

§ 76.985

47 CFR Ch. I (10–1–03 Edition)

shall have the burden of showing that its discounted price is not predatory.

NOTE 1 TO PARAGRAPH (C)(3): Discovery procedures for predatory pricing complaints. Requests for discovery will be addressed pursuant to the procedures specified in § 76.7(f).

NOTE 2 TO PARAGRAPH (C)(3): Confidential information. Parties submitting material believed to be exempt from disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552(b), and the Commission's rules, § 0.457 of this chapter, should follow the procedures in § 0.459 of this chapter and § 76.9.

[59 FR 17975, Apr. 15, 1994, as amended at 61 FR 18979, Apr. 30, 1996; 64 FR 35951, July 2, 1999]

§ 76.985 Subscriber bill itemization.

(a) Cable operators may identify as a separate line item of each regular subscriber bill the following:

(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. In order for a governmental fee or assessment to be separately identified under this section, it must be directly imposed by a governmental body on a transaction between a subscriber and an operator.

(b) The charge identified on the subscriber bill as the total charge for cable service should include all fees and costs itemized pursuant to this section.

(c) Local franchising authorities may adopt regulations consistent with this section.

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-XXXX
Expires 03/03/03

INSTRUCTIONS FOR FCC 329
CABLE PROGRAMMING SERVICE RATE COMPLAINT FORM

1. This FCC form is to be used by subscribers, franchising authorities, and other relevant state or local government entities seeking to file a complaint with the FCC challenging the reasonableness of a cable company's rates for cable programming service or for installation or rental of equipment used to receive cable programming service.
2. The term "cable programming service" includes all video programming provided by a cable company except: (1) programming provided on the basic service tier; or (2) programming provided on a pay-per-channel or pay-per-program basis. See Question 9.
3. The "basic service tier" is the tier that includes over-the-air television broadcast signals and public, educational and governmental access channels. Under federal law, in most instances, your local franchising authority rather than the FCC regulates rates for the basic service tier or associated equipment. Therefore, if you believe that your rate for the basic service tier or associated equipment is unreasonable, you should contact your local franchising authority to determine if it is authorized to regulate basic service tier rates.
4. Under federal law, video programming provided on a pay-per-channel or pay-per-program basis (for example, a premium movie channel such as HBO or a pay-per-view sports event) is not subject to rate regulation by either the FCC or your local franchising authority.
5. If you are concerned about your rates for cable programming service or associated equipment, then you may fill out this form and submit an original and one copy to the FCC. The FCC will examine the reasonableness of your cable programming service rate according to a specific formula. If the rate the cable company currently is charging you for the cable programming service is greater than the rate produced by the FCC's formula, the cable company's rate will be presumed unreasonable. In these circumstances, unless the cable company can provide cost information to justify the reasonableness of its rate, the FCC may order a refund and/or a prospective rate reduction for the cable programming service at issue.
6. Please note the following time limitations for filing a complaint:
 - If you are challenging the reasonableness of a rate increase for cable programming service or associated equipment, your complaint must be actually received by the FCC within 45 days from the date you receive a bill from your cable company reflecting the rate increase. (Note: a reduction in number of channels may constitute an effective rate increase even though the existing rate for the cable programming service remains unchanged.)
 - The only exception to the 45 day time limitation concerns cable programming service and associated equipment rates in effect when the FCC's rules become effective – that is, June 21, 1993. You may challenge the reasonableness of such rates, but you must file your complaint within 180 days from June 21, 1993 – that is, by December 18, 1993.
 - After December 18, 1993, you may only file complaints about rate increases and you must follow the general 45-day filing requirement described above.
 - Late-filed complaints will be dismissed with no opportunity to refile.
7. In addition to the cable company's name and mailing address, you should provide the cable company's "FCC Community Unit Identifier." (The FCC Community Unit Identifier is a number assigned to each cable system by the FCC for administrative purposes.) Also, you must provide the name and mailing address of the local franchising authority. (The local franchising authority is the local municipal, county or other government organization that regulates cable television in your community.) FCC rules require the cable company to furnish all this information to you on your monthly bill. If this information does not appear either on the front or back of your monthly bill, contact your cable company, your local franchising authority, or your local government to obtain the necessary information before filling out this form.
8. You must indicate whether you are challenging the reasonableness of: (1) a rate concerning cable programming service or associated equipment in effect on June 21, 1993; or (2) a rate increase. Except for a limited opportunity to challenge existing rates in effect on June 21, 1993, complaints may be filed only in the event of a rate increase.
9. If you are a subscriber, you must attach two copies of your monthly cable bill reflecting the rate or rate increase about which you are complaining. If you are challenging the reasonableness of a rate concerning cable programming service or associated equipment in effect on June 21, 1993, the bill should reflect that rate. If you are challenging the reasonableness of a rate increase, the bill should reflect the increased rate. (If you are challenging the reasonableness of a rate increase and have a previous bill which reflects the rate immediately prior to the increase, please attach two copies of the previous bill – note, however, that this is optional.)
10. You must check the box stating your belief that the cable programming service rate is unreasonable. The FCC staff will apply the formula mentioned in paragraph 5 to determine whether the cable company's rate is presumed reasonable or not – you do not need to make this calculation.
11. You must fill in all information required by this form.
12. You may contact your local franchising authority for assistance in filling out this form. In addition, you may attach two copies of a statement from your local franchising authority describing its views on the reasonableness of the cable programming service rate in question. This is not a requirement. If you do attach such a statement, you should also mail a copy of it to the cable company.
13. You must sign and date this form.
14. Once you complete the form copies must be mailed, including all attachments, to the following: Original and one copy: Federal Communications Commission, Attn: Cable Programming Service Rate Complaint, Room L-16, 1919 M Street, N.W., Washington, D.C. 20554; the cable company (at the address listed on your complaint); and the local franchising authority (at the address listed on your complaint).
Please be sure to send all copies to the correct address. If you do not, we may not be able to process your complaint.
15. **NOTE:** If you do not mail a copy of this form, including all attachments, to the cable company at the same time you mail your complaint to the FCC, the cable company will not be required to respond and your complaint may be dismissed.
16. If your complaint meets the requirements listed above, the FCC will require the cable company to respond to your complaint within thirty days and provide a justification for the reasonableness of your rate. The cable company must provide you with a copy of its response to the FCC.
17. The FCC staff will examine your complaint and the cable company's response and then rule on the reasonableness of the cable programming service rate. This ruling will be in writing, and you will receive a copy by mail. If the FCC staff determines that the rate in question is unreasonable, it may order refunds and/or prospective rate reductions. If it determines that the rate in question is reasonable, the FCC staff will deny the complaint.

