4. Section 22.901 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 22.901 Cellular service requirements and limitations.

Cellular system licensees must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing, including roamers, while such subscribers are located within any portion of the authorized cellular geographic service area (see § 22.911) where facilities have been constructed and mobile service to subscribers has commenced. A cellular system licensee may refuse or terminate service, however, subject to any applicable state or local requirements for timely notification to any subscriber who operates a cellular telephone in an airborne aircraft in violation of § 22.925 or otherwise fails to cooperate with the licensee in exercising operational control over mobile stations pursuant to § 22.927.

* * * * *

(d) *Alternative technologies and co-primary services.* Licensees of cellular systems may use alternative cellular technologies and/or provide fixed services on a co-primary basis with their mobile offerings, including personal communications services (as defined in Part 24 of this chapter) on the spectrum within their assigned channel block. Cellular carriers that provide mobile services must make such service available to subscribers whose mobile equipment conforms to the cellular system compatibility specification (see § 22.933).

(1) Licensees must perform or obtain an engineering analysis to ensure that interference to the service of other cellular systems will not result from the implementation of co-primary fixed services or alternative cellular technologies.

(2) Alternative technology and co-primary fixed services are exempt from the channeling requirements of § 22.905, the modulation requirements of § 22.915, the wave polarization requirements of § 22.367, the compatibility specification in § 22.933 and the emission limitations of §§ 22.357 and 22.917, except for emission limitations that apply to emissions outside the assigned channel block.

PART 24—PERSONAL COMMUNICATIONS SERVICES

5. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

6. Section 24.3 is revised to read as follows:

§ 24.3 Permissible communications.

PCS licensees may provide any mobile communications service on their assigned spectrum. Fixed services may be provided on a co-primary basis with mobile operations. Broadcasting as defined in the Communications Act is prohibited.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

7. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

8. Section 90.419 is revised to read as follows:

§ 90.419 Points of communication.

Normally, operations licensed under this part are intended to provide intrastation mobile communications. For example, a base station is intended to communicate with its associated mobile stations and mobile stations are intended to communicate between associated mobile stations and associated base stations of the licensee. Accordingly, operations between base stations at fixed locations are permitted only in the following situations:

(a) Base stations licensed under the Public Safety and Special Emergency Radio Services that operate on frequencies below 450 MHz, may communicate on a secondary basis with other base stations, operational fixed stations, or fixed receivers authorized in these services.

(b) Base stations licensed on any frequency in the Industrial and Land Transportation Radio Services and on base station frequencies above 450 MHz in the Public Safety and Special Emergency Services may communicate on a secondary basis with other base stations, operational fixed stations, or fixed receivers authorized in these services only when:

(1) The messages to be transmitted are of immediate importance to mobile stations; or

(2) Wireline communications facilities between such points are inoperative, economically impracticable, or unavailable from communications common carrier sources. Temporary unavailability due to a busy wireline circuit is not considered to be within the provisions of this paragraph.

(c) Operational fixed stations may communicate with units of associated mobile stations only on a secondary basis.

(d) Operational fixed stations licensed in the Industrial and Land Transportation Radio Services may communicate on a secondary basis with associated base stations licensed in these services when:

(1) The messages to be transmitted are of immediate importance to mobile stations; or

(2) Wireline communications facilities between such points are inoperative, economically impracticable, or unavailable from communications common carrier sources. Temporary unavailability due to a busy wireline circuit is not considered to be within the provisions of this paragraph.

(e) Travelers' Information Stations are authorized to transmit certain information to members of the traveling public (see § 90.242).

(f) CMRS Licensees in the SMR categories of Part 90, Subpart S, CMRS providers authorized in the 220 MHz service of Part 90, Subpart T, CMRS paging operations as defined by Part 90, Subpart P and for-profit interconnected business radio services with eligibility defined by Section 90.75 are permitted to utilize their assigned spectrum for fixed services on a co-primary basis with their mobile operations.

[FR Doc. 96–21794 Filed 8–28–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 76

[MM Docket No. 92–266; FCC 96–316]

Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: In this *Memorandum Opinion and Order* (''*Order*''), the Commission revisits the decision in the *Third Report and Order* to require cable operators to use the same method of initial rate regulation, either benchmark or cost-of-service, for both the BST and the CPSTs. This requirement applies for one year from the date that the operator first becomes subject to regulation on any tier. The *Third Report and Order* sought to remove incentives to engage in retiering strategies during the initial rate setting process that would result in operators receiving more than compensatory rates. The Commission indicated that it would review the requirement after 18 months. Upon

review of the record the Commission elects to modify the requirement set forth in the *Third Report and Order* so that consistent rate methodologies must be used for the entire period in which an operator is subject to rate regulation on both the BST and CPST(s). This *Order* is adopted concurrently with a *Notice of Proposed Rulemaking* which is summarized elsewhere in this issue of the Federal Register. The intended effect of this *Order* is that consistent rate methodologies be used for the entire period in which an operator is subject to rate regulation on both the BST and CPST(s).

