statement, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the Federal Register notice.

C. Initial Paperwork Reduction Act of 1995 Analysis

174. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due August 15, 1996; OMB comments are due September 27, 1996. 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 shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Filing Procedures

175. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before August 15, 1996, and reply comments on or before August 30, 1996. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC 20554.

176. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments be no longer than eighty (80) pages and reply comments be no longer than forty (40) pages, including exhibits, appendices, affidavits, or other attachments. Empirical economic studies, technical drawings, and copies of relevant state orders will not be counted against these page limits. These page limits will not be waived and will be strictly enforced. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. *See* 47 CFR § 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length, although a summary that does not exceed three pages will not count toward the page limit for comments or reply comments. This summary may be paginated separately from the rest of the pleading (*e.g.*, as ''i, ii''). We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments must clearly identify, in their Table of Contents, the specific paragraphs or sections of this NPRM to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the Table of Contents of this NPRM, such comments must be included in a clearly labelled section at the beginning or end of the filing. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) Written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written materials filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

177. Parties are also asked to submit comments and reply comments on diskette. 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 Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 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 (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

178. Written comments by the public on the proposed and/or modified information collections are due August 15, 1996, and reply comments must be submitted not later than August 30, 1996. 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 Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

XI. Ordering Clauses

179. Accordingly, *it is ordered* that pursuant to Sections 1, 2, 4, 201–205, 215, 218, 220, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201–205, 215, 218, 220, 271, 272, and 303(r), a Notice of Proposed Rulemaking is hereby adopted.

180. *It is further ordered* that, the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–19135 Filed 7–25–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 21

[CC Docket No 92–297, FCC 96–311]

Establishing Rules and Policies for Local Multipoint Distribution Service and Fixed Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Fourth Notice of Proposed Rulemaking.

SUMMARY: In this *Fourth Notice of Proposed Rulemaking (FNPRM),* the Commission proposes to designate, on a primary protected basis, the 31.0–31.3 GHz (31 GHz) band to LMDS for both hub-to-subscriber and subscriber-to-hub transmissions. In addition, the Commission seeks comment on eligibility of LECs and cable operators to obtain LMDS licenses in the geographic areas they serve. These actions are taken to provide maximum flexibility to a full range of LMDS service providers, and to provide consumers with more choices in service providers, new services, and innovative technologies.

DATES: Comments must be submitted on or before August 12, 1996, and reply comments must be submitted on or before August 22, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Regarding 31 GHz frequency band issues: Bob James, Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680; regarding eligibility issues: Walter Strack, Wireless Telecommunications Bureau, (202) 418–0600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Fourth Notice of Proposed Rulemaking* in CC Docket 92–297, adopted July 19, 1996, and released July 22, 1996. The complete text of the *Fourth Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, at (202) 857–3800, 1919 M Street, N.W., Room 246, Washington, D.C. 20554.

SYNOPSIS OF FOURTH NOTICE OF PROPOSED RULEMAKING

1. In the first *Notice of Proposed Rulemaking (NPRM),* 58 FR 6400 (January 28, 1993), the Commission considered three petitions for rulemaking proposing a redesignation of the 28 GHz band. That band currently is designated for fixed point-to-point and fixed satellite service use. It found that redesignation of the point-to-point use of the band to point-to-multipoint use could stimulate greater use of a band that largely has lain fallow. However, the Commission asked for comment from satellite entities regarding the effect of redesignation on any proposed fixed satellite use of the band. Non-geostationary orbit (NGSO) and Geostationary orbit (GSO) FSS systems were proposed. In addition, entities planning mobile satellite services requested spectrum for their uplink feeder links.

2. In the *Third Notice of Proposed Rulemaking (Third NPRM),* 60 FR 43740 (August 23, 1995), the Commission proposed a band segmentation plan that it tentatively concluded would permit both LMDS and Fixed Satellite Service (FSS) systems to operate in the 28 GHz frequency band. It also proposed to accommodate feeder links for certain Mobile Satellite Service (MSS) systems in this band. The *Report and Order* which is issued in combination with the instant *FNPRM* makes a final decision on segmentation of the 28 GHz band among fixed satellite, mobile satellite uplinks, and LMDS. That decision will be published in this publication in due course.

