

Plans and Policy, 601 North Fairfax Street, Alexandria, VA 22314-2007.

2. No later than April 15 of each even-numbered year, the Secretary (or designee) of each Military Department shall forward to the address above a report of the Military Department's review of newspapers and magazines. This report shall include summary data on total number of newspapers and magazines, along with a listing of the information indicated at attachment 1 to this appendix.

3. One information copy of each issue of all DoD newspapers and magazines shall be forwarded on publication date to the address in paragraph H.1. of this appendix.

4. Information copies of CE contracts shall be forwarded to the address in paragraph H.1. of this appendix, upon request.

5. Administrative Instructions shall be issued by the Director, AFIS, for the annual review and reporting of newspapers and magazines.

Attachment 1 to Appendix E to Part 247—Newspaper and Magazine Reporting Data

As required by section H. of this appendix, the following information shall be provided biennially regarding newspapers and magazines:

- A. Name of newspaper or magazine.
- B. Publishing command and mailing address.
- C. Printing arrangement:
 - 1. Government equipment.
 - 2. Government contract with commercial printer.
- 3. CE contract with commercial publisher (give name, mailing address, and phone number of commercial publisher).
- D. Automation capabilities (desktop publishing, computer bulletin board, etc.)
- E. Frequency and number of issues per year.
- F. Number of copies printed and estimated readership.
- G. Paper size (metro, tabloid, or magazine/newsletter) and average number of pages per issue.
- H. Size of publication staff, listed as full time, part time, and contractor-provided.

Dated: January 21, 1997.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 97-2079 Filed 1-31-97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25, 26, 73, 76 and 100

[MM Docket No. 95-176; FCC 97-4]

Closed Captioning of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996), added a new provision, Section 713, to the Communications Act of 1934, as amended, which requires the Commission to prescribe, by August 8, 1997, rules and implementation schedules for captioning of video programming. The Commission requests comment on proposed rules and timetables for mandatory closed captioning of video programming, as outlined in the *Notice of Proposed Rulemaking* ("NPRM"). The intended effect of this NPRM is to promote the accessibility of video programming to persons with hearing disabilities. Our proposals are based on comments and information submitted in response to a *Notice of Inquiry* ("NOI") in this proceeding and additional data gathered by the Commission for our *Report to Congress on video accessibility* that was issued on July 29, 1996.

DATES: Comments are due on or before February 28, 1997, and reply comments are due on or before March 24, 1997. Written comments by the public on the proposed information collections are due on or before February 28, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed collections on or before April 4, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 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, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Marcia Glauber, John Adams or Alexis Johns, Cable Services Bureau, (202) 418-7200, TTY (202) 418-7172. 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 the Commission's *Notice of Proposed Rulemaking*, MM Docket No. 95-176, FCC 97-4, adopted January 9, 1997, and released January 17, 1997. 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, TTY (202) 293-8810, 1919 M Street, N.W., Washington, D.C. 20554. For copies in alternative formats, such as braille, audio cassette, or large print, please contact Sheila Ray at International Transcription Service.

Paperwork Reduction Act

This NPRM contains proposed information collections. 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. 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 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 collections of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-XXXX Approval number to be assigned.

Title: Closed Captioning of Video Programming.

Type of Review: New collection.

Respondents: Individuals or households; businesses and other for-profit entities.

Number of Respondents: 23,342. (3,000 complainants + 20,342 program providers)

Estimated Time Per Response: 1-10 hours estimated as follows: We estimate that program providers will initiate 100 waivers/petitions each year requesting exemption from closed captioning requirements. At this time, we estimate

that the average burden to complete each waiver/petition process will be 5 hours. We estimate that 50% of program providers will use in-house assistance. We estimate that 50% of program providers will use outside legal assistance to complete waivers/petitions. These program providers will undergo an average burden of 2 hours for each waiver/petition to coordinate information with outside legal assistance. 50 (50% of program providers using in-house assistance) \times 5 hours=250 hours. 50 (50% of program providers using outside legal assistance) \times 2 hours=100 hours.

