

§ 76.937

(b) Public notice must be given of any written decision required in paragraph (a) of this section, including releasing the text of any written decision to the public.

§ 76.937 Burden of proof.

(a) A cable operator has the burden of proving that its existing or proposed rates for basic service and associated equipment comply with 47 U.S.C. 543, and §§ 76.922 and 76.923.

(b) For an existing or a proposed rate for basic tier service or associated equipment that is within the permitted tier charge and actual cost of equipment as set forth in §§ 76.922 and 76.923, the cable operator must submit the appropriate FCC form.

(c) For an existing or a proposed rate for basic tier service that exceeds the permitted tier charge as set forth in §§ 76.922 and 76.923, the cable operator must submit a cost-of-service showing to justify the proposed rate.

(d) A franchising authority or the Commission may find a cable operator that does not attempt to demonstrate the reasonableness of its rates in default and, using the best information available, enter an order finding the cable operator's rates unreasonable and mandating appropriate relief, as specified in §§ 76.940, 76.941, and 76.942.

(e) A franchising authority or the Commission may order a cable operator that has filed a facially incomplete form to file supplemental information, and the franchising authority's deadline to rule on the reasonableness of the proposed rates will be tolled pending the receipt of such information. A franchising authority may set reasonable deadlines for the filing of such information, and may find the cable operator in default and mandate appropriate relief, pursuant to paragraph (d) of this section, for the cable operator's failure to comply with the deadline or otherwise provide complete information in good faith.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17973, Apr. 15, 1994]

§ 76.938 Proprietary information.

A franchising authority may require the production of proprietary information to make a rate determination in those cases where cable operators have

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submitted initial rates, or have proposed rate increases, pursuant to an FCC Form 393 (and/or FCC Forms 1200/1205) filing or a cost-of-service showing. The franchising authority shall state a justification for each item of information requested and, where related to an FCC Form 393 (and/or FCC Forms 1200/1205) filing, indicate the question or section of the form to which the request specifically relates. Upon request to the franchising authority, the parties to a rate proceeding shall have access to such information, subject to the franchising authority's procedures governing non-disclosure by the parties. Public access to such proprietary information shall be governed by applicable state or local law.

[59 FR 17973, Apr. 15, 1994]

§ 76.939 Truthful written statements and responses to requests of franchising authority.

Cable operators shall comply with franchising authorities' and the Commission's requests for information, orders, and decisions. Any information submitted to a franchising authority or the Commission in making a rate determination pursuant to an FCC Form 393 (and/or FCC Forms 1200/1205) filing or a cost-of-service showing is subject to the provisions of § 1.17 of this chapter.

[68 FR 15098, Mar. 28, 2003]

§ 76.940 Prospective rate reduction.

A franchising authority may order a cable operator to implement a reduction in basic service tier or associated equipment rates where necessary to bring rates into compliance with the standards set forth in §§ 76.922 and 76.923

§ 76.941 Rate prescription.

A franchising authority may prescribe a reasonable rate for the basic service tier or associated equipment after it determines that a proposed rate is unreasonable.

§ 76.942 Refunds.

(a) A franchising authority (or the Commission, pursuant to § 76.945) may order a cable operator to refund to subscribers that portion of previously paid

rates determined to be in excess of the permitted tier charge or above the actual cost of equipment, unless the operator has submitted a cost-of-service showing which justifies the rate charged as reasonable. An operator's liability for refunds shall be based on the difference between the old bundled rates and the sum of the new unbundled program service charge(s) and the new unbundled equipment charge(s). Where an operator was charging separately for program services and equipment but the rates were not in compliance with the Commission's rules, the operator's refund liability shall be based on the difference between the sum of the old charges and the sum of the new, unbundled program service and equipment charges. Before ordering a cable operator to refund previously paid rates to subscribers, a franchising authority (or the Commission) must give the operator notice and opportunity to comment.

(b) An operator's liability for refunds in limited to a one-year period, *except that* an operator that fails to comply with a valid rate order issued by a franchising authority or the Commission shall be liable for refunds commencing from the effective date of such order until such time as it complies with such order.

(c) The refund period shall run as follows:

(1) From the date the operator implements a prospective rate reduction back in time to September 1, 1993, or one year, whichever is shorter.

(2) From the date a franchising authority issues an accounting order pursuant to § 76.933(c), to the date a prospective rate reduction is issued, then back in time from the date of the accounting order to the effective date of the rules; however, the total refund period shall not exceed one year from the date of the accounting order.

(3) Refund liability shall be calculated on the reasonableness of the rates as determined by the rules in effect during the period under review by the franchising authority or the Commission.

(d) The cable operator, in its discretion, may implement a refund in the following manner:

(1) By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified credit to those subscribers' bills; or

(2) By means of a prospective percentage reduction in the rates for the basic service tier or associated equipment to cover the cumulative overcharge. This shall be reflected as a specifically identified, one-time credit on prospective bills to the class of subscribers that currently subscribe to the cable system.

(e) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments.

(f) Once an operator has implemented a rate refund to subscribers in accordance with a refund order by the franchising authority (or the Commission, pursuant to paragraph (a) of this section), the franchising authority must return to the cable operator an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The franchising authority must promptly return the franchise fee overcharge either in an immediate lump sum payment, or the cable operator may deduct it from the cable system's future franchise fee payments. The franchising authority has the discretion to determine a reasonable repayment period, but interest shall accrue on any outstanding portion of the franchise fee starting on the date the operator has completed implementation of the refund order. In determining the amount of the refund, the franchise fee overcharge should be offset against franchise fees the operator holds on behalf of the franchising authority for lump sum payment. The interest rate on any refund owed to the operator presumptively shall be 11.25%.

[58 FR 29753, May 21, 1993, as amended at 58 FR 46736, Sept. 2, 1993; 59 FR 17974, Apr. 15, 1994; 60 FR 52120, Oct. 5, 1995]

EFFECTIVE DATE NOTE: At 60 FR 52120, Oct. 5, 1995, in § 76.942, paragraph (f) was revised. Paragraph (f) contains information collection and recordkeeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.