to the Form 329 contained in our practice and procedure rules, 47 CFR §§ 1.1204(b)(6) ("A complaint against a cable operator regarding its rates that is not filed on the standard complaint form required by § 76.951 of this chapter (FCC Form 329).") and 1.1206(a)(11) ("A cable rate complaint proceeding pursuant to section 623(c) of the Communications Act where the complaint is filed on FCC Form 329.").

[206] *See 2018 FNPRM*, 33 FCC Rcd at 10567-69, paras. 36, 38 and 40.

and BST of single-tier systems);[207] section 76.982 (refers to agreements pre-dating the 1990 rule changes and is not needed to implement section 623(j) of the Act); and section 76.963 (applies to CPST complaints).[208] No parties objected to the elimination of these forms and rules with one exception. Hawaii contends that section 76.963 should be retained with regard to CPST equipment, while NCTA asserts that this rule was rendered obsolete by the sunset of CPST rate regulation.[209] As we noted in the 2018 *FNPRM*, section 76.963 was adopted to limit the Commission's existing forfeiture authority from being applied to Commission orders resolving complaints regarding CPST service and equipment rates.[210] Because CPST regulation has sunset, including regulation of equipment used to receive the CPST,[211] we disagree with Hawaii that the retention of this rule is necessary.

46. *Closing of Proceedings*. In the 2018 *FNPRM*, we proposed closing the above-captioned proceedings with the adoption of this Report and Order because any open issues raised therein are resolved by this Report and Order, have become obsolete or irrelevant due to regulatory updates, technology advances, or marketplace changes, or have been addressed in other Commission orders and no longer need to be resolved.[212] No commenters opposed the closing of these dockets. Specifically, we close MB Docket No. 02-144, the Commission's NPRM initiated to resolve open issues related to the sunset of CPST regulation and the experience gained with the application of the Commission's rate regulations.[213] We close MM Docket Nos. 92-266, the original Report and Order implementing the statutory scheme for rate regulation.[214] We also close MM Docket No. 93-215 and CS Docket No. 94-28, the dockets addressing cost of service alternatives.[215] Because we eliminate the Form 1220 and cost of

[207] Section 76.922(e)(2)(iii)(C) allows cable operators using the annual rate adjustment methodology to make an additional rate adjustment to their CPST to reflect mid-year channel additions. The rule also allows operators with only a single regulated tier to make an additional rate adjustment to reflect mid-year channel additions which otherwise is not permitted with respect to BST rates. *See* 47 CFR § 76.922(e)(2)(iii)(C) ("An operator may make one additional rate adjustment during the year to reflect channel additions to the cable programming services tiers or, where the operator offers only one regulated tier, the basic service tier."). *See also* 47 CFR § 76.922(e)(1) (Except as provided for in paragraph (e)(2)(iii)(C) operators that elect the annual rate adjustment method may not adjust their rates more than annually.) Since the Commission adopted section 76.922(e)(2)(iii)(C), both the CPST and most single tier systems have been deregulated so we proposed eliminating this rule. No commenters opposed eliminating the rule. Operators may continue to project changes to the BST at the time of their annual filing or accrue costs and reflect them in their next annual filing.

[208] We note that eliminating section 76.963 does not affect the Commission's general authority to impose forfeitures for violations of specific rules or statutory provisions. *See* 47 U.S.C. § 503(b).

[209] See Hawaii Comments at iii-v, 13, 17-18, 20. *See* NCTA Comments at 11 and n. 37, 18.

[210] *See 2018 FNPRM*, 33 FCC Rcd at 10569, para. 40. In implementing this rule, the Commission stated that it "will not impose forfeitures on a cable operator simply because a rate for cable programming service is found to be unreasonable." *See Rate Order*, 8 FCC Rcd 5631, 5869-70, para. 380. *See also* H.R. Rep. No. 102–628, 102d Cong., 2d Sess. at 88 ("A finding that rates are unreasonable is not deemed a violation of law subject to the penalties and forfeitures of the Communications Act.").

[211] *See supra* Section III.B.

[212] *See 2018 FNPRM*, 33 FCC Rcd at 10554, para. 9.

[213] *See Revisions to Cable Television Rate Regulations*, MB Docket No. 02-144, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 11550, (2002), *revised*, 17 FCC Rcd 15974 (2002).

[214] *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 (1993).

[215] *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation and Adoption of a Uniform Accounting System for Provision of Regulated Cable Service*, MM Docket (continued….)

service methodology, issues raised on appeal of the *Final Cost Order*, as well as the Commission's Further Notice of Proposed Rulemaking appended to the *Final Cost Order*, are rendered moot.[216] Therefore, in this Report and Order, we terminate our *1996 FNPRM* contained in the *Final Cost Order* and dismiss the various pending petitions for reconsideration of the *Final Cost Order.*

IV. PROCEDURAL MATTERS

47. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[217] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[218] Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule and policy changes contained in this Report and Order on small entities. The FRFA is set forth in Appendix B.

48. *Paperwork Reduction Act.* This document may contain new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. §§ 3501-3521. All such new or modified information collections will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collections contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, we have assessed the effects of our rule modifications, including streamlining the initial rate-setting methodology, eliminating rate regulation of some equipment used to receive cable signals, and eliminating rate regulation of small systems owned by small cable companies, and find that all of these changes have the effect of eliminating or reducing regulatory burdens for all cable systems, including small business concerns. Additionally, this document may contain non-substantive modifications to approved information collections. Any such modifications will be submitted to OMB for review pursuant to OMB's non-substantive modification process.

49. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

50. *People with Disabilities*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

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No. 93–215, CS Docket No. 94–28, Report and Order and Further Notice of Proposed Rulemaking, 9 FCC Rcd 4527 (1994).

[216] The Commission adopted interim cost rules in 1994, which were finalized in 1996. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 93-215 and CS Docket No. 94-28, Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 2220 (1996) (*Final Cost Order*). A FNPRM in the *Final Cost Order* (*1996 FNPRM*), along with petitions for reconsideration of the *Final Cost Order*, remain pending. We note that one appeal of the rules, *Comcast Cable Communications, Inc. v. FCC* (D.C. Cir. Case No. 96-1148), was dismissed by voluntary stipulation of the parties in November 2010.

