

Federal Communications Commission

§ 76.944

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]

§ 76.943 Fines.

(a) A franchising authority may impose fines or monetary forfeitures on a cable operator that does not comply with a rate decision or refund order directed specifically at the cable operator, provided the franchising authority has such power under state or local laws.

(b) If a cable operator willfully fails to comply with the terms of any franchising authority's order, decision, or request for information, as required by § 76.939, the Commission may, in addition to other remedies, impose a forfeiture pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b).

(c) A cable operator shall not be subject to forfeiture because its rate for basic service or equipment is determined to be unreasonable.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17974, Apr. 15, 1994]

§ 76.944 Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.

(a) The Commission shall be the sole forum for appeals of decisions by franchising authorities on rates for the basic service tier or associated equipment involving whether or not a franchising authority has acted consistently with the Cable Act or §§ 76.922 and 76.923. Appeals of ratemaking decisions by franchising authorities that do not depend upon determining whether a franchising authority has acted consistently with the Cable Act or §§ 76.922 and 76.923, may be heard in state or local courts.

(b) Any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with