program have risen over the years, but these increased costs have not been reflected in certification charges. The fees charged for NIOSH services do not recover the costs to maintain the program. NIOSH will be updating the fee schedule to reflect the actual costs to maintain the program.

(1) How should certification fees be structured and calculated to recoup the cost of the certification process?

(2) Should manufacturers be required to pay for manufacturing site and product audits?

(3) Should fees be collected by NIOSH for respirator complaint investigations?

Issue 4. The certifications standards currently limit NIOSH to certify only complete respirators. Standards are not provided to evaluate component parts independently. There are not provisions in the current addressing standardization and interchangeability of components. Any change to a component part, or a replacement part that differs from the original, can change the effectiveness of a respirator, and decreased effectiveness normally cannot be detected by the user. To ensure that respirators perform effectively, they must be maintained as approved. Replacement parts are limited to those specified in the certification for the manufacturer's assembly of the respirator. These are the only components that have been evaluated for effectiveness. As a result, a respirator user must obtain replacement parts and service from the respirator's original manufacturer.

(1) Should NIOSH allow replacement parts for respirators by manufacturers other than the original manufacturer of the respirator?

(2) How should the effectiveness of replacement parts be assured?

(3) Would NIOSH need to adopt or develop component-specific certification requirements to allow alternate suppliers for replacement parts?

(4) Should NIOSH consider certifying respirator components in addition to, or instead of, complete respirator?

(5) Do other certifying agencies or standards organizations allow suppliers other than the original manufacturer to provide replacement parts for certified units?

(6) If suppliers other than the original manufacturer were permitted to provide replacement parts, how should NIOSH monitor these alternate suppliers?

(7) If suppliers other than the original manufacturer were permitted to provide replacement parts, how should NIOSH monitor those parts?

(8) Would NIOSH need to adopt design specifications to ensure that interchangeability of parts is safe?

Issue 5. Products auditing is an ongoing NIOSH activity involving the acquisition of respirators to assure compliance with NIOSH certification requirements. These products are purchased from distributors, inspected, and tested to verify they continue to meet the NIOSH certification criteria. This activity provides a ''snapshot'' of the results of quality control, quality assurance, and manufacturing processes used to produce the certified respirator.

NIOSH currently procures approximately 64 respirators a year to perform product audits. With increasing budget constraints and the very small number of respirators that NIOSH can purchase each year, NIOSH may require manufacturers to supply respirators upon request for product audits.

(1) What would be the maximum number of respirator per year, aside from problem investigations, that NIOSH should request from a manufacturer, at no charge to NIOSH?

(2) How should NIOSH acquire products for audit (i.e., by voucher, reimbursement, random selection by NIOSH at the manufacturer or distributor)?

(3) Should manufacturer be charged for these product audits, since they are a condition of certification?

Issue 6. The NIOSH certification is issued for an unlimited number of units, without an expiration date. In the past, some certified respirators have been removed from production for a period of time, then returned to production. Some certification holders have even gone out of business. There is currently no provision for notification to be given to NIOSH of these events. Typically, NIOSH becomes aware of these events only when attempting to purchase the affected respirator for audit, or as a result of a field complaint. Consequently, NIOSH has no information for most certified respirators on the number sold, or whether or not they are still in production.

The NIOSH certification is only removed in the event a certification rescission proceeding is invoked. Since 1919, only a couple of rescission proceedings have occurred. These proceedings are costly and time consuming to NIOSH, the manufacturers and users.

NIOSH is considering provisions that will inform the Institute on the production of respirators under a certification. These provisions could limit the time that a certification would be valid or require notification of production status.

(1) Should the NIOSH certification be valid for a limited time?

(2) What conditions should be met for a time-limited NIOSH certification to be renewable?

(3) What time limits should be used for a NIOSH certification and renewal?

(4) Should certification holders be required to notify NIOSH of changes in production status and the number of produced units when production is halted?

