This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1423 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.[760] We will address each service individually to provide a more succinct estimate of small entities.

277. *Cable Systems*: The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.[761] Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995.[762] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in this *Order*.

278. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% 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."[763] 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.[764] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450.[765] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time 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.

279. *MMDS*: The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more

[760]1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[761]47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. *Sixth Report and Order and Eleventh Order on Reconsideration* in MM Docket Nos. 92-266 and 93-215, FCC 95-196, 10 FCC Rcd 7393 (1995).

[762]Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[763]47 U.S.C. § 543(m)(2).

[764]47 C.F.R. § 76.1403(b).

[765]Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

than $40 million for the preceding three calendar years.[766] This definition of a small entity in the context of the Commission's *Report and Order* concerning MMDS auctions has been approved by the SBA.[767]

280. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We believe that there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

281. *ITFS*: There are presently 1,989 licensed educational ITFS stations and 97 licensed commercial ITFS stations. Educational institutions are included in the definition of a small business.[768] However, we do not collect annual revenue data for ITFS licensees and are unable to ascertain how many of the 97 commercial stations would be categorized as small under the SBA definition. Thus, we believe that at least 1,989 ITFS licensees are small businesses.

282. *DBS*: There are presently nine DBS licensees, some of which are not currently in operation. The Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

283. *HSD*: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by video service providers, of which 115 channels are scrambled and approximately 150 are unscrambled.[769] HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other video service providers; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing.

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[766] 47 C.F.R. § 21.961(b)(1).

[767] *See Report and Order* in MM Docket No. 94-31 and PP Docket No. 93-253, 10 FCC Rcd 9589 (1995).

[768] SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. § 601(5).

[769] *1996 Competition Report*, FCC 96-496, at para. 49.

Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.[770]

284. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers.[771] These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide.[772] This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

285. *OVS*: The Commission has certified nine OVS operators. Because these services were introduced so recently and only one operator is currently offering programming to our knowledge, little financial information is available. Bell Atlantic (certified for operation in Dover) and Metropolitan Fiber Systems ("MFS," certified for operation in Boston and New York) have sufficient revenues to assure us that they do not qualify as small business entities. Two other operators, Residential Communications Network ("RCN," certified for operation in New York) and RCN/BETG (certified for operation in Boston), are MFS affiliates and thus also fail to qualify as small business concerns. However, Digital Broadcasting Open Video Systems (a general partnership certified for operation in southern California), Urban Communications Transport Corp. (a corporation certified for operation in New York and Westchester), and Microwave Satellite Technologies, Inc. (a corporation owned solely by Frank T. Matarazzo and certified for operation in New York) are either just beginning or have not yet started operations. Accordingly, we believe that three OVS licensees may qualify as small business concerns.

286. *SMATVs*: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995.[773] Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996.[774] The ten largest SMATV operators together pass 815,740 units.[775] If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

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[770] *Id.*

[771] *Id.*

[772] *Id.*

[773] *Id.* at para. 81.

[774] *Id.*

[775] *Id.*

287. *LMDS*: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. An LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined above. A small radiotelephone entity is one with 1500 employees or less.[776] For the purposes of this proceeding, we include only an estimate of LMDS video service providers. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the *LMDS Second Report and Order*, we defined a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million.[777] We have not yet received approval by the SBA for this definition.

288. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. We tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

289. *MDU Operators*: The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings and dwellings other than apartment buildings, which include all such companies generating $5 million or less in revenue annually.[778] According to the Census Bureau, there were 26,960 operators of nonresidential buildings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992.[779] Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992.[780] The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

Reporting, Recordkeeping, and Other Compliance Requirements

290. *Disposition of MDU Home Run Wiring*: The *Order* requires MVPDs to comply with a set of procedural timetables for the disposition of home run wiring upon termination of service when an

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[776] 13 C.F.R. § 121.201.

[777] *Second Report and Order* in CC Docket No. 92-297, FCC 97-82 (released March 13, 1997).

[778] 13 C.F.R. § 121.601 (SIC 6512, SIC 6513, SIC 6514).

[779] 1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report, Table 4, SIC 6512 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[780] 1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report, Table 4, SIC 6513 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

MDU owner invokes the Commission's procedures. In addition, it requires MVPDs to include in future contracts with MDU owners a provision addressing the disposition of home run wiring upon the termination of the contract. It also requires the parties to cooperate to ensure as seamless a transition as possible for subscribers.

291. *Sharing of Molding*: The *Order* permits an MVPD to install home run wiring in an existing molding if the MDU owner determines that there is sufficient space, if the incumbent MVPD's ability to provide service is not impaired, and if the MDU owner gives its affirmative consent. If the MDU owner determines that there is not sufficient space, and the MDU owner will permit larger moldings, the MDU owner may install larger moldings at the alternative MVPD's expense.

292. *Disposition of Cable Home Wiring*: The *Order* requires MVPDs to implement their election to remove or abandon home wiring within seven days of learning that the home wiring will not be purchased.

293. *Customer Access to Cable Home Wiring before Termination of Service*: The *Order* requires cable operators to permit subscribers to provide or install their own cable home wiring, or redirect, reroute or connect additional wiring to the cable operator's home wiring, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact. The cable operator may choose to impose requirements that any home wiring meet reasonable technical specifications, not to exceed the technical specifications of such wiring installed by the cable operator; however, the cable operator may require additional technical specifications to eliminate electronic or physical harm.

