Shops in the autobody refinish industry are classified as small by the U.S. Small Business Administration if the entity that owns the shop has total sales of less than $3.5 million. Most individual shops are small by this criterion if the owning entity has no other sales from other shops. Therefore, an RFA was performed and is contained in the docket for this proposed rule. Information on the size of manufacturers and distributors impacted by this rule is not available, but some small entities among manufacturers and distributors may also be affected.

Several industry trade associations, including the Automotive Service Association (ASA) that represents body shops, and the Automotive Service Industry Association (ASIA) that represents coating distributors, have submitted comments and provided information during the development of the national rule. Most of the members of these associations are small businesses. The main concerns of these associations deal with recordkeeping and VOC content limits. Some members of ASA are already subject to State rules that contain VOC content limits and recordkeeping at the body shop. The drying times of some coatings compliant with State rules are significantly longer than those of conventional coatings, which can result in losses in body shop productivity. Some shops report that the recordkeeping required under some rules is burdensome and time consuming.

The proposed national rule applies to automobile refinish coating manufacturers and importers only, not to body shops or any other users of the coatings. After the national rule is effective, only compliant coatings will be available for purchase by coating users in this country. Since the purpose of most State recordkeeping requirements is to demonstrate that body shops are using compliant coatings, some States may decide to remove such requirements from their rules after the national rule is effective.

Coatings compliant with the proposed rule do not take significantly longer to dry than conventional coatings; therefore, small shops will be able to apply compliant coatings without purchasing additional equipment.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because the proposed rule is estimated to result in expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

List of Subjects in 40 CFR Part 59

Environmental protection, Air pollution control, Automobile refinish coatings, Consumer and commercial products, Ozone, Volatile organic compound.

Dated: April 19, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–10381 Filed 4–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–85, FCC 96–154]

Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has adopted an Order and Notice of Proposed Rulemaking regarding implementation of the Cable Act reform provisions of the Telecommunications Act of 1996 (''1996 Act''). The Order segment of this action may be found elsewhere in this issue of the Federal Register. This Notice of Proposed Rulemaking (''NPRM'') solicits comment on several issues arising from the enactment of the 1996 Act. This NPRM solicits comment regarding possible revisions to the interim final rules established in the companion Order and requests comment on other issues critical to the 1996 Act's implementation. The intended effect of this action is to develop rules that fully implement the mandates of the 1996 Act with regard to cable television.

DATES: Comments filed in response to this NPRM must be filed by May 28, 1996. Reply Comments are due June 28, 1996. Written comments by the public on the proposed and/or modified information collections are due on or before May 28, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before July 1, 1996.

ADDRESSES: An original and six copies of comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Nancy Stevenson of the Cable Services Bureau, 2033 M Street, NW., Room 408A, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC 20554.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20054, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Tom Power, Paul Glenchur, or Nancy Stevenson, Cable Services Bureau, (202) 416–0800. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of a Commission Notice of Proposed Rulemaking in CS Docket No. 96–85, FCC–154, adopted April 5, 1996 and released April 9, 1996. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20017.

This NPRM contains either proposed or modified information collections. The Commission has obtained Office of Management and Budget (''OMB'') approval, under the emergency processing provisions of the Paperwork Reduction Act of 1995 (5 CFR 1320.13), of the information collections contained herein. OMB approval is effective no later than the date that the summary for the NPRM appears in the Federal Register. The OMB control number for information collections contained in this rulemaking is 3060–0706. Emergency OMB approval for the information collections expires July 31, 1996. The Commission, as part of its continuing effort to reduce paperwork burdens and to obtain regular OMB approval of the information collections, invites the general public and OMB to comment on the information collections contained herein, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on this Order and NPRM; OMB notification of action is due 60 days after publication of the NPRM in the Federal Register. Comments should address: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0549.

Title: FCC Form 329 Cable Programming Service Rate Complaint Form, 76.950 Complaints regarding cable programming service rates and 76.1402 CPST rate complaints.

Form No.: FCC Form 329.

Type of Review: Revision of existing collection.

Respondents: State, local and tribal governments; individuals.

Number of Respondents: 1,600.

Estimated Time Per Response: 45 minutes.

Total Annual Burden: 1,200 hours.

Estimated costs per respondent: $1,600. $1 per response for postage and stationery costs.

Needs and Uses: FCC Form 329 will be used by local franchise authorities to file cable programming service tier rate complaints, upon receipt of more than one subscriber complaint about such rates.

OMB Approval Number: 3060–0652.

Title: 76.309 Customer service obligations and 76.964 Notice to subscribers.

Type of Review: Revision of existing collection.

Respondents: Businesses and other for profit entities.

Number of Respondents: 12,000.

