

discharge of merchant mariners, their pay and allotments, and the adequacy of their clothing would justify the exemption.

(c) The OCMI will forward the request, along with his or her recommendation, to the Commandant, who will determine whether to grant any exemption of any vessel from any requirement. The OCMI will issue a letter indicating any exemption granted. The master or individual in charge of the vessel shall keep the letter aboard the vessel.

(d) If operating conditions change, the owner, charterer, managing operator, master, or individual in charge of the vessel shall so advise the OCMI. The OCMI will forward pertinent information on how the conditions have changed, along with his or her recommendation, to the Commandant, who will determine whether any exemption should remain granted.

#### **§ 14.407 Reports.**

(a) The owner, charterer, managing operator, master, or individual in charge of each oceanographic-research vessel of 100 gross tons or more shall maintain a record of the employment, discharge, or termination of service of every merchant mariner in the crew. At least every six months, the person maintaining this record shall transmit it to the Coast Guard—either manually, in the form of a copy of a certificate of discharge, or electronically.

(b) The owner, charterer, managing operator, master, or individual in charge of the vessel shall keep original shipping articles and a copy of each certificate ready for review by the Coast Guard or the concerned mariner upon request. (After the effective date of this rule, the Coast Guard will no longer keep either original articles or copies of certificates; it will keep only electronic records of employment.)

(c) The master or individual in charge of the vessel shall ensure that every entry made in the articles agrees with the corresponding entry made in a continuous discharge book, on a certificate, or in any other proof of sea service furnished to the mariner.

(d) Each oceanographic company shall keep all original articles and copies of all certificates for ten years. After then each such company shall send all articles to the address in paragraph 14.103(a) of this part.

(e) Each oceanographic company that goes out of business or merges with another company shall send all original articles to the address in paragraph 14.103(a) of this part, within 30 days of the transaction.

Dated: March 21, 1996.

J.C. Card,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 96-7455 Filed 3-27-96; 8:45 am]

BILLING CODE 4910-14-M

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 76**

[CS Docket No. 96-57; FCC 96-117]

### **Telecommunications Act of 1996**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is issuing this Notice of Proposed Rulemaking ("NPRM") in order to solicit comment on the proper implementation of Section 623(a)(7)(A) of the Communications Act. This NPRM is necessary to fulfill the statutory requirement in Section 301(j) of the Telecommunications Act of 1996 that the Commission allow cable operators to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories regardless of the varying levels of functionality of the equipment within each such broad category. This proceeding will permit the Commission to issue final rules.

**DATES:** Comments are due April 12, 1996. Reply comments are due April 22, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ibn Spicer, Cable Services Bureau, Financial Analysis Division (202) 418-2296.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Notice of Proposed Rulemaking in CS Docket No. 96-57, FCC 96-117, adopted March 18, 1996 and released March 20, 1996. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street N.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS Inc.") at (202) 857-3800, 2100 M Street N.W., Suite 140, Washington, DC 20017.

#### **Synopsis of Notice of Proposed Rulemaking**

1. In this Notice of Proposed Rulemaking ("NPRM"), we propose to amend our rules to implement Section 301(j) of the Telecommunications Act of

1996 ("1996 Act") which adds a new Section 623(a)(7) to the Communication Act of 1934, as amended ("Communications Act"). Section 301(j) of the 1996 Act requires that the Commission allow cable operators to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories regardless of the varying levels of functionality of the equipment within each such broad category. That section also provides that "[s]uch aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic tier."

#### **Discussion**

##### **A. Cost Categorization**

2. Section 301(j) of the 1996 Act requires the Commission to allow regulated operators to aggregate "their [customer] equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category." We tentatively conclude that the statute intends that equipment be classified and placed in categories based on the primary purpose of the equipment.

3. We propose to amend the Equipment Basket provisions in Section 76.923(c) to allow categorization of customer equipment costs into broad categories. We further propose eliminating the language in Sections 76.923(f) and (g) that requires separate charges for each significantly different type of remote control device, converter box, and other customer equipment. We propose amending the rules to require that equipment be categorized based on its primary purpose. Thus, customer equipment, except equipment used by basic-only subscribers, that is used for the same purpose may be aggregated into the same broad category and priced at the same rate, regardless of the level of functionality. We seek comment on whether the Commission should establish a definition of the term "level of functionality" in order to bring more certainty to these new rules. If commenters believe we should do so, they should propose a definition of that term. Because equipment rates to subscribers must be based on actual costs, operators must base equipment charges on the same aggregation level as their costs. We propose amending our rules to make this explicit. Section 76.923(l) currently permits small systems to average costs for "similar types of equipment" on a company-wide basis. We propose eliminating this section since all systems shall be permitted to aggregate equipment

pursuant to the new provisions in the 1996 Act.

