presentations, as defined in the rules, and would therefore not be subject to permit-but-disclose requirements. Once another party appeared, both the applicant or filer and the other party would have to comply with the permit-but-disclose rules, because their presentations would be ''ex parte.''

8. In rulemaking proceedings, the public would, in effect, be treated as parties. Thus, the rules would expressly provide that permit-but-disclose requirements would be triggered by the filing of a petition for rulemaking, or the issuance of a notice of proposed rulemaking (or a rulemaking order done without notice and comment) and would apply to all persons.

9. The Commission also solicits comments as to whether the sunshine period prohibition should be modified. Under the current rules, once a proceeding has been placed on a sunshine notice, no presentations, whether ex parte or not, are permitted until the Commission has released the full text of the order in the proceeding noticed in the sunshine notice, deleted the item from the sunshine agenda, or returned the item for further staff consideration. The prohibition is intended to give the Commission ''a period of repose'' in which to make decisions.

10. The Commission asks for comments on whether there should be a ''sunshine period'' once items are adopted on circulation. The Commission also proposes to exempt from the prohibition the discussion of recent Commission actions at public meetings or symposia.

11. Additionally, the Commission proposes certain specific provisions of the ex parte rules. First, the Commission proposes to give additional authority to the Office of General Counsel to evaluate alleged ex parte violations. Second, the Commission proposes that notices of oral ex parte presentations should be more informative by requiring that a full summary of the contents of the presentation be filed with respect to all oral presentations, whether or not the arguments or data presented are ''new.'' Third, the Commission proposes to require that persons with reason to believe that a situation raises an ex parte question must alert the Office of General Counsel of this circumstance.

Initial Regulatory Flexibility Analysis

Reason for Action

The Commission has determined that the rules governing ex parte communications in Commission proceedings should be made simpler, clearer, and less restrictive. The Commission finds it appropriate to reexamine the public interest basis for the limitations on ex parte communications.

Objective

The Commission seeks to simplify and clarify the rules governing ex parte communications in Commission proceedings and to make the rules more consistent with the needs of administrative practice.

Legal Basis

Action is being taken pursuant to 47 U.S.C. §§ 154(i) and (j),303(r), 403.

Reporting, Record Keeping and Other Compliance Requirements

This proposal would modify the requirement to report ex parte presentations in order to increase the usefulness and value of the reports and to eliminate unnecessary restrictions on ex parte presentations.

Federal Rules which Overlap, Duplicate or Conflict with the Proposed Rules

None.

Description, Potential Impact, and Number of Small Entities Affected

Small entities participating in Commission proceedings would be subject to limitations on ex parte presentations.

Any Significant Alternative Minimizing Impact on Small Entities and Consistent with the Stated Objections

None.

List of Subjects for 47 CFR Part 1

Administrative practice and procedure, Radio, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 95–3935 Filed 2–15–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 63

[CC Docket No. 87–266; FCC 95–20]

Telephone Company-Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission adopted a Fourth Further Notice of Proposed Rulemaking in Common Carrier Docket 87–266, with the intent of soliciting information and comment on the extent to which Title II of the Communications Act, Title VI, or both, apply to a telephone company's provision of video programming directly to subscribers within its telephone service area. The Commission also requested comment on what changes, if any, need to be made to the video dialtone regulatory framework if a telephone company decides to become a video programmer on its own video dialtone platform in its telephone service area, and in particular, whether telephone company provision of video programming raises new concerns about anticompetitive behavior or cross-subsidy that the Commission's existing regulatory framework may not sufficiently address.

DATES: Comments must be submitted on or before March 6, 1995. Reply comments are due on March 27, 1995.

ADDRESSES: Comments and Reply Comments may be mailed to the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. A copy of each filing should also be filed with Peggy Reitzel of the Common Carrier Bureau, and James Yancey of the Cable Services Bureau.