[217] 5 U.S.C. §§ 601 *et seq.*, as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

[218] 5 U.S.C. § 605(b).

51. *Additional Information*. For additional information on this proceeding, contact Katie Costello of the Policy Division, Media Bureau at Katie.Costello@fcc.gov or (202) 418-2333.

V. ORDERING CLAUSES

52. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 2(a), 3, 4(i), 4(j), 303(r), 601(3), 602, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 153, 154(i), 154(j), 303(r), 521, 522, 543, this Report and Order **IS ADOPTED.**

53. **IT IS FURTHER ORDERED** that, pursuant to the authority found in sections 1, 2(a), 3, 4(i), 4(j), 303(r), 601(3), 602, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 153, 154(i), 154(j), 303(r), 521, 522, 543, the Commission's rules **ARE AMENDED** as set forth in Appendix A.

54. **IT IS FURTHER ORDERED** that this Report and Order **SHALL BE EFFECTIVE** 30 days after publication in the Federal Register, except that the amendments to sections 1.1204, 1.1206, 76.911, 76.922, 76.923, 76.934, 76.944, 76.990, 47 CFR §§ 1.1204, 1.1206, 76.911, 76.922, 76.923, 76.934, 76.944, 76.990, which may contain new or modified information collections, will not become effective until the Office of Management and Budget completes review of any information collections that the Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Bureau to announce the effective date for sections 1.1204. 1.1206, 76.911, 76.922, 76.923, 76.934, 76.944, 76.990 by notice in the Federal Register and by subsequent Public Notice.

55. **IT IS FURTHER ORDERED** that the Commission's Office of 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.

56. **IT IS FURTHER ORDERED** that the Office of the Managing Director, Performance Program Management, **SHALL SEND** a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

57. **IT IS FURTHER ORDERED** that should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 02-144, MM Docket Nos. 92-266 & 93-215, and CS Docket No. 94-28 **SHALL BE TERMINATED,** and their dockets closed.

58. **IT IS FURTHER ORDERED** that the FNPRM in Dockets MM 93-215 and CS 94-28, FCC 95-502, 11 FCC Rcd 2220 (1996), is **TERMINATED** and any pending petitions for reconsideration of Report and Order, FCC 95-502, 11 FCC Rcd 2220 (1996), **ARE DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

FINAL RULES

Parts 1 and 76 of Title 47 of the Code of Federal Regulations are amended as follows:

Part 1 — PRACTICE AND PROCEDURE

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

AUTHORITY: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

2. Amend § 1.1204 to remove paragraph (b) (6).

§ 1.1204 Exempt ex parte presentations and proceedings.

* * * * *

(b) * * *

(6) **[Removed]**

* * * * *

3. Amend § 1.1206 to remove and reserve paragraph (a) (11).

§ 1.1206 Permit-but-disclose proceedings.

(a) * * *

(11) **[Reserved]**

* * * * *

Part 76 — MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 335, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 562, 571, 572 and 573.

5. Amend § 76.911 to revise paragraph (b)(3) to read as follows:

§ 76.911 Petition for reconsideration of certification.

* * * * *

(b) * * *

(3) In any case in which a stay of rate regulation has been granted, if the petition for reconsideration is denied, the cable operator may be required to refund any rates or portion of rates above the permitted basic service tier charge or permitted equipment charge in accordance with § 76.942.

* * * * *

6. Revise § 76.922 to read as follows:

§ 76.922 Rates for the basic service tier.

(a) *Basic service tier rates.* Basic service tier rates for cable service provided to residential subscribers shall be subject to regulation by the Commission and by state and local authorities, as is appropriate, in order to assure that they are in compliance with the requirements of 47 U.S.C. 543. For purposes of this section, residential subscribers are defined as subscribers residing in an occupied housing unit, such as a house, an apartment, a mobile home or trailer, a group of rooms, or a single room occupied as separate living quarters. Rates that are demonstrated, in accordance with this part, not to exceed the permitted charge as described in this section, plus a charge for franchise fees, will be accepted as in compliance. The maximum monthly charges for regulated programming services shall not include any charges for equipment or installations. Charges for equipment and installations are to be calculated separately pursuant to §76.923. Equipment and installation rates that are demonstrated not to exceed the maximum permitted rates as specified in §76.923, will be accepted as in compliance.

(b) *Permitted charge.* (1) *Establishment of initial regulated rates*. The initial maximum permitted rate for newly regulated cable systems shall be the actual rate in effect on the date 60 days prior to the date the local franchising authority files its certification to regulate rates. The cable operator may establish its initial basic service tier rate by providing to the LFA written notice of its rate in effect on the date 60 days prior to the date the local franchising authority files its certification to regulate rates, along with a rate card or other supporting documentation. This initial basic service tier rate is not subject to review by the LFA.

(2) *Subsequent permitted charge.* Subsequent permitted charges for the basic service tier shall be the maximum permitted rate calculated using FCC Form 1240. Regulated basic service tier rates established prior to the effective date of this rule will be reviewed for conformance with the rules in effect at the time the basic service tier rates were established.

(c) *Annual rate adjustment method* -- (1) *Generally.* Except as provided for in paragraph (c)(2)(iii)(B) of this section and Section 76.923(o), operators using the annual rate adjustment method may not adjust their rates more than annually to reflect inflation, changes in external costs, changes in the number of regulated channels, and changes in equipment costs. Operators must file on the same date a Form 1240 for the purpose of making rate adjustments to reflect inflation, changes in external costs and changes in the number of regulated channels and a Form 1205 for the purpose of adjusting rates for regulated equipment and installation. Operators may choose the annual filing date, but they must notify the franchising authority of their proposed filing date prior to their filing. Franchising authorities or their designees may reject the annual filing date chosen by the operator for good cause. If the franchising authority finds good cause to reject the proposed filing date, the franchising authority and the operator should work together to reach a mutually acceptable date. If no agreement can be reached, the franchising authority may set the filing date up to 60 days later than the date chosen by the operator. An operator may change its filing date from year to year, except, as described in paragraph (c)(2)(iii)(B) of this section, at least twelve months must pass before the operator can implement its next annual adjustment.

