(b) * * *

(4) * * *

(iii) * * *

(B) In a case described in paragraph (b)(4)(iii)(A) of this section, reimbursement will be reduced, unless such reduction is waived based on special circumstances. The amount of this reduction shall be at least ten percent of the amount otherwise allowable for services for which preauthorization (including preauthorization for continued stays in connection with concurrent review requirements) approval should have been obtained, but was not obtained.

* * * * *

(c) * * *

(2) The physician acknowledgment required for Medicare under 42 CFR 412.46 is also required for CHAMPUS as a condition for payment and may be satisfied by the same statement as required for Medicare, with substitution or addition of ''CHAMPUS'' when the word ''Medicare'' is used.

* * * * *

(d) * * *

(2) * * *

(iii) Review for physician's acknowledgment of annual receipt of the penalty statement as contained in the Medicare regulation at 42 CFR 412.46.

* * * * *

(e) * * *

(3) * * *

(i) If the diagnostic and procedural information in the patient's medical record is found to be inconsistent with the hospital's coding or DRG assignment, the hospital's coding on the CHAMPUS claim will be appropriately changed and payments recalculated on the basis of the appropriate DRG assignment.

(ii) If the information stipulated under paragraph (d)(2) of this section is found not to be correct, the PRO will change the coding and assign the appropriate DRG on the basis of the changed coding.

* * * * *

Dated: November 7, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29975 Filed 11–13–97; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[FRL–5921–1]

Hazardous Waste Combustors; Continuous Emissions Monitoring Systems; Proposed Rule—Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: This announcement is a notice of advanced availability of a test report pertaining to the proposed requirement for Particulate Matter (PM) Continuous Emissions Monitoring Systems (CEMS) for hazardous waste combustors: ''Draft Particulate Matter Continuous Emissions Monitoring Systems Demonstration'', dated October 1997. The report documents PM CEMS demonstration tests conducted between September 1996 and May 1997 at the DuPont, Inc. Experimental Station On-Site Incinerator, in Wilmington, Delaware. Included in the report are the testing scheme, raw data, and discussion of results. Appendices to the report include: Method 5I—Determination of Low Level Particulate Matter Emissions from Stationary Sources; Revised Draft Performance Specification 11—Specifications and Test Procedures for PM CEMS in Stationary Sources; and Appendix F to 40 CFR Part 60, Quality Assurance Requirements for PM CEMS used for Compliance Determination.

FOR FURTHER INFORMATION CONTACT: To obtain the October 1997, Draft PM CEMS Demonstration test report, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9:00 a.m. to 6:00 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: On April 19, 1996, EPA proposed the Revised Standards for Hazardous Waste Combustors (i.e., incinerators, cement and lightweight aggregate kilns that burn hazardous waste). The revised standards would limit emissions of PM at these facilities and address the application of PM CEMS for compliance monitoring. See 61 FR 17358. On March 21, 1997, EPA published a Notice of Data Availability (NODA) that further examined the issues concerning PM CEMS as compliance instruments. See 62 FR 13776. EPA published an additional NODA on May 2, 1997, to inform the public of: (1) Significant changes the Agency is considering on aspects of the proposal based on public comments and new information; and (2) the Agency's own re-evaluation of MACT standard-setting approaches based on new data and public comments.

The proposed rule would require that PM CEMS be used to document compliance with the proposed PM standards. To be effective for compliance monitoring, the Agency determined that commercially available PM CEMS must meet certain performance specifications. The results of the demonstration tests assist in the development of these PM CEMS performance specifications.

EPA plans to follow today's NODA with a second NODA which will discuss issues pertaining to the demonstration test report and PM CEMS implementation considerations. The second NODA will provide the opportunity to comment on the report and the issues.

Dated: November 5, 1997.

David Bussard,

Acting Director, Office of Solid Waste.

