

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

interests (including most "preferred" stock classes) are not attributable. There are several exceptions to the voting stock threshold, including a "single majority shareholder" exception, which provides that minority interests will not be attributed where a single shareholder owns more than 50% of the outstanding voting stock. In addition, the interests of "insulated" limited partners are not attributed.

3. The Commission adopted a more restrictive attribution standard for those rules, such as the program access and program carriage rules and the cable/MMDS and cable/SMATV cross-ownership restrictions, that are designed not only to promote competition and diversity, but also to deter specific discriminatory or improper conduct by cable operators or programmers. In contrast to the broadcast attribution standard, this more restrictive standard (1) considers a cable operator to have an attributable interest if it holds 5% or more of an entity's stock, whether voting or non-voting, (2) does not apply the single majority shareholder rule, and (3) attributes limited partnership interests of 5% or more, regardless of insulation.

4. In addition, the Commission relied upon the attribution rules in defining when an entity is considered an "affiliate" for certain purposes under Title VI. The Commission applied the more restrictive attribution standard to the ratemaking context, for purposes of analyzing asset transfers and the provision of services between a cable operator and its affiliate, and for purposes of limiting the amount of pass-throughs permitted for programming services affiliated with cable operators. The Commission also applied the more restrictive attribution standard to the leased access provisions and the open video system provisions.

5. In the Cable Act Reform proceeding, the Commission is reviewing appropriate definitions of "affiliate" under other provisions of the 1996 Act, including the small operator provisions, the new prong of the "effective competition" test, and the cable-telco buy-out provisions. Pending the adoption of final rules, the Commission requested comments on the appropriate definition of "affiliate" for the cable-telco buyout provisions and established interim rules for the small operator and "effective competition" provisions. For the small operator provisions, the interim rule adopted the definition of "affiliate" used for purposes of the Commission's small system cost-of-service rules. Thus, an entity is deemed affiliated with a small cable operator if that entity has a 20%

or greater equity interest in the operator (active or passive) or holds de jure or de facto control over the operator. By contrast, in the "effective competition" context, the interim rule provided that an "affiliate" is an entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person, where the term "own" means to have an equity interest (or the equivalent thereof) of more than 10%.

6. The Commission has initiated a review of the broadcast attribution standard under the *Notice of Proposed Rule Making, Review of the Commission's Regulations Governing the Attribution of Mass Media Interests*, 60 FR 06483, MM Docket Nos. 94-150, 92-51 and 87-154, FCC 94-324, 10 FCC Rcd 3606 (1995) ("*Broadcast Attribution Notice*") and the *Further Notice of Proposed Rule Making, Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Regulation and Policies Affecting Investment in the Broadcast Industry and Reexamination of the Commission's Cross-Interest Policy*, 61 FR 67275, MM Docket Nos. 94-150, 92-51 and 87-154, FCC 96-436, 11 FCC Rcd 19895 (1996) ("*Broadcast Attribution Further Notice*").

7. Among the issues on which the Commission solicited comment in the *Broadcast Attribution Notice* were: (1) whether to increase the voting stock ownership benchmark from 5 percent to 10 percent; (2) whether to increase the passive investor stock ownership benchmark from 10 percent to 20 percent; (3) whether to restrict or eliminate our single majority shareholder exemption and whether to attribute nonvoting shares in certain circumstances, such as where the minority or nonvoting shareholder has contributed a significant portion of the equity or debt financing; (4) whether to revise our insulation criteria for limited partnership interests, and whether to adopt an equity benchmark for noninsulated limited partners; (5) whether to treat interests in limited liability companies ("LLCs") and similar new business forms, such as registered limited liability partnerships ("RLLPs"), as we now treat limited partnerships; (6) whether to eliminate the remaining aspects of our cross-interest policy that prevent individuals from having "meaningful" interests—including key employee relationships, joint ventures, and nonattributable equity interests—in two broadcast stations, or a daily newspaper and a broadcast station, or a television station and a cable system, when both outlets serve "substantially the same area;" and (7) how to treat non-equity financial

relationships and multiple business relationships that, although not individually attributable, could combine to create sufficient influence to warrant attribution.