Estimated annual burden to complainants and program providers for the complaint process: We estimate there will be 3,000 annual complaints filed by viewers at the local level. The average burden for each complaint and response is estimated to be 1 hour per complainant and 1 hour per program provider. 3,000 viewer complaints \times 1 hour and 3,000 program provider responses \times 1 hour=6,000 hours.

We estimate that the majority of complaints will be resolved at the local level and assume that approximately 600 (20% of 3,000) will go unresolved, resulting in complaints and responses being filed with the Commission. The average burden for each complaint and response in this instance is estimated to be 2 hours per complainant and 4 hours per program provider. 600 viewer complaints \times 2 hours and 600 program provider responses \times 4 hours=3,600 hours. We estimate the average annual burden for recordkeeping and making information available upon request to viewers will be 10 hours for each program provider. The estimated number of program providers is 20,342 as follows: 11,200 cable television systems, 1,532 commercial and non-commercial television stations, 137 national cable video networks, 3 open video system ("OVS") operators, 8 direct broadcast satellite ("DBS") operators, 30 home satellite dish ("HSD") program packagers, 5,200 satellite master antenna television systems ("SMATVs"), 200 wireless cable operators, and 2,032 instructional television fixed service ("ITFS") providers. $20,342 \times 10 = 203,420$ hours.

Total Annual Burden: 213,370 hours. $(250+100+6,000+3,600+203,420)$

Estimated Costs for Respondents: \$90,684 estimated as follows: Program providers will use outside legal assistance paid at \$150 per hour to complete approximately 50 waivers/petitions. 50 waivers \times 5 hours per waiver \times \$150 per hour=\$37,500. Postage and stationery costs for waivers are estimated at an average of \$5 per

waiver. $100 \text{ waivers} \times \$5 = \$500$. Postage and stationery costs for filing complaints is estimated as follows: 3,000 viewer complaints filed at the local level \times \$1=\$3,000. 3,000 program provider responses \times \$1=\$3,000. 600 viewer complaints filed at the Commission \times \$5 per complaint (increased postage for mailing video logs or tapes)=\$3,000. 600 program provider responses \times \$5=\$3,000. Postage and stationery costs for recordkeeping and making records available upon request are estimated at an average of \$2 per program provider.

$20,342 \times \$2 = \$40,684$. Total costs=\$37,500+ \$500+\$3,000 +\$3,000+\$3,000+\$3,000 +\$40,684=\$90,684.

Needs and Uses: This *NPRM* is adopted pursuant to Section 713 of the Communications Act of 1934, as amended. The requirements set forth in Section 713 are intended to further Congress' goal to "ensure that all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the home, school and workplace." The requirements will be used to ensure that video programming is accessible to individuals with hearing disabilities through closed captioning, regardless of the delivery mechanism used to reach consumers.

Synopsis of the Notice of Proposed Rulemaking

1. Closed captioning is an assistive technology designed to provide access to television for persons with hearing disabilities. Closed captioning is similar to subtitles. Captions also identify speakers, sound effects, music and laughter. Currently, programming accessible to persons with hearing disabilities through closed captioning is the result of the voluntary efforts of program producers and providers, although the Commission has encouraged these efforts in several previous actions.

2. Section 305 of the Telecommunications Act of 1996 ("1996 Act"), Public Law 104-104, 110 Stat. 56 (1996), added a new Section 713, Video Programming Accessibility, to the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. 613. Section 713 requires the Commission to prescribe, by August 8, 1997, rules and implementation schedules for captioning of video programming. In this *NPRM*, the Commission discusses and seeks comment on proposals intended to maximize the amount of closed captioned programming, with

appropriate exemptions and implementation schedules that take into account the relevant technical and costs issues involved. Our proposals are based on comments and information submitted in response to the *NOI* in this proceeding, summarized at 60 FR 65052 (December 18, 1995), and additional data gathered by the Commission for our *Report* to Congress on video accessibility that was issued on July 29, 1996, summarized at 61 FR 42249 (August 14, 1996), pursuant to the requirements of Section 713(a).