FOR FURTHER INFORMATION CONTACT: Jane Jackson (202) 418–1593, Common Carrier Bureau, Policy and Program Planning Division, and Larry Walke (202) 416–0847, Cable Services Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Fourth Further Notice of Proposed Rulemaking in Common Carrier Docket 87–266: Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58, adopted January 12, 1995, and released January 20. 1995. The complete text of this Fourth Further Notice of Proposed Rulemaking is available for inspection and copying, Monday through Friday, 9:00 a.m.–4:30 p.m., in the FCC Reference Room (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of the Fourth Further Notice of Proposed Rulemaking may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Synopsis of Fourth Further Notice of Proposed Rulemaking

A. Governing Statutory Provisions.

1. Local exchange carrier (LEC) provision of video programming raises questions about whether Title II of the Communications Act, Title VI of the Communications Act, or both, would govern particular LEC video offerings, and how these provisions might apply to a LEC's provision of video

programming directly to subscribers within its telephone service area and over facilities used to provide both voice and video services. We now seek comment on these issues and on the analysis we offer below.

1. Application of Title II to LEC Video Programming Offerings

2. We first tentatively conclude that telephone companies should be permitted to provide video programming over Title II video dialtone platforms. We recently reaffirmed our conclusion that the construction of video dialtone systems would serve the public interest goals of facilitating competition in the provision of video programming services, encouraging efficient investment in our national information infrastructure, and fostering the availability to the American public of new and diverse sources of video programming. Two U.S. Courts of Appeals have now held unconstitutional the specific statutory basis for prohibiting a telephone company from providing, directly or indirectly, programming over its own video dialtone platform. In light of the public interest benefits of a video dialtone platform, which provides multiple video programmers with common carrier-based access to end users, we tentatively conclude, in the absence of Section 533(b), that we should not ban telephone companies from providing their own video programming over their video dialtone platforms. We note that we allow telephone companies to use their networks to provide their own enhanced services today, subject to safeguards. Thus, in the absence of a demonstration of a significant governmental interest to the contrary, we propose to allow telephone companies to provide video programming over their own video dialtone platforms, subject to appropriate safeguards. We seek comment on this proposal, and on whether any such significant governmental interest to support a ban exists and, if it does, whether a ban would be a narrowly tailored restriction on the telephone companies' First Amendment rights.

3. A second Title II issue is whether we can, and should, require telephone companies to provide video programming only over video dialtone platforms. Even before the recent court decisions invalidating the telco-cable cross-ownership ban, there were three circumstances in which LECs could provide video programming directly to subscribers. In these circumstances, however, LECs have not been authorized to use their local exchange facilities to provide cable service, but, rather, to construct or purchase interests in separate cable facilities. Indeed, as noted by the court in *NCTA* v. *FCC (1994)*, it was not until after the 1984 Cable Act that technological advances have made it practical to deliver video signals over the same common carrier networks that are used to provide telephone service. Previously, as the court noted, ''[a] telephone company that wanted to provide cable service would have had to construct a coaxial cable distribution system parallel to its telephone system.''

4. We seek comment on whether we have authority under Section 214 to require LECs that seek to provide video programming directly to subscribers in their telephone service areas to do so on a video dialtone common carrier platform and not on a non-common carrier cable television facility. We seek comment on what circumstance would warrant such a requirement, and specifically on whether we should require use of a video dialtone platform whenever a LEC provides video services over facilities that are also used in the provision of telephone services. We seek comment on our authority generally to require LECs seeking Section 214 authority to acquire or construct video facilities to comply with our video dialtone framework.