8. In addition to the issues raised in the *Broadcast Attribution Notice*, the *Broadcast Attribution Further Notice* explored additional proposals to increase the precision of the attribution rules. In the *Broadcast Attribution Further Notice*, the Commission invited comment on whether it should add a new "equity or debt plus" ("EDP") attribution rule. Under such a rule, where an interest holder is a program supplier or same-market media entity, the Commission will attribute its otherwise non-attributable equity and/or debt interests in a licensee or other media entity subject to the cross-ownership rules if those aggregated interests exceed a specified benchmark, proposed to be set at 33 percent. Second, the Commission tentatively concluded that it should treat television time brokerage agreements or local marketing agreements ("LMAs") the same as radio LMAs, and also count radio and television LMAs toward all applicable ownership limits. Third, the Commission invited comment as to whether it should attribute joint sales agreements ("JSAs") in certain circumstances. Fourth, the Commission invited comments on its staff study of attributable ownership interests in broadcast television stations, appended to the *Broadcast Attribution Further Notice*, and on the implications of this study regarding the impact of the proposed attribution rule changes, particularly as to the voting stock benchmarks. Fifth, the Commission sought comments on whether a transition period or grandfathering of existing interests is appropriate. The Commission tentatively concluded that any grandfathering should apply only to the current interest holder and that interests acquired on or after December 15, 1994, the date of adoption of the *Broadcast Attribution Notice*, should be subject to any final rules adopted. The Commission invited comments as to whether it should apply broadcast attribution criteria and add a new EDP attribution rule for purposes of the cable/Multipoint Distribution Service ("MDS") cross-ownership restrictions.

9. This *NPRM* initiates a similar review of the attribution issues as they specifically relate to the Commission's cable rules. The *NPRM* seeks comment on the same issues raised in the broadcast attribution proceedings as they pertain to the cable industry, and on whether and how these issues should factor into the review of the

Commission's cable attribution rules. In particular, the Commission asks commenters to focus on: (1) the proposed "equity or debt plus" addition to the current attribution rules, and specifically those relationships in the cable context that may provide sufficient incentive and ability for an otherwise nonattributable interest holder to exert an attributable influence or control; (2) the attribution of certain contractual or other business relationships in the cable context (including affiliations that allow different cable entities to purchase programming, technology or equipment on common terms, analogous to JSAs and LMAs in the broadcast context) that may implicate diversity and competition concerns, irrespective of debt or equity; (3) the impact of raising the stock ownership benchmark for active and passive investors in the cable context, particularly seeking empirical data and analysis similar to the Commission staff study on the same subject in the broadcasting context; (4) whether to retain, modify, or eliminate the single majority shareholder exemption; and (5) whether a transition period or grandfathering of existing interests is appropriate if we decide to adopt more restrictive attribution rules. Because the *Broadcast Attribution Notice* and the *Broadcast Attribution Further Notice* already address application of the attribution rules to the cable/MMDS and the cable/broadcast cross-ownership restrictions, the Commission will not revisit and therefore does not seek comment on those issues in the *NPRM*.

10. The *NPRM* seeks comment on whether the assumptions underlying the cable attribution rules are still valid. In particular, comment is sought on whether any relevant differences exist between the cable and broadcasting industries that would support a distinct cable attribution standard even for those cable rules designed, like the broadcasting ownership rules, to ensure competition and diversity. In the *NPRM*, the Commission notes that the broadcast attribution rules focus primarily on those relationships which confer on their holders influence or control over a broadcaster's key business decisions in the areas of budget, personnel and programming. Comment is sought on whether, in the cable context, these are the appropriate key business areas and whether the underlying areas of concern should include cable entities' technology decisions and practices. The *NPRM* seeks comment on whether there are differences in ownership, financing or management structures, industry

health, typical stockholdings, informal business arrangements, or outside financial claims that render one of the industries more or less subject to the types of influence or control that the attribution rules seek to identify. Also, because the current cable attribution rules do not distinguish between types of cable operators, comment is sought on whether any relevant differences exist among cable operators that would warrant different attribution rules.