(2) *Projecting inflation, changes in external costs, and changes in number of regulated channels.* An operator using the annual rate adjustment method may adjust its rates to reflect inflation, changes in external costs and changes in the number of regulated channels that are projected for the 12 months following the date the operator is scheduled to make its rate adjustment pursuant to Section 76.933.

(i) *Inflation adjustments.* The residual component of a system's permitted charge may be adjusted annually to project for the 12 months following the date the operator is scheduled to make a rate adjustment. The annual inflation adjustment shall be based on inflation that occurred in the most recently completed quarter, converted to an annual factor. Adjustments shall be based on changes in the Gross National Product Price Index as published by the Bureau of Economic Analysis of the United States Department of Commerce.

(ii) *External costs.* (A) Permitted charges for the basic service tier may be adjusted annually to reflect actual changes in external costs experienced but not yet accounted for by the cable system, as well as for projections in these external costs for the 12-month period on which the filing is based. In order that rates be adjusted for projections in external costs, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. Projections involving copyright fees, retransmission consent fees, other programming costs, Commission regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. Operators may project for increases in franchise related costs to the extent that they are reasonably certain and reasonably quantifiable, but such changes are not presumed reasonably certain and reasonably quantifiable. Operators may pass through increases in franchise fees pursuant to Section 76.933.

(B) In all events, a system must adjust its rates every twelve months to reflect any net decreases in external costs that have not previously been accounted for in the system's rates.

(C) Any rate increase made to reflect increases or projected increases in external costs must also fully account for all other changes and projected changes in external costs, inflation and the number of channels on a regulated basic service tier that occurred or will occur during the same period. Rate adjustments made to reflect changes in external costs shall be based on any changes, plus projections, in those external costs that occurred or will occur in the relevant time periods since the periods used in the operator's most recent previous FCC Form 1240.

(iii) *Channel adjustments.* (A) Permitted charges for a basic service tier may be adjusted annually to reflect changes not yet accounted for in the number of regulated channels provided by the cable system, as well as for projected changes in the number of regulated channels for the 12-month period on which the filing is based. In order that rates be adjusted for projected changes to the number of regulated channels, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable.

(B) An operator may make rate adjustments for the addition of required channels to the basic service tier that are required under federal or local law at any time such additions occur, subject to the filing requirements of Section 76.933(c)(5), regardless of whether such additions occur outside of the annual filing cycle. Required channels may include must-carry, local origination, public, educational and governmental access and leased access channels. Should the operator elect not to pass through the costs immediately, it may accrue the costs of the additional channels plus interest, as described in paragraph (c)(3) of this section.

(3) *True-up and accrual of charges not projected.* As part of the annual rate adjustment, an operator must "true up" its previously projected inflation, changes in external costs and changes in the number of regulated channels and adjust its rates for these actual cost changes. The operator must decrease its rates

for overestimation of its projected cost changes and may increase its rates to adjust for underestimation of its projected cost changes.

(i) Where an operator has underestimated costs, future rates may be increased to permit recovery of the accrued costs plus 11.25% interest between the date the costs are incurred and the date the operator is entitled to make its rate adjustment.

(ii) If an operator has underestimated its cost changes and elects not to recover these accrued costs with interest on the date the operator is entitled to make its annual rate adjustment, the interest will cease to accrue as of the date the operator is entitled to make the annual rate adjustment, but the operator will not lose its ability to recover such costs and interest. An operator may recover accrued costs between the date such costs are incurred and the date the operator implements its rate adjustment.

(d) *External costs.* (1) External costs shall consist of costs in the following categories:

(i) State and local taxes applicable to the provision of cable television service;

(ii) Franchise fees;

(iii) Costs of complying with franchise requirements, including costs of providing public, educational, and governmental access channels as required by the franchising authority;

(iv) Retransmission consent fees and copyright fees incurred for the carriage of broadcast signals;

(v) Other programming costs;

(vi) Commission cable television system regulatory fees imposed pursuant to 47 U.S.C. §159 and

(vii) Headend equipment costs necessary for the carriage of digital broadcast signals.

(2) The permitted charge for a regulated basic service tier shall be adjusted on account of programming costs, copyright fees and retransmission consent fees only for the program channels or broadcast signals offered on that tier.

(3) Adjustments for external costs in the true-up portion of the FCC Form 1240 may be made on the basis of actual changes in external costs only. The starting date for adjustments to external costs for newly regulated systems shall be the implementation date of the initial maximum permitted rate established in §76.922(b)(1).

(4) Changes in franchise fees shall not result in an adjustment to permitted charges, but rather shall be calculated separately as part of the maximum monthly charge per subscriber for a regulated basic service tier.

(5) Adjustments to permitted charges to reflect changes in the costs of programming purchased from affiliated programmers, as defined in §76.901, shall be permitted as long as the price charged to the affiliated system reflects either prevailing company prices offered in the marketplace to third parties (where the affiliated program supplier has established such prices) or the fair market value of the programming.

(i) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(ii) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to §76.501 provided, however, that:

(A) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(B) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(6) Adjustments to permitted charges on account of increases in costs of programming shall be further adjusted to reflect any revenues received by the operator from the programmer. Such adjustments shall apply on a channel by channel basis.

(7) In calculating programming expense, operators may add a mark-up of 7.5% for increases in programming costs. Operators shall reduce rates to reflect decreases in programming costs and remove the 7.5% mark-up, if any, taken on the removed costs.

