

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 97-213, DA 97-2686]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 23, 1997, the Chief, Network Services Division, Common Carrier Bureau issued DA 97-2686, an order granting the Petition filed by the Federal Bureau of Investigation on December 17, 1997, to extend the date for reply comments in the Communications Assistance for Law Enforcement Act, Notice of Proposed Rulemaking, CC Docket No. 97-213, FCC 97-356 (rel. Oct. 10, 1997), to February 11, 1998.

DATES: Reply Comments are due February 11, 1998.

ADDRESSES: File reply comments with the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Ward, Network Services Division, Common Carrier Bureau, (202) 418-2320.

SUPPLEMENTARY INFORMATION:

Adopted: December 23, 1997
Released: December 23, 1997 By the Chief, Network Services Division:

1. On October 10, 1997, the Commission released a Notice of Proposed Rulemaking (NPRM) to implement certain sections of the Communications Assistance for Law Enforcement Act (CALEA), 47 U.S.C. 1001 *et seq.*¹ Comments were due on December 12, 1997, and reply comments are due on January 12, 1998.

2. The Commission has received a "Request for an Extension of Time to File Reply Comments" in the above captioned proceeding, filed on December 17, 1997 by the Federal Bureau of Investigation (FBI). The FBI asks for an extension of thirty days, which would change the date for reply comments from January 12, 1998, to February 11, 1998.

3. It is the policy of the Commission that extensions of time shall not be routinely granted.² The Petitioner cites

four special circumstances: "(1) the FBI must coordinate its reply effort with—and obtain consensus from—approximately fifty (50) Law Enforcement Technical Forum (LETF) members and other law enforcement agencies across the nation; (2) this rulemaking involves a complex subject matter that affects not only carriers, but hundreds of Federal, State, and local law enforcement agencies and prosecutors' offices; (3) the issues in this rulemaking invoke critical public safety and privacy concerns, the development of a complete record is particularly important in this matter; and (4) the current 30-day reply period coincides with the holidays, which further limits the FBI's undertaking."³

4. The circumstances shown by Petitioner establish good cause for an extension of the reply comment date in this docket. All parties to this proceeding will be allowed to file reply comments by February 11, 1998.

5. Accordingly, *it is ordered*, pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Sections 0.204(b), 0.291 and 1.45 of the Commission's rules, 47 CFR 0.204(b), 0.291 and 1.45, that an additional period of thirty days to submit Reply Comments is granted. The new date for Reply Comments is February 11, 1998.

Federal Communications Commission.

Geraldine A. Matise,
Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98-706 Filed 1-12-98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 97-248; FCC 97-415]

Program Access Proceeding

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the *Memorandum Opinion and Order and Notice of Proposed Rulemaking* ("NPRM"), the Commission grants the petition for rulemaking filed by Ameritech New Media, Inc. requesting that the Commission issue a notice of proposed rulemaking to amend

its program access rules. Also in the *NPRM* the Commission seeks comment on proposals to amend several aspects of the program access rules. The Commission believes that these proposals will provide expeditious and effective resolution of program access complaints. These proposed rules are necessary to further the Commission's goals of increased competition and diversity in the multichannel video programming market, as well as foster the development of competition to traditional cable systems. The intended effect of this action is to seek comment on proposed rules and procedures applicable to the Commission's program access rules.

DATES: Comments are due on or before February 2, 1998. Reply comments are due on or before February 23, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Klein or Steve Broeckert, Consumer Protection and Competition Division, Cable Services Bureau, at (202) 418-7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order and Notice of Proposed Rulemaking* in CS Docket No. 97-248, FCC 97-415 which was adopted and released on December 18, 1997. A copy of the complete item is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857-3800. The complete *Memorandum Opinion and Order and Notice of Proposed Rulemaking* also is available on the Commission's Internet home page (<http://www.fcc.gov>).

Summary of Action

I. Background

1. On December 18, 1997, the Federal Communications Commission ("Commission") adopted a *Memorandum Opinion and Order and Notice of Proposed Rulemaking* which granted a petition for rulemaking filed by Ameritech New Media, Inc. ("Ameritech") and sought comment on a variety of proposals relating to its program access rules. The *Order and NPRM* are summarized below.

¹ Communications Assistance For Law Enforcement Act, Notice of Proposed Rulemaking, CC Docket No. 97-213, FCC 97-356 (rel. Oct. 10, 1997).

