

FCC MAIL SECTION

Federal Communications Commission

FCC 98-68

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DISPATCH

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
1998 Biennial Regulatory Review--) CS Docket No. 98-54
)
Part 76 - Cable Television Service)
Pleading and Complaint Rules)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 13, 1998

Released: April 22, 1998

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

Comment Date: June 22, 1998
Reply Comment Date: July 7, 1998

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking ("Notice") we seek comment or ways to simplify and make more uniform our Part 76 Cable Television Service pleading and complaint process rules.¹ Under the Commission's current Part 76 rules, the procedures for initiating Commission action on a cable television service issue vary depending on the rules upon which the pleading or complaint is based. For example, some actions such as rate complaints must be filed on a specific form, whereas the requirements to file a petition for special relief are less exact. Although we recognize that in many circumstance there are practical and legal reasons for the different pleading procedures, there may be some common elements to every pleading or complaint that could be made uniform across the broad spectrum of issues raised under Part 76. We thus seek comment on whether we can or should institute some uniform pleading process and, if so, what form it should take.

II. DISCUSSION

2. We are initiating this proceeding in conjunction with the Commission's 1998 biennial regulatory review² pursuant to Section 11 of the 1996 Telecommunications Act ("1996 Act").³ Pursuant to Section 11 of the 1996 Act, Congress instructed the Commission "to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to

¹47 C.F.R. §§ 76.1-76.1514.

²47 U.S.C. § 161; see FCC News Release, 1998 Biennial Review of FCC Regulations Begun Early (Nov. 18, 1997).

³Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

repeal or modify any regulation it determines to be no longer in the public interest."⁴ Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an opportunity for a thorough examination of all of the Commission's regulations. We believe that, where possible, simplification of the complaint processes for Part 76 rules by instituting a uniform system would likely serve the public interest by lessening confusion and reducing the regulatory burden on franchising authorities, cable operators, and other interested persons making filings under our Part 76 rules.

3. In our examination of the Part 76 rules, we counted at least thirteen different types of petition or complaints that could be filed to initiate Commission action on these rules:

- 1) petition for special relief (47 C.F.R. § 76.7(a)(1));
- 2) must-carry complaint (47 C.F.R. § 76.7(a)(1));
- 3) petition to show cause (47 C.F.R. § 76.9);
- 4) request for temporary authority (47 C.F.R. § 76.29);
- 5) franchising authority certification (47 C.F.R. § 76.910(b));
- 6) petition for reconsideration of certification (47 C.F.R. § 76.911);
- 7) petition for recertification (47 C.F.R. § 76.916);
- 8) petition for review of rates (47 C.F.R. § 76.933);
- 9) rate complaint (47 C.F.R. § 76.950);
- 10) commercial leased access dispute (47 C.F.R. § 76.975);
- 11) program access adjudicatory proceedings (47 C.F.R. § 76.1003);
- 12) petition for exclusivity (47 C.F.R. § 76.1002);
- 13) carriage agreement adjudicatory proceeding (47 C.F.R. § 76.1302).

Each type of petition or complaint has particular requirements regarding the conditions that must be satisfied before a filing can be made, who must be served with the filing, and the deadline time for a response. One reason for this variation is that our rules have been adopted over a period of time in response to changes in the Communications Act and, specifically, changes regarding cable passed in 1984, 1992, and 1996.⁵ The rules adopted to implement changes in the law may have adopted a complaint process with its own unique procedures when an existing complaint process would have been sufficient. For example, following the filing of a petition for special relief, interested persons may submit comments or oppositions within twenty days after the date of public notice of the filing of such petition.⁶ In contrast, with respect to a petition for an issuance of an order to show cause, interested persons may submit comments or oppositions within thirty days after the petition has been filed.⁷ In this proceeding, we seek comment on whether these types of differences should be maintained or whether in circumstances of similar pleadings, the process rules associated with those pleadings should be the same.

⁴47 U.S.C. § 161.

⁵See Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984); Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶See 47 C.F.R. § 76.7(d).

⁷47 C.F.R. § 76.9(d).

4. The rules associated with each different pleading type are designed to establish fair and expeditious procedures for receiving, considering, and resolving issues related to our cable television service rules.⁸ We believe that there are some aspects of the pleading requirements in Part 76 rules that could be made uniform. We seek comment on which aspects of the pleading processes can be made consistent regardless of the Part 76 rule under which the complaint is being filed; or alternatively, which pleading processes are similar and should have similar procedures. Specifically, is it appropriate to have the same or different (1) periods of time to formulate and file a complaint; (2) service requirements; (3) pleading cycles; (4) affidavit and evidentiary requirements; and (5) burdens of proof? We also seek proposals on how to achieve a more streamlined complaint process for Part 76 pleadings. Specifically, we seek comment on those filing requirements, now unique to a particular type of pleading or complaint, that are beneficial and should be applied universally to all Part 76 pleadings; and conversely, which filing requirements are not useful and should be eliminated.

III. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis For the Notice of Proposed Rulemaking

5. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and proposals in this Notice of Proposed Rule Making ("Notice"). Written public comments concerning the effect of the proposals in the Notice, including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.⁹

6. *Reasons Why Agency Action is Being Considered.* Section 11 of the 1996 Telecommunications Act requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest.¹⁰ Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an excellent opportunity for a thorough examination of all of the Commission's regulations.

7. *Need for Action and Objectives of the Proposed Rule Change.* The Commission has proposed to simply and unify the pleading and complaint process rules for Part 76, Cable Television Service.¹¹ The Commission has tentatively concluded that such a procedure would serve the public interest by making the pleading and complaint process for Part 76 less confusing and less burdensome.

⁸See generally *Implementations of Sections of Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, MM Docket 92-266, 8 FCC Rcd 5631(1993).

⁹ Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981), as amended.

¹⁰47 U.S.C. § 161; News Release, Nov. 18, 1997.

¹¹47 C.H.R. §§ 76.1-76.1514.

8. *Legal Basis.* The authority for the action proposed for this rulemaking is contained in Section 4(i)-(j) of the Communications Act of 1934, as amended.¹²

9. *Description and Estimate of the Number of Small Entities Impacted.* The IRFA 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 IRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.¹³ Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁴

10. *Small MVPDs:* 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 annual receipts.¹⁵ 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 1,758 total cable and other pay television services and 1,423 had less than \$11 million in revenue.¹⁶ We address below each service individually to provide a more precise estimate of small entities.

11. *Cable Systems:* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.¹⁷ Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995.¹⁸ 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 we are adopting. We believe that only

¹²47 U.S.C. § 154(i)-(j).

¹³5 U.S.C. § 601(3) (1980) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after an opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes definitions in the Federal Register.

¹⁴Small Business Act, 15 U.S.C. § 632.

¹⁵13 C.F.R. § 121.201 (SIC 4841).

¹⁶U.S. Department of Commerce, Bureau of the Census, Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (Bureau of the Census data under contract to the Office of Advocacy of the SBA).

¹⁷47 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. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995).

¹⁸Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

a small percentage of these entities currently provide qualifying "telecommunications services" as required by the Communications Act and, therefore, estimate that the number of such entities are significantly fewer than noted.

12. 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."¹⁹ 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.²⁰ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450.²¹ 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.

13. *Multipoint Multichannel Distribution Systems ("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.²² This definition of a small entity in the context of MMDS auctions has been approved by the SBA.²³

14. 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 conclude that, for purposes of this IRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

15. *Direct Broadcast Satellite ("DBS")*: Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. Estimates of 1996 revenues for various DBS operators are

¹⁹47 U.S.C. § 543(m)(2).

²⁰47 C.F.R. § 76.1403(b) (SIC 4833).

²¹Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

²²47 C.F.R. § 21.961(b)(1).

²³See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, MM Docket No. 94-31 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

significantly greater than \$11,000,000 and range from a low of \$31,132,000 for Alphastar²⁴ to a high of \$1,100,000,000 for Primestar.²⁵ Accordingly, we now conclude that no DBS operator qualifies as a small entity.

16. *Home Satellite Dish ("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 MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.²⁶ 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 MVPDs; (2) viewers who receive only nonsubscription programming; and (3) viewers who receive satellite programming services illegally without subscribing.²⁷

17. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers.²⁸ These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide.²⁹ 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 multiple system operator ("MSO"). Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

18. *Open Video System ("OVS")*: The Commission has certified nine OVS operators. Of these nine, only two are providing service. On October 17, 1996, Bell Atlantic received approval for its certification to convert its Dover, New Jersey Video Dialtone ("VDT") system to OVS.³⁰ Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources.³¹

²⁴Alphastar Press Release (via Canada Newswire), March 20, 1997. Revenues were originally stated in Canadian Dollars (\$42,915,000 Canadian). Revenues were recalculated using an exchange rate of \$1.3785 (Can) = \$1.00 (US). Revenues stated include revenues for C-band service.

²⁵*The SkyTrends Report: 1996-1997*.

²⁶*1996 Competition Report*, 12 FCC Rcd at 4385 ¶ 49.

²⁷*Id.* at ¶ 50.

²⁸*Id.*

²⁹*Id.*

³⁰*Bell Atlantic-New Jersey, Inc. (Certification to Operate an Open Video System)*, 11 FCC Rcd 13249 (CSB 1996) ("*Bell Atlantic OVS Certification*").

³¹Bell Atlantic, *Bell Atlantic Now Offering Video Services in Dover Township New Jersey* (news release), Nov. 1, 1996.