(5) How would purchasers and users be affected if the certification of their respirator expires?

(6) Would an expired certification benefit purchasers and users by informing them that their respirator is no longer produced?

(7) Could information on the number of respirators produced under a certification be used to benefit purchasers and users?

Availability and Access of Copies: Additional copies of this document can be obtained by calling the NIOSH toll-free information number (1–800–35–NIOSH, option 5, 9 a.m.–4 p.m. ET); the electronic bulletin board of the Government Printing Office, 202/512–1387; and the NIOSH Home Page on the World-Wide Web (http://www.cdc.gov/niosh/homepage.html).

Dated: May 7, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–11859 Filed 5–15–96; 8:45 am]

BILLING CODE 4160–19–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 96–101, FCC 96–192]

In the Matter of Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as Added by the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) seeks comment on proposed regulations which implement new section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), as added by section 103 of the Telecommunications Act of 1996. Under new section 34, registered public utility

holding companies may now enter the telecommunications industry without prior Securities and Exchange Commission (''SEC'') approval by acquiring or maintaining an interest in an ''exempt telecommunications company'' (''ETC''). Moreover, exempt public utility holding companies, by owning or acquiring an interest in an ETC, may now acquire a ''safe harbor'' from potential SEC regulation under PUHCA section 3(a). Section 34(a)(1) requires the Commission to promulgate rules implementing the procedure of determining ETC status within one year of the date of enactment of the Telecommunications Act of 1996.

DATES: Interested parties may file comments on or before June 17, 1996 and reply comments on or before July 5, 1996. Written comments by the public on the proposed and/or modified information collections are due June 17, 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 15, 1996.

ADDRESSES: Comments and reply comments should be sent to the office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, with a copy to Lawrence J. Spiwak, Competition Division, Office of General Counsel, Federal Communications Commission, 1919 M Street NW., 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 20554, 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: Lawrence J. Spiwak, Competition Division, Office of General Counsel. (202) 418–1870. 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 NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (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: None.

Title: In the Matter of Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as amended by the Telecommunications Act of 1996, Notice of Proposed Rulemaking.

Type of Review: New collection.

Respondents: 15. There are fifteen registered public utility holding companies.

Number of Respondents: 15. We anticipate that each registered public utility holding company will make at least one application annually.

Estimated Time Per Response: We estimate that each application will take 16 hours to prepare. However, the Commission estimates that respondents will hire attorneys to prepare information. The time for coordinating the submission is ten hours per respondent.

Total Annual Burden: 150 hours.

Estimated costs per respondent: We estimate that the cost to each respondent will be approximately $3,200, assuming 16 hours at $200/hour for outside counsel.

Needs and Uses: The information will be used by the Commission to determine whether persons satisfy the statutory criteria for ''exempt telecommunications company'' status. Without such information, the Commission could not determine whether persons satisfied the requisite statutory criteria and therefore fulfill its responsibility under section 34(a)(1) of PUHCA, as amended.

I. Introduction

1. This notice of proposed rulemaking (NPRM) seeks comment on proposed regulations which implement new section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), 15 U.S.C. 79 *et seq.*, as added by section 103 of the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996).[1] Under new section 34, registered public utility holding companies may now enter the telecommunications industry without prior Securities and Exchange Commission (''SEC'') approval by acquiring or maintaining an interest in an ''exempt telecommunications company'' (''ETC'').[2] Moreover, exempt public utility holding companies, by owning or acquiring an interest in an ETC, may now acquire a ''safe harbor'' from potential SEC regulation under PUHCA section 3(a).[3] The new law vests the Commission with jurisdiction to determine whether a company warrants ETC status based on specific statutory criteria.