3. The *FNRPM* requests comment on two matters. First, it proposes to designate, on a primary protected basis, the 31.0–31.3 GHz (31 GHz) band to LMDS for both hub-to-subscriber and subscriber-to-hub transmissions. This action stems from efforts to accommodate a variety of LMDS system designs, services and transmission media in the adjacent 28 GHz band, and is being taken on the Commission's own motion. This proposed designation of spectrum for LMDS would provide consumers access to more choices in service providers, new services, and innovative technologies, while accommodating those LMDS system designs requiring a wide separation between the transmit and receive frequencies when operated in a two-way mode.

4. In order to ensure that there is adequate two-way interactive capacity for the various proposed LMDS systems, the Commission recognizes the need to designate additional spectrum for LMDS. The Commission observed that there is significant consumer demand for alternate providers of local exchange services, internet access, LANs and video teleconferencing, and that the LMDS proponents note that this demand can be more immediately satisfied, in an economically and technically efficient manner, by LMDS than by many of the alternate transmission media, thus making these services more accessible rapidly to a wider segment of the population. Accordingly, the Commission believes that the proposed designation of 300 MHz of spectrum would ensure consumers access to new and competitive services and technologies. Further, through written *ex parte* comments, several LMDS proponents highlighted some technical difficulties with using the 31 GHz band, *e.g.,* need for two antennas to deliver the desired service, effects on performance level, and increased system costs. The Commission requests that parties address its proposal to make the LMDS service a primary protected use in the 31.0–31.3 GHz band, the technical issues LMDS operators might encounter in using this band, and possible measures that may be used in overcoming such technical issues. The Commission also requests comment on how to assign this additional spectrum to LMDS entities. Should it be treated as a separate block and assigned independently of other LMDS spectrum? Or should it be combined with spectrum assigned in the associated *Report and Order* for LMDS operations and assigned as a single block? The Commission proposes to assign the 31 GHz spectrum and the 1000 MHz designated in the attached *Report and Order* as a single block.

5. An additional issue concerns existing licensees operating in the 31 GHz band, some of which are engaged in traffic signal communications, *i.e.,* traffic light monitoring and control. Such existing usage appears to be relatively light and geographically concentrated. Overlaying LMDS operations in those areas where there are such uses raises the potential for interference problems which could degrade the utility of such systems and perhaps adversely affect LMDS operations. However, the Commission's current rules explicitly provide that authorized operations at 31 GHz are not afforded any rights or obligations with respect to interference with other licensed operations. Thus, any operations that an entity believes are critical in nature and should otherwise warrant interference protection should be operated in a frequency band where such necessary protection is provided for in our rules. One band where these types of operations are permitted is the 23 GHz band. However, because systems in the 23 GHz band receive interference protection, new systems are subject to the prior coordination requirements of Section 101.103(d). The Commission asks for comment on what effect these

requirements will have on 31 GHz systems moving to the 23 GHz band. In addition, the Commission notes that mobile operations are permitted in the 31 GHz band but are not permitted in the 23 GHz band. There appear to be no existing mobile operations in the 31 GHz band; nevertheless, the Commission asks for comment on what effect, if any, this will have in moving current fixed operations to the 23 GHz band. Given that incumbents are only authorized to operate on a non-interference basis, should they be entitled to any recovery for reasonable relocation costs? If so, should any of the 28 GHz band applicants be required to contribute to the recovery of such reasonable costs?

6. The Commission's proposal to make LMDS a protected service in this band presupposes that incumbent licensees continue to operate on a unprotected basis, in this instance, ''secondary'' to LMDS. In the event one of the unprotected operations interferes with, or receives interference from, an LMDS system, the unprotected licensees must take steps to remedy the problem, or accept the resulting interference if it is operating the affected receiver or transmitter. Although the incumbent licensees have assumed all the risks of receiving interference, given the nature of some of these operations, the Commission seeks comment on whether there are any methods by which incumbent 31 GHz operations could be accommodated without delaying, causing interference to, or limiting the usefulness of LMDS services in this band. In light of the proposed ''secondary'' nature of the non-LMDS fixed services in this band, the Commission also seeks comment on whether it should accept any new applications, modifications, or renewal applications in the 31 GHz band.

7. Consistent with its intent to allow the rapid deployment of LMDS, the Commission encourages cooperation among the LMDS providers and existing licensees in exploring any methods which would allow the services to coexist, but that would not impose any economic or technical burdens on the LMDS providers. For example, would the LMDS licensees have sufficient capacity to accommodate the existing licensees as customers of their services? Or are there existing mechanisms that will permit all of these services to share the entire band without imposing any economic burdens on LMDS? Or are there other options the Commission should consider? In commenting on this request, the Commission asks that any recommendation advocating sharing include the supporting technical analysis.

