

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. 97-5355 Filed 3-4-97; 8:45 am]

BILLING CODE 6712-01-P

#### 47 CFR Part 73

[MM Docket No. 97-85, RM-9026]

#### Radio Broadcasting Services; Belgrade, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Gallatin Valley Witness, Inc., proposing the allotment of Channel 256A to Belgrade, Montana, as that community's second local FM broadcast service. The coordinates for Channel 256A are 45-46-36 and 111-10-36.

**DATES:** Comments must be filed on or before April 21, 1997, and reply comments on or before May 6, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Bryan Cave LLP, 700 Thirteenth Street, NW, Suite 600, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-85, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services,

Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857-3800. 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* contact.

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. 97-5356 Filed 3-4-97; 8:45 am]

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#### 47 CFR Part 73

[MM Docket No. 97-83; RM-8948]

#### Radio Broadcasting Services; Westport, WA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Chehalis Broadcasting Company proposing the allotment of Channel 267A at Westport, Washington, as the community's first local aural transmission service. Channel 267A can be allotted to Westport in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 267A at Westport are North Latitude 46-53-24 and West Longitude 124-06-06. Since Westport is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

**DATES:** Comments must be filed on or before April 21, 1997, and reply comments on or before May 6, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry E. Crawford, Esq., 1150 Connecticut Ave., NW., Suite 900, Washington, DC 20036 (Counsel for Petitioner).

#### FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-83, adopted February 21, 1997, and released February 28, 1997. 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, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 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. 97-5358 Filed 3-4-97; 8:45 am]

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#### 47 CFR Part 76

[CS Docket No. 97-80; FCC 97-53]

#### Commercial Availability of Navigation Devices

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Communications Commission seeks comments on proposals to implement Section 629 of the Communications Act of 1934, as amended, 47 U.S.C. 549, concerning the commercial availability of navigation devices. This notice is prompted by Section 304 of the 1996 Telecommunications Act, which became law on February 5, 1996, adding this provision to the Communications Act. This action is intended to implement the 1996 Act.

**DATES:** Comments are due on or before May 16, 1997 and reply comments are due on or before June 16, 1997.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION, CONTACT:** Technical Information: Michael Lance, Cable Services Bureau, (202) 418-7014. Legal Information: Barrett L. Brick, Cable Services Bureau, (202) 418-1065. **SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking, CS Docket No. 97-80, adopted February 11, 1997 and released on February 20, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1919 M Street, NW., Washington, DC 20554.

#### Synopsis of the Notice of Proposed Rule Making

1. In this notice of proposed rulemaking, the Commission seeks comment on proposals to implement Section 629 of the Communications Act, added as part of the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) (1996 Act). Section 629 instructs the Commission to promote the commercial availability to consumers of navigation devices: That is, equipment used to access multichannel video programming and other services offered over multichannel video programming systems. The Commission is also instructed not to jeopardize the security of services offered over multichannel video programming systems.

2. The Commission first seeks comment regarding the scope and meaning of Section 629. The Commission tentatively concludes that the coverage of Section 629 is broad in terms of the multichannel video programming distributors (MVPDs) involved, including cable television, multichannel broadcast television, DBS, MMDS, and SMATVs. The Commission also tentatively concludes that Section 629 is broad in terms of the type of equipment covered, including not just equipment used to receive video programming, but also equipment used to access other services offered by MVPDs over their systems. The Commission seeks comments on these conclusions, and also on methods to narrow the focus of the rulemaking process and rules adopted in order best to accomplish the statutory objectives.