294. *Signal Leakage*: The *Order* extends the Commission's cable signal leakage rules to all broadband service providers that pose a similar threat of interference with frequencies used for over-the-air communications. Section 76.615(b)(7) of the cable signal leakage rules requires cable operators to file annually with the Commission the results of their signal leakage tests conducted pursuant to Section 76.611.

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 this *Order*.

295. *Disposition of MDU Home Run Wiring*: We considered several alternatives for the disposition of MDU home run wiring, including: (1) creating a single demarcation point for cable and telephony providers; (2) moving the cable demarcation point; and (3) maintaining our current rules. The record indicates that MDU owners often object to the installation of multiple home run wires for reasons including aesthetics, space limitations, the avoidance of disruption and inconvenience, and the potential for property damage. Small video service providers often are new entrants that will have to install new home run wiring (if they cannot use the existing wiring), while incumbent service providers often are established entities that may resist efforts by both new entrants and MDU operators to arrange for use of the existing wiring. By bringing order and certainty to the disposition of the home run wiring upon termination of service, the rules adopted herein advance the interests of both small video service providers and small MDU owners.

296. *Transfer of Ownership of Home Run Wiring in Future Installations*: We considered adopting a requirement that, for future installations, MVPDs transfer ownership of home run wiring to MDU owners. We instead decided to require MVPDs to include in future contracts with MDU owners a provision addressing the disposition of home run wiring upon termination of the contract. This requirement will provide all MDU owners, including small MDU owners, the flexibility to negotiate for ownership of the home run wiring.

297. *Sharing of Molding*: We considered not requiring the sharing of molding even when empty space exists. We concluded, however, that the ability to share molding often may assist small MVPDs, which frequently are new entrants, to gain access to MDUs. We considered Time Warner's proposal to allow affected MVPDs and the MDU owner to determine whether the molding contains adequate space. Our rule, however, does not require the concurrence of the affected MVPDs in the determination of whether adequate space exists.

298. *Customer Access to Cable Home Wiring before Termination of Service*: We believe that subscriber access to home wiring will advance the interests of small entities. As customers gain the ability to select who will install and maintain their home wiring, small entities will be able to compete with the incumbent cable operator to provide such services.

299. *Signal Leakage*: This *Order* extends the Commission's cable signal leakage rules to all broadband service providers that pose a similar threat of interference with frequencies used for over-the-air communications. Although this modification will impact small broadband service providers, we are exploring the possibility of exempting certain categories of broadband service providers from the reporting requirements of the signal leakage rules.[781]

Report to Congress

300. The Commission shall send a copy of this *Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this *Order* and this FRFA (or summaries thereof) will also be published in the Federal Register, pursuant to 5 U.S.C. § 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

B. Initial Regulatory Flexibility Act Analysis

301. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, ("RFA"), the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected significant impact on small entities by the policies and rules proposed in this *Second Further Notice*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing procedures as other comments in this proceeding, but they must be have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Second Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the RFA. In addition, the *Second Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register, pursuant to 5 U.S.C. § 603(a).

[781]See the discussion of signal leakage requirements in the IRFA section below.

Need for Action and Objectives of the Proposed Rules

302. The Commission issues this *Second Further Notice* to consider additional rules to promote competition and enhance consumer choice. In particular, we seek comment on the competitive implications of exclusive service contracts between MDU owners and MVPDs, and whether we should: (1) limit exclusive contracts to a time certain; (2) adopt restrictions on the ability of MVPDs to enter into exclusive contracts; or (3) adopt a "fresh look" for "perpetual" exclusive contracts. In addition, we propose to expand to all MVPDs the rule regarding cable subscribers' rights, prior to termination of service, to provide and install their own cable home wiring and to connect additional home wiring to the wiring installed and owned by the MVPD. We also ask whether certain categories of broadband service providers (e.g., small broadband service providers, including small cable operators) should be exempt from the signal leakage reporting requirements in Section 76.615(b)(7). Finally, we seek comment on the current technical, practical, economic, and legal limitations of requiring competing broadband service providers to share a single home run wire in MDUs.

Legal Basis

303. This *Second Further Notice* is adopted pursuant to Sections 1, 4, 224, 251, 303, 601, 623, 624, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 224, 251, 303, 521, 543, 544, and 552.

Description and Estimate of the Number of Small Entities Impacted

304. 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.[782] 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.[783] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").[784] The rules we propose in this *Second Further Notice* will affect MVPDs and MDU owners.

305. *Small MVPDs*: SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts.[785] This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1423 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

[782] 5 U.S.C. § 604(a)(3).

[783] 5 U.S.C. § 601(3).

[784] 15 U.S.C. § 632.

[785] 13 C.F.R. § 121.201 (SIC 4841).

of 1992.[786] We will address each service individually to provide a more succinct estimate of small entities.

306. *Cable Systems:* The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.[787] Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995.[788] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules proposed in this *Second Further Notice*.

307. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% 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."[789] 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.[790] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450.[791] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time 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.

308. *MMDS*: The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[792] This definition of a small entity in the context of the Commission's *Report and Order* concerning MMDS auctions has been approved by the SBA.[793]

[786] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[787] 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. *Sixth Report and Order and Eleventh Order on Reconsideration* in MM Docket Nos. 92-266 and 93-215, FCC 95-196, 10 FCC Rcd 7393 (1995).

