request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300458]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 27, 1997.

Peter Caulkins,
Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:
Authority: 21 U.S.C. 346a and 371.

2. In § 180.431, by adding a new paragraph (c) to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

* * * * *

(c) *Section 18 emergency exemptions.* A time-limited tolerance is established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table. The tolerance expires on the date specified in the table.

Commodity	Parts per million	Expiration Date
Cranberries	2	July 31, 1998

[FR Doc. 97–5875 Filed 3–11–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–60; FCC 97–27]

Cable Television Leased Commercial Access

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Second Report and Order and Second Order on Reconsideration of the First Report and Order (''Order'') regarding implementation of the leased commercial access provisions of the 1992 Cable Act. The Order addressed comments and petitions for reconsideration filed in response to the Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking in CS Docket 96–60, FCC 96–122 (released March 29, 1996) (subparts referred to separately as ''Reconsideration Order'' and ''Further NPRM''). The Order: revised the maximum rate formulas for use of full-

time leased access channels; declined to impose a transition period for the implementation of the revised rate formulas; maintained the current rules for maximum part-time rates and adopted a rule that cable operators are not required to open additional leased access channels for part-time use until all existing part-time leased access channels are substantially filled or until a programmer requests a year-long eight-hour daily time slot that cannot otherwise be accommodated; allowed the resale of leased access time; granted leased access programmers the right to demand access to a tier with a subscriber penetration of more than 50%; stipulated that minority and educational programming does not qualify as a substitute for leased access programming unless it is carried on a tier with a subscriber penetration of more than 50%; declined to mandate preferential treatment for certain types of leased access programmers; required operators to accept leased access programmers on a non-discriminatory basis so long as available leased access capacity exceeds demand; required that an independent accountant review an operator's rate calculations prior to the filing of a rate complaint with the Commission; established a standard of reasonableness for certain contractual requirements; specified when leased access programmers must pay for technical support; and defined the term ''affiliate'' for purposes of leased access. The Order also addressed several issues on reconsideration, including the exclusion of programming revenues from the maximum rate calculation, the maximum rate calculation for a la carte channels, cable operators' obligations to provide certain information to potential leased access programmers and the need for operators to comply with those obligations, time increments, the calculation of the leased access set-aside requirement, and billing and collection services. The Order is intended to address issues and concerns raised in the comments and petitions for reconsideration that were filed with the Commission in response to the Reconsideration Order and Further NPRM.

DATES: This rule is effective April 11, 1997, except the amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), and 76.975 (b) and (c), which impose new or modified information collection requirements, shall become effective upon approval by the Office of Management and Budget (OMB), but no sooner than April 11, 1997. The Commission will publish a document at a later date establishing the effective date for the sections containing information collection requirements. Written comments by the public on the modified information collection requirements are due on or before April 11, 1997, and written comments by OMB on the modified information collection requirements are due on or before May 12, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. A copy of any comments on the information collections contained in the Order should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503, or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained in the Order, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reductions Act

The Order contains modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in the Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 30 days from the date of publication of the Order in the Federal Register; OMB notification of action is due 60 days from date of publication of the Order in the Federal Register. Comments should address: (a) Whether the modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0568.

Title: Commercial leased access rates, terms and conditions.

Type of Review: Revision of existing collection.

Respondents: Business and other for profit entities; not-for-profit institutions.

Number of Respondents: 6,330 (6,270 cable systems + 30 selected accountant reviewers + an estimated 30 leased access programmers involved in the leased access rate dispute process).

Estimated Time Per Response: 1–10 hours.

Total Annual Burden: 94,171 hours, estimated as follows: § 76.970 describes the manner in which cable operators are to calculate maximum leased access rates. Currently, there are approximately 11,400 cable systems, of which approximately 45% have channel capacities of less than 36 channels, and are therefore exempt from the Commission's leased access provisions. The number of cable system respondents is therefore 6,270 (55% of 11,400). The average annual burden of calculating maximum rates is estimated to be 4 hours per cable system. 6,270×4 hours=25,080 hours.

Section 76.970(h) requires cable operators to provide the following information within 15 calendar days of a request regarding leased access (for systems subject to small system relief, cable operators are required to provide the following information within 30 days of a request regarding leased access): (a) A complete schedule of the operator's full-time and part-time leased access rates; (b) how much of the cable operator's leased access set-aside capacity is available; (c) rates associated with technical and studio costs; and (d) if specifically requested, a sample leased access contract. We estimate that each cable system operator will undergo an average burden of 10 hours per year to gather and maintain this information and disclose it to requesting potential leased access programmers. Of the 10 hours, we estimate an average burden of 4 hours for each operator to gather and maintain the information and an average burden of 6 hours for each operator to furnish materials to an estimated 20 requesters per year. 6,270×10 hours=62,700 hours.

Section 76.971 requires cable operators to provide billing and collection services to leased access programmers unless they can demonstrate the existence of third party billing and collection services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers. The Commission estimates that identification of a third party billing and collection service rarely needs to occur because the vast majority of leased access programming

is placed on a programming services tier and is billed as part of that tier. Nonetheless, the Commission estimates an average burden of no more than 1 hour per cable system operator to identify a third party billing and collection service and then to make the necessary information available.

6,270×1 hour=6,270 hours.

Section 76.975(b) requires that persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a rate complaint with the Commission. We estimate that operators will undergo an average burden of 4 hours to arrange for an independent accountant review and coordinate rate information with the selected accountant. This average burden accounts for those instances where parties that cannot agree on a mutually acceptable accountant must each select an independent accountant who in turn select a third independent accountant. Nationwide, we estimate a need for 30 accountant rate reviews per year.

30 × 4 hours = 120 hours.

76.975(c) requires that petitioners attach a copy of the final accountant's report to their petition where the petition is based on allegations that a cable operator's leased access rates are unreasonable. We estimate that petitioners will undergo an average burden of 2 minutes to attach such reports. Nationwide, we estimate that petitioners will need to attach a total of no more than 30 accountant's reports when filing petitions for relief.

30 × 2 minutes = 1 hour. 25,080 + 62,700 + 6,270 + 120 + 1 = 94,171 hours.

Estimated costs to respondents: $74,000, estimated as follows: We estimate the annual telephone, postage and stationery costs incurred by cable operators for leased access recordkeeping, sending out leased access information to prospective programmers, identifying third party billing collection services, and selecting accountants to be $50,000, equating to approximately $7.97 per operator. ($7.97 × 6,270 respondents = $50,000). We estimate that accountants will undergo an average burden of 8 hours to review an operator's maximum rate calculations and to prepare the required report. Accountants are estimated to be paid $100 per hour for their services. (30 accountant reviews) × (8 hours per review) × ($100 per hour) = $24,000.

Total costs to respondents = $50,000 + $24,000 = $74,000.

Needs and Uses: The information collected is used by prospective leased access programmers and the Commission to verify rate calculations for leased access channels and to eliminate uncertainty in negotiations for leased commercial access. The Commission's leased access requirements are designed to promote diversity of programming and competition in programming delivery as required by section 612 of the Communications Act.

Synopsis

The following is a synopsis of the Commission's Second Report and Order and Second Order on Reconsideration of the First Report and Order in CS Docket 96–60, FCC 97–27, adopted January 31, 1997 and released February 4, 1997. 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, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800, 1919 M Street, NW., Washington, DC 20554.

I. Introduction

1. The statutory framework for commercial leased access, provided in Section 612 of the Communications Act of 1934, as amended, 47 U.S.C. 521 *et seq.* (''Communications Act''), was first established by the Cable Communications Policy Act of 1984, Public Law 98–549, 98 Stat. 2779 (1984), 47 U.S.C. 521 *et seq.* (''1984 Cable Act'') and was amended by the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, 106 Stat. 1460 (1992), 47 U.S.C. 521 *et seq.* (''1992 Cable Act''). Commercial leased access was created to provide access to the channel capacity of cable systems by parties unaffiliated with the cable operator that wish to distribute video programming free of the editorial control of the cable operator. Channel set-aside requirements were established in proportion to a system's total activated channel capacity. The statutory objectives of leased access are to ''promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.'' Each system operator subject to the leased access requirement must establish, consistent with the rules prescribed by the Commission, ''the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.''

2. In the Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC 93–177, 58 FR 29736 (May 21, 1993) (''Rate Order''), the Commission established initial regulations to implement the leased access provisions of the 1992 Cable Act. The Commission adopted the ''highest implicit fee'' formula as the method for setting maximum reasonable rates, and adopted various standards governing access terms and conditions, tier placement, technical standards for use, technical support, security deposits, conditions based on program content, requirements for billing and collection services, and procedures for the expedited resolution of disputes. In the Reconsideration Order, the Commission addressed certain issues pertaining to the highest implicit fee formula, the provision of certain leased access rate and channel availability information to prospective leased access programmers, acceptable time increments and pricing for part-time leased access use, operator provision of billing and collection services for leased access programmers, security deposits, calculation of the leased access set-aside requirement and reporting requirements. In the Further NPRM, the Commission re-examined the highest implicit fee formula from an economic perspective and tentatively concluded that the highest implicit fee formula is likely to overcompensate cable operators and does not sufficiently promote the goals underlying the leased access provisions. The Commission proposed a cost/market rate approach to setting maximum reasonable rates and requested comment on the approach and its implementation. In addition, the Commission sought comment on: (a) Part-time rates and an operator's obligation to open additional leased access channels for part-time use, (b) the resale of leased access time, (c) tier and channel placement for leased access programming, (d) the placement of minority or educational programming when it is used as a substitute for leased access programming, (e) preferential treatment for certain types of leased access programmers, including not-for-profit programmers, (f) the selection of leased access programmers, and (g) streamlined leased access dispute resolution procedures.

3. In the Order, the Commission amended its rules pertaining to cable television commercial leased access, after considering the comments and

reply comments filed in response to the Further NPRM, and addressed petitions for reconsideration of the leased access rules adopted in the Reconsideration Order.

II. Report and Order

A. Maximum Rate Formula for Leasing a Full Channel

4. Background: Section 612 directs the Commission to determine the maximum reasonable rates that cable operators may charge for commercial leased access. In the Rate Order, the Commission adopted rules that established maximum rates based on the highest implicit fee paid by non-leased access programming services distributed on a system. In the non-leased access context, cable operators generally pay programmers (e.g., a contractual license fee or a copyright fee) for their programming services. Nevertheless, there is an implicit fee for carriage to the extent that the amount of subscriber revenue that the operator receives for the programming is greater than the fee that the operator pays to the programmer. In other words, the amount of subscriber revenue that the programmer forgoes to the operator represents an implicit payment for carriage. The Commission determined that the implicit fee paid by a programmer is the average price per channel that a subscriber pays the operator minus the amount per subscriber that the operator pays the programmer. The highest of the implicit fees charged any unaffiliated non-leased access programmer was the maximum rate per subscriber that a cable operator could charge a leased access programmer.

