

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 99-1429; MM Docket No. 99-44, RM-9469]

Radio Broadcasting Services; Stanfield, OR**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: The Commission dismisses the request of Luella Hoskins seeking the allotment of Channel 241C3 to Stanfield, OR, since neither the petitioner nor any other party expressed an intent to apply for the channel, if allotted. See 64 FR 7842, February 17, 1999.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99-44, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99-19685 Filed 7-30-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 78**

[CS Docket No. 99-250; FCC 99-166]

Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service**AGENCY:** Federal Communications Commission.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document requests comment on amending the Commission's rules to allow private cable operators ("PCOs") and other

multichannel video programming distributors ("MVPDs") to use the frequencies in the 12 GHz band for the delivery of video programming. This document is in response to a petition for rulemaking filed with the Commission by Optel, Inc., a PCO that provides video programming and other services to residential subscribers, requesting eligibility to use the 12 GHz Cable Television Relay Service ("CARS") band for video programming. The Notice invites comments which will help the Commission determine the competitive impact on franchised cable resulting from the proposed expansion of eligibility for CARS licenses to PCOs and other MVPDs. The Notice also invites comments on technical and spectrum management issues relevant to expansion of CARS eligibility.

DATES: Comments are due on or before August 16, 1999 and reply comments are due on or before September 20, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (January 2, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

FOR FURTHER INFORMATION CONTACT: Eloise Gore or Carolyn Fleming at (202) 418-7200 or via internet at egore@fcc.gov or cflaming@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, FCC 99-166, CS Docket No. 99-250, adopted July 9, 1999 and released July 14, 1999 ("Notice"). The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, S.W., Washington, D.C. 20554, or may be purchased from the

Commission's copy contractor, International Transcription Service ("ITS"), (202) 857-3800, 1231 20th Street, NW, Washington, D.C. 20036, or may be reviewed via internet at <http://www.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8022.html>. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

Ex Parte Rules

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 47 CFR 1.1206(b).

Synopsis of Notice of Proposed Rulemaking*Introductory Background*

1. In this proceeding, we respond to a petition for rulemaking filed by Optel, Inc. ("Optel"), a PCO that provides video and other services to residential users primarily located in multiple dwelling units ("MDUs") on a shared tenant basis. In its petition, Optel proposes to expand eligibility for the 12 GHz CARS band to include PCOs. On its own motion, the Commission seeks comment on expanding eligibility to other MVPDs. The Optel petition was filed on April 1, 1998. The Commission received comments all of which were in support of Optel's petition.

2. For purposes of the Notice, the 12 GHz frequency band is defined as the band segment 12.70-13.20 GHz shared by CARS and other services. Currently, that segment of the 12 GHz bandwidth is used by, among others, CARS licensees which provide point-to-point, e.g., from one side of a river or mountain to the other side of the river or mountain, and point-to-multipoint transmissions, e.g., from one side of a river or mountain to many points, video and related audio signals. Part 78 of the Commission's rules governs the

licensing and operations of fixed or mobile CARS stations; thus, if Optel's petition is granted Sections 78.11 and 78.13 which govern both the eligibility criteria and the permissible services for CARS licensees would need to be amended. Optel has also requested use of the frequency band segment from 13.20 to 13.25 GHz for delivery of video programming. However, that segment is not designated for CARS use but rather for broadcast auxiliary service ("BAS"), including on-site mobile transmissions for electronic newsgathering. The Notice seeks comment on spectrum sharing issues raised by Optel's petition as it relates to incumbent cable operators in the 12 GHz CARS band and to the compatibility between fixed PCOs and mobile BAS in the 13.20 to 13.25 band segment.

