relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Docket

Copies of Santa Barbara's submittal and other information relied upon for the direct final actions are contained in docket number CA–001–PP OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this direct final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address revisions to Santa Barbara's existing operating permits program that was submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects

40 CFR Part 52

Environmental protection, air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: August 22, 1997.

John Wise,

Regional Administrator.

[FR Doc. 97–23362 Filed 9–2–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–5887–4]

RIN 2060–AE56

Proposed Revision of Standards of Performance for Nitrogen Oxide Emissions From New Fossil-Fuel Fired Steam Generating Units; Proposed Revisions to Reporting Requirements for Standards of Performance for New Fossil-Fuel Fired Steam Generating Units; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revision; extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period on the Proposed Revision of Standards of Performance for Nitrogen Oxide Emissions From New Fossil-Fuel Fired Steam Generating Units and the Proposed Revisions to Reporting Requirements for Standards of Performance for New Fossil-Fuel Fired Steam Generating Units which were published on July 9, 1997 (62 FR 36947).

DATES: Comments must be received on or before October 8, 1997.

ADDRESSES: Comments should be submitted in duplicate to: U.S. Environmental Protection Agency, The Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Room 1500, Washington, DC 20460. Attention Docket Number A–92–71. The docket may be inspected at the above address between 8:00 a.m. and 5:30 p.m., Eastern time, on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Eddinger [(919) 541–5426], Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: In response to a request from several companies and trade groups, the EPA is extending the public comment period from September 8, 1997, to October 8, 1997, on the Proposed Revision of Standards of Performance for Nitrogen Oxide Emissions From New Fossil-Fuel Fired Steam Generating Units and the Proposed Revisions to Reporting Requirements for Standards of Performance for New Fossil-Fuel Fired Steam Generating Units. The EPA agrees that an extension of the comment period will provide for more meaningful, constructive comments on the proposed revisions to the standards of performance.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 27, 1997.

Richard Wilson,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 97–23360 Filed 9–2–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–184; MM Docket No. 92–260; FCC 97–304]

Telecommunications Services Inside Wiring; Cable Home Wiring

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on proposed procedures for the disposition of cable inside wiring (including both the cable home wiring within the premises of the individual subscriber and the home run wiring dedicated to an individual subscriber's

unit) upon termination of service in multiple dwelling unit (''MDU'') buildings. This Further Notice of Proposed Rulemaking (''Further NPRM'') contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. It has been submitted to the Office of Management and Budget (''OMB'') for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Comments must be submitted on or before September 25, 1997 and reply comments must be submitted on or before October 2, 1997. Written comments by the public on the proposed and/or modified information collections are due September 25, 1997. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before November 3, 1997.

ADDRESSES: Comments and reply comments should be sent 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 N.W., Washington D.C. 20554.

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, NW, 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.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained in this Further NPRM, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

Paperwork Reduction Act: This Further NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to comment on the information collections contained in this Further NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this Further NPRM; OMB comments are due November 3, 1997. 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.

OMB Approval Number: 3060–0692.

Title: Home Wiring Provisions.

Type of Review: Revision of an existing collection.

Respondents: Individuals; Business and other for-profit entities.

Number of Respondents: 30,000 (20,000 MVPDs and 10,000 MDU owners).

Estimated Time Per Response: 5 minutes to 30 minutes.

Total Annual Burden to Respondents: 33,928 hours, calculated as follows: This collection (3060–0692) previously only contained information collection requirements concerning the disposition of cable home wiring. In addition to those requirements, it now addresses proposed notification and election requirements between MDU owners and all multichannel video programming distributors (''MVPDs''). Pursuant to the Paperwork Reduction Act, when modifying or proposing additional information collection requirements in an existing collection, agencies are obligated to put forth the entire collection for public comment. 47 CFR § 76.802 Disposition of Cable Home Wiring. In calculating hour burdens for the disposition of home wiring, we make the following estimates: There are approximately 20,000 MVPDs serving approximately 72 million subscribers in the United States. The average rate of churn (subscriber termination) for all MVPDs is estimated to be 1% per month, or 12% per year. MVPDs own the home wiring in 50% of the occurrences of voluntary subscriber termination and subscribers already own the wiring in the other 50% of occurrences (e.g., where the MVPD has charged the subscriber for the wiring upon installation, has treated the wiring as belonging to the subscriber for tax purposes, or where state and/or local law treats cable home wiring as a fixture). Where MVPDs own the wiring, we estimate that they intend to actually remove the wiring 5% of the time, thus initiating the disclosure requirement. We believe in most cases that MVPDs will choose to abandon the home wiring because the cost and effort required to remove the wiring generally outweigh its value. The burden to disclose the information at the time of termination will vary depending on the manner of disclosure, i.e., by telephone, customer visit or registered mail. Virtually all voluntary service terminations are done by telephone. The estimated average time consumed in the process of the MVPD's disclosure and subscriber's election is 5 minutes (.083 hours). Estimated annual number of occurrences is 72,000,000 × 12%×50%×5%=216,000. Estimated annual burden for MVPDs is 216,000×.083 hours=17,928 hours. 47 CFR § 76.802 also states that to inform subscribers of per-foot replacement costs, MVPDs may develop schedules based on readily available information; if the MVPD chooses to develop such schedules, it must place them in a public file and make them available for public inspection during regular business hours. We estimate that 50% of MVPDs will develop cost schedules to place in their public files. Virtually all subscribers terminate service via telephone, with few subscribers anticipated to review cost schedules on public file. The annual recordkeeping burden for cost schedules is estimated to be 0.5 hours per MVPD. Estimated annual recordkeeping burden is 20,000×50%×0.5 hours=5,000 hours. 47 CFR § 76.804 Disposition of Home Run Wiring. We estimate the burden for notification and election requirements for building-by-building and unit-by-unit disposition of home run wiring as described below. Note that these requirements apply only when an MVPD owns the home run wiring in a 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 entity that owns the common areas of the MDU or 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. For building-by-building disposition of home run wiring, the MDU owner gives the MVPD a minimum of 90 days' notice that its access to the entire building will be terminated. The MVPD then has 30 days to elect what it will do with the home run wiring. Where parties negotiate a price for the wiring and are unable to agree on a price, the incumbent MVPD must make another election between abandonment or removal of the wiring.

For unit-by-unit disposition of home run wiring, an MDU owner must notify the incumbent MVPD of its decision to permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit. The incumbent MVPD then has 30 days to elect what it will do with all of its home run wires dedicated to a subscriber who chooses an alternative provider's service. According to the Statistical Abstracts of the United States, 1995 at 733 Table No. 1224, over 28 million people resided in MDUs with three or more units in 1993. We therefore estimate there are currently 30 million MDU residents and that MDUs house an average of 50 residents, and so we estimate that there are approximately 600,000 MDUs in the United States. In many instances, MVPDs may no longer own the home run wiring or may continue to have a legally enforceable right to remain on the premises. Also, MDU owners may choose not to undergo the notice and election process. The Commission therefore estimates that there will be 10,000 notices and 12,000 elections made on an annual basis. The larger amount of elections accounts for instances when parties are unable to agree on a price for the sale of home run wiring, therefore necessitating an additional election. We assume all notifications and elections will be in writing and take an average burden of 30 minutes (0.5 hours) to prepare. 22,000 notifications and elections×0.5 hours=11,000 hours.

Total Annual Cost to Respondents: $32,000 estimated as follows: For operation and maintenance costs, we estimate that 50% of the 20,000 MVPDSs will annually develop cost schedules. Recordkeeping expenses for these schedules is estimated to be $1 per MVPD. 20,000×50%×$1=$10,000. Also, annual stationery and postage costs for home run wiring disposition notifications and elections are estimated to be $1 per occurrence. 22,000 notifications and elections×$1=$22,000. There are no estimated capital and start-up costs.

Needs and Uses: The various notification and election requirements in this collection (3060–0692) are set forth in order to promote competition and consumer choice by minimizing any potential disruption in service to a subscriber switching video providers.