(e) *Changes in the number of channels on the regulated basic service tier.* (1) *Generally.* A system must adjust annually the residual component of its permitted rate for the basic service tier to reflect any decreases in the number of channels that were on the that tier as of the date used for determining the initial maximum permitted rate on its initial Form 1240. Cable systems shall use FCC Form 1240 to justify rate changes made on account of changes in the number of channels on the basic service tier and include any off-form calculations.

(2) *Deletion of channels.* (i) When dropping a channel from a basic service tier, operators shall reflect the net reduction in external costs in their rates. With respect to channels to which the 7.5% markup on programming costs was applied, the operator shall treat the markup as part of its programming costs and subtract the markup from its external costs.

(ii) When the removal of channels results in a reduction of the total basic service tier channel count that existed when the initial maximum permitted rate was established (Initial Channel Count), an operator shall also reduce the price of the basic service tier by any "residual" associated with the removed channels. For subsequent Form 1240 updates, if the number of channels included in the current maximum permitted rate on the Form 1240 is less than the Initial Channel Count, the operator shall reduce the price of the basic service tier by any "residual" associated with the subsequently removed channels. For purposes of this calculation, the per channel residual is the permitted charge for the basic service tier, minus the external costs, divided by the total number of channels on the basic service tier.

(3) *Movement of channels to the basic service tier.* When a channel is moved from another tier of service to the basic service tier, the moved channel shall be treated as a new channel.

(4) *Substitution of channels on a basic service tier.* An operator may substitute a new channel for an existing channel on a basic service tier. The substituted channel will carry the same residual as the original channel for which it was substituted. Operators substituting channels on a basic service tier shall be required to reflect any reduction in programming costs in their rates and may reflect any increase in programming costs, including the 7.5% markup.

(f) Permitted charges for a basic service tier shall be determined in accordance with forms and associated instructions established by the Commission, these regulations and any Commission orders. Off-form calculations shall be included as attachments with the established forms.

(g) *Hardship rate relief.* A cable operator may adjust charges by an amount specified by the Commission or the franchising authority for the basic service tier if it is determined that:

(1) Total revenues from cable operations, measured at the highest level of the cable operator's cable service organization, will not be sufficient to enable the operator to attract capital or maintain credit necessary to enable the operator to continue to provide cable service;

(2) The cable operator has prudent and efficient management; and

(3) Adjusted charges on account of hardship will not result in total charges for regulated cable services that are excessive in comparison to charges of similarly situated systems.

7. Amend § 76.923 to revise paragraphs (a) (1) and (n) to read as follows:

§ 76.923 Rates for equipment and installation used to receive the basic service tier.

(a) * * *

(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 and video programming offered on a per channel or per program basis, if any, except if such equipment is additionally used by that subscriber to receive other tiers of programming service. Such equipment shall include, but is not limited to:

(i) Converter boxes;

(ii) Remote control units; and

(iii) Inside wiring.

* * * * *

(n) *Timing of filings.* An operator shall file FCC Form 1205 in order to establish its maximum permitted rates at the following times:

(1) When the operator sets its initial regulated equipment rates;

(2) On the same date it files its FCC Form 1240. If an operator elects not to file an FCC Form 1240 for a particular year, the operator must file a Form 1205 on the anniversary date of its last Form 1205 filing; and

(3) When seeking to adjust its rates to reflect the offering of new types of customer equipment other than in conjunction with an annual filing of Form 1205, 60 days before it seeks to adjust its rates to reflect the offering of new types of customer equipment.

* * * * *

8. Amend § 76.924 to revise paragraphs (a), (c), and the first sentence of paragraph (d), remove paragraph (d) (2), and revise paragraph (e) to read as follows:

§ 76.924 Allocation to service cost categories.

(a) *Applicability.* The requirements of this section are applicable to cable operators for which the basic service tier is regulated by local franchising authorities or the Commission. The requirements of this section are applicable for purposes of rate adjustments on account of external costs and for cost of service showings, including equipment pricing in accordance with §76.923.

* * * * *

(c) *Accounts level*. Cable operators making cost of service showings or seeking adjustments due to changes in external costs shall identify investments, expenses and revenues at the franchise, system, regional, and/or company level(s) in a manner consistent with the accounting practices of the operator on its initial date of regulation or re-regulation. However, in all events, cable operators shall identify at the franchise level their costs of franchise requirements, franchise fees, local taxes and local programming.

(d) *Summary accounts*. Cable operators making cost of service showings shall report all investments, expenses, and revenue and income adjustments accounted for at the franchise, system, regional and/or company level(s) to the summary accounts listed below.

* * *

(e) *Allocation to service cost categories.* (1) For cable operators making cost of service showings, investments, expenses, and revenues contained in the summary accounts identified in paragraph (d) of this section shall be allocated among the Equipment Basket, as specified in §76.923, and the following service cost categories:

(i) Basic service cost category. The basic service category shall include the cost of providing basic service as defined by §76.901(a). The basic service cost category may only include allowable costs as defined by §76.922.

(ii) Cable programming services cost category. The cable programming services category shall include the cost of providing cable programming services as defined by §76.901(b). The cable programming service cost category may include only allowable costs as defined in §76.922.

(iii) All other services cost category. The all other services cost category shall include the costs of providing all other services that are not included in the basic service or cable programming services cost categories as defined in paragraphs (e)(1)(i) and (ii) of this section.

(2) Cable operators seeking an adjustment due to changes in external costs identified in FCC Form 1240 shall allocate such costs among the equipment basket, as specified in §76.923, and the following service cost categories:

(i) The basic service category as defined by paragraph (e)(1)(i) of this section;

(ii) The cable programming services category as defined by paragraph (e)(1)(ii) of this section;

(iii) The all other services cost category as defined by paragraph (e)(1)(iii) of this section.

* * * * *

9. Revise § 76.930 to read as follows:

§ 76.930 Initiation of review of basic cable service and equipment rates.