2. As explained below, we propose to implement section 34(a)(1) by providing for a simple procedure for ETC determination, under which applicants briefly describe their planned activities and certify that they satisfy the specific statutory requirements and any applicable Commission regulations. The Commission believes that its responsibilities under section 34(a)(1) are limited to whether the applicant meets the express statutory criteria for ETC status. Thus, we believe that an ETC determination should not involve an inquiry into the public interest merits of entry by the applicant. Nor would the public interest or the intent of Congress be served if this process became a regulatory barrier to

[1] The Telecommunications Act was enacted on February 8, 1996.

[2] *See* PUHCA section 34(d).

[3] *See* PUHCA section 34(c).

significant new entry into the telecommunications industry. Accordingly, the proposed rules are limited to the filing requirements and procedures for persons seeking exempt telecommunications company status.[4] We believe that this approach is the best mechanism to expedite Congress's policy to allow holding companies to become vigorous competitors in the telecommunications industry in order to promote the public interest.[5]

3. The Commission invites interested parties to comment on the matters raised in the proposed rules.

II. Background

4. PUHCA was designed to prevent financial abuse among public utility holding companies and their affiliates.[6] PUHCA accomplished this goal by, among other things, restricting the activities and investments that holding companies are permitted to make outside of their core public utility businesses. Prior to the Telecommunications Act of 1996, the provisions of PUHCA strongly deterred entry by registered public utility holding companies into the telecommunications industry.[7] Somewhat anomalously, however, utilities that are not public utility holding companies have always been free to enter the telecommunications industry without prior SEC approval, regardless of their size or scope.

5. Section 103 of the Telecommunications Act of 1996, which adds new PUHCA section 34(a)(1), ends this disparate treatment by allowing previously restricted holding companies to enter telecommunications industries without prior SEC permission by acquiring or maintaining an interest in an ''exempt telecommunications company.'' Under section 34(a)(1), an ETC is any person determined by the Commission to be engaged directly or indirectly, wherever located, through one or more affiliates (as defined in section 2(a)(11)(B) of PUHCA [8]), and exclusively in the business of providing: (A) telecommunications services [9]; (B) information services [10]; (C) other services or products subject to the jurisdiction of the Commission; or (D) products or services that are related or incidental to the provision of a product or service described in (A), (B), or (C).

6. Section 34(a)(1) provides that an applicant who has applied in good faith for a determination of ETC status is deemed an ETC until the Commission makes such a determination. Section 34(a)(1) requires the Commission to render its determination of whether a person is an ETC within 60 days of the receipt of an application. Section 34(a)(1) also requires the Commission to notify the Securities and Exchange Commission (SEC) whenever it determines that a person is an ETC. Finally, Section 34(a)(1) requires the Commission to promulgate rules implementing the procedure of determining ETC status within one year of the date of enactment of the Telecommunications Act of 1996.

7. By obtaining ETC status, holding companies can now be vigorous competitors in the telecommunications industry, and, with such competition, bring more benefits to consumers.[11] Indeed, Congress recognized that utilities in general have experience in telecommunications operations, as these companies already operate telecommunications systems for the operation and monitoring of electric generation, transmission and distribution for reliability purposes.[12] Moreover, Congress recognized that holding companies have sufficient size and capital to be effective competitors to incumbent telecommunications companies.[13] Finally, Congress also found that electric utilities, by entering into telecommunications, can provide more efficient and more ecologically-sound energy service in the form of ''peak-shaving'' and real-time energy management.[14]

III. Discussion

A. Commission Responsibilities

8. We have previously held that the Commission's responsibilities under section 34(a)(1) do not appear to extend beyond a determination of whether an applicant complies with the relatively narrow certification criteria enumerated above.[15] This is evident not only from the unambiguous language of section 34(a)(1), but from other provisions of section 34, which preserve other statutory provisions where the merits of ETC entry can be evaluated. For example, section 34(n) preserves this Commission's and applicable states' authority to regulate the activities of an ETC under provisions of the Communications Act of 1934 and any applicable state laws. In addition, section 34(j) retains the jurisdiction of the Federal Energy Regulatory Commission (FERC) and state commissions to determine whether a public utility company may recover in its rates the costs of products or services purchased from or sold to an associate or affiliate company that is an ETC, regardless of whether such costs are incurred through the direct or indirect purchase or sale of products or services from the affiliate or associate company. Finally, section 34(m) provides state commissions the authority to conduct independent audits of public utility holding companies and their affiliates. We request comment on whether our existing interpretation of the scope of our inquiry under section 34(a)(1) is correct.