SUPPLEMENTARY INFORMATION: The following is a synopsis of the Commission's Further NPRM in CS Docket No 95–184 and MM Docket No. 92–260, adopted August 27, 1997 and released August 28, 1997. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Washington, DC 20037.

Synopsis

A. Introduction

1. This Further Notice of Proposed Rulemaking (''Further NPRM'') sets forth specific proposals for addressing certain issues raised in the Notice of Proposed Rulemaking in CS Docket No. 95–184 (''Inside Wiring NPRM'') and the First Order on Reconsideration and Further Notice of Proposed Rulemaking in MM Docket 92–260 (''Cable Home Wiring Further NPRM'') regarding potential changes in our telephone and cable inside wiring rules. The issues raised in this Further NPRM are intended to supplement the issues already discussed in the Inside Wiring NPRM and the Cable Home Wiring Further NPRM.

2. We believe that our inside wiring rules could more effectively promote competition and consumer choice, but we believe that the record would benefit from additional comment on our specific proposals. We stress that the Commission intends to act quickly on these proposals. The proposals herein are set forth in great detail and generally are limited to a single issue: the disposition of cable inside wiring in multiple dwelling unit buildings (''MDUs'') upon termination of service. In addition, our proposals herein are similar to a proposal first made by the Independent Cable & Telecommunications Association (''ICTA'') in its initial comments in this proceeding, described more fully by ICTA in an ex parte letter to the Commission, and discussed by interested parties in ex parte letters. Accordingly, and in light of the extensive comments and ex parte meetings and comments received in response to the Inside Wiring NPRM and the Cable Home Wiring Further NPRM, we have set shorter deadlines than usual for interested parties to file comments and reply comments. We ask parties to refrain from filing comments that are repetitive of their comments filed in response to the Inside Wiring NPRM and the Cable Home Wiring Further NPRM. All such comments will be considered as part of the record filed in response to this Further NPRM to the extent they remain relevant.

3. Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the ''1992 Cable Act''), codified at section 624(i) of the Communications Act, requires the Commission to ''prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.'' In February 1993, the Commission issued a Report and Order implementing section 624(i) (the ''Cable Wiring Order''). The Cable Wiring Order provided that when a subscriber voluntarily terminates cable service, the operator is required, if it proposes to remove the wiring, to inform the subscriber: (1) That he or she may purchase the wire; and (2) what the per-foot charge is. If the subscriber declined to purchase the home wiring, the operator was required to remove it within 30 days or make no subsequent attempt to remove it or to restrict its use.

4. We further provided that the subscriber may purchase the cable home wiring inside his or her premises up to the demarcation point. As in the telephone context, a demarcation point generally is the point at which a service provider's system wiring ends and the customer-controlled wiring begins. From the customer's point of view, this point is significant because it defines the wiring that he or she may own or control. For purposes of competition, the demarcation point is significant because it defines the point where an alternative service provider may attach its wiring to the customer's wiring in order to provide service.

5. For MDUs with non-''loop-through'' wiring, the cable demarcation point was set at (or about) 12 inches outside of where the cable wire enters the subscriber's individual dwelling unit. Generally, in a non-loop-through configuration, each subscriber in an MDU has a dedicated line (often called a ''home run'') running to his or her premises from a common ''feeder line'' or ''riser cable'' that serves as the source of video programming signals for the entire MDU. The riser cable typically runs vertically in a multi-story building (e.g., up a stairwell) and connects to the dedicated home run wiring at a ''tap'' or ''multi-tap,'' which extracts portions of the signal strength from the riser and distributes individual signals to subscribers. Depending on the size of the building, the taps are usually located in a security box (often called a ''lockbox'') or utility closet located on each floor, or at a single point in the basement. Each time the riser cable encounters a tap, its signal strength decreases. In addition, the strength of a signal diminishes as the signal passes through the coaxial cable. As a result,

cable wiring often requires periodic amplification within an MDU to maintain picture quality. Amplifiers are installed at periodic intervals along the riser based upon the number of taps and the length of coaxial cable within the MDU. Non-cable video service providers typically employ a similar inside wiring scheme, except that many of them (e.g., multichannel multipoint distribution services (''MMDS''), satellite master antenna services (''SMATV'') and direct broadcast satellite (''DBS'') providers) use wireless technologies to deliver their signal to an antenna on the roof of an MDU, and then run their riser cable down from the roof to the taps and dedicated home run wires.

6. In January 1996, the Commission issued the Cable Home Wiring Further NPRM and the Inside Wiring NPRM. In the Cable Home Wiring Further NPRM, among other things, the Commission clarified that, during the initial telephone call in which a subscriber voluntarily terminates cable service, if the operator owns and intends to remove the home wiring, it must inform the subscriber: (1) That the cable operator owns the home wiring; (2) that it intends to remove the home wiring; (3) that the subscriber has a right to purchase the home wiring; and (4) what the per-foot replacement cost and total charge for the wiring would be, including the replacement cost for any passive splitters attached to the wiring on the subscriber's side of the demarcation point. Where an operator fails to adhere to these procedures, it is deemed to have relinquished immediately any and all ownership interests in the home wiring, and thus, is not entitled to compensation for the wiring and may make no subsequent attempt to remove it or restrict its use. If the cable operator informs the subscriber of his or her rights and the subscriber agrees to purchase the wiring, constructive ownership over the home wiring will transfer immediately to the subscriber, who may authorize a competing service provider to connect with and use the home wiring. If, on the other hand, the subscriber declines to purchase the home wiring, the operator has seven business days to remove the wiring or make no subsequent attempt to remove it or restrict its use.

7. In the Inside Wiring NPRM, we sought comment on ''whether and how our wiring rules can be structured to promote competition both in the markets for multichannel video programming delivery and in the market for telephony and advanced telecommunications services.'' In particular, we requested comment on whether and where the Commission should establish a common demarcation point for wireline communications networks, whether we should continue to establish demarcation points based on the services provided over facilities, or whether we should create demarcation points based upon the nature of the facilities ultimately used to deliver the service (i.e., narrowband termination facilities or broadband termination facilities). We noted that we ''recognize that numerous other factors may affect the proper location of the cable network's demarcation point, as well as one's control over cable inside wiring and cable service generally.'' We also sought comment on the ''legal and practical impediments faced by telecommunications service providers in gaining access to subscribers.''

B. The Competitive Landscape

8. The evidence in this proceeding leads us to conclude that more is needed to foster the ability of subscribers who live in MDUs to choose among competing service providers. Based on the record evidence, we believe that one of the primary competitive problems in MDUs is the difficulty for some service providers to obtain access to the property for the purpose of running additional home run wires to subscribers' units. The record indicates that MDU property owners often object to the installation of multiple home run wires in the hallways of their properties, for reasons including aesthetics, space limitations, the avoidance of disruption and inconvenience, and the potential for property damage.

9. We believe that property owners' resistance to the installation of multiple sets of home run wiring in their buildings may deny MDU residents the ability to choose among competing service providers, thereby contravening the purposes of the Communications Act, and particularly section 624(i), which was intended to promote consumer choice and competition by permitting subscribers to avoid the disruption of having their home wiring removed upon voluntary termination and to subsequently utilize that wiring for an alternative service. We believe that the impact is substantial. As of 1990, there were almost 31.5 million MDUs in the United States, comprising approximately 28% of the nationwide housing market. Moreover, the trend between 1980 and 1990 indicates that the number of MDUs is growing at a much faster rate than the number of single family dwellings. Data also shows that MDUs make up between 32% and 84% of the housing market in cities with the greatest numbers of households receiving cable service.

10. The record does not demonstrate that the current cable home wiring rules, having been in place for four years, provide adequate incentives for MDU property owners to permit the installation of multiple home run wires. We believe that disagreement over ownership and control of the home run wire substantially tempers competition. The record indicates that, where the property owner or subscriber seeks another video service provider, instead of responding to competition through varied and improved service offerings, the incumbent provider often invokes its alleged ownership interest in the home run wiring. Incumbents invoke written agreements providing for continued service, perpetual contracts entered into by the incumbent and previous owner, easements emanating from the incumbent's installation of the wiring, assertions that the wiring has not become a fixture and remains the personal property of the incumbent, or that the incumbent's investment in the wiring has not been recouped, and oral understandings regarding the ownership and continued provision of services. Written agreements are frequently unclear, often having been consummated in an era of an accepted monopoly, and state and local law as to their meaning is vague. Invoking any of these reasons, incumbents often refuse to sell the home run wiring to the new provider or to cooperate in any transition. The property owner or subscriber is frequently left with an unclear understanding of why another provider cannot commence service. The litigation alternative, an option rarely conducive to generating competition, while typically not pursued by the property owner or subscriber, can be employed aggressively by the incumbent. The result is to chill the competitive environment.

