

## Federal Communications Commission

## § 76.960

must file its response with the local franchise authority via first class mail.

(b) The burden shall be on the cable operator to prove that the service rate or equipment charge in question is not unreasonable. The cable operator may carry its burden in the following manner:

(1) For a service rate at or below the permitted level, by providing information and calculations that demonstrate that the rate in question falls at or below the permitted level;

(2) For a service rate that exceeds the permitted level;

(i) By providing proof that the cable system has reduced the rate for the cable programming service at issue to a level at or below the permitted level; or

(ii) By providing detailed cost-based information that demonstrates that the rate in question is reasonable despite the fact that it exceeds the permitted level.

(3) For a charge for equipment installation or rental, by providing information that demonstrates that the charge is based on the cable operator's actual cost.

(c) In addition to responding to the merits of a complaint, the cable operator may also move for dismissal of the complaint for failure to meet the minimum showing requirement. Any such motion for dismissal must state with particularity the reasons the cable operator believes the complaint is defective and shall not relieve the cable operator of its obligation to respond to the merits of the complaint.

(d) A cable operator may file a consolidated response to multiple complaints regarding the identical rate or rate increase. A consolidated response must be filed within 30 days from the date of service of the first complaint received, unless the Commission notifies the cable operator to the contrary. A cable operator may amend a consolidated response to address new issues raised by complaints received after the cable operator's initial response.

(e) A cable operator that fails to file and serve a response to a valid complaint may be deemed in default. If the Commission deems a cable operator in default, the Commission may enter an order against the cable operator find-

ing the rate to be unreasonable and mandating appropriate relief.

(f) A cable operator need not respond to any complaint that is:

(1) Not filed on the applicable form; or

(2) That the Commission determined is defective *and* has so notified the cable operator.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17975, Apr. 15, 1994; 61 FR 18979, Apr. 30, 1996; 64 FR 35950, July 2, 1999]

### § 76.957 Commission adjudication of the complaint.

The Commission will consider the complaint and the cable operator's response and then determine by written decision whether the rate for the cable programming service or associated equipment is unreasonable or not. In making its determination, the Commission will only review the amount of the rate increase subject to the complaint. If the Commission determines that the rate change in question is unreasonable, it will grant the complaint and may order appropriate relief, including, but not limited to, prospective rate reductions and refunds. If it determines that the rate in question is reasonable, the Commission will deny the complaint.

[60 FR 52121, Oct. 5, 1995]

EFFECTIVE DATE NOTE: At 60 FR 52121, Oct. 5, 1995, § 76.957 was revised. This section contains information collection and record-keeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

### § 76.960 Prospective rate reductions.

Upon a finding that a rate for cable programming service or associated equipment is unreasonable, the Commission may order the cable operator to implement a prospective rate reduction to the class of customers subscribing to the cable programming service at issue.

(a) For an operator that adjusts its rates using the quarterly rate adjustment system pursuant to Section 76.922(d), the Commission's decision regarding a prospective rate reduction shall remain binding on the cable operator for one year unless the Commission specifies otherwise.

## §76.961

(b) For an operator that adjusts its rates using the annual rate adjustment system pursuant to Section 76.922(e), for one year following the Commission's decision, the operator shall provide the Commission at least 30 days' notice of any proposed change.

[60 FR 52121, Oct. 5, 1995]

EFFECTIVE DATE NOTE: At 60 FR 52121, Oct. 5, 1995, §76.960 was revised. This section contains information collection and record-keeping requirements and will not become effective until 30 days after approval has been given by the Office of Management and Budget.

### §76.961 Refunds.

(a) Upon a finding that a rate for cable programming service or associated equipment is unreasonable, the Commission may order the cable operator to refund to subscribers that portion of previously paid rates which is deemed unreasonable.

(b) The cumulative refund due subscribers shall be calculated from the date of the first complaint filed with the franchising authority until the date a cable operator implements a prospective rate reduction as ordered by the Commission pursuant to §76.960. The Commission shall calculate refund liability according to the rules in effect for determining the reasonableness of the rates for the period of time covered by the complaint.

(c) 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, one-time credit to those subscribers' bills; or

(2) By means of a prospective percentage reduction in the unreasonable cable programming service rate or equipment charge 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 programming service or associated equipment at issue.

(d) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments. Interest shall accrue from the date a

## 47 CFR Ch. I (10-1-03 Edition)

valid complaint is filed until the refund issues.

(e) At the time the Commission orders a cable operator to pay refunds to subscribers, 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 may 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.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17975, Apr. 15, 1994; 64 FR 35950, July 2, 1999]

### §76.962 Implementation and certification of compliance.

(a) *Implementation.* A cable operator must implement remedial requirements, including prospective rate reductions and refunds, within 60 days from the date the Commission releases an order mandating a remedy.

(b) *Certification of compliance.* A cable operator must certify to the Commission its compliance with any Commission order mandating remedial requirements. Such certification shall:

(1) Be filed with the Commission within 90 days from the date the Commission releases an order mandating a remedy;

(2) Reference the applicable Commission order;

(3) State that the cable operator has complied fully with all provisions of the Commission's order;

(4) Include a description of the precise measures the cable operator has taken to implement the remedies ordered by the Commission; and

(5) Be signed by an authorized representative of the cable operator.

### §76.963 Forfeiture.

(a) If any cable operator willfully fails to comply with the terms of any Commission order, including an order mandating remedial requirements after a finding of unreasonable cable programming service or equipment rates, or any Commission rule, the Commission may, in addition to other remedies, impose a forfeiture pursuant to Section 503(b) of the Communications