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(4) Cable operators seeking a rate increase for network upgrades shall allocate net cost increases in conformance with the cost allocation rules as set forth in § 76.924.

(5) Cable operators that undertake significant upgrades shall be permitted to increase rates by adding the benchmark/price cap rate to the rate increment necessary to recover the net increase in cost attributable to the upgrade.

(k) *Hardship rate relief*. A cable operator may adjust charges by an amount specified by the Commission for the cable programming service tier 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.

(l) *Cost of service showing*. A cable operator that elects to establish a charge, or to justify an existing or changed charge for regulated cable service, based on a cost-of-service showing must submit data to the Commission or the franchising authority in accordance with forms established by the Commission. The cable operator must also submit any additional information requested by franchising authorities or the Commission to resolve questions in cost-of-service proceedings.

(m) *Subsequent cost of service charges*. No cable operator may use a cost-of-service showing to justify an increase in any charge established on a cost-of-service basis for a period of 2 years after that rate takes effect, except that the Commission or the franchising authority may waive this prohibition upon a showing of unusual circumstances that would create undue hardship for a cable operator.

[58 FR 29753, May 21, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 76.922, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

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

(a) *Scope*. (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. Such equipment shall include, but is not limited to:

(i) Converter boxes;

(ii) Remote control units; and

(iii) Inside wiring.

(2) Subscriber charges for such equipment shall not exceed charges based on actual costs in accordance with the requirements set forth in this section.

Subscriber charges for such equipment shall not exceed charges based on actual costs in accordance with the requirements set forth below.

(b) *Unbundling*. A cable operator shall establish rates for remote control units, converter boxes, other customer equipment, installation, and additional connections separate from rates for basic tier service. In addition, the rates for such equipment and installations shall be unbundled one from the other.

(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 of the same type, 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. Equipment rates should be set at the same organizational level at which an operator aggregates its costs.

(2) *Basic service tier only equipment.* Costs of customer equipment used by basic-only subscribers may not be aggregated with the costs of equipment used by non-basic-only subscribers. Costs of customer equipment used by basic-only subscribers may, however, be aggregated, consistent with an operator's aggregation under paragraph (c)(1) of this section, on a franchise, system, regional, or company level. The prohibition against aggregation applies to subscribers, not to a particular type of equipment. Alternatively, operators may base its basic-only subscriber cost aggregation on the assumption that all basic-only subscribers use equipment that is the lowest level and least expensive model of equipment offered by the operator, even if some basic-only subscribers actually have higher level, more expensive equipment.

(3) *Installation costs.* Installation costs, consistent with an operator's aggregation under paragraph (c)(1) of this section, may be aggregated, on a franchise, system, regional, or company level. When submitting its installation 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. Installation rates should be set at the same organizational level at which an operator aggregates its costs.

(d) *Hourly service charge.* A cable operator shall establish charges for equipment and installation using the Hourly Service Charge (HSC) methodology. The HSC shall equal the operator's annual Equipment Basket costs, excluding the purchase cost of customer equipment, divided by the total person hours involved in installing, repairing, and servicing customer equipment during the same period. The HSC is calculated according to the following formula:

$$HSC = \frac{EB - CE}{H}$$

Where, EB = annual Equipment Basket Cost; CE = annual purchase cost of all customer equipment; and H = person hours involved in installing and repairing equipment per year. The purchase cost of customer equipment shall include the cable operator's invoice price plus all other costs incurred with respect to the equipment until the time it is provided to the customer.

(e) *Installation charges.* Installation charges shall be either:

(1) The HSC multiplied by the actual time spent on each individual installation; or

(2) The HSC multiplied by the average time spent on a specific type of installation.

(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:

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

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.

(h) *Additional connection charges.* The costs of installation and monthly use of additional connections shall be recovered as charges associated with the installation and equipment cost categories, and at rate levels determined by the actual cost methodology presented in the foregoing paragraphs (e), (f), and (g) of this section. An operator may recover additional programming costs and the costs of signal boosters on the customers premises, if any, associated with the additional connection as a separate monthly unbundled charge for additional connections.