4. Section 76.923(h) currently contains language that effectively requires separate charges for connections, which includes inside wire, additional outlets and signal boosters, if needed, used to provide cable service to additional television receivers. That language was included to implement Section 623(b)(3) of the Communications Act of 1934, as amended, which specifically required rates for installation and monthly use of connections for additional television receivers be separate from rates for the initial receiver. Therefore, we tentatively conclude that additional connections may not be aggregated with initial connections into a broad category.

#### *B. Organizational Levels*

5. In light of new section 623(a)(7), we propose that Section 76.923(c) of our rules be amended to specifically permit customer equipment cost aggregation at the franchise, system, regional, or company level. Because equipment rates to subscribers must be based on actual costs, operators must base equipment charges on the same aggregation level as their costs. We propose amending our rules to make this explicit. Furthermore, to the extent that our current rules permit cost aggregation of equipment only in a manner consistent with an operator's practices on April 3, 1993, we propose eliminating this date restriction. We tentatively conclude that such a restriction would improperly prevent an operator from aggregating costs at higher organizational levels, as specifically permitted in the statute.

6. We tentatively conclude that Congress did not intend that cost aggregation be permitted to the same extent for installation charges. We reach this tentative conclusion because Section 301(j) of the 1996 Act refers only to equipment and not to installations, whereas the 1992 Cable Act separately mentions installations. Consistent with our small system rules, we believe that customer equipment charges are less likely to vary significantly between systems, whereas installation charges are more dependent on local labor and other costs that can vary between communities. We recognize, however, that this requirement could impose additional burdens on cable operators, since customer equipment rates could be set at higher organizational levels than installation rates. We therefore propose that operators be permitted to aggregate installation costs based on specific service areas designated for the

aggregation of those costs. Under this approach, a rate could be established for installation for a specific service area that is chosen by the operator because the costs of providing installation are substantially similar throughout all franchises in that chosen service area. We seek comment on this approach. We also seek comment on whether there are alternative levels at which installation costs could be identified that would ease burdens on operators, yet still comport with Congressional intent.

#### *C. Basic-Only Subscriber Equipment*

7. The 1996 Act prohibits "[s]uch aggregation \* \* \* with respect to equipment used by subscribers who receive only a rate regulated basic service tier." We tentatively conclude that Congress was concerned that basic-only subscribers not subsidize the costs of more sophisticated equipment used by subscribers taking services in addition to basic. Therefore, we tentatively conclude that equipment used by basic-only subscribers may not be aggregated into broad categories. We propose amending Section 76.923(c) to provide that the cost of equipment used by basic service-only customers may not be averaged with other customer equipment. However, the statute is not clear as to whether a cable operator may aggregate the costs of equipment used by basic-only customers at higher organizational levels and developing system, regional, or company average prices for such equipment. Although we recognize this ambiguity, we believe that allowing cable companies to aggregate the costs of equipment used by basic service-only customers at a higher organizational level and develop a rate based upon such aggregation does not contravene Congress' concern that basic-only subscribers not subsidize the costs of more sophisticated equipment used by subscribers taking other services in addition to basic. Any aggregation of the costs of basic service-only equipment at a higher organizational level will still only include equipment for that level of service. We seek comment on this issue.

#### *D. Equipment Rates Jurisdiction and Review*

8. Affected local franchising authorities will continue to review the equipment rates and supporting aggregated cost data as part of the review of the cable operators' rate justifications for basic rates. We recognize that the review of aggregated cost data regarding equipment by each of the affected local franchising authorities could lead to varying analyses and potentially inconsistent

orders regarding that data. We seek comment on whether there is an alternative that could be more administratively efficient for local franchising authorities and cable operators alike.

#### *E. FCC Form 1205*

9. Because of our above tentative conclusions and proposed rules changes, we believe that FCC Form 1205 will need to be modified. We are proposing revisions to Form 1205 and seek comment on these revisions. The pages of Form 1205 containing revisions are set forth below.

#### *Procedural Provisions*

##### *A. Ex Parte Presentations*

10. This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR Sections 1.1202, 1.1203, 1.1206(a).

##### *B. Initial Regulatory Flexibility Analysis*

11. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis ("IRFA") of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. Our initial regulatory flexibility analysis under the Regulatory Flexibility Act indicates that if the proposed rule changes are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act and that any impact will be to give operators new, less burdensome options to comply with our rules. We are committed to reducing the regulatory burdens on small cable operators whenever possible, consistent with our other public interest responsibilities. The Secretary shall send a copy of this NPRM of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. Sections 601 *et seq.* (1981).