8. Second, the *FNPRM* seeks comment on eligibility of LECs and cable operators to obtain LMDS licenses in the geographic areas they serve. Throughout this proceeding commenters have had opportunities to address whether open eligibility for LMDS licenses would be likely to impede or hasten competition. The current record of this proceeding, however, was developed prior to enactment of the Telecommunications Act of 1996 (1996 Act). One of the key objectives of the 1996 Act is to expedite the introduction of competition to incumbent LECs and cable companies. In carrying out this statutory mandate, the Commission considers it important to obtain specific comment on how our policies towards LMDS eligibility would best promote the competitive objectives of the 1996 Act.

9. The proposed rules contemplate only a single LMDS licensee in each service area. Accordingly, in the same market, there will be no competition among multiple LMDS licensees, although some competition may develop among providers of similar services via alternative transmission technologies. It therefore is appropriate to consider measures to ensure that the unprecedented amount of spectrum assigned to each LMDS license will be used to enhance the competitive provision of services in these highly concentrated markets. The Commission seeks comment on whether it should temporarily restrict eligibility for incumbent LECs and cable companies that seek to obtain LMDS licenses in their geographic service areas.

10. In the *NPRM* that initiated this proceeding, the Commission proposed to license two equal competitors in every LMDS service area and not to restrict the ability of specific types of telecommunications providers to obtain LMDS licenses. In the *Third NPRM*, the Commission proposed only a single LMDS license for each service area and sought additional comment on the eligibility issue regarding Commercial Mobile Radio Service (CMRS) providers, MMDS licensees, LEC and cable participation in LMDS.

11. In determining whether it would be in the public interest to restrict LEC or cable eligibility to obtain a LMDS license within their respective service areas, the Commission considers whether LMDS will provide a unique and important new source of competition to incumbent cable and telephone companies. The record of this proceeding strongly supports the conclusion that LMDS is a potentially important source of competition to both LECs and cable operators. 28 GHz LMDS licenses will permit use of up to 1.3 GHz of spectrum by a single provider, and equipment is relatively close to marketability. While it is not possible to identify all potential uses of LMDS, licensees could use this unparalleled amount of spectrum to construct sophisticated networks that will incorporate aspects of many current telecommunications offerings. It also appears that LMDS is uniquely positioned to provide competitive telecommunications services and video program delivery because of its large potential for two-way broadband capabilities. In considering eligibility for LECs and cable operators within their geographic service areas one must weigh the potential for competition presented by open entry against the possibility that this spectrum may be used to forestall rather than promote competition. Open eligibility may delay or eliminate an opportunity to increase the number of competitors in the local exchange telephony and multichannel video programming markets. On the other hand, a bar on eligibility could prevent LECs and cable operators from using LMDS to compete against each other more effectively and rapidly or to provide new services not now offered by any firm. It also is possible that by restricting eligibility we prevent some potential providers from realizing efficiencies of scale and scope that could be realized if, for example, a LEC could use LMDS to expand the area it serves and to expand the range of services it offers. As a deregulatory principle, this Commission does not seek to interfere in or distort decisions based on sound business judgment by imposing unnecessary regulation. The Commission seeks comment on these issues.

12. The Commission asks parties to comment with specificity on projected uses of LMDS spectrum, including the degree to which LMDS is uniquely suited to entry into the local exchange and multichannel video programming markets. Do LMDS licenses represent a unique and necessary resource for de-concentrating the market power of incumbent LECs and cable operators? If an LMDS license is such a resource, can it have a deconcentrating effect if it is held by an incumbent LEC or cable operator, given the range of services that can be provided using LMDS? For example, would a LEC's use of an LMDS license to provide video services reduce the market power of the incumbent cable operator? Are there other realistic means of entry into these markets? In addressing this point, the Commission

asks parties to discuss other realistic means of entry in terms of (1) the availability of similar spectrum-based services; (2) technological factors; (3) economic cost; and (4) timing.

13. The Commission also asks for comment on whether there are any inherent cost advantages possessed by incumbent LECs or cable operators in holding LMDS licenses to provide service within their geographic service areas. Are there any economies of scope, or other efficiencies, such as efficiencies in billing and marketing of the services? Are any of these efficiencies unique to LMDS or could a LEC or cable operator realize them using above 40 GHz band, MMDS, OVS or other wireless or wireline facilities? Are there cost advantages in use of LMDS spectrum outside the markets served by incumbents? Can these cost advantages be quantified?