3. In its petition, Optel contends that PCOs need access to the 12 GHz CARS band because: (1) Opening the 12 GHz CARS band to PCO licensees would enhance competition with the franchised cable industry; (2) the Commission has established precedent for extending CARS eligibility to other similar users such as multipoint distribution service ("MDS") and multichannel, multipoint distribution service ("MMDS") operators; and (3) the 18 GHz frequency band, because of technical difficulties and recent and pending Commission rulemakings, can no longer support the services provided by the PCO industry. Optel also argues that, in the 12 GHz CARS band, it can provide more channels (up to 82 channels if the CARS band includes 13.20 GHz–13.25 GHz) and, therefore, can be more competitive with franchised cable systems.

4. The Commission's rules define a CARS station as a fixed or mobile station used for the transmission of television and related audio signals, signals of standard and FM broadcast stations, signals of instructional television fixed stations, and cable casting from the point of reception to a terminal point from which the signals are distributed to the public. (47 CFR 78.5(a)). CARS licensees are authorized to use CARS stations to relay signals for and to supply program material to cable television systems and other eligible entities using point-to-point and point-to-multipoint transmissions. (47 CFR 78.11(a), (c), (d)).

5. Optel's petition also requests amendment of Section 101.603(a)(2) to add the 12 GHz band to those frequency bands on which PCO licensees may deliver video programming and Section 101.603(b)(3) to include the 12 GHz band among those frequency bands that may be used to provide the final Radio

Frequency ("RF") link in the chain of transmission of program material to cable television systems, MDS, or Master Antenna Television Systems ("MATVs"). Part 101 of the Commission's rules governs the manner in which portions of the radio spectrum may be made available for use by private operational, common carrier, Local Multipoint Distribution Service ("LMDS"), and certain fixed microwave operations. PCOs currently obtain licenses under Part 101 for certain frequencies when their operations use microwave distribution. PCOs are permitted by Part 101 to use the 18 GHz (18.142 GHz–18.580 GHz) and 23 GHz (21.20 GHz–23.60 GHz) frequency bands to distribute video programming. Sections 78.11 and 78.13 govern both the eligibility criteria and the permissible services for CARS licensees. If at the conclusion of this rulemaking the Commission determines to extend the use of the 12 GHz CARS band to PCOs and other MVPDs, procedurally it will be sufficient to amend Section 78.13 of the Commission's rules, which would be consistent with the Commission's previous amendments to Section 78 of its rules to extend CARS eligibility to other service providers and would ensure that all users of this band for video distribution purposes are governed by the same rules and licensing criteria. No amendment to Part 101 is necessary. The Notice states that amending Part 78 to make PCOs and other MVPDs eligible for 12 GHz CARS licenses would also make them eligible for CARS licenses in the 18 GHz band, as are other current CARS licensees.

Competition in the Video Programming Distribution Industry

6. Optel maintains that it competes directly with incumbent franchised cable operators. Commenters agree with Optel's contentions with regard to the alleged competitive benefits of extending CARS eligibility to PCO licensees. RCN Telecom Services, Inc. ("RCN"), an operator of open video systems ("OVS"), argues that extending CARS eligibility to PCO licensees would establish parity between franchised cable operators who use the CARS band to relay programming material and PCO licensees who would use the 12 GHz CARS band for similar purposes. RCN believes that granting Optel's petition would result in increased competition for two reasons. First, RCN states that extending CARS eligibility to PCOs would satisfy the underlying goals of the 1996 Act by removing competitive obstacles and fostering competition. Second, RCN states that Optel correctly compares the status of PCO licensees

with that of MDS licensees who were found to be competitors of franchised cable operators and eligible for CARS licenses. The Notice seeks comment on the effect on incumbent CARS licensees of permitting PCO licensees to use the 12 GHz CARS band. The Notice seeks comment as to whether the proposed use of the 12 GHz CARS band by Optel is consistent with the current channelization scheme for 12 GHz CARS licensees. The channelization scheme sets the upper and lower frequency boundaries for each assigned channel used in the CARS band. The Notice further inquires as to whether there are other technical considerations or issues of spectrum congestion or coordination among licensees which should be considered.