12. The Commission issues this NPRM to consider the changes needed to permit cable operators to aggregate equipment costs into broad categories

and at the organizational level of their choice, as required by Section 301(j)) of the 1996 Act.

13. Objectives. To solicit comments on the rule changes needed to implement Section 301(j) of the 1996 Act.

14. Legal Basis. Action as proposed for this rulemaking is contained in Section 301(j) of the 1996 Act.

15. Description, Potential Impact and Number of Small Entities Affected. The proposals, if adopted, will not have a significant effect on a substantial number of small entities. The proposed rules changes would provide all regulated entities with new options, but would not require them to change the methodology by which they currently justify equipment rates. Thus, any economic impact of the rule changes will be positive.

16. Reporting, Recordkeeping and Other Compliance Requirements. None.

17. Federal Rules which Overlap, Duplicate or Conflict with these Rules. None.

18. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives. None.

#### C. Comment Filing Procedures

19. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR Sections 1.415, 1.419, interested parties may file comments on April 12, 1996, and reply comments on April 22, 1996. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. We find these periods for the filing of comments and reply comments to be reasonable in light of the 1996 Act's mandate that the Commission issue revisions to the appropriate rules and forms concerning the aggregation of equipment costs within 120 days of enactment. See *Florida Power & Light Co. v. United States*, 846 F.2d 765 (D.C. Cir. 1988) cert. denied, 490 U.S. 1045 (1989). Any party that wishes each Commissioner to receive a personal copy of its comments, must file an original and nine copies. Comments and reply comments should be limited to 25 pages, with reasonable margins and font size of at least 12 points, and sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Lenworth Smith, Jr. of the Cable Services Bureau, 2033 M Street, N.W., Room 805E, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular

business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

#### D. Paperwork Reduction Act

20. Initial Paperwork Reduction Act of 1995 Analysis. This NPRM proposes a modified information collection for FCC Form 1205. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the OMB to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

21. Written comments by the public on the proposed and/or modified information collections are due on or before 15 days after publication in the Federal Register, and reply comments on or before 10 days after the comment due date. Written comments must be submitted by the Office of Management and Budget ("OMB") on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov) and to Timothy Fain, OMB Desk Officer, 10236, NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

OMB Approval Number: 3060-0603.

Title: Rates for equipment and installation used to receive the basic service tier

Type of Review: Revision of existing collection

Respondents: Businesses or other for profit; state, local or tribal government

Number of Respondents: 2,000.

*Estimated Time Per Response:* The commission estimates an average burden of 4 hours for cable operators to maintain in-house accounting records pertaining to 76,923. The Commission estimates a burden of 1 hour for cable operators contracting out for accounting services.

*Total Annual Burden:* We estimate 75% of respondents maintain records in-house and 25% contract out.  $1,500$  (75% in-house)  $\times 4$  hours = 6,000.  $500$  (25% contracted out)  $\times 1$  hour = 500.  $6,000 + 500 = 6,500$  hours.

*Estimated costs per respondent:* We estimate that operators contracting out accounting assistance will pay \$100 per hour for the maintenance of their accounting systems.  $500$  (25% contracted out) accounting systems  $\times 4$  hours @ \$100 per hour = \$200,000.

*Needs and Uses:* The information is used by cable operators in their accounting systems to justify rates for equipment and installations.

OMB Approval Number: 3060-0592.

Title: FCC Form 1205 Determining Costs of Regulated Cable Equipment and Installation.

Form No.: FCC Form 1205.

Type of Review: Revision of existing collection

Respondents: Business and other for profit; state, local and tribal government

Number of Respondents: 8,800.

*Estimated Time Per Response:* The Commission estimates an average burden of 12 hours for operators to complete the FCC Form 1205 in-house. For operators contracting out accounting and legal assistance for completing the FCC Form 1205, we estimate an average burden of 1 hour.

*Total Annual Burden:* We estimate 75% of operators complete the FCC Form 1205 in-house and 25% contract out for assistance.  $6,600$  (75% in-house)  $\times 12$  hours = 79,200.  $2,200$  (25% contracted out)  $\times 1$  hour = 2,200 hours.  $79,200 + 2,200 = 81,400$  hours. The average burden to local franchising authorities to review FCC Form 1205s is estimated to be 8 hours per filing. We estimate local franchising authorities review approximately 8,000 FCC Form 1205 filings annually.  $8,000 \times 8$  hours = 64,000.  $81,400 + 64,000 = 145,400$  hours.