2. Application of Title VI to LEC Provision of Video Programming

5. We now seek comment on the circumstances, if any, in which a LEC that, by court decision, is not subject to the 1984 Cable Act telco-cable cross-ownership ban may offer a cable service subject to Title VI in lieu of a Title II video dialtone offering. We also seek comment on the extent to which Title VI should apply to video programming provided by LECs on a Title II video dialtone system. We have previously held that LEC provision of a common carrier video dialtone platform is not subject to Title VI of the Act. In particular, we found that such LECs are not offering ''cable service,'' and are not operating a ''cable system'' within the meaning of Title VI. We reasoned that LECs did not actively participate in the selection and distribution of video programming because they were precluded from providing video programming directly to subscribers in their telephone service areas. We also concluded that video dialtone facilities are not cable systems because they are common carrier facilities subject to title II of the Act which, under Commission rules, could not be used for LEC provision of video programming directly to subscribers in the LEC's telephone service area. We now seek comment on whether, if a LEC, or its affiliate, does provide video programming over its video dialtone system and actively engages in the selection and distribution of such programming, that LEC, or its affiliate, is subject to Title VI. We seek comment on the Commission's legal authority to determine whether some, but not all, provisions of Title VI relating to cable operators would apply to a LEC that provides video programming over its video dialtone platform. We also seek comment on whether the application of some or all provisions of Title VI would result in a regulatory framework that is duplicative of, or inconsistent with, federal or state regulation of communications common carriage. For example, the goals of the leased access provision of Title VI could be met through obligations Title II imposes on a LEC as the provider of the video dialtone platform whether or not the LEC as a video service provider provides its own leased access channels. We seek comment on the potential impact of our determinations in this proceeding on existing grants by state and local authorities of public rights-of-way. We also invite parties to discuss both the legal and practical implications of requiring, or not requiring, telephone companies providing video programming over their own video dialtone systems to comply with each of the various provisions of Title VI. In the event that Title VI cable rate regulation rules apply, we seek comment on how such rules would apply to a LEC providing video programming directly to subscribers over its own video dialtone platform.

6. In addition, we seek comment on whether, if Title VI does not apply to telephone companies' provision of video programming on video dialtone facilities, the Commission should adopt, under Title II, provisions that are analogous to certain aspects of Title VI. For example, we seek comment on whether we should adopt rules governing program access by competing distributors, carriage agreements between video service providers and unaffiliated programmers, and vertical ownership restrictions.

7. Finally, we note that the court's opinion in *NCTA* v. *FCC (1994)* is consistent with the Commission's reasoning in the First Report and Order, 56 FR 65464–01 (December 17, 1991), that a LEC providing video dialtone service does not require a local franchise because the LEC does not provide the video programming. We seek comment on whether this view would require a LEC offering video dialtone service to secure a local

franchise if that LEC also engages in the provision of video programming carried on its platform.

B. Regulatory Safeguards Governing a Local Exchange Carrier's Provision of Video Programming on its Video Dialtone Platform

1. Introduction and Scope

8. In this section we consider what changes, if any, need to be made to our video dialtone regulatory framework if a telephone company, pursuant to an applicable court decision, decides to become a video programmer on its own video dialtone platform in its telephone service area. In addressing the issues identified below, parties should address whether we should apply different safeguards for technical and market trials than for commercial offerings of video dialtone.

2. Ownership Affiliation Standards

9. Under our current rules, LECs are prohibited from providing video programming directly to subscribers, and from having a cognizable (*i.e.*, 5 percent or more) financial interest in, or exercising direct or indirect control over, any entity that is deemed to provide video programming in its telephone service area. We propose to retain these ownership affiliation standards to identify those video dialtone programmers that we will consider to be affiliated with LECs providing the underlying common carriage. Under this proposal, if the Commission determines that LEC ownership of video programming requires additional safeguards, those safeguards would apply if the LEC owned five percent or more of a video programmer. We seek comment on this proposal.

3. Safeguards Against Anticompetitive Conduct

a. Sufficient Capacity To Serve Multiple Service Providers

10. Under the video dialtone regulatory framework, a LEC is required to provide sufficient capacity to serve multiple service providers on a nondiscriminatory basis. In the Video Dialtone Reconsideration Order, 59 FR 63909–01 (December 12, 1994), we rejected use of an ''anchor programmer,'' that is, allocation of all or substantially all of the analog capacity of the video dialtone platform to a single programmer. We seek comment on whether there are other across-the-board rules that we should adopt to ensure that video dialtone retains its essential Title II character when a LEC becomes a video programmer on its platform.

11. We seek comment, for instance, on whether we should limit the percentage of its own video dialtone platform capacity that a LEC, or its affiliate, may use. Such a limit could help ensure other programmers access, but may create a risk that some capacity might go unused. We seek comment on what an appropriate limit would be; whether any percentage limit should vary with the platform's capacity; and whether different rules should apply to analog and digital channels. Video dialtone capacity constraints appear likely to be most severe in the short-term, with respect to analog channels, and may be of less concern on future all-digital systems. Commenters should address whether LEC use of video dialtone capacity raises short-term or long-term concerns, and how the probable duration of the problem should affect our regulatory approach. Alternatively, we seek comment on whether LECs that deny capacity to independent programmers should be subject to procedural requirements more detailed than those imposed inthe Video Dialtone Reconsideration Order.

