DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 94–055]

RIN 2115–AF23

Licensing and Manning for Officers of Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meetings; request for comments.

SUMMARY: The Coast Guard is holding four public meetings on its proposed rule to revise the requirements for licensing mariners who operate inspected as well as uninspected towing vessels. The proposed rule would ensure that all towing vessels are manned by officers holding licenses specifically authorizing their service. The Coast Guard is holding the public meetings to receive additional views on the licensing issues in the proposed rule.

DATES: The meeting in Memphis, Tennessee, will be held on February 11, 1998, from 9 a.m. to 5 p.m. The meeting in Houston, Texas, will be held on February 13, 1998, from 9 a.m. to 5 p.m. The meeting in Boston, Massachusetts, will be held on February 18, 1998, from 9 a.m. to 5 p.m. The meeting in Seattle, Washington, will be held on February 24, 1998, from 9 a.m. to 5 p.m. Written material must reach the Coast Guard not later than February 20, 1998. Comments on the supplemental notice of proposed rulemaking must be received on or before February 24, 1998.

ADDRESSES: The Memphis meeting will be held in the City Council Chambers, 125 North Main, Memphis, TN 38103. The Boston meeting will be held in the Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109–1045. The Houston meeting will be held at Hollywood Marine Inc., 16402–1/2 Dezavala, Channelview, TX 77530. The Seattle meeting will be held in the South Auditorium, Federal Building, 915 Second Avenue, Seattle, WA 98174–1067. You may send written comments to the Executive Secretary, Marine Safety Council (G–LRA) [CGD 94–055], U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Don Darcy, Operating and Environmental Standards Division (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone 202–267–0221.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 94–055] and the specific section of the proposed rule to which each comment applies, and give the reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comment should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

Public Meeting

Attendance is open to the public. Persons who are hearing-impaired may request sign translation by asking the person under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting. With advance notice, and as time permits members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted before, during, or after the meeting. Persons unable to attend the public meetings should submit written comments as outlined in the interim rule by February 24, 1998.

Dated: January 13, 1998.

R. L. Skewes,

Captain, U.S. Coast Guard, Acting Director of Standards Marine Safety and Environmental Protection.

[FR Doc. 98–1399 Filed 1–20–98; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MM Docket No. 95–176; FCC 98–3]

Closed Captioning of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Viewers with hearing disabilities may not always have access to the same televised emergency information that is currently available to other viewers. The Commission adopted this *Further Notice of Proposed Rulemaking (''Further Notice'')* seeking information and comment regarding appropriate rules and policies to promote and to ensure the accessibility of televised emergency information to persons with hearing disabilities. Closed captioning rules for emergency information programs were not adopted in the *Report and Order* in MM Docket No. 95–176, *In the Matter of Closed Captioning and Video Description of Video Programming, Video Programming Accessibility (''Closed Captioning Order'')* due to the limited comments submitted in that proceeding on the issue of captioning of such programs.

The *Further Notice* does not contain proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

DATES: Comments are due on or before February 25, 1998 and reply comments are due on or before March 27, 1998.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexis D. Johns, Cable Services Bureau, (202) 418–7038, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Further Notice of Proposed Rulemaking*, MM Docket 95–176, adopted January 9, 1998 and released January 14, 1998. The full text of this *Further Notice* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036.

Synopsis of the Further Notice of Proposed Rulemaking

1. The rules we adopted in the *Closed Captioning Order* require video program providers to increase gradually the amount of captioned new programming offered over time. The rules require minimum captioning benchmarks to be met at two year intervals, starting on January 1, 2000. Appendix B at § 79.1(b)(1) (62 FR 48487, September 16, 1997). New programming is defined as programs first published or exhibited after January 1, 1998. Appendix B at § 79.1(a)(5) (62 FR 48487, September 16, 1997). The rules allow video program providers to exercise discretion with respect to what types of programs to caption first, and permit video program providers to caption news programming using the electronic newsroom (''ENR'') method. Para. 47 and Appendix B at § 79.1(e)(3) (62 FR 48487, September 16, 1997). ENR captions are created from the text in the station's news script computers. With ENR, only text transmitted from the scripting computers onto teleprompters is captioned; unscripted material, such as live reports from the field, reports of breaking news, and weather and sports reporting, is not captioned.