*Estimated costs per respondent:* We estimate postage and photocopying costs of \$2 per filing.  $8,800 \times \$2 = \$17,600$ . We estimate that operators contracting out accounting assistance will pay \$100 per hour to complete FCC Form 1205.  $2,200$  (25% contracted out)  $\times 12$  hours @ \$100 per hour = \$2,640,000.  $\$17,600 + \$2,640,000 = \$2,657,600$ .

*Needs and Uses:* Information derived from FCC Form 1205 filings facilitates the review of equipment and installation rates when reviewed by applicable local franchising authorities.

#### Ordering Clauses

22. Accordingly, *it is Ordered* that, pursuant to Sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 303(r), and 543, *Notice is Hereby Given* of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in the Notice of Proposed Rulemaking, and that *Comment is Sought* regarding such proposals, discussion, and statement of issues.

23. *It is Further Ordered* that, the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. Sections 601 et seq. (1981).

#### List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary.*

#### Proposed Amendatory Text

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

#### PART 76—[AMENDED]

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

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat. as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. Section 76.923 is amended by revising paragraphs (c), (f), and (g), removing paragraph (l) and redesignating paragraphs (m) through (o) as paragraphs (l) through (n) and revising redesignated paragraph (l) to read as follows:

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

\* \* \* \* \*

(c) Equipment basket. A cable operator shall establish an Equipment Basket, which shall include all costs associated with providing customer equipment and installation under this section. Equipment Basket costs shall be

limited to the direct and indirect material and labor costs of providing, leasing, installing, repairing, and servicing customer equipment, as determined in accordance with the cost accounting and cost allocation requirements of § 76.924, except that operators do not have to aggregate costs in a manner consistent with the accounting practices of the operator on April 3, 1993. The Equipment Basket shall not include general administrative overhead including marketing expenses. The Equipment Basket shall include a reasonable profit.

(1) Customer Equipment. Costs of customer equipment included in the Equipment Basket may be aggregated, on a franchise, system, regional, or company level, into broad categories. Except to the extent indicated in paragraph (c)(2) of this section, such categorization may be made, provided that each category includes only equipment having the same primary purpose, regardless of the levels of functionality of the equipment within each such broad category. When submitting its equipment costs based on average charges, the cable operator must provide a general description of the averaging methodology employed and a justification that its averaging methodology produces reasonable equipment rates.

(2) Basic Service Tier Only Equipment. Costs of customer equipment included in the Equipment Basket, which is used by subscribers who receive only a rate regulated basic service tier, shall not be aggregated into broad cost categories. Costs of each significantly different type of equipment must be classified into specific equipment cost categories. The costs shall not be averaged with the costs of equipment that is used by subscribers who receive only a rate regulated basic service tier.

(3) Installation Costs. Installation costs may be aggregated only for a specific service area, to the extent that the costs of providing installation are substantially similar throughout all franchises in that service area.

\* \* \* \* \*

(f) Remote charges. Monthly charges for rental of a remote control unit shall consist of the average annual unit purchase cost of remotes leased, including acquisition price and incidental costs such as sales tax, financing and storage up to the time it is provided to the customer, added to the product of the HSC times the average number of hours annually repairing or servicing a remote, divided by 12 to determine the monthly lease

rate for a remote according to the following formula:

$$\text{Monthly Charge} = \frac{\text{UCE} + (\text{HSC} \times \text{HR})}{12}$$

Where, HR = average hours repair per year; and UCE = average annual unit cost of remote.

(g) Other equipment charges. The monthly charge for rental of converter boxes and other customer equipment shall be calculated in the same manner as for remote control units. Separate charges may be established for each category of other customer equipment.

\* \* \* \* \*

(l) Cable operators shall set charges for equipment and installations to recover Equipment Basket costs. Such charges shall be set, consistent with the level at which Equipment Basket costs are aggregated as provided in § 76.923(c). Cable operators shall maintain adequate documentation to demonstrate that charges for the sale and lease of equipment and for installations have been developed in accordance with the rules set forth in this section.

\* \* \* \* \*

#### Attachment—Changes to the Instructions for FCC Form 1205

Note: This attachment will not appear in the Code of Federal Regulations.

FCC Form 1205—Instructions for Determining Costs of Regulated Cable Equipment and Installation  
“Equipment Form”

- Schedule B: Annual Operating Expenses for Service Installation and Maintenance of Equipment. This schedule collects total annual operating expenses for installation and maintenance of cable facilities. The costs collected here include salaries, benefits, and supplies.

- Schedule C: Capital Costs of Leased Customer Equipment. This schedule computes the annual capital costs for each type or category of customer premises equipment that you offer in connection with regulated service. The method of computing capital costs is the same as that used in Schedule A.

- Schedule D: Average Hours Per Installation. This schedule is used only if you choose to charge average rates for different types of installation services, as opposed to an hourly service charge. This schedule collects the average hours required to complete various types of installations.

