

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

47 CFR Part 20

Radio.

47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-1974 Filed 1-31-96; 8:45 am]

BILLING CODE 6712-01-U

47 CFR Part 76

[CS Docket No. 95-184; FCC 95-504]

Telecommunications Inside Wiring, Customer Premises Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on whether certain telephone and cable inside wiring rules should be harmonized or otherwise changed in light of the evolving and converging telecommunications marketplaces. This item will assist the Commission in creating a record necessary to its ultimate design of rules in this area.

DATES: Comments are due on or before March 18, 1996 and reply comments are due on or before April 17, 1996.

FOR FURTHER INFORMATION CONTACT: Larry Walke, (202) 416-0847, or Rick Chessen, (202) 416-1166.

SUPPLEMENTARY INFORMATION: The text of this document 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 Service, (202) 857-3800, 2100 M Street NW., Washington DC 20037.

Notice of Proposed Rulemaking

I. Introduction

1. The Commission issues this *Notice of Proposed Rulemaking* ("NPRM") to consider changes in our telephone and cable inside wiring rules and policies in light of today's evolving and converging telecommunications marketplace. Because this proceeding will consider the issue of parity between our telephone and cable inside wiring rules, we are granting a petition for rulemaking (RM 8380) filed jointly by the Media Access Project, the United States Telephone Association and Citizens for a Sound Economy Foundation (collectively, "MAP"), to the extent that MAP urges the Commission to establish a proceeding to consider making cable home wiring rules the same as those governing telephone inside wiring. We also note that, concurrently with the adoption of this NPRM, we issue a *First Order on Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket No. 92-260 regarding our cable home wiring rules under Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Pub. L. No. 102-385, 106 Stat. 1460 (1992), 47 U.S.C. 521, *et seq.* We incorporate the record in MM Docket No. 92-260 herein by reference.

2. We expect that at least some consumers may soon have a choice of two or more telecommunications service companies providing telephony, data, video programming and other services. Through this NPRM, we seek comment on whether and how we should revise our current telephone and cable inside wiring rules to reflect these new realities and promote competition, by ensuring that the Commission's inside wiring rules continue to facilitate the development of new and diverse services for the American public. In particular, and as described more fully below, we seek comment on whether it is technically and competitively desirable to create a uniform set of inside wiring rules that would apply to telephone companies and cable operators alike, or, in the alternative, that would apply according to the technical characteristics of the service—e.g., broadband or narrowband—or the type of wiring used—e.g., fiber optics, coaxial cable or twisted-pair wiring.

II. Inside Wiring Issues

A. Demarcation Point

1. *Background.* 3. Section 16(d) of the 1992 Cable Act directs the Commission to "prescribe rules concerning the disposition, after a subscriber to a cable

system terminates service, of any cable installed by the cable operator within the premises of such subscriber." The Commission's regulations implementing Section 16(d) provide that, when a customer voluntarily terminates service, the cable operator must give that subscriber the opportunity to acquire the wiring before the operator removes it. The subscriber may purchase the wiring inside his or her premises up to the demarcation point. The cable wiring demarcation point serves such multiple purposes as defining (1) the location at which the subscriber may control the internal home wiring if he or she owns it; (2) the point at which an alternative multichannel video programming service provider would attach its wiring to the subscriber's wiring in order to provide service; and (3) the point from which the customer has the right to purchase cable home wiring upon termination of service. The demarcation point for cable home wiring in single unit installations is set at (or about) 12 inches outside of where the cable wire enters the subscriber's premises. The demarcation point for multiple dwelling units is set at (or about) 12 inches outside of where the cable wire enters the subscriber's individual dwelling unit.

4. In multiple dwelling unit buildings, cable wiring configurations fall into two categories: loop-through and non-loop-through. In a loop-through cable wiring system, a single cable provides service to multiple subscribers such that every subscriber on the loop must receive the same cable service. Generally, in a non-loop-through configuration, each subscriber has a dedicated line (a "drop") running to his or her premises from a common "feeder line." Only the wiring extending from the demarcation point to inside the subscriber's premises constitutes home wiring; thus, the drop wiring from the demarcation point out to the feeder line does not constitute home wiring. The feeder line is the source of video programming signals for everyone in the multiple dwelling unit building. A "tap" or "multi-tap" is a passive device, installed where the drop meets the feeder, that extracts portions of the signal strength in the feeder and distributes individual portions to subscribers. The strength of the signals within the feeder decreases each time the signals encounter a tap. In addition, the cable's electrical characteristics cause the strength of the signals to diminish as the signals pass through the coaxial cable. As a result of the signal strength lost through taps and its passage through coaxial cable, periodic amplification is often required within

the multiple dwelling unit building to maintain good picture quality. Amplification is accomplished by installing amplifiers at pre-designed intervals along the feeder based upon the number of taps and the length of coaxial cable within the multiple dwelling unit building.

5. With respect to telephone wiring, in 1990, the Commission amended the definition of the telephone demarcation point for simple inside wiring, *inter alia*, to "assure that it [would] not be at a significant distance from where [the] wiring enters the customer's premises." *Report and Order and Further Notice of Proposed Rule Making in CC Docket No. 88-57*, 5 FCC Rcd 4686, 4692 (1990) 53 FR 9952 (March 28, 1988) ("*Telephone Inside Wiring Report and Order*"), *recon. pending*. Accordingly, the Commission's rules set the telephone wiring demarcation point for new and existing single unit installations (where there is no protector) at a point within 12 inches of where the telephone wire enters the customer's premises—i.e., up to 12 inches inside the home. The telephone demarcation point in existing multiple dwelling unit buildings is determined in accordance with the carrier's reasonable and nondiscriminatory standard operating practices. For new multiple dwelling unit buildings, including additions, modifications and rearrangements of existing wiring, the telephone company may establish a standard operating practice of placing the demarcation point at the minimum point of entry (usually the basement of the building). If the telephone company does not establish such a practice, the owner of a multiple dwelling unit building may determine the location of the demarcation point or points. Finally, in contrast with cable inside wiring, individual telephone lines typically run from the basement in multiple dwelling unit buildings (where the demarcation point is usually located) to each individual subscriber's dwelling unit.