B. Filing Requirements

9. We note that PUHCA section 34(a)(1) is similar to the ''exempt wholesale generator'' paradigm of PUHCA section 32 which permits, inter alia, public utility holding companies to enter into the independent power production business.[16] FERC, the agency responsible for implementing PUHCA section 32, interpreted that statute as intended to give it only narrowly circumscribed authority, and therefore implemented a procedure whereby an applicant need only briefly describe its planned activities and certify that it satisfies the requisite statutory criteria.[17]

---

[4] The proposed rules would create a new subpart S, part 1 under title 47, chapter I of the Code of Federal Regulations.

[5] See Report of the Committee on Commerce, Science and Transportation on S. 652, S. Rep. No. 104–23, 104th Cong., 1st Sess. at 8 (1995) (''Senate Report'').

[6] *See* Arcadia, Ohio v. Ohio Power, 498 U.S. 73, 87, 111 S.Ct. 415, 423 (1990) (Stevens, J. concurring) (citations omitted).

[7] *See* PUHCA sections 3(a), 11(b)(1).

[8] PUHCA section 2(a)(11)(B) defines ''affiliate'' as ''any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company.''

[9] *See* Communications Act of 1934 section (3)(51), as added by the Telecommunications Act of 1996, which provides that the term ''telecommunications service'' means the ''offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used to transmit the telecommunications service.''

[10] *See* Communications Act of 1934 section (3)(41), as added by the Telecommunications Act of 1996, which provides that the term ''information service'' means the ''offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telephone system or the management of a telecommunications service.''

[11] See Senate Report at 7–8.

[12] Id.

[13] Id.

[14] Id.

[15] See Entergy Technology Company, (FCC 96–163, released April 12, 1996) (Entergy Technology).

[16] See PUHCA section 32, as added by section 711 of the Energy Policy Act of 1992. 15 U.S.C. 79z-5a.

We believe that similar filing requirements should be required under section 34(a)(1).

10. Accordingly, for the company or companies which are eligible companies owned and/or operated by the applicant, the proposed rules would first require the applicant to provide a brief description of the planned activities of the company or companies which are eligible companies owned and/or operated by the applicant. Second, the proposed rules would require a person seeking ETC status (applicant) to file a sworn statement, by a representative legally authorized to bind the applicant, attesting to any facts or representations presented to demonstrate eligibility for ETC status, including a representation that the applicant is engaged directly, or indirectly, wherever located, through one or more affiliates (as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935), and exclusively in the business of providing: (A) telecommunications services; (B) information services; (C) other services or products subject to the jurisdiction of the Commission; or (D) products or services that are related or incidental to the provision of a product or service described in (A), (B), or (C). Finally, the proposed rules would require an applicant to provide a sworn statement, by a representative legally authorized to bind the applicant, certifying that the applicant satisfies Part 1, Subpart P, of the Commission's regulations, 47 CFR 1.2001 through 1.2003r, regarding the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862. The application would then be placed on public notice for comment on the adequacy or accuracy of the representations contained therein.[18] The Commission would review the application and any comments to determine whether the application meets the statutory requirements for ETC status. This analysis would be the extent of the Commission's inquiry. To the extent parties believe that our inquiry should either be more expansive or narrow, we invite them to comment on this issue.