- Worksheet for Calculating Permitted Equipment and Installation Charges. You must complete this worksheet *only* if you are calculating the costs of specific equipment and installations to derive the maximum rates you may charge for regulated equipment and installations.

- Worksheet for Calculating Total Equipment and Installation Costs. Utilizing

the data collected and computed in Schedules A through D, this worksheet calculates a monthly per subscriber cost of regulated equipment and installations that is used to separate these costs from cable services rates. You must complete this worksheet *only* if you are filing this form in conjunction with a FCC Form 1200, Form 1220, or Form 1225 to establish maximum permitted rates for regulated cable services.

- **Summary Schedule: Current Equipment and Installation Rates.** This Schedule collects information determined on the Worksheet for Calculating Permitted Equipment and Installation Charges and presents it in summary form together with your actual equipment and installation charges.

#### General Instructions

You should complete this Form using financial data from the company's general ledger and subsidiary records maintained in accordance with generally accepted accounting principles. The Commission's cost accounting rules require that cable operators maintain their accounts in accordance with these requirements and in a manner that will enable identification of appropriate costs and application of the Commission's cost assignments and allocation procedures (see 47 CFR § 76.924). The data submitted in this Form 1205 should be from the operator's fiscal year indicated on the cover sheet. However, when there has been an unusual change in operations, data from a representative month may be used for the calculation of rates, subject to acceptance by the franchising authority or, when applicable, by the FCC. You must attach justification for this approach.

To the extent you have not previously maintained accounts in a manner consistent with our rules, and do not have fully developed cost data, you must indicate on this Form that you are using estimates, where necessary, in calculating equipment and installation costs and rates, and provide justification that the estimates are reasonable.

The data for installations (includable in Schedules A and C) may be identified only for a specific service area, to the extent that the costs of providing installations are substantially similar throughout all franchises in that service area. The data for customer equipment (includable in Schedule C) may be identified on a franchise, system, regional, or company level. For purposes of calculating cable service rates on an FCC Form 1200, 1220, or 1225, the cost data developed on this Form 1205 must be adjusted to the franchise area level (see Worksheet for Calculating Permitted Equipment and Installation Charges or Worksheet for Calculating Total Equipment and Installation Costs below for instructions).

Cable operators completing this Form in conjunction with FCC Form 1200 should be aware that the figure entered on line 14 of the Worksheet for Calculating Total Equipment and Installation Costs will be entered on either line D2 or line E2, and on line I2 of FCC Form 1200.

#### Precision of Calculation; Rounding

If you are performing the calculations required by this form by hand, you must display at least four decimal places. If you

are using a calculator or computer, you must carry out the calculation to the full precision afforded by your calculator or computer and display at least four decimal places. If you are using the spreadsheet version of this form, the spreadsheet will round calculations for you; you do not need to display additional decimal places.

The *only* place you should round the figures is in the Summary Schedule. These figures should be rounded to the nearest cent.

#### About the Spreadsheet

The FCC has developed an electronic spreadsheet to assist you in making the necessary calculations on the Form 1205. We strongly recommend that you make use of this spreadsheet.

If you use the spreadsheet, the values for the shaded boxes on the Form 1205 will be calculated automatically and filled in for you. Instructions for the corresponding line numbers are italicized. You may submit a completed version of an official Form 1205, an exact photocopy of that form, or a copy generated by Commission software, provided that it has the appearance of an actual Form 1205.

#### If You Need Help

If you have any questions while completing this Form, please call the FCC's Cable Services Bureau between 9:30 a.m. and 5:30 p.m. Eastern Standard Time on Monday through Friday at (202) 418-2381.

#### FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

The solicitation of personal information in this form is authorized by the Communications Act of 1934, as amended. The Commission and/or the local franchising authority will use the information provided in this form to determine the reasonableness of a cable company's rates. In reaching that determination, or for law enforcement purposes, it may become necessary to provide personal information contained in this form to another government agency. If information requested on this form is not provided, processing may be delayed. All information provided in this form will be available for public inspection. Your response is required to apply the Commission's cable rate standards and to provide a response to consumer complaints. Respondents are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget control number.

Public reporting burden for this information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Washington, D.C. 20554. Do not send completed forms to this address.

The foregoing notice is required by the Privacy Act of 1974, Pub. Law 93-579,

December 31, 1975, 5 U.S.C. 522a(e)(3) and the Paperwork Reduction Act of 1995, 104-13, May 22, 1995, 47 U.S.C. 3507.

#### Instructions for Schedule C—Capital Costs of Leased Customer Equipment

Schedule C computes the annual capital costs of equipment leased to customers. Follow the instructions below for each type or category of leased equipment.