Estimated Time Per Response: 2.91 hours.

Total Annual Burden: 34,917 hours.

Estimated costs per respondent: None.

Needs and Uses: This information collection accounts for the notifications requirements found in 76.309 and 76.964. Cable operators are no longer required to provide prior notice to subscribers of any rate change that is the result of a regulatory fee, franchise fee, tax assessment, or charge of any kind imposed by any Federal agency, State, or franchise authority. Eliminating this requirement reduces annual notification burdens imposed on operators by 30 minutes per operator, for an aggregate reduction of 6,000 hours. 12,000 systems×.30 minutes=6,000.

OMB Approval Number: 3060–0551.

Title: 76.1002 Specific unfair practices prohibited.

Type of Review: Revision of existing collection.

Respondents: Businesses and other for profit entities.

Number of Respondents: 52 (26 proceedings×2 parties).

Estimated Time Per Response: Each proceeding has an average burden of 25 hours. 50% of respondents undergo a burden of 1 hour to instead coordinate information with outside legal assistance.

Total Annual Burden: 676 hours. (26×25 hours) + (26×1 hour).

Estimated costs for respondents: 50% of respondents will use outside legal assistance paid at $150 per hour. 26×25 hours per proceeding×$150 per hour=$97,500.

Needs and Uses: The information is used by the Commission to determine on a case-by-case basis whether particular exclusive contracts for cable television programming are in compliance with the statutory public interest standard of Section 628(c)(2)(D) of the Communications Act of 1934.

OMB Approval Number: 3060–0552.

Title: 76.1003 Adjudicatory proceedings.

Type of Review: Revision of existing collection.

Respondents: Businesses and other for profit.

Number of Respondents: 24 (12 proceedings×2 parties).

Estimated Time Per Response: Each proceeding has an average burden of 20 hours. 50% of respondents undergo a burden of 1 hour to instead coordinate information with outside legal assistance.

Total Annual Burden: 252 hours. (12×20)+(12×1).

Estimated costs per respondent: 50% of respondents will use outside legal assistance paid at $150 hour. 12×20 hours per proceeding×$150 per hour=$36,000.

Needs and Uses: Information contained in the proceedings is used by the Commission to resolve disputes alleging unfair methods of competition and deceptive practices where the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to consumers.

OMB Approval Number: 3060–0706.

Title: 76.1401 Effective competition and local exchange carriers, 76.1403 Small cable operators, and 76.1404 Use of cable facilities by local exchange carriers.

Type of Review: New collection.

Respondents: Businesses and other for profit entities; state, local and tribal governments.

Number of Respondents: 300 petitions for determination of effective competition; 400 requests for certification of small cable operator status; 50 contract submissions.

Estimated Time Per Response: Petitions for determination of effective competition have an average burden of 20 hours. However, 75% of respondents (225) will undergo a burden of 1 hour instead to coordinate information with outside legal assistance. Requests for certification of small cable operator status have an average burden of 2 hours. However, 25% of respondents (100) will undergo a burden of 1 hour instead to coordinate information with outside legal assistance. LFAs will then undergo an average burden of 3 hours to review each request. Sending copies of contracts pertaining to use of cable facilities by local exchange carriers

along with explanations of how such contract is reasonably limited in scope and duration has an average burden of 1 hour.

Total Annual Burden: 3,675 hours. (75×20 hours)+(225×1 hour)+(300×2 hours)+(400×3 hours)+(100×1 hour)+(50×1 hour).

Estimated costs for respondents: $705,750. Outside legal assistance used to file petitions for determination of effective competition and requests for certification of small operator status will be paid at $150 per hour. 225 petitions×20 hours×$150 per hour=$675,000. 300 petitions×$1 for postage and stationery=$300. 100 requests for certification×2 hours×$150 per hour=$30,000. 400 requests for certification×$1 for postage and stationery=$400. 50 contract submissions×$1 for postage and stationery=$50.

Needs and Uses: Information collected in petitions for determination of effective competition will be used by the Commission to make such determinations for operators. Information collected in requests for certification of small operator status will be used by franchise authorities to make such determinations of small operator status. Information collected in contract submissions will be used by the Commission to determine whether the local exchange carrier's use of the transmission facilities is limited in scope and duration.

Notice of Proposed Rulemaking

1. In this NPRM, we propose final rules implementing certain provisions of the 1996 Act. We seek to adopt clear rules streamlining our processes, establishing certainty for cable operators, Local Franchise Authorities (''LFAs'') and subscribers, and effectuating the intent of Congress. A number of the issues discussed below are also the subject of a related Order. In commenting on such issues, parties should consider the discussion and treatment of them in the Order.