3. At the outset, we note that the provisions of Section 713 apply to all types of video programming delivered electronically to consumers, regardless of the entity that provides the programming or the category of programming. We consider over-the-air broadcast television service (both commercial and noncommercial), and all multichannel video programming distributors ("MVPDs"), including: cable television, direct-to-home ("DTH") satellite services, including DBS and HSD services; wireless cable systems using the multichannel multipoint distribution service ("MMDS"), ITFS, or local multipoint distribution ("LMDS"); SMATV systems; and OVS. Also, as required by Section 713, we consider all sources of video programming distributed by these technologies, including programming from commercial and noncommercial broadcast television networks, basic and premium cable networks, syndicated programming, and locally or regionally produced broadcast and cable programming.

4. Throughout this *NPRM*, we seek comment on our proposed closed captioning requirements. We also invite commenters to provide alternative proposals that will fulfill the congressional mandate to ensure video accessibility to individuals with hearing disabilities.

5. **Responsibility for Compliance with Captioning Requirements.** In order to implement any closed captioning requirements that we may adopt, we must determine where the responsibility lies for ensuring that video programming is closed captioned, and which parties shall be required to comply with those requirements. Section 713(b)(1) focuses on the result that new programming be closed captioned, rather than who is responsible for accomplishing this goal, while Section 713(b)(2) refers to both video programming providers and program owners as being responsible for captioning of library programming. Our tentative proposal is to require those entities that deliver video programming

directly to consumers (i.e., television broadcasters and MVPDs) to be ultimately responsible for the rules we adopt. Although we propose to place the compliance obligations on video programming providers, we recognize, from a practical standpoint, that captioning is most efficient at the production stage. Thus, we believe that producers generally will have the responsibility for captioning programming, regardless of who has the obligation to comply with our rules.

6. *Transition Rules for New*

Programming. Section 713(b)(1) requires the Commission to adopt rules to ensure that all non-exempt video programming first published or exhibited after the effective date of the our closed captioning rules ("new programming") is fully accessible through the provision of closed captions. Section 713(c) further requires that the Commission's rules include an appropriate schedule of deadlines by which non-exempt video programming must be closed captioned. We propose to require that all non-exempt, new programming be closed captioned within eight years. We propose to phase in this captioning requirement by increasing the amount of required captioning by 25% every two years. Thus, we would require 25% of such programming to be captioned at the end of the second year, 50% at the end of the fourth year, 75% at the end of the sixth year, and to have all non-exempt, new programming captioned at the end of the eighth year. Alternatively, we seek comment on a ten year period, with 25% of new programming captioned after three years, 50% after five years, 75% after seven years, and 100% after ten years. With respect to MVPDs, we propose to apply the percentages of programming that must be captioned on a system-wide basis. However, we also solicit comment on whether the percentages of programming that must be captioned should apply to each program service or channel transmitted by an MVPD. We ask whether the determination that a percentage requirement has been met should be based on the amount of programming with captioning that has been shown over a month, a week, or some other period of time. We seek comment on what the period of time should be if we apply the percentages on a system-wide basis, and what it should be if we apply the percentages on a per-channel basis.

7. *Transition Rules For Library*

Programming. With respect to programming that was first published or exhibited before the effective date of our rules ("library programming"), Section 713(b)(2) requires that our rules ensure

that video programming providers or owners maximize the accessibility of such programming through closed captioning. In considering closed captioning requirements for library programming, we do not believe that the statute requires that all such programming be captioned, given the distinction between new programming ("fully accessible") and library programming ("maximize accessibility") evident in the statutory language of Sections 713 (b)(1) and (b)(2). We ask whether we should require that a percentage of library programming (e.g., 75%) ultimately be captioned. We also seek comment on what deadline should apply to captioning of library programming and what the relevant time frames for the transition period should be. Some commenters assert that captioning of previously published programming is increasing, and thus it may be unnecessary to require completion of closed captioned video libraries by a date certain. We ask that commenters who support this approach indicate how the Commission would ensure that video programming providers or owners "maximize the accessibility" of previously published programming, as required by Section 713(b)(2).