[788] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[789] 47 U.S.C. § 543(m)(2).

[790] 47 C.F.R. § 76.1403(b).

[791] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[792] 47 C.F.R. § 21.961(b)(1).

[793] *See Report and Order* in MM Docket No. 94-31 and PP Docket No. 93-253, 10 FCC Rcd 9589 (1995).

309. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We believe that there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

310. *ITFS*: There are presently 1,989 licensed educational ITFS stations and 97 licensed commercial ITFS stations. Educational institutions are included in the definition of a small business.[794] However, we do not collect annual revenue data for ITFS licensees and are unable to ascertain how many of the 97 commercial stations would be categorized as small under the SBA definition. Thus, we believe that at least 1,989 ITFS licensees are small businesses.

311. *DBS*: There are presently nine DBS licensees, some of which are not currently in operation. The Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

312. *HSD*: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by video service providers, of which 115 channels are scrambled and approximately 150 are unscrambled.[795] HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other video service providers; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.[796]

313. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers.[797] These program

[794]SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. § 601(5).

[795]*1996 Competition Report*, FCC 96-496, at para. 49.

[796]*Id.*

[797]*Id.*

packagers provide subscriptions to approximately 2,314,900 subscribers nationwide.[798] This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

314. *OVS*: The Commission has certified nine OVS operators. Because these services were introduced so recently and only one operator is currently offering programming to our knowledge, little financial information is available. Bell Atlantic (certified for operation in Dover) and Metropolitan Fiber Systems ("MFS," certified for operation in Boston and New York) have sufficient revenues to assure us that they do not qualify as small business entities. Two other operators, Residential Communications Network ("RCN," certified for operation in New York) and RCN/BETG (certified for operation in Boston), are MFS affiliates and thus also fail to qualify as small business concerns. However, Digital Broadcasting Open Video Systems (a general partnership certified for operation in southern California), Urban Communications Transport Corp. (a corporation certified for operation in New York and Westchester), and Microwave Satellite Technologies, Inc. (a corporation owned solely by Frank T. Matarazzo and certified for operation in New York) are either just beginning or have not yet started operations. Accordingly, we believe that three OVS licensees may qualify as small business concerns.

315. *SMATVs*: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995.[799] Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996.[800] The ten largest SMATV operators together pass 815,740 units.[801] If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

316. *LMDS*: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. An LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined above. A small radiotelephone entity is one with 1500 employees or less.[802] For the purposes of this proceeding, we include only an estimate of LMDS video service providers. The vast majority of LMDS entities providing video distribution could be small businesses

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[798] *Id.*

[799] *Id.* at para. 81.

[800] *Id.*

[801] *Id.*

[802] 13 C.F.R. § 121.201.

under the SBA's definition of cable and pay television (SIC 4841). However, in the *LMDS Second Report and Order*, we defined a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million.[803] We have not yet received approval by the SBA for this definition.

317. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. We tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

318. *MDU Operators*: The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings and dwellings other than apartment buildings, which include all such companies generating $5 million or less in revenue annually.[804] According to the Census Bureau, there were 26,960 operators of nonresidential buildings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992.[805] Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992.[806] The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

Reporting, Recordkeeping, and Other Compliance Requirements

319. The *Second Further Notice* seeks comment on whether small broadband service providers, including small cable operators, should be exempt from the signal leakage reporting requirements in Section 76.615(b)(7). Such an exemption would relieve qualifying providers from only the relevant filing requirements, but not from the signal leakage testing requirements.

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 proposed or considered in the *Second Further Notice*.

320. The *Second Further Notice* seeks comment on several proposals which could minimize the economic impact on a substantial number of small entities. For instance, in seeking comment on what

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[803] *Second Report and Order* in CC Docket No. 92-297, FCC 97-82 (released March 13, 1997).

[804] 13 C.F.R. § 121.601 (SIC 6512, SIC 6513, SIC 6514).

[805] 1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report, Table 4, SIC 6512 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[806] 1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report, Table 4, SIC 6513 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

policies should be adopted with respect to exclusive contracts, the Commission raises the option of a limit on the length of exclusive contracts that would still permit a small MVPD to obtain exclusive contracts for the period of time necessary to recover its investment costs in the MDU building. In addition, the Commission seeks comment on whether small broadband service providers, including small cable operators, should be exempt from the signal leakage reporting requirements in Section 76.615(b)(7). The issue of whether competing providers should be required to share home run wiring explores the possibility of another means by which small MVPDs may be able to access MDUs. Commenters are invited to address the economic impact of these proposals on small entities and offer any alternatives.

Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

VI. PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

321. The requirements adopted in this *Report and Order and Second Further Notice of Proposed Rulemaking* have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirements contained in this *Report and Order and Second Further Notice of Proposed Rulemaking*, as required by the 1995 Act. Public comments are due 60 days from date of publication of this *Report and Order and Second Further Notice of Proposed Rulemaking* in the Federal Register. Comments should address: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

322. Written comments by the public on the modified information collection requirements are due 60 days from date of publication of this *Report and Order and Second Further Notice of Proposed Rulemaking* in the Federal Register. Comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov. For additional information on the information collection requirements, contact Judy Boley at 202-418-0214 or via the Internet at the above address.