A. Effective Competition

1. Generally

2. The new test for effective competition requires that the LEC-delivered programming be ''comparable'' to that of the cable operator. The Conference Report to the 1996 Act, H.R. Rept. 104–458, states that video programming services are comparable if they ''include access to at least 12 channels of programming, at least some of which are television broadcasting signals.'' We tentatively conclude that this definition of comparable programming should be adopted. We note that after defining ''comparable'' in this manner, the Conference Report cites Section 76.905(g) of our rules which in fact has a slightly different definition of comparable. The rule defines ''comparable'' as meaning a minimum of 12 channels of programming, ''including at least one channel of nonbroadcast service programming.'' Commenters should consider this factor in addressing the meaning of ''comparable'' programming for purposes of the new test for effective competition.

3. In light of our tentative conclusion that ''comparable programming'' requires access to broadcast channels, commenters should address whether this could include satellite-delivered broadcast channels (e.g., ''superstations''). In the same context, commenters should address whether a multichannel multipoint distribution service (''MMDS'') subscriber should be deemed a recipient of ''comparable programming'' if the broadcast stations are received by way of an over-the-air antenna located at the subscriber's residence, rather than as part of the MMDS operator's microwave signals. Would it matter if the antenna was provided by the subscriber as opposed to the MMDS operator? We believe that a single definition of ''comparable programming'' should apply to both prongs of the effective competition test in which that term is used. Commenters who disagree with this conclusion should provide a justification for having a different definition of comparable programming in different prongs of the effective competition test.

4. We tentatively conclude that the new test for effective competition applies with equal force regardless of whether the LEC or its affiliate is merely the video service provider, as opposed to the licensee or owner of the facilities. We seek comment on this tentative conclusion. Further, we seek comment as to whether the type of service provided by, or over the facilities of, the LEC or its affiliate should be relevant. For example, we seek comment as to whether satellite master antenna television (''SMATV'') systems constitute direct-to-home satellite services and hence do not fall within the class of video providers that can be a source of effective competition under the new test.

5. We seek comment on whether we should follow the standards adopted in the companion Order for purposes of the permanent rule by which cable operators may show that the competing MVPD is offering service in the franchise area. We note that the new definition of effective competition, unlike the other three effective competition tests, does not include a percentage of homes passed or a specific penetration rate. We seek comment as to whether Congress intended effective competition to be found if a LEC's, or its affiliate's, service was offered to subscribers in any portion of the franchise area, or whether the competitor's service must be offered to some larger portion of the franchise area to constitute effective competition. In addressing this issue, commenters should consider what level of competition provided by a LEC or its affiliate is sufficient to have a restraining effect on cable rates. Commenters also should address the likelihood that an incumbent cable operator's response to the presence of a competitor may depend not just upon the current pass rate of the competitor, but also on its potential pass rate. That is, a LEC that offers service to 5% of the residents in a franchise area and that, due to technical constraints, will never exceed this reach would seem to pose less of a competitive threat than a LEC with a 5% pass rate that eventually will be able to offer service throughout the franchise area. We seek comment as to whether to take account of this factor in implementing the new test for effective competition.

6. In the companion Order, we have adopted interim filing procedures by which regulated operators may seek to establish the presence of effective competition under the new statutory test. We tentatively conclude that we should adopt these procedures as a final rule and conform our existing procedures accordingly, such that all tests for effective competition would be determined in a uniform manner. We seek comment on this tentative conclusion.

2. Definition of ''Affiliate''

7. With respect to the definition of ''affiliate'' for purposes of the new prong of the effective competition test, we note that the 1996 Act does not specifically alter the following definition of ''affiliate'' which remains applicable for purposes of cable regulation under Title VI of the Communications Act, § 602(2):

The term ''affiliate,'' when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;

8. Although this definition remains unchanged, the following definition of ''affiliate'' is now found in Title I as a result of the enactment of the 1996 Act:

The term ''affiliate'' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term ''own'' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

9. As engrafted into Sec. 3 of the Communications Act, this definition of ''affiliate'' now applies ''[f]or purposes of this [Communications] Act, unless the context otherwise requires * * * .'' Commenters should address whether, for purposes of the new effective competition test, ''the context * * * require[s]'' a definition of ''affiliate'' other than the one now contained in Title I.

10. We tentatively conclude that the Title I definition of ''affiliate'' should be adopted for purposes of the new effective competition test. While we do not believe that Congress mandated the use of this definition for purposes of Title VI, incorporating the Title I definition for purposes of Title VI is not inconsistent with Congressional intent and would create some uniformity throughout the Commission's rules. We also tentatively conclude that both passive and active ownership interests are attributable and seek comment accordingly. We also seek comment on whether a beneficial interest in a cable operator would be ''equivalent'' to an equity interest under this proposed definition of ''affiliate'' and, if so, how ''beneficial interest'' should be defined. Commenters should address whether the affiliation standard has to be met by a single LEC or whether the interests of more than one LEC can be aggregated.