² See 47 CFR 1.46.

³ Communications Assistance for Law Enforcement Act, Request of the Federal Bureau of Investigation for An Extension of Time to File Reply Comments, CC Docket No. 97-213, FCC 97-356 (Dec. 17, 1997), at 2.

A. Introduction

2. Section 628 of the Communications Act of 1934, as amended ("Communications Act"), prohibits unfair or discriminatory practices in the sale of satellite cable and satellite broadcast programming. Section 628 is intended to increase competition and diversity in the multichannel video programming market, as well as to foster the development of competition to traditional cable systems, by prescribing regulations that govern the access by competing multichannel systems to cable programming services. Section 628(c) instructs the Commission to adopt regulations to identify particular conduct that is prohibited by section 628(b). The Communications Act provides parties aggrieved by conduct alleged to violate the program access provisions the right to commence an adjudicatory proceeding before the Commission. Ameritech filed a petition for rulemaking requesting that the Commission issue a notice of proposed rulemaking to amend its program access rules. Pursuant to § 1.401 of the Commission's rules, on June 2, 1997, the Commission issued a public notice seeking comment on Ameritech's petition. Timely comments and oppositions were filed on July 2, 1997; reply comments were filed on July 17, 1997. As discussed herein, the Commission is initiating a proceeding to consider the amendment of several aspects of the program access rules.

B. Time Limits

3. The Commission seeks comment on Ameritech's proposed time limits for the processing of program access complaints: 90 days in the case of a complaint that can be resolved without recourse to discovery, and within 150 days if the complainant elects to conduct discovery. The Commission seeks comment on appropriate time limits for the resolution of program access complaints: should the Commission adopt the 90-day and 150-day time periods proposed by Ameritech; should some other time period apply; or should the Commission not adopt time limits. In addition, the Commission seeks comment on whether the time limit, if any, should run from the time the complaint was filed, or whether the time limit should run from some other point, such as the close of pleadings, or the close of discovery.

4. Further, the Commission seeks comment regarding whether one universally applicable time limit should apply to all program access complaints, or whether one time limit should be established for cases involving denial of

programming, with another longer time limit established for price discrimination cases, which generally involve issues of greater complexity. The Commission also seeks comment on any other reasonable distinction between program access cases which would impact the appropriate time limit, if any, for resolution of that type of program access proceeding. In addition, the Commission seeks comment on Ameritech's proposal to shorten the answer (30 days to 20 days) and reply (20 days to 15 days) pleading periods applicable to program access complaints.

C. Discovery

5. The Commission seeks comment on several means of expediting the discovery process. In this regard, the Commission seeks comment on whether it would speed the discovery process to have complainants submit proposed discovery requests with their program access complaints and require Defendants to submit their proposed discovery requests and objections to complainants' discovery requests with their answer. Complainants would submit their objections to defendants' discovery requests with their reply.

6. The Commission seeks comment on any other change in the procedures applicable to program access complaints that would result in the necessary information disclosure in the most efficient, expeditious fashion possible. In this regard, the Commission seeks comment on whether different standards for discovery should be applied to different types of program access complaints, such as price discrimination, exclusivity, and denial of programming. The Commission also seeks comment on whether the issuance of a standardized protective order applicable to program access complaints would expedite the necessary information disclosure. Further, the Commission seeks comment on Ameritech's proposal that complainants be entitled to discovery as of right, particularly in light of our conclusion not to permit discovery as of right in common carrier formal complaint proceedings.

D. Damages

7. The Commission has authority to impose forfeitures for violation of the program access rules. The Commission seeks comment on whether forfeitures alone are an adequate deterrent to prevent violations of these rules. The Commission also seeks comment on whether an additional check on anticompetitive conduct such as the imposition of damages for violations of

section 628 of the Communications Act may now be appropriate and in the public interest. In this regard, the Commission also seeks comment on the appropriate interaction, if any, between damages and the Commission's existing forfeiture authority under Title V to impose forfeitures for violations of the program access rules. The Commission also seeks comment regarding the correct procedures through which to implement damages or forfeitures in the context of specific program access proceedings. For example, the Commission seeks comment on the date from which damages should be levied for violations of section 628. The Commission seeks comment on whether the operative date should be the date of the notice of intent to file a program access complaint, as Ameritech suggests, or the date of filing of the program access complaint, or the date on which the violation first occurred. Because the complainant has the ability to file a complaint at any time after the 10 day notice requirement set forth in 47 CFR 76.1003(a), the Commission seeks comment on whether damages should be calculated from the date upon which the complainant filed its program access complaint with the Commission. The Commission also seeks comment on the adequacy and clarity of the forfeiture procedures and guidelines set forth in section 503 of the Communications Act, the Commission's rules, and case law. In addition the Commission seeks comment on whether, in some cases, the most efficient manner of processing program access cases would be to bifurcate the program access violation determination from the damages or forfeiture determination. The Commission seeks comment on whether Commission Staff should be given the discretion to bifurcate the violation and sanction portions of program access proceedings and whether doing so would more efficiently process such cases.

