

for intership port operations communications in defined port areas.

PART 80—STATIONS IN THE MARITIME SERVICES

3. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307 (e), 309 and 322, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307 (e), 309 and 322 unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. In § 80.373 (f), footnote 2 to the table is amended as follows:

§ 80.373 Private communications frequencies.

* * * * *

² 156.250 MHz is available for port operations communications use only within the U.S. Coast Guard designated VTS radio protection areas of New Orleans and Houston described in § 80.383. 156.250 MHz is available for intership port operations communications used only within the area of Los Angeles and Long Beach harbors, within a 25-nautical mile radius of Point Fermin, California.

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PART 90—PRIVATE LAND MOBILE RADIO SERVICES

5. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309 and 322, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 322 unless otherwise noted.

6. Section 90.20 is amended by revising the table in paragraph (c) (3) and by adding paragraph (d)(79) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
156.240	do	43, 79	PH
156.2475	do	43, 44, 79	PH

* * * * *

(d) * * *

(79) This frequency will be secondary to marine port operations within 100 miles of Los Angeles (coordinates 34° 03' 15" north latitude and 118° 14' 28" west longitude).

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[FR Doc. 99–32840 Filed 12–20–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92–297; FCC 99–379]

Local Multipoint Distribution Service

AGENCY: Federal Communications Commission

ACTION: Notice of proposed rule making.

SUMMARY: The Commission's rules for the Local Multipoint Distribution Service (LMDS) prohibit an incumbent local exchange carrier (LEC) or incumbent cable company, or any entity with an attributable interest in these incumbents, from having an attributable interest in an A-block LMDS license whose geographic service area significantly overlaps the incumbent's service area. This LMDS eligibility rule will sunset on June 30, 2000, unless the Commission extends it. This document seeks comment on whether to allow the restriction to sunset, or to extend the restriction.

DATES: Submit comments on or before January 21, 2000; submit reply comments on or before February 11, 2000.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th St SW, Washington, DC 20554. See Supplementary Information for information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Stacy Jordan or John Spencer, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Sixth Notice of Proposed Rule Making (Sixth NPRM) in CC Docket No. 92–297 (including the associated Initial Regulatory Flexibility Analysis), FCC 99–379, adopted December 1, 1999, and released December 13, 1999. The complete text of the Sixth NPRM and Initial Regulatory Flexibility Analysis is available on the Commission's Internet site, at www.fcc.gov. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY–B400, 445 12th Street SW, Washington, DC. Comments may be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>, or by e-mail to ecfs@fcc.gov.

Synopsis of the Sixth NPRM

1. The LMDS allocation consists of two primary blocks of spectrum: an A block consisting of 850 MHz at 27.5 GHz, 150 MHz at 29 GHz, and 150 MHz at 31 GHz; and a B block consisting of 150 MHz at 31 GHz. The LMDS allocation is unusual in both the size of the allocation and the extent to which the spectrum is unencumbered.

2. When the Commission adopted final LMDS rules in 1997, it assumed that the LMDS spectrum allocation provided a rare opportunity for facilities-based providers of local exchange services, multi-channel video programming distribution (MVPD) services, broadband data services, or all of the above. In order to foster competition, the Commission imposed in 47 CFR 101.1003 a short-term ownership eligibility rule prohibiting incumbent local exchange carriers (LECs) or cable companies from having an attributable interest in an LMDS A-block license that overlaps with ten percent or more of the population in their service areas. This decision was based on four considerations: the most likely uses for LMDS; the then-current market structure for local exchange services and MVPD services, and whether the incumbent operators in these markets would have the incentive to attempt to forestall competition in their respective markets; whether an eligibility restriction would be the best means to promote competition; and whether efficiencies would be lost if the LMDS spectrum were operated by

providers other than the incumbent cable operators and local exchange carriers.

3. The first LMDS products are just now becoming available in the United States, and LMDS remains a nascent market whose evolution is uncertain. Our research suggests that in the near term, LMDS may be used primarily to provide high-speed data and Internet services to small and medium-sized businesses rather than to provide services, especially MVPD services, to single-family residences. Possible other services include: video conferencing, tele-medicine, distance learning, closed-circuit applications, and backhaul or backbone applications. An industry segment aiming to provide service akin to typical landline service (including lifeline telephone service with directory assistance) has yet to emerge. CLEC holders of LMDS licenses plan to bundle local exchange services with high-speed data and Internet access services.