C. Disposition of Home Run Wiring

11. We propose to establish procedures for building-by-building disposition of the home run wiring (where the MDU owner decides to convert the entire building to a new video service provider) and for unit-by-unit disposition of the home run wiring (where an MDU owner is willing to permit two or more video service providers to compete for subscribers on a unit-by-unit basis) where the MDU owner wants the alternative provider to be able to use the existing home run wiring. We believe that these procedural mechanisms will not create or destroy any property rights, but will promote competition and consumer choice by

bringing order and certainty to the disposition of the MDU home run wiring upon termination of service.

12. In today's marketplace, alternative video service providers have no timely and reliable way of ascertaining whether they will be able to use the existing home run wiring upon a change in service. MDU owners are similarly unsure of their legal rights. Because of this uncertainty, an MDU owner seeking to change providers may be confronted with choosing among: (1) Allowing the alternative provider to install duplicative home run wiring before it knows whether the incumbent will abandon the existing home run wiring when it leaves; (2) waiting to see what the incumbent does with the home run wiring when it leaves the building, risking a potential disruption in service to its residents; (3) staying with the incumbent provider; or (4) allowing the alternative provider to use the home run wiring and risking litigation. The proposed procedures are intended to provide all parties sufficient notice and certainty of whether and how the existing home run wiring will be made available to the alternative video service provider so that a change in service can occur efficiently. We tentatively conclude that establishing rules governing the disposition of the MDU home run wiring will represent a substantial step toward increased competition in the MDU video programming service marketplace.

13. We propose that the procedural mechanisms described below would apply only where the incumbent provider no longer has an enforceable legal right to remain on the premises against the will of the MDU owner. In other words, these procedures would not apply where the incumbent provider has a contractual, statutory or common law right to maintain its home run wiring on the property. In the building-by-building context, the procedures below would not apply where the incumbent provider has a legally enforceable right to maintain its home run wiring on the premises against the MDU owner's wishes and prevent any third party from using the wiring; in the unit-by-unit context, the procedures below would not apply where the incumbent provider has a legally enforceable right to keep a particular home run wire dedicated to a particular unit (not including the wiring on the subscriber's side of the demarcation point) on the premises against the property owner's wishes. We are not proposing to preempt an incumbent's ability to rely upon any rights it may have under state law. We seek comment on the impact of this condition on the efficacy of our proposal, and how any adverse effects should be addressed. In particular, we seek comment on whether the Commission can and should create any presumptions or other mechanisms regarding the relative rights of the parties if the incumbent's right to maintain its home run wiring on the premises is disputed. For example, we seek comment on a presumption that the incumbent does not possess an enforceable legal right to maintain its home wiring on the premises (and therefore that our proposed procedures would apply), unless the incumbent can adduce a clear contractual or statutory right to remain.

i. Building-by-Building Disposition of Home Run Wiring

14. We seek comment on the following proposal: where the incumbent service provider 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, and the MDU owner wants to be able to use the existing home run wiring for service from another provider, the MDU owner may give the incumbent service provider a minimum of 90 days' notice that the provider's access to the entire building will be terminated. The incumbent provider would then have 30 days to notify the MDU owner in writing of its election to do one of the following for all the home run wiring inside the MDU: (1) To remove the wiring and restore the MDU to its prior condition by the end of the 90-day notice period; (2) to abandon and not disable the wiring at the end of the 90-day notice period; or (3) to sell the wiring to the MDU 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 would be required to notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the MDU owner refuses to purchase the home run wiring, the alternative video service provider may purchase it.

15. We are concerned that an incumbent provider may initially elect to remove its home run wiring and then decide to abandon it. Such conduct could put the alternative service provider to the unnecessary burden and expense of installing a second set of home run wires when the incumbent has no intention of removing the existing wiring. We seek comment on whether to adopt penalties for incumbent providers that elect to remove their home run wiring and then fail to do so.

16. Where the incumbent provider elects to sell the home run wiring, our preference is to let the parties negotiate the price of the wiring. We seek comment on whether market forces would provide adequate incentives for the parties to reach a reasonable price. If market forces are insufficient, we seek comment on how a reasonable price should be established. For instance, we seek comment on whether: (1) The Commission should establish broad guidelines within which negotiations would occur (e.g., a reasonable price should be more than a nominal amount but should not include the incumbent provider's lost opportunity costs); (2) the price should be left to negotiations between the parties but the Commission should establish a default price if the parties cannot reach an agreement; or (3) the Commission should establish a general rule or formula for determining a reasonable price. If parties believe that the Commission should establish guidelines, a default price, a general rule or formula, we seek comment on the type of guidelines, default price, general rule or formula that should be established.

17. We propose that, if the parties negotiate a price, they would have 30 days from the date of election to negotiate a price for the home run wiring. The parties could also negotiate to purchase additional wiring (e.g., riser cables) at their option. If the parties are unable to agree on a price, the incumbent would be required to elect to either abandon or remove the wiring and 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 would become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. Similarly, if the incumbent elects to remove its wiring and restore the building to its prior condition, it would have to do so by the end of the 90-day notice period. If the incumbent failed to comply with any of the deadlines established herein, it would be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period.

ii. Unit-by-Unit Disposition of Home Run Wiring

18. We also seek comment on the following proposal for unit-by-unit disposition of home run wiring. Where the incumbent video service provider 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 its home run wiring on the premises, the MDU owner may permit multiple service providers to compete head-to-head in the building for the right to use the individual home run wires dedicated to each unit. We propose that, where an MDU owner wishes to permit such head-to-head competition, the MDU owner must provide at least 60 days' notice to the incumbent provider of the owner's intention to invoke the following procedure. The incumbent service provider would then have 30 days to provide the MDU owner with a written election as to whether, for all of the incumbent's home run wires dedicated to individual subscribers who may later choose the alternative provider's service, it will: (1) remove the wiring and restore the MDU to its prior condition; (2) abandon the wiring without disabling it; or (3) sell the wiring to the MDU owner. In other words, the incumbent service provider would be required to make a single election for how it will handle the disposition of individual home run wires whenever a subscriber wishes to switch video service providers; that election would then be implemented each time an individual subscriber switches service providers. The alternative service provider would be required to make a similar election within this same 30-day period for any home run wiring that the alternative provider subsequently owns (i.e., after the alternative provider has purchased the wiring from the current incumbent provider) and that is solely dedicated to a subscriber who switches back from the alternative provider to the incumbent. We also tentatively conclude that it would streamline and expedite the process to permit the alternative service provider or the MDU owner to act as the subscriber's agent in providing notice of a subscriber's desire to change services. We tentatively conclude that unauthorized changes in service (i.e., ''slamming'') are unlikely to occur in this context; if slamming does occur, however, we would propose to take additional steps to protect consumers, such as requiring proof of agency.

19. As with the proposed building-by-building procedures, we would prefer to let the parties negotiate for the sale of the home run wiring and seek comment on whether market forces will produce a reasonable price. If market forces are not adequate, we seek comment on the appropriate mechanism for establishing a reasonable price for the home run wiring. We propose that, if one or both of the video service providers elects to negotiate for the sale of the home run wiring, the parties have 30 days from the date of such election to reach an agreement. During this 30-day negotiation period, the incumbent, the MDU owner and/or the new provider could also work out arrangements for an up-front lump sum payment in lieu of a unit-by-unit payment. An up-front lump sum payment would permit either service provider to use the home run wiring to provide service to a subscriber without the administrative burden of paying separately for each home run wire every time a subscriber changes providers. We also propose that, if the parties cannot agree on a price, the incumbent provider would be required to elect one of the other two options (i.e., abandonment or removal). If the incumbent fails to comply with any of the deadlines established herein, we propose to treat the home run wiring as abandoned and permit the alternative provider to use the home run wiring immediately to provide service.