12. In the Third Further Notice of Proposed Rulemaking, 59 FR 63971–01 (December 12, 1994), the Commission sought comment and information regarding channel sharing mechanisms that LECs have proposed as means of making analog capacity available to more customer-programmers than might otherwise be accommodated. Parties addressing limits on LEC use of the video dialtone platforms should comment in this proceeding on the relationship between such channel sharing mechanisms and any proposal to limit LEC use of analog channels. The Third Further Notice of Proposed Rulemaking also sought comment on two other signal carriage issues: (1) Whether the Commission should mandate preferential video dialtone access or rates for commercial broadcasters, public, educational and governmental (''PEG'') channnels, or other not-for-profit programmers; and (2) whether the Commission should permit LECs to offer preferential treatment to certain programmers on a voluntary (''will carry'') basis. Parties should comment in this proceeding on the relationships among mandatory preferential treatment, ''will carry,'' and any proposed limits on a LEC's use of its video dialtone capacity to provide programming directly to subscribers.

13. Another example of potentially anticompetitive conduct that has been cited in the context of cable television service under Title VI involves channel positioning. Programmers assert that cable operators can and do deliberately assign unaffiliated program services to undesirable channel locations. Under Title II, such discriminatory conduct is prohibited. We seek comment on whether LECs that are also video program providers have an increased incentive to use their control over the video dialtone platform to engage in such activities and what, if any, specific safeguards we should implement to prevent such conduct. In particular, we seek comment on whether the channel positioning rules that apply to cable operators in the context of the ''must-carry'' requirement of Title VI should also apply to video dialtone platform operators providing programming directly to subscribers in their local exchange service areas.

b. Non-Ownership Relationships and Activities Between Telephone Companies and Video Programmers

14. In the Video Dialtone Reconsideration Order, the Commission affirmed, with certain modifications, its decision to permit LECs to enter into non-ownership relationships with video programmers that exceed a carrier-user relationship. We propose at a minimum, to retain these restrictions as safeguards against LEC anticompetitive conduct and to promote further LEC deployment of broadband services. We believe that the restrictions on non-ownership affiliations between LECs and cable operators are important to the Commission's goal of promoting competition in the video services marketplace, and are not overbroad infrigements on LEC First Amendment rights. Parties should comment on the proposal to retain these safeguards and should describe any specific additional measures they believe necessary to safeguard against anticompetitive conduct by LECs that offer programming on their own video dialtone system.

c. Acquisition of Cable Facilities

15. In the Video Dialtone Reconsideration Order, the Commission substantially affirmed its decision to prohibit telephone companies from acquiring cable facilities in their telephone service areas for the provision of video dialtone. We continue to believe that this ban will benefit the public interest by promoting greater competition in the delivery of video services, increasing the diversity of video programming available to consumers, and advancing the deployment of the national communications infrastructure. We tentatively conclude that the ban on LEC acquisition of cable facilities for the provision of video dialtone does not impermissibly restrict LEC speech

under *C&P Tel. Co.* v. *U.S.* and *U S West* v. *U.S.*, and seek comment on this conclusion.

16. In the *Third Further Notice of Proposed Rulemaking*, the Commission recognized that some markets may be incapable of supporting two video delivery systems. The Commission was concerned that, in such markets, the prohibition could preclude establishment of video dialtone service, thereby denying consumers the benefits of competition and diversity of programming sources that our video dialtone regulatory framework is designed to promote. As a result, the Commission requested parties to suggest criteria that would permit us to identify those markets in which two wire-based multi-channel video delivery systems would not be viable. We seek comment on how, if at all, the decisions in *C&P Tel. Co.* v. *U.S.* and *U S West* v. *U.S.* should affect our consideration of criteria for allowing exceptions to our two-wire policy. We also seek comment on whether we should ban telephone company acquisition of cable facilities, with or without exceptions, if (a) Title VI applies to telephone companies providing programming on their own video dialtone platforms; or (b) telephone companies are permitted to become traditional cable operators in their own service areas instead of constructing video dialtone platforms.

d. Joint Marketing and Customer Proprietary Network Information

17. In the Video Dialtone Reconsideration Order, the Commission also affirmed its decision to permit LECs to engage in joint marketing of basic and enhanced video services, and of basic video and non-video services. We found that significant public interest benefits can accrue from the efficiencies and innovations that may be obtained by permitting LECs to engage in joint marketing of basic and enhanced video services, and of basic video and non-video services. We also found that the record on reconsideration did not support a finding that joint marketing of common carrier video and telephony services would have an anticompetitive impact on the provision of video programming to end users. We now seek comment on whether LEC provision of video programming directly to end users requires that we revisit our analysis of joint marketing issues.