4. A number of factors may affect the development and deployment of these markets and the types of services offered using the LMDS spectrum. The characteristics of LMDS spectrum and equipment help determine the uses to which it will be put. Due to propagation limitations, LMDS will likely be used not as a stand-alone network, but as a "roof-top" means to complement or extend other existing networks. Compared to fiber, LMDS's lower cost and shorter deployment time make it an effective means of reaching the last mile. At the end of that last mile are likely to be small and medium-sized businesses in urban and suburban areas, as the propagation characteristics of LMDS favor taller buildings.

5. While multiple dwelling units may be served by LMDS in three to five years, there is a significant question whether the cost of the customer premises equipment (CPE) will forestall a business case for single-family homes for many years. Estimates for the cost of the CPE range from \$5,000 to \$7,000. The radio frequency hazard potential of a microwave service like LMDS may always require professional installation, precluding cost-saving consumer installation. The subscribers would also have to generate enough revenue to establish a hub from which their remote would receive a signal. The costs to establish a hub range from \$300,000 to \$400,000, which could become prohibitive given that the range for LMDS is limited to one-to-three miles.

6. Service affordability is another issue for the residential market. A residential market demand for broadband services at prices profitable

to LMDS licensees may not exist if consumers are unwilling to pay substantially higher prices for the advantages of broadband. Early cable broadband services have experienced low penetration rates, which may indicate a reluctance of residential consumers to pay a high subscriber fee for high-speed Internet access. However, these early figures may underestimate the actual residential market for high-speed data and Internet access.

7. Deployment of LMDS systems could be delayed or hampered by lack of building access. LMDS licensees are encountering difficulties negotiating roof right-of-way agreements and overcoming inside-wiring issues. Another possible source of delay is the lack of equipment for the 150 MHz LMDS B block and the upper 300 MHz of the LMDS A block. The A- and B-block allocations are unique to the U.S. The lack of international frequency harmonization and the potential interference between the A and B blocks have been blamed for increased equipment development time and costs. Once production commences, the shorter production runs on specialized equipment may frustrate the attainment of scale economies.

8. Finally, several competing technologies are capable of delivering broadband services. Most residential and small business consumers access the Internet via the ILEC and relatively slow modems. The residential market is beginning to see high-speed services via coaxial cable, ILEC xDSL, and satellite. The rules for LMDS, MMDS, 24 GHz, and 39 GHz allow point-to-point and point-to-multipoint services, and these licensees appear to be targeting the same populations, small and medium-sized businesses. These frequencies, however, vary somewhat in their propagation characteristics, distance limitations, and spectrum allocations.

9. The Sixth NPRM seeks comment broadly on the question whether the LMDS restriction should be allowed to sunset on June 30, 2000, or should be extended. The rule provides that the restriction will terminate unless we "extend its applicability based on a determination that incumbent LECs or incumbent cable companies continue to have substantial market power in the provision of local telephony or cable television services." Consistent with our findings that incumbent LECs and cable television providers continue to hold dominant positions in the local telephony and MVPD services markets, this standard would suggest that we extend the applicability of the eligibility restriction. We have significant questions, however, about whether this

standard remains the appropriate one for evaluating whether we should extend the restriction, or whether a different standard is more appropriate.

10. We therefore seek comment generally on the standard that we should apply in making this decision, as well as on alternative standards. For example, our analysis in the *LMDS Report and Order*¹ suggests that the true harm to competition may lie not in the incumbent local exchange carriers' or cable companies' power in their respective markets, but in the incumbents' incentive and ability to foreclose LMDS as a source of competition in their own or related markets. Thus, we could extend the sunset of the eligibility rule upon a finding that the incumbent local exchange carriers and cable companies possess the incentive and ability to purchase the LMDS block to prevent entry of a competitor. Alternatively, we seek comment on whether we should use the test adopted in the *39 GHz Report and Order*.² There, we "inquired whether open eligibility poses a significant likelihood of substantial competitive harm in specific markets, and, if so, whether eligibility restrictions are an effective way to address that harm." We seek comment on whether we should require that this test be met before extending the LMDS eligibility restriction. Finally, we seek comment on the sufficiency of case-by-case review of license transfers and assignments to safeguard against anti-competitive acquisition of LMDS licenses if the eligibility rule is allowed to sunset.