[FR Doc. 97–30019 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–184; MM Docket No. 92–260; FCC 97–376]

Inside Wiring

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a *Report and Order and Second Further Notice of Proposed Rulemaking* which addresses rules and policies concerning cable inside wiring. The *Report and Order* segment of this decision may be found elsewhere in this issue of the Federal Register. The *Second Further Notice of Proposed Rulemaking* (''*Second Further Notice*'') segment seeks comment on proposed amendments to the Commission's regulations relating to exclusive service contracts, application of cable inside wiring rules to all multichannel video programming distributors (''MVPDs''), signal leakage reporting requirements, and simultaneous use of home run wiring. This action was necessary because exclusive service contracts and

access to home run wiring are significant competitive issues in multiple dwelling unit buildings (''MDUs''). In addition, this action was necessary in order to ensure that all MVPDs are treated equitably under our inside wiring rules. The intended effect of this action is to expand opportunities for new entrants seeking to compete in distributing video programming and to ensure that the Commission's inside wiring rules remain pro-competitive.

DATES: Comments must be submitted on or before December 23, 1997 and reply comments must be submitted on or before January 22, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: The following is a synopsis of the *Second Further Notice* segment of the Commission's *Report and Order and Second Further Notice of Proposed Rulemaking* in CS Docket No. 95–184 and MM Docket No. 92–260, FCC No. 97–376, adopted October 9, 1997 and released October 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, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800 (phone), (202) 857–3805 (fax), 1231 20th Street, NW, Washington, DC 20036.

Synopsis

I. Introduction

1. The *Second Further Notice* addresses issues raised in the *Notice of Proposed Rulemaking* in CS Docket No. 95–184, 61 FR 3657 (February 1, 1996) (''*Inside Wiring Notice*''), the *Order On Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket No. 92–260, 61 FR 6131 (February 16, 1996) and 61 FR 6210 (February 16, 1996) (''*Cable Home Wiring Further Notice*''), and the *Further Notice of Proposed Rulemaking* in CS Docket No. 95–184 and MM Docket No. 92–260, 62 FR 46453 (September 3, 1997) (''*Inside Wiring Further Notice*'') regarding potential changes in our telephone and cable inside wiring rules in light of the evolving telecommunications marketplace.

II. Second Further Notice of Proposed Rulemaking

A. Exclusive Service Contracts

2. We believe that exclusive service contracts between MDU owners and MVPDs can be pro-competitive or anti-competitive, depending upon the circumstances involved. The term ''MDU owner'' (sometime referred to as the ''premises owner'') as used herein includes whatever entity owns or controls the common areas of an apartment building, condominium or cooperative. Some alternative providers have commented that in order to initiate service in an MDU, they must be able to use exclusive contracts to ensure their ability to recover investment costs. Other alternative providers have argued that the Commission should limit the ability of incumbent cable operators to enter into exclusive contracts with MDU owners.

3. We seek comment on whether the Commission should adopt a ''cap'' on the length of exclusive contracts for all MVPDs that would limit the enforceability of exclusive contracts to the amount of time reasonably necessary for an MVPD to recover its specific capital costs of providing service to that MDU, including, but not limited to, the installation of inside wiring, headend equipment and other start-up costs. Commenters have suggested exclusivity periods such as five to six years, seven years and seven to ten years as reasonable. We seek comment on what would be a reasonable period of time for a provider to recoup its specific investment costs in an MDU. We seek comment on an approach under which a presumption that all existing and future exclusivity provisions would be enforceable for a maximum term of seven years, except for exceptional cases in which the MVPD could demonstrate that it has not had a reasonable opportunity to recover its specific investment costs. For instance, the exclusivity of a ''perpetual'' exclusive contract entered into in 1983 would no longer be enforceable; however, if the service provider completed a substantial rebuild of its plant in 1996, the provider may be able to show that it has not had a reasonable opportunity to recover its investment costs notwithstanding the fact that the exclusive contract was entered into more than seven years ago. Similarly, a provider may be able to show that it has not had an opportunity to recover its costs where it provided discounted service in the early years of an exclusive contract with the expectation of making its returns in later years. We inquire whether there should be different treatment accorded existing contracts and future contracts. We also seek comment on the appropriate forum for such a showing and whether the enforceability of an exclusivity provision should be extended only for the time period reasonably necessary for the provider to recover its costs.

