

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified

Maps are available for inspection at the Travis County Transportation and Natural Resources Department, Executive Office Building, 411 West 13th Street, Austin, Texas.

Send comments to The Honorable Bill Aleshire, Travis County Judge, P.O. Box 1748, Austin, Texas 78767.

Maps are available for inspection at the City of Austin Watershed Engineering Division, 206 East Ninth Street, Suite No. 17102, Austin, Texas.

Send comments to The Honorable Kirk Watson, Mayor, City of Austin, P.O. Box 1088, Austin, Texas 78767.

Washington	Clark County (Unincorporated Areas).	East Fork Lewis River	Approximately 17,000 feet downstream of Daybreak Road.	*31	*32
		Approximately 400 feet downstream of Daybreak Road.	*76	*75

Maps are available for inspection at the Clark County Department of Community Development, Development Services Division, Office of Engineering Review, 1408 Franklin Street, Vancouver, Washington.

Send comments to The Honorable Betty Sue Morris, Chairperson, Clark County Board of Commissioners, P.O. Box 5000, Vancouver, Washington 98666-5000.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 7, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98-18724 Filed 7-13-98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-264; FCC 98-138]

Horizontal Ownership Limits

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In the *Further Notice of Proposed Rulemaking* ("Further Notice"), the Commission seeks comment on possible revisions of the cable television horizontal ownership rules and the method by which horizontal ownership is calculated. The Commission seeks comment on whether, in light of evolving market conditions, the horizontal ownership limit should remain at 30% of homes passed nationwide by cable, and also seeks comment on the 35% minority-control allowance. The *Further Notice* also seeks comment on whether the Commission should revise the rules to consider the presence in the market of all multichannel video programming providers ("MVPDs") rather than cable operators alone, and whether to base the limit on actual subscribers rather than on homes passed. The *Further Notice* is part of a companion *Memorandum Opinion and Order on Reconsideration*

which is summarized elsewhere in this issue of the **Federal Register**.

DATES: Comments are due on or before August 14, 1998, and reply comments are due on or before September 3, 1998.

FOR FURTHER INFORMATION CONTACT: John Norton, Cable Services Bureau, (202) 418-7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Further Notice of Proposed Rulemaking*, MM Docket No. 92-264, FCC 98-138 adopted June 23, 1998, and released June 26, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, NW, Washington, D.C. 20036.

Synopsis of the Notice of Proposed Rulemaking

1. In the Second Report and Order in MM Docket No. 92-264, 58 FR 60135, November 15, 1993 ("Second Report and Order"), the Commission adopted the horizontal ownership rules, which provide that no person may hold attributable interests in cable systems reaching more than 30% of all homes passed nationwide by cable. In the *Second Report and Order*, the Commission stated that it planned to review subscriber limits every five years to determine whether such limits are reasonable under the prevailing market conditions and whether such limits continue to serve the objectives for which they were adopted. The rules in question were adopted in 1993, and the

Commission believes that it is appropriate to review these rules to address intervening changes in the communications marketplace.

2. In the *Further Notice*, the Commission seeks comment on whether 30% remains the appropriate horizontal ownership limit in light of evolving market conditions. The current rules further allow ownership of additional cable systems reaching up to 35% of cable homes passed, provided such additional cable systems are minority-controlled. The purpose of the 35% minority-control allowance was to encourage diversity of viewpoints by fostering increased minority participation and ownership in the cable industry, through increased multiple systems operator ("MSO") investment in minority-owned cable systems. The Commission seeks comment on the constitutionality of the minority-control allowance in light of the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). Recognizing that the minority-control allowance has never been utilized by any MSO, the Commission also seeks comment on the effectiveness of this rule and on the development of alternative rules to promote minority participation consistent with the standards set forth in *Adarand*.

3. The Commission also seeks comment on two specific issues concerning the method of ownership calculation: (1) whether the rules should consider the presence in the market of all MVPDs rather than cable operators alone, and (2) whether the rules should be based on actual subscriber numbers rather than on homes passed. The rules proposed in the *Further Notice* would

provide that, in calculating a cable MSO's market share, the numerator would consist of the MSO's cable subscribers plus its non-cable MVPD subscribers, and the denominator would consist of the total number of cable subscribers plus non-cable MVPD subscribers nationwide. In addition to these proposed rule changes, the Commission seeks comment as to whether the method of ownership calculation should be modified in some way to support cable overbuild competition.

4. In the *Further Notice*, the Commission recognizes that the MVPD market has continued to evolve since our adoption of the horizontal ownership rules. The Commission seeks comment on a proposal to revise the rules to include alternative MVPDs in the measure of horizontal concentration in order to reflect the emergence of competitors to cable in the video marketplace, as well as potential MSO increases in market power through acquisition of interests in other MVPDs. The *Further Notice* seeks comment on whether such a rule revision—recognizing the impact of all purchasers of video programming, not just cable operators—would provide a more accurate measure of MSOs' market power.