5. In the Reconsideration Order and Further NPRM, we identified certain problems with the highest implicit fee formula and sought comment on a ''cost/market rate formula,'' an alternative approach that we believed might better promote the goals of leased access. Under this proposed approach, the maximum rate for leased access would depend on whether the cable operator is leasing its full statutory set-aside requirement. When the full set-aside capacity is not leased to unaffiliated programmers, the maximum rate would be based on the operator's reasonable and quantifiable costs (i.e., the costs of operating the cable system plus the additional costs related to leased access), including a reasonable profit. The operator would be allowed to use the subscriber revenue received from a leased access channel to offset the operating costs associated with the channel. In addition, the operator would be allowed to charge the leased access programmer the reasonable costs of bumping a programming service in order to accommodate the leased access programmer. We tentatively concluded that once the operator met its set-aside requirement, the cost-based maximum rate could be replaced by a market rate.

6. Discussion: Our role with regard to leased access rates is to establish maximum reasonable rates, not a mandatory rate that must be charged to all leased access programmers. Operators have the discretion to negotiate rates below the maximum rates established by the Commission. For clarification purposes, we adopted a rule that specifically states that cable operators are permitted under our rules to negotiate rates below the maximum permissible rates.

i. Cost/Market Rate Formula

7. After reviewing the record in this proceeding and after considering and analyzing all of the options presented, we concluded that the proposed cost/market rate formula does not adequately account for certain factors which, if excluded, would make the maximum leased access rates resulting from the formula unworkable in today's programming marketplace. Although the proposed cost/market rate formula accounts for lost advertising revenue and lost commissions that would result from bumping existing programming, it does not account for negative effects that leased access programming might have on subscriber revenue (i.e., lost subscriber revenue caused by subscribers dropping the tier or by requiring a lower price due to a devaluation of the tier). In the Further NPRM, we recognized this cost but tentatively concluded that the inability to quantify the specific effect on subscriber revenue caused by the replacement of current programming with leased access programming in the tiered programming services context made it too speculative to include as an opportunity cost category in the cost/market rate formula. We nevertheless sought comment on how our cost/market rate formula might measure changes in subscriber penetration due to the addition of leased access programming.

8. Neither the Commission nor the commenters in this proceeding have been able to accurately quantify the effect that leased access programming carried on a programming services tier may have on subscribership or subscriber revenues to a degree specific enough to assign it a definite value in a formula. Nevertheless, we no longer believe that this effect is a factor that reasonably can be ignored. Under the cost/market rate formula, the value of a channel is measured by subtracting the programming or license fee the operator pays for the channel from the advertising revenues and commissions the operator receives for the channel. The formula does not include the subscriber revenue received for the channel because, as explained above, we assumed that leased access programming would have no measurable impact on subscriber revenue. By ignoring the effect of leased access programming on subscriber revenue, the cost/market rate formula assigns a negative value to a channel where the license fee is higher than the revenue collected from advertising and commissions. For example, a programming service such as The Disney Channel, which carries no commercial advertising, could have a negative value under the cost/market rate formula and thus would yield a negative leased access rate. The proposed cost/market rate formula therefore must not accurately represent at least some important factor in assessing the value of a channel because a well-established channel like The Disney Channel is unlikely to have a negative value to the operator. The missing factor, we believe, is the subscriber revenue that an operator receives because it carries a particular channel. In the case of a channel newly added to a tier, this subscriber revenue includes both the additional amount an operator can charge its existing subscribers when it adds a channel and also the full tier price paid by subscribers the channel attracts to the tier.

9. Because the cost/market rate formula does not adequately account for a significant benefit that cable operators receive from programming, we believe it may result in an unduly low rate that does not adequately capture the value of a channel. Such a rate would not adequately compensate the cable operator and would force cable operators to subsidize leased access programmers, thereby impermissibly affecting the cable system's operation, financial condition or market development. We therefore concluded that the proposed cost/market rate formula would not accurately establish reasonable maximum rates because, in its attempt to measure the opportunity costs of using a channel for leased access, it ignores a significant opportunity cost—the effect on subscriber revenue. Because neither the Commission nor the commenters in this proceeding have been able to

specifically quantify this effect, we were unable to revise our proposed formula in a way that would allow us to adopt it as an appropriate method for determining maximum leased access rates.

ii. Maximum Rate for Full-Time Leased Access Programming Carried on a Programming Services Tier

10. Based on our review of the comments, we no longer believe that the proposed cost/market rate formula is a reasonable formula for determining maximum leased access rates. Instead, we decided to retain an implicit fee formula. We did, however, modify our current formula to address the concerns set forth in the Further NPRM and in the comments. Specifically, as described below, we concluded that the maximum reasonable rate for leased access programming that is carried on a programming services tier should be the ''average implicit fee.'' We will, however, continue to monitor the availability of leased access channels and may revisit this issue if it appears that the average implicit fee formula no longer reflects a reasonable rate.

11. To determine the average implicit fee for a full-time channel on a particular tier with a subscriber penetration over 50%, an operator must first calculate the total amount it receives in subscriber revenue per month for the programming on all such tier(s), and then subtract the total amount it pays in programming costs per month for such tier(s) (the ''total implicit fee calculation''). A weighting scheme that accounts for differences in the number of subscribers and channels on all such tier(s) must be used to determine how much of the total implicit fee calculation will be recovered from any particular tier. The weighting scheme is determined in two steps. First, the number of subscribers is multiplied by the number of channels (the result is the number of ''subscriber-channels'') on each tier with subscriber penetration over 50%. For instance, a tier with 10 channels and 1,000 subscribers would have 10,000 subscriber-channels. Second, the number of subscriber-channels on each of these tiers is divided by the total number of subscriber-channels on all such tiers. Given the percent of subscriber-channels for the particular tier, the implicit fee for the tier is computed by multiplying the subscriber-channel percentage for the tier by the total implicit fee calculation. Finally, to calculate the average implicit fee per channel, the implicit fee for the tier must be divided by the corresponding number of channels on the tier. The final result is the maximum rate per month that the operator may charge the leased access programmer for a full-time channel on that particular tier. In the event of an agreement to lease capacity on a tier with less than 50% penetration, the average implicit fee should be determined on the basis of subscriber revenues and programming costs for that tier alone.

12. In essence, the average implicit fee measures the average amount that full-time programmers implicitly ''pay'' the cable operator for carriage. In other words, the average implicit fee represents the average amount of subscriber revenue that full-time programmers cede to the operator to permit the operator to cover its costs and earn a profit. For instance, if subscribers pay an average of $0.50 per channel for a particular tier, and the average programming or license fee on the tier is $0.10, then, on average, programmers on the tier are implicitly ''paying'' the operator $0.40 for carriage. Since full-time lessees resemble, and will be competing with, full-time cable networks, it is appropriate that the maximum full-time leased access rate reflect the average marketplace terms and conditions under which cable networks are able to gain access to the cable system. From the operator's standpoint, the average implicit fee represents the average value of a channel after programming acquisition costs are paid. A formula based on the average value of a channel may reflect the value of channel capacity more accurately than a formula based on the value of the programming bumped for leased access, such as the proposed cost/market rate formula, because programming that is bumped for leased access may not have had sufficient opportunity to reach its full revenue-generating potential.

13. In addition, we adopted an average implicit fee formula because it is possible to determine the average value of a channel accurately, even when channels are sold as part of a package (i.e., a tier). A precise calculation of the average channel value is possible because the necessary components are known: in particular, what a subscriber pays for the tier and what the operator pays in total programming costs for all channels on the tier. By contrast, the proposed cost/market rate formula and the highest implicit fee formula cannot provide such accuracy because they attempt to measure the value of an individual channel on a tier. However, the value of an individual channel on a tier cannot be ascertained accurately because it is not possible to determine the subscriber revenue attributable to a particular channel that is sold collectively with other channels as a single package. The same problem would be presented by an attempt to determine the lowest implicit fee.

14. We also believe that developments in the multichannel video programming marketplace are relevant to our decision to adopt the average implicit fee formula. The number of non-vertically integrated national programming services has grown in each of the past three years. We believe that a shift from a highest implicit fee formula to an average implicit fee formula may provide additional opportunities for diverse, unaffiliated programmers to enter the marketplace, without creating a maximum rate that is artificially low and putting the cable operator's operation, financial development or market development at risk.

15. Moreover, we believe that the average implicit fee formula addresses the concerns with the highest implicit fee formula that we expressed in the Reconsideration Order. Most importantly, we do not believe that the average implicit fee formula permits the operator a ''double recovery.'' In the Reconsideration Order, we noted that the highest implicit fee formula overcompensates the operator because it appears to allow the value of the channel to be recovered twice—once from the leased access programmer (the highest implicit fee), and once from subscribers (the average per channel subscriber charge). For example, if the subscriber revenue for a tier is an average of $0.50 per channel and the lowest license fee for unaffiliated programming on that tier is $0.05, the highest implicit fee for that tier would be $0.45. Because we assumed that the leased access programmer would pay up to $0.45 (the highest implicit fee) and the subscriber would still pay $0.50 (the average per channel subscriber charge), we believed that the operator was permitted to recover the value of the channel twice.

16. Our ''double recovery'' hypothesis was based on the assumption that operators would be able to charge subscribers the same amount for leased access programming that they charge on average for other programming on the same tier. Although a number of commenters in this proceeding supported this assumption, other commenters asserted that subscribers will not be willing to pay the same amount for leased access programming because subscribers value it less than programming selected by the operator. These commenters claimed that the amount of subscriber revenue that

operators will be able to collect for most leased access channels will be close to or equal to zero, and leased access programming may in fact diminish the value of a tier because subscribers will find it so unappealing that viewership of the other programming on the tier will be adversely impacted.

17. Based on the record before us, we could not conclude that operators, in general, will be able to charge the same amount for a tier once leased access programming is added, especially since most leased access programming will be new and will not have an established audience. We could not, however, predict with any certainty what the relative value of the leased access programming will be. It is possible that some leased access programming will be as profitable, if not more so, than some of the operator's selected programming and that the effect on the tier charge will be neutral or positive. On the other hand, it is also possible that some leased access programming will be less valuable than the operator's current programming, leading either to a loss of subscribers or to a loss of subscriber revenue if the operator lowers the tier price.

18. We therefore found that the assumption underlying our ''double recovery'' hypothesis—that leased access programming will always be equally valuable to the operator as its non-leased access programming—was not supported by the record. Neither the Commission nor the commenters, however, have been able to develop a reliable method for predicting what value, if any, subscribers will place on leased access programming. Since the current record did not permit us to accurately assess the impact of leased access programming on the value of the tier, we could not find that leased access programming will necessarily result in an excess recovery (let alone a ''double'' recovery) for the operator.

19. Moreover, we believe that any potential excess recovery generally will be minimal. Based on what cable operators in a competitive environment are able to charge subscribers for the addition of a new channel, our ''going forward'' order allows operators to charge a subscriber $0.20 a month for an additional channel. We expect, however, that operators will recover less than $0.20 for a new leased access channel because we believe that, on average, subscribers will not be willing to pay as much for new leased access programming as they do for new programming selected by the cable operator. In selecting its own programming, a cable operator is able to take into account the particular mix of programming already on its system and the particular interests and demands of its subscribership. Thus, unlike with leased access, the operator can select programming that will maximize net subscriber revenue.