11. We also seek comment on whether we should adopt rules governing applications seeking ETC status filed by different entities that are affiliates of a common holding company parent. While the Act apparently contemplates that every entity seeking ETC status must apply to the Commission,[19] we see no reason why this should require separate entities affiliated with the same holding company parent to seek ETC status through separate applications and proceedings. Such a process seems administratively wasteful and duplicative.[20] Accordingly we propose to allow multiple entities seeking ETC status, which are affiliated with the same public utility holding company parent, to seek a determination for all such entities through a single consolidated application. In such a case, the application should contain for each affiliate sufficient information as required by our rules to make a separate ETC determination for that affiliate. We seek comment on this proposal.

12. The proposed rules also require applicants to serve a copy of the ETC application on the SEC and affected State commissions. An affected State commission is defined as the State commission of each state in which the ETC will be located or doing business. Although service of applications on the SEC and State commissions is not required by law, section 34 of PUHCA specifically contemplates a role for the SEC and State commissions insofar as certain eligible companies are concerned. It also contemplates that the SEC be aware of ETC determinations. The Commission sees no reason not to inform these agencies of pending ETC applications at an early stage, particularly since the copying and mailing costs associated with serving filings on the SEC and affected State commissions will be minimal. We note that FERC took a similar approach in its analogous rules.[21] We invite parties to comment on this proposal.

C. Notice and Comment

13. As of April 25, 1995, the Commission has received 11 applications for ETC status, three of which have been granted.[22] While staff placed these applications on public notice for comment, there is no requirement in the Telecommunications Act that the Commission do so. On the other hand, neither is there any prohibition on the Commission's discretion to do so. The proposed rules would provide for public notice and comment on ETC applications, but would limit consideration of any submissions that might be made in response to such public notices to the narrow purpose of determining the adequacy or accuracy of the certification made to satisfy the statutory criteria. Given the limited focus of the Commission's inquiry under section 34(a)(1), we do not believe that it would be appropriate to allow persons to raise issues that fall outside the purview of the statutorily fixed determination, and that go to the public interest merits of an applicant's proposed entry. Accordingly, the proposed rules specify that parties may file comments on a proposed application, but that any comments must be limited to the adequacy and accuracy of the representations contained therein. Comments on the adequacy of the representations may include whether the application is within the scope of the ETC criteria, e.g., the extent to which applicant's services constitute telecommunications, information or related services. Applicants would then have the opportunity to respond to any comments filed. The Commission requests comments on the tentative conclusion to allow comments, but to limit such comments to the accuracy and adequacy of the representations contained in the applications. We also request comments on the length of the time period which should be set for such comments.

D. Implementation

14. The proposed rules specify that the Commission must act within 60 days of receipt of an application. Applications that do not meet the requirements of the proposed rule set forth in proposed 1.4002 will be rejected. Under the proposed rules, if the Commission does not act within 60 days, the application is deemed to have been granted.

15. Proposed § 1.4005 requires the Secretary of the Commission to notify the SEC whenever an application for ETC status is granted, as explicitly required by section 34(a)(1) of PUHCA.

E. Change in Circumstances

16. An ETC determination is based on the facts that are presented to the Commission. Any material variation from those facts may render an ETC determination invalid. Accordingly, proposed section 1.4006 requires ETCs, within 30 days of any material change in facts that may affect an ETC's eligibility for ETC status under section 34(a)(1) of the Public Utility Holding Company Act of 1935, to either: (a)

---

[17] See Filing and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status, Order No. 550, 58 FR 8897 (February 18, 1993); order on reh'g, Order No. 550–A, 58 FR 21250 (April 20, 1993); see also 18 CFR 365.1 through 365.7.

[18] See Section III.C.

[19] Section 34(a) provides that "No person shall be deemed to be an exempt telecommunications company under this section unless such person has applied to the [Commission] for a determination under this paragraph."

[20] For example, six affiliates of a single public utility holding company recently filed six separate applications for determination of ETC status.

[21] See 18 CFR § 365.3.