2. The emergency information which we address in this *Further Notice* falls under the *Closed Captioning Order's* definition of new programming. By ''emergency information,'' we generally mean state, local and regional emergency announcements or reports, including interruptions of regularly-scheduled programming and late-breaking reports during live news programs. Pursuant to the rules adopted in the *Closed Captioning Order*, emergency information would be subject to the same closed captioning requirements as other new programming. Such programming would not be required to be offered with closed captioning before 2000 at the earliest, and each video program provider would have the discretion to determine whether to give emergency information priority for captioning relative to other new programming. In addition, under the rules, a video program provider could caption its live news programming using the ENR method, which could leave much emergency information inaccessible to persons with hearing disabilities since it is likely to be late-breaking news and unscripted.

3. Given the significant health and safety issues inherent in emergency information, in the *Closed Captioning Order* we concluded that closed captioning requirements for emergency information should be considered further. In this *Further Notice*, we seek comment on how our rules can best ensure that such programs are accessible to viewers with hearing disabilities. We request comment on whether separate transitional closed captioning requirements are needed for emergency information or whether there are other methods of providing accessibility for this type of programming.

4. As we stated in the *Closed Captioning Order*, providing all viewers with accurate information regarding emergencies is of great importance, and we are concerned that viewers with hearing disabilities may not always have access to the same information that is available to other viewers. As a threshold matter, we seek comment on the types of information and programs that should be considered ''emergency information'' for the purposes of our rules. We note that the Commission currently requires broadcast licensees to make the emergency information programming that they transmit accessible to persons who are deaf or hard of hearing. *See* 47 CFR 73.1250(h). The types of emergency information contemplated in the *Further Notice* are not those which must be transmitted by the Emergency Alert System (''EAS'') under our existing rules. *See* 47 CFR 11.1 *et seq.* Use of the EAS is required only in the event of a national emergency, though state and local authorities may use the EAS to provide early warnings to communities about regional, state and local emergencies. The rules and policies proposed in this *Further Notice* are not intended to conflict with or supersede the EAS rules in any way. The broadcast rule enumerates the following examples of emergency situations as being subject to the rule: tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, and school closings and changes in school bus schedules resulting from such conditions. We tentatively conclude that for this purpose, we should broadly define emergency information to ensure that sufficient information regarding situations that affect the safety of viewers is available to persons with hearing disabilities with the same immediacy as it is for other viewers. To the types of situations cited in the existing broadcast rule, we believe that it would be appropriate to add warnings and watches of impending changes in weather affecting the safety of viewers, and seek comment on how to define such situations. We also seek comment on whether defining emergency information more broadly here than in the broadcast rule would cause any practical problems or other complications for entities subject to emergency closed captioning requirements.

5. We seek comment on whether it is feasible to require video program providers to supply closed captions for emergency information programs. By its nature, emergency information is not typically programming that can be pre-recorded and captioned in advance of airing. A requirement that such programs be captioned would therefore oblige providers to obtain real-time captioning services for such programs. As we described in the *Closed Captioning Order*, real-time captioning resources are somewhat limited at this time. We declined to require that all live news programming be captioned using real-time captioners in part due to concerns about the limited real-time resources in existence and the need to allow captioning companies sufficient time to recruit and train more captioners to meet the increased demands for their services that the rules will create.

6. We seek comment on the estimated costs, in both financial and human resource terms, that a captioning requirement for emergency information will impose on video providers. In particular, we seek updated information on the number of real-time captioners currently available as well as the number projected to be available in the near future. In the event a real-time captioning requirement is instituted for emergency information, we seek comment on the effect such a rule will have on the availability of live captioning resources for other types of live programming. Captioning companies and commenters who regularly use real-time captioning services should submit detailed information on the hourly costs charged for such services, and whether and under what conditions those costs vary. Is it feasible for video program providers to have real-time captioners ''on call'' for closed captioning when emergencies arise, or would providers have to hire full-time staff to produce live closed captions? What would it cost to hire an ''on call'' real-time captioner?