18. In the Bell Atlantic Market Trial Order, released on January 20, 1995, the Commission authorized Bell Atlantic to conduct a six-month video dialtone market trial that will include provision of video programming directly to subscribers by a Bell Atlantic affiliate as well as by independent video programmers.

Pending resolution of the instant rulemaking proceeding, we conditioned Bell Atlantic's authorization on its compliance with existing safeguards for the provision of nonregulated services, including enhanced services, and with several additional, interim safeguards against discrimination. We seek comment on whether any or all of these interim safeguards should be adopted as permanent requirements for LECs that provide video programming over their own video dialtone platforms.

19. Under the Commission's customer proprietary network information (CPNI) requirements, the Commission limits the Bell Operating Companies' (BOCs') and GTE Service Corporation's (GTE's) use of CPNI; requires them to make CPNI available to competitive enhanced service providers (ESPs) designated by a customer; and requires that they make available to ESPs non-proprietary aggregated CPNI on the same terms and conditions on which they make such CPNI available to their own enhanced service personnel. In the Video Dialtone Reconsideration Order, the Commission determined that there was insufficient evidence to conclude that our existing CPNI rules do not properly balance our CPNI goals relating to privacy, efficiency, and competitive equity in the context of video dialtone. The Commission also required the BOCs and GTE to provide additional information regarding the kinds of CPNI to which they will have access as a result of providing video dialtone service and indicated its intent to seek further comment on such information. We now seek additional comment and information on whether LEC provision of video programming impacts the balancing of our goals for CPNI.

20. In addition to concerns over possible anticompetitive use of CPNI, parties should discuss whether LEC provision of video programming raises new concerns regarding consumer privacy. Parties that perceive a greater threat to consumer privacy should describe with specificity their concerns, and suggest specific safeguards for protecting consumer privacy, and explain how these suggestions benefit the public interest.

21. We also seek comments on safeguards to ensure nondiscriminatory access to network technical information. In the Bell Atlantic Market Trial Order, the Commission required Bell Atlantic to provide all video programmers with nondiscriminatory access to technical information concerning the basic video dialtone platform and related equipment. The Commission also noted that, in the circumstances of the market trial, Bell Atlantic would also be subject to the more specific Computer III network disclosure rules. We seek comment on whether the Bell Atlantic condition should be adopted as a permanent safeguard. We also seek parties to address whether the Computer III network disclosure rules should be modified in any way for application in the video dialtone context.

4. Safeguards Against Cross-Subsidization of Video Programming Activities

22. In the Video Dialtone Reconsideration Order, the Commission determined that price cap regulation and accounting safeguards would be effective to prevent cross-subsidization of video dialtone-related nonregulated activities. We tentatively conclude that these safeguards against cross-subsidization apply to LEC provision of video programming just as they would to any other activity not regulated as Title II common carrier service, and that the existing rules are adequate to forestall cross-subsidy of the video programming activity. We seek comment on these tentative conclusions.

23. Assuming we do not require structural separation, LECs will have the flexibility to conduct video programming activities both within the telephone operating company and through affiliates. For those video programming activities conducted in the operating company, the LEC will be required to record costs and revenues in accordance with Part 32 of the Commission's Rules, the Uniform System of Accounts (USOA), and to separate the costs of video programming activity from the costs of regulated telephone service in accordance with the part 64 joint cost rules. We tentatively conclude that these rules are adequate to prevent cross-subsidization of video programming activities. We also tentatively conclude that we will apply to video programming activities the rule adopted in the Video Dialtone Reconsideration Order requiring LECs to amend their cost allocation manuals to reflect video dialtone-related nonregulated activities within 30 days of receiving video dialtone facilities authorization. We seek comment on these tentative conclusions.