Note: Subscriber drops up to the Commission-defined cable network demarcation point at the customer's premises are considered network equipment and may not be included as customer equipment on Schedule C.

**Line A—Equipment.** List all customer equipment for which you wish there to be a separate charge. You may calculate separate charges for specific types of equipment including different models of remote control units, different types of converter boxes, and other equipment (e.g., splitters and amplifiers). However, at your option, customer equipment may instead be listed in broad categories, provided that each category includes only equipment having the same primary purpose, regardless of the levels of functionality of the equipment within each broad category. Except, customer equipment which is used by subscribers who receive only a rate regulated basic service tier, shall not be aggregated into broad cost categories. Costs of each significantly different type of equipment must be classified into specific equipment cost categories.

The costs shall not be averaged with the costs of equipment that is used by subscribers who receive only a rate regulated basic service tier. In addition, with respect to the lease of cable connections, the cost of additional connections may not be aggregated with the cost of initial connections.

On an attached sheet, list separately each type or category of other equipment for which you plan to develop a separate charge and provide the necessary information as required on lines A through K of Schedule C to compute the charge. A separate charge must be developed for each type or category of other customer equipment. Enter in the "Other Equipment" column of Schedule C the total figures for the equipment included on your attachment.

**Line B—Total Maintenance/Service Hours.** Enter the total maintenance and/or service hours. Attach a Schedule explaining how you calculated these figures.

**Line C—Total Number of Units in Service.** Enter the total number of units in service for leased remotes and converter boxes. For other leased equipment, list the total number of units in service or the total number of subscribers using this equipment, whichever is appropriate. Use either the number of units or subscribers for the last day of the fiscal year covered by this Form 1205.

**Line D—Gross Book Value.** Enter the gross book value of the listed equipment as of the date you closed books for the time period covered by the filing of this Form. The gross book value includes the cost of a reasonable number of spare customer equipment units that the operator keeps on-hand as replacements for broken equipment.

Schedule D asks for information about four categories of installations: (a) installations of

unwired homes; (b) installations of already wired homes; (c) installations of additional connections at the time of initial installation; and (d) installations of additional connections after initial installation. These data are needed in the first worksheet below to calculate the four separate average charges that the Commission requires for an operator choosing to exercise the average charge option. Spaces also are included for other specific types of installations (such as those requiring extra long drops to the home). Attach additional sheets as needed.

#### Worksheet for Calculating Permitted Equipment and Installation Charges

##### Step A: Hourly Service Charge (HSC).

The Hourly Service Charge (HSC) is designed to recover the costs of service installation and maintenance of customer equipment. The HSC will be used as a factor in developing permitted charges for installation and monthly lease of individual pieces of equipment. To calculate the HSC, you will compute your annual capital costs plus expenses for the maintenance of customer equipment and the installation of basic tier service. You will divide the total costs and expenses by the total number of person-hours spent on those activities over the past year.

The HSC includes the annual capital costs for installing, maintaining, and repairing customer equipment for the specific service area to which this filing applies; the capital cost of the customer equipment itself, however, is not recovered through the HSC. That cost is recovered through the lease of that type of equipment (see Steps C through E of the Worksheet for Calculating Permitted Equipment and Installation Charges).

Note 1: If an expense amount is included on Schedule B for equipment sent out for repair, an appropriate adjustment to the total labor hours reported on this Form must be made. This adjustment adds "equivalent labor hours" to the total company labor hours. This may be calculated, for example, as total costs included on Schedule B for work sent out for repair divided by the average company technician wage rate. The total cost may be recovered by including the average hours in the computation for the appropriate equipment charges computed in Steps C through E. In any case that an amount is included on Schedule B for work sent out for repair, explain all the adjustments made on the Worksheet. This explanation must include the number of hours added on line 6 below as well as a description of and the number of hours added into the charges developed in Steps C through E.

Note 2: With respect to the calculation for labor costs associated with installation of the drop up to the Commission-defined cable network demarcation point at the customer's premises, you have two options. The first option is to include the labor costs associated with subscriber drops in the charges for installations. The second option is to capitalize such costs in distribution plant as part of the cost of drops. (In this case, the labor cost for drops is recovered in the charges for cable services only—not in installation or customer equipment charges.)

If the second option is chosen, the costs and the associated hours must be eliminated from the charges for all customer equipment and installation charges.

Line 9d1—HSC. Enter the HSC from line 7.

Line 9d2—Average Hours Per Additional Connection Installation Requiring Separate Installation. Enter the figure from line D of Schedule D.

Line 9d3—Charge per Additional Connection Installation Requiring Separate Installation. Multiply line 9d1 by line 9d2.