B. CPST Rate Complaints

11. Here we propose to adopt the interim rules regarding the filing of rate complaints by LFAs, adopted in the Companion Order, as final rules and solicit comment accordingly.

12. In addition to addressing the interim procedures, parties should comment on whether we should establish a deadline by which LFA complaints must be filed. Although Section 301(b)(1)(C) permits the LFA to file a CPST rate complaint with the Commission only if the LFA has received subscriber complaints within 90 days of a CPST rate increase, it specifies no deadline for the LFA complaint. Commenters should propose possible deadlines, taking into account the steps that a LFA may be required to undertake following the close of the 90-day window on subscriber complaints in order to file its own complaint with the Commission. Finally, because Section 301(b)(1)(C) alters the rate complaint process, we propose eliminating the requirement contained in Section 76.952 of our rules that operators must include the name, mailing address, and telephone number of the Cable Services Bureau of the Commission on monthly subscriber bills.

C. Small Cable Operators

1. National Subscriber Count

13. Here we propose specific rules to clarify implementation of Section 301(c) which provides for greater deregulation of small cable operators. We first must determine the method by which we will establish the total number of cable subscribers in the United States, since only operators serving fewer than 1% of all subscribers qualify as small cable operators. We propose to establish such a number on an annual basis and to have that number serve as the applicable threshold until a new number is calculated the following year. While the number of subscribers varies daily, we tentatively conclude that fixing a number on an annual basis will produce certainty and reduce administrative burdens for operators, LFAs, and the Commission. Commenters should address these tentative conclusions and propose any reasonable alternatives.

14. As noted, the method we select to count the total number of subscribers should minimize administrative burdens as well as ensure a subscriber count that is as accurate and reliable as is reasonably possible. We are aware that industry groups, trade journals, and other private concerns already attempt to track subscriber figures. We tentatively conclude that using the most reliable of these figures, or perhaps some average of these figures, would best further our goals. We solicit comment on this tentative conclusion and on what data would be the most reliable for this purpose.

2. Definition of ''Affiliate''

15. In addition, we seek comment on the proper definition of ''affiliate'' for purposes of the small operator provisions. We already have discussed the separate definitions of ''affiliate'' contained in Title I and Title VI. We note that the Title I definition of ''affiliate'' does not strictly apply to matters under Title VI, since Title VI contains a separate definition of that term that, unlike the Title I definition, does not set a percentage threshold as to what constitutes ownership. We believe this gives us discretion to establish a percentage ownership threshold other than 10% for purposes of Title VI.

16. As for the precise threshold we should establish here, we note that last year in applying the Title VI definition in the context of our small system rules, we concluded that a 20% ownership interest, active or passive, would be deemed affiliation. There we observed: ''Relaxing regulatory burdens should free up resources that affected operators currently devote to complying with existing regulations and should enhance those operators' ability to attract capital, thus enabling them to achieve the goals of Congress * * *.'' We believe that Congress had a similar intent when it crafted the small cable operator provisions of the 1996 Act and, therefore, we tentatively conclude that the affiliation standard applicable under our small system cost-of-service rules also should be applied for present purposes. Under this approach, an entity would be affiliated with a cable operator if the entity held an ownership interest of 20% or more, either active or passive, in the cable operator. De facto control also would constitute affiliation. We seek comment on this proposed definition.

3. Definition of ''Gross Revenues''

17. Once a cable operator identifies its affiliates under whatever rule we adopt, it will have to calculate the gross annual revenues of those affiliates. We have defined ''gross revenues'' in other contexts, such as determining eligibility for certain licenses for frequencies devoted to personal communications services:

Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited quarterly financial statements for the relevant period.

18. We tentatively conclude that this definition should be applied under the small cable operator provisions of the 1996 Act, although we do not intend to require that all entities produce audited financial statements. If an entity maintains such statements as a matter of course, they would seem to be the best record of its gross revenues. However, we realize that some smaller business may not go to the expense of having their financial statements audited; certainly they should not be required to do so on the basis of legislation intended to minimize burdens for smaller businesses. Therefore, we propose to adopt the definition of ''gross revenues'' quoted above, as modified to eliminate any requirement that the operator or its affiliates produce audited

financial statements. Commenters should address the propriety of this definition for establishing operator eligibility for small cable operator treatment. We also seek comment as to how the revenues of natural persons should be measured and verified under this rule.

