

request for information or a rate suspension may be by an informal letter to the chief of the Cable Services Bureau rather than by way of a formal pleading. The appeal will be handled pursuant to the following expedited procedure. The franchising authority is required to respond to an interlocutory appeal in seven days; the cable operator's optional reply date is four days thereafter. The operator will not be required to respond to a franchising authority's request for information while an appeal is pending at the Commission. The Commission will resolve those appeals expeditiously.

46. The operator may appeal a request for information or a tolling order even if its requested rate exceeds \$1.24 per channel. However, where the requested rate is no more than \$1.24 per channel, our review of the appeal will be guided by the presumption of reasonableness that will attach to rates not exceeding that amount and by our conception of what constitutes a reasonable request for information, as described above. A decision by the Commission to sustain an operator's interlocutory appeal will be accompanied by an order directing the franchising authority to issue the appropriate order based upon the documentation previously supplied by the operator. When appropriate, we will make informal attempts at mediation of such disputes.

47. We have adopted the rate of \$1.24 per channel for the purposes set forth above based on the 35 FCC Form 1220 cost-of-service filings that have been submitted by systems with 15,000 or fewer subscribers owned by what we have defined here as small cable companies. We expect to adjust this figure in the future to account for changes in the relevant economic data, such as inflation. Using the rate-setting formula that we hereby adopt, staff found that the subscriber-weighted average cost per channel for eligible systems that had filed FCC Form 1220 amounted to \$.93. Because this is an average figure, we know that, according to the data provided on the forms, a fair number of these Form 1220 filers would be entitled to rates exceeding \$.93 per channel, presumably because of higher costs or recent capital improvements that justified a higher than average rate. 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 \$1.24.⁴ We therefore believe that a strong presumption of reasonableness should attach to a rate at or below this level when established by an eligible operator. As noted above, to disapprove a rate that does not exceed \$1.24 per channel, the burden will be upon the franchising authority to show that the cable operator did not reasonably interpret and allocate its cost and expense data in coming up with the operating expense, net rate base, and rate of return figures claimed by the operator in calculating its permitted rate.

48. Once the operator has established rates at a level permitted by Form 1230, it may increase rates thereafter at its discretion until it reaches the maximum level permitted by the form, subject only to the 30 days' notice requirement. Even though the operator is charging less than the maximum rate permitted by Form 1230, the operator may adjust that maximum rate. For example, an operator may adjust its maximum permitted rate to take account of inflation and increases in external costs. Likewise, when adding channels an operator may use the going-forward methodology to adjust its maximum permitted rate. While making these adjustments to the maximum permitted rate, the operator simultaneously may, but need not, increase the actual rate charged. Thus, adjustments to the actual rate charged may be made independent of adjustments to the maximum rate permitted. As long as the actual rate does not exceed the maximum permitted rate, the operator may adjust its actual rate as and when it desires, subject to the notice requirement. In addition, at any time an operator may adjust its maximum permitted rate simply by filing a new Form 1230.

49. Once the operator has established rates at the maximum level permitted by Form 1230, the operator will be able to increase its actual rate by adjusting its maximum permitted rate in accordance with our normal rules to reflect increases in inflation and external costs. When adding channels, an operator may establish its new rate by filing a new

Form 1230 or by complying with the going forward rules.⁵ In determining the number of channels for which a small system owned by a small cable company may claim the alternative going-forward treatment that we adopted in the Sixth Reconsideration Order, 59 FR 62614 (December 6, 1994) only those channels added after the system files its first Form 1230 shall be counted. Therefore, if an operator added channels under the alternative going-forward rules before filing its initial Form 1230, the previously added channels will not be counted against the maximum of seven channels that an operator may add for purposes of those rules. However, the filing of a second or subsequent Form 1230 shall not increase the number of channel additions qualifying for the alternative going-forward treatment.

50. The cable system and any other participant in the rate making proceeding at the franchising authority level may appeal to the Commission for review of the final decision of the franchising authority under our normal appellate procedure. If the rate decision is appealed by the operator, we first will review any challenged request for information that was not the subject of an interlocutory appeal by the operator. If, under the standards outlined above, we find no proper grounds for the request for information, we will have the ability to permit the operator to charge the requested rate without proceeding further. Thus, where the requested rate does not exceed \$1.24, if a franchising authority denies the request on the basis of information that goes beyond the reasonable scope described above, we will reverse the rate decision. If the scope of information requested by the franchising authority is not at issue up on appeal of the final rate decision, the franchising authority will have the burden of proving the reasonableness of its decision to deny any requested rate that does not exceed \$1.24, and the operator will have the burden of establishing the reasonableness of the requested rate if it exceeds that amount. Thus, we will look more closely at rates exceeding \$1.24 per channel and, as noted above, will be less restrictive with respect to the permissible scope of information which the franchising authority may request and rely upon in determining the reasonableness of the rate. If we uphold a franchising authority decision to request further information, we will

⁴ Standard deviation is a commonly used measure of variability. It measures the amount of variance from the average in a sample. The amount of variance is usually expressed in terms of one or more standard deviations from the average. One standard deviation, when applied to the average, generally will capture about two-thirds of the sample, e.g., in this case, two-thirds of eligible cable systems. Two standard deviations generally will capture about 95% of the sample. In this case we selected one standard deviation as the appropriate measure. Thus, about one-third of eligible systems who file for this form of relief should have rates above the \$1.24 threshold and will have the burden of justifying their rates.

⁵ The operator must elect between the two forms of relief. Therefore, upon adding a channel, an operator may file a new Form 1230 reflecting that channel addition, or elect going-forward treatment with respect to the new channel, but it cannot do both.