6. In another Commission proceeding involving the setting of the cable network demarcation point, some alternative multichannel video programming providers argue that the demarcation point in multiple dwelling unit buildings should be located "at that point outside a subscriber's premises and within the common areas of the multiple dwelling unit where existing wiring is first readily accessible" for increased access and subscriber convenience. On the other hand, some cable operators argue that these proposals to move the demarcation point for multiple dwelling units are not precise enough because such a point

could vary from building to building, and that such proposals are contrary to the plain language of the statute. Cable operators in the same proceeding argued that moving the cable demarcation point would severely restrict their ability to compete to provide telephony and advanced telecommunications services even if a subscriber chose a competitor's video services. Moreover, the cable operators asserted that consumers would benefit from additional broadband wires to their premises, since they could then have the flexibility of receiving different broadband services from different providers, rather than simply choosing which single provider's package to receive.

2. *Request for Comment.* 7. We seek comment on whether we should establish a common demarcation point for wireline communications networks—regardless of whether such networks are broadband or narrowband, or cable or telephony services. Sound reasons for creating a common demarcation point may exist. For example, in a world in which cable and telephony services are provided over a single broadband wire, a common demarcation point could make logical and technical sense. On the other hand, there may be technical and practical constraints on setting a common demarcation point. For example, if we set the demarcation point for multiple dwelling units at the minimum point of entry (usually in the basement), there may be concerns about the expense, disruption, and additional space required to install individual broadband wires and amplifiers to each unit, as well as the removal of any existing common wiring. Moreover, it also raises the issue of who the "customer" is—the landlord or the tenant—who is entitled to control the wiring. Altering the cable demarcation point so that it is farther away from the subscriber's individual unit would also raise questions about compensation for the wire between the current cable demarcation point and any amended demarcation point. For instance, if a subscriber already owns the cable home wiring up to the current demarcation point, and the Commission moves the demarcation point to the minimum point of entry, how would the cable operator be compensated for the additional wiring if the subscriber wished to purchase it? On the other hand, if the subscriber elected not to purchase the additional wiring in this scenario, would the cable operator then have the right to remove that portion of the wiring? Alternatively, if we require a common demarcation point that is closer to each subscriber, such as where

the existing cable wiring demarcation point is located, this could subject the currently unregulated telephone wiring between the minimum point of entry and the customer's premises to regulation. We seek comment on where, if we establish a common demarcation point for cable and telephony services, we should establish such a common demarcation point. We also seek comment on whether, if we do not create a common demarcation point, we should continue to establish demarcation points based on the services provided over facilities (i.e. telephony or cable), or whether we should create demarcation points based upon the nature of the ultimate facilities used to deliver the service (i.e. narrowband termination facilities or broadband termination facilities).

8. We seek comment on whether and how our wiring rules can be structured to promote competition both in the markets for multichannel video programming delivery and in the market for telephony and advanced telecommunications services, and if it will affect our goal of promoting the development of advanced telecommunications services and competition for those services. In addition, we seek comment on whether, and if so, how, the selection of a demarcation point for either network should depend upon the technical characteristics of the wiring and the current design considerations for telephone and cable services.

9. *Single Dwelling Units.* We seek comment on the effect of changing the telephone demarcation point to mirror the cable demarcation point, and on the effect of changing the demarcation point for cable, which presently does not employ protectors, to mirror the telephone demarcation point. Finally, we seek comment on the consequences of permitting broadband service providers to choose where to locate the network demarcation point, within a range of 12 inches outside the customer's premises and 12 inches inside the customer's premises.

10. *Multiple Dwelling Units.* We seek comment on the effect of changing the telephone network demarcation point to mirror the cable demarcation point, and on whether the current cable and telephony demarcation points give reasonable access to competitive providers of either narrowband or broadband services, or whether it would better promote competition and otherwise be in the public interest to require that the demarcation points for broadband and narrowband networks be placed at a common point or at the point at which the broadband or

narrowband line becomes dedicated to an individual subscriber's use.

11. We seek additional comment on the competitive effect and consumer impact of keeping or changing the current cable demarcation point—not only on the video programming delivery marketplace, but on the broader telecommunications services market. Because we are concerned, however, that the current cable demarcation point may be impeding competition in the video services delivery marketplace, we intend to resolve this issue expeditiously.

12. We recognize that numerous other factors may affect the proper location of the cable network's demarcation point, as well as one's control over cable inside wiring and cable service generally. For example, single-family row units in condominiums or other residential settings may be provided cable service via a single, central access point, which may generate many of the same issues concerning the network demarcation point as are present in vertical multiple dwelling unit buildings. We seek comment on other factors related to the architecture of multiple dwelling unit premises that can affect the location of the demarcation point. We also seek comment on the consequences of changing the demarcation point or points, under one of the approaches described above, in light of the many various architectural settings in which subscribers may reside. The Commission also seeks information on any technical constraints on moving either network's demarcation point.

B. Connections

1. *Background.* a. *Cable Service Wiring.* 13. An important technical consideration in the delivery of cable service and the connections employed in the technology used to deliver service, is the risk of cable signal leakage. Cable systems often deliver cable signals over the same frequencies as many over-the-air licensees, including air traffic control and police and fire safety communications. The Commission has established specific restrictions on cable operators' use of radio frequencies in order to reduce the potential for interference caused by cable leakage. Another important technical consideration is the quality of the signal delivered to the subscriber's terminal. Our rules require a minimum signal level at the subscriber's terminal to ensure that adequate levels are delivered to the television set or video cassette recorder and that a good quality picture is delivered. Signal strength can be lessened by the use of poor cable,

signal splitting for additional television sets, improper termination and improper attachments of and to customer-owned premises equipment.

b. *Telephone Connection.* 14. By contrast, signal leakage interfering with over-the-air communications has not been a regulatory concern for telephone service because the transmission of telephony requires only a fraction of the signal power used to transmit video programming, and telephone signals are carried over a much narrower, as well as a different, portion of frequency spectrum than aeronautical communications. Rather, the overall purpose of our telephone wiring regulations is to ensure that equipment connected to the telephone network and the methods used to make those connections do not cause harm to the telephone network or telephone company employees. Harm, as defined in our rules, includes: electrical hazards to telephone company personnel, damage to telephone company equipment, malfunction of telephone company billing equipment, and degradation of service to persons other than the user of the subject terminal equipment, his calling or called party. 47 CFR 68.3. The Commission has determined that allowing customers access to carrier-installed wiring on their premises for the purpose of connecting simple inside wiring will not impair the ability of carriers to provide adequate service to the public. The Commission has found little inherent risk that a plug/jack arrangement will be installed incorrectly, or if actually installed incorrectly, will cause harm to the network.