Line 9e—Other Installations (As specified in Schedule D, Line E).

If there are more than three other types of installations, attach a separate sheet showing how the charges for these other installations are calculated.

Line 9e1—HSC. Enter the HSC from line 7.

Line 9e2—Average Hours Per Installation of Item 1. Enter the figure on Schedule D, line E, Item 1.

Line 9e3—Charge per Installation of Item 1. Multiply line 9e1 by line 9e2.

Line 9e4—HSC. Enter the HSC from line 7.

Line 9e5—Average Hours Per Installation of Item 2. Enter the figure on Schedule D, line E, Item 2.

Line 9e6—Charge per Installation of Item 2. Multiply line 9e4 by line 9e5.

Line 9e7—HSC. Enter the HSC from line 7.

Line 9e8—Average Hours Per Installation of Item 3. Enter the figure on Schedule D, line E, Item 3.

Line 9e9—Charge per Installation of Item 3. Multiply line 9e7 by line 9e8.

Step C. Charges for Leased Remotes.

The rental charge for remote control units is designed to recover the costs of providing and maintaining each type or category of remote control unit leased by subscribers and includes a reasonable profit. The charge determined in this step will not reflect the costs of installation. You must repeat the following substep calculations for each significantly different type or category of remote listed in Schedule C. Describe each type or category of remote in detail sufficient to identify differences among types and/or categories. Attach extra sheets as needed.

Line 10—Total Maintenance/Service Hours. Enter the total maintenance and/or service hours for each type or category of remote from the corresponding column on Schedule C, line B.

Line 11—HSC. Enter the HSC from line 7.

Line 12—Total Maintenance and Service Cost. Multiply line 10 by the HSC listed on line 11. The result is the total annual cost for repairing and servicing each type or category of remote.

Line 13—Annual Capital Costs. Enter the annual capital costs for each type or category of remote from the corresponding column of line K on Schedule C.

Line 14—Total Cost of Remote. Add line 12 to line 13. The sum is the total annual cost for each type or category of remote.

Line 15—Number of Units in Service. Enter the number of units of each type or category of remote in service from the appropriate column of line C on Schedule C.

Line 16—Unit Cost. Divide line 14 by 15. The result is the annual unit cost of each type or category of remote.

Line 17—Rate per Month. Divide the figure from line 16 by the number 12. The result

will be the monthly cost of each type or category of remote including a reasonable profit. This figure is the maximum permitted monthly lease charge for each type or category of remote.

##### Step D. Charges for Leased Converter Boxes.

The rental charge for a converter box is designed to recover the costs of providing and maintaining that type or category of converter box leased by a subscriber and includes a reasonable profit. You must repeat the calculations in the following substeps for each type or category of converter box listed in Schedule C. Describe each type or category of converter box in detail sufficient to identify differences among types and/or categories. Attach extra sheets as needed.

Line 18—Total Maintenance/Service Hours. Enter the total maintenance and/or service hours for each type or category of converter box from the corresponding column of line B on Schedule C.

Line 19—HSC. Enter the HSC from line 7.

Line 20—Total Maintenance and Service Cost. Multiply the figure from line 18 by the HSC listed on line 19. The result is the total annual cost for repairing and servicing each type or category of converter box.

Line 21—Annual Capital Costs. Enter the annual capital costs for each type or category of converter box from the corresponding column of line K on Schedule C.

Line 22—Total Cost of Converters. Add line 20 to line 21. The sum is the total annual cost for each type or category of converter box.

Line 23—Number of Units in Service. Enter the number of units of each type or category of converter box from the corresponding column of line C on Schedule C.

Line 24—Unit Cost. Divide line 22 by line 23. The result is the annual unit cost of each type or category of converter box.

Line 25—Rate per Month. Divide the figure on line 24 by the number 12. The result is the monthly cost of each type or category of converter box including a reasonable profit. This figure is the maximum permitted monthly lease charge for each type of converter box.

##### Step E. Charges for Other Leased Equipment.

The rental charge for other leased equipment is designed to recover the costs of providing and maintaining that equipment leased by a subscriber and includes a reasonable profit. An operator choosing to establish charges for different types of other equipment must repeat the calculations in the following substeps for each type or category of other equipment listed in Schedule C. Describe each type or category of additional leased equipment in detail, e.g., additional connections. Attach extra sheets as needed.

Commission rules permit operators to charge for power boosters installed in connection with additional connections. Operators may establish a separate charge for the power boosters or may establish a separate charge for additional connections with power boosters. Such charges should be identified and included in Step E.

Line 26—Total Maintenance/Service Hours. Enter the total maintenance and/or

service hours for this other equipment. Enter the figure from the corresponding column on Schedule C, line B.