8. *Exemptions Based on Economic Burden.* Section 713(d)(1) provides for the exemption of classes of video programming or video providers where the requirement to close caption programming would be economically burdensome. While Section 713 and its legislative history do not define the term "economic burden," we interpret this provision to permit us to exempt those classes of programming where the economic burden of captioning these programming types outweighs the benefits to be derived from captioning and, in some cases, the complexity of adding the captions. We seek to establish a general classification or a number of general classifications of programming for which captioning would be economically burdensome. Thus, we need to determine when a closed captioning requirement would be economically burdensome, and we seek comment on whether a definition of economic burden should be based on relative market size, degree of distribution, audience ratings or share, relative programming budgets or revenue base, lack of repeat value, or a combination of factors. We specifically discuss whether the following types of programming should be included in our own general exemptions: foreign language programs; programs which are primarily textual; cable access

programs; instructional programs; advertising; home shopping; interstitials and promotional advertisements; political advertising; noncommercial broadcasters' fundraising activities; music programs; weather programs; and sports programs.

9. While the statute also allows us to exempt classes of video providers, we believe that a blanket exemption even for very small providers is unnecessary, because the various providers distribute the same types of programming to consumers, and all classes of providers appear to have the technical capability to deliver closed captioning to viewers intact.

10. *Exemptions Based on Existing Contracts.* Section 713(d)(2) exempts programming from any closed captioning requirements we may adopt, if applying such requirements would be "inconsistent" with a contract in existence as of February 8, 1996, the enactment date of the 1996 Act. We tentatively conclude that contracts which affirmatively prohibit closed captioning would fall within this exemption and we seek comment on this conclusion. Such contracts do not appear to be typical but may be entered into when the program creator wishes to maintain total creative control over the product involved. However, we recognize that it is possible that contracts may contain more general language, not explicitly mentioning closed captioning, that might nonetheless be inconsistent with captioning. We seek comment on the types of provisions that might be contained in programming contracts that would be inconsistent with a captioning requirement.

11. *Exemptions Based on Undue Burden.* Section 713(d)(3) provides for a program owner or provider of video programming to petition the Commission for an exemption from the closed captioning requirements based on a showing of undue burden. In determining whether closed captioning requirements would be an undue burden, the statute indicates that the factors the Commission must consider include: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner. The Commission seeks comment on how to apply these factors and whether there are any other factors which should be considered when determining that closed captioning would result in an undue burden for an individual programming provider.

Commenters are also asked to address whether or not we should require parties to provide specific facts or meet objective tests to prove an undue burden or whether petitioners should have wider discretion in demonstrating that under their specific circumstances, the closed captioning requirements would constitute an undue burden. We also seek comment on what specific information petitioners should provide in order to demonstrate the factors needed to prove an undue burden. In addition, we request comment on a proposal to use standard "special relief" or waiver-type procedures for these types of requests.

12. *Standards for Quality and Accuracy.* Section 713 does not require the Commission to adopt rules or standards for the accuracy or quality of closed captioning. However, in the *NOI*, we sought comment on these issues based on reported problems with existing closed captions. We propose to extend to other programming providers the rule (47 CFR 76.606) that requires cable operators to deliver existing closed captions intact. However, we tentatively conclude that we should not adopt standards for the non-technical aspects of captioning, including accuracy of transcription, spelling, placement and style, at the start of our phase in period for closed captioning. We propose to monitor the closed captioning that results from our requirements and, if necessary, revisit this issue at a later date. We also do not propose to establish minimum credentials for captioners or to place any limits on the method used to create captions.

13. *The Enforcement Process.* We propose to rely on complaints as a primary enforcement mechanism for the rules we adopt. Further, all complaints would initially be directed to the program provider in an attempt to resolve problems privately within a specified time period in order to minimize administrative resources devoted to matters that are better resolved through informal processes. We also seek comment on other methods or information needed to verify compliance, such as a requirement that each entity responsible for compliance with the rules retain in its files, or have available upon appropriate request, records sufficient to verify compliance.