20. Additional factors are likely to further reduce any potential excess recovery. For one, the ''going forward'' rate is based on what operators can charge subscribers when new channels are added without displacing existing programming. Therefore, if leased access programming displaces existing programming, any amount of subscriber revenue that an operator gains from a leased access channel may be offset by subscriber revenue lost from the displaced channel. In addition, we believe that subscriber revenue from a leased access channel will be further offset by lost advertising revenues since leased access programmers, unlike other programmers, generally will not provide advertising slots to the cable operator. Subscriber revenue will also be offset by additional administrative costs imposed by leasing, which are not recovered through the average implicit fee formula. For all of the above reasons, we believe that any excess recovery for a leased access channel will be significantly less than the $0.20 that an operator is allowed to charge subscribers for a new channel.

21. Although we no longer believe that our ''double recovery'' concern was a valid reason for rejecting the highest implicit fee formula, we nonetheless believe that the average implicit fee formula is a more appropriate method for determining the maximum leased access rate. First, as discussed above, the average implicit fee is based on a more logical calculation than the highest implicit fee, because it is derived from values that can be measured—subscriber revenue for the tier(s) and programming costs for the tier(s)—to arrive at an average amount of subscriber revenue that programmers cede to the operator in exchange for carriage. The highest implicit fee formula, by contrast, attempts to measure the implicit fee of a particular channel by using one verifiable figure (the actual programming cost) and one proxy (the average per channel subscriber revenue), since the actual amount that subscribers pay for any particular channel on a tier cannot be determined. Second, the average implicit fee mitigates our previous concern that the highest implicit fee may overcompensate operators by permitting them to charge the highest mark-up over programming costs (i.e., the highest of the implicit fees). While the average implicit fee formula does not allow the operator to recover its highest mark-up over programming costs, it also does not restrict the operator to charging the lowest mark-up over programming costs. Although we stated in the Rate Order that using the highest market value of channel capacity is fair, we believe that basing the maximum rate on the average mark-up over programming costs more appropriately balances the interests of cable operators and leased access programmers.

22. Third, we also expressed concern in the Reconsideration Order that an implicit fee formula is not based on the operator's reasonable costs. We now believe, however, that an implicit fee formula may better reflect the value of the channel capacity, since a formula based strictly on quantifiable costs cannot account for lost subscriber revenue and therefore may not adequately compensate the operator. Given that the maximum rate should not adversely affect the operation, financial condition or market development of the cable system, it is entirely appropriate to consider these non-quantifiable costs, such as any negative effects leased access programming may have on the value of the tier, in establishing the market value of a channel.

23. We also made a few other changes to the manner in which the maximum leased access rate is calculated for tiered channels. First, we departed from the current rule requiring rate calculations to be made on a tier-by-tier basis. As described below, we have determined that leased access programmers have the right to demand access to a tier with more than 50% subscriber penetration. We believe that subscribers generally perceive these highly penetrated tiers as a single programming package, not as separate products. Consistent with this view, we believe that operators should calculate the average implicit fee using all channels carried on any tier with more than 50% subscriber penetration. In addition, our rate regulation rules generally are based on the principle of tier neutrality, which requires cable operators to charge the same per channel rate regardless of the programming costs incurred on a particular tier. Prior to rate regulation, we believe that tier prices did not necessarily follow this tier neutrality principle. Similarly, because the Communications Act requires cable operators to transmit must-carry and public, educational, and governmental (''PEG'') access channels on the basic service tier, the average programming cost on that tier will tend to be lower than it would be absent such a carriage requirement. Since, as a result of

regulation, individual tier prices may not be directly correlated with their underlying programming costs, we believe that it is appropriate to permit cable operators to assess these costs more accurately by averaging across highly penetrated tiers.

24. Second, we believe that the maximum rate calculation should no longer exclude channels devoted to must-carry broadcast signals or PEG access programming. In the Reconsideration Order, we stated that must-carry and PEG access channels should be excluded from consideration because the lack of program license fees for those channels does not represent a marketplace decision, but is the result of statutory mandates. Under the highest implicit fee approach, the inclusion of channels with zero license fees, such as must-carry and PEG access channels, would virtually ensure that every cable system had a commensurately high leased access rate. Now, with the average implicit fee formula, because all of the programming costs are averaged together, it is appropriate to include must-carry and PEG access channels in calculating the maximum leased access rate. Although the lack of programming costs for these channels makes it inappropriate to use them as the sole determinant of maximum rates, these channels are relevant to a calculation that is based on the value of the relevant tier(s). Since the average implicit fee is derived from the total value of the tier(s) being considered, it is appropriate to account for the effect of all of the channels on the tier(s). Moreover, as with all individual channels on a tier, it would not be possible to ascertain how much the total subscriber revenue for the tier should be reduced if must-carry and PEG access channels were excluded.

25. For the same reason we also concluded that the maximum rate calculation should no longer exclude channels devoted to affiliated programming. In the Rate Order, we determined that affiliated programming should not be considered in determining the highest implicit fee because to do so could affect the operator's right to charge affiliated and unaffiliated programmers different rates. However, in addition to the necessity of including all channels on the relevant tier(s) in an average implicit fee calculation, we believe that requiring cable operators to base an implicit fee calculation only on unaffiliated programming may inappropriately result in different maximum leased access rates for systems that are identical but for their affiliation with certain programmers. We believe that adopting a standard similar to that adopted with regard to our affiliate transaction rules will resolve this disparity without interfering with the operator's right to establish different rates for affiliated and unaffiliated programmers. We therefore modified our rules to require that, in calculating the average implicit fee, operators must use programming costs for affiliated programming that reflect the prevailing company prices offered in the marketplace to third parties. If a prevailing company price does not exist, the programming should be priced at the lower of the programmer's cost or the fair market value. Because these objective measurements are based on factors outside affiliated transactions, the requirement to use them as proxies for the actual programming costs does not conflict with our conclusion in the Rate Order that the Commission is precluded from establishing rates based on transactions with affiliates.

26. Finally, we eliminated our current programmer categories for determining maximum rates for leased access programming that is carried on a tier. In the Rate Order, the Commission stated that the programmer categories were intended to reflect the different economies faced by the different types of programmers. We now believe, however, that basing maximum rates on the average value of the channel capacity is a more appropriate approach to implementing section 612 than making distinctions based on the different economies among leased access programmers. For this reason, and also because an average implicit fee calculation must include all channels on the relevant tier(s), we abolished the mandatory distinction between the rate charged to direct sales programmers and ''all others.'' Therefore, all leased access programmers carried on a cable system's tier will be subject to the same maximum rate, which will be derived using all channels on the relevant tier(s), including channels devoted to direct sales programming (e.g., home shopping networks and infomercials). As described below, cable operators will still be required to calculate different rates for programming services sold on a per-channel, or a la carte, basis. We will maintain the distinction between leased access programming carried on a tier and leased access programming offered as an a la carte service, not because of their ''different economies,'' but because of the practical differences involved in implementing a maximum leased access rate for a la carte services.

iii. Maximum Rate for Full-Time Leased Access Programming Carried as an A La Carte Service

27. Despite our conclusion that the average implicit fee formula is the appropriate method for setting maximum reasonable rates for leased access programming carried on a tier, we concluded that the highest implicit fee formula remains the best approach for setting maximum reasonable rates for leased access programming offered to subscribers as an a la carte service. Because the subscriber revenue for an a la carte service is known, an a la carte programmer can readily determine how much it is implicitly paying the operator for carriage. If an unaffiliated a la carte programmer is implicitly paying more than the maximum leased access rate for carriage, the a la carte programmer could obtain a larger share of the subscriber revenue simply by demanding a lease. This potential disruption to operators' negotiated relationships with unaffiliated a la carte programmers could adversely impact the operation, financial condition, and market development of cable systems. The highest implicit fee for a la carte services protects operators from this potential adverse effect because, unlike the average implicit fee, it represents the maximum amount that any a la carte programmer is implicitly paying for carriage. The average implicit fee does not pose such a risk for tiered services because the actual subscriber revenue for individual channels is not known. Even if the actual subscriber revenue for a particular tiered service could be determined, a non-leased access programmer implicitly paying more than the average implicit fee would have little reason to switch to leased access because subscriber revenue is not passed through to leased access programmers that are carried on a tier. Non-leased access programmers that are carried on a tier are unlikely to switch from an arrangement where they receive a license fee to an arrangement where they pay the cable operator but receive no subscriber revenue.

28. In addition, because in the a la carte context we are able to determine the actual subscriber revenue derived from particular programming services, we do not need to use the average implicit fee formula. Moreover, there can be no ''double recovery'' in the a la carte context because any subscriber revenues for a leased access channel carried as an a la carte service are readily ascertainable and can be passed through to the leased access programmer. In order to protect against any over recovery, we modified our

rules to clarify that any subscriber revenue from an a la carte leased access service must be passed through to the leased access programmer. As with the average implicit fee, we require operators to include affiliated a la carte services in their highest implicit fee calculation using the rules described above for determining programming costs for affiliated programming. As discussed below, we also made one modification regarding the calculation of the highest implicit fee for a la carte programming services.

iv. Transition Period

29. We did not establish a transition period for implementing our revised rate formulas. In the Rate Order, the Commission clearly stated that ''the rules we adopt should be understood as a starting point that will need refinement both through the rulemaking process and as we address issues on a case-by-case basis.'' Thus, cable operators and non-leased access programmers have had ample notice that the rate formula was subject to change. Both operators and programmers alike understand that a reduction in the maximum rate could increase the demand for leased access, thereby increasing the possibility that bumping might occur. We believe that operators and programmers that negotiate to place non-leased access programming on a channel designated for leased access assume the risk that the programming might have to be bumped for a leased access programmer. Section 612 explicitly provides that operators may no longer use unused leased access capacity once a written agreement is obtained by a leased access programmer.

B. Part-Time Leased Access Programming and Maximum Part-Time Rates

30. Under the Commission's rules, cable operators are required to accommodate part-time leased access requests, but need not accommodate requests of less than one half hour. With respect to rates for part-time leased access programming, the Commission's rules permit cable operators to charge different time-of-day rates, provided that: (a) The total of the rates for a day's schedule (i.e., a 24-hour block) does not exceed the maximum rate for one day of a full-time leased access channel prorated evenly from the monthly rate; (b) the overall pattern of time-of-day rates is otherwise reasonable; and (c) the time-of-day rates are not intended to unreasonably limit leased access use. The Further NPRM sought comment on a cable operator's obligation to accommodate a part-time leased access programmer by opening a new channel for leased access use, and on the calculation of maximum rates for part-time use.

i. Accommodation of Requests for Part-Time Leased Access

31. As an initial matter, we affirmed our current rule requiring cable operators to lease time in half-hour increments. We recognize that part-time leasing is not expressly required by the statute, that it may impose additional administrative and other costs on cable operators, and that it may pose the risk of capacity being under-used. As noted above, if cable operators are not adequately compensated for their capacity, it may constitute a violation of Section 612. We also recognize, however, that the statute does not restrict leased access to full-time programming and that part-time programming currently represents a significant share of the leased access marketplace, thereby providing much of the competition and diversity of programming sources that Section 612 was intended to promote. Therefore, rather than permit cable operators to exclude part-time leased access programming, we permit cable operators to set reasonable limits on when and how part-time programming must be accommodated, as set forth below.