11. We seek comment on the likely course of LMDS market development, particularly LMDS licensees' and equipment manufacturers' current expectations for LMDS and the markets most likely to be targeted by the licensees. More specifically, we seek comment on the characteristics, technical and otherwise, of the services most likely to be provided over LMDS. We seek comment on whether LMDS will be used to provide typical landline service in some geographic areas and to what consumer groups. We seek comment on whether LMDS licensees expect to use LMDS to deliver MVPD services to single-dwelling residential customers and/or multi-dwelling residential customers in any geographic areas. Further, we seek comment on the characteristics of the consumers to which these services will be directed. Finally, we seek comment on what broadband applications, if any, are

¹ 62 FR 23148, Apr. 29, 1997.

² 63 FR 3075, Jan. 21, 1998.

likely to be provided by LMDS licensees, and the characteristics of the consumers that will be targeted.

12. We also plan to evaluate whether we should extend the eligibility restriction to avert the possibility of incumbent LECs and cable companies acquiring LMDS to forestall new facilities-based competition for broadband services. The net benefits of extending the eligibility restriction will depend on a number of factors, including whether the LMDS A block can serve as a facilities-based medium for broadband services, and whether this spectrum is unique in both its size and extent to which it is unencumbered. We seek comment on whether the net benefits of extending the eligibility restriction may be greater than the net benefits of permitting the incumbents to acquire the LMDS A block.

13. We seek comment on the extent and robustness of residential consumer demand for broadband services. We invite comment on the extent the cost and line-of-sight limitations of LMDS might hamper the ability of LMDS to provide effective competition to either the ILECs' or the cable operators' broadband means of access into the home or very small businesses. We seek comment on whether technological advances and increasing deployment will improve equipment range and lower equipment costs. We also seek comment on the extent to which affordability enhancing innovations like equipment leasing may emerge as an alternative to outright equipment purchase, particularly for CPE.

14. We seek comment on whether the capability of LMDS to provide high-speed data and Internet telecommunications would give incumbents a strategic incentive to acquire LMDS spectrum to forestall the use of LMDS as a means of access for another facilities-based provider of broadband services, and whether we should retain the LMDS eligibility restriction for at least some period in order to prevent such a result. With respect to cable, if the cable industry primarily serves residential areas and likely LMDS service will be to small- and medium-sized businesses, we seek comment on whether we should restrict incumbent cable companies' use of the LMDS spectrum to serve business needs for high-speed data and Internet access.

15. We invite comment about the extent to which LMDS, MMDS, 24 GHz, 39 GHz, and other media that might offer consumers broadband access are substitutable. We seek comment on the degree to which LMDS, MMDS, 24 GHz, 39 GHz, and other frequencies could be used to offer consumers similar services

at similar prices; whether the size of the LMDS allocation and its lack of encumbrances provide advantages to the license holder over alternative frequencies; and whether the limitations and the cost of LMDS will hamper the ability of LMDS to provide effective competition for services provided by either the incumbent LECs or cable operators. We seek comment on the limitations (capacity, rain fade, and line of sight) of these other wireless services relative to LMDS. We seek comment on the extent to which the time-to-market leads of the 24 MHz and 39 MHz licensees yield competitive advantages in high-speed data and Internet access that could handicap LMDS licensees. Given the similarities between LMDS and 24 GHz and 39 GHz spectrum, we seek comment on the implications of the lack of eligibility restrictions at the latter two frequencies.