19. The plain language of the statute appears to require an operator with multiple affiliates to aggregate the gross annual revenues of all of the affiliates and to compare this aggregate figure to the $250 million threshold. We tentatively conclude that if the gross revenues of all affiliates, when aggregated in this manner, exceed $250 million, the operator does not qualify as small, even if no single affiliate has revenues in excess of that amount. We also solicit comment as to whether the statute should be read to exclude the revenues of the operator itself for purposes of applying the $250 million threshold. Finally, we solicit comment on whether only affiliates of the cable operator that are also cable operators should be included when aggregating gross annual revenues with respect to the $250 million threshold.

4. System and Franchise Area Subscribers

20. Rate regulation is reduced or eliminated for a small cable operator ''in any franchise area in which that operator services 50,000 or fewer subscribers.'' Although a single cable system can serve more than one franchise area, deregulation under this provision of the 1996 Act appears to be determined on a franchise area-by-franchise area basis, without regard to the total number of system subscribers. Under this analysis, a system serving well over 50,000 subscribers spread over multiple franchise areas could qualify for deregulation throughout the entire system as long as no individual franchise area contained more than 50,000 subscribers. Likewise, a single system could be subject to regulation in one franchise area but not in another because its subscriber counts are over and under the 50,000 mark in the two areas, respectively. We seek comment on our tentative conclusion that system size is irrelevant for purposes of this provision.

21. In other contexts in which subscriber counts are important, such as determining whether effective competition exists in a franchise area, we have directed operators how to measure subscribership to take account of various circumstances, such as in vacation areas that experience seasonal shifts in population. However, in limited circumstances we have allowed operators to count subscribers residing in multiple dwelling units (''MDUs'') based on the equivalent billing unit methodology. We seek comment on the proper methodology to be used for purposes of the 50,000 subscriber limit under Section 301(c).

5. BST and CPST deregulation

22. The 1996 Act plainly eliminates CPST rate regulation for systems that qualify under the revenue and subscriber criteria. For qualifying systems that do not offer a CPST, the statute eliminates BST regulation if that tier ''was the only service tier subject to regulation as of December 31, 1994 * * *.'' With respect to qualifying systems that had only a single tier subject to regulation as of that date, we seek comment as to whether Congress intended the BST to be deregulated even if the operator has created a CPST since then or creates a CPST hereafter. In other words, can a qualifying system with both a BST and a CPST be exempt from rate regulation on both tiers, as long as it had only a single tier as of December 31, 1994? Assume, for example, that as of December 31, 1994 an operator had only a single regulated tier, consisting of all of the channels that an operator is required to carry on its BST plus a large number of additional channels. Thereafter, the operator creates a CPST and migrates from the BST to the new CPST some or all of the channels that are not mandatory BST channels, including all of the most popular satellite-delivered cable networks. Arguably, the system's resulting BST would be exempt from regulation on the grounds that the BST ''was the only service tier subject to regulation as of December 31, 1994 * * *.'' It is also arguable, however, that the resulting BST should be subject to regulation because the fundamental nature of the original BST was significantly altered after December 31, 1994.

23. We tentatively conclude that the scope of deregulation depends solely upon the number of tiers that were subject to regulation as of December 31, 1994. Under this construction of the statute, a system currently offering two or more tiers would be deregulated on all tiers if the BST was the only tier subject to regulation as of December 31, 1994, but would be deregulated only on its CPST(s) if it had more than one tier subject to regulation as of December 31, 1994. We seek comment on this construction of the statute.

6. Procedures

24. As for procedures, we seek to design a mechanism by which an operator can obtain a prompt determination of small operator status with a minimum of paperwork, while still giving LFAs and the Commission the ability to verify, when necessary, the subscriber and revenue data relied on by the operator in seeking such status. We understand that a large number of operators entitled to deregulation under the 1996 Act have subscriber and revenue figures that fall far below the statutory thresholds. We tentatively conclude that the procedures we adopt in this regard should be such that these systems can obtain a prompt declaration of their deregulatory status without having to comply with the rules that may be necessary for systems whose eligibility is not so certain. Accordingly, we propose to adopt on a permanent basis the interim procedures described above.

25. While designed to simplify the process in the case of operators who clearly meet the statutory criteria, this process could be applied to all operators, even though further scrutiny may be required for operators that come closer to those statutory criteria. We seek comment on this approach and invite commenters to propose other mechanisms that would minimize the administrative burdens on operators and franchising authorities, particularly in cases where there will be no dispute as to the operator's eligibility for deregulation. We further seek comment as to the procedures to be followed where a determination of the operator's status will require further examination.