A cable operator shall file its rate justifications for the basic service tier and associated equipment with a franchising authority within 30 days of receiving written notification from the franchising authority that the franchising authority has been certified by the Commission to regulate rates for the basic service tier, or within 30 days from the date the franchising authority notifies the operator that the operator will be subject to the generally applicable rate rules because the operator's regulatory status has changed. Basic service tier filings for proposed rate increases and equipment rate filings for existing rates or proposed rate increases (including increases that result from reductions in the number of channels on a tier) must use the appropriate official FCC form, a copy thereof, or a copy generated by FCC software. Failure to file on the official FCC form, a copy thereof, or a copy generated by FCC software, may result in the imposition of sanctions specified in §76.937(d). A cable operator shall include rate cards and channel line-ups with its filing and include an explanation of any discrepancy in the figures provided in these documents and its rate filing.

10. Revise § 76.933 to read as follows:

§ 76.933 Franchising authority review of basic cable rates and equipment costs.

(a) A cable operator that submits for review its existing rates for equipment may continue the existing rates in effect pending franchising authority review and subject to the refund liability provisions of §76.942.

(b) A cable operator that submits for review a proposed change in its existing rates for the basic service tier and associated equipment costs shall do so no later than 90 days prior to the effective date of the proposed rates.

(c) (1) The franchising authority will have 90 days from the date of the rate filing to review it. However, if the franchising authority or its designee concludes that the operator has submitted a facially incomplete filing, the franchising authority's deadline for issuing a decision, the date on which a rate increase may go into effect if no decision is issued, and the period for which refunds are payable will be tolled while the franchising authority is waiting for this information, provided that, in order to toll these effective dates, the franchising authority or its designee must notify the operator of the incomplete filing within 45 days of the date the filing is made.

(2) If there is a material change in an operator's circumstances during the 90 day review period and the change affects the operator's rate filing, the operator may file an amendment to its rate filing prior to the end of the 90 day review period. If the operator files such an amendment, the franchising authority will have at least 30 days to review the filing. Therefore, if the amendment is filed more than 60 days after the operator made its initial filing, the operator's proposed rate change may not go into effect any earlier than 30 days after the filing of its amendment. However, if the operator files its amended application on or prior to the sixtieth day of the 90 day review period, the operator may implement its proposed rate adjustment, as modified by the amendment, 90 days after its initial filing.

(3) If a franchising authority has taken no action within the 90 day review period, then the existing rates may continue in effect or the proposed rates may go into effect at the end of the review period, subject to a prospective rate reduction and refund if the franchising authority subsequently issues a written decision disapproving any portion of such rates, provided, however, that in order to order a prospective rate reduction and refund, if an operator inquires as to whether the franchising authority intends to issue a rate

order after the 90 day review period, the franchising authority or its designee must notify the operator of its intent in this regard within 15 days of the operator's inquiry. If the franchising authority has not issued its rate order by the end of the 90 day review period, the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within the 12-month period, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing.

(4) At the time an operator files its rate justifications with the franchising authority, the operator may give customers notice of the proposed rate changes. Such notice should state that the proposed rate change is subject to approval by the franchising authority. If the operator is only permitted a smaller increase than was provided for in the notice, the operator must provide an explanation to subscribers on the bill in which the rate adjustment is implemented. If the operator is not permitted to implement any of the rate increase that was provided for in the notice, the operator must provide an explanation to subscribers within 60 days of the date of the franchising authority's decision. Additional advance notice is required if the rate to be implemented exceeds the previously noticed rate.

(5) If an operator files for a rate adjustment for the addition of channels to the basic service tier that the operator is required by federal or local law to carry, the franchising authority has 60 days to review the requested rate. The proposed rate shall take effect at the end of this 60 day period unless the franchising authority rejects the proposed rate as unreasonable. The franchising authority shall be subject to the requirements described in paragraphs (c)(1)-(3) of this section for ordering refunds and prospective rate reductions, except that the initial review period is 60 rather than 90 days.

(6) When the franchising authority is regulating basic service tier rates, a cable operator may increase its rates for basic service to reflect the imposition of, or increase in, franchise fees or cable television system regulatory fees imposed pursuant to 47 U.S.C. 159. The increased rate attributable to Commission cable television system regulatory fees or franchise fees shall be subject to subsequent review and refund if the franchising authority determines that the increase in basic tier rates exceeds the increase in regulatory fees or in franchise fees allocable to the basic tier. This determination shall be appealable to the Commission pursuant to §76.944. When the Commission is regulating basic service tier rates pursuant to §76.945, an increase in those rates resulting from franchise fees or Commission regulatory fees shall be reviewed by the Commission pursuant to the mechanisms set forth in §76.945.

(d) If an operator files an FCC Form 1205 for the purpose of setting the rate for a new type of equipment under Section 76.923(o), the franchising authority has 60 days to review the requested rate. The proposed rate shall take effect at the end of this 60 day period unless the franchising authority rejects the proposed rate as unreasonable. The franchising authority shall be subject to the requirements described in paragraph (c)(1)-(3) of this section for ordering refunds and prospective rate reductions, except that the initial review period is 60 rather than 90 days.

11. Amend § 76.934 to read as follows:

§ 76.934 Small systems and small cable companies.

(a) For purposes of rules governing the regulatory status of small systems, the size of a system or company shall be determined by reference to its size as of the date the system files with its franchising authority or the Commission the documentation necessary to qualify for the relief sought. Where relief is dependent upon the size of both the system and the company, the operator must measure the size of both the system and the company as of the same date. A small system shall be considered affiliated with a cable company if the company holds a 20 percent or greater equity interest in the system or exercises *de jure* control over the system.

(b) A franchising authority that has been certified, pursuant to §76.910, to regulate rates for basic service and associated equipment may permit a small system as defined in §76.901 to certify that the small system's rates for basic service and associated equipment comply with §76.922, the Commission's substantive rate regulations.

(c) *Regulation of small systems*. A small system, as defined by §76.901(c), that receives a notice of regulation from its local franchising authority must respond within the time periods prescribed in §76.930.

(d) *Petitions for extension of time*. Small systems may obtain an extension of time to establish compliance with rate regulations provided they can demonstrate that timely compliance would result in severe economic hardship. Requests for extension of time should be addressed to the local franchising authority. The filing of a request for an extension of time to comply with the rate regulations will not toll the effective date of rate regulation for small systems or alter refund liability for rates that exceed permitted levels.