32. First, we affirmed the holding in *TV–24 Sarasota, Inc.* v. *Comcast*, 10 FCC Rcd 3512, 3518 (Cable Serv. Bur., Dec. 27, 1994) that a cable operator is not required to open an additional leased access channel if a programmer's request can be accommodated in a comparable time slot on an existing leased access channel. We believe that the comparability of time slots can be determined by a number of objective factors, such as day of the week, time of day, and audience share. We also adopted our tentative conclusion in the Further NPRM that a cable operator should not be required to make even a dark channel available for leased access, so long as the programmer's request can be accommodated in a comparable time slot on a programmed channel. In addition, we extended TV–24 Sarasota to permit a cable operator to accommodate a part-time leased access request by offering the programmer a comparable time slot on a channel otherwise carrying non-leased access programming.

33. Furthermore, we concluded that cable operators should not be required to open an additional channel for use by part-time leased access programmers until existing part-time leased access channels are substantially filled with leased access programming. For these purposes, we will consider a channel to be ''substantially filled'' with leased access programming if leased access programming occupies 75% or more of its programming day. In other words, cable operators do not have to open a second channel for part-time use until the first part-time channel has at least 18 hours of programming every day. Likewise, a third channel for part-time use does not have to be made available until the second channel has at least 18 hours of programming every day, and so on.

34. Consistent with our tentative conclusion in the Further NPRM, we provide an exception to this rule and require operators to open an additional channel for part-time leased access use if a programmer (or collective) agrees to provide programming for a minimum of eight contiguous hours every day for at least one year. The programmer may select any eight-hour time period during the day, but the same eight hours must be used every day. Therefore, even if an operator has an existing part-time leased access channel that is not substantially filled with leased access programming, the operator must open an additional part-time leased access channel if it cannot otherwise accommodate a programmer's request for a year-long eight-hour daily time slot. Once an operator has opened a vacant channel to accommodate such a request, our other leased access rules apply. If, however, the operator has accommodated such a request on a channel already carrying an existing full-time non-leased access programmer, the operator does not have to accommodate other part-time requests of less than eight hours on that channel until all other existing part-time leased access channels are substantially filled with leased access programming.

35. Part-time programmers are permitted to seek access on a collective basis. If part-time programmers request an entire channel on a collective basis, the operator must provide the channel regardless of any unused capacity on part-time leased access channels because we would not consider that a request for part-time programming. Similarly, part-time programmers that individually cannot meet the year-long eight-hour daily time commitment may demand access as a group in order to satisfy the requirement. Allowing collective requests will not impose any further burden on cable operators since the same request could have been made by an individual programmer.

36. To summarize, we modified our rules regarding part-time leased access programming as follows. Cable operators may accommodate part-time

leased access requests by providing comparable time slots on non-leased access channels or on channels already being used for leased access on a part-time basis. Cable operators will not be required to make an additional channel available for part-time leased access use until all other part-time leased access channels have at least 18 hours of leased access programming every day. So long as an operator has at least one channel designated for part-time leased access use that is not substantially filled by part-time programmers, the operator will not be required to open another part-time channel even if comparable time slots are no longer available on the part-time channel that is only partially programmed. However, if a leased access programmer (or collective) agrees, at a minimum, to provide programming during the same eight-hour time slot every day for at least one year, an operator will be required to accommodate the request even if an existing part-time leased access channel is not substantially filled with leased access programming. We believe that this approach achieves the statutory objectives of competition and diversity of programming sources, while doing so in a manner consistent with the growth and development of cable systems.

ii. Maximum Part-Time Rates

37. Because we did not adopt the proposed cost/market rate formula, and because the formulas for tiered and a la carte full-time services that we adopted are similar in kind to the existing approach for setting the maximum full-time leased access rate, we affirmed our decision to require that cable operators prorate their maximum full-time rate when determining their maximum permitted part-time rate, and to allow operators to adjust part-time rates according to time-of-day pricing. As we stated in the Reconsideration Order, we believe that this approach accounts for marketplace realities by recognizing that different time slots have different values, furthers the statutory goal of promoting a diversity of programming sources, and promotes the full use of leased access channels by making non-prime time slots less expensive than prime-time slots, and therefore more attractive, to programmers. Cable operators are permitted to recover any additional technical costs that are attributable to part-time leased access programming in accordance with the rules described below.

C. Resale of Leased Access Time

38. In the Further NPRM, we asked whether persons unaffiliated with the operator should be allowed to lease programming time from the operator and then sell it for a profit to other unaffiliated persons. In the Order, we concluded that resale of leased access capacity to persons unaffiliated with the operator should be permitted, subject to certain contractual conditions described below that a cable operator may reasonably impose, because we believe that resale can provide substantial benefits to leased access programmers without an adverse impact on cable operators. In particular, we believe that small and part-time programmers could benefit from resale. For instance, a reseller could bring together various part-time programmers to form a programming package for an entire channel. This service would not only relieve operators of much of the cost and burden of dealing with a large number of small programmers, but would be more efficient, since a reseller's business would be devoted to this goal while cable operators typically devote little or no staff to promoting leased access. We believe that resale may prove to be a crucial mechanism by which part-time programmers are able to obtain carriage.

39. To avoid discouraging cable operators from providing carriage to not-for-profit entities and others at reduced rates, we found that it would be a reasonable term or condition of carriage for a cable operator to provide that if the lessee resells its capacity, the lessee must start paying the operator at a rate which may be up to and including the maximum permissible rate. In addition, cable operators may provide in their leased access contracts that any sublessees are subject to the non-price terms and conditions that apply to the initial lessee. Finally, we noted that the cable operator's right to refuse to transmit programming containing obscenity or indecency applies to any leased access program or portion of a leased access program, regardless of whether the programmer purchased leased access capacity directly from the cable operator or through a reseller.

D. Tier and Channel Placement

40. Background: According to the legislative history of the 1992 amendments to Section 612, the purpose of leased access would be defeated if leased access programmers were placed on tiers that few subscribers access. The 1992 Senate Report states that ''[t]he FCC should ensure that [leased access] programmers are carried on channel locations that most subscribers actually use.'' It further states that ''it is vital that the FCC use its authority to ensure that these channels are a genuine outlet for programmers.'' In the Further NPRM, the Commission tentatively concluded that leased access programmers are entitled to placement either on the basic service tier (''BST'') or on the cable programming services tier (''CPST'') with the highest subscriber penetration, unless technical or other compelling reasons weigh against such placement. We reasoned that the BST and the CPST with the highest subscriber penetration qualify as ''genuine outlets'' because ''most subscribers actually use'' them. We sought comment on whether the term ''most subscribers'' should be interpreted to mean that any CPST that has a subscriber penetration of more than 50% should also qualify as a ''genuine outlet.''

41. Discussion: As stated in the Further NPRM, we believe that we must ensure a ''genuine outlet'' for leased access programming in order to further the statutory goals of competition in the delivery of video programming sources and diversity of programming sources. To that end, we affirmed our tentative conclusion that, absent a technical or other compelling reason, leased access programmers have the right to demand access to a tier that most subscribers actually use. Leased access programmers would not be assured access to most subscribers if cable operators were permitted to require leased access channels to be sold on an individual, or a la carte, basis.

42. Although we continue to believe that the BST and the CPST with the highest subscriber penetration qualify as genuine outlets, we do not think it is necessary to restrict the placement of leased access programming to only those tiers. We believe that any tier with a subscriber penetration over 50% should also qualify as a genuine outlet because it consists of channel locations that ''most subscribers actually use.'' Therefore, if a leased access programmer requests placement on a tier, we will allow the cable operator the flexibility to place the programming on any tier that has a subscriber penetration of more than 50%. We believe that this approach takes into account the ''legitimate need of the cable operator to market its product'' because it allows the operator to consider the marketing mix of different tiers. The record reflected that some commenters would favor placing leased access channels on a separate tier comprised primarily, if not exclusively, of leased access programming. We concluded that so long as such a tier has a subscriber penetration of more than 50%, the cable operator is not precluded from developing a tier that predominantly features leased access programming.

43. With regard to specific channel placement, we believe that the cable operator should have the discretion to select the channel location of a leased access channel, so long as the operator's choice is reasonable. Because a determination of reasonable channel placement will depend on the particular circumstances of a situation, we will evaluate these types of disputes on a case-by-case basis. We will take into consideration evidence that the operator deliberately interfered with potential viewership of the leased access programming in an effort to discourage continued carriage (e.g., by intentionally surrounding a leased access channel with dark channels or by frequently shifting its channel location without sufficient justification). Once a cable operator has provided leased access programmers with a genuine outlet, we do not believe it is necessary to interfere with that operator's ability to structure channel line-ups. Therefore, although a leased access programmer may demand access to a tier that has a subscribership of more than 50%, the cable operator is entitled to place the leased access programming on any reasonable channel location on any qualifying tier.

E. Minority and Educational Programmers

44. Background: Pursuant to section 612(i), a cable operator may substitute programming from a qualified minority or educational programming source for up to 33% of its designated leased access channels. In the Further NPRM, the Commission sought comment on whether leased access requirements regarding tier and channel placement should also apply to minority or educational programming that is used as a substitute for leased access programming. The Commission tentatively concluded that minority or educational programming should not qualify as a substitute for leased access programming unless it is carried on the BST or on a CPST that qualifies as a genuine outlet.

45. Discussion: Applying the same tier placement standard we adopted for leased access, we concluded that minority or educational programming will not qualify as a substitute for leased access programming unless it is carried on a tier that has a subscriber penetration of more than 50%. The cable operator may select which qualifying tier to use for the substituted programming. As we noted in the Further NPRM, neither the statute nor the legislative history specifically requires that most subscribers receive the substituted minority or educational programming. However, as we previously stated, the language of Section 612(i)(1) strongly suggests that Congress envisioned that any substituted minority or educational programming would be placed on the same channels that would have been used for leased access. Specifically, section 612(i)(1) states that ''a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity'' to provide minority or educational programming. Furthermore, to allow a more lenient standard for minority or educational programming could potentially diminish its value as a substitute for leased access programming. We therefore imposed the same tier and channel placement requirements on substitute minority or educational programming as we did on leased access programming.

F. Preferential Access

46. Background: In the Further NPRM, we asked whether preferential treatment for not-for-profit leased access programmers should be required to promote a diversity of programming sources. We sought comment on how to calculate preferential rates, if found to be necessary, and we asked whether cable operators should be required to give preferential access to not-for-profit programmers by setting aside a certain percentage of their leased access capacity for such use (e.g., 25%). Commenters were also invited to demonstrate with specific evidence why preferential treatment might be appropriate for certain types of for-profit programmers, such as low power television (''LPTV'') stations and minority and educational programmers.

47. Discussion: We do not believe that mandating preferential access or preferential rates for not-for-profit programmers, or any other class of programmers, is necessary or appropriate under Section 612. First, leased access is intended for ''commercial use,'' which the Communications Act defines as ''the provision of video programming, whether or not for profit.'' The fact that not-for-profit leased access programmers are defined as commercial users for purposes of leased access indicates that they should compete on equal terms with for-profit leased access programmers.