4. If a ''cap'' is adopted, we seek comment on whether service providers would generally be able to structure their business arrangements so as to recover their capital costs within that time limit. After a video service provider has had an opportunity to recover its costs under an exclusive contract on a particular property, we seek comment on whether we should prohibit future exclusive contracts between the video service provider and the property owner, unless the service provider can demonstrate that the exclusive contract is necessary to recoup a substantial new investment in the property. We also inquire whether MDU owners should be afforded an opportunity to terminate the exclusive contract and retain the inside wiring, in exchange for a payment to the provider compensating it for unrecovered investment costs. We seek to determine what circumstances allow MDU owners and tenants to receive the benefits of technological improvements most expeditiously, while at the same time enhancing competition among MVPDs.

5. In the alternative, we seek comment on whether the Commission should only limit exclusive contracts where the MVPD involved possesses market power. The Supreme Court has noted: ''Exclusive dealing is an unreasonable restraint on trade only when a significant fraction of buyers or sellers are frozen out of a market by the exclusive deal.'' *Jefferson Parish Hosp. Dist. No. 2* v. *Hyde*, 466 U.S. 2, 45 (1984), citing *Standard Oil* v. *United States*, 337 U.S. 293 (1949). We seek comment on circumstances encompassing the video distribution market and whether the Commission can and should restrict or prohibit MVPDs with market power from entering into or enforcing exclusive service contracts. In particular, we seek comment on how to define ''market power'' for these purposes, as well as how to define the relevant geographic market.

6. We are concerned about the administrative practicability of making market power determinations on a widespread, case-by-case basis and seek comment on whether we should establish any presumptions in this

regard. We seek comment on whether our decision not to preempt state mandatory access statutes effectively means that non-cable MVPDs cannot enforce exclusive agreements in those states, even where such agreements may be pro-competitive. We also seek comment on any other issues relevant to the analysis of market power and exclusive contracts in the context of this proceeding.

7. In addition, we seek comment on whether the Commission can and should take any specific actions regarding so-called ''perpetual'' exclusive contracts (i.e., those running for the term of a cable franchise and any extensions thereof). For instance, under the market power approach, we seek comment on whether the Commission should adopt a presumption that the MVPDs involved possessed market power when such contracts were executed. Under the seven-year ''cap'' approach, we seek comment on whether ''perpetual'' exclusive contracts would simply fall within the general rule limiting the enforceability of exclusive contracts to seven years from execution unless the MVPD can demonstrate that it has not had a reasonable opportunity to recover its specific capital costs.

8. Under one proposal, property owners that have committed to long-term perpetual exclusive contracts would have a window of 180 days to take a ''fresh look'' at the marketplace to renegotiate or terminate those contracts without liability in order to avail themselves of a competitive alternative service provider. We seek comment on whether we can and should adopt a ''fresh look'' for ''perpetual'' exclusive contracts. In addition, we seek comment on several implementation issues: (1) whether the ''fresh look'' would apply only to ''perpetual'' exclusive contracts and, if so, how such contracts reasonably can be distinguished from other long-term exclusive contracts; (2) the scope of the ''fresh look'' and how the ''fresh look'' period would be triggered to ensure a viable choice exists (e.g., whether the ''fresh look'' be applied on an MDU-by-MDU basis upon the request of a private cable operator able to serve the MDU, or more generally on a franchise-by-franchise basis where competitive choices exist in the franchise area); and (3) whether the ''fresh look'' would be a one-time opportunity or whether there could be additional ''fresh look'' windows in light of the development of new technology and the entry of new video service providers.