VII. PROCEDURAL PROVISIONS

323. *Ex parte Rules - "Permit-but-Disclose" Proceeding.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the rules.[807] Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely

[807] 47 C.F.R. § 1.1206(b), as revised.

a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[808] Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).[809]

324. *Filing of Comments and Reply Comments.* Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules,[810] interested parties may file comments on or before December 23, 1997, and reply comments on or before January 22, 1998. 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 and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 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 NW, Washington DC 20554.

VIII. ORDERING CLAUSES

325. IT IS ORDERED that, pursuant to Sections 1, 4(i), 201-205, 214-215, 220, 303, 623, 624 and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214-215, 220, 303, 543, 544 and 552, the Commission's rules are hereby amended as set forth in Appendix A.

326. IT IS FURTHER ORDERED that the rules as amended in Appendix A will become effective upon approval by OMB. The Commission will publish a document at a later date announcing the effective date of these rules.

327. IT IS FURTHER ORDERED that, pursuant to Sections 1, 4(i), 201-205, 214-215, 220, 303, 623, 624 and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214-215, 220, 303, 543, 544 and 552, NOTICE IS HEREBY GIVEN of proposed amendments to the Commission's rules, in accordance with the proposals, discussions and statements of issues in the *Second Further Notice of Proposed Rulemaking*, and COMMENT IS SOUGHT regarding such proposals, discussions and statements of issues.

328. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this *Report and Order and Second Further Notice of Proposed Rulemaking*, including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

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[808] *See* 47 C.F.R. § 1.1206(b)(2), as revised.

[809] 47 C.F.R. § 1.1206(b).

[810] 47 C.F.R. §§ 1.415 and 1.419.

APPENDIX A

Revised Rules

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 76.5 is amended by revising paragraph (mm)(2) to read as follows:

Sec. 76.5 Definitions.

* * * * *

(mm) * * *

(2) For new and existing multiple dwelling unit installations with non-loop-through wiring configurations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit, or, where the wire is physically inaccessible at such point, the closest practicable point thereto that does not require access to the individual subscriber's dwelling unit.

(3) For new and existing multiple dwelling unit installations with loop-through wiring configurations, the demarcation points shall be at (or about) twelve inches outside of where the cable wire enters or exits the first and last individual dwelling units on the loop, or, where the wire is physically inaccessible at such point(s), the closest practicable point thereto that does not require access to an individual subscriber's dwelling unit.

(4) As used in this subsection, the term "physically inaccessible" describes a location that (i) would require significant modification of, or significant damage to, preexisting structural elements, and (ii) would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring.

Note to paragraph (mm)(4): For example, wiring embedded in brick, metal conduit or cinder blocks with limited or without access openings would likely be physically inaccessible; wiring enclosed within hallway molding would not.

3. Section 76.613 is amended by revising the heading and by revising paragraphs (b), (c), and (d) to read as follows:

Sec. 76.613 Interference from a multichannel video programming distributor ("MVPD").

* * * * *

(b) An MVPD that causes harmful interference shall promptly take appropriate measures to eliminate the harmful interference.

(c) If harmful interference to radio communications involving the safety of life and protection of property cannot be promptly eliminated by the application of suitable techniques, operation of the offending MVPD or appropriate elements thereof shall immediately be suspended upon notification by the District Director and/or Resident Agent of the Commission's local field office, and shall not be resumed until the interference has been eliminated to the satisfaction of the District Director and/or Resident Agent. When authorized by the District Director and/or Resident Agent, short test operations may be made during the period of suspended operation to check the efficacy of remedial measures.

(d) The MVPD may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

4. Section 76.620 is added to read as follows:

Sec. 76.620 Non-cable multichannel video programming distributors ("MVPDs").

(a) Sections 76.605(a)(12), 76.610, 76.611, 76.612, 76.614, 76.615(b)(1-6), 76.616, and 76.617 shall apply to all non-cable MVPDs. However, non-cable MVPD systems that are substantially built as of January 1, 1998 shall not be subject to these sections until January 1, 2003. "Substantially built" shall be defined as having 75 percent of the distribution plant completed. As of January 1, 2003, Section 76.615(b)(7) shall apply to all non-cable MVPDs.

(b) To comply with Section 76.615(b)(2), a non-cable MVPD shall submit its Internal Revenue Service's Employer Identification (E.I.) number instead of an FCC identifier.

5. Subpart M is amended by revising the heading to read as follows:

Subpart M -- Cable Inside Wiring

6. Section 76.800 is added to read as follows:

Sec. 76.800 Definitions.

(a) *MDU.* A multiple dwelling unit building (*e.g.*, an apartment building, condominium building or cooperative).

(b) *MDU owner.* The entity that owns or controls the common areas of a multiple dwelling unit building.

(c) *MVPD.* A multichannel video programming distributor, as that term is defined in Section 602(13) of the Communications Act, 47 U.S.C. § 522(13).

(d) *Home run wiring.* The wiring from the demarcation point to the point at which the MVPD's wiring becomes devoted to an individual subscriber or individual loop.

7. Section 76.802 is amended by revising paragraphs (a) and (g), and adding paragraph (l) to read as follows:

Sec. 76.802 Disposition of cable home wiring.