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 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 refer personal information contained in this form to another government agency. All information provided in this form will be available for public inspection. Your response is required to obtain the requested relief.

Public reporting burden for this collection of information is estimated to average 30 minutes, 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, AMD-PIRS, Washington, D. C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-XXXX), Washington, D. C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, D. 288ER 31, 1975, 5 U.S.C. §22a6(e) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 6-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
1060-XXXX
Expires 00/00/00

INSTRUCTIONS FOR FCC 328 FRANCHISING AUTHORITY CERTIFICATION

- The Cable Television Consumer Protection and Competition Act, enacted in October 1992, changes the manner in which cable television systems that are not subject to effective competition are regulated. In general, rates for the basic service tier (the tier required as a condition of access to all other video services and containing, among other services, local broadcast station signals and public, educational, and public access channels) and associated equipment will be subject to regulation by local or state governments ("franchising authorities"). Rates for cable programming services and associated equipment (all services except basic and pay channels) will be subject to regulation by the FCC. Rates for pay channels (channels for which there is a specific per-channel or per-program charge) are not regulated.
- Only cable systems that are not subject to effective competition may be regulated. Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors, each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.
- In order to regulate basic service tier rates, a franchising authority must be certified by the FCC. In order to be certified, a franchising authority must complete this form. An original and one copy of the completed form and all attachments must be returned to the FCC by registered mail, return receipt requested, to the FCC at the address on the form.
- A copy of the form must be served on the cable operator by first-class mail on or before the date the form is sent or delivered to the FCC.
- The franchising authority's certification will become effective 30 days after the date stamped on the postal return receipt unless otherwise notified by the Commission by that date. The franchising authority cannot begin to regulate rates, however, until it has actually adopted the required regulations (see below) and until it has notified the cable operator that it has been certified and that it has adopted the required regulations.
- In order to be certified, franchising authorities must answer "yes" to Questions 3, 4, and 5, which are explained as follows:
- Question 3: The franchising authority must adopt rate regulations consistent with the Commission's regulations for basic cable service. To fulfill this requirement for certification, the franchising authority may simply adopt a regulation indicating that it will follow the regulations established by the FCC.