Metropolitan Fiber Systems was granted certifications on December 9, 1996, for the operation of OVS systems in Boston and New York, both of which are being used to provide programming.³² Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

19. *Satellite Master Antenna Television ("SMATVs")*: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995.³³ Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996.³⁴ The ten largest SMATV operators together pass 815,740 units.³⁵ 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 conclude that a substantial number of SMATV operators qualify as small entities.

20. *Local Multipoint Distribution System ("LMDS")*: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A 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 in paragraph 12 *supra*. A small radiotelephone entity is one with 1500 employees or less.³⁶ However, for the purposes of this *Notice of Proposed Rulemaking*, we include only an estimate of LMDS video service providers.

21. LMDS is a service for which licenses were auctioned by the FCC beginning in February 1998. 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).³⁷ However, in the *Third NPRM*,³⁸ we

³²See *Metropolitan Fiber Systems/New York, Inc. (Certification to Operate an Open Video System)*, Consolidated Order, 11 FCC Rcd 20896, DA 96-2075 (CSB Dec. 9, 1996).

³³1996 *Competition Report*, 12 FCC Rcd at 4403-4404 ¶ 81.

³⁴*Id.*

³⁵*Id.*

³⁶13 C.F.R. § 121.201.

³⁷See para. 269 *supra* for an estimate of the number of entities under SIC 4841.

³⁸*In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's*

proposed to define 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. We have not yet received approval by the SBA for this definition.

22. 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. Accordingly, we affirm our tentative conclusion that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

23. *Program Producers and Distributors:* The Commission has not developed a definition of small entities applicable to producers or distributors of television programs.³⁹ Therefore, we will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812),⁴⁰ Motion Picture and Video Tape Distribution (SIC 7822),⁴¹ and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922).⁴² These SBA definitions provide that a small entity in the television programming industry is an entity with \$21.5 million or less in annual receipts for SIC 7812 and 7822, and \$5 million or less in annual receipts for SIC 7922.⁴³ The 1992 Bureau of the Census data indicate the following: (1) there were 7265 U.S. firms classified as Motion Picture and Video Production (SIC 7812), and that 6987 of these firms had \$16,999 million or less in annual receipts and 7002 of these firms had \$24,999 million or less in annual receipts;⁴⁴ (2) there were 1139 U.S. firms classified as Motion

Preference, ("Third NPRM") CC Docket No. 92-297, 11 F.C.C. Rcd. 53 (1995), ¶ 188.

³⁹The term "television programs" is used in this context to include all video programming outlets, e.g., cable, DBS.

⁴⁰"Establishments primarily engaged in the production of theatrical and nontheatrical motion pictures and video tapes for exhibition or sale, including educational, industrial, and religious films. Included in the industry are establishments engaged in both production and distribution. Producers of live radio and television programs are classified in Industry 7922." Standard Industrial Classification Manual, SIC 7812, Executive Office of the President, Office of Management and Budget (1987) (OMB SIC Manual).

⁴¹"Establishments primarily engaged in the distribution (rental or sale) of theatrical and nontheatrical motion picture films or in the distribution of video tapes and disks, except to the general public." OMB SIC Manual, SIC 7822.

⁴²"Establishments primarily engaged in providing live theatrical presentations, such as road companies and summer theaters. . . . Also included in this industry are producers of . . . live television programs." OMB SIC Manual, SIC 7922.

⁴³13 C.F.R. § 121.201.

⁴⁴U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC 7812, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration) (SBA 1992 Census Report). The Census data do not include a category for \$21.5 million. Therefore, we have reported the closest increment below and above the \$21.5 million threshold. There is a difference of 15 firms between the \$16,999 and \$24,999 million annual receipt categories. It is possible that these 15 firms could have annual receipts of \$21.5 million or less and, therefore, would be classified as small businesses.

Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had \$16,999 million or less in annual receipts and 1013 of these firms had \$24,999 million or less in annual receipts;⁴⁵ and (3) there were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than \$5 million in annual receipts.⁴⁶

24. Each of these SIC categories is very broad and includes firms that may be engaged in various industries including television. Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, we conclude that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the rules adopted in this proceeding.

25. *Reporting, Recordkeeping, and other Compliance Requirements:* The Commission is not proposing any new or modified recordkeeping or information collection requirements.

26. *Significant Alternatives Which Minimize the Impact on Small Entities and which are Consistent with Stated Objectives:* The Notice solicits comments and proposals for means to simplify or make uniform Part 76 pleading and complaint process rules. Any significant alternatives presented in the comments will be considered.

27. *Federal Rules which Overlap, Duplicate, or Conflict with the Commission's Proposal:* None.