(a) (1) Upon voluntary termination of cable service by a subscriber in a single unit installation, a cable operator shall not remove the cable home wiring unless it gives the subscriber the opportunity to purchase the wiring at the replacement cost, and the subscriber declines. If the subscriber declines to purchase the cable home wiring, the cable system operator must then remove the cable home wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(2) Upon voluntary termination of cable service by an individual subscriber in a multiple-unit installation, a cable operator shall not be entitled to remove the cable home wiring unless: (i) it gives the subscriber the opportunity to purchase the wiring at the replacement cost; (ii) the subscriber declines, and (iii) neither the MDU owner nor an alternative MVPD, where permitted by the MDU owner, has provided reasonable advance notice to the incumbent provider that it would purchase the cable home wiring pursuant to this section if and when a subscriber declines. If the cable system operator is entitled to remove the cable home wiring, it must then remove the wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(3) The cost of the cable home wiring is to be based on the replacement cost per foot of the wiring on the subscriber's side of the demarcation point multiplied by the length in feet of such wiring, and the replacement cost of any passive splitters located on the subscriber's side of the demarcation point.

* * * * *

(g) If the cable operator adheres to the procedures described in paragraph (b) of this section, and the subscriber asks for more time to make a decision regarding whether to purchase the home wiring, the seven (7) day period described in paragraph (b) of this section will not begin running until the subscriber declines to purchase the wiring; ***

* * * * *

(l) The provisions of Section 76.802, except for Section 76.802(a)(1), shall apply to all MVPDs in the same manner that they apply to cable operators.

8. Section 76.804 is added to read as follows:

Sec. 76.804 Disposition of home run wiring.

(a) *Building-by-building disposition of home run wiring*: (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the MDU owner, the MDU owner may give the MVPD a minimum of 90 days' written notice that its access to the entire building will be terminated to invoke the procedures in this section. The MVPD will then have 30 days to notify the MDU owner in writing of its election for all the home run wiring inside the MDU building: (i) to remove the wiring and restore the MDU building consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first; (ii) to abandon and not disable the wiring at the end of the 90-day notice period; or (iii) to sell the wiring to the MDU building owner. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider shall notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the incumbent provider elects to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider that has elected to abandon its home run wiring may remove its amplifliers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the MDU owner declines to purchase the home run wiring, the MDUowner may permit an alternative provider that has been authorized to provide service to the MDU to negotiate to purchase the wiring.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (a)(1), the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. If the parties are unable to agree on a price within that 30-day time period, the incumbent must elect: (i) to abandon without disabling the wiring; (ii) to remove the wiring and restore the MDU consistent with state law; or (iii) to submit the price determination to binding arbitration by an independent expert. If the incumbent provider chooses to abandon or remove its wiring, it must notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment shall become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. If the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first.

(3) If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90-day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures. If the incumbent fails to comply with any of the deadlines established herein, it shall be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period.

(4) The MDU owner shall be permitted to exercise the rights of individual subscribers under this subsection for purposes of the disposition of the cable home wiring under Section 76.802. When an MDU owner notifies an incumbent provider under this section that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider shall, in accordance with our current home wiring rules: (1) offer to sell to the MDU owner any home wiring within the individual dwelling units that the incumbent provider owns and intends to remove; and (2) provide the MDU owner with the total per-foot replacement cost of such home wiring. This information must be provided to the MDU owner within 30 days of the initial notice that

the incumbent's access to the building will be terminated. If the MDU owner declines to purchase the cable home wiring, the MDU owner may allow the alternative provider to purchase the home wiring upon service termination under the terms and conditions of Section 76.802. If the MDU owner or the alternative provider elects to purchase the home wiring under these rules, it must so notify the incumbent MVPD provider not later than 30 days before the incumbent's termination of access to the building will become effective. If the MDU owner and the alternative provider fail to elect to purchase the home wiring, the incumbent provider must then remove the cable home wiring, under normal operating conditions, within 30 days of actual service termination, or make no subsequent attempt to remove it or to restrict its use.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(b) *Unit-by-unit disposition of home run wiring*: (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes, the MDU owner may permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit in the MDU. The MDU owner must provide at least 60 days' written notice to the incumbent MVPD of the MDU owner's intention to invoke this procedure. The incumbent MVPD will then have 30 days to provide a single written election to the MDU owner as to whether, for each and every one of its home run wires dedicated to a subscriber who chooses an alternative provider's service, the incumbent MVPD will: (i) remove the wiring and restore the MDU building consistent with state law; (ii) abandon the wiring without disabling it; or (iii) sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative provider to purchase it. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election within this 30-day period for each home run wire solely dedicated to a subscriber who switches back from the alternative provider to the incumbent MVPD.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (b)(1), the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. During this 30-day negotiation period, the parties may arrange for an up-front lump sum payment in lieu of a unit-by-unit payment. If the parties are unable to agree on a price during this 30-day time period, the incumbent must elect: (i) to abandon without disabling the wiring; (ii) to remove the wiring and restore the MDU consistent with state law; or (iii) to submit the price determination to binding arbitration by an independent expert. If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring within 14 days. If subscribers wish to switch service providers after the expiration of the 60-day notice period but before the expert issues its price determination, the procedures set forth in paragraph (b)(3) shall be followed, subject to the price established by the arbitrator. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures.