48. Second, we do not believe that requiring cable operators to offer preferential treatment to not-for-profit programmers is necessary to serve the statutory purposes of Section 612. Mandatory preferential treatment would not necessarily promote diversity since unaffiliated not-for-profit programming sources are not inherently more diverse than unaffiliated for-profit programming sources. In fact, mandatory preferential treatment could potentially conflict with the statutory directive that leased access rates not ''adversely affect the operation, financial condition, or market development of the cable system'' because a mandatory preferential rate below what the Commission has determined to be the maximum reasonable rate may be insufficient to compensate operators for leased access use. Third, not-for-profit status does not necessarily indicate a lack of financial resources. While we noted that Congress gave cable operators the flexibility to negotiate lower rates, we do not believe that operators' right to negotiate lower rates should be transformed into an obligation to provide affordable rates to not-for-profit leased access programmers.

49. We also declined to mandate preferential treatment for not-for-profit programmers that qualify as minority or educational programmers under Section 612(i)(2) or (3). Congress chose to encourage minority and educational programming by allowing it to be used as a substitute for leased access, regardless of its profit status. There is no evidence that Congress intended the Commission to create an additional mechanism to promote not-for-profit minority or educational programming through preferential rates and set-asides. Furthermore, we did not require cable operators to provide preferential treatment for LPTV stations or for educational and community programming services that public television stations may wish to offer in addition to their primary over-the-air signals. Congress provided public television stations and LPTV stations the preferences it deemed necessary.

G. Selection of Leased Access Programmers

50. In the Further NPRM, the Commission proposed rules to govern a cable operator's selection of leased access programmers. In the Order, we concluded that, so long as an operator's available leased access capacity is sufficient to satisfy the current demand for leased access, all leased access requests must be accommodated as expeditiously as possible, unless the operator refuses to transmit the programming because it contains obscenity or indecency. We believe that such an approach is the most appropriate method of assuring that cable operators comply with section 612(c)(2), which explicitly restricts operators' exercise of editorial control

over leased access programming. Section 612(c)(2) provides that ''a cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming,'' except in the case of programming containing obscenity or indecency, or to the minimum extent necessary to set a reasonable price. We believe that requiring operators to accommodate all leased access requests when the programming does not contain obscenity or indecency, so long as there is available capacity, will most effectively restrict operators' exercise of editorial control, without impinging upon their discretion with regard to price and sexually-oriented programming. We also believe that such an approach will further the statutory objective to promote competition because it will reduce an operator's ability to select leased access programming based on anti-competitive motives.

51. We believe, however, that an operator should be allowed to make objective, content-neutral selections from among leased access programmers when the operator's available leased access channel capacity is insufficient to accommodate all pending leased access requests. In the full-time channel context, this situation would arise if two or more leased access programmers requested the remaining available leased access space; in the part-time context, this situation could arise, for example, if two or more programmers requested the 8:00 p.m. to 9:00 p.m. time slot on the system's part-time leased access channel. In such situations, we believe that the cable operator should be allowed to make an objective, content-neutral selection among the competing programmers. For example, the operator could hold a lottery. Or, the operator could base its decision on other objective, content-neutral criteria such as a programmer's non-profit status, the amount of time a programmer is willing to lease, or a programmer's willingness to pay the highest reasonable price for the capacity at issue. Allowing flexibility within this limited context will better enable operators to assure the growth and development of their cable systems.

H. Procedures for Resolution of Disputes

52. We affirmed our proposal in the Further NPRM to streamline the complaint process by requiring that an independent accountant make a determination of the cable operator's maximum permitted rate prior to the filing of any complaint alleging that the operator's rate is unreasonable. We believe that such a requirement will preserve Commission resources by reducing the likelihood that unsubstantiated claims will be filed with the Commission. In the event that a complaint is filed with the Commission because the dispute remains unresolved despite the accountant's final report, there will be a rebuttable presumption that the accountant's findings are correct.

53. We did not adopt our proposal in the Further NPRM to allow the cable operator to select an independent accountant in the event that the operator and leased access programmer fail to agree on a mutually acceptable accountant. Such an approach may be unfair to the leased access programmer because it does not encourage the operator to find a mutually acceptable accountant. Instead, we required that if the parties cannot agree on a mutually acceptable accountant within five business days of the programmer's request for a review, they must each select an independent accountant on the sixth business day. These two accountants will then have five business days to select a third independent accountant to perform the review. To account for their more limited resources, operators of systems entitled to small system relief will have 14 business days to select an independent accountant when no agreement can be reached. A cable system is entitled to small system relief if it either: (a) serves 15,000 or fewer subscribers and is owned by a small cable company serving a total of 400,000 or fewer subscribers over all of its systems, or (b) has been granted special relief as provided for in the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, 60 FR 35854 (July 12, 1995) (''Small System Order''). The final accountant report must be completed within 60 days of when the final accountant is selected to perform the review. The Order amended the Commission's current rule requiring complaints to be filed within 60 days of the alleged violation to provide instead that complaints must be filed within 60 days of the completion of the final accountant report.

54. The operator must pay the full cost of the review if the final accountant report shows that the operator's rate exceeds the maximum permitted rate by more than a *de minimis* amount. Otherwise, each party will pay their own expenses incurred in making the review and will split the cost of the final accountant's review. We believe that this approach is appropriate because, unlike the leased access programmer, the cable operator possesses all the information necessary to calculate its rates accurately and knows, or should know, whether its rates are excessive.

55. The final accountant report should be filed in the cable system's local public file. In order for the information to serve as adequate notice to other potential leased access programmers, the final accountant report must, at a minimum, state the maximum permitted rate and explain, as fully as possible without revealing proprietary information, how it was determined. The report must be signed, dated, and certified by the accountant.

56. We strongly encourage parties to use ADR to settle disputes that are not resolved by the final accountant report. If parties attempt, but fail, to settle their dispute through ADR, we will make an exception to our requirement that complaints must be filed within 60 days of the completion of the final accountant report, provided that the leased access programmer certifies that its complaint was filed within 60 days of the termination of the ADR proceedings. The cable operator may rebut such a certification.

I. Contractual Issues

i. Minimum Contract Length

57. In response to the request of a few commenters that we address certain contractual issues that arise in the negotiation of leased access contracts, we found that the record before us was insufficient to determine what a reasonable minimum contract length would be. We recognize that the lack of long-term security could create difficulties for leased access programmers that need to obtain financing or to make long-term investments in leases and equipment. However, our rule that operators must accommodate all leased access requests so long as capacity exceeds demand guarantees that a leased access programmer will be assured of continued access at least until the operator's set-aside requirement is met. Operators are not allowed to terminate leased access contracts for simply any reason asserted by the cable operator. Termination provisions of leased access contracts must be commercially reasonable. Because we believe that this requirement affords leased access programmers adequate security, we declined to establish a minimum contract length.

58. Operators may not, however, unreasonably limit the length of a contract with a leased access programmer. In assessing reasonableness in this context, we will

weigh heavily the contract lengths that the operator enters into with the non-leased access programming services on its system.

ii. Insurance Requirements

59. At the outset, we noted that operators have the right to require reasonable liability insurance coverage for leased access programming. We declined to adopt specific conditions or limits regarding the amount of coverage or the type of insurance policy that operators may require because we believe that a specific restriction might not be appropriate for all situations. Instead, we adopted a standard comparable to the standard that applies in the context of security deposits for leased access programming. That is, insurance requirements must be reasonable in relation to the objective of the requirement. Cable operators will bear the burden of proof in establishing reasonableness. Similar to the rule for security deposits, insurance requirements may be sufficient to insure adequate coverage. Determinations of what is a ''reasonable'' insurance requirement will be based on the operator's practices with respect to insurance requirements imposed on non-leased access programmers, the likelihood that the nature of the leased access programming will pose a liability risk for the operator, previous instances of litigation arising from the leased access programming, and any other relevant factors.

J. Technical Equipment Costs

60. The Commission's rules provide that cable operators must provide ''the minimal level of technical support necessary for [leased access] users to present their material on the air * * * provided however, that leased access providers must reimburse operators for the reasonable cost of any technical support that operators actually provide.'' We clarified that this provision entitles cable operators to charge an additional fee only for the reasonable cost of providing technical support to a leased access programmer that is not also provided to non-leased access programmers on the system. Cable operators may not impose a separate charge for the same kind of technical support that they already provide to non-leased access programmers because the maximum leased access rate represents what non-leased access programmers implicitly pay for carriage, including their technical costs. In other words, the maximum leased access rate already includes technical costs common to all programmers. Similarly, the operator cannot impose an additional charge on the leased access programmer to purchase additional equipment (e.g., when the current equipment is fully utilized) if the same type of equipment is used to serve non-leased access programmers. For example, the operator cannot add a charge for the costs of providing a satellite dish if it provides that type of technical support to non-leased access programmers at no additional charge. In contrast, the operator is entitled to add a charge to recover the costs of providing, for instance, a tape recorder or a camera if such technical equipment would be provided to non-leased access programmers for the same additional charge. The operator may also charge the leased access programmer for the use of technical equipment that is provided at no charge for PEG access programming, provided that the franchise agreement requires the operator to provide the equipment, the equipment is not being used for any other non-leased access programming, and the operator's franchise agreement does not preclude such use.

61. If, in order to accommodate a leased access programmer, a cable operator must purchase technical equipment that is not of a type used by non-leased access programmers on the system, we believe that the operator should have the option of requiring the leased access programmer to pay the full purchase price of the equipment. Should the cable operator exercise this option, the leased access programmer will have all rights of ownership associated with the equipment under applicable state and local law. If, on the other hand, the operator prefers to own the technical equipment, it may purchase the equipment for itself and lease it to leased access programmers at a reasonable rate. We believe that this approach will protect leased access programmers, while assuring that the cable system's operation, financial condition or market development are not adversely affected.

K. Definition of Affiliate

62. For purposes of section 612, we adopted the definition of affiliate that applies in the context of our program access rules under section 628 and our open video system rules under section 653. As we do in those contexts, we apply the definitions contained in the notes to 47 CFR 76.501 (which reflect the broadcast attribution rules contained in the notes to 47 CFR 73.3555), with certain modifications. Specifically, in contrast to the broadcast attribution rules reflected in § 76.501: (a) An entity is considered a cable operator's affiliate if the cable operator holds 5% or more of the entity's stock, whether voting or non-voting; (b) there is no single majority shareholder exception; and (c) all limited partnership interests of 5% or greater qualify, regardless of insulation. In addition, actual working control, in whatever manner exercised, is also deemed a cognizable interest.

63. Section 612 is designed to promote diversity of programming sources and to reduce the ability of cable operators to discriminate against unaffiliated programming services for anti-competitive reasons. Because these dual objectives are analogous to the objectives of the program access and open video system rules, adoption of a similar affiliation standard is warranted. Moreover, by adopting a definition of affiliate for leased access that is consistent with the program access standard, we avoided the possibility that a programmer will be considered a cable operator's affiliate for one purpose but not for another.