Initial Regulatory Flexibility Analysis

14. Pursuant to Section 603 of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603, as amended, the Commission has prepared the following initial regulatory flexibility analysis ("IRFA") of the expected impact of

these proposed policies and rules on small entities. 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 IRFA. The Secretary shall cause a copy of this *NPRM* to be sent to the Chief Counsel for Advocacy of the Small Business Administration ("SBA") in accordance with Section 603(a) of the RFA, 5 U.S.C. 603(a).

15. *Reason for Action and Objectives of the Proposed Rule.* The 1996 Act requires the Commission to promulgate rules designed to maximize the availability of closed captioned programming. 47 U.S.C. 613. The Commission is issuing this *NPRM* to seek comment on proposed rules intended to implement this provision of the 1996 Act.

16. *Legal Basis.* This *NPRM* is adopted pursuant to Sections 4(i), 4(j) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 613.

17. *Description and Number of Small Entities Affected.* The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act, 5 U.S.C. 601(3). 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 SBA. 15 U.S.C. 632.

18. *Small MVPDs.* SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts, 13 CFR 121.201 (SIC 4841). This definition includes cable system operators, closed circuit television services, DBS services, MMDS systems, SMATV systems and subscription television services. According to the Bureau of the Census, there were 1423 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. We will address each service individually to provide a more succinct estimate of small entities. We seek comment on the tentative conclusions below.

19. *Cable Systems.* The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). Based on our most recent information, we

estimate that there were 1,439 cable operators 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 operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this *NPRM*.

20. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% 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." 47 U.S.C. 543(m)(2). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be 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. 47 CFR 76.1403(b). Based on available data, we find 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, we are 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.

21. *MMDS.* The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. 47 CFR 21.961(b)(1). This definition of a small entity in the context of the Commission's *Report and Order*, summarized at 60 FR 36524 (July 17, 1995), concerning MMDS auctions that has been approved by the SBA.

22. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1,573 previously authorized and proposed MMDS facilities. Information available

to us indicates that no MDS facility generates revenue in excess of \$11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

23. *ITFS*. There are presently 2,032 ITFS licensees. All but one hundred of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. 5 U.S.C. 601(5). However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1932 licensees are small businesses.

24. *DBS*. As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

25. *HSD*. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

26. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller. We seek comment on these tentative conclusions.

27. *OVS*. The Commission has certified three OVS operators. On October 17, 1996, Bell Atlantic received approval for its certification to convert its Dover, New Jersey Video Dialtone ("VDT") system to OVS. Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources. Metropolitan Fiber Systems was granted certifications on December 9, 1996, for the operation of OVS systems in Boston and New York, both of which are being used to provide programming. On October 10, 1996, Digital Broadcasting Open Video Systems received approval to offer OVS service in southern California. Because these services have been introduced so recently, little financial information is available. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Digital Broadcasting Open Video Systems however is a general partnership just beginning operations. Accordingly, we tentatively conclude that one OVS licensee qualifies as a small business concern.

28. *SMATVs*. 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 we assume 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, we are 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, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

29. *LMDS*. Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined above. A small radiotelephone entity is one with 1,500 employees or less. 13 CFR § 121.201. However, for the purposes of this *NPRM* on closed captioning, we include only an estimate of LMDS video service providers.

30. LMDS is a service that is expected to be auctioned by the FCC in 1997. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the *Third NPRM*, CC Docket No. 92-297, summarized at 60 FR 43740 (July 23, 1995), we proposed to define a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than \$40 million. We have not yet received approval by the SBA for this definition.

31. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. We tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

32. *Small Broadcast Stations*. The SBA defines small television broadcasting stations as television broadcasting stations with \$10.5 million or less in annual receipts. 13 CFR 121.201.