(3) When an MVPD that is currently providing service to a subscriber is notified either orally or in writing that that subscriber wishes to terminate service and that another service provider intends to use the existing home run wire to provide service to that particular subscriber, a provider that has elected to remove its home run wiring pursuant to paragraph (b)(1) or (b)(2) will have seven days to remove its

home run wiring and restore the building consistent with state law. If the subscriber has requested service termination more than seven days in the future, the seven-day removal period shall begin on the date of actual service termination (and, in any event, shall end no later than seven days after the requested date of termination). If the provider has elected to abandon or sell the wiring pursuant to paragraph (b)(1) or (b)(2), the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent shall inform the party requesting service termination, at the time of such request, of the date on which service will be terminated. The incumbent provider shall make the home run wiring accessible to the alternative provider within twenty-four (24) hours of actual service termination.

(4) If the incumbent provider fails to comply with any of the deadlines established herein, the home run wiring shall be considered abandoned, and the incumbent may not prevent the alternative provider from using the home run wiring immediately to provide service. The alternative provider or the MDU owner may act as the subscriber's agent in providing notice of a subscriber's desire to change services, consistent with state law. If a subscriber's service is terminated without notification that another service provider intends to use the existing home run wiring to provide service to that particular subscriber, the incumbent provider will not be required to carry out its election to sell, remove or abandon the home run wiring; the incumbent provider will be required to carry out its election, however, if and when it receives notice that a subscriber wishes to use the home run wiring to receive an alternative service. Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will apply where a subscriber's service is terminated without notifying the incumbent provider that the subscriber wishes to use the home run wiring to receive an alternative service.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(6) Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will continue to apply to the wiring on the subscriber's side of the cable demarcation point.

(c) The procedures set forth in paragraphs (a) and (b) shall apply unless and until the incumbent provider obtains a court ruling or an injunction within forty-five (45) days following the initial notice enjoining its displacement.

(d) After the effective date of this rule, MVPDs shall include a provision in all service contracts entered into with MDU owners setting forth the disposition of any home run wiring in the MDU upon the termination of the contract.

(e) Incumbents are prohibited from using any ownership interest they may have in property located on or near the home run wiring, such as molding or conduit, to prevent, impede, or in any way interfere with, the ability of an alternative MVPD to use the home run wiring pursuant to this section.

(f) Section 76.804 shall apply to all MVPDs.

9. Section 76.805 is added to read as follows:

Sec. 76.805 Access to molding.

(a) An MVPD shall be permitted to install one or more home run wires within the existing molding of an MDU where the MDU owner finds that there is sufficient space to permit the installation of the additional wiring without interfering with the ability of an existing MVPD to provide service, and gives its affirmative consent to such installation. This paragraph shall not apply where the incumbent provider has an exclusive contractual right to occupy the molding.

(b) If an MDU owner finds that there is insufficient space in existing molding to permit the installation of the new wiring without interfering with the ability of an existing MVPD to provide service, but gives its affirmative consent to the installation of larger molding and additional wiring, the MDU owner (with or without the assistance of the incumbent and/or the alternative provider) shall be permitted to remove the existing molding, return such molding to the incumbent, if appropriate, and install additional wiring and larger molding in order to contain the additional wiring. This paragraph shall not apply where the incumbent provider possesses a contractual right to maintain its molding on the premises without alteration by the MDU owner.

(c) The alternative provider shall be required to pay any and all installation costs associated with the implementation of paragraphs (a) or (b), including the costs of restoring the MDU owner's property to its original condition, and the costs of repairing any damage to the incumbent provider's wiring or other property.

10. Section 76.806 is added to read as follows:

Sec. 76.806 Pre-termination access to cable home wiring.

(a) Prior to termination of service, a customer may: (1) install or provide for the installation of their own cable home wiring; or (2) connect additional home wiring, splitters or other equipment within their premises to the wiring owned by the cable operator, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact.

(b) Cable operators may require that home wiring (including passive splitters, connectors and other equipment used in the installation of home wiring) meets reasonable technical specifications, not to exceed the technical specifications of such equipment installed by the cable operator; provided however, that if electronic or physical harm is caused to the cable system, the cable operator may impose additional technical specifications to eliminate such harm. To the extent a customer's installations or rearrangements of wiring degrade the signal quality of or interfere with other customers' signals, or cause electronic or physical harm to the cable system, the cable operator may discontinue service to that subscriber until the degradation or interference is resolved.

(c) Customers shall not physically cut, substantially alter, improperly terminate or otherwise destroy cable operator-owned home wiring.

APPENDIX B

Parties that Filed Comments and Reply Comments

Note: If no abbreviation appears in parentheses following the full name, the full name is used in this *Order and Second Further Notice.*