2. *Request for Comment.* 15. We expect that broadband common carrier services will be delivered over the same aeronautical and public safety frequencies, and at similar levels of power, as are current cable television signals. Therefore, the same concerns regarding interference with over-the-air communications that we currently encounter only with traditional cable service may be implicated. We seek comment on the best method of extending our signal leakage limits that are currently applied only to traditional cable service to others who provide service over broadband facilities. Our cable signal leakage limits are based on individual leakage levels as well as maximum allowable cumulative leakage levels and frequency separations from over-the-air users. We solicit comment on whether these requirements are sufficient or should be changed to safeguard against interference by any broadband service provider. We also

request comment on whether our cable signal quality standards should be extended to other broadband video signal providers or whether, in a future competitive environment, quality standards may be unnecessary because signal quality will be one of the factors highlighted by broadband providers in competing for business.

16. Finally, we note that underlying all of the discussion and proposals outlined in this item is a concern for system integrity, including any increased risk of signal leakage or decrease in signal quality. We thus seek comment generally on how any new or revised regulatory approaches proposed in this *NPRM* may impact upon these considerations.

3. *Means of Connection.* a. *Background.* 17. The Commission's common carrier rules define the technical specifications for any jacks that interface with the telephone network. The rules state that "any jack installed by the telephone company at, or constituting, the demarcation point shall conform to Subpart F of 47 CFR Part 68. Subject to the requirements of section 68.213 of our rules, connection of wiring and terminal equipment to the telephone network may be through a jack conforming to Subpart F or by direct attachment to carrier installed wiring. * * *." This standardization ensures that network integrity is maintained and protects telephone company employees, facilitates the installation of equipment by non-telephone company employees, and promotes competition for inside wiring services and telephone customer premises equipment.

18. Even though the Commission does not have specific rules governing the type of connectors used by the cable industry, operators almost exclusively employ "F-type connectors" for connection between coaxial wire and equipment, which, in part, are designed to prevent signal leakage. These F-type connectors are installed at the ends of coaxial cable in order to attach the wiring to customer premises equipment such as televisions, videocassette recorders and set-top boxes.

b. *Request for Comment.* 19. We seek comment on whether the Commission should adopt technical requirements for standard jacks and connectors for broadband or narrowband networks. If standards are necessary, how should factors such as electronics and the physical features of the jack or connector be addressed in designing such standards? All responses to this and the above inquiries should address the relative need for standards for protectors, jacks and connectors that

will maintain system integrity (i.e., picture and audio quality, signal reliability, minimal signal leakage), while giving other providers ease of connection and thus facilitate competition among telecommunications services providers.

20. We solicit comment on whether the Commission should establish technical standards for connections to cable networks or broadband services, where multiple services are delivered over a single wire. We note that a single standard may facilitate competition among providers by standardizing and simplifying the type of connection all providers must use. In the alternative, we seek comment on whether we should require that all connections to either the telephone network or cable systems use only the jacks meeting Commission standards or their technical equivalent.

C. Regulation of Simple and Complex, and Residential and Non-Residential Wiring

1. Background. a. Telephone Provisions: Simple vs. Complex Wiring.

21. The degree to which the Commission regulates telephone inside wiring depends largely on whether the subscriber requires simple wiring or complex wiring to receive service. Simple inside wiring includes all one and two line telephone wiring on the customer's side of the demarcation point, and is often called "non-system premise wiring" or "customer premise wiring." Complex wiring, also called "intrasystem wiring," includes all wiring of three or more twisted pairs and its associated components (e.g., connecting blocks, terminal boxes, conduit) located on the customer's side of the demarcation point that connects telephones, facsimile machines, modems, and other devices to each other or to the common equipment of a private branch exchange ("PBX") or key system, when this wiring is inside a building or between a customer's buildings located on the same or contiguous property not separated by public property.

22. Most single dwelling units require only simple wiring, while multiple dwelling units and commercial settings require complex intrasystem wiring. We have not allowed customers to connect to the public telephone network with complex wiring other than through a telephone company-provided jack. In the interstate jurisdiction, we have deregulated the installation and maintenance of both simple and complex inside wire. In the intrastate jurisdiction, however, we have allowed the states to regulate the prices, terms

and conditions on which simple inside wire services are offered to the public.

b. *Cable Service Provisions.* 23. As described above, our cable inside wiring rules address three primary areas: (1) technical standards; (2) the disposition of wiring after termination of service; and (3) rates for the wiring installation and maintenance. First, the Commission's technical standards apply only to wiring that a cable operator installs and maintains. This caveat does not affect the Commission's standards concerning signal leakage, however, because these requirements must be met regardless of who provides the final service link to the individual subscriber or who actually receives payment from subscribers for cable service.

24. Second, rules adopted pursuant to Section 16(d) of the 1992 Cable Act governing the disposition of wiring upon termination of service apply only to cable wiring installed by cable operators in residential dwelling units. Both the House and Senate Reports and the 1992 Cable Act clearly identify Section 16(d) as applying to home wiring—i.e., wiring "inside the home." Third, rates for equipment used to receive residential cable service, including inside wiring, are regulated by the local franchising authority pursuant to rules the Commission has promulgated under the 1992 Cable Act.

2. *Request for Comment.* 25. We anticipate that telecommunications service providers in the future will provide both telephony and video programming services, as well as other services. These services may be delivered over multiple wires or over a single broadband wire. We believe that separate regulatory regimes for telephone and cable inside wiring may impede the delivery and possibly development, of broadband and other services to the public because the differing schemes may cause needless confusion for providers and consumers. Therefore, we seek comment on whether the Commission can and should harmonize the definitions within the common carrier and cable rules with regard to simple versus complex wiring; and residential versus non-residential wiring.