7. The Notice notes that PCOs currently are permitted to use 18 GHz and 23 GHz for video, as well as for data and voice. The Notice seeks comment on the costs for PCOs associated with the use of multiple frequency bands that they could use under the existing rules. Specifically, we request a detailed cost analysis and comparison, including equipment costs, comparing use of 18 GHz or 23 GHz versus use of the 12 GHz CARS band.

8. In the Notice, the Commission states its belief that Optel's petition presents an opportunity to consider expanding eligibility for the CARS band to MVPDs other than PCOs. Thus, on the Commission's own motion, the Notice seeks comment on expanding eligibility for the CARS band to entities such as OVS operators and others who provide video programming as their dominant service. An example of an MVPD which provides video programming as its dominant service is an MVPD that offers 60 channels of video programming and 2 channels of ancillary services. The Commission has stated that use of the microwave radio spectrum should be governed by type of use rather than type of licensee is applicable here. *See Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed, Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 5 FCC Rcd 6410, 6423 (1990), 55 FR 46006 (Oct. 31, 1990) ("CARS Order"). Based on that principle, the Commission expanded eligibility for the CARS band to MDS licensees and further stated that similarly-situated entities should have parity of access to the spectrum. In the *CARS Order*, the

Commission stated that cable and wireless cable, respectively, have similar needs for CARS frequencies and there was no evidence to justify disparate treatment with regard to use of the CARS band.

9. The Commission notes that franchised cable systems that are currently eligible for CARS licenses generally are required to provide service to an entire community. In contrast, PCOs can select those areas and buildings where they wish to provide service and ignore less desirable areas or buildings. The Notice seeks comment on whether PCOs should have the same access to CARS stations without being required to provide the same level of service. In addition, we seek comment on the conflict that could arise where a franchised cable system may be unable to serve a part of a community which it is required to serve because a PCO already has the CARS license for those frequencies. The Notice seeks comment on whether PCOs and other MVPDs would first have to exhaust their spectrum usage in the 18 GHz and 23 GHz frequency bands, as provided by Part 101 of the Commission's rules, before being eligible to use the 12 GHz CARS band. The Notice further seeks comment on whether PCO use of the 12 GHz band for CARS should be limited to secondary use where it will not interfere with cable systems or MMDS licensees that have actual plans to use a CARS station. The Notice inquires further as to whether there are other conditions or restrictions which should be imposed. For example, should the Commission limit CARS eligibility to only those PCOs with a certain minimum number of subscribers?

Technical Limitations in the 18 GHz Band

10. Optel currently uses microwave distribution centers in the 18 GHz frequency band to interconnect private cable systems to a central headend facility. Optel maintains, however, that the 18 GHz band can no longer support the range of services offered by itself and other PCOs because the propagation limitations of the 18 GHz band significantly restrict PCOs' ability to expand due to greater operating costs. Optel maintains that the signal propagation characteristics (e.g., distance over which the signal remains strong) of the 18 GHz band make it unsuitable for widely distributed systems and limits growth within the PCO industry. Optel states that transmissions in the 18 GHz band have an effective range up to 8 miles and that PCOs who wish to provide service outside of the 8 mile area would be

forced to build a new headend closer to the outlying systems, add microwave relay stations, or abandon expansion projects altogether. Depending upon path conditions, it has been the Commission's experience that CARS stations in the 12 GHz frequency band using Amplitude Modulated Links (AML) can travel 11–15 miles and, in the 18 GHz frequency band, 8–11 miles. The Notice also refers to section 78.108 of the Commission's rules which requires minimum path lengths of 5 km between the end points of a fixed link using the 12 GHz CARS band. The Notice seeks comment on the estimates of effective range and the assertion that PCOs need additional range and raises related questions such as should PCOs be required to demonstrate that they need to transmit over more than 10 miles before they are eligible for a CARS license? The Notice requests comment on the technical impact on PCOs which continue to operate in the 18 GHz band. The Notice also requests comment on the impact to CARS operations, including franchised cable systems that are currently CARS licensees or may need access to CARS in the future, if PCO entities are allowed access to the 12.75–13.25 GHz band. Will cable systems' transition to fiber optics obviate their need for CARS stations thus lessening any potential negative impact and making more spectrum available to other applicants, such as PCOs and other MVPDs?