14. Are there any other advantages that incumbent LECs and cable operators have in providing LMDS service? For example, does their size, experience in that telecommunications market or financial status make incumbent LECs, or more specifically the RBOCs, uniquely positioned to be strong LMDS providers? If so, will limiting incumbent LEC and cable operators from bidding on LMDS licenses only in their current service areas discourage investment in LMDS or the development of LMDS technology? Excluding incumbent LECs and cable operators, are there a sufficient number of other providers with the necessary resources and expertise to construct and operate LMDS systems? Will incumbent eligibility restrictions have any negative effects on competition in the multichannel video programming and local exchange markets—for example by making it more difficult for incumbent LECs to compete with cable operators for the provision of video services?

15. The Commission also asks for comment on whether an incumbent LEC or cable operator offering LMDS services within its respective geographic service area would be likely to offer it at a higher price than new entrants. Would this depend on whether the LMDS service offered by the incumbents is substitutable for the services they currently offer? Commenters are also asked to address whether it would be more cost-effective for incumbents to acquire LMDS spectrum to supplement their own existing services rather than to face immediate competition by allowing LMDS spectrum to be acquired by a potential competitor.

16. Finally, the Commission seeks comment on how the auction process can be expected to influence the concerns prompting our consideration of incumbent eligibility. Will an auction ensure the highest and best use of the spectrum—even if an incumbent wins the license? Or, is there an economic incentive for an incumbent to bid successfully at auction and to warehouse the spectrum? Or divert it to less competitive uses? Does this economic incentive exist when the spectrum can be used for services other than those provided by the incumbent? In any case, would payment of a winning auction bid and the cost of compliance with the build-out rules proposed in the *Second Further Notice of Proposed Rulemaking*, 59 FR 7964 (February 17, 1994), prove a sufficient check against such warehousing?

17. If the Commission determines that the benefits of open entry are outweighed by our desire to encourage alternative sources of competition, should it adopt any restrictions, and if so, how should they be structured? One option is to prohibit incumbent LECs and cable companies from bidding on or acquiring licenses, each within its geographic service area. Alternatively, the Commission could limit incumbent LECs and cable companies' use of the LMDS spectrum. For example, LEC participation in LMDS could be limited to the provision of no more than a certain percentage of non-video programming, and cable participation in LMDS could be limited to the provision of no more than a certain percentage of video services. The advantage to this approach is that it is narrower than a complete eligibility restriction, and it would allow incumbent providers to use the spectrum to provide competing services, as well as supplemental incumbent services. The disadvantage to this approach is that it may impair the deployment of LMDS as a market-driven flexible broadband service and is inconsistent with the Commission's flexible spectrum policy. The Commission seeks comment on these and any other alternatives.

18. In order to adopt any restrictions on incumbent cable and LEC participation, the Commission needs to define ''incumbent'' since LATA lines and cable franchise areas are not coincident with BTA boundaries. One possibility would be to use the cellular/PCS cross-ownership rule, which implicates similar competitive concerns. Consistent with this rule, an incumbent LEC or cable operator would be considered ''in-region'' if 20 percent or more of the population of a BTA is within a LEC's telephone service area or a cable company's franchised service area. The Commission asks for comment on this option and on any alternative. It also seeks comment on whether the same definition should be applied to both types of incumbents.

19. The Commission also seeks comment on what should constitute an attributable interest in an incumbent LEC or cable operator. In the past, the Commission has used several different formulations of attribution in different contexts. For these purposes, the Commission proposes to consider a 10 percent or more interest, when factored through a multiplier, to be attributable. It also proposes to consider a 10 percent or more interest in an affiliate of an incumbent, when factored through a multiplier, to be considered attributable. This attribution level tracks Section 652 of the 1996 Act, 47 U.S.C. § 572, and it has the same goals as does the Commission in this proceeding.

20. In addition, if the eligibility of incumbent LECs and cable operators is limited, the Commission seeks comment on how these restrictions should be addressed in the context of the proposal in the *Third NPRM* to allow partitioning and disaggregation. It requests comment on whether competitive harm would result from a LMDS licensee disaggregating its license and assigning any excess spectrum to an incumbent LEC or cable operator within their geographic service areas. Similarly, comment is requested on whether any competitive harm would result from a LMDS licensee partitioning some of its service area to an incumbent LEC or MSO within their geographic service area.