9. If we were to adopt a ''fresh look'' for ''perpetual'' exclusive contracts, we seek comment on whether we should open a 180-day ''fresh look'' window for MDU owners upon the effective date of our rules, unless the ''perpetual'' exclusive contract was entered into less than seven years earlier, in which case the ''fresh look'' window would open for that MDU at the end of the seven-year period. We also seek comment on whether the MVPD should be able to apply to the Commission for an extension if the MVPD can demonstrate that it has not had a reasonable opportunity to recover its specific capital costs by the end of this seven-year period. Further, we seek comment on whether, if an MDU owner does not enter into a new contract during its initial ''fresh look'' period, a new 180-day ''fresh look'' window should open at the expiration of each subsequent franchise period until the MDU owner opts out of its ''perpetual'' exclusive contract. We seek comment on whether this framework would protect MDU owners who do not have a competitive alternative and therefore would be prejudiced by a one-time ''fresh look'' window, while ensuring that the MVPDs involved have a reasonable opportunity to recover their costs.

10. We also seek comment on our statutory authority to adopt the exclusive contracts proposals discussed above. We also seek comment on any other constitutional, statutory or common law implications that these proposals raise.

B. Application of Cable Inside Wiring Rules to All MVPDs

11. We propose to apply our cable home wiring rules for single-unit installations to all MVPDs in the same manner that they apply to cable operators. We believe that applying those rules to all MVPDs would promote competitive parity and facilitate the ability of a subscriber whose premises was initially wired by a non-cable MVPD to change providers. We seek comment on this proposal and on our authority to adopt it.

12. We also propose to expand to all MVPDs the rule we are adopting herein regarding cable subscribers' rights, prior to termination of service, to provide and install their own cable home wiring and to connect additional home wiring to the wiring installed and owned by the cable operator. We believe that applying this rule to all MVPDs will promote the same consumer benefits as in the cable context: increased competition and consumer choice, lower prices and greater technical innovation. We seek comment on this proposal, and in particular on the Commission's authority for expanding this rule to all MVPDs.

C. Signal Leakage Reporting Requirements

13. Section 76.615 of the Commission's signal leakage rules requires cable operators to file certain information with the Commission when operating in the aeronautical radio frequency bands. 47 CFR 76.615. In particular, § 76.615(b)(7) requires cable operators to file annually with the Commission the results of their signal leakage tests conducted pursuant to § 76.611. 47 CFR 76.611 and 76.615(b)(7). We are concerned that the reporting requirements of § 76.615(b)(7) may impose undue burdens on small broadband service providers, including small cable operators. We seek comment on whether certain categories of broadband service providers should be exempt from the filing requirements of § 76.615(b)(7) and, if so, what criteria the Commission should use in defining those providers. We would not propose to exempt any broadband service providers from the testing requirements of § 76.615(b)(7), but simply the requirement to report the results of such tests to the Commission. For instance, we seek comment on whether we should exempt small broadband service providers from the filing requirements of § 76.615(b)(7) based on an existing definition in the Commission's rules, a particular number of subscribers served, the length of the cable plant or some other criteria. For example, we have defined a small cable system as any system that serves 15,000 or fewer subscribers and a small cable company as one serving a total of 400,000 or fewer subscribers over all of its systems. *Sixth Report and Order and Eleventh Order on Reconsideration,* MM Docket Nos. 92–266 and 93–215 (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation), 60 FR 35854 (July 12, 1995). We seek comment on the risks to safety of life communications posed by such an exemption. We also seek comment on any other changes in this area that would reduce burdens, yet meet the goals of protecting against signal leakage.

D. Simultaneous Use of Home Run Wiring

14. As stated above, DIRECTV suggests that the Commission should establish a ''virtual'' demarcation point from which an alternative provider could share the wiring simultaneously with the cable operator. Other alternative providers endorse this view, if it is technically possible, and CEMA states that some of its members are

currently developing equipment that will allow multiple uses of a single broadband wire. Cable operators generally oppose DIRECTV's suggestion that two video service providers may share a single wire, stating that the alternative provider would have to use different frequency bands to avoid interference, and, while theoretically possible, most systems do not have sufficient bandwidth capacity to carry multiple MVPDs. DIRECTV acknowledges that only service providers that use different parts of the spectrum technically may be able to share a single wire.