24. H a LEC chooses for business reasons to provide video programming through an affiliate, the accounting treatment of operating company transactions with that affiliate will be governed by the affiliate transactions rules. We seek comment on whether amendments to those rules are needed

to safeguard against abuses in transactions between LECs and affiliated video program providers. Specifically, we seek comment on whether we should amend Section 32.27 to clarify that any video program provider that is considered, because of a LEC's five percent ownership interest, to be a LEC affiliate for purposes of applying video dialtone safeguards will also be considered an ''affiliate'' for purposes of the affiliate transactions rule.

5. Structural Separation

25. In the Computer III proceeding, the Commission replaced its requirement that BOCs offer enhanced services through separate subsidiaries with a set of nonstructural safeguards. Those nonstructural safeguards were intended to protect against discrimination and cross-subsidization while avoiding the inefficiencies associated with structural separation. We seek comment on whether our approach to these questions should differ when BOCs provide video programming. Specifically, we seek comment as to whether there are aspects of the video programming business that warrant our treating BOC provision of video programming differently from the way we treat BOC provision of customer premises equipment (CPE) and enhanced services generally. We also seek comment on whether any structural separation requirement should apply to LECs other than the BOCs. Commenting parties should specifically identify what aspects warrant different treatment, and what form of separation would be appropriate. Parties should also offer information concerning the relative costs and benefits of structural separation.

6. Pole Attachments

26. Section 63.57 of our rules requires LECs seeking to provide channel service to show in their Section 214 applications that the cable system for which they would be providing channel service had pole attachment rights or conduit space available ''at reasonable charges and without undue restrictions on the uses that may be made of the channel by the operator.'' In the Third Further Notice of Proposed Rulemaking, the Commission sought comment on whether a similar rule should apply to LECs providing video dialtone service. We now seek additional comment on that proposal in light of *C&P Tel. Co.* v. *U.S.* and *U S West* v. *U.S.* Parties should address whether incentives to abuse control over pole and conduit space are increased if a LEC decides to offer video programming within its telephone service area. In addition, as requested in the Third Further Notice of Proposed Rulemaking, advocates of such a rule should propose specific language, and should explain how the rule would prevent anticompetitive conduct.

7. Legal and Constitutional Issues

a. Waiver of the Cross-Ownership Ban

27. Section 533(b)(4) of the Communications Act provides that, upon a ''showing of good cause,'' the Commission may waive the 1984 Cable Act's cross-ownership ban. Under Section 533(b)(4), a waiver ''shall be granted by the Commission upon a finding that the issuance of such waiver is justified by the particular circumstances demonstrated by the petitioner, taking into account the policy of this subsection.'' In *GTE California* v. *FCC*, the United States Court of Appeals for the Ninth Circuit raises the question whether the Commission may establish conditions under which it will waive the telco-cable cross-ownership ban in order to obviate potential constitutional difficulties. We tentatively conclude that such a reading of Section 533(b)(4) is consistent with the terms of the statute. ''Good cause'' is commonly interpreted to include changed circumstances, and the circumstances that led us to institute the cross-ownership rule in 1970 have changed dramatically. The cable industry is no longer a fledgling industry. Instead, as the Supreme Court recently recognized, ''Congress found that over 60 percent of the households with television sets subscribe to cable * * * and for those households cable has replaced over-the-air broadcast television as the primary provider of video programming.''

28. We also tentatively conclude that the safeguards we will establish will constitute ''particular circumstances * * *, taking into account the policy'' of Section 533(b), under which waivers are warranted. We do not intend to waive the telco-cable cross-ownership rule altogether, so that telephone companies may purchase cable companies that do not face competition and offer their own programming via a monopoly cable system. Rather, and in fulfillment of the policy underlying Section 533(b), we intend to promote competition in the multi-channel video programming market by establishing particular conditions under which telephone companies may establish video dialtone systems that will compete with existing cable operators, thus providing consumers with a choice of multi-channel video systems.