26. We also must determine the treatment of systems that qualify for deregulation now, but later exceed the subscriber or revenue thresholds. We tentatively conclude that the plain language of the statute indicates that a deregulated system would become subject to regulation upon exceeding the statutory thresholds. Under this approach, would a system that qualifies for deregulation instantly lose that status the moment its subscriber base exceeds 50,000 in the franchise area, or at the moment its operator starts to serve more than 1% of subscribers nationwide? Is deregulated status lost immediately upon the accumulation of annual revenues above $250 million? We tentatively conclude that an instantaneous shift from complete deregulation to full regulation may not be in the public interest because it could be disruptive to consumers and operators. The addition of subscribers by a system or operator would seem to indicate that the company is responding to consumer demand. We would not want to discourage such responsiveness on the part of cable operators.

Nevertheless, we tentatively conclude that the language of the 1996 Act requires the transition into regulation to begin as soon as the system no longer qualifies under the subscriber or revenue criteria. We seek comment on these issues.

27. We note that last year the Commission adopted rules streamlining cost-of-service rate regulation for any system serving fewer than 15,000 subscribers, as long as the system is not owned by an operator serving more than 400,000 subscribers. Once a system qualifies under these criteria, it remains subject to the relaxed rules for so long as the system serves fewer than 15,000 subscribers. When the system exceeds 15,000 subscribers, it may maintain its current rates, but it is then subject to our standard rate rules applicable to systems generally, and therefore cannot seek an increase until such an increase is permitted under our standard rate rules. We seek comment as to whether this transition mechanism could be applied to systems when they exceed the statutory criteria, or whether some other approach would be more appropriate.

D. Definition of ''Affiliate'' in the Context of Open Video Systems and Cable-Telco Buy Outs

28. We recently initiated a rulemaking to implement the provisions of Section 302(a) of the 1996 Act establishing open video systems [61 FR 10496 (March 14, 1996)]. Open video systems represent a new medium for the provision of video programming to subscribers. The 1996 Act specifically authorizes a LEC to provide cable service over an open video system within its own telephone service area. The 1996 Act also provides that, to the extent permitted by Commission regulation, a cable operator or any other person may provide video programming through an open video system. As with other portions of the 1996 Act, Section 302(a) requires that we define the term ''affiliate'' in order to implement its provisions. Although Section 3 of the 1996 Act defines ''affiliate,'' Congress did not alter the separate definition of ''affiliate'' set forth in Title VI. Thus, we solicit comment regarding the definition of ''affiliate'' in the context of the new statutory provisions governing open video systems.

29. The cable-telco buy out provisions of Section 302 of 1996 Act also refer to the ''affiliates'' of such entities. We request comment regarding the definition of ''affiliate'' in this context as well.

E. Uniform Rate Requirement

30. As discussed above, Section 301(b)(2) of the 1996 Act amends the pre-existing requirement that a cable operator maintain a uniform rate structure throughout its franchise area by, among other things, exempting from that requirement bulk discounts offered to multiple dwelling units. We have amended the rule to comform with the exact statutory language. Here we solicit comment on the meaning of several terms in the statutory language.

31. We tentatively conclude that the bulk rate exception does not permit a cable operator to offer discounted rates on an individual basis to subscribers simply because they are residents of a multiple dwelling unit, but rather requires a ''bulk discount[ ],'' to use the language of the statute, that is negotiated by the property owner or manager on behalf of all of the tenants. We seek comment on this tentative conclusion. We also seek comment as to whether the bulk discounts permitted under Section 301(b)(2) include discounts offered to MDU residents who are billed individually, or should only be permitted where the discount is deducted from a bulk payment paid to the cable operator by the property owner or manager on behalf of all of its tenants.

32. We further seek comment as to the meaning of the term ''multiple dwelling units'' as used in Section 301(b)(2). The Commission has a long-standing definition of ''multiple unit dwellings'' that historically has been significant in determining whether certain cable facilities fell within the private cable exemption to the definition of a cable system. As noted above, prior to the passage of the 1996 Act the definition of a cable system excluded facilities serving subscribers ''in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right of way * * *.'' In that context, we defined a multiple unit dwelling to include a single building that contains multiple residences, and to exclude developments consisting of detached single-family residences, such as mobile home parks, planned and resort communities, and military installations. Congress now has expanded the private cable exemption to include all facilities located wholly on private property, without regard to the nature or common ownership of the property served. Thus, operators of private cable systems (e.g., SMATV systems) now may serve mobile home parks and planned developments without being subject to regulations applicable to cable systems. Since Section 301(b)(2) clearly authorizes a cable operator to deviate from its standard rate structure in order to respond to competition at multiple dwelling units, commenters should address whether we should interpret ''multiple dwelling units'' to correspond to the expanded private cable exemption to the cable system definition.

