

period for which the system has the relevant data readily available, adjusted for known and measurable changes occurring between the end of the 12 month period and the effective date of the rate. Expenses shall include all regular expenses normally incurred by a cable operator in the provision of regulated cable service, but shall not include any lobbying expense, charitable contributions, penalties and fines paid on account of statutes or rules, or membership fees in social service, recreational or athletic clubs or associations.

(ii) The net rate base of a system is the value of all of the system's assets, less depreciation.

(iii) The rate of return claimed by the system shall reflect the operator's actual cost of debt, its cost of equity, or an assumed cost of equity, and its capital structure, or an assumed capital structure.

(iv) The number of subscribers reported by the system shall be calculated according to the most recent reliable data maintained by the system.

(v) The number of channels reported by the system shall be the number of channels it has on its basic and cable programming service tiers on the day it files Form 1230.

(vi) In establishing its operating expenses, net rate base, and reasonable rate of return, a system may rely on previously existing information such as tax forms or company financial statements, rather than create or recreate financial calculations. To the extent existing information is incomplete or otherwise insufficient to make exact calculations, the system may establish its operating expenses, net rate base, and reasonable rate of return on the basis of reasonable, good faith estimates.

(5) After the system files Form 1230, review by the franchising authority, or the Commission when appropriate, shall be governed by § 76.933, subject to the following conditions.

(i) If the maximum rate established on Form 1230 does not exceed \$1.24 per channel, the rate shall be rebuttably presumed reasonable. To disallow such a rate, the franchising authority shall bear the burden of showing that the operator did not reasonably interpret and allocate its cost and expense data in deriving its annual operating expenses, its net rate base, and a reasonable rate of return.

(ii) In the course of reviewing Form 1230, a franchising authority shall be permitted to obtain from the cable operator the information necessary for judging the validity of methods used for calculating its operating costs, rate base, and rate of return. If the maximum rate

established in Form 1230 does not exceed \$1.24 per channel, any request for information by the franchising authority shall be limited to existing relevant documents or other data compilations and should not require the operator to create documents, although the operator should replicate responsive documents that are missing or destroyed.

(iii) A system may file with the Cable Services Bureau an interlocutory appeal from any decision by the franchising authority requesting information from the system or tolling the effective date of a system's proposed rates. The appeal may be made by an informal letter to the Chief of the Cable Services Bureau, served on the franchising authority. The franchising authority must respond within seven days of its receipt of the appeal and shall serve the operator with its response. The operator shall have four days from its receipt of the response in which to file a reply, if desired. If the maximum rate established on Form 1230 does not exceed \$1.24 per channel, the burden shall be on the franchising authority to show the reasonableness of its order. If the maximum rate established on Form 1230 exceeds \$1.24 per channel, the burden shall be on the operator to show the unreasonableness of the order.

(iv) In reviewing Form 1230 and issuing a decision, the franchising authority shall determine the reasonableness of the maximum rate permitted by the form, not simply the rate which the operator intends to establish.

(v) A final decision of the franchising authority with respect to the requested rate shall be subject to appeal pursuant to § 76.944. The filing of an appeal shall stay the effectiveness of the final decision pending the disposition of the appeal by the Commission. An operator may bifurcate its appeal of a final rate decision by initially limiting the scope of the appeal to the reasonableness of any request for information made by the franchising authority. The operator may defer addressing the substantive rate-setting decision of the franchising authority until after the Commission has ruled on the reasonableness of the request for information. At its option, the operator may forego the bifurcated appeal and address both the request for documentation and the substantive rate-setting decision in a single appeal. When filing an appeal from a final rate-setting decision by the franchising authority, the operator may raise as an issue the scope of the request for information only if that request was not approved by the Commission on a

previous interlocutory appeal by the operator.

(6) Complaints concerning the rates charged for a cable programming services tier by a system that has elected the small cable company cost-of-service methodology may be filed pursuant to § 76.957. Upon receipt of a complaint, the Commission shall review the system's rates in accordance with the standards set forth above with respect to basic tier rates.

(7) Unless otherwise ordered by the franchising authority or the Commission, the system may establish its per channel rate at any level that does not exceed the maximum rate permitted by Form 1230, provided that the system has given the required written notice to subscribers. If the system establishes its per channel rate at a level that is less than the maximum amount permitted by the form, it may increase rates at any time thereafter to the maximum amount upon providing the required written notice to subscribers.

(8) After determining the maximum rate permitted by Form 1230, the system may adjust that rate in accordance with this paragraph. Electing to adjust rates pursuant to one of the options set forth below shall not prohibit the system from electing a different option when adjusting rates thereafter. The system may adjust its maximum permitted rate without adjusting the actual rate it charges subscribers.

(i) The system may adjust its maximum permitted rate in accordance with the price cap requirements set forth in § 76.922(d).

(ii) The system may adjust its maximum permitted rate in accordance with the requirements set forth in § 76.922(e) for changes in the number of channels on regulated tiers. For any system that files Form 1230, no rate adjustments made prior to the effective date of this rule shall be charged against the system's Operator's Cap and License Reserve Fee described in § 76.922(e)(3).

(iii) The system may adjust its maximum permitted rate by filing a new Form 1230 that permits a higher rate.

(iv) The system may adjust its maximum permitted rate by complying with any of the options set forth in § 76.922(b)(1) for which it qualifies or under an alternative rate agreement as provided in paragraph (g) of this section.

(9) In any rate proceeding before a franchising authority in which a final decision had not been issued as of June 5, 1995, a small system owned by a small cable company may elect the form of rate regulation set forth in this section to justify the rates that are the subject of