33. *Estimates Based on Census and BIA Data*. According to the Bureau of the Census, in 1992, 1155 out of 1478 operating television stations reported revenues of less than \$10 million for 1992. This represents 78% of all television stations, including noncommercial stations. The Bureau of

the Census does not separate the revenue data by commercial and noncommercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of 10.5 million dollars in annual receipts. Census data also indicates that 81% of operating firms (that owned at least one television station) had revenues of less than \$10 million.

34. We also have performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database, which lists a total of 1141 full power commercial television stations. It should be noted that, using the SBA definition of small business concern, the percentage figures derived from the BIA database may be underinclusive because the database does not list revenue estimates for noncommercial educational stations, and these therefore are excluded from our calculations based on the database. The BIA data indicate that, based on 1995 revenue estimates, 440 full power commercial television stations had an estimated revenue of \$10.5 million or less. That represents 54% of full power commercial television stations with revenue estimates listed in the BIA program. The database does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of 10.5 million dollars or less, representing approximately 68% of the 1141 full power commercial television stations listed in the BIA data base.

35. Alternatively, if we look at owners of commercial television stations as listed in the BIA database, there are a total of 488 owners. The database lists estimated revenues for 60% of these owners, or 295. Of these 295 owners, 156 or 53% had annual revenues of less than \$10.5 million. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, of small entities would constitute 72% of the total number of owners.

36. In summary, based on the foregoing worst case analysis using Bureau of the Census data, we estimate that our rules will apply to as many as 1150 commercial and noncommercial television stations (78% of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as approximately 771 commercial television stations (about 68% of all commercial televisions stations) could be classified as small entities. As we noted above, these

estimates are based on a definition that we tentatively believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that under the SBA's definitions, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. The estimates overstate the number of small entities since the revenue figures on which they are based do not include or aggregate such revenues from nontelevision affiliated companies.

37. *Program Producers and Distributors.* The Commission has not developed a definition of small entities applicable to producers or distributors of television programs. Therefore, we will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812—"Establishments primarily engaged in the production of theatrical and nontheatrical motion pictures and video tapes for exhibition or sale," including "establishments engaged in both production and distribution"), Motion Picture and Video Tape Distribution (SIC 7822—"Establishments primarily engaged in the distribution * * * of theatrical and nontheatrical motion picture films or in the distribution of video tapes and disks, except to the general public"), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922—"Establishments primarily engaged in providing live theatrical presentations," including "producers of * * * live television programs."). These SBA definitions provide that a small entity in the television programming industry is an entity with \$21.5 million or less in annual receipts for SIC 7812 and 7822, and \$5 million or less in annual receipts for SIC 7922. 13 CFR § 121.201. The 1992 Bureau of the Census data indicates the following: (1) there were 7265 U.S. firms classified as Motion Picture and Video Production (SIC 7812), and that 6987 of these firms had \$16,999 million or less in annual receipts and 7002 of these firms had \$24,999 million or less in annual receipts; (2) there were 1139 U.S. firms classified as Motion Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had \$16,999 million or less in annual receipts and 1013 of these firms had \$24,999 million or less in annual receipts; and (3) there were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than \$5 million in annual receipts. The Census data does not include a category for

\$21.5 million; therefore, we have reported the closest increment below and above the \$21.5 million threshold.

38. Each of these SIC categories are very broad and includes firms that may be engaged in various industries including television. We tentatively conclude that cable networks that are essentially program distributors are included in this category. Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, we tentatively conclude that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the proposed rules in this NPRM.

39. *Reporting, Recordkeeping and Compliance Requirements.* The NPRM tentatively proposes requiring video programming providers (including broadcast licensees and MVPDs) to substantially increase the volume of closed captioned video programming carried over a period of time. Virtually all future programming and a gradually increasing volume of previously released programming is expected to be captioned over time. If this proposal is adopted, video programming providers may be choose to maintain records of the volume of closed captioned programming carried in order to resolve any disputes which may arise regarding compliance.

