

does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New Source Review, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 15, 2000.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*  
[FR Doc. 00-24941 Filed 9-27-00; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[CS Docket No. 97-80; FCC 00-341]

#### Commercial Availability of Navigation Devices

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document seeks comments regarding rules adopted to implement Section 629 of the Communications Act. Section 304 of the 1996 Telecommunications Act, which became law on February 5, 1996, added Section 629 to the Communications Act. Section 629 concerns the commercial availability of navigation devices. This document may result in information collection(s) subject to the Paperwork Reduction Act (PRA) of 1995.

**DATES:** Comments are due November 15, 2000; reply comments are due December 18, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Thomas Horan at (202) 418-7200 or via internet at [thoran@fcc.gov](mailto:thoran@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking ("FNPRM"), FCC 00-341, adopted September 14, 2000; released September 18, 2000. The full text of the Commission's FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via internet at <http://www.fcc.gov/csb/>.

#### I. Synopsis of the Further Notice of Proposed Rulemaking

##### A. Development of OpenCable Specifications.

1. In this Further Notice of Proposed Rulemaking ("Notice"), we seek comment on whether the specifications provided by CableLabs allow consumer electronics manufacturers to build a navigation device that provides consumers a viable alternative to the equipment provided by their service provider. In addition, we also seek comment on whether there are further steps the Commission should undertake

to ensure compliance with section 629 and achieve the statutory objective of commercial availability of navigation devices.

##### B. Integrated Boxes

2. We seek comment on the extent of the effect operator provision of integrated equipment has had on achieving a competitive market for commercially available navigation devices. We seek comment on whether the 2005 date for the phase-out of integrated boxes remains appropriate. Alternatively, we seek comment on whether it would be satisfactory to permit multichannel video programming distributors (MVPD) or retail distribution of integrated boxes after January 1, 2005 if integrated boxes are also commercially available or for other reasons necessary to further the objectives of Section 629. In addition, we seek comment on the considerations that factor into a decision regarding the date of the phase-out of integrated boxes. For example, would an earlier or later date create incentives for the development of a commercial market for navigation devices? We also seek comment on the economic impact an earlier or later date would have on manufacturers and on MVPDs. In this regard, we believe the following information would be beneficial to the Commission's analysis: (1) The number of integrated boxes that MVPDs have deployed to customers to date; (2) the number of integrated boxes MVPDs expect to be deployed in 2003; (3) the number of orders MVPDs and retailers have made for non-integrated equipment; and (4) the number of orders for integrated boxes MVPDs have placed since the release of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices, 64 FR 29599 (June 2, 1999), and (5) the total cost differential (including manufacturing, marketing, research and development, and distribution costs), if any, between an integrated box and a host/POD combination.

##### C. Obstacles to Commercial Availability

3. We note that a retail market for cable modems is developing in certain regions of the country, while commenters assert that there are no host devices available at retail. We seek comment on this apparent disparity. We seek comment on any obstacles or barriers preventing or deterring the development of a retail market for navigation devices. We note that cable systems are in development that utilize technology outside that of traditional cable architecture. We seek comment on

the impact of such systems on the commercial availability of navigation devices.

#### D. Other Factors

4. In addition to the specific requests for comments set forth above, we also request comments regarding other factors that commenters believe may be impeding or affecting achievement of the goals of Section 629. For example, recent articles indicate that retail availability of equipment has been slowed by market participants' failure to achieve mutually beneficial business arrangements. We seek comment as to what additional actions, if any, the Commission should initiate to achieve the statutory objective of competition in the navigation devices market.

## II. Administrative Matters

### A. Initial Regulatory Flexibility Act Analysis

5. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the possible policies and rules that would result from this Further Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

6. *Need for, and Objectives of, the Proposed Rules.* The navigation devices rules were adopted to implement Section 629 of the Communications Act. They are designed to assure the commercial availability from retail outlets of equipment used to access service from multichannel video programming systems. In adopting these rules, the Commission indicated that it would monitor the development of the commercial availability of navigation devices and on reconsideration stated that it would commence a proceeding in the year 2000 to review the effectiveness of the rules and consider any necessary changes. In this proceeding, we undertake that review. This Notice is designed to seek comment on the Commission's navigation devices rules and to elicit comment on whether any changes to the current rules are necessary in order to promote commercial availability.

7. *Legal Basis.* Authority for this proposed rulemaking is contained in Sections 4(i), 303(r), and 629 of the

Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 549.

8. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Nationwide, as of 1992, there were approximately 275,801 small organizations. Rules adopted in this proceeding could apply to manufacturers of DTV equipment, including television receivers, set-top boxes and "point of deployment" modules. Distributors of this equipment, including retailers of consumer electronics equipment and, in the case of "point of deployment" modules, cable operators, would also be affected.

9. *Cable Systems.* The SBA has developed a definition of small entity for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992.

10. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators 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 Notice.

11. 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." The Commission has determined that there are 66,690,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 666,900 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. Based on available data, we find that the number of cable operators serving 666,900 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.