Comments in CS Docket No. 95-184

Adelphia Communications Corp. (Adelphia)
Ameritech, Inc. (Ameritech)
AT&T Corp. (AT&T)
BellSouth Corp. and BellSouth Telecommunications, Inc. (BellSouth)
Building Industry Consulting Service International (Building Industry Consulting)
Building Owners and Managers Association International, National Realty Committee, National Multi Housing Council, National Apartment Association, Institute of Real Estate Management and National Assocation of Home Builders (Building Owners, et al.)
Cable Telecommunications Assocation (CATA)
CAI Wireless
Charter Communications & Comcast Cable (Charter/Comcast)
Cincinnati Bell Telephone Company (Cincinnati Bell)
Circuit City Stores, Inc. (Circuit City)
Compaq Computer Corp. (Compaq)
Consumer Electronics Manufacturers Assocation (CEMA)
Consumer Project on Technology
Continental Cablevision, Inc. and Cablevision Systems Corp. (Continental/Cablevision)
Cox Communications, Inc. (Cox)
DIRECTV, Inc. (DIRECTV)
General Instrument Corp. (General Instrument)
GTE Service Corp., on behalf of its domestic telephone operating companies and GTE Media Ventures, Inc. (GTE)
Guam Cable TV
Heartland Wireless
Independent Cable & Telecommunications Association (ICTA)
Independent Data Communications Manufacturers Association (Independent Data Comm. Mfrs. Assn.)
Information Technology Industry Council (Info. Tech. Industry Council)
Interactive Cable Systems, Inc. and ActiveTel. L.D., Inc. (Interactive Cable/ActiveTel)
International Council of Shopping Centers (Shopping Centers)
Liberty Cable Company (Liberty)
Marcus Cable Company; American Cable Entertainment; Greater Media, Inc.; Cable Television Association of Maryland, Delaware and the District of Columbia; Cable Television Assocation of Georgia; Minnesota Cable Communications Association; New Jersey Cable Telecommunications Association; Ohio Cable Telecommunications Assocation; Oregon Cable Television Association; South Carolina Cable Television Association; Tennessee Cable Television Association; and Texas Cable TV Association (Joint Cable Parties)
Media Access Project and Consumer Federation of America (Media Access/CFA)
MFS Communications Company, Inc. (MFS)

Motorola, Inc. (Motorola)
Multimedia Development Corp. (Multimedia Development)
MultiTechnologies Services, L.P. (MultiTechnologies Services)
National Association of Realtors (NAR)
National Cable Television Association (NCTA)
National Private Telecommunications Association (NPTA)
New York City, Department of Information Technology and Telecommunications (New York City)
NYNEX Telephone Companies (NYNEX)
Optel, Inc. (Optel)
Pacific Bell and Pacific Telesis Video Services (PacTel)
People of the State of California and the Public Utilities Commission of the State of California (California PUC)
Printz, Michael (Mr. Michael Printz)
R & B Realty Group (R&B Realty)
Residential Communications, Inc. (RCN)
Riser Management Systems, L.P. (Riser Mgmt.)
Siecor Corp. (Siecor)
State of New Jersey Board of Public Utilities (New Jersey BPU)
State of New Jersey, Department of the Treasury, Division of the Ratepayer Advocate (New Jersey Ratepayer Advocate)
Stellarvision
Tandy Corp. (Tandy)
Tele-Communications, Inc. (TCI)
Telecommunications Industry Association/User Premises Equipment Division (TIA)
Time Warner Cable and Time Warner Communications (Time Warner)
TKR Cable Company (TKR)
United States Telephone Association (USTA)
U S West, Inc. (U S West)
UTC, the Telecommunications Association (UTC)
Wireless Cable Association International, Inc. (WCA)

Informal Comments in CS Docket No. 95-184

1st Lake Properties, Inc. (1st Lake Properties)
101 Hudson Leasing Associates (101 Housing)
Accredited Management Organization (Accredited Mgmt.)
Adler Management Services, Inc. (Adler Mgmt.)
Alan-Ben Properties, Inc. (Alan-Ben Properties)
Albert B. Ashforth, Inc. (Albert B. Ashforth)
Allen Morris Company (Allen Morris)
American Apartment Communities (American Apts.)
American Baptist Homes of the West
AMLI Residential
Amurcon Corporation (Amurcon)
Andrews, Victoria (Ms. Victoria Andrews)
Anthem Equity Group, Inc.

Apartment Investment and Management Company (AimCo)
Aransas Princess Condominiums Homeowners Association (Aransas Princess Assn.)
The Armiger Group
Ash Tree Apartments (Ash Tree Apts.)
Asset Management & Consulting Services, Inc. (Asset Mgmt. & Consulting)
Atlanta Apartment Association (Atlanta Apt. Assn.)
Avalon Properties
Avery Construction Company (Avery Construction)
Bankers Trust Company (Bankers Trust)
Beacon Centre
Beacon Properties, L.P. (Beacon Properties)
Ben-Steele Properties
BOMA of Chicago (Chicago BOMA)
Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer & Gladstone (Brach, Eichler, et al.)
Brandel, Nancy (Ms. Nancy Brandel)
Brookfield Management Colorado, Inc. (Brookfield Mgmt.)
Building Owners and Managers Association of Greater Miami, Inc. (Miami BOMA)
Building Owners and Managers Association of Southern California (So. California BOMA)
Building Owners and Managers Association of Metropolitan St. Louis (St. Louis BOMA)
Calders Corner Apartments (Calders Corner Apts.)
Cambridge Square
Candlestick Apartments (Candlestick Apts.)
Center Management Corp. (Center Mgmt.)
Centrefirst Management Corp. (Centrefirst Mgmt.)
Charles Dunn Company (Charles Dunn)
Charles E. Smith Realty Companies (Charles E. Smith Realty)
Clark Realty Capital, LLC (Clark Realty)
Clinton International Group, Inc. (Clinton International)
Codina Real Estate Management, Inc. (Codina Mgmt.)
Colliers ABR, Inc. (Colliers ABR)
Colonial American Development Corp. (Colonial American)
Colonial Manor Apartments (Colonial Manor Apts.)
Columbus Realty Trust (Columbus Realty)
Community Associations Institute
Community Housing Improvement Program, Inc. (CHIP)
Compass Management and Leasing, Inc. (Compass Mgmt.)
Corum Real Estate Group (Corum Real Estate)
Court Street East, Ltd. (Court Street)
Courtyard Place
Crossings
Dayton Power & Light Company (DP&L)
Dietrich Apartments (Dietrich Apts.)
Dominion Management, Inc. (Dominion Mgmt.)
D Squared
Duke Realty Investments (Duke Realty)
Eakin & Smith, Inc. (Eakin & Smith)
81st Street Realty Company (81st Street Realty)