16. We seek comment on whether the broadband offerings by ILECs and incumbent cable operators justifies extending the restriction to either ILECs or incumbent cable companies, or both. We seek comment on the likelihood that LMDS, if used for broadband, will provide effective competition against incumbent LECs' and cable operators' broadband offerings. Specifically, we invite comments on the incumbent LECs' and cable operators' most likely footprints for broadband services. Cable operators' current coverage areas do not lend themselves to providing broadband access to businesses. We invite comment on the present reach of cable networks and the ease with which these networks could be extended to reach business subscribers. In addition, we seek comment on whether the ILECs are likely to provide xDSL services to a large segment of residential or business customers. We seek comment on whether the equipment cost and deployment cost of LMDS relative to ILECs' T-1 leased lines or xDSL will disadvantage LMDS in the market. To the extent LMDS and a T-1 line are substitutes, the falling prices for T-1 leased lines may diminish the profitability of LMDS service.

17. We seek comment on the significance of uncertainty in the market for the eligibility restriction. There are uncertainties regarding how LMDS equipment will continue to evolve; how fast LMDS equipment costs will fall; how much difficulty licensees will encounter negotiating roof right-of-way agreements, interconnection agreements, and other necessary negotiations to provide services; and how the domestic LMDS market will develop. These uncertainties may have led firms to hold off investments until

there is less uncertainty in the market, and may warrant delaying the sunset of the eligibility restriction. We seek comment on these concerns and on whether the Commission should extend the eligibility restriction to allow the market more time to reveal how LMDS and competing media will be marketed and deployed.

18. Finally, we note that uncertainty in the market impacts bond and stock market activity. The uncertainty surrounding LMDS may spill over into the capital markets and impede the efforts of LMDS licensees to raise debt and equity capital. We seek comment on the effect of extending, or not extending, the eligibility restriction on LMDS licensees' access to capital. While extending the eligibility restriction might encourage investment, lifting the restriction could have a similar effect: that is, large investors currently prohibited from doing so might acquire significant stakes in LMDS licensees, stimulating investment therein. We seek comment on both scenarios. We also seek comment on the concerns of small entities on the various issues discussed above.

Summary of Initial Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act (RFA),³ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities by the policies and rules suggested in this Sixth NPRM. Written public comments are requested on the IRFA. Comments should be identified as responses to the IRFA, and must be filed by the deadlines for comments on the Sixth NPRM provided above. The Commission will send a copy of the Sixth NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

20. *Need for and Objectives of the Proposed Rule:* In this Sixth NPRM, the Commission seeks comment on whether to allow the eligibility restriction for the Local Multipoint Distribution Service (LMDS) set out in 47 CFR 101.1003(a) to sunset as scheduled, or to extend the restriction. As discussed in detail above, various policy reasons might dictate action for or against the sunset.

21. *Legal Basis:* See Authority section, below.

22. *Description and Estimate of the Number of Small Entities to Which the*

³ U.S.C. 603. The RFA, 5 U.S.C. 601 et seq., has been amended by the Contract with America Advancement Act, Pub. L. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Actions Taken May Apply: The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the action taken. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵ A small business concern is one that: (1) Is independently owned and operated; (2) Is not dominant in its field of operation; and (3) Satisfies any additional criteria established by the Small Business Administration (SBA).⁶ Below, we further describe and estimate the number of small business concerns that may be affected by the actions taken in this Sixth NPRM.

23. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.⁷ We first discuss the number of small telecommunications entities falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules, and that may be affected by this Sixth NPRM.

24. *Total Number of Telecommunications Entities Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.⁸ This number contains a variety of different categories of entities, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS

providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the actions taken in this Second Report and Order.

25. The most reliable source of current information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).⁹ According to data in the most recent report, there are 3,604 interstate carriers. These include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

26. We have included small incumbent local exchange carriers (LECs) in this RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.¹⁰ We have

therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

27. *Wireline Carriers and Service Providers (SIC 4813).* The Census Bureau reports that there were 2,321 telephone communications companies other than radiotelephone companies in operation for at least one year at the end of 1992.¹¹ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the actions taken in this Sixth NPRM.

28. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small LECs. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.¹² The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, there are 1,410 LECs. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs that may be affected by the actions taken in this Sixth NPRM.

29. *A-Block LMDS Providers.* The total number of A-block LMDS licenses is limited to 493, one for each Basic

⁴ 5 U.S.C. 601(6).

⁵ U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. 601(3).

⁶ Small Business Act, 15 U.S.C. 632.

⁷ 13 CFR 121.201.