21. Finally, if the Commission were to propose any restrictions, to believes that such restrictions should continue only until there is increased competition in the video and telephony markets. In the cable context, Section 623(l) of the Communications Act sets forth a four pronged test for determining when a cable operator faces effective competition. The Commission seeks comment on whether this effective competition test is a reliable indicator of appropriate levels of multichannel video programming competition for these purposes. The Commission focuses especially on Section 623 L(1), which can be relatively easy to satisfy in rural areas. For LECs, there is no standard test for effective competition in the local exchange market. The ''Competitive Checklist,'' set forth in Section 271(c)(2)(B) of the 1996 Act, is one part of the mechanism used to determine when the Regional Bell Operating Companies (RBOCs) may enter the in-region long distance market. Comment is requested on whether the Competitive Checklist or all the prerequisites for BOC in-region entry

serves as a reliable indicator of appropriate levels of local exchange competition for determining when LECs should be allowed to hold LMDS licenses. In addition, since the ''Competitive Checklist'' does not apply to LECs which are not RBOCs, comment is requested on how it could be used with other LECs. The Commission also seeks comment on alternative sunset provision. For example, it could limit eligibility for such entities to a fixed period of time (such as, 3 or 5 years) with automatic sunset and optional renewal of these restrictions. Commenters are requested to provide information on the following questions: what alternative criteria should the Commission use to sunset these restrictions? Should the Commission consider the number of facilities-based competitors? Are there local competitors throughout the service area? If the Commission does not use the ''Competitive Checklist'', does the list suggest factors that the Commission should incorporate into any sunset criteria we may adopt?

22. Because it plans to begin the LMDS licensing process this year, the Commission realizes that the imposition of any eligibility restrictions now, even if they sunset at some future point, may effectively preclude incumbent LECs and cable operators from participation in that initial licensing process. However, incumbents could offer LMDS services at a future date by acquiring all or part of the LMDS spectrum in a BTA in a post-auction transaction, if we adopt our competitive bidding rules proposed in the *Third NPRM*. The Commission requests comment on these issues.

Comment Dates

23. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before August 12, 1996, and reply comments on or before August 22, 1996. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus eight copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

Initial Regulatory Flexibility Analysis

24. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Fourth Notice of Proposed Rulemaking.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided in section (VI)(C).

I. Reason for Action

25. This Fourth Notice of Proposed Rulemaking (*FNPRM*) requests comment on two issues: (1) whether the Commission should designate, on a primary protected basis, the 31.0–31.3 GHz (31 GHz) band to Local Multipoint Distribution Service (LMDS); and (2) whether the Commission should restrict eligibility of local exchange carriers (LEC) and cable operators to hold LMDS licenses in the geographic areas they serve.

26. With regard to the first issue, the Commission determines that a further NPRM is necessary to accommodate a variety of LMDS system designs, services, and transmission media in the adjacent 28 GHz band. The additional spectrum would facilitate interactive systems, thus providing new and innovative communications services for residential and business users, including small businesses. Moreover, the additional spectrum potentially could benefit small businesses unable to participate in competitive bidding for licenses because additional spectrum not needed by a LMDS licensee could potentially be leased to smaller businesses. The 31 GHz band currently is licensed only on a secondary basis, and has few incumbents. Nevertheless, the Commission requests comment on whether there are any methods of accommodating these services.

27. With regard to the second issue, the current record of this proceeding was developed prior to the enactment of the Telecommunications Act of 1996. One of the key objectives of the Act is to expedite the introduction of competition to incumbent LECs and cable companies. In carrying out this mandate, the Commission believes it important to obtain specific comment on how its policies towards LMDS eligibility would best promote the competitive objectives of the Act. In addition, the comments received after the close of the record in this proceeding, including comments from small entities such as WebCel, convince us that further comment is warranted.

II. Objectives

28. The objective of this *NPRM* is to request public comment on the proposals made herein for the efficient licensing of LMDS services, for the development and implementation of a new technology to provide innovative telecommunications services to the public.

III. Legal Basis for Proposed Rules

29. The authority for this action is the Administrative Procedure Act, 5 U.S.C. 553; and sections 4(i), 4(j), 301, 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. 145, 301, and 303(r).

IV. Description and Estimate of Small Entities Subject to the Rules

30. The regulations on which the Commission seeks comment, if adopted, would apply to any small entity seeking a LMDS license. In addition, the regulations would impact small entities who are incumbent licensees in the 31.0–31.3 GHz frequency band.