[22] See CSW Communications, Inc., (FCC 96–152, released April 4, 1996); Entergy Technology, supra n. 15; Entergy Technology Holding Company, (FCC 96–162, released April 12, 1996).

apply to the Commission for a new determination of ETC status; (b) file a written explanation with the Commission of why the material change in facts does not affect the ETC's status; or (c) notify the Commission that it no longer seeks to maintain ETC status. To the extent persons other than the ETC applicant inform the Commission of a material change of circumstances, the ETC will be given the opportunity to respond and the Commission will take further action as appropriate. The Commission requests comments on this proposed rule.

IV. Procedural Matters

A. Regulatory Flexibility Act

17. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in the document. The IRFA is set forth below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.[23]

B. Ex Parte Rules—Non-Restricted Proceeding

18. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.[24]

C. Comment Dates

19. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before June 17, 1996, and reply comments on or before July 5, 1996.[25] To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments, and supporting comments. If parties want each Commissioner to receive a personal copy of their comments, parties must file an original plus nine copies. Parties should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street NW. Washington, D.C., 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, Room 239, 1919 M Street NW., Washington, D.C. 20554.

D. Paperwork Reduction Act

20. This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (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.

21. Written comments by the public on the proposed and/or modified information collection are due on or before June 17, 1996 and reply comments on or before July 5, 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 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street NW., Washington, DC 20554, 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.

E. Legal Authority

22. Authority for issuance of this NPRM is contained in section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by section 103 of the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996), and sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r).

F. Further Information

23. For further information concerning this proceeding, contact Lawrence J. Spiwak, Competition Division, Office of General Counsel at (202) 418–1870.

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). Written public comments are requested on the IRFA.

Reason for Action: This rulemaking proceeding was initiated to secure comment on proposals for establishing filing requirements and procedures for implementing section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by section 103 of the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996), and sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r).

Objectives: The proposed rules, if adopted, would provide filing requirements and procedures to expedite public utility holding company entry into the telecommunications industry. To achieve this goal, the proposed regulations require persons seeking a determination of ETC status to file in good faith for a determination by the Commission. Applicants would be required to file with the Commission a brief description of their planned activities, and a sworn statement attesting to any facts presented to demonstrate eligibility for ETC status and attesting to any representation otherwise offered to demonstrate eligibility for ETC status. Applicants would also be required to submit sworn statements certifying that they complied with part 1, subpart P, of the Commission's regulations, 47 CFR 1.2001 through 1.2003, regarding implementation of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862. Finally, applicants would be required to serve copies of their application with the SEC and affected state commissions.

Legal Basis: The proposed action is authorized by section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by section

[23] Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

[24] See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

[25] See 47 CFR 1.415 and 1.419.

103 of the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996), and sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303(r).

Reporting, Recordkeeping, and Other Compliance Requirements: Under the proposal contained in the NPRM, within thirty days of any change in material fact that may affect ETC status, persons who received ETC status have an affirmative duty to either: (a) apply to the Commission for a new determination of ETC status; (b) file a written explanation with the Commission of why the material change in facts does not affect the ETC's status; or (c) notify the Commission that it no longer seeks to maintain ETC status.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

Description, Potential Impact, and Number of Small Entities Involved: The proposed rules are designed to provide an expedited procedural process as contemplated in the Section 34(a)(1) of PUHCA. The proposed rules should therefore increase the flexibility of small businesses with minimal administrative burden. After evaluating comments filed in response to the NPRM, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: This NPRM solicits comment on a variety of alternatives. Any additional significant alternatives presented in the comments will also be considered.

IRFA Comments: We request written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the comment deadlines set forth in this NPRM.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. A new subpart S is added to part 1 to read as follows:

Subpart S—Exempt Telecomunications Companies

Sec.

Subparts—Exempt Telecommunications Companies

§ 1.4000 Purpose.

The purpose of part 1, subpart S, is to implement section 34(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79 through 79z–56 as added by section 103 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56.

§ 1.4001 Definitions.