5. The Commission also seeks comment on whether the proposed revision of the horizontal ownership rules is consistent with the Commission's authority under Section 613 of the Communications Act to "prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems * * *." The proposal would result in a sliding or adjustable cable horizontal ownership limit, under which the number of subscribers a cable operator is authorized to reach through cable systems would decrease in proportion with any increase in the number of subscribers that entity reaches through other MVPD systems. Conversely, the cable horizontal ownership limit would rise for a cable operator that reaches fewer subscribers through other MVPD systems. The proposed rules would impose no limit on the number of subscribers a cable operator may reach through alternative MVPD systems. These rules also would not apply to persons who have no attributable ownership interests in cable systems. The Commission seeks comment on this proposal and on whether it is consistent with the terms of the underlying statute, given Section 613's focus on the cable industry and the establishment of a cable

subscribership limit rather than an MVPD subscribership limit.

6. In the *Further Notice*, the Commission also seeks comment on the possibility of changing the method of calculating the basis of the horizontal ownership limits from potential reach, i.e., number of homes passed, to actual reach, i.e., number of MVPD subscribers served, in order to reflect an MVPD's actual purchasing power. In revisiting the horizontal ownership rules, the Commission seeks comment on whether the homes passed standard continues to be an accurate measure of horizontal concentration and market power in today's marketplace, and whether the easier to measure subscriber standard can be adapted for use in a fashion that will not require an abrupt halt to the addition of new subscribers to established cable systems. The Commission asks for comment on the best method for counting subscribers, including those residing in multi-dwelling units and commercial subscribers such as hotels, bars, etc.

7. The Commission seeks comment on whether the greater accuracy provided by a subscriber based standard outweighs the greater stability provided by a homes passed standard. With regard to the argument that a subscriber based standard may have the effect of discouraging subscriber growth, the Commission seeks comment on whether system operators would have a sufficient opportunity to anticipate the approaching limit and to dispose of systems sufficient to stay under the limit rather than to simply cease the addition of new subscribers.

8. The Commission asks commenters to address whether the proposed revisions are consistent with the public interest objectives and the Commission's legal authority under section 613 and 47 U.S.C. §§ 151, 154, and 303. The Commission seeks comment on whether the proposed horizontal ownership rules would provide a more accurate measure of horizontal concentration and market power than the current rules. The Commission also seeks comment on the practical impact of the proposed rule changes on MSO ownership and operation. In particular, the Commission asks that commenters address whether the proposed changes would place any cable MSO in violation of the 30% horizontal ownership limit and to provide specific factual information in support of any such conclusions. The Commission seeks comment on whether it should develop special rules to address situations where a cable MSO may exceed the 30% limit as a result of subscriber growth within an existing

area of homes passed. The Commission further invites comment on any other matters relevant to its proposals and tentative conclusions.

Initial Regulatory Flexibility Analysis for the Further Notice of Proposed Rulemaking

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

10. *Need for, and Objectives of, the Proposed Rules.* The 1992 Cable Act and subsequent actions to implement it, and Section 11(c) of the 1992 Cable Act in particular, are intended to encourage competition in the cable industry and prevent the exercise of undue market power by large cable multiple systems owners. The Commission issues the *Further Notice* to obtain comment on whether certain aspects of the Commission's horizontal ownership rules should be revised to make them more effective in serving the public interest objectives Congress charged the Commission with protecting in Section 11(c).

11. *Legal Basis.* Authority for the actions proposed in this *Further Notice* may be found in Sections 1, 4, 303, and 613 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 303, 533.

12. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA generally defines "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 the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities. 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"). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

13. The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of \$11 million or less. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 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.

14. The Commission has developed its own definition of a "small cable company" and "small system" 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, the Commission estimates that there were 1,439 cable companies 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 companies. Consequently, the Commission estimates that there are fewer than 1,439 small entity cable companies that may be affected by the proposal adopted in the *Notice*. The Commission's rules also define a "small system," for the purposes of cable rate regulation, as a cable system with 15,000 or fewer subscribers. The Commission does not request nor does it collect information concerning cable systems serving 15,000 or fewer subscribers and thus the Commission is unable to estimate at this time the number of small cable systems nationwide.

15. The Communications Act also contains a definition of a "small cable operator," which is "a cable operator that, directly or through an affiliate,

serves in the aggregate fewer than 1 percent 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, the Commission found that an operator serving fewer than 617,000 subscribers is 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, the Commission finds that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, the Commission is 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. The Commission is likewise unable to estimate the number of these small cable operators that serve 50,000 or fewer subscribers in a franchise area.