7. We request information on the availability and feasibility of providing live captions remotely in emergency situations. Where an emergency affects a large geographic region, all video providers in that region will need to access real-time captioning resources at the same time. Given the limited number of real-time captioning

resources available at present, it may not be possible for each provider to obtain the necessary captioning assistance within its geographic region. For example, a major snowstorm such as that which occurred on the East Coast in early 1996 could place a significant strain on real-time resources throughout the northeast and mid-Atlantic states. Could video program providers use real-time captioners located in other areas (e.g., California) unaffected by the emergency to offer remote captioning under such circumstances? Would remote real-time captioning incur greater costs or be less costly than local live captioning under such circumstances?

8. We specifically seek comment on whether emergency programming should be given a higher priority for captioning than other types of new programs. Specifically, should we require that emergency information be provided with captions prior to the commencement of the captioning requirement for other new programs? If so, when should video program providers be required to begin captioning these programs? With respect to the minimum benchmarks for captioning of new programs, we ask whether video program providers should be required to supply closed captions for emergency information programs during the transition period, regardless of whether the provider has already met its captioning benchmark for new programs. Would such a requirement be feasible, or would it pose significant logistical problems or economic burdens on video program providers? We tentatively conclude that any textual presentation of emergency information programs should be required to incorporate substantially the entire text of the audio portion of the program. We seek comment on this tentative conclusion.

9. The closed captioning rules also include exemptions based on video program providers' gross revenues. Under the revenue exemption, video program providers with annual gross revenues of less than $3 million per channel are exempt from all captioning requirements, except for the obligation to pass through captions where programs are received from the program supplier with captions. Appendix B at § 79.1(d)(12) (62 FR 48487, September 16, 1997). Also, our rules provide that once a video program provider has spent an amount equal to 2% of its gross annual revenues on captioning, that provider need not spend any more money on captioning. Appendix B at § 79.1(d)(11) (62 FR 48487, September 16, 1997). We seek comment as to whether these exemptions should be suspended for the limited purpose of emergency information programming closed captioning. Should all video program providers be required to supply closed captions for emergency information, even where the provider is otherwise eligible for one of our revenue-based exemptions? How would such a rule affect small entities such as small or low power television stations and small cable operators? Commenters should submit proposals for reducing the burdens on small entities that such a mandatory closed captioning rule might impose.

10. Alternatively, we ask whether other methods of visually presenting emergency information would be acceptable in lieu of a closed captioning requirement. As noted above, the Commission currently requires broadcast licensees to make such programming accessible to persons who are deaf or hard of hearing. To the extent broadcast licensees transmit emergency information programming, they are required by our rules to transmit such programs both aurally and visually or only visually. The broadcast rules allow television stations to ''use any method of visual presentation which results in a legible message conveying the essential emergency information,'' including, but not limited to, slides, electronic captioning, manual methods (e.g., hand printing), or mechanical printing processes. 47 CFR 73.1250(h). However, no equivalent obligation exists for emergency information transmitted by cable television operators or other multichannel video program distributors (''MVPDs''). We seek comment as to whether an extension of the existing broadcast rules to cover emergency information disseminated by MVPDs, in conjunction with our existing captioning rules, would be appropriate or sufficient to address the concerns raised in this *Further Notice*.

11. In addition, an emergency information program may consist of an audio report that is not displayed visually, or the audio portion of the report may be longer and offer more complete information than that displayed visually, leaving viewers with hearing disabilities without full details on the situation. We seek information on methods or requirements that could be adopted to ensure that all pertinent details are accessible. We also seek comment on a proposal submitted by Cal-TVA for cases where local stations are unable to provide an instant visual transcription of audio emergency messages. Cal-TVA recommends use of a second text channel that a viewer may switch to within ten minutes of the airing of an emergency message, to read a typed report of the audio message and any actions the viewer is being instructed to take. We seek comment regarding the feasibility of this proposal, and request information regarding other possible methods of ensuring the accessibility of this information to persons with hearing disabilities.

12. Finally, we seek comment on any other proposals to promote and to ensure the accessibility of emergency programming and other special reports that have not already been raised in this *Further Notice* or in the closed captioning proceeding. In particular, we ask commenters to address the legal, policy, and practical implications of any such proposals.