(a) For the purpose of this part, the terms *telecommunications services* and *information services* shall have the same meanings as provided in the Communications Act of 1934, as amended;

(b) Commission shall be defined as the Federal Communications Commission; and

(c) ETC shall be defined as an exempt telecommunications company.

§ 1.4002 Contents of application and procedure for filing.

A person seeking status as an exempt telecommunications company (applicant) must file with the Commission with respect to the company or companies which are eligible companies owned and/or operated by the applicant, and serve on the Securities and Exchange Commission and any affected State commission, the following:

(a) A brief description of the planned activities of the company or companies which are or will be eligible companies owned and/or operated by the applicant;

(b) A sworn statement, by a representative legally authorized to bind the applicant, attesting to any facts or representations presented to demonstrate eligibility for ETC status, including a representation that the applicant is engaged directly, or indirectly, wherever located, through one or more affiliates (as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935), and exclusively in the business of providing:

(1) Telecommunications services;

(2) Information services;

(3) Other services or products subject to the jurisdiction of the Commission; or

(4) Products or services that are related or incidental to the provision of a product or service described in paragraphs (b)(1), (2), or (3) of this section; and

(c) A sworn statement, by a representative legally authorized to bind the applicant, certifying that the applicant satisfies part 1, subpart P, of the Commission's regulations, 47 CFR 1.2001 through 1.2003, regarding implementation of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862.

§ 1.4003 Effect of filing.

A person applying in good faith for a Commission determination of exempt telecommunications company status will be deemed to be an exempt telecommunications company from the date of receipt of the application until the date of Commission action pursuant to § 1.4004.

§ 1.4004 Commission action.

If the Commission has not issued an order granting or denying an application within 60 days of receipt of the application, the application will be deemed to have been granted as a matter of law.

§ 1.4005 Notification of Commission action to the Securities and Exchange Commission.

The Secretary of the Commission will notify the Securities and Exchange Commission whenever a person is determined to be an exempt telecommunications company.

§ 1.4006 Procedure for notifying commission of material change in facts.

If there is any material change in facts that may affect an ETC's eligibility for ETC status under section 34(a)(1) of the Public Utility Holding Company Act of 1935, the ETC must, within 30 days of the change in fact, either:

(a) Apply to the Commission for a new determination of ETC status;

(b) File a written explanation with the Commission of why the material change in facts does not affect the ETC's status; or

(c) Notify the Commission that it no longer seeks to maintain ETC status.

§ 1.4007 Comments.

(a) Any person wishing to be heard concerning an application for ETC status may file comments with the Commission within fifteen (15) days from the release date of a public notice regarding the application, or such other period of time set by the Commission. Any comments must be limited to the adequacy or accuracy of the application.

(b) Any person who files comments with the Commission must also serve copies of all comments on the applicant.

(c) An applicant has seven (7) days to reply to any comments filed regarding the adequacy and accuracy of its application, or such other period of time as set by the Commission. Such reply shall be served on the commenters.

[FR Doc. 96–11964 Filed 5–15–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 15

[ET Docket No. 96–102; FCC 96–193]

Unlicensed NII/SUPERNet Operations in the 5 GHz Frequency Range

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this *Notice of Proposed Rule Making* (''*NPRM*''), the Commission proposes to make available 350 megahertz of spectrum at 5.15—5.35 GHz and 5.725—5.875 GHz for use by a new category of unlicensed equipment, called NII/SUPERNet devices. These devices would provide short-range, high speed wireless digital communications on an unlicensed basis. The Commission anticipates that these NII/SUPERNet devices will support the creation of new wireless local area networks (''LANs'') and will facilitate wireless access to the National Information Infrastructure (''NII''). This action is in response to petitions for rule making filed by the Wireless Information Networks Forum (WINForum) and Apple Computer, Inc.