20. We propose that, after completion of this initial process, a provider's election would be carried out if and when the provider is notified either orally or in writing that a subscriber wishes to terminate service and that an alternative service provider intends to use the existing home run wire to provide service to that particular subscriber. At that point, a provider that has elected to remove its home run wiring would have seven days to do so and to restore the building to its prior condition. We tentatively conclude that seven days is adequate for removal because we believe that, unlike in the building-by-building context, the provider would only be required to remove a single home run wire. If the current service provider has elected to abandon or sell the wiring, the abandonment or sale would become effective seven days from the date it receives a request for service termination or upon actual service termination, whichever occurs first. We would propose that, if the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent would be required to inform the subscriber or the subscriber's agent (whichever is notifying the incumbent that the subscriber wishes to terminate service) at the time of the request for service termination of the date on which service will be terminated. In addition, we would propose to require the incumbent provider to disconnect the home run wiring from its lockbox and to leave it accessible for the new provider by the end of the seven-day period or within 24 hours of actual service termination, whichever occurs first.

21. We base the above procedures on the assumption that the alternative service provider will have an incentive to ensure that the incumbent is notified that the alternative service provider intends to use the existing home run wire to provide service. To the extent this assumption is inaccurate, we seek comment on how the incumbent's election regarding the home run wiring in the unit-by-unit context should be triggered efficiently and so as to minimize disruption of service. If the subscriber's service is simply terminated without any indication that a competing service provider wishes to use the home run wiring, the incumbent service provider would not be required to carry out its election to sell, remove or abandon the home run wiring. This might occur, for instance, where an MDU tenant is moving out of the building. In such cases, we do not believe that it would be appropriate to require the incumbent to sell, remove or abandon the home run wiring when it might have every reasonable expectation that the next tenant will request its service. We would propose, however, that the incumbent provider would be required to carry out its election with regard to the home run wiring if and when it receives notice from a subsequent tenant (either directly or through an alternative provider) that the tenant wishes to use the home run wiring to receive a competing service.

22. Moreover, we propose that, even where the incumbent receives a request for service termination but does not receive notice that an alternative provider wishes to use the home run wiring, the incumbent must follow the procedures set forth in our cable home wiring rules—e.g., to offer to sell to the subscriber any cable home wiring that the incumbent provider otherwise intends to remove. First, the required notice in the unit-by-unit context may be effected in two stages (i.e., the subscriber may call to terminate service and the alternative provider may separately notify the incumbent that it wishes to use the home run wiring). We believe that, in order for the home run wiring and the home wiring to be disposed of in a coordinated manner, our cable home wiring rules must apply upon any termination of service. In addition, we believe that subscribers should have the right to purchase their home wiring to protect themselves from unnecessary disruption associated with removal of home wiring, regardless of whether they intend to subscribe to an alternative service.

iii. Ownership of Home Run Wiring

23. In both the building-by-building and unit-by-unit approaches, we propose to give the MDU owner the initial option to negotiate for ownership and control of the home run wiring because the property owner is responsible for the common areas of a building, including safety and security concerns, compliance with building and electrical codes, maintaining the aesthetics of the building and balancing the concerns of all of the residents. Moreover, vesting ownership of the home run wiring in the MDU owner, as opposed to the alternative service provider, will reduce future transaction costs since the procedures proposed herein would not need to be repeated if service is subsequently switched again. Nevertheless, we recognize that some MDU owners may not want to own the home run wiring in their buildings; we propose that in such cases the alternative service provider should be permitted to purchase the wiring.

24. We do not believe that individual subscribers would be disadvantaged by having the MDU owner own the home run wiring. If a subscriber has the ability to choose between multiple service providers in the unit-by-unit context, the MDU owner has already concluded that it is willing to permit multiple service providers on the premises in order to compete for subscribers. Given that the MDU owner would have voluntarily opened its building to multiple competitors, we do not believe that the MDU owner would deny a resident the ability to use the home run wiring for the resident's provider of choice. Furthermore, we believe that, if the alternative service provider purchases the home run wiring, that provider would not be able to act as a bottleneck and the individual subscriber would continue to be protected because, as described herein, the alternative service provider would also be subject to these same procedures if and when the alternative provider's service is terminated.

iv. Impact on Incumbent Video Service Providers

25. We tentatively conclude that cable operators' argument that the loss of their home run wiring eliminates their ability to provide other telecommunications services is misplaced. Cable operators' ability to compete in the telephony market should be largely unaffected. The procedures proposed herein apply where the incumbent has no legally enforceable right to remain on the premises and the MDU owner and/or the individual subscriber has selected another provider's package—notwithstanding the incumbent's other telecommunications services. Given MDU owners' resistance to the installation of multiple home run wires, we tentatively conclude that affording consumers a choice among various packages offered by multiple service providers is better than the current situation, in which MDU residents often have no choice at all. Under our proposal, MDU owners would remain free to implement the type of multiple-wire model advocated by the cable industry by requiring all service providers to install their own home run wires.

26. Cable operators also complain that property owners often act as ''gatekeepers'' in selecting a service provider and pursue their own interests rather than the interests of their residents. While we acknowledge how these circumstances can exist, we tentatively conclude that where the real estate market is competitive, it will discourage MDU owners from ignoring their residents' interests. In addition, the rules we propose do not grant MDU owners any additional rights, but simply establish a procedural mechanism for MDU owners to enforce rights they already have. Moreover, in the unit-by-unit context, the MDU owner would be expanding its residents' choices, not restricting them.

v. Application of Procedural Framework

27. In both the building-by-building and unit-by-unit contexts, one of our goals is to promote competition and consumer choice by minimizing any potential disruption in service to a subscriber switching video service providers. To that end, we have proposed certain rules herein designed to give the subscriber reasonable notice if and when his or her service will be terminated prior to the end of the applicable notice period. In addition, we would propose to adopt a general rule requiring the parties to cooperate to ensure as seamless a transition as possible. We seek comment on whether it is necessary to promulgate such a rule, or whether a provider's desire to win the subscriber back will compel the provider to cooperate during the transition period.

28. We also propose that the above procedural mechanisms would apply regardless of the identity of the incumbent video service provider involved. While initially this incumbent would commonly be a cable operator, it could also be a SMATV provider, an MMDS provider, a DBS provider or others.

vi. Statutory Authority

29. We believe that the Commission has authority under sections 4(i) and 303(r) of the Communications Act to establish procedures for the disposition of MDU home run wiring upon termination of service. Section 4(i) permits the Commission to ''perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.'' The Commission may properly take action under section 4(i) even if such action is not expressly authorized by the Communications Act, as long as the action is not expressly prohibited by the Act and is necessary to the effective performance of the Commission's functions. We propose to invoke section 4(i) here because the law does not expressly prohibit the Commission from adopting procedures regarding the disposition of home run wiring and because affording the widest range of competitive opportunities is necessary to effectuate the purposes of the Communications Act.

30. Section 4(i) has been held to justify various Commission regulations that were not within explicit grants of authority. In these cases, the courts found that the Commission's regulations were not inconsistent with the Communications Act because they did not contravene an express prohibition or requirement of the Act, and were reasonably ''necessary and proper'' for the execution of the agency's enumerated powers. Most recently, in *Mobile Communications Corp.* v. *FCC*, the United States Court of Appeals for the District of Columbia Circuit acknowledged the Commission's authority under section 4(i) to regulate even where the Communications Act does not explicitly authorize such action. In that case, the D.C. Circuit held that the Commission had authority under 4(i) to require Mtel, which held a pioneer's preference, to pay for a narrowband personal communications service (''PCS'') license, despite the fact that the Act did not specifically authorize the Commission to charge a price for a license granted to a pioneer's preference holder. The court denied Mtel's argument that the Commission's action was inconsistent with the Communications Act and therefore not within the Commission's section 4(i) power. Mtel argued that Congress' explicit grant of authority to the Commission to collect certain fees and to conduct auctions for specified types of licenses denied the Commission authority to impose other fees. The court found Mtel's reliance on the

expressio unius maxim—that the expression of one is the exclusion of other—misplaced. According to the court, ''[t]he maxim 'has little force in the administrative setting,' where we defer to an agency's interpretation of a statute unless Congress has 'directly spoken to the precise question at issue.' '' The court also denied Mtel's argument that, in the absence of an affirmative statutory mandate to support the payment requirement, the Commission's action was not ''necessary in the execution of [the Commission's] functions,'' as required by section 4(i).