26. We also seek comment on whether the complex telephone wiring configurations and cable inside wiring configurations employed in multiple dwelling unit buildings or non-residential settings, respectively, are similar, and if so, whether this similarity means that complex telephone wiring and similarly employed cable inside wiring should be subject to similar rules. Would our telephone wiring rules, cable wiring

rules, or some combination of both, be most appropriate? We seek comment on the optimal regulatory regime for wiring used to deliver both telephony and video programming as well as other services, i.e., the complex versus simple dichotomy, our cable wiring regulations, or some other approach. For example, would it be sensible to explore treating different types of cable inside wiring differently based on their technical characteristics, similar to the complex versus simple distinction in the regulation of telephone wiring? In addition, we seek comment on regulating wiring based on some other approach, such as the type of wiring used (i.e., twisted copper pair, coaxial or fiber optic). In this vein, would it be appropriate to establish individual simple and complex wiring definitions for each type of wiring? Finally, we seek comment on how any changes in our rules concerning the above aspects of wiring may affect system integrity and reliability.

27. We seek comment on how any changes in our rules concerning these aspects of wiring may affect signal leakage and signal quality. We also seek comment on how any of the above changes to our rules may affect competition in the telephone and cable markets.

D. Customer Access to Wiring

1. *Cable Wiring Provisions.* 28. Section 16(d) of the 1992 Cable Act requires the Commission to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber." The Commission's regulations implementing Section 16(d) provide that, when a customer voluntarily terminates cable service, the cable operator may not remove the cable home wiring unless it has first given that subscriber the opportunity to acquire the wiring at its per-foot replacement cost and the subscriber declines. If the subscriber declines to purchase the wiring, the operator must remove the wiring within 30 days (now seven business days) or make no subsequent attempt to remove it or restrict its use. This rule does not apply where the subscriber already owns the home wiring. The current cable home wiring rules do not require cable operators to permit subscribers to provide and install their own cable home wiring, or to move or rearrange operator-owned cable home wiring.

2. *Telephone Provisions.* 29. The Commission has deregulated the installation and maintenance of both complex and simple telephone inside

wire. As explained above, we first acted with regard to the installation of complex wiring, which is "new intrasystem wiring installed with new CPE systems." Since we had deregulated the installation of new CPE systems in *Computer II, Amendment of Section 64.702 of the Commission's Rules and Regulations*, Final Decision, 77 FCC2d 384, 45 FR 31319 (May 13, 1980) ("*Computer II*"), modified on reconsideration, 84 FCC2d 50 (1980), further modified on reconsideration, 88 FCC2d 512 (1981) it was inconsistent to have complex wiring installed under tariff. Therefore, to foster competition in complex wiring installation, we deregulated the installation of complex wiring in the same way and on the same basis as we had deregulated CPE in *Computer II*. We subsequently deregulated the installation of simple inside wiring and maintenance of all inside wiring, effective January 1, 1987. Through these actions, we intended to make the cost-causative customer bear the costs of connecting CPE, including inside wiring, to the telephone network and, thus, to produce immediate cost savings that would be passed on to ratepayers.

30. To complete the deregulation of inside wire, the Commission prohibited telephone companies from imposing restrictions on inside wire that would prevent customers from removing, replacing, rearranging or maintaining inside wire using sources of their own choosing. In addition, we precluded the telephone companies from requiring customers to purchase or to pay a charge for using inside wire that had been previously installed or maintained under tariff.

3. *Request for Comment.* 31. We tentatively conclude that there is no reason to change our rules giving consumers the right to access their narrowband wiring inside the demarcation point, whether that wiring is used to provide voice, video or data services. We seek comment on this tentative conclusion. We also seek comment on whether the Commission should establish rules that give consumers the right to provide and to install their own broadband inside wiring and to access broadband wiring (for purposes of, for example, installing additional outlets, performing maintenance or reconfiguring existing wiring) on their premises which has been installed and is owned by the broadband service provider. In particular, we seek comment on whether consumers should have such a right if: (a) the broadband wire carries both cable and common carrier services

("joint use"); or (b) the broadband wire carries cable services only.

32. Access to broadband inside wiring prior to termination of service would allow consumers to select who will install and maintain their broadband wire (e.g., someone other than the cable operator, such as a commercial contractor, or the consumer himself or herself). The resulting competition in the wiring marketplace might also reduce the amount of maintenance fees and service charges a subscriber pays to the broadband service provider.

33. In this context, we ask whether and how broadening the cable rules to establish the subscribers' right to provide and to install their own cable inside wiring and to access cable operator-owned inside wiring would (a) promote consumer choice; (b) foster competition among multichannel video programming service providers, thus lowering prices and encouraging technological innovation; and (c) facilitate the provision of more than one type of telecommunications service (e.g., telephone and video) by different types of companies. We also request comment generally on how to protect against signal leakage and to maintain the signal quality delivered over the coaxial cable if subscribers are given pretermination access to broadband cable inside wiring.

34. We seek comment on whether the Commission has authority under the Communications Act to promulgate cable inside wiring rules requiring pretermination access, both when the wiring is used jointly by cable and common carrier services and when the wiring is used solely for cable services. In particular, we ask whether, in the joint use context, the inside wiring used to transmit interstate telecommunications services is so inseparable from the wiring used to transmit the cable services that consumers should have the right to access the wiring under the Commission's current telephone rules. We note that, while the telephone rules may provide a useful model for broadband wiring, cable operators may not be regulated as common carriers "by reason of providing any cable service." We believe, however, that simply applying rules to cable that are the same as, or similar to, the telephone inside wiring rules is not tantamount to treating cable operators as common carriers. We nevertheless request comment on this interpretation of the statute. We also ask commenters to address the issue of whether permitting pretermination access would constitute an impermissible "taking" of property without just compensation, in violation

of cable operators' Fifth Amendment rights.

35. We also ask whether the best way to ensure that subscribers are permitted to own and to access cable inside wiring, whether by buying it or installing it prior to termination of service, might be to deregulate cable inside wiring rates, much the same as telephone inside wiring has been deregulated. We ask whether the introduction of competition in the markets for cable inside wiring would force cable operators to permit pretermination access where there is subscriber demand. We seek comment on whether we have the statutory authority to deregulate cable home wiring rates. We direct the parties to Section 16(d) of the 1992 Cable Act and Section 623(b) of the Communications Act, as amended, and note that Congress specifically expressed a "[p]reference for competition" over regulation in setting rates for cable services. In addition, we seek comment on whether and on what basis the Commission should establish a transition period, during which rates would remain regulated, while the market for cable home wiring becomes competitive. We also ask for comment on whether, if the Commission is statutorily required to regulate cable inside wiring rates, we should provide incentives to cable operators to permit pretermination access, for example, by providing that, if an operator allows subscribers to access the home wiring prior to termination of service, or sells the wiring to the subscriber (upon installation or any time thereafter), the operator may then charge the subscriber whatever rate it wishes to reconfigure or perform maintenance on the wiring.