(i) *Charges for equipment sold.* A cable operator may sell customer premises equipment to a subscriber. The equipment price shall recover the operator's cost of the equipment, including costs associated with storing and preparing the equipment for sale up to the time it is sold to the customer, plus a reasonable profit. An operator may sell service contracts for the maintenance and repair of equipment sold to subscribers. The charge for a service contract shall be the HSC times the estimated average number of hours for maintenance and repair over the life of the equipment.

(j) *Promotions.* A cable operator may offer equipment or installation at charges below those determined under paragraphs (e) through (g) of this section, as long as those offerings are reasonable in scope in relation to the operator's overall offerings in the Equipment Basket and not unreasonably discriminatory. Operators may not recover the cost of a promotional offering by increasing charges for other Equipment Basket elements, or by increasing programming service rates above the maximum monthly charge per subscriber prescribed by these rules. As part of a general cost-of-service showing, an operator may include the cost of promotions in its general system overhead costs. Equipment sales by an operator will be unregulated where the operator offers subscribers the same equipment under regulated leased rates.

(k) *Franchise fees.* Equipment charges may include a properly allocated portion of franchise fees.

(l) *Company-wide averaging of equipment costs.* For the purpose of developing unbundled equipment charges as required by paragraph (b) of this section, a cable operator may average the equipment costs of its small systems at any level, or several levels, within its operations. This company-wide averaging applies only to an operator's small systems as defined in § 76.901(c); is permitted only for equipment charges, not installation charges; and may be established only for similar types of equipment. When submitting its equipment costs based on average charges to the local franchising authority or the Commission, an operator that elects company-wide averaging of equipment costs must provide a general description of the averaging methodology employed and a justification that its averaging methodology produces reasonable equipment rates. The local authority or the Commission may require the operator to set equipment rates based on the operator's level of averaging in effect on April 3, 1993, as required by § 76.924(d).

(m) 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.

(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 rates under either the benchmark system or through a cost-of-service showing;

(2) Within 60 days of the end of its fiscal year, for an operator that adjusts its rates under the system described in Section 76.922(d) that allows it to file up to quarterly;

(3) On the same date it files its FCC Form 1240, for an operator that adjusts

its rates under the annual rate adjustment system described in Section 76.922(e). 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

(4) 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.

(o) *Introduction of new equipment*. In setting the permitted charge for a new type of equipment at a time other than at its annual filing, an operator shall only complete Schedule C and the relevant step of the Worksheet for Calculating Permitted Equipment and Installation Charges of a Form 1205. The operator shall rely on entries from its most recently filed FCC Form 1205 for information not specifically related to the new equipment, including but not limited to the Hourly Service Charge. In calculating the annual maintenance and service hours for the new equipment, the operator should base its entry on the average annual expected time required to maintain the unit, *i.e.*, expected service hours required over the life of the equipment unit being introduced divided by the equipment unit's expected life.

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§ 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, or, with respect to a cable programming services tier, for which a complaint has been filed with 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.

(b) *Accounting requirements*. Cable operators electing cost-of-service regulation or seeking rate adjustments due to changes in external costs shall maintain their accounts:

(1) in accordance with generally accepted accounting principles; and

(2) in a manner that will enable identification of appropriate investments, revenues, and expenses.

(c) *Accounts level*. Except to the extent indicated below, cable operators electing cost of service regulation 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 April 3, 1993. 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*. (1) Cable operators filing for cost-of-service regulation, other than small systems owned by small cable companies, 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.

RATEBASE

Net Working Capital
Headend
Trunk and Distribution Facilities
Drops
Customer Premises Equipment
Construction/Maintenance Facilities and Equipment
Programming Production Facilities and Equipment
Business Offices Facilities and Equipment
Other Tangible Assets
Accumulated Depreciation
Plant Under Construction
Organization and Franchise Costs
Subscriber Lists
Capitalized Start-up Losses
Goodwill
Other Intangibles
Accumulated Amortization
Deferred Taxes

OPERATING EXPENSES

Cable Plant Employee Payroll
Cable Plant Power Expense
Pole Rental, Duct, Other Rental for Cable Plant
Cable Plant Depreciation Expense
Cable Plant Expenses—Other
Plant Support Employee Payroll Expense