31. Applying these principles here, we conclude that the Commission is authorized under section 4(i) to establish procedures regarding the disposition of MDU home run wiring upon termination of service. First, establishing rules regarding the disposition of the home run wiring upon termination is necessary to the execution of the Commission's functions. As noted above, section 624(i) directs the Commission to prescribe rules regarding the disposition of wiring within a subscriber's premises in order to promote consumer choice and competition by permitting subscribers to avoid the disruption of having their home wiring removed upon voluntary termination and to subsequently utilize that wiring for an alternative service. We believe that, under our current rules, we cannot fully meet those objectives in the MDU context because, as described above, MDU owners often will not permit multiple home run wires to be installed in their buildings. In order to promote consumer choice and competition, we therefore propose to prescribe additional rules regarding the disposition of the existing home run wiring upon termination of service.

32. Further, we propose to premise our decision to establish procedures regarding the disposition of home run wiring in MDUs on the Communications Act's fundamental purpose of ''regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all people of the United States * * * a rapid, efficient, Nation-wide, and world-wide wire and radio communications service * * *.'' Moreover, we propose to premise our decision on the pervasive regulatory structure Congress established regarding cable communications, the goal of which is to replicate or encourage competitive conditions. Section 601 of the Communications Act states that one of the purposes of Title VI is to promote competition in cable communications. Due to the lack of competitive alternatives in multichannel video programming services, Congress has authorized the Commission to ensure that basic cable services, including equipment, are available at reasonable rates, to ensure that cable programming service rates are not unreasonable, and to establish standards whereby cable operators fulfill customer service requirements.

33. We believe that establishing procedures regarding the disposition of MDU home run wiring will assist the Commission in discharging its statutory obligations under section 623(b) and its overall responsibility to pursue Congress' preference for competition stated in the 1992 Cable Act. Section 623(b) of the Communications Act requires the Commission to prescribe rules to ensure that rates for basic cable service are ''reasonable'' and that such regulations ''shall include standards to establish, on the basis of actual cost, the price or rate for * * * installation and lease of equipment used by subscribers * * *.'' The regulations authorized by section 623(b) cover ''equipment used by subscribers to receive the basic cable service tier, including * * * equipment as is required to access programming * * *.'' The term ''equipment'' under section 623(b) includes cable inside wiring. This extensive authority seeks to foster enhanced services to the subscriber at reasonable prices.

34. We believe that establishing the above procedures regarding the disposition of MDU home run wiring is necessary to fulfill section 623(b)'s mandate of reasonable basic cable rates. We believe that these procedures will provide advance certainty for property owners, alternative video service providers and subscribers regarding the disposition of the home run wiring when the existing service is terminated, thereby alleviating current circumstances that deter the property owner from considering alternative service providers and fostering competition among service providers. We believe that such competitive choice will exert a restraining influence on rates as service providers compete for the opportunity to serve the entire building or individual subscribers.

35. Moreover, in the 1992 Cable Act, Congress specifically embraced a ''[p]reference for competition'' over regulation in setting rates for cable services. Fostering competition among service providers through the adoption of rules regarding the disposition of MDU home run wiring is a fundamental means to ensure that cable service rates remain ''reasonable.'' The legislative history of section 623(b) states that Congress agreed that ''[r]ather than requiring the Commission to adopt a formula to establish the price for equipment, the Commission is given the authority to choose the best method of accomplishing the goals of this legislation.'' We therefore find that it is within our scope of authority under the 1992 Cable Act to establish procedural mechanisms that encourage reasonable rates through a competitive environment rather than a regulatory one.

36. Finally, we believe that our proposed approach would help to fulfill Congress' mandate in the 1996 Act to ''provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans.'' We believe that adoption of the above procedural mechanisms would enhance competition, fostering the deployment of innovative technologies and expanded services.

37. We believe that the above provisions authorize the Commission not only to establish regulations duplicating the behavior of a competitive market, but to take actions that prompt the evolution of a true competitive environment. Based on the record before us, we find that failing to establish such procedures would continue existing barriers to competitive choice for individuals residing in MDUs. Individuals residing in MDUs often are currently limited to receiving service from only one provider. Although we recognize that subscriber choice would be enhanced by the use of multiple wires, we do not believe that requiring MDU owners to permit multiple wires is a viable option at this point in time. We believe that the inability of the MDU owner to use the existing home run wiring deters consideration of alternative providers, and that providing certainty with regard to the disposition of the MDU home run wiring provides a reasonable means of increasing choice and promoting competition.

38. We also conclude that, in accordance with the second part of section 4(i), the procedural mechanisms we are proposing are not inconsistent with any provision of the law. Nothing in the language of section 624(i) prohibits the Commission from adopting rules concerning wiring outside the subscriber's premises. This is not a circumstance where the general canon of statutory construction, the ''specific governs the general,'' applies. The courts have found this canon applicable only where there ''is an 'inescapable conflict' between the specific provision

and the general provision.'' Section 624(i) does not expressly prohibit the Commission from adopting rules affecting home run wiring. Thus, we tentatively conclude that there is no ''inescapable conflict'' between section 624(i) and the procedures discussed below. To the contrary, as described above, we believe that the rules we are proposing will further promote section 624(i)'s underlying purpose of promoting consumer choice and competition by permitting subscribers to use their existing home wiring to receive an alternative video programming service. Finally, as the *Mtel* court found, the *expressio unius maxim*—that the expression of one is the exclusion of other—'' 'has little force in the administrative setting,' where we defer to an agency's interpretation of a statute unless Congress has 'directly spoken to the precise question at issue.' '' Indeed, the *Mtel* court stated: ''[W]e think the nature of Congress's auction authorization more supports than undermines the Commission's decision here.''

39. While the legislative history of section 624(i) indicates that Congress was concerned about the potential for theft of service and signal leakage, we believe that the rules we are proposing would not have an adverse impact on those concerns. First, we do not believe that the procedural mechanisms we are proposing will increase the frequency of service theft; a provider's control over its network security is unaffected by our rules. Our proposed rules do not give the MDU owner, the alternative service provider or the subscriber access to the incumbent's riser cable or lockbox. Second, our proposed rules would not affect the service provider's signal leakage responsibilities. It would remain the duty of the provider to protect against signal leakage while it is providing service, regardless of who owns the home run wiring in the building.

40. We also think that cable operator reliance on the ''Joint Use'' provision of the 1996 Act (codified at section 652(d)(2) of the Communications Act) as evidence of Congress' intent that cable operators retain ownership and control of the home run wiring is misplaced. Section 652(d)(2) provides generally that a LEC may obtain permission from the cable operator to use that part of the transmission facilities extending from the last multi-user terminal to the premises of the end user, and that such use must be reasonably limited in scope and duration. Cable operators assert that this provision invests them with ownership and control of all cable wiring outside the subscriber demarcation point, including the home run wiring, even after a subscriber terminates service, as Congress otherwise would not have established rules allowing cable operators to set the terms and conditions for a LEC's use of the facilities.

41. We disagree. Notably, section 652(d)(2) is entitled ''Joint Use,'' indicating Congress'' intent for the provision to govern only the joint use of the facilities by a cable operator and a local exchange carrier. It is an exception to the general prohibition in section 652(c) on joint ventures or partnerships between cable operators and LECs that serve the same market area. We believe that section 652(d)(2) does not constrain our authority to establish procedures governing the disposition of the home run wiring because the provision only addresses use of the wiring while the cable operator continues to own or use the facilities. Here, the procedural mechanisms would not apply until the cable operator has no legally enforceable right to remain on the premises and the MDU owner and/or subscriber terminates the operator's service.