29. The United States Court of Appeals for the District of Columbia Circuit recognized, in *NCTA* v. *FCC (1990)*, that ''the policy of this subsection is to promote competition.'' However, in that decision the D.C. Circuit also appeared to give a narrow reading to the scope of the waiver provision. Specifically, the court of appeals remanded a decision in which the Commission had granted a waiver because the court concluded that the Commission had not shown that the participation of an affiliate of a telephone company in constructing transmission facilities was ''essential to the success'' of an experimental video programming project. But at that time no court had declared Section 533(b) unconstitutional, and the D.C. Circuit did not consider whether a broader reading of Section 533(b)(4) was appropriate to render the provision constitutional. The Supreme Court has recently reiterated that ''a statute is to be construed where fairly possible so as to avoid substantial constitutional questions.'' A reading of the waiver provision that authorizes telephone companies that comply with the safeguards we will establish to provide video programming should render Section 533(b) constitutional, because in those circumstances any burden on speech by telephone companies will be minimal. Hence, under *U.S.* v. *X-Citement Video*, a broad interpretation of Section 533(b)(4) seems warranted. We seek comment on these tentative conclusions.

b. Constitutionality of Proposed Safeguards

30. As the Court of Appeals for the Fourth Circuit stated in *C&P Tel. Co.* v. *U.S.*, in order for a content-neutral government regulation of speech, such as the cross-ownership ban, to be constitutional, that regulation must be ''narrowly tailored to serve a significant governmental interest, and * * * leave open ample alternative channels for communication of the information.'' With respect to all proposals set forth above for safeguards on LEC provision of video programming, we seek comment on whether such safeguards, whether individually, or in any combination, would be consistent with the First Amendment, the Fourth Circuit's decision in *C&P Tel. Co.* v. *U.S.*, and the Ninth Circuit's decision in *U.S. West* v. *U.S.*

Ex Parte Presentations

31. This Fourth Further Notice of Proposed Rulemaking 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, 1.1206.

Comment Filing Dates

32. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. 1.415, 1.419, interested parties may file comments on or before March 6, 1995, and reply comments on or before March 27, 1995. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554, with a copy to Peggy Reitzel of the Common Carrier Bureau, Room 544, and James Yancey of the Cable Services Bureau, Room 408C. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC.

Initial Regulatory Flexibility Analysis Statement

33. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Fourth Further Notice of Proposed Rulemaking, seeking comment and information regarding whether additional or modified safeguards and rule changes may be necessary or appropriate in the context of the Commission's video dialtone regulatory framework, when a telephone company provides video programming directly to subscribers in its telephone service area may directly impact entities that are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act.

34. The Secretary shall send a copy of this *Fourth Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.*

Ordering Clauses

35. *It is ordered* that, pursuant to Sections 1, 4, 201–205, 215, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, and 218, a Fourth Further Notice of Proposed Rulemaking is hereby adopted.

36. *It is further ordered* that, the Secretary shall send a copy of the Fourth Further Notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 63

Cable television, Communications common carriers, Reporting and recordkeeping requirements, Telephone, Video dialtone.

Federal Communications Commission

William F. Caton,

Secretary.

[FR Doc. 95–3831 Filed 2–15–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95-16]

Radio Broadcasting Services; Leone, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, on its own motion, proposes the deletion of vacant and unapplied-for Channel 266C1 from Leone, American Samoa. The independent nation of Western Samoa has recently assigned an FM station to operate on Channel 266A which conflicts with the American Samoa allotment. Should an interest in applying for a Class C1 channel at Leone be expressed, the staff has determined that Channel 230C1 can be allotted to Leone in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates –14–20–38 South Latitude and 170–47–06 West Longitude.

DATES: Comments must be filed on or before April 3, 1995, and reply comments on or before April 18, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95-16, adopted January 25, 1995, and released February 10, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–3936 Filed 2–15–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA Docket No. RAR–4, Notice No. 10]

RIN 2130–AA58

Railroad Accident Reporting

AGENCY: Federal Railroad Administration (FRA).

ACTION: Notice of postponement of decision whether or not to issue a supplemental notice of proposed rulemaking and confirmation of March 10, 1995, deadline for comments.

SUMMARY: In accordance with a notice published on December 27, 1994 (59 FR 66501), FRA held an informal public regulatory conference on January 30–February 2, 1995, in Washington, D.C. to further discuss issues related to its notice of proposed rulemaking (NPRM)