64. We also clarified that leased access programmers are required to be unaffiliated only with the operator of the cable system on which they seek carriage. Section 612(b)(1) provides that leased access channel capacity shall be designated for use by programmers ''unaffiliated with the cable operator.'' We believe that use of the term ''the'' to modify ''cable operator'' clearly indicates that Congress was referring only to the cable operator of the particular system in question. We believe that if Congress feared that affiliated programmers have an advantage in acquiring carriage from even rival cable operators, it would have disqualified all affiliated programmers by using ''a'' or ''any'' to modify ''cable operator.'' Furthermore, allowing a broader category of programmers to use leased access will advance the statutory purposes of promoting competition and diversity.

III. Order on Reconsideration

A. Maximum Rate Formula

i. Exclusion of Programming Revenues

65. We declined to modify our current rule that programming revenues received by the operator from non-leased access programmers, such as sales commissions from home shopping networks, should be excluded from the maximum rate calculation. We found that the effect of excluding sales commissions on future maximum leased access rates will be minimal given that the Order: (a) Adopted the average implicit fee for tiered services which, unlike the highest implicit fee, is derived using all channels on the

relevant tier(s), and (b) eliminated direct sales programming as a separate category for setting rates. We therefore do not believe that excluding sales commissions will result in the migration of home shopping networks to leased access.

ii. Averaging Subscriber Penetration for A La Carte Channels

66. The Reconsideration Order clarified that in order to calculate the maximum rate when leased access programming is offered as an a la carte service, the highest per-subscriber implicit fee should be multiplied by the average number of subscribers that subscribe to the operator's a la carte services. As discussed above, we continue to permit cable operators to use the highest implicit fee formula to set maximum reasonable rates for leased access programming that is carried as an a la carte service. We believe, however, that it is most appropriate to require operators to determine on an aggregate basis for a single channel which of their a la carte services has the highest implicit fee. For example, if Channel A on a given cable system has a per-subscriber implicit fee of $1.00 and has 2000 subscribers, its aggregate implicit fee is $2000. If Channel B has a per-subscriber implicit fee of $1.50 and 1000 subscribers, its aggregate implicit fee is $1500. Of these channels, Channel A has the highest aggregate implicit fee even though it has a lower per-subscriber implicit fee than Channel B. Therefore, assuming these two channels are the only channels offered on an a la carte basis, the amount that is implicitly paid for Channel A would be the maximum rate that the operator may charge a leased access programmer that wishes to be carried as an a la carte service.

67. We believe that this formulation accurately represents the highest amount that a non-leased access programmer has agreed to implicitly pay the operator for carriage as an a la carte service. Thus, it will discourage existing a la carte services from migrating to leased access. Accordingly, on reconsideration, we concluded that operators should not be required to multiply the highest per-subscriber implicit fee by the average number of subscribers that subscribe to the operator's a la carte services. Instead, operators must determine which a la carte service has the highest implicit fee by comparing their implicit fees on an aggregate basis.

B. Provision of Initial Leased Access Information

i. Response Period

68. In the Reconsideration Order, we stated that our leased access complaint process had revealed that cable operators often did not provide rate information in a timely manner, despite our rule requiring a schedule of rates to be provided to prospective leased access programmers upon request. In order to facilitate the provision of such information to potential leased access programmers, we required an operator to provide the following information within seven business days of a request regarding leased access: (a) A complete schedule of the operator's full-time and part-time leased access rates; (b) how much of the cable operator's leased access set-aside capacity is available; (c) rates associated with technical and studio costs; and (d) if specifically requested, a sample leased access contract.

69. In the Order, we stressed our expectation that cable operators will respond to all leased access requests in a complete and timely manner. While we recognized the importance of prompt disclosure of the required information by cable operators, we nevertheless modified our rule to require operators to respond to a leased access request within 15 calendar days of the date the leased access programmer makes the request. Such an extension should insure that operators have a reasonable length of time to process leased access requests even when those requests are received through the mail. In order to provide more certainty regarding the date of a request, we also modified our rule to require that all requests for leased access be made in writing and specify the date they are sent to the operator. In addition, we allowed operators of systems subject to small system relief 30 calendar days from the date of a leased access request to provide the required information, rather than the 15 calendar days in which other operators must respond.

ii. Preconditions To Providing Initial Leased Access Information

70. Because we remain concerned that requests for programmer information will be used by operators to discourage leased access use, operators may not ask for any information before responding to a leased access request unless the information is necessary to prepare the required response. For instance, if a leased access request does not specify for which cable system access is sought, the cable operator may ask the programmer for this information because maximum rates are calculated on a per-system basis. On the other hand, information from the programmer regarding its tier preference is not necessary for the operator to provide the required information, since the operator may place a programmer demanding access to a tier on any tier with more than 50% subscriber penetration. In addition, operators are not entitled to inquire about the content of the programming before responding to a request because such information is not relevant to the required rate and capacity information.

71. We did, however, make an exception for systems subject to small system relief because their initial costs of providing this information may be higher than other systems. Therefore, we found that operators of systems subject to small system relief do not have to provide the required information until the leased access programmer supplies the following information: (a) Desired length of contract term, (b) time slot desired, (c) anticipated commencement date for carriage, and (d) the nature of the programming.

iii. Obligation To Provide Information Regarding the Amount of Available Leased Access Capacity

72. We declined to reconsider our requirement that cable operators provide potential leased access users with information about how much set-aside capacity is available on their systems. We believe that information concerning overall available channel capacity may be of use to a potential leased access programmer in deciding which cable system best meets its needs, particularly if the programmer wishes to lease more than one channel. Moreover, we do not believe that calculating a system's available leased access capacity is difficult, particularly with the clarifications of our rules regarding the methodology for calculating set-aside requirements. Finally, the additional time we granted cable operators to supply the information should make supplying the information less burdensome.

C. Time Increments

73. We declined to alter our current rule that operators are not required to accept leases that are for less than half-hour intervals. As noted above, part-time leased access programming provides much of the competition and diversity of programming sources that Section 612 was intended to promote. As we stated in the Reconsideration Order, the most common programming time increment is typically one-half to

one hour. We therefore continue to believe that permitting operators to exclude leased access programming seeking half-hour increments would unfairly deny access to a substantial number of potential programmers. Moreover, we believe that the rules we adopted regarding part-time use address any concerns that a half-hour minimum will cause excessive migration of current infomercial programming to leased access channels and will lead to excessive displacement of existing non-leased access programmers. We clarified that the leased access rate for a half-hour program must be prorated to reflect the length of the program (i.e., hourly rates cannot be charged for half-hour programs).

D. Calculation of Statutory Set-Aside Requirement

74. Section 612 requires a cable system to set aside up to 15% of its activated channels for leased access. For operators with 100 or fewer activated channels, the statutory set-aside requirements for leased access channels are expressed as a percentage of ''channels not otherwise required for use by federal law or regulation.'' We continue to believe that, when calculating its set-aside requirement, an operator must include channels carrying retransmission consent stations because such channels are not ''required by federal law or regulation.'' We clarified that channels which cannot be used due to technical and safety regulations of the federal government, such as aeronautical channels, should be excluded when calculating the set-aside requirement for cable systems that have 100 channels or less.

E. Billing and Collection Services

75. Section 612(c)(4)(A)(ii) grants the Commission the authority to establish reasonable terms and conditions for the billing of rates to subscribers and for the collection of revenue from subscribers for leased access channels. In the Rate Order, we required cable operators to provide billing and collection services to leased access programmers unless operators could demonstrate the existence of third-party billing and collection services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers. In both the Rate Order and the Reconsideration Order, we did not adopt specific rules regarding rates for such services. In the Order, we declined to modify our current rule or to establish specific rules relating to the rates that cable operators can charge for billing and collection services.

IV. Market Entry Analysis

76. We noted that section 257 of the Communications Act requires the Commission to complete a proceeding to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the telecommunications industry. The Commission is directed to promote a diversity of media voices and vigorous economic competition, among other things. We believe that the Order is consistent with the objectives of section 257 in that it establishes rates, terms, and conditions for leased access that are intended to promote diversity and competition. We also believe that our provisions for part-time leased access are especially suited to allow small or entrepreneurial leased access programmers to enter the telecommunications programming marketplace.

V. Final Regulatory Flexibility Analysis

77. 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 Further NPRM. The Commission sought written public comments on the proposals in the Further NPRM, including comments on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA, as amended.

A. Need for Action and Objectives of the Rule

78. Section 612 of the Communications Act requires the Commission to establish reasonable terms and conditions, including maximum reasonable rates, for leased access on cable systems. The purpose of the Order is to amend the Commission's rules regarding leased access, including the rules for calculating maximum reasonable rates. The statutory objectives of the leased access provisions are to promote competition in the delivery of diverse programming sources and to assure the widest possible diversity of programming sources in a manner that is consistent with the growth and development of cable systems.

B. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

79. In response to the IRFA, the Small Cable Business Association (''SCBA'') filed comments criticizing the Commission for failing to estimate the number of small cable systems and small cable operators that would be affected by the regulations proposed in the Further NPRM. SCBA argued that, as reflected in the Small System Order, the Commission has extensive data regarding the existence of small cable entities. SCBA also claimed the Commission neither sought specific comment regarding the impact of its proposals on small cable entities nor asked for alternatives. SCBA urged the Commission to adopt the alternatives for small cable systems that it has proposed in this proceeding. In its filings, SCBA raised the following issues and alternatives.

80. Information Collection Issues. SCBA argued that the Commission's seven business-day response time for providing leased access information imposes significant burdens on small cable systems. SCBA recommended that the Commission allow small system operators 30 days to provide a written response stating whether unused leased access capacity is available and 60 days to provide the remaining required information. SCBA also requested that the Commission allow small system operators to respond only to ''bona fide'' leased access requests.

81. Rate Issues. SCBA argued that the Commission's proposed cost/market rate formula would not adequately compensate small system operators for the following reasons:

(a) Full-Time Rates. SCBA contended that because small system operators often receive no advertising revenues, the Commission's cost/market rate formula could result in leased access rates of zero or less. Among other things, SCBA suggested that the Commission revise the proposed formula to allow small system operators to recover all operating costs reflected on FCC Form 1230, instead of using subscriber revenue as a surrogate for such costs. Alternatively, SCBA proposed allowing operators of small systems to charge market rates for all leased access programmers regardless of demand, particularly if the party requesting access is affiliated with the provider of a competing multi-channel video programming service.

(b) Part-Time Rates. SCBA argued that if the full-time rate under the proposed cost/market rate formula is prorated, the per hour or half-hour rates for small systems would be lower than advertising rates, which would create a flood of requests for part-time leased access.

(c) Transaction Costs. SCBA contended that leased access contracts create higher transaction costs than other programming contracts because leased access agreements are negotiated

more frequently and must be negotiated on a system-by-system basis. SCBA proposed that the Commission remedy this problem for small system operators by allowing them to include an additional amount of at least $1,000 in their leased access rate calculations.