11. In the *NPRM*, the Commission also solicits comment on whether and how we should re-evaluate the more restrictive attribution standard applicable to certain of the rules described above, such as the program access and program carriage rules and the cable/MMDS and cable/SMATV cross-ownership restrictions. In particular, the Commission seeks comment on: (1) whether the more restrictive standard serves the purposes for which it was intended; (2) whether the more restrictive standard is over- or under-inclusive; (3) whether the more restrictive attribution standard should be revised in relation to the broadcast attribution standard; (4) whether these two attribution standards should be treated as completely separate and independent formulations; and (5) whether, in view of the purposes it serves, we should require a more compelling showing before modifying the more restrictive standard.

12. In the *NPRM*, comment is sought on whether and how any changes in our cable attribution rules should affect the Commission's various definitions of "affiliate." In particular, the Commission seeks comment on whether and how those affiliation rules that are expressly based on the cable attribution rules should change if the underlying attribution rules are changed.

13. In the *NPRM*, the Commission seeks comment as to the business arrangements involved in recent cable system partnerships, joint ventures, swaps, transfers, mergers and acquisitions, particularly those transactions announced or consummated in 1997 or thereafter, including those discussed in the Commission's 1997 annual report on the status of competition in the delivery of video programming. Commenters should identify the entities involved in each transaction, the projected date of consummation, details of the new structure including: the percentage and nature (e.g., voting or non-voting, limited or general partnership, insulated or non-insulated, rights of conversion) of each entity's ownership interests, the number of officers, directors, and other key personnel appointed by each entity

to a management committee, board or other governing body, the portion of the equity or debt financing contributed by each entity, and any authority or power held by each entity to review, veto or otherwise influence the management or operation of the cable systems, as well as the ability to purchase programming, technology, or equipment under common contract terms. The Commission seeks information, in particular, as to any business arrangements undertaken to insulate one or more parties to these transactions from control or influence over key business aspects of the cable systems at issue. Comment is also sought as to the development of the Commission's cable attribution rules to avoid inconsistency with any other statutes or regulations (e.g., those of the Internal Revenue Service or the Financial Accounting Standards Board) that may influence the structuring of the business arrangements at issue.

14. With respect to each ownership or relational interest discussed herein, the Commission seeks comment on whether the specified level or degree of ownership interest in, or relationship to, an entity would be likely to impart the ability to influence or control the operations of that entity, including core areas such as budget, personnel, programming, technology, or competitive practices, such that the ownership rules should be implicated. Consistent with the purpose of section 257 of the 1996 Act to reduce market entry barriers for small businesses, comment is also sought on the impact that any changes to the Commission's cable ownership attribution or affiliation standards will have on market entry barriers for small businesses. In the *NPRM*, the Commission asks interested parties to support their comments with empirical data and economic analyses regarding levels of influence in business organizations and current market conditions.

Initial Regulatory Flexibility Analysis

15. 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 *NPRM*. Written public comments concerning the effect of the proposals in the *NPRM*, 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 the *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.

16. *Need for, and Objectives of, the Proposed Rules.* This proceeding is being initiated to obtain comment on whether the Commission's cable attribution and affiliation rules continue to serve their intended goals, and whether certain aspects of those rules should be revised to make them more effective. The actions proposed in the *NPRM* are intended to ensure that the Commission effectively implements the various cable rules that include an attribution or affiliation standard by identifying those interests that may result in undue market power by large entities, such as large cable multiple systems owners, and undermine a competitive, diverse and fair marketplace.

Legal Basis

17. Authority for the actions proposed in the *NPRM* is contained in sections 4, 303, 612, 613, 616, 623, 628, 652 and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303, 532, 533, 536, 543, 548, 572 & 573.