8. The Commission also seeks comment on the calculation of damages, if assessed. Commenters should consider whether the Commission should determine damages on a case-by-case basis, or whether there should be a standard calculation for damages in program access matters. Those arguing that damages should be based on a standard calculation should comment on how the Commission should determine such standard calculation. The Commission also seeks comment on the basis on which damages, if assessed, should be calculated. For example, should damages be based on lost profit, the difference between the rate that the

complainant was charged and the rate the complainant should have been charged, or some other legitimate basis.

9. The Commission seeks comment on whether a complainant seeking damages must file in its complaint or supplemental complaint either a detailed computation of damages or a detailed explanation of why such a computation is not possible at the time of filing. Commenters advocating the adoption of such a requirement should address whether the explanation standards adopted for complaints against common carriers should be adopted, or whether some other explanation standard should apply.

10. Finally, the Commission observes that no persuasive evidence has been presented which suggests that punitive damages should be imposed in program access cases. Accordingly, the Commission tentatively concludes that punitive damages should not be imposed in program access cases. The Commission seeks comment on this tentative conclusion.

E. Terrestrial-Delivery of Programming

11. Section 628 of the Communications Act is applicable to cable operators, satellite cable programming vendors in which a cable operator has an attributable interest, and satellite broadcast programming vendors and generally applies to the delivery of satellite cable programming and satellite broadcast programming. On its face, section 628 does not preclude a programmer from altering its distribution method from satellite-distribution to terrestrial-distribution. Such an action could arguably constitute an unfair method of competition or unfair or deceptive act or practice, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers. The Commission seeks comment on appropriate ways to address such situations. As a threshold matter, the Commission specifically asks commenters to address the statutory basis for any suggested remedial action, and whether legislation is needed. To the extent that commenters contend that Commission action is appropriate, the Commission seeks comment on what types of evidence a complainant may marshal to prevail on a claim against a programmer that has moved satellite-delivered programming to terrestrial delivery to evade the program access requirements. The Commission also seeks comment on whether programming that has been

moved from satellite to terrestrial delivery can or should be subject to program access requirements based on the effect, rather than the purpose, of the programmer's action.

F. Buying Groups: Joint and Several Liability

12. The Commission seeks comment on a proposal that the Commission clarify its program access rules to provide that any cooperative buying group that maintains adequate financial reserves should not be required to provide joint and several liability. Specifically, the Commission seeks comment on what financial assurances cooperative buying groups can provide to programming distributors such that joint and several liability is not necessary, while adequately protecting programming distributors from the financial risks associated with such arrangements. For example, the Commission seeks comment on whether buying groups that maintain a cash reserve equal to one month's programming fees would satisfy such a requirement. In addition, the Commission seeks comment on any other proposals that would result in the elimination of joint and several liability while maintaining adequate protection for programmers.

II. Procedural Matters

A. Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the rules proposed in the *NPRM*. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

A. Need for, and Objectives of, the Proposed Rules

14. In 1993, the Commission adopted its current rules intended to protect, pursuant to section 628 of the Communications Act, the right of multichannel video programming providers to obtain access to specified types of video programming. Ameritech filed a petition for rulemaking proposing that certain aspects of the Commission's program access rules be amended to better ensure the

Communication Act's program access requirements. In this *NPRM*, the Commission seeks comment as to whether certain aspects of the Commission's program access rules should be amended to better enforce the Communication Act's program access requirements.

B. Legal Basis

15. The authority for the action proposed for this rulemaking is contained in sections 4(i), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. sections 4(i), 303(r), and 548.

C. Description and Estimate of the Number of Small Entities

16. The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business" and "small organization." In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").

17. *Small MVPDs*. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1,758 total cable and other pay television services and 1,423 had less than \$11 million in revenue. The Commission addresses below each service individually to provide a more precise estimate of small entities.