Initial Regulatory Flexibility Analysis

13. Pursuant to Section 603 of the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, 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 *Further Notice*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall cause a copy of this *Further Notice* to be sent to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'') in accordance with section 603(a) of the RFA, 5 U.S.C. 603(a).

14. *Reason for Action and Objectives of the Proposed Rule:* Section 713 of the 1996 Act required the Commission to adopt rules and timetables for the captioning of video programming by August 8, 1997. In the course of the closed captioning proceeding, a few commenters addressed the particular need for captioning of emergency programming and similar special reports, but the information submitted to the Commission regarding this issue was insufficient to support the adoption of specific captioning rules for emergency programming. Instead, the *Closed Captioning Order* directed that a separate proceeding be initiated to address this issue. In this *Further Notice*, we seek comment on appropriate requirements for promoting and ensuring the accessibility of emergency programming to viewers with hearing disabilities.

15. *Legal Basis:* This *Further Notice* is adopted pursuant to Sections 4(i), 303(r), and 713 of the Communications

Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 613.

16. *Description and Number of Small Entities Affected:* The RFA 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. 5 U.S.C. 601(3). A small business 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. 15 U.S.C. 632.

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. 13 CFR 121.201 (SIC 4841). 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. We address below each service individually to provide a more precise estimate of small entities. We seek comment on the tentative conclusions below.

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 the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this *Futher Notice.*

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.'' 47 U.S.C. § 543(m)(2). 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. 47 CFR 76.1403(b) (SIC 4833). Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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. 47 CFR 21.961(b)(1). 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 1,573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We tentatively conclude that, for purposes of this IRFA, there are approximately 1,634 small MMDS providers as defined by the SBA and the Commission's auction rules.

22. *ITFS:* There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. 5 U.S.C. § 601(5). 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 1,932 licensees are small businesses.

23. *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. The Commission does not collect annual revenue data for DBS, and is unable to determine with certainty the number of small DBS licensees that could be affected by these proposed rules. However, 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, we tentatively conclude that no DBS operator qualifies as a small entity.

24. *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.

25. 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. We seek comment on these tentative conclusions.

26. *Open Video Systems (''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. On October 10, 1996, Digital Broadcasting Open Video Systems received approval to offer OVS service in southern California. Digital Broadcasting Open Video Systems is a general partnership just beginning operations. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we tentatively conclude that at least some of the OVS operators qualify as small entities.

27. *Satellite Master Antenna Television (''SMATVs''):* Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators served approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

28. *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 in paragraph 16 *supra.* A small radiotelephone entity is one with 1500 employees or less. 13 CFR 121.201. However, for the purposes of this *Further Notice,* we include only an estimate of LMDS video service providers.

29. LMDS is a service that was 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 *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,* CC Docket No. 92–297 (60 FR 43740 at ¶ 188, August 23, 1995), 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. We have not yet received approval by the SBA for this definition.

30. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. No commenters addressed the tentative conclusions we reached in the Further Notice. We tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

31. *Small Broadcast Stations:* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. 13 CFR 121.201.

32. *Estimates Based on Census and BIA Data:* According to the Bureau of the Census, in 1992, 1,155 out of 1,478 operating television stations reported revenues of less than $10 million for 1992. This represents 78% of all television stations, including noncommercial stations. The Bureau of the Census does not separate the revenue data by commercial and noncommercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of $10.5 million in annual receipts. Census data also indicate that 81% of operating firms (that owned at least one television station) had revenues of less than $10 million.

33. We also have performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database, which lists a total of 1,141 full power commercial television stations. It should be noted that, using the SBA definition of small business concern, the percentage figures derived from the BIA database may be underinclusive because the database does not list revenue estimates for noncommercial educational stations, and these therefore are excluded from our calculations based on the database. The BIA data indicate that, based on 1995 revenue estimates, 440 full power commercial television stations had an estimated revenue of $10.5 million or less. That represents 54% of full power commercial television stations with revenue estimates listed in the BIA program. The database does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of $10.5 million or less, representing approximately 68% of the 1,141 full power commercial television stations listed in the BIA data base.