36. In order to promote the efficient transfer of service, we thus seek comment on establishing a requirement that subscribers own their inside wiring upon installation of cable service, on a going-forward basis. We note that our current rules, as Title VI requires, already permit cable operators to recover the costs of inside wiring installation. We solicit comment on whether we should require cable operators to sell the wiring upon installation of cable service. We seek comment on the best way to achieve this. For example, should we require cable operators to include the cost of the wiring as well as the cost of labor to install the wiring in the cost of installation of cable service? We seek comment on whether it is necessary for the Commission to detail how these costs are to be recovered, e.g., in a one-time initial payment, or on a monthly basis for some maximum number of

months. Under the latter approach, we would intend for full ownership of the wiring to be vested in the subscriber once the subscriber pays any portion of the costs associated with the wiring. We understand that cable operators would need time to implement this approach; therefore, we seek comment on requiring cable operators to adopt this approach as of some date certain in the future, *e.g.*, six, 12 or 18 months following adoption of the requirement.

37. Alternatively, we seek comment on whether the Commission can and should create a presumption that the subscriber owns his or her cable inside wiring. As we noted in the *Cable Wiring Order*, the subscriber often already owns the home wiring, such as where the subscriber was charged for the wiring upon installation, or, at least in the case of single family dwellings, where the applicable state or local law treats the wire as a "fixture," or the previous occupant already owned the home wiring, either by purchasing the wiring upon voluntary termination of service or because the operator failed to remove it within the time allowable under our rules. We seek comment on whether this presumption could be rebutted by the cable operator or be an irrebuttable presumption. If rebuttable, we seek comment on what kind of showing cable operators would have to make to overcome a presumption that the subscriber owns his or her home wiring, what type of records operators would be required to keep, any constitutional or statutory impediments to such a presumption, and when such a process would occur. We also seek comment on our concern that, at least for existing wiring, operators may possess inadequate records to demonstrate ownership. If irrebuttable, we seek comment on how such a relinquishment of ownership rights could be structured consistent with constitutional and statutory requirements, and what deadlines should be imposed in order to permit cable operators to obtain full compensation for their inside wiring costs.

4. *Compensation for Wiring.—a. Background.* 38. The Commission's rules compensate cable operators for their costs of installing the subscriber's cable home wiring. With respect to telephone wiring, as previously noted, the Commission deregulated the installation of simple inside wiring and the maintenance of all inside wiring, effective January 1, 1987. We then precluded carriers from imposing restrictions upon the removal, replacement, rearrangement or maintenance of inside wiring.

39. Currently, cable operators must elect a uniform installation charge that is based upon either the product of the hourly service charge and the person hours of the visit, or the product of the hourly service charge and the average hours spent per installation visit. Further, the rules prescribe a per-foot replacement cost upon termination of service. We stated in the *Cable Wiring Order* that the per-foot charge should be based on the replacement cost of coaxial cable in the community, and gave as an example for which the cost was approximately six cents per foot.

b. *Request for Comment.* 40. We seek comment on whether our current rules for compensation of broadband cable should change if, for example, we move the demarcation point for cable systems to the minimum point of entry in multiple dwelling unit buildings or some other point, including some point farther than 12 inches from the subscriber's premises. We also seek comment on providing compensation to telephone companies for the cost of an additional segment of what is now a customer's narrowband telephone loop, if it is determined that the demarcation point for the telephone network will be placed 12 inches outside the customer's premises, or at some point inside of the minimum point of entry.

E. Dual Regulation

1. *Background.* 41. As described above, the Commission has established rules to govern the technical performance of cable systems, the disposition of wiring upon termination of service, and subscriber rates for the installation, maintenance and sale of equipment necessary to receive cable service generally, including inside wiring. The local franchising authority generally is the first line of enforcement of all such rules, while the Commission will, either informally or by rule, resolve disputes that may arise between a cable operator and the local franchising authority.

42. Because most local telephone exchange facilities are used jointly to provide interstate and intrastate telephone services, they are regulated by both federal and state regulatory authorities. The extent of dual regulation depends generally on whether the Commission has preempted state authority to regulate exclusively a particular aspect of telephone service rates.

43. With respect to simple wiring services, however, we have maintained certain federal standards with which state regulations must comply. For example, if a state chooses to regulate the rates under which telephone

companies provide simple inside wiring, the state regulations must require the telephone companies to unbundle the inside wiring charges from the charges for basic transmission services. Moreover, a state may not establish rules that will impede the competitive provision of telephone inside wiring. In addition, any state regulations governing the terms or conditions under which inside wire services are provided must be consistent with the technical standards set forth in Part 68 of our rules.

44. In addition, the Commission has instituted a system to monitor state regulatory programs for inside wire to assess their impact on our goal of achieving full competition in the market for inside wire services. We require a telephone company with annual operating revenues of \$100 million or more to file with the Commission a copy of any state or local statute, rule, order, or other document that regulates, or proposes to regulate, the price or prices the telephone companies charge for inside wire services.

2. *Request for Comment.* 45. We first solicit comment on whether it may be necessary to harmonize these respective disparate systems of regulation as the similarity increases between the technology employed to deliver telephony and video programming. For example, as stated previously, it is possible that in the future both telephony and video programming will be delivered over a single wire; thus, an issue may arise over which dual system regulation should govern, *i.e.*, Commission-local franchising authority (cable service) or Commission-state public utility commission (telephone service). We seek comment on whether the Commission has legal authority to change or harmonize these dual systems of regulation to accommodate the situation where broadband or multiple services are provided over a single wire or multiple wires, and how this could be accomplished. Similarly, if we were to adopt a common demarcation point for both cable and telephone networks, confusion also might arise over which relationship between local and federal authorities should govern. Therefore, we also seek comment generally on any conflicts that may arise from unifying these disparate systems of dual regulation between cable and telephone service for inside wiring, in light of the definition of the network or system demarcation points as well as the other standard technical requirements for the two services.