31. The SBA definitions of small entity for LMDS are the definitions applicable to radiotelephone companies and to pay television services. The definition of radiotelephone companies provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The definition of a small pay television service is one which has annual receipts of less than $11 million. In the Final Regulatory Flexibility Analysis for the *Report and Order, supra,* we were unable to make a meaningful estimate based on the 1992 Census Bureau data.

32. Likewise, we believe that the entities who are incumbent licensees in the 31.0–31.3 GHz frequency band may also be comprised of a majority of small entities. Such licensees are public safety entities, the majority of whom are municipalities or other local governmental entities. The SBA data base does not include governmental entities. We are required to estimate the number of such entities with populations of less than 50,000 that would be affected by our new rules. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates

that this ratio is approximately accurate for all governmental entities. There are twenty-seven (27) incumbent licensees in the 31.0–31.3 GHz band. Accordingly, we estimate that 96 percent, or 25 to 26 of these licensees, are small entities.

33. We request comment on the description and the number of small entities that are significantly impacted by this proposed rule.

V. Reporting, Recordkeeping, and Other Compliance Requirements

34. The proposals under consideration in this *FNPRM* would not involve any reporting or recordkeeping requirements.

35. Incumbent licensees in the 31.0–31.3 GHz band would have new compliance requirements vis-a-vis LMDS licensees. Our rules provide that licensees therein operate on a non-interference basis, meaning that they have no rights to protection from interference, nor any obligations to not interfere with other similar incumbent operations. The Fourth NPRM proposes that LMDS be designated as a primary protected use of the band, ensuring that LMDS licensees would have interference protection from other authorized users of the band.

VI. Significant Alternatives Considered and Rejected

36. The Commission considered and rejected the alternative of placing all LMDS spectrum in the 28 GHz band, rather than placing a portion of the available spectrum in the 31 GHz band. The Commission concluded that LMDS requires additional spectrum to successfully deploy the variety of services proposed. It also concluded that these proposed services could be successfully implemented with non-contiguous bands of spectrum, whereas the satellite services could not. To the extent LMDS entities are small businesses, as discussed in the Final Regulatory Flexibility Analysis, *infra*, such entities are affected by this decision. However, some small entities commenting on the final band plan concurred with this approach (*e.g.*, CellularVision, RioVision).

37. In addition, the Commission considered and rejected the alternative of proceeding with open eligibility in licensing, for the reasons stated herein. This action is responsive to the many small entities commenting in this proceeding who requested that restrictions be placed upon, or considered for, local exchange carriers and major cable companies, e.g., WebCel.

VII. Federal Rules That Overlap, Duplicate, or Conflict With These Proposed Rules

38. None.

Ordering Clause

39. Authority for issuance of this *Fourth Notice of Proposed Rulemaking* is contained in Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j).

List of Subjects in 47 CFR Part 21

Communications Common Carriers, Federal Communications Commission, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–19347 Filed 7–26–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. 96–067; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision to Grant Exemption

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

ACTION: Proposed decision.

SUMMARY: This proposed decision responds to a joint petition filed by Lamborghini and Vector requesting that each company be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 1995 through 1997, and that lower alternative standards be established. In this document, NHTSA proposes that the requested exemption be granted and that alternative standards of 12.8 mpg be established for MY 1995, 12.6 mpg for MY 1996, and 12.5 mpg for MY 1997, for Lamborghini and Vector.

DATES: Comments on this proposed decision must be received on or before September 27, 1996.

ADDRESSES: Comments on this proposal must refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Spinner's telephone number is: (202) 366–4802.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to 49 U.S.C. 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility

(2) Economic practicability

(3) The effect of other Federal motor vehicle standards on fuel economy, and

(4) The need of the Nation to conserve energy.

The statute at 49 U.S.C. 32902(d)(2) permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Background Information on Lamborghini and Vector

Vector Aeromotive Corporation (Vector) and Automobili Lamborghini S.p.A. (Lamborghini) are small automobile manufacturers that each produce a single model of high priced, uniquely designed exotic sport vehicles. Lamborghini is an Italian manufacturer of passenger cars, which concentrates exclusively on the production of high quality, high performance, prestige sports cars. Lamborghini currently produces one model, the Diablo. Vector, a domestic low volume manufacturer, also marketing exotic high performance