(e) *Small Systems Owned by Small Cable Companies.* Small systems owned by small cable companies are not subject to rate regulation as long as they meet the definitions of small system and small cable company. When a system no longer qualifies for deregulatory status, the system must give the franchising authority notice of its change in status. Upon regulation, actual rates and subsequent rate increases will be subject to generally applicable regulations governing rates and rate increases. After receiving notice of regulation from the franchising authority, the system shall file its schedule of rates consistent with §76.930 of this subpart.

(f) For rules governing small cable operators, see §76.990 of this subpart.

12. Revise § 76.935 to read as follows:

§ 76.935 Participation of interested parties.
In order to regulate basic service 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 time periods that franchising authorities have to review rates under §76.933.

13. Amend § 76.937 to remove paragraph (c), redesignate paragraphs (d) and (e) as paragraphs (c) and (d) and revise new paragraph (d) to read as follows:

§ 76.937 Burden of proof.

* * * * *

(d) A franchising authority or the Commission may order a cable operator that has filed a facially incomplete form to file supplemental information, and the franchising authority's deadline to rule on the reasonableness of the proposed rates will be tolled pending the receipt of such information. A franchising authority may set reasonable deadlines for the filing of such information, and may find the cable operator in default and mandate appropriate relief, pursuant to paragraph (c) of this section, for the cable operator's failure to comply with the deadline or otherwise provide complete information in good faith.

14. Revise § 76.938 to read as follows:

§ 76.938 Proprietary information.
A franchising authority may require the production of proprietary information to make a rate

determination in those cases where cable operators have submitted initial rates for review or have proposed rate increases. The franchising authority shall state a justification for each item of information requested and, where related to an FCC form filing, indicate the question or section of the form to which the request specifically relates. Upon request to the franchising authority, the parties to a rate proceeding shall have access to such information, subject to the franchising authority's procedures governing non-disclosure by the parties. Public access to such proprietary information shall be governed by applicable state or local law.

15. Revise § 76.939 to read as follows:

§ 76.939 Truthful written statements and responses to requests of franchising authority.
Cable operators shall comply with franchising authorities' and the Commission's requests for information, orders, and decisions. Any information submitted to a franchising authority or the Commission in making a rate determination pursuant to an FCC form filing is subject to the provisions of §1.17 of this chapter.

16. Revise § 76.942 to read as follows:

§ 76.942 Refunds.

(a) A franchising authority (or the Commission, pursuant to §76.945) may order a cable operator to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted basic service tier charge or above the actual cost of equipment. Before ordering a cable operator to refund previously paid rates to subscribers, a franchising authority (or the Commission) must give the operator notice and opportunity to comment.

(b) The refund period shall run as follows:

(1) From the date the operator implements the rate under review until it reduces the rate in compliance with a valid rate order or justifies that rate or a higher rate in its next rate filing, whichever is sooner, however, the refund period shall not begin before the effective date of regulation.

(2) For rates in effect and justified on rate forms filed before the effective date of this rule, as amended, the refund period shall be determined by the rules in effect at the time of filing.

(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.

(c) 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. The refund 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.

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

(e) 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 franchising 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%.

17. Amend § 76.944 to revise paragraph (c) as follows:

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

* * * * *

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

18. Revise § 76.945 to read as follows:

§ 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 service tier rate schedule with the Commission within 30 days, with a copy to the local franchising authority.

(b) Basic service tier and equipment rate schedule filings for existing rates or proposed rate increases or adjustments (including increases that result 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(c).

(c) Filings for proposed rate increases or adjustments must be made 90 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 filed in accordance with sections 76.6 and 76.7, that oppose 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. A cable operator opposing such petition must file its opposition within five days of the filing of the petition, certifying to service on both the petitioner and the local franchising authority.

19. Remove §76.963.

§ 76.963 [Removed]

20. Amend § 76.980 to remove Note 1 and revise paragraphs (a) and (e) to read as follows:

§ 76.980 Charges for customer changes.

(a) This section shall govern charges for any changes in service tiers or equipment provided to the subscriber that are initiated at the request of a subscriber after initial service installation and that result in the subscriber receiving only a basic tier of service, with or without additional non-tier services, and no additional tier of service.

* * *

(e) Cable operators must also notify subscribers of potential charges for customer service changes, as provided in §76.1604.

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21. Remove §76.982.

§ 76.982 [Removed]

22. Amend § 76.984 to remove Notes 1 and 2, revise paragraph (a) and add paragraph (c)(4) to read as follows:

§ 76.984 Geographically uniform rate structure.

(a) The rates charged by cable operators for basic service and associated equipment and installation shall be provided pursuant to a rate structure that is uniform throughout each franchise area in which cable service is provided.

* * *

(c)

* * *

(4) Requests for discovery for predatory pricing complaints will be addressed pursuant to the procedures specified in §76.7(f). Parties submitting confidential 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.

* * * * *

23. Amend §76.990 to remove paragraph (b) (3) and the Note to §76.990 and revise paragraphs (a), (b) (2) and (c) to read as follows:

§ 76.990 Small cable operators.

(a) A small cable operator is exempt from rate regulation on its basic service tier if that tier was the only service tier subject to rate regulation as of December 31, 1994, in any franchise area in which that operator services 50,000 or fewer subscribers.

(b) * * *

(2) Once the operator has certified its eligibility for deregulation on the basic service tier, the local franchising authority shall not prohibit the operator from taking a rate increase and shall not order the operator to make any refunds unless and until the local franchising authority has rejected the operator's certification in a final order that is no longer subject to appeal or that the Commission has affirmed. The operator shall be liable for refunds for revenues gained (beyond revenues that could be gained under regulation) as a result of any rate increase taken during the period in which it erroneously claimed to be deregulated, plus interest, in the event the operator is later found not to be deregulated. The limits on refund liability will not be applicable during that period to ensure that the filing of an invalid small operator certification does not reduce any refund liability that the operator would otherwise incur.