33. Substantively, we believe that allegations of predation should be made and reviewed under principles of federal antitrust law as applied and interpreted by the federal courts. Commenters should address what standards should be applied to determine whether a complainant has made out a prima facie case ''that there are reasonable grounds to believe that the discounted price is predatory * * *.'' Because complaints in this connection are likely to involve some measure of discovery, we propose the adoption of procedures set forth in our rules for the adjudication of program access complaints. Commenters should address whether that section, or some modified version of procedures set forth in that section, should apply on a permanent basis.

F. Technical Standards

34. The Commission has adopted technical standards that govern the picture quality performance of cable television systems. The rules generally have preemptive force in situations where there is any conflict between the Commission's requirements and those that might be imposed by state or local governments. Section 624(e) of the Communications Act, as adopted in the 1992 Cable Act, provided that the Commission should prescribe minimum technical standards.

35. Current Commission rules dictate specific technical standards and provide for enforcement by LFAs. For example, the Commission's rules provide that, upon request by a LFA, an operator must be prepared to demonstrate compliance with the Commission's technical standards. In addition, the rules provide that, in some instances, an operator may negotiate with its LFA for standards less stringent than otherwise prescribed by the Commission's rules. Section 76.607 of the Commission's rules require an operator to establish a process for receiving signal quality complaints, and subscriber complaints must be referred to the franchising authority and the operator before being referred to the Commission.

36. Here, we seek comment on the overall scope and meaning of new Section 624(e) of the Communications

Act, as amended by Section 301(e) of the 1996 Act. For example, how does this provision affect the Commission rules cited above? How does the 1996 Act's amendments to Section 624(e) affect the scope of the cable franchising, renewal or transfer process in the area of the technical considerations allowed in those situations? Commenters should bear in mind that the 1996 Act did not amend the franchising or the renewal provisions of the Communications Act. Specifically, Section 626 of the Communications Act provides that, ''subject to Section 624'' an operator's proposal for franchise renewal ''shall contain such material as the franchising authority may require, including proposals for upgrade of the cable system.'' In addition, Section 626 provides for franchising authority consideration of the ''quality of the operator's service, including signal quality'' during the course of a renewal under Section 626. Section 621 provides, in part, that a franchising authority awarding a franchise ''may require adequate assurance that the cable operator has the * * * technical * * * qualifications to provide cable service.''

G. Prior Year Losses

37. Section 301(k)(1) of the 1996 Act amends Section 623 of the Communications Act by adding the following provision:

(n) Treatment of Prior Year Losses.—Notwithstanding any other provision of this section or of section 612, losses associated with a cable system (including losses associated with the grant or award of a franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation under this section are lawful.

38. This amendment was effective upon enactment and ''shall be applicable to any rate proposal filed on or after September 4, 1993, upon which no final action has been taken by December 1, 1995.''

39. We note that this provision is similar to a rule change we recently made in the Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking (''Final Cost Order''), found at 61 FR 9361 (March 8, 1996) and 61 FR 9411 (March 8, 1996). The Final Cost Order established final rules applicable to operators that establish regulated rates in accordance with our cost of service rules, one of the two general approaches we have implemented with respect to rate regulation. The other, and primary, method of rate regulation is the benchmark approach. The cost of service rules, intended as a safety valve for operators unable to generate reasonable revenues under the benchmark mechanism, involve a detailed analysis of an operators investment, expenses, and revenues. One of the issues in such an analysis is the extent to which an operator should be permitted to recover ''start up losses'' incurred by the system. Start up losses occur in the early years of operation when rates are set more to attract customers than to fully cover the significant capital and operating costs that an operator incurs before and in the first years after initiating service. Prior to adoption of the Final Cost Order, we presumptively limited the recovery of start up losses to those losses incurred in the first two years of operation. We eliminated this presumption in the Final Cost Order and now permit operators to recover start up loses over whatever period of time such losses were actually incurred.

40. We tentatively conclude that the statutory requirement of Section 301 (k)(1) is applicable to an operator's cost-of-service justification, but differs somewhat from the rule adopted in the Final Cost Order. First, our rule permitting the recovery of start up losses applies to all cable operators, while the recovery of prior year losses under Section 301(k)(1) is limited to ''a cable system that is owned and operated by the original franchisee of the system.'' Second, under our existing rule, reasonable start up losses may be recovered regardless of when they were incurred, while Section 301(k)(1) permits the recovery only of losses incurred prior to September 4, 1992. Third, while start up losses are those incurred in the early years of a system's operation, Section 301(k)(1) contains no such limitation. We seek comment on these tentative conclusions. Further, we seek comment as to whether Congress intended to permit the recovery of prior year losses attributable to imprudent or unreasonable expenditures.