3. The Commission seeks comment on the meaning of commercial availability in the context of Section 629. The Commission proposes to incorporate a consumer right to attach equipment into the rules, modeled after the telephony right to attach which had its genesis in Carterphone, 13 FCC 2d 420, recon. denied, 14 FCC 2d 571 (1968), and seeks comment on this proposal. The Commission recognizes that in implementing Section 629, there is a need to assure that customer premises equipment (CPE) does not cause harm to the network to which the CPE is attached, and that the networks technical integrity is maintained. The Commission seeks comment on how best to accomplish this task. The Commission tentatively concludes that existing Part 15 certification rules should adequately address signal leakage issues surrounding existing navigation devices, and seeks comment on this conclusion. The Commission also seeks comment on whether the marketplace will sufficiently address signal quality issues involving navigation devices.

4. Section 629 requires that navigation devices be commercially available from vendors not affiliated with any MVPD. The Commission tentatively concludes that the definition of affiliate in Section 3 of the 1996 Act, which establishes a ten percent equity interest threshold, is applicable to Section 629 and seeks comment on this conclusion.

5. The Commission seeks comment not only on issues raised by current equipment distribution models, but also on whether and what degree of standardization might be necessary so that navigation devices may be geographically portable or may be interoperable to function with different types of MVPDs or both. The Commission seeks comment on the incremental cost of additional capabilities in this context. The Commission also seeks comment on the process whereby any necessary standards might be developed to promote competition. The Commission states its desire not to develop standards itself, but rather urges the adoption of voluntary standards by those affected. The Commission seeks comment on the techniques it should use should standards prove to be necessary or desirable toward assuring the commercial availability of navigation devices, including alternatives to actual standard setting.

6. The Commission recognizes that some of the technologies implicated by this proceeding may be wholly or partially proprietary in nature. The Commission seeks comment on its

authority to affect proprietary rights, and on what limitations existing proprietary rights may place on the Commission's authority to mandate commercial availability of navigation devices.

7. Section 629 instructs the Commission not to jeopardize the security of services offered over multichannel video programming systems, nor to impede service providers' legal rights to prevent theft of service. In order to fashion effective rules that fulfill this requirement, the Commission seeks data and information on existing security methodologies employed by MVPD industries, and seeks comment on what it means to jeopardize security and to impede a programmer's rights to prevent theft of service. The Commission recognizes that equipment that performs security functions is often combined with equipment that performs other functions. The Commission seeks comment on the possibility of unbundling security from nonsecurity equipment. The Commission tentatively concludes, should such unbundling be necessary, that the preferred option for developing the necessary framework to accomplish this would be to adopt only a conduct or performance rule mandating the separation involved, leaving to the industry participants involved the task of developing the necessary interface standards. The Commission also seeks comment on whether the affected industries could voluntarily adopt and the Commission approve a variant of the decoder interface connector discussed in the First Report and Order in ET Docket No. 93-7, 9 FCC Rcd 1981, 59 FR 25339 (May 16, 1994) and in the Memorandum Opinion and Order in ET Docket No. 93-7, 11 FCC Rcd 4121, 61 FR 18508 (April 26, 1996). The Commission also seeks comment on the impact of the 1996 Act's amendments to Section 624A of the Communications Act on the Commission's authority under Section 629.

8. Section 629 allows MVPDs to offer navigation devices to consumers if the charges are separately stated and not subsidized by charges for the service accessed by the devices. The Commission tentatively concludes that continuing with existing forms of regulations that are broadly intended to constrain the subsidization of equipment prices from regulated service revenues is most consistent with the 1996 Act, and seeks comment on this conclusion, as well as on alternative means of addressing subsidy issues.

9. Section 629 requires the Commission to waive any implementing

regulation adopted for a limited period of time upon an appropriate showing that such a waiver is necessary to assist the development or introduction of new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. The Commission tentatively concludes that where such waivers are required and requested, these requests should be looked upon sympathetically and expansively. The Commission seeks comment on this analysis. The Commission also seeks comment on whether guidelines need to be set to define the limited time contemplated, and also on whether the Commission's existing waiver procedures need to be modified to comply with the statutory mandate that the Commission act on a waiver within 90 days of its filing.