42. Additionally, we believe that had Congress intended the ''Joint Use'' provision to govern cable wiring, it would have placed the provision in section 624, which sets forth the existing wiring provisions, rather than in section 652, which concerns telephone company-cable television cross-ownership restrictions. We also agree with alternative video service providers that Congress would have enumerated additional types of potential users of cable operators' wiring, other than telephone companies, if it had intended this provision to cover uses of the wiring other than the limited situation of wiring being shared between a LEC and a cable operator.

43. We believe that we have authority to apply all our cable inside wiring rules to all MVPDs, and not just to cable operators. Section 303(r) of the Communications Act authorizes the Commission, as required by public convenience, interest, or necessity, to promulgate rules and restrictions, not inconsistent with law, as may be necessary to carry out the provisions of the Act. We believe that applying these rules to over-the-air video service providers would be in the public interest. The same competitive concerns described above exist regardless of whether a cable operator or some other video service provider initially installed a subscriber's or an MDU's inside wiring. In addition, we believe that applying our cable home wiring rules to MVPDs that are radio licensees would not be inconsistent with section 624(i) and would further its purposes, since subscribers could use their existing inside wiring to receive an alternative service. Further, for similar reasons to those discussed above in proposing procedures for disposition of the home run wiring in MDUs for cable operators, such procedures would not be inconsistent with section 624(i) if applied to MVPDs that are radio licensees.

44. In addition, we tentatively conclude that we have the authority under sections 201 to 205 of the Communications Act to extend our cable inside wiring rules to common carriers engaged in the transmission of video programming. We tentatively conclude that section 4(i) also invests the Commission with authority to expand our rules in this manner with regard to MVPDs that are neither radio licensees nor common carriers. Again, we tentatively conclude that the same competitive concerns are present regardless of the type of service provider that initially installs the broadband inside wiring. In addition, we tentatively conclude that such an extension of our rules is necessary in the execution of our functions and is not inconsistent with the Communications Act, as described above. To promote parity among broadband competitors and to fulfill the directives of the 1992 Cable Act and the 1996 Act, we propose to apply our cable inside wiring rules to all MVPDs.

vii. Constitutional Arguments

45. We tentatively conclude that the procedural mechanisms we have proposed do not constitute an impermissible ''taking'' under the Fifth Amendment. First, there is no forced taking of the incumbent's physical property, since the incumbent has a reasonable opportunity to remove, abandon, or sell the wiring. If the incumbent fails to act within the reasonable periods set forth and its wiring is deemed abandoned, it is the operator's failure to act, not the Commission's rule, that would extinguish the cable operator's rights. The Fifth Amendment cannot be construed to allow a service provider with no contractual or other legal right to remain on a person's property to leave its wiring on the property indefinitely and prohibit the property owner from using it. In addition, there can be no taking of the incumbent's access rights because the procedures expressly apply only where the incumbent does not have a contractual, statutory or other legal right to maintain its wiring on the premises. We seek

comment on these tentative conclusions.

D. Disposition of Cable Home Wiring

46. We believe that fostering competitive choice in MDUs requires the coordinated disposition of two segments of cable wiring: (1) The home run wiring from the point where the wiring becomes devoted to an individual unit to the cable demarcation point; and (2) the cable home wiring from the demarcation point to the subscriber's television set or other customer premises equipment. Without clear and predictable rules for the disposition of each of these segments, an alternative provider's ability to convince an MDU owner or individual subscriber to switch services could be significantly compromised. The procedural framework proposed above addressed the disposition of MDU home run wiring. Here, we set forth a specific proposal on how to address certain issues regarding the disposition of MDU cable home wiring. We believe that these rules will promote competition and consumer choice by providing a comprehensive and workable framework for the disposition of MDU cable wiring.

47. As in the context of home run wiring, we propose that these home wiring procedural mechanisms apply regardless of the identity of the incumbent video service provider involved. While initially this incumbent would commonly be a cable operator, it could also be a SMATV provider, an MMDS provider, a DBS provider or others. We tentatively conclude that we have the authority to apply these home wiring rules to other video service providers. We request comment on this proposal.

i. Building-by-Building Disposition of Home Wiring

48. In the Cable Home Wiring Further NPRM, we requested comment on, among other issues, whether, in order to promote the goals of section 624(i) and our rules thereunder, the subscriber (on a non-loop-through wiring configuration) or the building owner (with a loop-through wiring configuration) should be given the opportunity to purchase the cable home wiring when the MDU owner terminates cable service for the entire building.

49. We tentatively conclude that, if the MDU owner has the legal right, either by law or by contract, to terminate the subscriber's cable service, the owner terminating service for the entire building is effectively voluntarily terminating service on the subscribers' behalf. We therefore tentatively conclude that our home wiring rules would be triggered when an MDU owner terminates service for the entire building. We tentatively conclude that providing the cable operator a single point of contact (i.e., the MDU owner) would further the statutory purposes of minimizing disruption and facilitating the transfer of service to a competing video service provider. Because we believe that it would be impractical and inefficient for the incumbent provider to deal with each individual subscriber regarding the disposition of his or her cable home wiring when the entire MDU is switching providers, we propose to deem the MDU owner to be acting as the terminating ''subscriber'' for purposes of the disposition of the cable home wiring within the individual dwelling unit where the cable home wiring is not already owned by a resident. We request comment on this proposal. Similarly, with regard to bulk service contracts, we tentatively conclude that it is logical for the landlord to be deemed the subscriber, and thus for the landlord to have the right to purchase the wiring as provided in our general rules. We tentatively conclude, however, that this rule should not override a bulk service contract that specifically provides for the disposition of the wiring upon termination of the contract.

50. We propose that, when an MDU owner provides an incumbent provider with its minimum of 90 days notice 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 must, in accordance with our current home wiring rules, (1) offer to sell to the MDU owner any home wiring within the individual dwelling units which 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. As with the home run wiring, if the MDU owner declines to purchase the cable home wiring not already owned by a resident, the alternative service provider could elect to purchase it upon service termination under our rules.

51. We propose to require that the MDU owner decide whether it or the alternative provider will purchase the cable home wiring and so notify the incumbent provider no later than 30 days before the termination of access to the building will become effective. We propose to modify our current home wiring rules to allow the incumbent provider 30 days, rather than the current seven, to remove all of the cable home wiring for the entire building. We believe this is appropriate given the amount of home wiring that may need to be removed from an entire building. We propose that, if the MDU owner and the alternative service provider decline to purchase the home wiring, the incumbent provider would not be permitted to remove the home wiring until the date of actual service termination, i.e., likely 90 days after the building owner notified the incumbent that its access to the entire building will be terminated. Under these circumstances, we would propose that if the incumbent provider fails to remove the home wiring within 30 days of actual service termination, it could make no subsequent attempt to remove the wiring or restrict its use. We request comment on this proposal.

ii. Unit-by-Unit Disposition of Home Wiring

52. In the unit-by-unit context, we propose to continue to apply our rules permitting terminating subscribers (or their agents) to purchase the cable home wiring up to a point approximately 12 inches outside their individual units. We continue to believe that this is consistent with the purposes of section 624(i) to promote consumer choice and competition by permitting subscribers to avoid the disruption of having their home wiring removed upon voluntary termination and to subsequently utilize that wiring for an alternative service. We do, however, propose to modify our rules in two ways. First, as discussed below, we propose to permit the MDU owner or the alternative service provider to purchase the cable home wiring within each unit if the subscriber declines, provided that the building owner timely notifies the incumbent provider that it or the alternative provider wants to purchase the home wiring whenever a subscriber declines. Second, we propose to change the time in which an incumbent provider must remove the home wiring or make no further effort to use it or restrict its use from seven business days to seven calendar days after the individual subscriber terminates service. We believe that this minor change is sufficient time for removal of a single unit's cable home wiring, and will avoid customer confusion by having the time permitted for the provider to remove the home wiring within the individual unit run concurrently with the time permitted for the provider to remove, sell or abandon the home run wiring outside the unit.