(d) Technical Costs. SCBA argued that additional headend equipment used to add leased access channels will result in high per-subscriber costs for small systems. SCBA proposed that the Commission allow small system operators to charge leased access programmers for all technology costs related to leased access.

(e) Transition Period. SCBA argued that the Commission should phase in leased access obligations for small cable systems to avoid the disruption to current programming line-ups that the proposed cost/market rate formula would create.

(f) Advance Channel Designations. The Further NPRM proposed that a cable operator must place in its public file a list of the specific channels it intends to use for leased access programming. SCBA argued that small system operators should only be required to provide the required leased access information following receipt of a ''bona fide'' request.

82. In reviewing the record before us, we identified issues that may impact small leased access programmers, such as maximum rate calculations, part-time use of leased access, resale, tier and channel placement, preferential access, dispute resolution procedures, certain contractual issues, technical equipment costs, and the definition of affiliate. The Order addressed comments from leased access programmers regarding these issues.

C. Description and Estimate of the Number of Small Entities Impacted

83. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' and the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one which: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (''SBA''). The rules we adopted in the Order will affect cable systems and cable programmers.

84. Cable Systems: The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. While this definition includes small cable entities, it also includes closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. Thus, the definition includes many small entities that will not be directly impacted by our leased access rules. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. We noted that not only does this estimate include small entities other than small cable entities, but the majority of the small cable systems included within this estimate have less than 36 channels and therefore are not subject to the Commission's leased access regulations. We therefore estimated that, based on the SBA definition, the number of small cable entities likely to be impacted by our rules will be significantly less than 1,423 entities.

85. The Commission has developed its own definition of a small cable system for purposes of rate regulation. Under the Commission's rules, cable systems serving fewer than 15,000 subscribers are considered small systems, and small systems owned by small cable companies serving fewer than 400,000 subscribers nationwide are entitled to small system relief. This definition is both broader and narrower than that of the SBA. The definition is broader in that it includes larger cable systems than the SBA definition. It is narrower in that, unlike the SBA definition, it does not include closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, or subscription television services. Our most recent information indicates that, under the Commission's definition, there were 1,439 systems entitled to small system relief at the end of 1995. Of these systems, we estimated that approximately 614 systems offer more than 36 channels, and thus are subject to our leased access rules.

86. Section 623(m)(2) of the Communications Act defines a small cable system 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.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we found that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we were unable to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

87. Cable Programmers: We anticipate that both small leased access programmers and small non-leased access programmers may be impacted by our leased access rules. The Commission has not developed a definition of small entities applicable to producers or distributors of cable television programs. Therefore, we utilized the SBA classifications of Motion Picture and Video Tape Production (SIC 7812), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the cable television programming industry is an entity with $21.5 million or less in annual receipts for SIC 7812, and $5 million or less in annual receipts for SIC 7922. Census Bureau data indicate the following: (a) There were 7,265 firms in the United States classified as Motion Picture and Video Production (SIC 7812), and that 6,987 of these firms had $16.999 million or less in annual receipts and 7,002 of these firms had $24.999 million or less in annual receipts; and (b) there were 5,671 firms in the United States classified as Theatrical Producers and Services (SIC 7922), and that 5,627 of these firms had $4.999 million or less in annual receipts.

88. Each of these SIC categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated. Thus, we estimated that our rules may affect approximately 6,987 small entities that produce and distribute taped cable

television programs and 5,627 small producers of live programs. In addition, as of May 31, 1996, there were 1,880 LPTV stations that may also be affected by our rules.

D. Reporting, Recordkeeping, and Other Compliance Requirements

This section specifies the reporting, recordkeeping and other related requirements of the regulations adopted, amended, modified, or clarified in the Order.

89. Maximum Rate Calculations: Operators of cable systems subject to leased access requirements must calculate their maximum leased access rates in accordance with the rate formulas we have established. We do not believe that operators will need additional professional skills to perform these calculations.

90. Accountant Reports: A final accountant report that is completed as a result of a dispute concerning an operator's rate calculations must be filed in the operator's local public file.

91. Provision of Initial Leased Access Information: Within 15 calendar days of a leased access request, cable operators are required to provide the following types of information: (a) A complete schedule of the operator's full-time and part-time leased access rates, (b) how much of the cable operator's leased access set-aside capacity is available, (c) rates associated with technical and studio costs, and (d) if specifically requested, a sample leased access contract. An exception is provided for operators of systems entitled to small system relief, which are allowed 30 calendar days to provide the required information. In addition, these operators are not required to respond to a leased access request if the programmer does not provide the following information: (a) Desired length of contract term, (b) time slot desired, (c) anticipated commencement date for carriage, and (d) the nature of the programming.

92. Requirements for Leased Access Requests: Leased access requests must be made in writing and must specify the date the request was sent to the operator.

E. Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With the Stated Objectives

This section analyzes the impact on small entities of the regulations adopted, amended, modified, or clarified in the Order.

93. Information Collection Issues. We allow operators of systems entitled to small system relief to respond to leased access requests within 30 calendar days, instead of the 15 calendar days required of other operators. In addition, we do not require these operators to respond to leased access requests unless the programmer provides the following information: (a) Desired length of contract term, (b) time slot desired, (c) anticipated commencement date for carriage, and (d) the nature of the programming. These modifications to the Commission's rules should mitigate any disproportionate burdens that responding to a leased access request may create for small system operators.

94. Rate Issues. We do not believe that either full-time or part-time rates under our maximum rate formula will impose disproportionate burdens on small system operators. When calculated for a particular cable system, both the average implicit fee (for tiered services) and the highest implicit fee (for a la carte services) represent what current non-leased access programmers are implicitly paying for carriage on that system. Because the maximum rates under an implicit fee formula are tailored to each individual system, we disagreed with SCBA that small system operators should be allowed to charge market prices. For the following reasons, we also disagreed with SCBA's various other proposals to modify the maximum rate formula for small systems.

(a) Transaction Costs. We did not agree with SCBA that small system operators should be allowed to include in their rates an additional sum of at least $1,000 as compensation for transaction costs imposed by leased access because, as discussed above, we believe that the recovery that operators may gain from subscriber revenue for leased access programming will sufficiently offset any additional transaction costs.

(b) Technical Costs. We declined to adopt modified rules for small system operators regarding the recovery of technical costs associated with leased access. We do not believe that there will be a disproportionate impact on small system operators because our rules enable them to recover technical costs that are specific to leasing.

(c) Transition Period. SCBA argued that the Commission should phase in leased access obligations for small cable systems in order to minimize the displacement of existing programming services. In light of our adoption of the average implicit fee methodology and our accommodations of the special needs of small systems, we concluded that a transition period was unnecessary.

(d) Advance Channel Designations. SCBA argued that the Commission should not require small system operators to publicly file a list of their designated leased access channels. The Commission did not adopt such a requirement for any cable systems.

95. Dispute Resolution Procedures. To account for their more limited resources, we allow operators of systems entitled to small system relief 14 business days to select an independent accountant when an operator and a leased access programmer fail to agree on a mutually acceptable accountant to review the operator's rate calculations in the case of a dispute. The general rule is that the parties must each select an independent accountant on the sixth business day if they cannot agree on a mutually acceptable accountant within five business days of the programmer's request for a review.

96. Impact on Cable Programmers. Leased access may impact existing programmers to the extent that operators displace them in order to accommodate leased access requests. However, we believe that displacement of existing programmers is inherent in section 612(b)(4), which provides that a cable operator may no longer use unused leased access capacity once a written agreement is obtained by a leased access programmer. In addition, since it is within an operator's discretion to select which non-leased access programmers to carry (aside from must-carry and PEG access channels), our rules do not create a disproportionate impact on small non-leased access programmers. With respect to small leased access programmers, we believe that the impact of our revised rules generally will be positive, particularly since our rules will result in lower maximum rates for tiered services, permit resale, grant access to highly penetrated tiers, and require part-time rates to be prorated without a surcharge. Although permissible costs for insurance policies, technical equipment, and accountant reviews of rate calculations may impose a burden on small leased access programmers, we believe that such impacts are the normal costs of being a leased access programmer, and that no modifications are warranted.

F. Report to Congress

97. The Commission will send a copy of this Final Regulatory Flexibility Analysis, along with the 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).

VI. Ordering Clauses

98. Accordingly, *it is ordered* that, pursuant to the authority granted in sections 4(i), 4(j), and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 532, the Petitions for Reconsideration in CS Docket No. 96–60 are *Granted in part* and *denied in part,* as provided herein.

99. *It is further ordered* that, pursuant to the authority granted in Sections 4(i), 4(j), and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 532, Part 76 of the Commission's rules *is hereby amended* as indicated below. The amendments to 47 CFR 76.970 (a), (b), (i), 76.971 (a), (c), (d), (g), (h), and 76.977(a) shall become effective April 11, 1997. The amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), and 76.975 (b) and (c), which impose information collection requirements, shall become effective upon approval by the Office of Management and Budget (OMB), but no sooner than April 11, 1997. The Commission will publish a document at a later date establishing the effective date for the sections containing information collection requirements.

100. *It is further ordered* that the Secretary shall send a copy of this 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 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

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

PART 76—CABLE TELEVISION SERVICE

1. 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.

2. Section 76.970 is amended by adding a last sentence to paragraph (a), revising paragraphs (b), (c), (d), (e) and (f), and adding new paragraphs (g), (h) and (i) to read as follows:

§ 76.970 Commercial leased access rates.

(a) * * * For cable systems with 100 or fewer channels, channels that cannot be used due to technical and safety regulations of the Federal Government (e.g., aeronautical channels) shall be excluded when calculating the set-aside requirement.

(b) In determining whether a party is an ''affiliate'' for purposes of commercial leased access, the definitions contained in the notes to § 76.501 shall be used, provided, however, that the single majority shareholder provision of Note 2(b) to § 76.501 and the limited partner insulation provisions of Note 2(g) to § 76.501 shall not apply, and the provisions of Note 2(a) to § 76.501 regarding five (5) percent interest shall include all voting or nonvoting stock or limited partnership equity interest of five (5) percent or more. Actual working control, in whatever manner exercised, shall also be deemed a cognizable interest.

(c) The maximum commercial leased access rate that a cable operator may charge for full-time channel placement on a tier exceeding a subscriber penetration of 50 percent is the average implicit fee for full-time channel placement on all such tier(s).