English Village Apartments (English Village Apts.)
Equitable Real Estate Investment Management, Inc. (Equitable Real Estate)
Faison
FDC Management, Inc. (FDC Mgmt.)
First Capital Corp. (First Capital)
First Union Management Inc. (First Union Mgmt.)
Flourney Properties, Inc. (Fourney Properties)
Four Seasons Apartments (Four Seasons Apts.)
Galbreath Company (Galbreath)
Gebhart Management, Inc. (Gebhart Mgmt.)
Georgia Apartment Association (Georgia Apt. Assn.)
Glenwood Management Corp. (Glenwood Mgmt.)
Glick, Gene B. (Mr. Gene Glick)
Goodman Segar Hogan Hoffler (Goodman Segar)
Gorsuch Management (Gorsuch Mgmt.)
Green Oaks Apartments (Green Oaks Apts.)
Greensview Apartments (Greensview Apts.)
Hall, M. Wesley, III and Wall, Thomas Patrick, III (Messrs. Wesley Hall and Thomas Wall)
Hampton Enterprises
Harbert Properties Corporation (Harbert Properties)
Harbor Village Apartments (Harbor Village Apts.)
Harris Group
Haygood Management Company (Haygood Mgmt.)
H&M Management Company (H&M Mgmt.)
Hickory Woods
Highpoint
Home Builders Association of Maryland (Maryland Home Builders Assn.)
Host Apartments (Host Apts.)
HRO International
Huntington
Insignia Management Group (Insignia Mgmt.)
Institute of Real Estate Management (Institute of Real Estate Mgmt.)
IPM Real Estate Services, Inc. (IPM Real Estate)
Jack Resnick & Sons, Inc. (Jack Resnick & Sons)
Jacobs Development Company (Jacobs Development)
Jefferson West Apartments (Jefferson West Apts.)
John Alden Life Insurance Company (John Alden Life)
John Hancock Mutual Life Insurance Company (John Hancock Life)
Jon-Mark Properties LLC (Jon-Mark Properties)
Jupiter Western National
Keptel, an Antec Company (Keptel)
Keystone Realty, Inc. (Keystone Realty)
Kings Point Apartments (Kings Point Apts.)
Koll Real Estate Services Company (Koll Real Estate)
Lafayette Place Condominiums
LaFontenay Apartments (LaFontenay Apts.)
Lakeside Luxury Living (Lakeside)

Lake Terrace Gardens
Lane Company
LaSalle Partners
L&B Multifamily Advisors, Inc. (L&B Advisors)
LCOR, Inc. (LCOR)
Ledic Management Group (Ledic Mgmt.)
Legow Management Company (Legow Mgmt.)
Live Oaks Properties
Lockwood Group
Lowe Enterprises Colorado, Inc. (Lowe Enterprises)
Management Services Corporation I (Mgmt. Services I)
Management Services Corporation II (Mgmt. Services II)
Mara Enterprises, Inc. (Mara Enterprises)
MarRay-Ash Plaza, Inc. (MarRay-Ash Plaza)
MarRay-PCP 1500, Inc. (MarRay-PCP 1500)
Massachusetts Institute of Technology (MIT)
Mathews, Click, Bauman, Inc. (Mathews, Click, et al.)
Matthews-Brown Contractors, Inc. (Matthews-Brown)
Meadow Run Apartments (Meadow Run Apts.)
Meca Properties
MEGA Corporation (MEGA)
Mendik Company, Inc. (Mendik)
Mendik Realty Company, Inc. (Mendik Realty)
Metropolitan Life Insurance Corp., Corporate Property Management (MetLife)
Mid State Management Corp. (Mid State Mgmt.)
Mink and Mink, Inc. (Mink & Mink)
Edward J. Minskoff Equities, Inc.
Missouri Apartment Association (Missouri Apt. Assn.)
MPMS, Inc.
Murray Land Clearing
National Association of Industrial and Office Properties (NAIOP)
National Assocation of Real Estate Investment Trusts (National Assn. of REITs)
Network Property Services (Network Property)
New Plan Realty Trust (New Plan Realty)
NHP Incorporated (NHP)
Niles Investment Corp. (Niles Investment)
92nd Realty Co.
Norman Management Company (Norman Mgmt.)
Norris & Stevens
North Village Apartments (North Village Apts.)
NP Dodge Management Company, Inc. (NP Dodge Mgmt.)
O'Conor Real Estate Management (O'Conor Real Estate)
One Brickell Square
Oxford Hill Apartments (Oxford Hill Apts.)
Pace Realty Corporation (Pace Realty)
Pache Management Company, Inc. (Pache Mgmt.)
Pacific Tower Properties