53. In the Cable Home Wiring Further NPRM, we requested comment on whether the premises owner should have the right to purchase the cable

home wiring when a subscriber who voluntarily terminates cable service does not own the premises and elects not to purchase the wiring. We tentatively conclude that an MDU owner should be permitted to purchase the wiring within an individual dwelling unit based on the per-foot replacement cost if the individual subscriber declines to do so. This approach would preserve the current subscriber's rights, and still allow the building owner to act on behalf of future tenants, thus promoting competition and consumer choice. As with the home run wiring, if the MDU owner declines to purchase the cable home wiring, the alternative service provider would be permitted to purchase it. Except with respect to the building-by-building procedure described above, we would not require that the building owner or the alternative provider have the opportunity to purchase the wiring before the subscriber has the opportunity to do so because we believe that Congress intended for section 624(i) to promote individual subscriber choice whenever possible. Our preference is therefore for the subscriber to control its own home wiring, and only when that is not reasonable or efficient, for the building owner or alternative provider to control it.

54. We propose that the MDU owner should notify the incumbent provider of its election to purchase or to allow the alternative provider to purchase the home wiring at the same time as the MDU owner provides the incumbent provider with 60 days notice that it intends to allow head-to-head competition within its building. Thus, the MDU owner would be required to inform the incumbent provider one time for the entire building. If the MDU owner fails to provide the incumbent with such notice, the incumbent would be under no obligation to sell the home wiring to the MDU owner or the alternative provider when an individual subscriber terminates and declines to purchase the wiring. We request comment on this proposal.

E. Alternatives to Procedural Framework

55. In some cases, there may be room in the molding or conduit for an alternative service provider to install its home run wiring without interfering with the incumbent's wiring. We propose to permit the alternative service provider to install its wiring within the existing molding or conduit, even over the incumbent provider's objection, where there is room in the molding or conduit and the MDU owner does not object. We seek comment on whether and how to allow compensation for the alternative service provider's use of the molding or conduit. We tentatively conclude that such a rule would promote competition and consumer choice and would not constitute a taking of the incumbent provider's private property without just compensation under the Fifth Amendment. We seek comment on these tentative conclusions. We also seek comment on whether and how this rule would apply in the situation where an incumbent provider has an exclusive contractual right to occupy the molding or conduit.

56. Several commenters also point out that the current cable demarcation point can be physically inaccessible. We tentatively conclude that where the cable demarcation point is truly physically inaccessible to an alternative service provider (e.g., embedded in brick, metal conduit or cinder blocks, not simply within hallway molding), the demarcation point should be moved back to the point at which it first becomes physically accessible. We seek comment on this tentative conclusion and on how to define ''physically inaccessible.'' We also seek comment on the percentage of installations in which the demarcation point would be deemed physically inaccessible. Finally, we seek comment on our authority to adopt, and any other legal implications of, this proposed modification.

57. We also seek comment on whether we should adopt a rule requiring video service providers to transfer to the MDU owner upon installation ownership of the home wiring and home run wiring installed in MDUs under contracts entered into on or after the effective date of any rules we may adopt. Such a rule might increase competition and consumer choice in future installations by permitting MDU owners to control access to the home run wiring from the start. We seek comment on the appropriate mechanism for effecting such a transfer, whether the price for the wiring should be regulated or left to private negotiations, and whether and how our rules should address the issue of an MDU owner that does not want to own the home run wiring in its building. In addition, we seek comment on our authority to adopt, and any other legal implications of, such a rule.

58. Finally, we seek comment on any other proposals to promote MVPD competition and consumer choice in MDUs that have not already been previously raised and commented on in the Inside Wiring NPRM and the Cable Home Wiring Further NPRM. In particular, we ask commenters to address the legal, policy and practical implications of any such proposals.

Initial Regulatory Flexibility Act Analysis

59. 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 Further NPRM. 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 have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of the Further NPRM, including the IRFA to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the RFA.

Need for Action and Objectives of the Proposed Rules

60. This Further NPRM proposes to supplement the cable home wiring rules with new procedural mechanisms to provide certainty regarding the use of MDU home run wiring upon termination of existing service. In addition, we propose to expand our cable inside wiring rules to apply to all MVPDs in order to promote parity among competitors.

Legal Basis

61. This Further NPRM is adopted pursuant to sections 1, 4(i), 201–205, 303, 623, 624, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, 303, 543, 544 and 552.

Description and Estimate of the Number of Small Entities Impacted

62. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' and the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one which: (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''). The rules we

propose in this Further NPRM will affect MVPDs and MDU owners.

63. 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. 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. We will address each service individually to provide a more succinct estimate of small entities.

64. 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. 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. 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 Further NPRM.

65. 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.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. 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.

66. 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. 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.

67. 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 tentatively conclude that there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

68. 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. 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 tentatively conclude that at least 1,989 ITFS licensees are small businesses.

69. 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.

70. HSD: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other multichannel video service providers. 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. 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.

71. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. 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.

72. OVS: The Commission has certified nine open video system (''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 tentatively conclude that three OVS licensees may qualify as small business concerns.

73. SMATVs: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. 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 tentatively conclude that a substantial number of SMATV operators qualify as small entities.

74. 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. 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. We have not yet received approval by the SBA for this definition.

75. 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.

76. 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. 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. 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. 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

77. The Further NPRM proposes rules to require that, upon termination of existing service, the MDU operator must provide the incumbent service provider with notice of termination of the incumbent's access to the building or of the owner's wish to permit head-to-head competition for individual home run wires. The MDU operator would have the option of either purchasing the wiring or allowing the alternative provider to purchase it. The incumbent service provider would be required to elect to sell, remove or abandon its home run wiring and would have to complete its sales negotiations or remove its wiring within the time schedule provided herein or be deemed to have abandoned its wiring. The Commission's inside wiring rules would also be expanded to apply to all MVPDs.

78. The Further NPRM requests comment on the adoption of penalties for incumbent MVPDs that elect to remove their MDU home run wiring upon termination of service and then fail to do so. Incumbent providers may choose to maintain records to prove their compliance with the rules regarding disposition of home run wiring, but we do not believe that they will need additional professional skills to maintain such records and we propose no requirement for such recordkeeping.

79. The Further NPRM proposes a rule requiring video service providers to transfer ownership of MDU home run wiring to the MDU owner upon installation. Video service providers may choose to maintain records of the home run wiring subject to such a rule, but we do not believe that they will need additional professional skills to maintain such records and we propose no requirement for such recordkeeping.

Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered: None. However, any significant alternatives presented in the comments will be considered.

Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rules: None.

Paperwork Reduction Act of 1995 Analysis

80. The requirements proposed in this Further NPRM 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 Further NPRM, as required by the 1995 Act. Public comments are due September 25, 1997. 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 would 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.

81. Written comments by the public on the proposed new and modified information collection requirements are due September 25, 1997. 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.

Procedural Provisions

82. 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. 47 CFR 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 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

83. Filing of Comments and Reply Comments. 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 September 25, 1997 and reply comments on or before October 2, 1997. 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.

84. Written comments by the public on the proposed and/or modified information collections are due September 25, 1997. Written comments must be submitted by the Office of Management and Budget (''OMB'') on the proposed and/or modified information collections on or before November 3, 1997. 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.

Ordering Clauses

85. *It is ordered* that, pursuant to sections 1, 4(i), 201–205, 303, 623, 624 and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, 303, 543, 544 and 552, *notice is hereby given* of proposed amendments to Part 76, in accordance with the proposals, discussions and statements of issues in this Further Notice of Proposed Rulemaking, and that *comment is sought* regarding such proposals, discussions and statements of issues.

86. *It is further ordered* that the Commission *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Proposed Rule Changes

Part 76 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 would continue 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 proposed to be amended by revising paragraph (mm)(2) to read as follows:

§ 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, as close as practicable thereto so as to permit access to the cable home wiring.

* * * * *

3. Section 76.802 is proposed to be amended by revising paragraph (a) and paragraph (g) by removing the word ''business'', and by adding new paragraphs (l), (m) and (n) to read as follows:

§ 76.802 Disposition of cable home wiring.