The franchising authority has 120 days to adopt these regulations after the time it is certified. The franchising authority may not, however, begin to regulate cable rates until after it has adopted these regulations and until it has notified the cable operator that it has been certified and has adopted the required regulations.

- Question 4(a): The franchising authority's "legal authority" to regulate basic service must come from state law. In some states, only the state government may regulate cable rates. In those states, the state government should file this certification. Provisions in franchise agreements that prohibit rate regulation are void, and do not prevent a franchising authority from regulating the basic service tier and associated equipment.

Question 4(b): The franchising authority must have a sufficient number of personnel to undertake rate regulation.

A franchising authority unable to answer "yes" to questions 4(a) or 4(b) may wish to review the FCC's Report and Order in Docket 92-256, FCC 93-177 (released May 3, 1993) for further information on the establishment of alternative federal regulatory procedures.

- Question 5: Franchising authorities must have procedural regulations allowing for public participation in rate regulation proceedings. If a franchising authority does not have these regulations already in place, it must adopt them within 120 days of certification and before it may undertake rate regulation.
- Question 6: Most cable systems are not subject to effective competition, as defined by the Cable Act. (The definition is included above and on the form.) The franchising authority may presume that the cable system in its jurisdiction is not subject to effective competition.

For purposes of applying the definition of effective competition (see Item 2 above), "multichannel video programming distributors" include a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a video dialtone service, and a satellite master antenna television system. A multichannel video programming distributor's services will be deemed "offered" when they are both technically and actually available. Service is "technically available" when the multichannel distributor is physically able to deliver the service to a household wishing to subscribe, with only minimal additional investment by the distributor. A service is "actually available" if subscribers in the franchise area are reasonably aware through marketing efforts that the service is available. Subscribership of those multichannel video programming distributors offering service to at least 50 percent of the households in a franchise area will be aggregated to determine whether at least 15 percent of the households in the franchise area are served by competitors. A multichannel video programming distributor must offer at least 12 channels of programming, at least one channel of which is nonbroadcast, to be found to offer "comparable" video programming.

- This certification form must be signed by a government official with authority to act on behalf of the franchising authority.

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 will use the information provided in this form to determine if the franchise authority should be authorized to regulate cable rates. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. All information provided in this form will be available for public inspection. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 30 minutes, 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, ANCP/RS, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (1060-XXXX), Washington, D.C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1975, 5 U.S.C. § 2226(h)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Federal Communications Commission
Washington, D. C. 20554

FCC 328

Approved by OMB
3166-XXXX
Expires 08/00/00

CERTIFICATION OF FRANCHISING AUTHORITY TO REGULATE BASIC CABLE SERVICE RATES AND INITIAL FINDING OF LACK OF EFFECTIVE COMPETITION

1 Name of Franchising Authority		
Mailing Address		
City	State	ZIP Code
Telephone No. (include area code):		
Person to contact with respect to this form:		

3. Will your franchising authority adopt (within 120 days of certification) and administer regulations with respect to basic cable service that are consistent with the regulations adopted by the FCC pursuant to 47 U.S.C. Section 543(b)? Yes No

4. With respect to the franchising authority's regulations referred to in Question 3,

a. Does your franchising authority have the legal authority to adopt them? Yes No

b. Does your franchising authority have the personnel to administer them? Yes No

5. Do the procedural laws and regulations applicable to rate regulation proceedings by your franchising authority provide a reasonable opportunity for consideration of the views of interested parties? Yes No

6. The Commission presumes that the cable system(s) listed in 2.b. is (are) not subject to effective competition. Based on the definition below, do you have reason to believe that this presumption is correct? Yes No

(Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.)

2. a. Name (s) and address(es) of cable system(s) and associated FCC community unit identifiers within your jurisdiction. (Attach additional sheets if necessary.)

Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

2. b. Name (s) of system(s) and associated community unit identifiers you claim are subject to regulation and with respect to which you are filing this certification. (Attach additional sheets if necessary.)

Name of System	Community Unit Identifier
Name of System	Community Unit Identifier

2. c. Have you served a copy of this form on all parties listed in 2.b.? Yes No

Signature
Title
Date

Return the original and one copy of this certification form (as indicated in Instructions), along with any attachments, to:

Federal Communications Commission
Attn: Cable Franchising Authority Certification
Room L-16
1919 M Street, N.W.
Washington, D. C. 20554

FCC 328
June 1993

§ 76.986 "A la carte" offerings.

(a) Collective offerings of unregulated per-channel or per-program ("a la

carte") video programming shall be regulated as CPSTs pursuant to § 76.922.