(d) The average implicit fee identified in paragraph (c) of this section for a full-time channel on a tier with a subscriber penetration over 50 percent shall be calculated by first calculating the total amount the operator receives in subscriber revenue per month for the programming on all such tier(s), and then subtracting the total amount it pays in programming costs per month for such tier(s) (the ''total implicit fee calculation''). A weighting scheme that accounts for differences in the number of subscribers and channels on all such tier(s) must be used to determine how much of the total implicit fee calculation will be recovered from any particular tier. The weighting scheme is determined in two steps. First, the number of subscribers is multiplied by the number of channels (the result is the number of ''subscriber-channels'') on each tier with subscriber penetration over 50 percent. For instance, a tier with 10 channels and 1,000 subscribers would have a total of 10,000 subscriber-channels. Second, the subscriber-channels on each of these tiers is divided by the total subscriber-channels on all such tiers. Given the percent of subscriber-channels for the particular tier, the implicit fee for the tier is computed by multiplying the subscriber-channel percentage for the tier by the total implicit fee calculation. Finally, to calculate the average implicit fee per channel, the implicit fee for the tier must be divided by the corresponding number of channels on the tier. The final result is the maximum rate per month that the operator may charge the leased access programmer for a full-time channel on that particular tier. The average implicit fee shall be calculated by using all channels carried on any tier exceeding 50 percent subscriber penetration (including channels devoted to affiliated programming, must-carry and public, educational and government access channels). In the event of an agreement to lease capacity on a tier with less than 50 percent penetration, the average implicit fee should be determined on the basis of subscriber revenues and programming costs for that tier alone. The license fees for affiliated channels used in determining the average implicit fee shall reflect the prevailing company prices offered in the marketplace to third parties. If a prevailing company price does not exist, the license fee for that programming shall be priced at the programmer's cost or the fair market value, whichever is lower. The average implicit fee shall be based on contracts in effect in the previous calendar year. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services).

(e) The maximum commercial leased access rate that a cable operator may charge for full-time channel placement as an a la carte service is the highest implicit fee on an aggregate basis for full-time channel placement as an a la carte service.

(f) The highest implicit fee on an aggregate basis for full-time channel placement as an a la carte service shall be calculated by first determining the total amount received by the operator in subscriber revenue per month for each non-leased access a la carte channel on its system (including affiliated a la carte channels) and deducting the total amount paid by the operator in programming costs (including license and copyright fees) per month for programming on such individual channels. This calculation will result in implicit fees determined on an aggregate basis, and the highest of these implicit fees shall be the maximum rate per month that the operator may charge the leased access programmer for placement as a full-time a la carte channel. The license fees for affiliated channels used in determining the highest implicit fee shall reflect the prevailing company prices offered in the marketplace to third parties. If a prevailing company

price does not exist, the license fee for that programming shall be priced at the programmer's cost or the fair market value, whichever is lower. The highest implicit fee shall be based on contracts in effect in the previous calendar year. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services). Any subscriber revenue received by a cable operator for an a la carte leased access service shall be passed through to the leased access programmer.

(g) The maximum commercial leased access rate that a cable operator may charge for part-time channel placement shall be determined by either prorating the maximum full-time rate uniformly, or by developing a schedule of and applying different rates for different times of the day, provided that the total of the rates for a 24-hour period does not exceed the maximum daily leased access rate.

(h)(1) Cable system operators shall provide prospective leased access programmers with the following information within 15 calendar days of the date on which a request for leased access information is made:

(i) How much of the operator's leased access set-aside capacity is available;

(ii) A complete schedule of the operator's full-time and part-time leased access rates;

(iii) Rates associated with technical and studio costs; and

(iv) If specifically requested, a sample leased access contract.

(2) Operators of systems subject to small system relief shall provide the information required in paragraph (h)(1) of this section within 30 calendar days of a bona fide request from a prospective leased access programmer. For these purposes, systems subject to small system relief are systems that either:

(i) Qualify as small systems under § 76.901(c) and are owned by a small cable company as defined under § 76.901(e); or

(ii) Have been granted special relief.

(3) Bona fide requests, as used in this section, are defined as requests from potential leased access programmers that have provided the following information:

(i) The desired length of a contract term;

(ii) The time slot desired;

(iii) The anticipated commencement date for carriage; and

(iv) The nature of the programming.

(4) All requests for leased access must be made in writing and must specify the date on which the request was sent to the operator.

(5) Operators shall maintain, for Commission inspection, sufficient supporting documentation to justify the scheduled rates, including supporting contracts, calculations of the implicit fees, and justifications for all adjustments.

(i) Cable operators are permitted to negotiate rates below the maximum rates permitted in paragraphs (c) through (g) of this section.

3. Section 76.971 is amended by revising paragraphs (a), (c), (f)(1) and (g), adding two sentences to the end of paragraph (d), and adding new paragraph (h) to read as follows:

§ 76.971 Commercial leased access terms and conditions.

(a) (1) Cable operators shall place leased access programmers that request access to a tier actually used by most subscribers on any tier that has a subscriber penetration of more than 50 percent, unless there are technical or other compelling reasons for denying access to such tiers.

(2) Cable operators shall be permitted to make reasonable selections when placing leased access channels at specific channel locations. The Commission will evaluate disputes involving channel placement on a case-by-case basis and will consider any evidence that an operator has acted unreasonably in this regard.

(3) On systems with available leased access capacity sufficient to satisfy current leased access demand, cable operators shall be required to accommodate as expeditiously as possible all leased access requests for programming that is not obscene or indecent. On systems with insufficient available leased access capacity to satisfy current leased access demand, cable operators shall be permitted to select from among leased access programmers using objective, content-neutral criteria.

(4) Cable operators that have not satisfied their statutory leased access requirements shall accommodate part-time leased access requests as set forth in this paragraph. Cable operators shall not be required to accept leases for less than one half-hour of programming. Cable operators may accommodate part-time leased access requests by opening additional channels for part-time use or providing comparable time slots on channels currently carrying leased or non-leased access programming. The comparability of time slots shall be determined by objective factors such as day of the week, time of day, and audience share. A cable operator that is unable to provide a comparable time slot to accommodate a part-time programming request shall be required to open an additional channel for part-time use unless such operator has at least one channel designated for part-time leased access use that is programmed with less than 18 hours of part-time leased access programming every day. However, regardless of the availability of partially programmed part-time leased access channels, a cable operator shall be required to open an additional channel to accommodate any request for part-time leased access for at least eight contiguous hours, for the same time period every day, for at least a year. Once an operator has opened a vacant channel to accommodate such a request, our other leased access rules apply. If, however, the operator has accommodated such a request on a channel already carrying an existing full-time non-leased access programmer, the operator does not have to accommodate other part-time requests of less than eight hours on that channel until all other existing part-time leased access channels are substantially filled with leased access programming.

* * * * *

(c) Cable operators are required to provide unaffiliated leased access users the minimal level of technical support necessary for users to present their material on the air, and may not unreasonably refuse to cooperate with a leased access user in order to prevent that user from obtaining channel capacity. Leased access users must reimburse operators for the reasonable cost of any technical support actually provided by the operator that is beyond that provided for non-leased access programmers on the system. A cable operator may charge leased access programmers for the use of technical equipment that is provided at no charge for public, educational and governmental access programming, provided that the operator's franchise agreement requires it to provide the equipment and does not preclude such use, and the equipment is not being used for any other non-leased access programming. Cable operators that are required to purchase technical equipment in order to accommodate a leased access programmer shall have the option of either requiring the leased access programmer to pay the full purchase price of the equipment, or purchasing the equipment and leasing it to the leased access programmer at a reasonable rate. Leased access programmers that are required to pay the full purchase price of additional equipment shall have all rights of

ownership associated with the equipment under applicable state and local law.

(d) * * * Cable operators may impose reasonable insurance requirements on leased access programmers. Cable operators shall bear the burden of proof in establishing reasonableness.

* * * * *

(f) (1) A cable operator shall provide billing and collection services for commercial leased access cable programmers, unless the operator demonstrates the existence of third party billing and collection services which in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers.

* * * * *

(g) Cable operators shall not unreasonably limit the length of leased access contracts. The termination provisions of leased access contracts shall be commercially reasonable and may not allow operators to terminate leased access contracts without a reasonable basis.

(h) Cable operators may not prohibit the resale of leased access capacity to persons unaffiliated with the operator, but may provide in their leased access contracts that any sublessees will be subject to the non-price terms and conditions that apply to the initial lessee, and that, if the capacity is resold, the rate for the capacity shall be the maximum permissible rate.

4. Section 76.975 is amended by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 76.975 Commercial leased access dispute resolution.

* * * * *

(b) (1) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the provisions of Title VI of the Communications Act, or our implementing regulations, §§ 76.970 and 76.971, may file a petition for relief with the Commission. Persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a petition for relief with the Commission.

(2) Parties to a dispute over leased access rates shall have five business days to agree on a mutually acceptable accountant from the date on which the programmer provides the cable operator with a written request for a review of its leased access rates. Parties that fail to agree on a mutually acceptable accountant within five business days of the programmer's request for a review shall each be required to select an independent accountant on the sixth business day. The two accountants selected shall have five business days to select a third independent accountant to perform the review. Operators of systems subject to small system relief shall have 14 business days to select an independent accountant when an agreement cannot be reached. For these purposes, systems subject to small system relief are systems that either:

(i) Qualify as small systems under § 76.901(c) and are owned by a small cable company as defined under § 76.901(e); or

(ii) Have been granted special relief.

(3) The final accountant's report must be completed within 60 days of the date on which the final accountant is selected to perform the review. The final accountant's report must, at a minimum, state the maximum permitted rate, and explain how it was determined without revealing proprietary information. The report must be signed, dated and certified by the accountant. The report shall be filed in the cable system's local public file.

(4) If the accountant's report indicates that the cable operator's leased access rate exceeds the maximum permitted rate by more than a *de minimis* amount, the cable operator shall be required to pay the full cost of the review. If the final accountant's report does not indicate that the cable operator's leased access rate exceeds the maximum permitted rate by more than a *de minimis* amount, each party shall be required to split the cost of the final accountant's review, and to pay its own expenses incurred in making the review.

(5) Parties may use alternative dispute resolution (ADR) processes to settle disputes that are not resolved by the final accountant's report.

(c) A petition must contain a concise statement of the facts constituting a violation of the statute or the Commission's Rules, the specific statute(s) or rule(s) violated, and certify that the petition was served on the cable operator. Where a petition is based on allegations that a cable operator's leased access rates are unreasonable, the petitioner must attach a copy of the final accountant's report. In proceedings before the Commission, there will be a rebuttable presumption that the final accountant's report is correct.

(d) Where a petition is not based on allegations that a cable operator's leased access rates are unreasonable, the petition must be filed within 60 days of the alleged violation. Where a petition is based on allegations that the cable operator's leased access rates are unreasonable, the petition must be filed within 60 days of the final accountant's report, or within 60 days of the termination of ADR proceedings. Aggrieved parties must certify that their petition was filed within 60 days of the termination of ADR proceedings in order to file a petition later than 60 days after completion of the final accountant's report. Cable operators may rebut such certifications.

(e) The cable operator or other respondent will have 30 days from the filing of the petition to file a response. If a leased access rate is disputed, the response must show that the rate charged is not higher than the maximum permitted rate for such leased access, and must be supported by the affidavit of a responsible company official. If, after a response is submitted, the staff finds a prima facie violation of our rules, the staff may require a respondent to produce additional information, or specify other procedures necessary for resolution of the proceeding.

* * * * *

5. Section 76.977 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 76.977 Minority and educational programming used in lieu of designated commercial leased access capacity.

(a) * * * The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this section may not exceed 33 percent of the channel capacity designated pursuant to 47 U.S.C. 532 and must be located on a tier with more than 50 percent subscriber penetration.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[(OST) Docket No. 1; Amdt. 1–284]

Organizations and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard and Administrator, Maritime Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule revises in part the delegations of Secretarial authority