16. *Description of Projected Recording, Record keeping, and Other Compliance Requirements.* If the horizontal ownership rules are changed, the Commission may have to change certain cable reporting requirements. Cable entities also may have to adjust the organization of their business interests in order to comply with any new rules that the Commission may adopt.

17. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The actions proposed in the *Further Notice* are intended to ensure that the Commission's horizontal ownership rules are effective in preventing the exercise of undue market power by large cable multiple systems owners and promote a competitive, diverse and fair marketplace. Accordingly, as discussed in the above descriptions of the proposed rule changes, the approaches proposed in this *Further Notice* should promote fairness and diversity for all cable systems, including the small entities listed above. The Commission invites comments on these approaches, including comment on whether alternative approaches will mitigate any unwarranted expenses incurred by smaller entities by virtue of their size alone.

18. *Federal Rules that Overlap, Duplicate or Conflict with the Proposed Rules.* None.

Paperwork Reduction Act

19. The proposals contained herein in the *Further Notice* have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose modified information collection requirements. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget ("OMB"). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirements contained in this *Further Notice*, as required by the 1995 Act. 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.

20. Written comments by the public on the modified information collection requirements are due August 14, 1998. OMB comments are due August 31, 1998. Comments on the information collection requirements 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. For additional information on the information collection requirements, contact Judy Boley at 202-418-0214 or via the Internet at the above address.

Procedural Provisions

21. *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 § 1.1206(b) of the rules. 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. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

22. Filing of Comments and Reply Comments. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, comments are due August 14, 1998, and reply comments are due September 3, 1998. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street NW, Washington DC 20554.

Ordering Clauses

23. Accordingly, it is ordered that, pursuant to sections 1, 4, 303 and 613 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 303 and 533, notice is hereby given of proposed amendments to the Commission's rules, in accordance with the proposals, discussions and statements of issues in the *Further Notice* and comment is sought regarding such proposals, discussions and statements of issues.

24. It is further ordered that the Office of Public Affairs Reference Operation Division shall send a copy of this *Further Notice*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subject in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 98-18038 Filed 7-13-98; 8:45 am]

BILLING CODE 67129-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98-82; FCC 98-112]

Cable Television Ownership Attribution Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the *Notice of Proposed Rulemaking* ("NPRM"), the Commission initiates a review of its cable attribution rules. The attribution rules seek to identify those corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders should be subject to the Commission's regulation. The Commission is initiating this rulemaking in light of recent developments in the cable industry.

DATES: Comments are due on or before August 14, 1998, and reply comments are due on or before September 3, 1998.

FOR FURTHER INFORMATION CONTACT: John Norton, Cable Services Bureau, (202) 418-7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking* ("NPRM") CS Docket No. 98-82, FCC 98-112 adopted June 4, 1998, and released June 26, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, NW, Washington, D.C. 20036.

Synopsis of the Notice of Proposed Rulemaking

1. The *NPRM* initiates a review of the Commission's cable television ownership attribution rules, which seek to identify those corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders should be subject to the Commission's regulation. The cable attribution rules are particularly significant in the context of a number of statutory provisions enacted as part of

the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), including: (1) former section 613(a)(1), which prohibited the common ownership of local television stations and cable systems that serve the same area (the "cable/broadcast station cross-ownership restriction"); (2) section 613(f)(1)(A), which requires the Commission to establish reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest ("horizontal cable ownership limits"); (3) section 613(f)(1)(B), which requires the Commission to establish reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest ("vertical occupancy limits"); (4) section 613(a)(2), which prohibits a cable operator from holding a license to provide multichannel multipoint distribution service ("MMDS"), or from offering satellite master antennae television ("SMATV") service separate and apart from any franchised cable service, in any portion of the franchise area served by the cable operator's cable system (the "cable/MMDS" and "cable/SMATV" cross-ownership restrictions); (5) section 628, which, among other things, requires the Commission to establish safeguards to prevent a cable operator with an attributable interest in a programming vendor from engaging in unfair or deceptive acts involving the distribution of programming to an unaffiliated multichannel video programming distributor ("program access" rules); and (6) section 616, which, among other things, restricts the activities of cable operators and other multichannel programming distributors when dealing with programming vendors, including prohibiting discrimination in the selection, terms, or conditions of carriage, on the basis of a vendor's affiliation or non-affiliation ("program carriage" rules).

2. For broad structural rules such as the horizontal cable ownership limits and vertical channel occupancy limits, that are designed to ensure competition and diversity in the video marketplace, the Commission adopted attribution rules from the broadcast context where the goal is the same. The broadcast attribution standard generally provides that partnership interests, direct ownership interests, and voting stock interests of 5% or more are attributable. For passive investors, the voting stock benchmark is 10%. Non-voting stock