(a) (1) Upon voluntary termination of cable service by a subscriber in a single unit dwelling, 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 dwelling unit building, 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, the subscriber declines, and the owner of the multiple dwelling unit building's common areas (referred to herein as the ''MDU owner'') has not previously elected to purchase or have the alternative MVPD purchase the cable home wiring when a subscriber declines, as provided in paragraph (l) hereof. If the subscriber declines to purchase the cable home wiring, and, the MDU owner has not elected to purchase or have the alternative MVPD 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.

(3) Upon voluntary termination of cable service for an entire multiple dwelling unit building by the MDU owner, a cable operator shall not remove the cable home wiring unless it gives the MDU owner the opportunity to purchase the wiring at the replacement cost, and the MDU owner declines either to purchase the wiring or to allow the alternative MVPD to purchase the wiring. If the MDU owner declines to purchase or have the alternative MVPD purchase the cable home wiring, the cable system operator must then remove the cable home wiring no later than 30 days, under normal operating conditions, after it is notified of the MDU owner's decision, or make no subsequent attempt to remove it or to restrict its use.

(4) 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.

* * * * *

(l) If a subscriber who is not the owner of the premises terminates service and declines to purchase the cable home wiring under this section, the owner of the multiple dwelling unit building's common areas (referred to herein as the ''MDU owner'') may purchase it under the same terms and conditions provided in subsection (a) hereof, provided that the MDU owner notified the cable system operator of its desire to purchase the cable home wiring in the event the subscriber declines. Such notification must occur no later than the time at which the MDU owner provides the incumbent MVPD 60 days' notice of the MDU owner's intention to invoke the procedure set forth in Section 76.804(b).

(m) Where an entire multiple dwelling unit building is switching service providers, the MDU owner shall be permitted to exercise the rights of individual subscribers for purposes of the disposition of the cable home wiring under this section. If the MDU owner declines to purchase the cable home wiring, the MDU owner may allow the alternative provider to purchase it upon service termination under this section.

(n) This section shall apply to all multichannel video programming distributors, as that term is defined in Section 602(13) of the Communications Act, 47 U.S.C. § 522(13), in the same manner as it applies to cable operators.

4. Section 76.804 is proposed to be added to read as follows:

§ 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 a multiple dwelling unit building (''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 entity that owns the common areas of the MDU (''the MDU owner''), the MDU owner may give the MVPD a minimum of 90 days' notice that its access to the entire building will be terminated. The MVPD will then have 30 days to elect, for all the home run wiring inside the MDU building: (i) To remove the wiring and restore the MDU building to its prior condition by the end of the 90-day notice period; (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 MDU owner refuses to purchase the home run wiring, an alternative provider that has been authorized to provide service to the MDU by the MDU owner may negotiate to purchase the wiring. For purposes of this section, ''home run wiring'' shall refer to the wiring from the point at which the MVPD's wiring becomes devoted to an individual subscriber to the demarcation point.

(2) If the parties negotiate a price for the home run wiring, they shall have 30 days from the date of election to negotiate a price. If the parties are unable to agree on a price, the incumbent must elect one of the other two options (i.e., abandonment or removal) and 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 to remove its wiring and restore the building to its prior condition, it must do so by the end of the 90-day notice period. 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.

(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, an MDU owner may permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit. The MDU owner must provide 60 days' 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 and the competing MVPD(s) 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 to its prior condition;

(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 alternative provider may purchase it. The alternative provider(s) 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) When an existing MVPD is notified either orally or in writing that a 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, an existing provider that has elected to remove its home run wiring will have seven days to remove its home run wiring and restore the building to its prior condition. If the existing provider has elected to abandon or sell the wiring, the abandonment or sale will become effective seven days from the date it received the request for service termination or upon actual service termination, whichever occurs first. 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 by the end of the seven-day period or within 24 hours of actual service termination, whichever occurs first.

(3) If the incumbent provider fails to comply with any of the deadlines established herein, the home run wiring shall be considered abandoned and the alternative provider shall be permitted to use 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. If 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, 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 our 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.

(4) The parties shall cooperate to ensure as seamless a transition as possible for the subscriber.

(5) Section 76.802 of our 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.

5. Section 76.805 is proposed to be added to read as follows:

§ 76.805 Access to molding and conduits

An multichannel video service provider (''MVPD'') shall be permitted to install one or more home run wires in an existing molding or conduit where:

(a) Sufficient space is present to permit the installation;

(b) The installation will not interfere with the ability of an existing MVPD to provide service; and

(c) The owner of the multiple dwelling unit building does not object to such installation.

[FR Doc. 97–23303 Filed 9–2–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 97–153, RM–8584, RM–8623, RM–8680, RM–8734; FCC 97–239]

Amendments to Part 90 Private Land Mobile Radio Service Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has released a *Notice of Proposed Rule Making* that proposes several amendments to the part 90 Private Land Mobile Radio Services rules. This action was initiated in response to petitions for rulemaking concerning eliminating certain frequency coordination requirements in the Business Radio Service, the transmission of safety alerting signals on Radiolocation Service frequencies, and modifying construction and loading requirements for private, non-Specialized Mobile Radio systems operating in the 800 and 900 MHz bands. The proposed rules will reduce the regulatory burden on licensees, and will promote more efficient and flexible use of the private land mobile radio frequency spectrum. Additionally, comments are requested on potential interference problems resulting from shared use of the 216–217 MHz band under parts 90 and 95 of the rules.

DATES: Comments are due October 3, 1997. Reply comments are due October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Gene Thomson, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunicatioons Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making (Notice),* WT Docket No. 97–153, FCC 97–239, adopted July 2, 1997, and released August 25, 1997. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room 246, 1919 M Street NW., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 1231 20th St. NW., Washington, DC. 20036, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. The Commission has released a *Notice of Proposed Rule Making* that proposes several amendments to part 90 of the rules concerning the Private Land Mobile Radio (PLMR) Services.

2. In response to a Petition for Rule Making filed by the Council of Independent Communications Suppliers, (RM–8623), the *Notice* proposes the elimination of frequency coordination requirements for five low-power frequencies in the Business Radio Service.

3. In response to a Petition for Rule Making filed by the Radio Association Defending Airwave Rights, (RM–8734), the *Notice* proposes to permit the transmission of safety alerting signals in the 24.05–24.25 GHz band in the Radiolocation Service. The *Notice* also proposes to extend use of 24.05–24.25 GHz band frequencies to permit traffic light control by emergency vehicles.

4. In response to a Petition for Rule Making filed by the Alliance of 800/900 MHz Licensees, (RM–8584), the *Notice* proposes to modify the construction requirements for private, non-Specialized Mobile Radio systems operating in the 800 and 900 MHz bands. The *Notice* declines to also change the mobile loading and reporting requirements for 800 and 900 MHz non-SMR systems.

5. As requested in a Petition for Rule Making filed jointly by the Industrial Telecommunications Association and the Council of Independent Communications Suppliers, (RM–8680), the *Notice* declines to amend the part 90 and part 13 rules to establish a PLMR Services Radio Maintainers License and to require persons installing and servicing land mobile radio equipment to have such a license.

6. Additionally, the *Notice* requests comments on potential interference problems resulting from shared use of the 216–217 MHz band under parts 90 and 95 of the rules.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 90 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.17 is proposed to be amended by revising paragraph (e)(4) to read as follows:

§ 90.17 Local Government Radio Service.

* * * * *

(e) * * *

(4) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without additional authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to §§ 90.203(b)(4) and (b)(5) is used, and all other rule provisions are satisfied. A licensee in this service may also operate, subject to all of the foregoing conditions and on a secondary basis, radio units at fixed locations and in emergency vehicles that transmit on the frequency 24.10 GHz, both unmodulated continuous wave radio signals and modulated FM digital signals for the purpose of alerting motorists to hazardous driving conditions or the presence of an emergency vehicle. Unattended and continuous operation of such transmitters will be permitted. Additionally, licensees may utilize type accepted equipment operating in the 24.20–24.25 GHz portion of the 24.05–24.25 GHz band for traffic light control purposes without additional authorization and on a secondary basis.