Effect on PCOs of Other Ongoing Commission Rulemakings

11. Optel contends that PCOs need access to the 12 GHz CARS frequency band because certain ongoing Commission rulemaking proceedings threaten to limit PCOs' use of the 18 GHz frequency band. Specifically, Optel argues its ability to compete with franchised cable operators in the Denver, CO and the Washington, D.C. markets has been limited by the Commission's decision to relocate Digital Electronic Message Services ("DEMS") in connection with the establishment of "exclusion zones." Optel further argues that its continued existence in the 18 GHz frequency band would be impaired by the grant of blanket licenses to fixed satellite service ("FSS") users in the 18 GHz band as proposed in the *Notice of Proposed Rulemaking, Redesignation of the 17.7–19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3–17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite Service*

Use, FCC 98–235, 63 FR 54100 (Oct. 8, 1998) ("*Redesignation NPRM*"). Currently, the 17.70 to 19.70 GHz band is allocated for shared use between satellite services and terrestrial fixed services. If the *Redesignation NPRM* is adopted as proposed, Optel and other terrestrial fixed services would lose their current co-primary status in the 18.30 GHz–18.55 GHz and 18.80 GHz–19.30 GHz bands but gain primary status in the 17.70 GHz–18.30 GHz bands. The Commission has determined that fixed services can continue to file for authorization to use these bands, but after the adoption of a Report and Order in *Redesignation NPRM* proceeding, such applications would be accorded secondary status to promote exclusive use of this spectrum by satellite operations. The Commission has explained that a service that is designated as co-primary must share a frequency band with other services designated as co-primary on a co-equal basis and that a service designated as secondary may use a frequency band as long as its operations do not cause interference to any primary designated operations. If interference occurs, the secondary designated service must cease operations. The Notice seeks comment on whether the increasing constraints that will be presented for terrestrial services at 18 GHz warrants making the 12 GHz CARS band available for PCO service, or whether other alternatives, such as 23 GHz, or use of fiber optic cable, can reasonably provide necessary capacity.

12. The Notice also takes note of another ongoing Commission proceeding that raises spectrum sharing issues with regard to the 12 GHz frequency bandwidth, i.e., *In the Matter of Amendments of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range and Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates, Notice of Proposed Rulemaking ("NGSO 12 GHz NPRM")*, 64 FR 1786 (Jan. 12, 1999). Among other issues, the *NGSO 12 GHz NPRM* responds to a petition filed by SkyBridge LLC requesting that the Commission allow NGSO FSS gateway earth stations earth-to-space links in the CARS frequencies at 12.75 GHz–13.25 GHz on a co-primary basis, subject to appropriate coordination and spectrum sharing requirements. The *NGSO 12 GHz NPRM* takes notice of the Optel petition and requests comments on the

compatibility between new NGSO FSS operations and Optel's proposed use of the 12 GHz frequency band. As noted in the *NGSO 12 GHz NPRM*, 12.75–13.25 GHz is currently subject to heavy usage. Optel's request for use of the 12 GHz CARS band and that of SkyBridge, if granted, could greatly increase the terrestrial use of the 12 GHz band, although Optel's use of the 12 GHz CARS band for point-to-point and point-to-multipoint relay of signals will not differ from the current use of the band by CARS licensees. Spectrum sharing issues with respect to the proposed NGSO FSS operations in the 12.75–13.25 GHz band will be considered in ET Docket No. 98–206. Consideration of these issues need not be repeated in this docket. The Notice invites comment in this proceeding only on any additional issues specifically related to the question of expanding CARS eligibility.