Line 27—HSC. Enter the HSC from line 7.

Line 28—Total Maintenance and Service Cost. Multiply the figure on line 26 by the HSC listed on line 27. The result is the total annual cost for repairing and servicing other equipment.

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 40

[OST Docket No. OST-96-1176, Notice 96-5]

RIN 2105-AC37

### Amendments to Laboratory Certification Requirements

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This NPRM proposes provisions that would permit drug testing laboratories located outside the U.S. to participate in the Department's drug testing program. The certification would happen on the basis of recommendations from the Department of Health and Human Services.

**DATES:** Comments should be received by May 13, 1996. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. OST-96-1176, Department of Transportation, 400 7th Street SW., Room PL-400, Washington, DC, 20590. Comments will be available for inspection at this address from 9:00 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

#### FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Room 10424, (202-366-9306); 400 7th Street SW., Washington DC, 20590.

**SUPPLEMENTARY INFORMATION:** Recently, the Federal Highway Administration (FHWA) issued a final rule applying its drug and alcohol testing requirements to foreign-based drivers operating in the United States (60 FR 49322; September 22, 1995). Under the rule, Canadian and Mexican drivers who come into the

United States will be subject to testing on the same basis as U.S. drivers, beginning July 1, 1996, for employees of larger carriers and a year later for employees of smaller carriers.

In any case, Canadian and Mexican employers who collect drug urine specimens under FHWA rules will be able to have the specimens tested in U.S. laboratories certified by the Department of Health and Human Services (DHHS), on the same basis as U.S. employers. In the interest of facilitating program implementation, the Department hopes that it will be possible for Mexican and Canadian laboratories to participate in the program as well.

Canadian and Mexican laboratories may participate in the DOT-mandated testing program only if their participation is consistent with the Department's statutory authority. Strict safeguards for the accuracy and quality of laboratory tests are a key mandate of the Omnibus Transportation Employee Testing Act of 1991.

The motor carrier portion of the Act (49 U.S.C. 31306(b), which parallels the other modal sections of the Act), provides that, in carrying out the requirement to establish a motor carrier drug testing program, the Secretary "shall" develop requirements "that shall"

(2) For laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) Comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing; \* \* \*

(C) Appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section.

(3) Require that a laboratory involved in testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests; \* \* \*

The language of these provisions is clearly mandatory, a point which the legislative history reinforces. Senate Report 102-54 (May 2, 1991), concerning S. 676, the bill that became the Act, notes, in response to concerns about testing accuracy and false positive tests, that "By incorporating laboratory

certification and testing procedures developed by HHS and DOT \* \* \* the Committee has taken affirmative steps to ensure accuracy." (S. Rept. 102-54 at 7.) Later, in speaking of the laboratory and other safeguards in the bill, the report says that

These safeguards are critical to the success of any testing program. They are designed to ensure that \* \* \* there is accountability and accuracy of testing. They provide what the Committee believes are the basic minimums. \* \* \* The Secretary is urged to carefully review the safeguards in any testing program to ensure they are adhered to in a vigorous manner. (*Id.* at 31)

More specifically on laboratory matters, the Committee said that

Incorporating the HHS guidelines relating to laboratory standards and procedures \* \* \* as DOT has done in Part 40 \* \* \* is an essential component of the procedural safeguards specified in this subsection. \* \* \* Realizing that these guidelines may be subject to future modification, the Committee has acted to specify that the basic elements of certain provisions now in effect are mandated, including the need for comprehensive standards and procedures for all aspects of laboratory testing of drugs \* \* \* [and] the establishment of standards and procedures for the periodic review of laboratories and the development of criteria for laboratory certification or revocation of such certification. (*Id.* at 32)

It is noteworthy that Congress explicitly accepts an active DOT role in establishing and carrying out the laboratory-related provisions of the statute. What is mandatory is not that one agency or the other play any particular administrative role in the process, but that the protections embodied in the DHHS guidelines be applied, through DOT's rules, to participants in the program. There is no bar in the statutory language to a DOT rule assigning to DOT the task of reviewing and certifying laboratories, so long as these actions by DOT are based on the conformity of the laboratories to DOT's incorporation of DHHS laboratory standards. Consequently, DOT has broad legal discretion to take action in the area of drug testing procedures, extending to the certification of laboratories.

DOT and DHHS are working closely together with respect to the potential certification of foreign laboratories. As the two agencies envision the process, there could be two different ways in which foreign laboratories become certified. First, DHHS could review the application of the foreign laboratory, in the same manner that it reviews applications from U.S. laboratories. If the laboratory meets DHHS standards, DHHS would recommend that DOT certify the laboratory under DOT