34. Alternatively, if we look at owners of commercial television stations as listed in the BIA database, there are a total of 488 owners. The database lists estimated revenues for 60% of these owners, or 295. Of these 295 owners, 156 or 53% had annual revenues of less than $10.5 million. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, then small entities would constitute 72% of the total number of owners.

35. In summary, based on the foregoing worst case analysis using Bureau of the Census data, we estimate that our proposed rules will apply to as many as 1,150 commercial and noncommercial television stations (78% of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as 771 commercial television stations (about 68% of all commercial television stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we tentatively believe greatly overstates the number of television broadcasters that are small businesses. Further, it

should be noted that, under the SBA's definitions, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. The estimates overstate the number of small entities since the revenue figures on which they are based do not include or aggregate such revenues from nontelevision affiliated companies.

36. *Reporting, Recordkeeping and Compliance Requirements:* The *Further Notice* seeks comment on whether we should require video programming providers (including broadcast licensees and MVPDs) to closed caption or otherwise visually display emergency programming and similar special reports to ensure the accessibility of these types of video programs to viewers with hearing disabilities. If this proposal is adopted, video programming providers may choose to maintain records of the closed captioned emergency programming carried in order to resolve any disputes which may arise regarding compliance.

37. *Federal Rules Which Overlap, Duplicate or Conflict With the Commission's Proposal:* None.

38. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives:* The *Closed Captioning Order* directs us to initiate proceedings to establish captioning requirements for emergency programming. We seek comment on proposals to promote and ensure the accessibility of emergency programming and other special reports to persons with hearing disabilities. We also seek comment on methods of visually displaying emergency information to viewers other than closed captioning which may be less costly or burdensome than captioning.

Ex Parte

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

40. 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 25, 1998 and reply comments on or before March 27, 1998. All relevant and timely comments will be considered before final action is taken in this proceeeding. 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, N.W., Washington, D.C. 20554.

41. Accordingly, *It is ordered* that pursuant to the authority contained in Sections 4(i), 303(r), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 613, the *Further Notice of Proposed Rulemaking* IS ADOPTED.

42. *It is further ordered* that the Office of Public Affairs shall send a copy of this *Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 79

Closed Captioning of Video Programming.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1394 Filed 1–20–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[ET Docket No. 95–183; PP Docket No. 93–253; FCC 97–391]

Use of the 38.6–40.0 GHz Band for Fixed Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopts a *Second Notice of Proposed Rule Making* regarding the use of the 38.6–40.0 GHz Band for fixed microwave services. Specifically, the Commission seeks comment on the appropriate unjust enrichment requirements for approving partitioning and disaggregation arrangements involving a complete or partial transfer of a license owned by a qualified small business to a non-small business or a small business eligible for a smaller bidding credit.

DATES: Comments are due on or before February 20, 1998, and reply comments are due on or before March 9, 1998.

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

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Public Safety and Private Wireless Division, (202) 418–0871, or Christina Eads Clearwater, Auctions Division, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Second Notice of Proposed Rule Making* in the *Report and Order and Second Notice of Proposed Rule Making,* ET Docket No. 95–183, PP Docket No. 93–253, FCC 97–391, adopted October 24, 1997, and released November 3, 1997. The complete text of this *Report and Order and Second Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036.

Synopsis of the Second Notice of Proposed Rule Making in the Report and Order and Second Notice of Proposed Rule Making

1. The Commission has concluded in the *Report and Order* that any 39 GHz licensee will be permitted to partition or disaggregate portions of its authorization. In the *Second Notice of Proposed Rule Making,* the Commission seeks comment regarding what restrictions to impose on partitioning and/or disaggregation by licensees that have received bidding credits when the buyer is a small business subject to less favorable bidding credits or a non-small business not eligible for bidding credits.

2. The Commission seeks comment on the type of unjust enrichment requirements that should be placed as a condition for approval of partitioning and disaggregation arrangements, *e.g.,* an application for a partial transfer of a license owned by a qualified small business to a non-small business. The Commission tentatively concludes that these unjust enrichment provisions would include payment of any bidding credit that it may adopt for small business and would be applied on a proportional basis. The Commission seeks comment on how such unjust enrichment amounts should be calculated, especially in light of the difficulty of devising a methodology or