Other Issues

13. The Commission, pursuant to 309(j) of the Telecommunications Act of 1996, is required to implement a system of competitive bidding when mutually exclusive applications are accepted for filing for any initial license or permit involving use of the spectrum. Currently CARS licenses are not auctioned. However, if the Commission determines that opening the CARS band to PCOs and other MVPDs creates mutually exclusive applications, the CARS spectrum would be subject to auction. Alternatively, the Commission could adopt priority of use rules, which would avoid mutual exclusivity and the auctioning of the CARS spectrum. The Notice seeks comment on the effect of auctioning CARS spectrum or adopting priority of use rules. The Notice also seeks comment on the applicability of the Commission's Part 1 auction rules to this service in the event the Commission decides to award CARS licenses through competitive bidding. The Notice also seeks comment on whether the Commission should adopt a minimum subscriber requirement to avoid permitting a PCO with a small number of subscribers to use a CARS station that could have been licensed, instead, to a cable system serving significantly more subscribers. Another option for consideration and comment is granting PCOs and other MVPDs secondary, but not primary, eligibility for using the 12 GHz CARS band.

14. Some PCOs currently use 18 GHz or 23 GHz to bundle data, voice, video and other services in one package for their customers. The 12 GHz CARS band must be used principally for the delivery of video programming. The Notice does not propose to change the

principal use of CARS as a tool for relaying video programming between and among the components of a cable or other eligible system. However, we seek comment on whether and to what extent CARS licensees should be permitted to provide voice or data using the 12 GHz CARS band provided the principal use remains the delivery of video programming and subject to existing technical and operating requirements.

15. The Commission, on its own motion, seeks comment on the realignment and the reassignment of the channel frequency assignments set forth in Section 78.18(a) of the Commission's rules to provide for more efficient use of channels by facilitating continuous channel transmissions. Specifically, the Notice seeks comments on: (1) designating the unassigned guard band (12.9465–12.9525 GHz) as channel C43, and the unassigned second guard band (13.0057–13.0125) as channel D43; and (2) allowing CARS operators to slightly shift the frequencies of channels C04–C10, channels D04–D10, channels E04–E10, and channels F04–F10 to produce 6–6 MHz video channels for each channel group (i.e., C group, D group, E group, and F group). Currently, applicants must seek waivers for a change in the frequency assignments pursuant to Section 78.18 of the Commission's rules for such minor frequency shifts and to use the guard band. The Notice also seeks comment on whether other changes in frequency assignments are necessary to provide for more seamless and efficient use of the CARS frequency spectrum.

Paperwork Reduction Act

The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 and do not impose new or modified information collection requirements on the public.

OMB Approval Number: None.

Title: In the Matter of Petition for Rulemaking To Amend Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service.

Type of review: None.

Initial Regulatory Flexibility Analysis: As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the policies and proposals in this Notice of Proposed Rulemaking. Written public comments concerning the effect of the proposals in the NPRM, including the Initial Regulatory Flexibility Act, on small businesses are requested. Comments must be identified as responses to the

IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Secretary shall send a copy of this NPRM, 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.

A. Reasons Why Agency Action is Being Considered

This Notice is in response to a petition for rulemaking filed by Optel.

B. Need for Action and Objectives of the Proposed Rule Change

The Commission undertakes this proceeding to address the spectrum sharing and technical issues presented by Optel's petition. Optel's petition, if granted, could increase competition to incumbent, franchised cable operators, particularly with regard to video programming service to multi-dwelling units. While we desire to promote competition and innovation by allowing for new services or additional spectrum use, we also need to consider the competing interests of the incumbent services in the 12 GHz CARS band. The Notice notes the need to consider the impact on PCOs of recent and pending Commission rulemakings involving the 18 GHz band. Thus, the Notice seeks comment on whether the proposed blanket licensing of GSO/FSS operators in the 18 GHz will unduly constrain future growth of incumbent PCO users.