⁸ 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, Bureau of the Census, U.S. Dept. of Commerce, at Firm Size 1-123 (1995) (1992 Census).

⁹ Carrier Locator: Interstate Service Providers, Fig. 1 (Jan. 1999) (Carrier Locator). See also 47 CFR 64.601-608.

¹⁰ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local Competition Provisions of the Telecommunications*

Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

¹¹ 1992 Census, supra, at Firm Size 1-123.

¹² 13 CFR 121.210, SIC Code 4813.

Trading Area.¹³ The Commission has held auctions for all 493 licenses, in which it defined "very small business" (average gross revenues for the three preceding years of not more than \$15 million), "small business" (more than \$15 million but not more than \$40 million), and "entrepreneur" (more than \$40 but not more than \$75 million) bidders.¹⁴ There have been 99 winning bidders that qualified in these categories in these auctions, all of which may be affected by the actions taken in this Sixth NPRM.

30. *Cable Services or Systems.* 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 revenue annually.¹⁵ 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 Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.

31. 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.¹⁶ 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. 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.

32. 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 percent 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."¹⁷ The Commission has determined that there are 66 million subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 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.¹⁸ Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and thus 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. It should be further noted that recent industry estimates project that there will be a total of 66 million subscribers.

33. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:* In this Sixth NPRM we seek comment on whether to allow the existing LMDS eligibility restriction to sunset. These actions impose no reporting, recordkeeping or other compliance requirements.

34. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* This Sixth NPRM is a broad inquiry into whether there continues to be a need for an LMDS ownership restriction. It seeks comment on the present and likely future nature of the marketplace for various services that may be offered using LMDS spectrum, the costs and benefits of a restriction, and appropriate criteria for evaluating whether to extend the restriction. It also seeks the views of small businesses on the various issues raised.

35. *Federal Rules That May Overlap, Duplicate, or Conflict with the Proposed Rules:* There are no federal rules that overlap, duplicate or conflict with 47 CFR 101.1003(a).

36. *Report to Congress:* The Commission will send a copy of this Sixth NPRM, including this IRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁹ In addition, the Commission will send a copy of this Sixth NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. Summaries of

this Sixth NPRM and IRFA will be published in the **Federal Register**.

List of Subjects in 47 CFR Part 101

Communications, local multipoint distribution service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-33005 Filed 12-20-99; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 99-6550]

RIN 2127-AH16

Federal Motor Vehicle Safety Standards: Heavy Vehicle Antilock Brake System (ABS) Performance Requirement

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).
ACTION: Notice of proposed rulemaking.

SUMMARY: On March 10, 1995, NHTSA published a final rule amending the hydraulic and air brake standards to require medium and heavy vehicles to be equipped with antilock brake systems (ABS) to improve the directional stability and control of these vehicles during braking. We supplemented the ABS requirements for truck tractors with a braking-in-a-curve performance test on a low-coefficient of friction surface, using a full brake application, in both the unloaded (bobtail) condition and with the tractor loaded to its gross vehicle weight rating (GVWR) using an unbraked control trailer. The braking-in-a-curve test was not applied to single-unit trucks or buses or to air-braked trailers because we had performed only limited testing of ABS-equipped single-unit vehicles. We stated that we would continue research on dynamic performance tests for single-unit trucks, buses, and trailers, and would consider applying performance test requirements to these vehicles in the future.

The agency is now proposing to apply the braking-in-a-curve dynamic performance test requirement to single-unit trucks and buses that are required to be equipped with antilock braking systems. After issuing the March 1995 final rule, we tested several ABS-equipped single-unit trucks and buses equipped with both hydraulic and air

¹³ 47 CFR 101.1005, 101.1007.

¹⁴ 47 CFR 101.1107(a)-(c), 101.1112.

¹⁵ 13 CFR 121.201, SIC 4841.

¹⁶ 47 CFR 76.901(e). The Commission developed this definition based on its determination 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 (1995), 60 FR 10,534 (Feb. 27, 1995).

¹⁷ 47 U.S.C. 543(m)(2).

¹⁸ 47 U.S.C. 76.1403(b).

¹⁹ See 5 U.S.C. 801(a)(1)(A).