46. We also ask commenters to discuss the role of non-federal regulation in setting the prices, terms

and conditions for telecommunications services inside wiring. Currently, many local regulators regulate cable wiring. We seek comment on whether the non-federal regulation of telephone wiring should be altered if the delivery systems for telephony and video programming become more similar. With respect to federal involvement, difficulties also may arise in determining the proper level of our involvement in the oversight of wiring as telephone and video programming technologies advance. In this context, we seek comment on whether we should expand or decrease our monitoring of charges for inside wiring used to provide video service, or increase or decrease our oversight of telephone inside wiring.

F. Service Provider Access to Private Property

1. *Background.* 47. We also wish to examine the right of various service providers to obtain access to private property, such as multiple dwelling unit buildings, private housing developments, and office buildings. If, in the interest of competitive parity, we ultimately were to adopt a uniform demarcation point for the networks of all companies providing similar services, that goal may not be achieved if all providers do not have equal access to the customer's wiring at the demarcation point.

48. Telephone companies traditionally have gained access to private property through private easements and contracts with the property owners. As common carriers, they also have the use of public right-of-ways and can exercise the power of eminent domain. Thus, when they seek to provide telephone service, there has been little objection to their right to access private property.

49. Cable operators' right to gain access to private property has been less clear. Currently, approximately thirteen states have passed some form of cable mandatory access statute, including Connecticut, Delaware, Florida, Illinois, Kansas, Maine, Minnesota, Nevada, New Jersey, New York, Pennsylvania, Rhode Island and Wisconsin.

2. *Request for Comment.* 50. Parity of access rights to private property may be a necessary predicate for any attempt to achieve parity in the rules governing cable and telephone network inside wiring, because without access to the premises, the inside wiring rules and proposals discussed in this *NPRM* will not even be implicated. An inequality in access can unfairly benefit one provider over another. In addition, we have received conflicting information about the ability of alternative service

providers to obtain the permission of multiple dwelling unit building owners: (a) to enter the building at all; (b) to run a common feeder line up a stairwell, for example, to a security closet or lockbox; and (c) to run individual wiring down hallways from the lockbox to individual units. We seek comment on the legal and practical impediments faced by telecommunications service providers in gaining access to subscribers. For instance, as discussed above, moving the cable demarcation point farther away from the subscriber, such as back to the lockbox, could alleviate much of the access problem if building owners primarily objected to running additional wiring down the hallways; on the other hand, moving the demarcation point may have little impact if building owners have been denying alternative providers access to the property altogether.

51. We seek comment on the above discussion and several other specific issues related to provider access. First, we seek comment on the current status of the law regarding access to private property by cable operators and telephone companies. For instance, what type(s) of access do state statutes granting mandatory access for cable operators provide? Who qualifies for such mandatory access (e.g., only franchised cable operators)? Have cable operators been successful in obtaining access to private property under any other statutory or common law theories? Similarly, what type(s) of access to private property do the states grant to telephone companies? Is such access related to the type of service provided or to the identity of the company? Do the statutes permit telephone companies to obtain access to private residences, such as multiple dwelling units, or simply to run their lines across private property? In other words, can an individual resident in a multiple dwelling unit obtain telephone service over the property owner's objection?

52. We also seek comment on whether and how the rules governing access to customers' premises should be harmonized in a world in which the cable operator, the telephone company and possibly others may be offering telephony, video and other services over a single wire. Can and should cable operators that offer telephony be permitted to use the telephone companies' easements to obtain access to private property? Can and should cable operators or telephone companies, if they have an easement to provide telephony, also be permitted to provide video or other services using the same easement? Should it make a difference whether the services are provided over

one wire or two? We seek comment on whether allowing a company that possesses an easement for one service to rely on that easement in providing another service would constitute an impermissible "taking" without just compensation, in contravention of the property owner's Fifth Amendment rights.

53. Finally, we request comment on whether the Commission can and should attempt to create access parity among service providers, and what our rules should say regarding the terms of such access. We also seek comment on any statutory or constitutional impediments to this goal. In particular, we ask commenters to address the concern that any right of access to private property may constitute an impermissible "taking" in violation of the property owner's Fifth Amendment rights. We realize that a number of these potential service providers are not common carriers and their right to access is not well established in state or federal law. We seek comment on the potential constraints this lack of common carrier status will have on the rules we prescribe.

G. Customer Premises Equipment

1. *Background.* 54. Telephone-related customer premises equipment (CPE) constitutes all telephone equipment located on the customer's side of the demarcation point, including private branch exchanges (PBXs), key systems, modems, and telephone handsets. In the Computer II Final Decision, we concluded that Title II regulation of CPE was no longer warranted. We found that deregulation "fosters a regulatory scheme which separates the provision of regulated common carrier services from competitive activities that are independent of, but related to, the underlying utility service." Earlier decisions removed tariff provisions that restricted customers' rights to attach non-carrier provided CPE to the telephone network. Those earlier efforts culminated in a registration program that allows consumers to connect their own equipment to the network if the equipment conforms to certain technical standards and is properly registered with the Commission under Part 68 of our rules. These decisions confirmed the existence of broad consumer right under Sections 201(b) and 202(a) of the Act.

55. In *Computer II*, we were also concerned that carriers' practices of bundling CPE charges with charges for basic services could undermine our efforts to ensure that regulated service rates accurately reflected the costs of providing the associated service. Given

the variety of CPE products and suppliers, we were confident that our unbundling and detariffing of CPE would not adversely affect consumers.

56. Cable-related CPE, regulated under Part 15 of the Commissions rules for emission and interference, generally includes equipment located on the customer's side of the demarcation point, such as television receivers ("TVs"), video cassette recorders ("VCRs"), remote control units, and set-top converter descramblers ("set-top boxes"). We note that most of the current cable-related CPE mentioned, such as TVs and VCRs, were designed and can function without connection to cable systems, whereas practically all telephone-related equipment is specifically designed to be connected to telephone networks. As such, a number of issues may exist regarding the connection of customer-owned CPE to cable system equipment, including loss of CPE features and requiring a set-top box to receive cable service. While set-top boxes are generally provided by the cable operator, TVs and VCRs are generally provided by the subscriber. In addition, we anticipate that future CPE used by cable and telephone subscribers may include computers, component decoders and tuning devices, and facilities used for interactive services. Often, cable operators protect their extended basic and premium services with proprietary scrambling techniques. In these cases, the subscriber must obtain the descrambler converters from the cable operator. Our current cable regulations do not specifically address the rights of cable subscribers to connect CPE to cable operators' facilities. Therefore, unlike equipment used to receive common carrier telephone service, there is some ambiguity as to whether cable operators may prohibit or limit subscribers' ability to connect CPE to operators' facilities for services other than cable service.