C. Legal Basis

The authority for the action proposed for this rulemaking is contained in Sections 4(i)–(j), 303(c), (f), (g), and (r), and 309(j) of the Communications Act of 1934, as amended.

D. Description and Estimate of the Number of Small Entities Impacted

The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. 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.

Private Cable Operators

The proposal to permit PCOs to use the 12 GHz CARS band applies to all

private cable system operators. The Commission has developed, with the approval of the Small Business Administration ("SBA"), its own definition of a small cable system operator for rate regulation purposes. 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 3,400 private cable operators serving multiple dwelling units that qualified as small cable companies. Some of those companies may have grown to serve from 800,000 to 1.5 million subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 3,400 small entity cable system operators that may be affected by the decisions and rules the Commission adopts.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The Commission is not proposing to impose additional reporting or recordkeeping requirements.

F. Significant Alternatives Which Minimize the Impact on Small Entities and Are Consistent With Stated Objectives

The NPRM solicits comments on all alternatives to Optel's request which would minimize any adverse impact on small entities.

G. Federal Rules Which Overlap, Duplicate, or Conflict With the Commission's Proposal

None.

H. Report to Congress

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

Ordering Clauses

It is ordered that, pursuant to Sections 4(i)-(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)-(j), 303(c), (f), and (r), and 309(j), notice is hereby given of the proposed amendments to part 78 of the Commission's rules, in accordance with the proposals, discussions, and statements of issues contained in this Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussions, and statements of issues.

It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration, in accordance with paragraph 603(a) of this regulatory flexibility Act. Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 78

Cable television, Communications equipment.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99-19709 Filed 7-30-99; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition To Delist the Concho Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service) announce a 90-day finding for a petition to delist the Concho water snake (*Nerodia paucimaculata*) under the Endangered Species Act of 1973, as amended. We find that the petitioner did not present substantial information indicating that delisting this species may be warranted.

DATES: The finding announced in this document was made on July 13, 1999.

ADDRESSES: Comments, material, information, or questions should be sent to the Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 10711 Burnet Road, Suite 200, Austin, Texas 78758. The petition and supporting data are available for public inspection by appointment during normal business hours at the above address. A copy of the finding announced in this notice may be obtained by writing to the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Connor, Fish & Wildlife Biologist, at the above address (telephone 512-490-0057 ext. 227).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, we must make this finding within 90 days of the date the petition is received, and this finding must be published promptly in the **Federal Register**. If the finding is that the petitioner has presented substantial information we must then promptly commence a status review of the species.

When evaluating whether the substantial information standard is met, we use the definition provided in the implementing regulations at 50 CFR 424.14(b). Substantial information is defined as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." The factors for listing, delisting or reclassifying species are described in 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be based on one of the following reasons—(1) extinction, (2) recovery, or (3) original data for classification were in error.

On June 29, 1998, we received a petition by John W. Grant on behalf of the Colorado River Municipal Water District (CRMWD) dated June 24, 1998, to delist the Concho water snake (CRMWD 1998). The petition asserts that—(1) the status of the Concho water snake was stable at the time of listing and continues to be stable, (2) all putative threats are insubstantial, and (3) the determination that the Service made to list the snake as threatened was in error. After careful review, we find that the snake should remain classified as threatened under the Act.

The Concho water snake is endemic to the Concho and Colorado rivers in Runnels, Tom Green, Concho, McCulloch, Coleman, Brown, Mills, San Saba, Irion, Lampasas, and Coke counties, Texas. We listed the Concho water snake as threatened on September 3, 1986, due in part, to its limited geographic range, limited population sizes, and loss of important habitats and prey base resulting from water development projects (past, ongoing, and future) (51 FR 31412). We designated critical habitat for the species on June 29, 1989 (54 FR 27377).