

permit an operator to present its arguments as to why its rate is reasonable.

51. Complaints regarding CPST rates will be resolved by the Commission, as required by the 1992 Cable Act. In reviewing CPST rates pursuant to a complaint, we will apply the same standard that is to be applied by a certified franchising authority when an operator files its Form 1230.

52. A system's initial and continued eligibility for this new form of relief shall be determined in the same manner as any other relief now available to them. Thus, if a system qualifies for relief under this approach as of the effective date of this order or as of the date it files Form 1230, it shall remain eligible for so long as it serves 15,000 or fewer subscribers, regardless of whether it, or the cable operator that owns the system, is subsequently acquired by a company that exceeds the 400,000 subscriber limit, or if its current operator subsequently exceeds 400,000 subscribers due to the normal growth of its systems. When a system that has established rates in accordance with Form 1230 exceeds 15,000 subscribers, the system may maintain its then existing rates. However, any further adjustments shall not reflect increases in external costs, inflation or channel additions until the system has re-established initial permitted rates in accordance with our benchmark or cost-of-service rules. Such a system may file a petition for special relief seeking continued treatment as a small system.

53. Finally, we must address the applicability of this new form of relief to pending matters. We have little reason to question those commenters who contend that our existing rules have significantly burdened small systems. Accordingly, we will direct franchising authorities to permit systems to use the small system cost-of-service approach to justify rates in any proceeding that is pending as of the date this item is released, using data that was accurate as of the time the rates were charged. To apply the small cable system cost-of-service relief to a pending case, the system must show that it met the new definitions of a small system owned by a small cable company as of the date this item is released and as of the period during which the disputed rates were in effect. Our adoption of this new form of relief shall not affect the validity of a final rate decision made by a franchising authority before the release date of this item. If such a decision is appealed to the Commission, we will review the decision in accordance with the rules that were in effect at the time the rates

were charged and the decision was made. We believe that the interests of administrative finality warrant this treatment of cases already decided by a final decision of the franchising authority.

54. In any proceeding before the Commission involving a CPST complaint in which a final decision had not been issued as of the release date of this item, a small system owned by a small cable company may elect the form of rate regulation set forth in this section to justify rates charged prior to the adoption of this rule and to establish new rates. This approach will apply regardless of the current phase of the proceedings. Thus, a small system owned by a small cable company may file its Form 1230 to oppose a CPST rate complaint, to support a timely petition for reconsideration of a previous Bureau or Commission decision regarding a CPST complaint, or to support a petition for Commission review of a Bureau decision regarding a CPST complaint. As with cases pending before franchising authorities, to apply the small cable system cost-of-service relief to a case currently pending before the Commission, the system must show that it met the new definitions of a small system owned by a small cable company as of the date this item is released and as of the period during which the disputed rates were in effect.

V. Regulatory Flexibility Analysis

55. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-12, the Commission's final analysis with respect to the Sixth Report and Order and Eleventh Order on Reconsideration is as follows:

56. Need and purpose of this action: The Commission, in compliance with section 3(i) of the Cable Television Consumer Protection and Competition Act of 1992 pertaining to rate regulation, adopts rules and procedures intended to ensure cable subscribers of reasonable rates for cable services with minimum regulatory and administrative burden on cable entities.

57. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis contained in the *Further Notice of Proposed Rulemaking*. The Chief Counsel for Advocacy of the United States Small Business Administration filed comments in the original rulemaking order. The Commission addressed these comments in the *Rate Order*. The Chief Counsel for Advocacy of the United States Small Business Administration also filed

comments in response to the *Further Notice of Proposed Rulemaking*. Those comments are addressed herein.

58. Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. The Commission responded to these comments in this order which will significantly reduce the burdens on small cable systems and small cable companies.

VI. Paperwork Reduction Act

59. The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified information collection requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

VII. Ordering Clauses

60. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 303(r), 612, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, and 543 the rules, requirements and policies discussed in this *Sixth Report and Order and Eleventh Order on Reconsideration* are adopted and § 76.934 of the Commission's rules, 47 CFR 76.934, is amended as set forth below.

61. *It is further ordered* that the Secretary shall send a copy of this Order to the Chief Counsel for Advocacy of the United States Small Business Administration.

62. *It is further ordered* that, the requirements and regulations established in this decision shall become effective upon approval by the Office of Management and Budget of the new information collection requirements adopted herein, but no sooner than thirty (30) days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 76

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

Amendatory Text

PART 76—CABLE TELEVISION SERVICE

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