DATES: Comments must be filed on or before July 15, 1996 and reply comments must be filed on or before August 14, 1996.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Tom Derenge, Office of Engineering and Technology (OET), (202) 418–2451, or Fred Thomas, OET, (202) 418–2449.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, ET Docket No. 96–102, FCC 96–193, adopted April 25, 1996 and released May 6, 1996. The full text of this Commission 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. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Additionally, an electronic version of the text may be obtained from the World Wide Web at the URL:''http://www.fcc.gov/Bureaus/Engineerin__Technology/Notices/''.

Summary of the Notice of Proposed Rule Making

1. The Commission proposes to amend Part 15 of its rules and to make available 350 megahertz of spectrum at 5.15—5.35 GHz and 5.725—5.875 GHz for use by a new category of unlicensed equipment, called NII/SUPERNet devices. This amount of spectrum should be sufficient to provide for a number of high-speed, wide-bandwidth, unlicensed operations in each geographical area to meet growing demand for data LANs. These devices may offer new opportunities for providing advanced telecommunications services to educational institutions, health care providers, libraries, businesses, and other users. These devices may thereby significantly assist in meeting the universal service goals and encouraging the provision of advanced telecommunications capabilities to all Americans as set forth in the Telecommunications Act of 1996. This action should also foster the development of a broad range of new devices and services that will stimulate economic development and the growth of new industries. The Commission feels that additional studies of spectrum sharing between the proposed unlicensed operations and existing and other proposed operations in the 5 GHz range would be useful and requests that interested parties address this matter in their comments.

2. In order to permit maximum technical flexibility in the design and operation of NII/SUPERNet devices, the Commission proposes that such devices be subject to the minimum technical standards necessary to prevent interference to other services and to ensure that the spectrum is used efficiently. Specifically, the *NPRM* proposes to limit the peak equivalent isotropically radiated power (EIRP) for NII/SUPERNet devices to −10 dBW (0.1 watt), which would provide for typical communications distances of 50 to 100 meters. The Commission, however, does not propose at this time to accommodate the higher power, longer range (approximately 10–15 kilometer) communications links sought by the petitioners due to concerns that such higher power operations would pose unacceptable interference risks to other services, such as the fixed satellite service in the 5.10–5.25 GHz band, and would greatly limit the number of unlicensed operations within a local area. Nonetheless, comment is solicited on whether to permit such higher power operation at up to 1 watt of transmitter output power within the 5.725–5.875 GHz band; whether to limit the maximum antenna gain; and whether higher power operations would be better accommodated on a licensed basis in this band or in other bands presently (or soon to be) available for licensed use (*e.g.*, 2 GHz, 28 GHz, 38 GHz, or above 40 GHz ranges).

3. Furthermore, the *NPRM* proposes that all emissions occurring from NII/SUPERNet devices outside of the 5.15–5.35 GHz and 5.725–5.875 GHz bands be attenuated by at least 50 dB or to the radiated emission limits set forth in 47 CFR § 15.209, whichever is the lesser attenuation. In addition, the *NPRM* proposes that any emissions occurring in the restricted bands (*see* 47 CFR § 15.205) comply with the radiated emission limits set forth in 47 CFR § 15.209. The Commission believes that these out-of-band emission limits will provide sufficient protection against harmful interference to adjacent band and harmonically related radio operations. Additionally, the *NPRM* proposes to amend Section 15.205 to delete the listing of 5.15–5.25 GHz as a restricted band. Further, to ensure that the emissions from digital circuitry employed with the NII/SUPERNet equipment do not cause harmful interference to lower frequency radio operations, the *NPRM* proposes to require that any such emissions below 1000 MHz comply with the general field strength limits set forth in Section 15.209.

4. The *NPRM* does not at this time propose a channeling plan, in order to provide flexibility for equipment designers to develop devices and systems that will meet a wide variety of user needs. However, comment is solicited on whether a channel bandwidth (*e.g.*, 25 MHz) should be established to ensure that the spectrum will be used efficiently and will be