40. In addition to seeking comment on a complaint process, the Commission invites comments regarding alternative enforcement procedures including a requirement that video programming providers their compliance with by placing information regarding the amount of closed captioning they distribute in a public file. The Commission invites commenters to address the possible effectiveness of this alternative enforcement mechanisms and how it might be implemented.

41. *Federal Rules Which Overlap, Duplicate or Conflict With the Commission's Proposal.* None.

42. *Any Significant Alternatives Minimizing the Impact On Small Entities and Consistent With the Stated Objectives.* The statutory language provides for exemptions from any closed captioning requirements the Commission may adopt, when imposing those requirements would create an economic burden. 47 U.S.C. 613(e). Consistent with this directive, the NPRM seeks comment on several

mechanisms which would allow small entities to be exempt in whole or in part from the closed captioning requirements. These measures are intended, in part, to minimize the regulatory impact on small entities.

43. Section 713(d)(1) provides that the Commission may exempt classes of video programming or video providers where closed captioning would be economically burdensome. Pursuant to this provision, the Commission proposes to establish a general classification or a number of classifications of programming for which captioning would be economically burdensome. Thus, the Commission seeks comment on whether a definition of economic burden should be based on relative size, degree of distribution, audience ratings or share, relative programming budgets or revenue base, lack of repeat value, or a combination of factors.

44. Section 713(d)(3) permits video programming providers or program owners to petition the Commission for an exemption where our video captioning requirements would constitute an undue burden. 47 U.S.C. 613(d)(3). Section 713(d)(3) further provides specific factors to be considered when resolving such petitions. Accordingly, the Commission seeks comment on how to apply these factors and whether there are any factors which should be considered when determining if a requirement for closed captioning results in an undue burden for an individual video programming provider or program owner.

Ex Parte

45. *Ex parte Rules*—Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally*, 47 CFR 1.1202, 1.1203, and 1.1206(a).

Comment Dates

46. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 28, 1997, and reply comments on or before March 24, 1997. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus 11 copies. You should send comments and reply comments to

the 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

47. Authority for this proposed rulemaking is contained in Sections 4(i), 4(j), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 613.

48. *It is ordered* that the Secretary shall send a copy of the *Notice of Proposed Rulemaking*, including the 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 No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects

47 CFR Part 25

Communications common carriers, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 26

Communications common carriers, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 73

Education, Political candidates, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable television, Political candidates, Reporting and recordkeeping requirements.

47 CFR Part 100

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-2535 Filed 1-31-97; 8:45 am]

BILLING CODE 6712-01-P

47 CFR Part 63

[CC Docket No. 97-11; FCC 97-6]

Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing a Notice of Proposed Rulemaking

("NPRM") to seek comment on the scope of the statutory exemption under Section 402(b)(2)(A) of the Telecommunications Act of 1996. Section 402(b)(2)(A) provides that common carriers are exempt from the requirements of Section 214 of the Communications Act of 1934, as amended ("the Act") "for the extension of any line." The Commission seeks comment on how "extension of any line" should be defined. It tentatively concludes that an "extension of a line" is a line that allows the carrier to expand its service into a geographic territory that it is eligible to serve, but that its network does not currently reach. The Commission also proposes to forbear, under Section 401 of the 1996 Act (47 U.S.C. 160), from exercising Section 214 authority over "new" lines with respect to local exchange carriers ("LECs") subject to price cap regulation, LECs that are considered average schedule companies, and domestic carriers deemed non-dominant, whether they are offering local or domestic, long distance services. In addition, the Commission proposes to grant Section 214 blanket authority for small projects undertaken by carriers to construct new lines. Further, it seeks comment on other alternatives, including whether to treat price cap LECs which have elected a "no-sharing" X-factor differently from other price-cap LECs and whether to forbear altogether from applying Section 214 to small carriers. The intended effect of this action is to implement Section 402(b)(2)(A).

DATES: Comments are due on or before February 24, 1997 and Reply Comments are due on or before March 17, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before April 4, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Room 222, Washington, D.C. 20554. Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554. International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet dconway@fcc.gov. Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, D.C. 20503 or via the Internet fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer, Attorney, Network