H. Advanced Telecommunications Incentives

41. Subsection 706(a) of the 1996 Act requires the Commission to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.'' We seek comment on how we can advance Congress' goal within the context of our cable services regulation. The Commission has solicited such information in other proceedings and reserves its right to address the implementation of Subsection 706(a) in a consolidated action.

I. Cable Operator Refusal To Carry Certain Programming

42. Here we solicit comment on the proper interpretation of the term ''nudity'' as used in Sections 506 (a) and (b) of the 1996 Act. We tentatively conclude that the term ''nudity'' should be interpreted in accordance with the decision of the Supreme Court in *Erznoznik* v. *City of Jacksonville.* In that decision, the Supreme Court found invalid a city ordinance that prohibited showing films containing nudity at drive-in theaters visible from public places. The Court found the restriction overly broad because it was not directed against sexually explicit nudity or otherwise limited. Accordingly, we tentatively conclude that the term ''nudity'' as used in Sections 506 (a) and (b) of the 1996 Act should be interpreted to mean nudity that is obscene or indecent. We seek comment on this tentative conclusion.

J. Other Matters

43. We recognize that the cable reform subsections of the 1996 Act that we address in this NPRM are broad in scope, and that there may be additional issues regarding those subsections that we have not specifically addressed in the NPRM. Commenters may submit proposals or concerns regarding the implementation of these cable reform subsections, including their impact on other parts of the 1996 Act that are to be addressed in separate proceedings. We also seek proposals to ease the burdens of regulation for interested parties.

Regulatory Flexibility Analyses

44. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's Initial Regulatory Flexibility Analysis with respect to the NPRM is as follows:

45. *Reason for action:* The Commission is issuing this NPRM to seek comment on various issues concerning implementation of the 1996 Act.

46. *Objectives:* To provide an opportunity for public comment and to provide a record for a Commission decision on the issues discussed in the NPRM.

47. *Legal Basis:* The NPRM is adopted pursuant to Section 301 of the 1996 Act; and sections 4(i), 602, 614, 617, 623, 624, 628, 632, of the Communications Act of 1934, as amended, 47 U.S.C. 154, 522, 534, 537, 543, 544, 548, 552, and 548.

48. *Description, potential impact, and number of small entities affected:* Amending our rules will directly affect entities which are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act. The 1996 Act reduces or eliminates rate regulation for many such entities.

49. *Reporting, recordkeeping, and other compliance requirements:* None.

50. *Federal rules which overlap, duplicate, or conflict with the Commission's proposal:* None.

51. *Any significant alternatives minimizing the impact on small entities and consistent with state objectives:* The NPRM seeks to minimize burdens on small entities in conformance with the 1996 Act.

52. *Comments are solicited:* Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this NPRM, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the NPRM to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*.

Procedural Provisions

53. Pursuant to applicable procedures set forth in Sections 1.415 and §§ 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 28, 1996 and reply comments on or before June 28, 1996. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. Parties are also asked to submit, if possible, draft rules that reflect their positions. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Nancy Stevenson of the Cable Services Bureau, 2033 M Street, N.W., Room 408A, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

54. Parties are also asked to submit comments and reply comments on diskette, where possible. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Nancy Stevenson of the Cable Services Bureau, 2033 M Street, N.W., Room 408A, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

55. Written comments by the public must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after publication of the Order and NPRM in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20054, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain____t@al.eop.gov.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–10172 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–093, Notice 02]

RIN 2127–AF76

Federal Motor Vehicle Safety Standards; Accelerator Control Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, NHTSA proposes to change the scope of the Federal motor vehicle safety standard on accelerator control systems. The current standard prohibits uncontrolled engine speed in the event of a disconnection or severance of the accelerator control system at a single point, and it also specifies return-to-idle times for the normal operation of accelerator control systems. The agency has tentatively decided that it not necessary to regulate the normal operation of accelerator control systems. Vehicles with return-to-idle times too great for safe driving would be unacceptable to prospective vehicle buyers regardless of a regulation. The standard will continue to require fail-safe performance of accelerator control systems in the case of a single point disconnection or severance. This proposed action is part of NHTSA's efforts to implement the President's Regulatory Reinvention Initiative.

DATES: Comments are due June 14, 1996.

ADDRESSES: Comments should refer to the docket number and notice number cited at the beginning of this notice, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.) It is requested that 10 copies of the comment be provided.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Patrick Boyd, Office of Crash Avoidance Standards, NPS–21, telephone (202) 366–6346, FAX (202) 366–4329.

For legal issues: Ms. Dorothy Nakama, Office of Chief Counsel, NCC–20, (202) 366–2992, FAX (202) 366–3820.

Both may be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590. Comments should not be sent or FAXed to these persons, but should be sent to the Docket Section.