(c) *Transition from small cable operator status.* If a small cable operator subsequently becomes ineligible for small operator status, the operator will become subject to regulation. Upon regulation, actual rates and subsequent rate increases will be subject to generally applicable regulations governing rates and rate increases. A cable operator must give its franchising authority notice of its change in status. The system shall file its rate justifications consistent with §76.930 of this subpart. For rules governing small cable systems and small cable companies, see §76.934.

* * * * *

24. Remove § 76.1805.

§ 76.1805 [Removed]

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) incorporated an Initial Regulatory Flexibility Analysis (IRFA) in *Revisions to Cable Television Rate Regulations, Further Notice of Proposed Rulemaking, (2018 FNPRM)*, released in October 2018.[2] The Commission sought written public comment on the proposals in the *2018 FNPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA and it (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Rules

2. The Report and Order makes changes to remove rule sections and eliminate rate calculation forms that are obsolete due to the sunset of cable programming service tier (CPST) rate regulation. In the past, the Commission developed rules and forms for the regulation of cable television rates when both the basic service tier (BST) and the CPST were subject to rate regulation. In the Report and Order, the Commission updates rules and rate forms to reflect the March 1999 sunset of CPST rate regulation pursuant to the Telecommunications Act of 1996[4] and to address issues which have arisen over time. The Report and Order updates and streamlines the cable rate regulations in Part 76 of the Commission's rules governing multichannel video and cable television service. The Report and Order also streamlines the initial rate-setting methodology, clarifies how cable operators may adjust their rates every year, eliminates rate regulation of some equipment used to receive cable signals, and eliminates rate regulation of small systems owned by small cable companies. Further, the Report and Order eliminates rate forms that are no longer necessary. These changes relieve regulatory burdens for small and other cable operators, modernize and streamline cable rate regulations, and update regulations to account for the deregulation of cable programming service tier rates.

3. For cable systems in general, including small cable systems, all of these changes have the effect of eliminating or reducing regulatory burdens.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA. However, the American Cable Association (ACA) commented regarding the impact of the rule on small entities stating that the administrative burdens faced by small cable operators are greater than those of larger operators that have more administrative and technical resources.[5] ACA commented in favor of the Commission's proposal to deregulate small cable systems serving 15,000 or fewer subscribers, that are owned by small cable companies serving 400,000 or fewer subscribers.[6] In the Report and Order, the Commission finds that the benefits of regulating small systems owned by small

[1] 5 U.S.C. § § 601 *et seq.*, as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), Pub. L. No. 104-121, 110 Stat. 8457 (1996).

[2] *Modernization of Media Regulation Initiative; Revisions to Cable Television Rate Regulations, Further Notice of Proposed Rulemaking and Report and Order*, 33 FCC Rcd 10549, 10589 Appx. C (2018) (*2018 FNPRM*).

[3] 5 U.S.C. § 604.

[4] This is codified as Communications Act § 623(c)(4), 47 U.S.C. § 543(c)(4).

[5] ACA Connects – America's Communications Association (ACA) Comments at 5-9.

[6] *Id.* at 2-3.

cable companies do not outweigh the potential hardship of regulatory compliance for small entities. The Commission's action will allow small systems to better attract the financing and investment necessary to maintain and improve service.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and provide a detailed statement of any change made to the proposed rules as a result of those comments.[7] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[8] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[9] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[10] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[11]

7. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[12] Based on industry data, there are about 420 cable companies in the U.S.[13] Of these, only seven have more than 400,000 subscribers.[14] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[15] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[16] Of these, about 639 have more than 15,000 subscribers.[17] Accordingly, the Commission

[7] 5 U.S.C. § 604(a)(3).

[8] *Id*. § 604(a)(4).

[9] *Id.* § 601(6).

[10] *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[11] 15 U.S.C. § 632.

[12] 47 CFR § 76.901(d).

[13] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[14] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[15] 47 CFR § 76.901(c).

[16] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[17] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

estimates that the majority of cable companies and cable systems are small.

8. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[18] For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.[19] Based on industry data, only six cable system operators have more than 498,000 subscribers.[20] Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[21] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

9. *Small Governmental Jurisdictions*. The small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[22] U.S. Census Bureau data from the 2022 Census of Governments[23] indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[24] Of this number there were 36,845 general purpose governments (county,[25] municipal and town or township[26])

[18] 47 U.S.C. § 543(m)(2).

[19] *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (*2023 Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id*. This threshold will remain in effect until the Commission issues a superseding Public Notice. *See* 47 CFR § 76.901(e)(1).

[20] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[21] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR § 76.910(b).

[22] 5 U.S.C. § 601(5).

[23] 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/economic-census/year/2022/about.html.

[24] *See* U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

[25] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[26] *See id*. at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

with populations of less than 50,000 and 11,879 special purpose governments (independent school districts[27]) with enrollment populations of less than 50,000.[28] Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of "small governmental jurisdictions."[29]

10. As noted in the Report and Order, nearly all, if not all, cable operators now face effective competition and are not subject to rate regulation. This means that few, if any, local governments, including small governmental jurisdictions, are certified to regulate rates at this time. Therefore, we expect the number of small governmental jurisdictions, to which these rule changes would apply at this time, to be negligible.

E. Description of Economic Impact and Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

11. The RFA directs agencies to provide a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.[30]

12. The Report and Order updates and streamlines the cable rate regulations in Part 76 of the Commission's rules governing multichannel video and cable television service. All of the rule changes are either neutral or reduce existing reporting, recordkeeping, or other compliance requirements for small and other entities. Specifically, the Report and Order exempts systems serving 15,000 or fewer subscribers that are owned by small cable companies of 400,000 or fewer subscribers from all rate regulation. The Report and Order also limits cable equipment regulation to equipment that is used by BST-only subscribers to receive the BST and additional per channel or per program services. Further, it streamlines the process for establishing initial regulated rates by updating the methodology for newly regulated cable operators to establish initial BST rates using the BST rate in effect 60 days prior to the date a local franchising authority (LFA) files its certification to regulate BST rates. In addition, the Report and Order sunsets the unabbreviated and abbreviated cost of service methodologies and clarifies and or eliminates obsolete rules and forms. These changes are necessary to relieve regulatory burdens, modernize and streamline cable rate regulations, and update regulations to account for the deregulation of CPST rates. No increase in the regulatory burden on small systems or small governmental entities is expected to result from this proceeding.