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 92–266 FCC 96–316 adopted July 25, 1996, and released August 15, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

Synopsis of the Memorandum Opinion and Order

1. In the *Third Report and Order* in MM Docket No. 92–266, 58 FR 63087 (''*Third Report and Order*'') the Commission determined that operators must use the same rate-setting method for all tiers. This requirement applies for one year from the date an operator first becomes subject to rate regulation on either the BST or a CPST. The Commission established this requirement because, in some circumstances, using the benchmark approach for one tier and the cost-of-service approach for another tier could result in a double recovery of costs by the cable operator.

2. The regulatory review process for BST rates is separate from the review process for CPST rates. Regulation of rates for BSTs is the responsibility of certified local franchising authorities (''LFAs''), pursuant to standards and procedures established by the Commission. An operator may appeal an LFA's rate decision to the Commission. CPST rates are regulated directly by the Commission upon receipt by the Commission of a valid complaint from an LFA.

3. In the *Third Report and Order,* the Commission held, that without the tier consistency requirement:

> an operator could retier its services and place its most expensive programming on the tier regulated by a cost-of-service determination. The operator would then be allowed to charge a per channel rate for the low cost tier based on the benchmark (which is an averaged rate) that actually exceeds its cost for that tier (and, thus, the rate it would be able to charge under a cost-of-service showing). At the same time, the operator may be able to charge a higher-than-benchmark rate for the other tier through a cost-of-service showing, based on its higher costs for that tier. The end result would be rates that exceed the reasonableness standard set forth in the 1992 Cable Act.

4. The Commission upholds the requirement of the *Third Report and Order* that the same methodology for determining rates on all regulated tiers shall be used in the initial rate setting process. The Commission sees no reason to conclude that the concerns referred to in the preceding paragraph have dissipated. In addition, because these concerns do not dissipate one year after an operator initially becomes subject to regulation, on its own motion, the Commission removes the provision that limits the required use of consistent methodologies to the one year period beginning on the date an operator initially becomes subject to rate regulation, and thereby extend the requirement so that consistent methodologies must be used whenever an operator has more than one tier subject to rate regulation. This requirement will remain effective until such time as the Commission finds that the use of the same rate regulatory method on all rate regulated tiers is not necessary to prevent operators from charging rates above that which the rate regulations contemplate. This provision effectuates the Commission's statutory mandate to protect consumers from unreasonable rates.

5. Use of the same rate regulatory method for all rate regulated tiers does not hamper an operator's ability to charge fully compensatory rates. The Commission provides a cost of service option as an alternative to the benchmark formula for operators that believe the benchmark would not enable them to recover costs reasonably incurred in the provision of regulated cable service. As of the effective date of this *Order,* operators must use consistent rate regulatory methods on all rate regulated tiers whenever the operator is required to justify its rates on any rate regulated tier.

Final Regulatory Flexibility Analysis

6. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket 92–266, 58 FR 29736 (''*Report and Order*''). The Commission sought written public comments on the proposals in the *Report and Order* including comments on the IRFA, and addressed these responses in the *Third Report and Order.* No IRFA was attached to the *Third Report and Order* because the *Third Report and Order* only adopted final regulations and did not propose regulations. This FRFA thus addresses the impact of regulations on small entities only as adopted or modified in this action and not as adopted or modified in earlier stages of this rulemaking proceeding. The Commission's Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847. Subtitle II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), codified at 5 U.S.C. § 610 *et seq.* (1996).

7. *Need and Purpose for Action:* This action is being taken in accordance with the Commission's decision, as set forth in the *Third Report and Order,* to revisit the issues discussed herein, and to carry out the Commission's statutory mandate to insure that cable rates are reasonable.

8. *Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:* There were no comments received in response to the Initial Regulatory Flexibility Analysis. A single commenter petitioned the Commission for reconsideration of the requirements contained in the *Third Report and Order,* but this petition was ultimately withdrawn. The petitioner was not a small entity, and no reply comments to the petition were received.