18. *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"). The Small Business Enforcement Fairness Act of 1996 (SBREFA) provision of the RFA also applies to nonprofit organizations and to governmental organizations such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000. 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.**"

19. *Local Franchising Authorities.* There are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. Any official actions with respect to cable systems will typically be undertaken by local franchising authorities ("LFAs"), which primarily consist of counties, cities and towns. Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states, which typically are not LFAs. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000. Thus, approximately 37,500 "small governmental jurisdictions" may be affected by the rules proposed in the *NPRM*.

20. *Cable Services or Systems.* 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.

21. 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 *NPRM*. 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 is unable to estimate at this time the number of small cable systems nationwide.

22. 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.

23. *Satellite Master Antennae Television ("SMATV") Operators.* Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If it is assumed that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, the Commission is not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, the Commission believes that a substantial number of SMATV operators qualify as small entities.

24. *Local Exchange Carriers ("LECs").* Neither the Commission nor the SBA

has developed a definition for small LECs. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide is the data that the Commission collects annually in connection with the TRS Worksheet. According to the Commission's most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. The Commission does not have information on the number of carriers that are not independently owned and operated, nor what carriers have more than 1,500 employees, and thus the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,347 small incumbent LECs.

25. *Cable Programmers.* The Commission has not developed a definition of small entities applicable to producers or distributors of cable television programs. Therefore, the Commission will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the cable television programming industry is an entity with \$21.5 million or less in annual receipts for SIC 7812, and \$5 million or less in annual receipts for SIC 7922. Census Bureau data indicate the following: (a) there were 7,265 firms in the United States classified as Motion Picture and Video Production (SIC 7812), and that 6,987 of these firms had \$16.999 million or less in annual receipts and 7,002 of these firms had \$24.999 million or less in annual receipts; and (b) there were 5,671 firms in the United States classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had \$4.999 million or less in annual receipts.

26. *Description of Projected Recording, Record Keeping, and Other Compliance Requirements.* If the Commission's cable ownership attribution or affiliation standards are changed, the Commission may have to change certain cable reporting requirements and cable entities may be required to observe new recording, record keeping or other compliance requirements that would be necessary to ensure compliance with the new attribution or affiliation standards.

Cable entities also may have to adjust the organization of their business interests in order to comply with any new attribution or affiliation standards that the Commission may adopt.

27. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The actions proposed in the NPRM are intended to ensure that the Commission effectively implements the various cable rules that include an attribution or affiliation standard by identifying more accurately those interests that may result in undue market power by large entities, such as large cable multiple systems owners, and undermine a competitive, diverse and fair marketplace. Accordingly, as discussed in the above descriptions of the proposed rule changes, and in the Broadcast Attribution Notice and Broadcast Attribution Further Notice, the approaches proposed in this NPRM should promote fairness and diversity for all cable systems and other 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.

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

Paperwork Reduction Act Analysis

29. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act"). The Commission has determined that, if we change our cable ownership attribution or affiliation standards, the Commission may have to require cable entities to comply with new or modified information collection requirements that would be necessary to ensure compliance with the new attribution or affiliation standards. If the Commission, in a subsequent rulemaking in this proceeding, implements new or modified information collection requirements, those requirements will first be subject to approval by the Office of Management and Budget as prescribed by the Act.

Procedural Provisions

30. 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 § 1.1206(b).

31. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR. 1.415 and 1.419, 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, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

Ordering Clauses

32. Accordingly, it is hereby ordered that pursuant to the authority in sections 4, 303, 612, 613, 616, 623, 628, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 532, 533, 536, 543, 548, 572 and 573, notice is hereby given of proposed amendments to part 76, in accordance with the proposals, discussions, and statement of issues in this *Notice of Proposed Rulemaking*, and that comment is sought regarding such proposals, discussion, and statement of issues.