10. Section 629 provides that implementing regulations which are adopted shall cease to apply upon a Commission determination that the MVPD market is fully competitive, that the market for navigation devices is fully competitive, and that elimination of the regulations will promote competition and the public interest. The Commission seeks comment on the service category and geographic market analyses required, as well as the circumstances in general under which regulatory involvement might terminate. The Commission tentatively concludes that regulations for certain types of equipment may not need to be adopted in the first place if competition is already fully robust, and seeks comment on this conclusion.

#### Initial Regulatory Flexibility Analysis

11. As required by Section 603 of the Regulatory Flexibility Act ("RFA"),<sup>1</sup> the Commission has prepared the following Initial Regulatory Flexibility Analysis ("IRFA") of the expected significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. 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 Notice but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this Notice to be sent to the Chief Counsel for Advocacy of the Small Business Administration

<sup>1</sup> 5 U.S.C. 603. The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the "Small Business Regulatory Enforcement Fairness Act of 1996" ("SBREFA"), codified at 5 U.S.C. 601 et seq.

("SBA") in accordance with 5 U.S.C. 603(a).

12. Need for and Objectives of the Proposed Rules: The 1996 Act requires the Commission to promulgate rules designed to promote the commercial availability of navigation devices. The Commission is issuing this Notice to seek comment on the proposed rules intended to implement this provision of the 1996 Act, and to provide a record for a Commission decision on issues discussed in the Notice.

13. Legal Basis: Authority for this proposed rulemaking is contained in Sections 4(i), 4(j), 303(r), and 629 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), 303(r), and §§ 304 and 549 of the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996).

14. Description and Estimate of Small Entities to Which the Proposed Rules Will Apply: Implementation of Section 304 will have the positive result of opening up to small entities the market to supply navigation devices directly to cable and other subscribers. In addition, small businesses will have the opportunity to become the manufacturers of navigation devices. While any policies or rules developed in this proceeding could have an impact on small businesses that manufacture, distribute, or use converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, this proceeding seeks comment on how this burden, if any, could be mitigated for small entities.

15. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.<sup>2</sup> A small concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

16. Small MVPDs: SBA has developed a definition of small entity for cable and other pay television services, which includes all such companies generating less than \$11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the

<sup>2</sup> 5 U.S.C. 601(3) (1980).

Census Bureau, there were 1,323 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992.<sup>3</sup>

17. Cable Systems: The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.<sup>4</sup> Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.<sup>5</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Notice.

18. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>6</sup> The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.<sup>7</sup> Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.<sup>8</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the

<sup>3</sup> U.S. Census Bureau, 1992 Economic Census, 1992 Census of Transportation, Communications and Utilities at Firm Size 1-123.

<sup>4</sup> 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 60 FR 35854 (July 12, 1995).

<sup>5</sup> Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>6</sup> 47 U.S.C. 543(m)(2).

<sup>7</sup> 47 CFR 76.1403(b).

<sup>8</sup> Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

19. MMDS: The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.<sup>9</sup> This definition of a small entity in the context of the Commission's Report and Order concerning MMDS auctions that has been approved by the SBA.<sup>10</sup>

20. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MDS facility generates revenue in excess of \$11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

21. ITFS: There are presently 2032 ITFS licensees. All but one hundred of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.<sup>11</sup> However, we do not collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1932 licensees are small businesses.

22. DBS: As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of

capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

23. HSD: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.<sup>12</sup> HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.<sup>13</sup>

24. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers.<sup>14</sup> These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide.<sup>15</sup> This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

25. SMATVs: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995.<sup>16</sup> Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of

September 1996.<sup>17</sup> The ten largest SMATV operators together pass 815,740 units.<sup>18</sup> If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

26. LMDS: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). A small radiotelephone entity is one with 1500 employees or less.<sup>19</sup> However, for the purposes of this Notice, we include only an estimate of LMDS video service providers.

27. LMDS is a service that is expected to be auctioned by the FCC in 1997. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the Third NPRM, we proposed to define a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than \$40 million.<sup>20</sup> We have not yet received approval by the SBA for this definition.

28. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> 13 CFR § 121.201.

<sup>20</sup> In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference ("Third NPRM"), CC Docket No. 92–297, 11 FCC Rcd 53, at ¶188, 60 FR 43740 (August 23, 1995).

<sup>9</sup> 47 CFR 21.961(b)(1).

<sup>10</sup> See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–31 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 60 FR 36524 (July 17, 1995).

<sup>11</sup> SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. 601(5).

<sup>12</sup> Report in CS Docket No. 96–133 ("1996 Competition Report"), FCC 96–496 at ¶ 49, 62 FR 5627 (February 6, 1997).

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> 1996 Competition Report at ¶181.

and our proposed auction rules. We tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA and the Commission's proposed definition.

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

30. **Electronic Equipment Manufacturers:** The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment. Therefore, we will utilize the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment.<sup>21</sup> According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.<sup>22</sup> Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.<sup>23</sup> The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately 778 small manufacturers of radio and television equipment.

31. **Electronic Household/Consumer Equipment:** The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.<sup>24</sup> Census Bureau data indicates that there are 410 U.S. firms that

manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities.<sup>25</sup> The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use.

32. **Computer Manufacturers:** The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of Electronic Computers. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.<sup>26</sup> Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities.<sup>27</sup> The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition. We conclude that there are approximately 659 small computer manufacturers.

33. **Small Retailers:** The Commission has not developed a definition of small entities applicable to navigation retail devices. Therefore, we will utilize the SBA definition. The 1992 Bureau of the Census data indicates: there were 9,663 U.S. firms classified as Radio, TV & electronic stores (SIC 5731), and that 9,385 of these firms had \$4.999 million or less in annual receipts and 9,473 of these firms had \$7.499 million or less in annual receipts.<sup>28</sup> Consequently, we

tentatively conclude that there are approximately 9,663 small entities that produce and distribute radio, television, and electronic stores that may be affected by the decisions and rules proposed in this Notice.

34. **Reporting, Recordkeeping, and Other Compliance Requirements:** The proposed actions may require MVPDs to obtain security modules for sale to subscribers. They may also prohibit MVPDs from providing CPE which is not commercially available. In addition, the proposed actions may require MVPDs to make available to consumers basic technical information concerning the network to which a navigation device is to be attached (paragraph 56). This latter proposal, if adopted, would not necessitate any additional professional, engineering, or customer service skills beyond those already utilized in the ordinary course of business by MVPDs. Any costs to the MVPD would be justified by the competitive benefits; MVPDs and consumers will benefit from an increased, more innovative, and more competitive market for navigation devices. We seek comment on this.

35. **Any Significant Alternatives Minimizing the Impact On Small Entities Consistent With the Stated Objectives:** We believe that our proposals will have the positive result of opening up to small entities the market to supply navigation devices directly to cable and other subscribers (see discussion at paragraph 84). In addition, small businesses will have the opportunity to become the manufacturers of navigation devices (see discussion at paragraph 84). While small businesses would experience costs associated with maintaining for sale navigation devices, should we adopt rules that would require such, we believe such businesses are capable of doing so. Should commenters disagree with this conclusion, we welcome comments suggesting ways in which any perceived burden upon small entities could be mitigated.

36. **Federal Rules Which Overlap, Duplicate or Conflict with Proposed Rules:** None.

#### *Ex Parte*

37. This is a non-restricted notice and comment rule making proceeding. *Ex*

Business Administration) (SBA 1992 Census Report). The Census data does not include a category for \$6.5 million therefore, we have reported the closest increment below and above the \$6.5 million threshold. There is a difference of 88 firms between the \$4.999 and \$7.499 million annual receipt categories. It is possible that these 88 firms could have annual receipts of \$6.5 million or less and therefore, would be classified as small businesses.

<sup>21</sup> This category excludes establishments primarily engaged in the manufacturing of household audio and visual equipment which is categorized as SIC 3651. See *infra* for SIC 3651 data.