15. We believe that the sharing of a single wire by multiple service providers deserves further exploration. We seek comment on DIRECTV's proposal that we require competing broadband service providers to share a single home run wire in MDUs. In particular, we seek comment on the current technical, practical and economic feasibility and limitations of sharing of home run wiring. We also seek comment on our legal authority to impose such a requirement and whether such a requirement would constitute an impermissible taking of private property under the Fifth Amendment.

III. Initial Regulatory Flexibility Act Analysis

16. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, (''RFA''), the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected significant impact on small entities by the policies and rules proposed in this *Second Further Notice.* Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing procedures as other comments in this proceeding, but they must be have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Second Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the RFA. In addition, the *Second Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**, pursuant to 5 U.S.C. 603(a).

Need for Action and Objectives of the Proposed Rules

17. The Commission issues this *Second Further Notice* to consider additional rules to promote competition and enhance consumer choice. In particular, we seek comment on the competitive implications of exclusive service contracts between MDU owners and MVPDs, and whether we should: (1) limit exclusive contracts to a time certain; (2) adopt restrictions on the ability of MVPDs to enter into exclusive contracts; or (3) adopt a ''fresh look'' for ''perpetual'' exclusive contracts. In addition, we propose to expand to all MVPDs the rule regarding cable subscribers' rights, prior to termination of service, to provide and install their own cable home wiring and to connect additional home wiring to the wiring installed and owned by the MVPD. We also ask whether certain categories of broadband service providers (e.g., small broadband service providers, including small cable operators) should be exempt from the signal leakage reporting requirements in § 76.615(b)(7). Finally, we seek comment on the current technical, practical, economic, and legal limitations of requiring competing broadband service providers to share a single home run wire in MDUs.

Legal Basis

18. *This Second Further Notice* is adopted pursuant to sections 1, 4, 224, 251, 303, 601, 623, 624, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 224, 251, 303, 521, 543, 544, and 552.

Description and Estimate of the Number of Small Entities Impacted

19. The RFA 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 RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' and the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). The rules we propose in this *Second Further Notice* will affect MVPDs and MDU owners.

20. 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. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna 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.

21. 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 1439 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 1439 small entity cable system operators that may be affected by the decisions and rules proposed in this *Second Further Notice.*

22. 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 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. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. 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.

23. 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. This definition of a small entity in the context of the Commission's *Report and Order*

concerning MMDS auctions has been approved by the SBA.

24. 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 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We believe that there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

25. ITFS: There are presently 1,989 licensed educational ITFS stations and 97 licensed commercial ITFS stations. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees and are unable to ascertain how many of the 97 commercial stations would be categorized as small under the SBA definition. Thus, we believe that at least 1,989 ITFS licensees are small businesses.

26. DBS: There are presently nine DBS licensees, some of which are not currently in operation. 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.

27. 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 video service providers, 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 video service providers; (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.

28. 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.

29. OVS: The Commission has certified nine OVS operators. Because these services were introduced so recently and only one operator is currently offering programming to our knowledge, little financial information is available. Bell Atlantic (certified for operation in Dover) and Metropolitan Fiber Systems (''MFS,'' certified for operation in Boston and New York) have sufficient revenues to assure us that they do not qualify as small business entities. Two other operators, Residential Communications Network (''RCN,'' certified for operation in New York) and RCN/BETG (certified for operation in Boston), are MFS affiliates and thus also fail to qualify as small business concerns. However, Digital Broadcasting Open Video Systems (a general partnership certified for operation in southern California), Urban Communications Transport Corp. (a corporation certified for operation in New York and Westchester), and Microwave Satellite Technologies, Inc. (a corporation owned solely by Frank T. Matarazzo and certified for operation in New York) are either just beginning or have not yet started operations. Accordingly, we believe that three OVS licensees may qualify as small business concerns.