57. The 1992 Cable Act directed the Commission to establish standards that relied upon actual cost to set the rates charged to lease equipment used by subscribers to receive basic cable service. Only some cable-related CPE are subject to this statutory provision, including set-top boxes, remote control units, connections for additional outlets, and inside wiring. We note that the 1992 Cable Act also directed the Commission to ensure compatibility between consumer equipment and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefits of both the programming available on cable systems

and the functions available on their television receivers and VCRs.

58. What is more, and as stated previously, we anticipate that the technologies used to deliver and receive cable and telephone service may become more similar. For example, future video programming and telephony may not only be delivered over a single broadband wire, but future subscribers may receive both services using a single piece of equipment, such as a computer modem or a "videophone." It is also possible that the subscriber may only need one piece of customer premises equipment to interact with both services, such as an enhanced set-top box or stand-alone interface unit. In addition, multi-use devices may be developed that allow subscribers to receive video, data and voice services, akin to the present functions of a telephone modem used to reach computer networks. In such cases, the disparate regulatory schemes for cable-related CPE and telephone-related equipment could cause confusion for service providers as well as subscribers and regulators. For example, service providers may be uncertain whether rates for such equipment are subject to regulation. Similarly, subscribers may be uncertain of their rights to connect CPE to the network(s) over which they receive service.

2. *Request for Comment.* 59. *Interconnection.* Since the Commission deregulated telephone CPE, the Commission's goals of promoting marketplace entry by communications equipment vendors, increasing competition among these vendors, and producing cost savings for both consumers and common carriers have largely been fulfilled. We believe that exploring and possibly establishing the rights of consumers to provide and connect unregulated CPE to cable operator facilities can similarly benefit cable subscribers. We also believe that creating a record on these and other related issues will enable the Commission to establish simple and pro-competitive rules setting forth the rights and responsibilities of both service providers and subscribers with respect to CPE.

60. We therefore seek comment on the costs and benefits of harmonizing or revising our rules to accommodate better the possible convergence of technologies used to receive and to interact with network-delivered video programming and telephony. We seek comment on whether to allow customers to use and connect their cable-related CPE, such as set-top boxes, to cable facilities while allowing cable operators to protect their legitimate

security interests and to provide new and innovative services without inhibiting the use of existing customer CPE. We recognize that new and innovative services often require proprietary equipment which may not be compatible with existing CPE. We seek comment on the technical and economic impediments to requiring new services to be compatible with existing CPE. We also solicit comment on whether we should establish a common regulatory scheme to govern both cable and telephone network CPE.

61. We also understand that the technology of future CPE may take a variety of forms (e.g., component decoders, computer modems). We note that technologies to deliver voice and video service on an integrated basis continue to evolve. We seek comment on whether we should tailor our rules to accommodate different types of CPE technologies and functions. For example, perhaps there should be a different set of rules for cable-related equipment that is designed to both transmit and receive, than for equipment that is designed only to receive. We tentatively conclude that consumers should be able to connect cable-related equipment, as well as purchase this equipment, and seek comment on how the Commission may best achieve this goal. We note that in the 1992 Cable Act, Congress recognized that there are a number of compatibility problems between cable service and consumer electronics equipment. Congress was particularly concerned about the inability of cable subscribers to use the special features and functions of their TV sets and VCRs when receiving cable signals which are most often precluded by the use of a cable supplied set-top box. These features include picture-in-picture, timed recordings and the ability to view one channel while recording another. Presently, the Commission is awaiting finalization of a standard for a Decoder Interface connector. This standard is being developed by the Cable-Consumer Electronics Compatibility Advisory Group in conjunction with the Joint Engineering Committee of the Electronics Industry Association and NCTA. We believe that special rules must govern subscribers' access to and connection of CPE with access control functions that are consistent with these efforts. In this context, we seek comment on how best to protect against theft of cable service or other damage to cable operators' facilities if we were to change our rules to accommodate the possible convergence of technology used to deliver and receive cable and

telephone service. We also note that the Commission has taken steps to ensure enhanced compatibility between consumer electronics equipment and cable operators' facilities. See *In the Matter of Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992: Compatibility Between Cable Systems and Consumer Electronics Equipment*, ET Docket 93-7, 9 FCC Rcd 1981 (1994), 58 FR 7205 (Feb. 2, 1993). The regulations adopted in the equipment compatibility proceeding will allow consumers to utilize customer premises equipment offered by a variety of suppliers, including the cable operator, in a competitive market.

62. We are not proposing to change our *Computer II* framework for equipment connected to narrowband facilities, or for equipment used in conjunction with Title II services but not Title VI services. We tentatively conclude that CPE used in conjunction with Title VI services provided over narrowband facilities should also be governed by *Computer II*, and seek comment on this tentative conclusion, including any security concerns that are raised by such a conclusion.

63. We note that Part 68 of the Commission's rules establishes standards for telephone-related CPE and an equipment registration program that are designed to ensure the reliability of telephone networks. Network reliability and safety must be maintained as entities other than traditional telephone companies begin to offer both voice and video services that use or interconnect with the public switched network. We thus seek comment on whether the Commission should enlarge the current registration program to cover cable-related CPE that use or interconnect with the public switched network, if such interconnection is to occur. We further seek comment on whether an equipment registration program similar to the existing Part 68 program should be established for manufacturers of equipment used with future services, both broadband and narrowband, to ensure the integrity and reliability of these networks. Finally, we seek comment on how such a program should be structured to define the rights of both the service providers and the network subscribers, while ensuring the development and maintenance of a competitive CPE market. Such policies might include adoption of standards, for example, such as the Commission has adopted for telephone equipment in Part 68 of its rules.

64. *Equipment Rates.* We believe that improving cable subscribers' rights to acquire and provide their own cable-

related CPE would benefit subscribers. Such rules would give subscribers the choice of purchasing, installing or maintaining CPE themselves, or having a vendor other than the cable operator do so. This should promote marketplace entry by communications equipment vendors and facilitate competition among these vendors, as we have seen in the telephone context. A competitive marketplace should lead to the development of innovative types of CPE, improved performance of existing and new CPE, and improved maintenance of CPE.