<sup>22</sup> 13 CFR 121.201, (SIC) Code 3663.

<sup>23</sup> U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities, Table 1D, (issued May 1995), SIC category 3663.

<sup>24</sup> 13 CFR 121.201, (SIC) Code 3651.

<sup>25</sup> U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3651, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

<sup>26</sup> 13 CFR 121.201, (SIC) Code 3571.

<sup>27</sup> U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3571, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

<sup>28</sup> U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC 7812, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small

*parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

#### Comment Dates

38. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before May 16, 1997 and reply comments on or before June 16, 1997. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 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) of the Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

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

Cable television.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 97-5350 Filed 3-4-97; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN: 1018-AC10

#### Endangered and Threatened Wildlife and Plants, Notice of Reopening of Comment Period on Proposed Threatened Status for the Flat-tailed Horned Lizard

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

**ACTION:** Proposed Rule, notice of reopening of comment period.

**SUMMARY:** The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period on proposed endangered status for the flat-tailed horned lizard (*Phrynosoma mcalli*). The

comment period has been reopened to acquire additional information from interested parties.

**DATES:** The public comment period closes May 9, 1997. Any comments received by the closing date will be considered in the final decision on this proposal.

**ADDRESSES:** Written comments and materials concerning this proposal should be sent directly to the Field Supervisor, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Sandy Vissman at (619) 431-9440.

#### SUPPLEMENTARY INFORMATION:

##### Background

The flat-tailed horned lizard inhabits desert areas of southern Riverside, eastern San Diego, and Imperial Counties in California; southwestern Arizona; and adjacent regions of northwestern Sonora and northeastern Baja California Norte, Mexico. Within the United States, populations of the flat-tailed horned lizard are centered in portions of the Coachella Valley, Ocotillo Wells, Anza Borrego Desert, West Mesa, East Mesa and the Yuma Desert in California; and the area between Yuma and the Gila Mountains in Arizona. The flat-tailed horned lizard occurs on Federal, State, county, and privately owned lands.

This species may be threatened by one or more of the following: commercial and residential development, agricultural development, off-highway vehicle activity, energy developments, military activities, and pesticide use.

On November 29, 1993, the Service published a rule proposing threatened status for the flat-tailed horned lizard. The original comment period closed on January 28, 1994. The Service was unable to make a final listing determination on this species because of a limited budget, other endangered species assignments driven by court orders, and higher listing priorities. In addition, a moratorium on listing actions (Public Law 104-6) that took effect April 10, 1995, stipulated that no funds could be used to make final listing or critical habitat determinations. Now that funding has been restored, the Service is proceeding with a final determination for this species.

Due to the length of time that has elapsed since the close of the initial comment period, changing procedural

and biological circumstances, and the need to review the best scientific information available during the decision-making process, the comment period is being reopened. Such changing circumstances include the recent (October 1996) draft *Flat-tailed Horned lizard Rangewide Management Strategy*, which likely affect the threats facing the species.

The Service seeks information that has become available in the last three years concerning:

- (1) Biological, commercial, or other relevant data on any threat (or lack thereof) to this species; and
- (2) The size, number, or distribution of populations of this species.

Written comments may be submitted until May 9, 1997 to the Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

*Author:* The primary author of this notice is Sandy Vissman.

#### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Dated: February 26, 1997.

Thomas J. Dwyer,

*Acting Regional Director, Region 1.*

[FR Doc. 97-5383 Filed 3-4-97; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 970226037-7037-01; I.D. 022197F]

RIN 0648-AJ39

#### Fisheries of the Exclusive Economic Zone Off Alaska; Management Measures to Reduce Seabird Bycatch in the Hook-and-Line Groundfish Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to require operators of hook-and-line vessels fishing for groundfish in the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA) and federally-permitted hook-and-line vessels fishing for groundfish in Alaska waters adjacent to the BSAI and to the GOA, to conduct