9. *Certification of No Significant Economic Impact on a Substantial number of Small Entities:* We do not believe that the final rule adopted in the *Order* will have a significant impact on small entities as defined by the Small Business Administration (SBA), by statute, or by our rules. The Communications Act at 47 U.S.C. 543 (m)(2) defines a small cable operator as ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is

not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' Under the Communications Act, at 47 U.S.C. 543(m)(1), a small cable operator is not subject to the rate regulation requirements of Sections 543 (a), (b) and (c) on cable programming service tiers (''CPSTs'') in any franchise area in which it serves 50,000 or fewer subscribers. The rule adopted in this *Order* requires that the same rate regulatory methodology be used across the basic service tier (''BST'') and CPSTs. Thus, the rule adopted in this *Order* only applies to operators that are rate regulated on both the BST and CPST, and would therefore not apply to a small cable operator in any franchise area in which it serves 50,000 or fewer subscribers.

10. Section 623(i) of the Communications Act, 47 U.S.C. § 543(i), requires that the Commission design rate regulations in such a way as to reduce the administrative burdens and the cost of compliance for cable systems with 1,000 or fewer subscribers. The Commission introduced a form of rate regulation known as the small system cost-of-service methodology. This approach is more streamlined than the standard cost-of-service methodology available to cable operators that are not small cable systems owned by small cable companies. In addition, the small system rules include substantive differences from the standard cost-of-service rules to take account of the proportionately higher costs of providing service faced by small systems. This rate adjustment methodology is an alternative to the standard rate adjustment methodologies which are the subject of this *Order*. In designing this alternative methodology, the Commission extended the small system relief required by Section 623(i) of the Communications Act to cable systems with 15,000 or fewer subscribers owned by cable companies serving 400,000 or fewer subscribers over all of their cable systems. Because of the utilization of this alternative rate adjustment methodology by small cable operators, we do not believe that this *Order*, which does not concern this alternative methodology, will have any significant economic impact on a substantial number of small cable companies as defined by the Commission's rules.

11. The SBA, at 13 CFR Part 121.201 (as of July 25, 1996), defines a small cable business concern as a cable business, including its affiliates, that has $11 million or less in annual receipts. The Commission, in defining a small system as a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers, stated that $100 million in annual regulated revenues equates to approximately 400,000 subscribers. We therefore believe that many cable operators that are within this SBA definition will also be within the Commission's definition of small cable operator, and will not experience significant economic impact for the reasons described in the preceding paragraph. If, however, a cable operator has $11 million or less in annual receipts, but does not fall within the class of small cable companies entities to small system rate relief under the Commissions rules, we believe that such a company would fall under the Communications Act at 47 U.S.C. 543(m)(1), which states that a small cable operator is not subject to the rate regulation requirements of Sections 543 (a), (b) and (c) on CPSTs in any franchise area in which it serves 50,000 or fewer subscribers. If $100 million in annual regulated revenues equates to approximately 400,000 subscribers, then 50,000 subscribers, expressed in terms of dollars, should meet or exceed the $11 million in annual receipts from the SBA definition of a small cable business concern. Using this same approach, we likewise believe that the SBA definition of a cable business concern will fall within the one percent of United States subscribers from the Communications Act definition of a small cable operator, because the Commission has determined that there are approximately 61,700,000 subscribers in the United States. We believe that small cable business concerns as defined by the SBA will fall within the Communication Act's definition of a small cable operator and the Act's provision of CPST rate deregulation for small cable operators that serve 50,000 or fewer subscribers. As explained above, the rule adopted in this *Order* is inapplicable to operators that are not subject to CPST rate regulation.

12. The SBA, at 5 U.S.C. Section 601 (Vol. 5), states that small governmental jurisdictions are ''[g]overnments of cities, counties, towns, townships, villages, school districts or special districts with populations of less than 50,000.'' Under the Commissions current rules, if a local governmental has elected to rate regulate the BST, a cable operator must submit rate justifications to the local government on FCC Forms. We do not believe that a substantial number of small governmental jurisdictions will face a significant economic impact due to this *Order* for the following reasons. First, we do not know of any cable operators that are currently using inconsistent rate setting methods on their rate regulated tiers, and that would therefore have to switch to consistent methods as a result of this *Order*. If such an operator did exist, the operator would not be required to use consistent rate regulatory methods until the next time the operator was required to justify rates on a rate regulated tier. Thus, the requirement would not generate an increased number of rate reviews by a local franchising authority. Even in this instance, an operator may elect to change its CPST ratemaking methodology in order to conform to the rule as opposed to its BST ratemaking methodology. Such a change would not affect small governmental jurisdictions because the CPST rate is regulated by the Commission, and not by small governmental jurisdictions.

13. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

Procedural Provisions

14. *Ex parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally*, 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

15. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 6, 1996, and reply comments on or before November 8, 1996. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

Ordering Clauses

16. Accordingly, *it is ordered* that, pursuant to the authority granted in Sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 303(r) and 543, the requirements set forth in the *Third Report and Order are amended* to provide that the use of the same rate regulatory methodology will be required for all rate regulated tiers for the entire period in which an operator is subject to rate regulation on more than one tier.

17. *It is further ordered* that the requirements established in this decision shall become effective September 30, 1996.

18. *It is further ordered* that, the Secretary shall send a copy of this *Memorandum Opinion and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

List of Subjects in 47 CFR Part 76

Cable television.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

Section 76.922(a) is revised to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

(a) *Basic and cable programming service tier rates.* Basic service tier and cable programming service rates shall be subject to regulation by the Commission and by state and local authorities, as is appropriate, in order to assure that they are in compliance with the requirements of 47 U.S.C. 543. Rates that are demonstrated, in accordance with this part, not to exceed the ''Initial Permitted Per Channel Charge'' or the ''Subsequent Permitted Per Channel Charge'' as described in this section, or the equipment charges as specified in § 76.923, will be accepted as in compliance. The maximum monthly charge per subscriber for a tier of regulated programming services offered by a cable system shall consist of a permitted per channel charge multiplied by the number of channels on the tier, plus a charge for franchise fees. The maximum monthly charges for regulated programming services shall not include any charges for equipment or installations. Charges for equipment and installations are to be calculated separately pursuant to § 76.923. The same rate-making methodology (either the benchmark methodology found in paragraph (b) of this section, or a cost-of-service showing) shall be used to set initial rates on all rate regulated tiers, and shall continue to provide the basis for subsequent permitted charges.

* * * * *

[FR Doc. 96–21582 Filed 8–28–96; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–87; Notice 2]

RIN 2127–AF78

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends Standard No. 108, the Federal motor vehicle standard on lighting, to adopt new photometric requirements for motorcycle headlamps. The requirements will improve the objectivity of the aiming of their upper beam. The new photometric requirements are those of Society of Automotive Engineers (SAE) Standard J584 OCT93, added as a new Figure 32 to Standard No. 108. They will exist simultaneously with the current photometric requirements of SAE J584 April 1964 until September 1, 2000, when they become mandatory for new vehicle equipment. When being tested for photometric compliance with Figure 32, the upper beam of motorcycle headlamps will be aimed photoelectrically, instead of visually, as at present.

The amendments will enhance motor vehicle safety by improving visibility for the motorcycle operator, and detectability of his or her machine.

DATES: The final rule is effective October 15, 1996. Conformance with its requirements is optional until September 1, 2000, when it becomes mandatory.

Petitions for reconsideration must be filed not later than October 15, 1996.

ADDRESSES: Petitions for reconsideration must refer to Docket No. 95–87; Notice 2 and be submitted to: Administrator, NHTSA, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Safety Performance Standards, NHTSA (Telephone: 202–366–5276; FAX: 202–366–4329).

SUPPLEMENTARY INFORMATION:

Background

Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* specifies requirements for motorcycle headlamps. Principally, these are the specifications of SAE Standard J584 April 1964, which have been incorporated by reference into Standard No. 108.

Petition for Rulemaking

The Motorcycle Industry Council (MIC) petitioned for rulemaking to amend Standard No. 108 to allow SAE Standard J584 OCT93 as an alternative to SAE J584 April 1964. According to MIC, motorcycle headlamps designed to conform to SAE J584 April 1964 have difficulty in providing sufficient lower beam illumination directly in front of the motorcycle, a need met by SAE J584 OCT93. Further, adoption of the 1993 requirements would allow manufacturers to install the same headlamp design on motorcycles sold in the United States as are currently being installed on motorcycles sold in 50 other countries.

The Notice of Proposed Rulemaking (NPRM)

In response to MIC's petition, NHTSA published a notice of proposed rulemaking (NPRM) on February 21, 1996 (61 FR 6616). NHTSA noted in the NPRM that, although it had granted MIC's petition, SAE J584 OCT93 is inappropriate for incorporation in full into Standard No. 108 because J584 OCT93 contains three sets of photometric specifications for five different classes of motorcycles. Standard No 108, on the other hand (J584 April 1964), contains two sets of photometric specifications, applicable to motorcycles and to motor driven cycles, i.e., motorcycles with 5 horsepower or less.