33. It is further ordered that the Office of Public Affairs Reference Operation Division shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the 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 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 98-18036 Filed 7-13-98; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-98-4028; Notice 4]

RIN 2127-AC85

Federal Motor Vehicle Safety Standards; Glazing Materials

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

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws a proposal in which the agency considered amending Federal Motor Vehicle Safety Standard No. 205, *Glazing materials*, to revise its light transmittance requirements. The amendments would have specified a new procedure for testing the light transmittance of glazing samples. Instead of specifying that they be tested at the currently specified 90 degree angle, the standard would have specified that they be tested at the acute angle at which the glazing would be installed in the vehicle (the rake angle). The amendments also would have added light transmittance requirements for light trucks, vans, sport utility vehicles, and buses of less than 10,000 pounds gross vehicle weight rating (GVWR), and specified different transmissibility requirements for the various windows.

After reviewing the available information, NHTSA has decided to withdraw this proposal. The reasons for taking this action include the following: the cost impacts of testing at the installed angle pursuant to the proposed new procedure would not be adequately offset by the potential safety benefits of increased visibility if glazing continues to be installed at current rake angles; the practical limits imposed by concerns about visual distortion will prevent rake angles from increasing; the agency does not want to prohibit the use of the best present solar windshield glazing in order to achieve slight differences in effective light transmittance at current rake angles; the agency wishes to better define the relationship between light transmittance and highway safety before

it establishes transmittance levels for various vehicle windows; and without controlling for the installed angle of the glazing, setting specific transmittance levels would not consistently and predictably result in improved light transmittance. Another reason for withdrawing this proposal to establish light transmittance levels for additional classes of motor vehicles concerned the fact that the proposed transmittance levels were premised upon adopting the proposed new test method. Since the agency is not adopting the new method, it can not adopt transmittance levels selected on the basis of that method.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Richard Van Iderstine, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C., 20590. Telephone: (202) 366-5280.

For legal issues: Paul Atelsek, NCC-20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 366-2992.

SUPPLEMENTARY INFORMATION:

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I. Background

A. The Current Standard

Federal Motor Vehicle Safety Standard No. 205, *Glazing Materials* (49 CFR 571.205), specifies performance requirements and permissible locations for the types of glazing that may be installed in motor vehicles. The

standard incorporates by reference American National Standards Institute (ANSI) Standard Z26.1, "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," as amended through 1980 (Z26). The requirements in Z26 are specified in terms of performance tests that the various types, or "items," of glazing must pass.

One of the tests is for luminous, or light, transmittance. This test measures the regular (parallel) transmittance of a sample of the glazing, in terms of the percentage of incident light that passes through the glazing. During the test, light strikes the glazing at a 90 degree angle. To pass the test, the glazing must allow 70 percent of the incident light to pass through.

The amount of light transmitted through vehicle glazing affects the ability of the driver to see objects on the road. Low light transmittance can make it difficult to detect low contrast objects, such as pedestrians, whose luminance and coloring causes them to blend with the background of the roadside environment. The effect of low light transmittance levels on the driver's vision is most pronounced at dusk and night when the ambient light level is low. This is because the "contrast sensitivity" of the eye diminishes as the overall brightness of the scene decreases. This lower contrast sensitivity makes it especially difficult to discern low contrast objects. This problem is most acute for older drivers who have poorer contrast sensitivity. Contrast sensitivity declines by a factor of two about every 20 years after age 30. Thus, older drivers have poorer dusk and night vision.

The light transmittance requirements must be met by all glazing installed in windows that are "requisite for driving visibility" (see Z26, table 1). In a longstanding interpretation of this term, NHTSA has determined that all windows in a passenger car, with limited exceptions not relevant here, are considered requisite for driving visibility.

For buses, trucks, and multipurpose passenger vehicles (MPV's), glazing that meets the 70 percent light transmittance requirements is required in the windshield, the windows to the immediate left and right of the driver, and any rear or rear side windows that are requisite for driving visibility. The agency has not issued an interpretation specifying which rear or rear side windows are requisite for driving visibility. In rear windows in buses, trucks, and MPV's that are not requisite for driving visibility, items of glazing that are not subject to the 70 percent