28. *Report to Congress.* The Commission shall send a copy of this IRFA along with this Notice in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. § 801(a)(1)(A). A copy of this IRFA will also be published in the Federal Register.

B. Paperwork Reduction Act of 1995 Analysis

29. The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and would impose new and 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 proposed information collection requirements contained in this Notice, as required by the 1995 Act. Public comments are due 60 days from date of publication of this Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility,

⁴⁵SBA 1992 Census Report, SIC 7812. The Census data does not include a category for \$21.5 million; therefore, we have reported the closest increment below and above the \$21.5 million benchmark. There is a difference of 6 firms between the \$16,999 and \$24,999 million annual receipt categories. It is possible that these 6 firms could have annual receipts of \$21.5 million or less and, therefore, would be classified as small businesses.

⁴⁶SBA 1992 Census Report, SIC 7922.

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.

30. Written comments by the public on the proposed new and modified information collection requirements are due 60 days from the date of publication of this Notice in the Federal Register. Comments should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov. For additional information on the proposed information collection requirements, contact Judy Boley at 202-418-0214 or via the Internet at the above address.

C. Ex Parte Rules

31. 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. 47 C.F.R. § 1.1206(b), as revised. 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 a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

D. Filing of Comments and Reply Comments

32. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before June 22, 1998 and reply comments on or before July 7, 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, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554. The Cable Services Bureau contact for this proceeding is Thomas Horan at (202) 418-2486 or thoran@fcc.gov.

33. Written comments by the public on the proposed and/or modified information collections are due May 29, 1998. Written comments must be submitted by the Office of Management and Budget ("OMB") on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any 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 and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

34. Parties are also asked to submit comments and reply comments on diskette, where possible. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Thomas Horan of the Cable Services Bureau, 2033 M Street N.W., Room 700I, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comments or reply comments), and date of submission. The diskette should be accompanied by a cover letter.

E. Ordering Clause

35. **IT IS ORDERED** that, pursuant to Section 4(i)-(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i)-(j), **NOTICE IS HEREBY GIVEN** of proposed amendments to Part 76, in accordance with the proposals, discussions and statements of issues in this Notice of Proposed Rulemaking, and that **COMMENT IS SOUGHT** regarding such proposals, discussions and statements of issues.

36. **IT IS FURTHER ORDERED** that the Commission's Office of Public Affairs, Reference Operations Division shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act.⁴⁷

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Magalie Roman Salas
Secretary

⁴⁷ Pub. L. No. 96-354, 94 Stat.1164, 5 U.S.C. §§ 601 *et seq.* (1981).

Separate Statement of Commissioner Harold W. Furchtgott-Roth**In re: Notice of Proposed Rulemaking****1998 Biennial Regulatory Review --
Part 76 Cable Television Service Pleading and Complaint Rules**

I support adoption of this Notice of Proposed Rulemaking. To my mind, any reduction in paperwork obligations or simplification of our procedural rules for regulated entities -- or "streamlining" -- is always a plus. To that extent, this item is good policy and I am all for it.

This item should not, however, be mistaken for compliance with section 11 of the Communications Act.

First of all, section 11 requires a review of all regulations that govern the operations of "any provider of telecommunications service." 47 U.S.C section 161. It does not by its terms apply to regulations governing broadcast and cable companies. I therefore understand this cable item to be premised not on section 11 (notwithstanding the caption, which might suggest otherwise) but on our general authority to change our rules when appropriate under section 4(i) and related provisions of the Communications Act.

Second, this item focuses, as do some pure section 11 items that we have issued,⁴⁸ on procedural rules governing filings at the Commission as opposed to substantive rules that limit what companies can do in the marketplace, *e.g.*, regulations that restrict market entry or limit market share. As stated above, it is certainly important that in the course of the Biennial Review we evaluate our procedural rules and modify or eliminate them if necessary. But section 11 requires us to look at *both* procedural and substantive rules and make an affirmative finding of their continued necessity.

If all we do is "streamline" certain procedures at the Commission, without also examining all pertinent substantive rules and making the statutorily-required determinations of necessity, we will fail to meet the express directive of section 11.

As I have previously explained, I question whether the FCC is prepared to meet its statutory obligation to review all of the regulations covered by section 11 in 1998. *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, __ FCC Rcd __ (released Jan. 30, 1998). To my knowledge, the FCC has no plans to review affirmatively *all* regulations applicable to the operations or activities of telecommunications providers and to make specific findings as to their continued necessity. Nor has the Commission issued general principles to guide our "public interest" analysis and decisionmaking process across the wide range of FCC regulations.

We should not let this item, which does not relate to telecommunications rules and focuses only on procedural matters, or any other limited Commission analysis be mistaken for full compliance with Section 11.

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⁴⁸By this I mean items regarding rules applicable to telecommunications providers.