30. 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 believe that a substantial number of SMATV operators qualify as small entities.

31. LMDS: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. An 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 1500 employees or less. For the purposes of this proceeding, we include only an estimate of LMDS video service providers. 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 *LMDS Second Report and Order,* we defined 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.

32. 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.

33. MDU Operators: The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings and dwellings other than apartment buildings, which include all such companies generating $5 million or less in revenue annually. According to the

Census Bureau, there were 26,960 operators of nonresidential buildings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

Reporting, Recordkeeping, and Other Compliance Requirements

34. The *Second Further Notice* seeks comment on whether small broadband service providers, including small cable operators, should be exempt from the signal leakage reporting requirements in § 76.615(b)(7). Such an exemption would relieve qualifying providers from only the relevant filing requirements, but not from the signal leakage testing requirements.

Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With the Stated Objectives

This section analyzes the impact on small entities of the regulations proposed or considered in the *Second Further Notice.*

35. The *Second Further Notice* seeks comment on several proposals which could minimize the economic impact on a substantial number of small entities. For instance, in seeking comment on what policies should be adopted with respect to exclusive contracts, the Commission raises the option of a limit on the length of exclusive contracts that would still permit a small MVPD to obtain exclusive contracts for the period of time necessary to recover its investment costs in the MDU building. In addition, the Commission seeks comment on whether small broadband service providers, including small cable operators, should be exempt from the signal leakage reporting requirements in § 76.615(b)(7). The issue of whether competing providers should be required to share home run wiring explores the possibility of another means by which small MVPDs may be able to access MDUs. Commenters are invited to address the economic impact of these proposals on small entities and offer any alternatives.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

IV. Procedural Provisions

36. Ex parte Rules—''Permit-but-Disclose'' Proceeding. This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under § 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b). 47 CFR 1.1206(b).

37. Filing of Comments and Reply Comments. 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 December 23, 1997, and reply comments on or before January 22, 1998. 47 CFR 1.415 and 1.419. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street NW, Washington DC 20554.

V. Ordering Clauses

38. *It is ordered* that, pursuant to sections 1, 4(i), 201–205, 214–215, 220, 303, 623, 624 and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, 214–215, 220, 303, 543, 544 and 552, NOTICE IS HEREBY GIVEN of proposed amendments to the Commission's rules, in accordance with the proposals, discussions and statements of issues in the *Second Further Notice of Proposed Rulemaking,* and COMMENT IS SOUGHT regarding such proposals, discussions and statements of issues.

39. *It is further ordered* that the Commission SHALL SEND a copy of this *Second Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29513 Filed 11–13–97; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL RAILROAD PASSENGER CORPORATION

49 CFR Part 701

Revision of the Freedom of Information Act Regulations of the National Railroad Passenger Corporation and Implementation of the Electronic Freedom of Information Act Amendments of 1996 (Public Law 104–231)

AGENCY: National Railroad Passenger Corporation.

ACTION: Proposed rule.

SUMMARY: This notice sets forth proposed revisions of the Freedom of Information Act (FOIA) regulations of the National Railroad Passenger Corporation (''Amtrak''). The rules reflect recent developments in the statute and case law, including the Electronic Freedom of Information Act Amendments of 1996 (Public Law 104–231). The proposed revisions provide substantive and procedural changes to conform to the amendments. Amtrak has also taken this opportunity to streamline its rules and include updated cost figures to be used in calculating and charging fees.

DATES: Submit comments on or before December 15, 1997.

ADDRESSES: Address all comments concerning this proposed rule to Medaris Oliveri, Freedom of Information Office, National Railroad Passenger Corporation, 60 Massachusetts Avenue, N.E., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Medaris Oliveri at 202/906–2728.

SUPPLEMENTARY INFORMATION: These revisions incorporate changes to the language and structure of Amtrak's regulations and also add new provisions