65. As previously stated with respect to equipment rates, the 1992 Cable Act directed the Commission to establish a rate-setting methodology for equipment used to receive basic cable service, including set-top boxes, remote control units, wiring, and additional cable outlets. In response, the Commission's regulations link maximum permitted rates for regulated equipment to operators' actual costs of providing the equipment. We note, however, that Congress exhibited a clear preference for competition over regulation in the setting of rates for cable service and equipment.¹ We believe that deregulating rates for currently regulated CPE would be in the public interest if the marketplace for CPE becomes competitive, and seek comment on this tentative conclusion. We wish to make clear that we are not proposing to re-regulate currently deregulated telephone CPE rates. We also seek comment on whether the Commission has authority to deregulate cable CPE rates under the Communications Act, and specifically whether the Commission possesses such authority under Sections 623(b), 632(b), 4(i), and 1. We further seek comment on whether specifically deregulating rates for currently regulated CPE would be inconsistent with the 1992 Cable Act, given that market forces in the resulting marketplace should determine rates. Finally, we seek comment on whether it would be necessary to establish a transition period prior to the deregulation of currently regulated CPE rates, until a competitive marketplace for CPE exists.

III. Initial Regulatory Flexibility Act Analysis

66. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis ("IRFA") of the expected impact of these proposed policies and rules on small entities. Written public comments

are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *NPRM*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall cause a copy of the *NPRM*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

67. The Commission issues this *NPRM* to consider changes in our telephone and cable inside wiring rules and policies in light of today's evolving and converging telecommunications marketplace.

68. *Objectives.* To explore the development of new cable and telephony service rules in the following areas in light of converging technology: demarcation point, means of connection, simple and complex residential and non-residential wiring, installation, maintenance, access and ownership of inside wiring, compensation, dual regulation and service provider access.

69. *Legal Basis.* Action as proposed for this rulemaking is contained in Section 1, 4(i), 201-205, 214-215, 220, 623, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214-215, 220, 543 and 552.

70. *Description, Potential Impact and Number of Small Entities Affected.* The proposals, if adopted, will not have a significant effect on a substantial number of small entities.

71. *Reporting, Recordkeeping and Other Compliance Requirements.* None.

72. *Federal Rules which Overlap, Duplicate or Conflict with these Rules.* None.

73. *Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives.* None.

IV. Procedural Provisions

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

75. 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

¹47 U.S.C. § 543(a)(2).

reply comments, you must file an original plus nine copies. Comments are due on March 18, 1996, and reply comments are due on April 17, 1996. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 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 N.W., Washington D.C. 20554.

V. Ordering Clauses

76. It is ordered that, pursuant to Sections 1, 4(i), 201-205, 214-215, 220, 623, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214-215, 220, 543 and 552, NOTICE IS HEREBY GIVEN of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this *Notice of Proposed Rulemaking*, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

77. It is further ordered that the Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

78. It is further ordered that the Petition for Rulemaking filed by the Media Access Project, *et al.*, to the extent it concerns making cable home wiring rules the same as those governing telephone inside wiring, is hereby granted.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

[FR Doc. 96-2169 Filed 1-31-96; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 112995B]

Negotiated Rulemaking Advisory Committee on Tuna Management in the Mid-Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for comments.

SUMMARY: Commerce is considering establishing a new advisory committee under the Federal Advisory Committee Act (FACA). The committee's purpose would be to negotiate issues leading to a proposed rulemaking that will resolve the gear conflict between recreational and commercial fishermen competing for tuna off the Mid-Atlantic coast. The committee would consist of representatives of parties with a definable stake in the outcome of the proposed rule.

DATES: Comments must be submitted on or before March 4, 1996.

ADDRESSES: Comments should be submitted to the Highly Migratory Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 301-713-2347.

I. Introduction

In accordance with the Presidential directive of March 4, 1995, the report of the National Performance Review, entitled "Creating a Government that Works Better and Costs Less", and Executive Order 12866 to utilize Negotiated Rulemaking (NRM), the Secretary of Commerce (Secretary) pledged to utilize the technique of NRM, where appropriate. In March 1995, NOAA suggested, and Commerce accepted, the National Fishing Association's petition as the basis for such a procedure.

The project's stated purpose is to resolve the gear conflict between the recreational and commercial fishermen competing for access to tuna fishery areas off the Mid-Atlantic coast. The project will bring together a balanced mix of parties and interests to negotiate at the pre-proposal stage. The goal of the negotiation is to reach consensus on proposals and/or language that will be the basis of the rule. Negotiations will be conducted through an advisory committee chartered under FACA. All procedural requirements of the Administrative Procedure Act and other applicable statutes continue to apply.

A senior official selected by NMFS will act as the designated Federal officer on behalf of NMFS. Individuals representing definable interests in the fishing industry, environmental community, academia, governmental and quasi-governmental entities will negotiate on behalf of their constituencies. A neutral mediator will

keep the process moving smoothly and assist in resolving disputes.

NMFS is optimistic that this process can produce better regulations, use all parties' time and resources more wisely, and reduce litigation and uncertainty.

II. Procedures and Guidelines

A. Procedures for Establishing an Advisory Committee

NMFS has prepared a charter and has initiated the requisite consultation process. Only upon the successful completion of this process and the receipt of the approved charter will Commerce form the committee and commence negotiations.

B. Participants

The negotiating group should not exceed 21 participants. Participants must be willing to negotiate in good faith and be authorized to do so. One purpose of this notice is to help determine whether the rule that NMFS is developing would substantially affect interests not adequately represented by the proposed participants (listed later in this notice). NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each interest must be adequately represented. The intent is to have a group that as a whole reflects a proper balance and mix of interests.

The National Marine Fisheries Service will provide the necessary administrative support, including technical assistance, for the proposed committee.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation in the negotiating group, NMFS, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. The Secretary will make the final decision based on whether the individual or interest would be substantially affected by the rule or whether the individual is already adequately represented in the negotiating group.

D. Tentative Schedule

NMFS plans to hold the first meeting of the advisory committee in March 1996, with three additional meetings to follow, scheduled at 2-week intervals or until consensus is reached on a proposed rule, whichever occurs first. Another committee meeting may be necessary after publication of the proposed rule if the comments received reflect that substantial controversy