

of programming in connection with implementation of these channel occupancy limits is not required by the 1992 Act and may result in unnecessary disruption of service to the public. We seek comment on this proposal and on whether these procedures are appropriate to ensure compliance with the channel occupancy limits.

## VII. PARTICIPATION IN PROGRAM PRODUCTION.

56. Section 11 of the 1992 Cable Act also requires the Commission to consider the necessity and appropriateness of imposing limitations on the degree to which multichannel video programming distributors ("multichannel distributors") may engage in the creation or production of video programming. Congress included this provision in response to the same concerns regarding vertical and horizontal integration discussed above. Thus, in considering whether such limits are necessary or appropriate, we must also consider the degree to which these concerns are already addressed by other rules and regulations established in the 1992 Cable Act.

57. As previously stated in this Notice, the 1992 Act mandates that the Commission establish certain structural limits on the development of horizontal and vertical integration in the cable industry. These limits are intended to promote diversity and to encourage competitive dealings between cable programming services and cable operators and between cable programming services and competing video distributors. Channel occupancy limits, in particular, restrict the ability and the incentive for cable operators to favor programming services in which they have an attributable interest. Such structural limits also limit the ability of operators or group of cable operators to impede the entry of new programming services.

58. In addition to the structural limits addressed in this proceeding, the 1992 Cable Act establishes certain behavioral restrictions which prohibit anticompetitive conduct by cable operators in the acquisition of programming. For example, Section 12 of the 1992 Cable Act prohibits cable operators from requiring either exclusive rights or a financial interest in programming services as a condition of carriage. Moreover, Section 12 of the 1992 Act prohibits cable operators from discriminating against unaffiliated programmers in the selection, terms and conditions of carriage.

59. In order to further encourage the development of competition and diversity in video programming distribution, Section 19 of the 1992 Act prohibits cable operators and programming vendors that are vertically integrated with cable operators from engaging in "unfair" or "deceptive" practices that would hinder competition in cable service and programming or inhibit delivery of programming to consumers. In addition, Section 19 directs the Commission to prescribe regulations to specify particular conduct that is prohibited in selling programming to cable systems or programming distributors. At minimum, the FCC regulations are to establish effective safeguards to prevent a cable operator with an attributable interest in a programming vendor from: (1) unduly or improperly influencing the vendor's decision to sell, or the prices or terms of sale of programming to an unaffiliated multichannel programming distributor; (2) discriminating in the

prices, terms, and conditions of sale or delivery of programming among or between cable systems, other multichannel video distributors, or their agents; and (3) establishing exclusive arrangements or contracts for programming. Section 19 also specifies several exceptions that could cause permissible differentials in prices and terms in selling or delivering programming, as well as considerations to permit exclusive contracts that are in the public interest for areas served by cable operators.

60. In view of the structural and behavioral restrictions already required under the 1992 Act, we seek comment on whether additional restrictions on the ability of Multichannel Distributors to engage in the creation or production of video programming are warranted. We believe that at the present time the objectives of such a restriction may be fully addressed by the other provisions of Section 11, Section 12, and Section 19 of the 1992 Cable Act. Commenters who believe that further restrictions are warranted should indicate what, if any, additional benefits would be achieved by imposing such additional restrictions and what effect they would have on the growth and development of new programming services.

## VIII. ADMINISTRATIVE MATTERS

### A. Regulatory Flexibility Analysis

61. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same deadlines as comments on the other sections of this Notice of Proposed Rule Making. However, such comments must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this Notice of Proposed Rule Making and regulatory flexibility analysis to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1981).

### B. Ex Parte

62. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 C.F.R. Sections 1.1202, 1.203. and 1.206(a).

### C. Comments

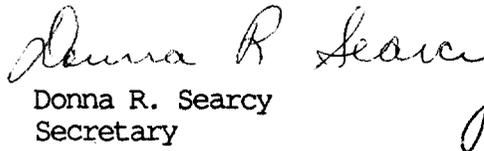
63. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before February 9, 1993 and reply

comments on or before March 3, 1993. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Additional Information

64. For additional information on this proceeding, contact Jacqueline Chorney, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

  
Donna R. Searcy  
Secretary

APPENDIX A

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds:

1. Reason for the Action: The purpose of this Notice is to establish rules and regulations in accordance with the Cable Television Consumer Protection and Competition Act of 1992 relating to the development of horizontal and vertical ownership limits and implementation of cross-ownership and Anti-trafficking provisions.

2. Objective of this Action: The 1992 Act and the subsequent actions to implement it are intended to encourage competition in the cable industry and prevent the exercise of undue market power by horizontally or vertically integrated cable systems. This action is meant to clarify and the interpretation and implementation of Sections 11 and 13 of the 1992 Act. This proceeding will codify the statutory anti-trafficking restriction and the cross-ownership restriction. This proceeding will also establish subscriber limits and channel occupancy limits required by the 1992 Act.

3. Legal Basis: Authority for the actions proposed in this Notice may be found in Sections 4, 303, 613 and 617 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303, 533 and 537.

4. Reporting, Record keeping, and Other Compliance Requirements Inherent in the Proposed Rule: This Notice proposes to implement new certification and filing requirements applicable to cable systems, in order to ensure compliance with the proposed rules.

5. Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule: None.

6. Description, Potential Impact and Number of Small Entities Involved: Approximately 11,000 existing cable systems of all sizes may be affected by the proposals contained in this Notice. In addition, an unknown number of video programming sources may be affected.

7. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: The purpose of this Notice is to seek comment on issues including alternatives that would minimize the impact on small entities.