12. *Small Manufacturers.* The SBA has developed definitions of small entity for manufacturers of household audio and video equipment (SIC 3651) and for radio and television broadcasting and communications equipment (SIC 3663). In each case, the definition includes all such companies employing 750 or fewer employees.

13. *Electronic Equipment Manufacturers.* The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment. Therefore, we will utilize the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities. The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately

778 small manufacturers of radio and television equipment.

14. *Electronic Household/Consumer Equipment.* The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities. The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use, but in any event, no more than 410 are small entities.

15. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of Electronic Computers. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities. The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition. We conclude that there are approximately 659 small computer manufacturers.

16. *Small Retailers.* The Commission has not developed a definition of small entities applicable to retail sellers of navigation devices. Therefore, we will utilize the SBA definition. The 1992

Bureau of the Census data indicate: there were 9,663 U.S. firms classified as Radio, Television, and Consumer Electronic Stores (SIC 5731), and that 9,385 of these firms had \$4.999 million or less in annual receipts and 9,473 of these firms had \$7.499 million or less in annual receipts. Consequently, we tentatively conclude that there are approximately 9,663 such small retailers that may be affected by the decisions and rules proposed in this Notice.

17. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* At this time, it is not expected that the proposed actions will require any additional recordkeeping or compliance requirements. We seek comment on whether others perceive a need for extensive recordkeeping.

18. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

19. Parties have requested that we consider accelerating the date on which the prohibition of integrated devices goes into effect. We have sought comment on this issue and will examine the effect on businesses and small entities that such a change would entail. We have also sought comment on other suggestions that would facilitate the development of a commercial marketplace for navigation devices. We will consider and examine the effect of those suggestions on businesses and small entities as well. Should commenters disagree with any of our conclusions, we welcome comments suggesting ways in which any perceived burden upon small entities could be mitigated.

20. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

#### B. Ex Parte Rules

21. Subject to the provisions of 47 CFR 1.1203 concerning "Sunshine Period" prohibitions, this proceeding is exempt from ex parte restraints and

disclosure requirements, pursuant to 47 CFR 1.1204(b)(1).

#### C. Filing of Comments and Reply Comments

22. Interested parties may file comments on or before November 15, 2000, and reply comments on or before December 18, 2000. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form<your e-mail address>." A sample form and directions will be sent in reply.

23. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The Cable Services Bureau contact for this proceeding is Thomas Horan at (202) 418-7200, TTY (202) 418-7172, or at [thoran@fcc.gov](mailto:thoran@fcc.gov).

24. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Thomas Horan, Cable Services Bureau, 445 12th Street NW., Room 4-A817, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette

should be clearly labeled with the party's name, proceeding (including the lead docket number in this case [CS Docket No. 97-80]), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW., Washington, DC 20036.

#### *D. Paperwork Reduction Act*

25. This document may result in information collection(s) subject to the Paperwork Reduction Act (PRA) of 1995. If an information collection results, it will be submitted to the Office of Management and Budget (OMB) for review under the PRA.

#### **III. Ordering Clause**

26. Pursuant to sections 4(i), 303(r), and 629 of the Communications Act of 1934, as amended, 47 USC 154(i), 303(r), and 549, notice is given of the proposals described in this FNPRM.

27. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this FNPRM, including the IFRA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### **List of Subjects in 47 CFR Part 76**

Cable television.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00-24902 Filed 9-27-00; 8:45 am]

**BILLING CODE 6712-01-P**

#### **DEPARTMENT OF THE INTERIOR**

##### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**RIN 1018-AG14**

#### **Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of Draft Economic Analysis on Proposed Critical Habitat Designation for the Great Lakes Breeding Population of the Piping Plover**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule, reopening of comment period and notice of availability of draft economic analysis; correction.

**SUMMARY:** This document corrects the closing date of the comment period listed in a document published in the **Federal Register** on September 19, 2000, regarding the reopening of the comment period and notice of availability of draft economic analysis for proposed critical

habitat designation for the Great Lakes breeding population of the piping plover. This clarification provides the correct date for the closing of the comment period on the proposed critical habitat designation for the Great Lakes breeding population of the piping plover and the draft economic analysis for the proposed critical habitat designation.

**DATES:** Comments must be received on or before November 20, 2000.

#### **FOR FURTHER INFORMATION CONTACT:**

Laura Ragan @ (612) 713-5157.

#### **Correction**

In the document announcing the reopening of the comment period and notice of availability of draft economic analysis for proposed critical habitat designation for the Great Lakes breeding population of the piping plover, 65 FR 56530 in the issue of September 19, 2000, make the following correction in the **DATES** section. On page 56530 in the 3rd column, correct the date by when comments must be received from "October 19, 2000" to "November 20, 2000."

Dated: September 21, 2000.

**T.J. Miller,**

*Acting, Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 00-24759 Filed 9-27-00; 8:45 am]

**BILLING CODE 4310-55-P**