18. *Cable Systems*. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under 47 CFR 76.901(e), a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, the Commission estimates that there were 1439 cable operators that qualified as small cable companies at

the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules the Commission is adopting. The Commission believes that only a small percentage of these entities currently provide qualifying "telecommunications services" as required by the Communications Act and, therefore, estimate that the number of such entities are significantly fewer than noted.

19. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission finds that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

20. *Multipoint Multichannel Distribution Systems ("MMDS")*. The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. This definition of a small entity in the context of MMDS auctions has been approved by the SBA.

21. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that

they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of \$11 million annually. The Commission concludes that, for purposes of this FRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

22. *Direct Broadcast Satellite ("DBS")*. Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. Estimates of 1996 revenues for various DBS operators are significantly greater than \$11,000,000 and range from a low of \$31,132,000 for Alphastar to a high of \$1,100,000,000 for Primestar. Accordingly, the Commission concludes that no DBS operator qualifies as a small entity.

23. *Home Satellite Dish ("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. 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 nonsubscription programming; and (3) viewers who receive satellite programming services illegally without subscribing.

24. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator ("MSO"). Furthermore, because this is an average, it is likely

that some program packagers may be substantially smaller.

25. *Open Video System ("OVS")*. The Commission has certified nine OVS operators. Of these nine, only two are providing service. On October 17, 1996, Bell Atlantic received approval for its certification to convert its Dover, New Jersey Video Dialtone ("VDT") system to OVS. Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources. Metropolitan Fiber Systems was granted certifications on December 9, 1996, for the operation of OVS systems in Boston and New York, both of which are being used to provide programming. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. The Commission believes that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, the Commission concludes that at least some of the OVS operators qualify as small entities.

26. *Satellite Master Antenna Television ("SMATVs")*. Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If the Commission assumes 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, the Commission is 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, the Commission concludes that a substantial number of SMATV operators qualify as small entities.

27. *Local Multipoint Distribution System ("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). The SBA definition for cable and other pay services is defined above. A small radiotelephone entity is one with 1500 employees or less. However, for the purposes of this *NPRM*, the Commission includes only an estimate of LMDS video service providers.

28. LMDS is a service that is expected to be auctioned by the FCC in 1998. 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, the Commission 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. The Commission has not yet received approval by the SBA for this definition.

29. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, the Commission assumes that CellularVision is a small business under both the SBA definition and our proposed auction rules. Accordingly, the Commission affirms its tentative conclusion that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

30. *Program Producers and Distributors.* The Commission has not developed a definition of small entities applicable to producers or distributors of television programs. Therefore, the Commission will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812), Motion Picture and Video Tape Distribution (SIC 7822), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the television programming industry is an entity with \$21.5 million or less in annual receipts for SIC 7812 and 7822, and \$5 million or less in annual receipts for SIC 7922. The 1992 Bureau of the Census data indicate the following: (1) there were 7265 U.S. firms classified as Motion

Picture and Video Production (SIC 7812), and that 6987 of these firms had \$16,999 million or less in annual receipts and 7002 of these firms had \$24,999 million or less in annual receipts; (2) there were 1139 U.S. firms classified as Motion Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had \$16,999 million or less in annual receipts and 1013 of these firms had \$24,999 million or less in annual receipts; and (3) there were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than \$5 million in annual receipts.

31. Each of these SIC categories is very broad and includes firms that may be engaged in various industries including television. Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, the Commission concludes that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the rules adopted in this proceeding.

D. Description of Reporting, Recordkeeping, and Other Compliance Requirements

32. The rules proposed in this *NPRM* will not require a change in record keeping requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The *NPRM* proposes various alternatives which may expand access to video programming by small entities.

F. Federal Rules Which Overlap, Duplicate, or Conflict With These Rules

34. None.

B. Ex Parte Presentations

35. The *NPRM* is a permit but disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

C. Comments

36. 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 February 2, 1998 and reply comments on or before February 23, 1998. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. Parties are also asked to submit, if possible, draft rules that reflect their positions. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Deborah Klein of the Cable Services Bureau, 2033 M Street, N.W., 7th Floor, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

37. Parties are also asked to submit comments and reply comments on diskette, where possible. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Deborah Klein of the Cable Services Bureau, 2033 M Street, N.W., 7th Floor, Washington, D.C. 20554. Such a submission must be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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