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[27] *See id*. at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. There were 11,879 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

[28] While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[29] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

[30] 5 U.S.C. § 604(a)(5).

F. Discussion of Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities…including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[31]

14. The Report and Order updates and streamlines the cable rate regulations in Part 76 of the Commission's rules governing multichannel video and cable television service. This includes streamlining channel addition and deletion rules and the process for establishing initial regulated rates, the further deregulation of small entities, and the elimination of obsolete rules and forms. Many of the alternatives considered in the Report and Order relieve regulatory burdens for small and other cable operators, modernize and streamline cable rate regulations, and update regulations to account for the deregulation of CPST rates. For example, ACA commented in favor of the Commission's proposal to eliminate administrative burdens for small cable systems serving 15,000 or fewer subscribers that are owned by small cable companies of 400,000 or fewer subscribers, because those burdens would discourage investment in services by these cable systems. In considering whether to adopt this alternative, the Commission finds ACA's assertions to be persuasive. These changes do not increase the regulatory burden small systems face as a result of rate regulation. Instead, they lessen it by reducing the amount of information required to be reported.

15. The Report and Order also considered whether to extend rate regulation beyond residential customers, but instead, considering the language of the Act and Commission precedent, decided not to include non-residential subscribers, such as retail stores and restaurants. Additionally, the Commission modified the three-month period for cable operators that lose their status as small operators to now conform with the new 60 day rule for other operators subject to these regulations.

G. Report to Congress

16. The Commission will send a copy of the Report and Order, including this Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Congressional Review Act.[32] In addition, the Commission will send a copy of the Report and Order, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA and will publish a copy of the Report and Order, and this Final Regulatory Flexibility Analysis (or summaries thereof) in the Federal Register.[33]

[31] *Id*. § 604(a)(6).

[32] *Id*. § 801(a)(1)(A).

[33] *Id.* § 604(b)

STATEMENT OF
CHAIRMAN BRENDAN CARR

Re: *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 and MM Docket No. 93-215*; Adoption of Uniform Accounting System for the Provision of Regulated Cable Service,* CS Docket No. 94-28 *(*June 26, 2025).

With all the changes in the video marketplace since 1992, one would suspect that rules adopted 33 years ago might no longer make sense. In the case of cable rate regulation, that is most certainly the case. With today's decision, the Commission is streamlining and eliminating cable rate regulations that serve no purpose in the modern age.

Indeed, while Congress authorized the FCC to impose lots of regulations on cable providers back in 1992, the market has changed significantly since then. As a result, most of the cable rate regulations that Congress contemplated have been overtaken by events. But the Commission has continued to maintain those regulations across scores of pages and rules on our books nonetheless.

In 2018, the Commission launched a rulemaking to update this set of regulations. Today's decision finally gets that work over the finish line.

Going by the numbers, this Order will get rid of 77 rules or requirements, eliminate 8 forms, and close out several open dockets. That translates to the removal of 27 pages and 11,475 words from our rulebooks.

Among the most notable reforms, we are exempting small cable systems (those serving 15,000 or fewer subscribers that are owned by cable companies serving 400,000 or fewer subscribers) from rate regulation, altogether. Notably, not a single commenter argued for keeping these regulations on small businesses.

We're also getting rid of regulations that have applied to many types of cable equipment and that are no longer relevant today.

Add it all up, and we're clearing away obsolete and unworkable rules and freeing up providers to focus on delivering consumers quality service at reasonable rates.

Thank you to the staff who worked on this item, including Katie Costello, Lori Marbjerg, Maria Mullarkey, Nancy Murphy, Brendan Murray, Sima Nilsson, and Alex Sanjenis.

STATEMENT OF
COMMISSIONER OLIVIA TRUSTY

Re: *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 and MM Docket No. 93-215; *Adoption of Uniform Accounting System for the Provision of Regulated Cable Service*, CS Docket No. 94-28 (June 26, 2025).

Thank you, Chairman Carr, Commissioner Gomez, and the entire staff at the FCC for such a wonderful and warm welcome. It is truly an honor to be here and I'll take a moment to reiterate how much I look forward to working with my new colleagues on some of the most critical and pressing issues across today's communications landscape.

With respect to today's agenda, President Trump has prioritized deregulatory initiatives that will reduce red tape, unleash innovation, and promote prosperity – and I appreciate the effort already underway at the Commission – led by Chairman Carr – to identify and clear out lingering regulatory encumbrances.

As part of this effort, the Chairman's "Delete, Delete, Delete" initiative highlights regulations that may have outlasted their initial purpose.

I look forward to contributing to this initiative and working to tackle the regulatory challenges facing consumers and industry alike. With this in mind, I'm happy that, rather than focusing too much on "in with the new," today we're saying "out with the old" – starting with the Commission's overly complex and outdated cable television rate regulations.

The Commission's rules governing rate regulations for cable television are decades old, and much has changed in the intervening years since they were adopted. Increased competition, regulatory updates, and technology advancements in the video marketplace have rendered the Commission's approach to cable rate regulations obsolete. Rules that may have served a worthwhile purpose in decades past are no longer necessary in today's video marketplace where consumers have access to increasingly personalized viewing experiences at more competitive rates.

The Order we adopt today will modernize and streamline cable rate regulations by reducing existing reporting, recordkeeping, and other outdated compliance requirements. Doing so will encourage greater investment and better quality services that will ultimately benefit our country's innovators, entrepreneurs, small businesses, and consumers.

I welcome the regulatory simplification and clarity brought by today's item and it has my support.