The FAA assessed post-crash-survival time during the adoption of § 25.856 and revisions to appendix F to part 25 at Amendment 25–111 for fuselage burn-through protection. Studies conducted by and on behalf of the FAA indicated that following a survivable accident, prevention of fuselage burn-through for approximately 5 minutes can significantly enhance survivability.[3]

The FAA would consider Airbus showing the design prevents ignition of fuel tank vapors in the integral RCT during at least 5 minutes of exposure to an external fuel-fed ground fire as a sufficient time duration for the purposes of these special conditions. The time duration of 5 minutes is consistent with the aforementioned studies showing prevention of fuselage burn-through for approximately 5 minutes enhances occupant survivability. The requirements of the proposed special conditions and the time duration are consistent with the European Union Aviation Safety Agency Special Conditions No. SC–D25.863–01, Cabin Evacuation—Protection from Fuel Tank Explosion due to External Fuel Fed Ground Fire applicable to integral RCTs.[4]

Airbus may consider a flammability reduction system or ignition mitigation means that complies with § 25.981 when showing compliance with the proposed special conditions, provided the system's performance is demonstrated to meet the proposed special conditions. As discussed previously, showing compliance with only § 25.981(b) is insufficient to show post-crash fire-safety performance of fuel-tank skin or structure. Airbus must also meet the proposed special conditions.

The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these proposed special conditions are applicable to the Airbus Model A321neo XLR series airplane for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

Conclusion

This action affects only certain novel or unusual design feature on A321neo XLR series airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, and 44704.

The Proposed Special Conditions

■ Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A321neo XLR series airplanes.

Cabin Evacuation—Protection from Fuel Tank Explosion Due to External Fuel-Fed Ground Fire.

The applicant must show the design prevents ignition of fuel tank vapors (due to hot surface) from occurring in the integral rear center tank during the time required for evacuation. The applicant's showing must also demonstrate that the design provides sufficient time for a safe evacuation of all occupants after the initiation of an external fuel-fed ground fire.

Issued in Kansas City, Missouri, on April 29, 2024.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2024–09660 Filed 5–6–24; 8:45 am]

BILLING CODE 4910–13–P

[3] Cherry, R. and Warren, K. ''Fuselage Burnthrough Protection for Increased Postcrash Occupant Survivability: Safety Benefit Analysis Based on Past Accidents, ''FAA Report DOT/FAA/AR–99/57, September 1999 and R G W Cherry & Associates Limited, ''A Benefit Analysis for Cabin Water Spray Systems and Enhanced Fuselage Burnthrough Protection,'' FAA Report DOT/FAA/AR–02/49, April 7, 2003.

[4] SC–D25.863–01, Issue 2, dated 24 October 2023 *https://www.easa.europa.eu/en/document-library/product-certification-consultations/final-special-condition-ref-sc-d25863-01-cabin.*

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 24–115; FCC 24–44; FR ID 216063]

Fostering Independent and Diverse Sources of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on the current state of the marketplace for diverse and independent programming and on the obstacles faced by independent programmers seeking carriage on multichannel video programming distributors (MVPDs) and online platforms. In order to alleviate such obstacles, the Commission proposes to prohibit two types of contractual provisions in program carriage agreements between independent programmers and MVPDs: most favored nation (MFN) provisions, and unreasonable alternative distribution method (ADM) provisions. The Commission also seeks comment on current program bundling practices.

DATES: Comments are due on or before June 6, 2024; reply comments are due on or before July 8, 2024.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). You may submit comments, identified by MB Docket No. 24–115, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: For additional information, contact Kathy Berthot, *Kathy.Berthot@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–7454.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 24–44, adopted on April 17, 2024 and released on April 19, 2024. The full text of this document is available on the FCC website at *https://docs.fcc.gov/public/attachments/FCC-24-44A1.pdf.* This document will also be available via ECFS at *https://www.fcc.gov/cgb/ecfs/.*

Paperwork Reduction Act of 1995 Analysis: This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Providing Accountability Through Transparency Act: Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document will be available on: *https://www.fcc.gov/proposed-rulemakings.*

Synopsis

1. Through this Notice of Proposed Rulemaking (NPRM), the Commission initiates a new proceeding to seek comment on the current state of the marketplace for diverse and independent programming. The Commission also seeks comment on the obstacles faced by independent video programmers seeking MVPD carriage and carriage on online platforms and how this impacts consumers. In order to alleviate marketplace obstacles that may hinder independent programmers from reaching consumers, the Commission proposes to prohibit two types of contractual provisions in program carriage agreements between independent programmers and MVPDs: (i) most favored nation (MFN) provisions, and (ii) unreasonable alternative distribution method (ADM) provisions. Additionally, the Commission seeks comment on current program bundling practices.

2. In 2016, the Commission launched a proceeding in MB Docket No. 16–41 to examine how certain contractual provisions in carriage agreements between programmers and distributors, such as most favored nation (MFN) and alternative distribution method (ADM) clauses, impact programming competition, innovation, and diversity. In general, an MFN provision entitles an MVPD to more favorable economic or non-economic contract terms that a video programming vendor has provided to another video programming distributor, whether an MVPD or an OVD. An ADM provision generally prohibits or restricts a video programming vendor from exhibiting its programming on OVDs, often for a specified period of time (sometimes referred to as a ''holdback period'' or ''window'') following the programming's original linear airing, or until certain conditions are met. In 2020, having not received any new comments in the proceeding in over two years, Commission staff terminated this proceeding under the dormant proceedings rule.

Current State of the Marketplace for Independent Programming

3. The Commission seeks comment on developments and changes in the marketplace for independent programming and the availability of such programming to consumers since the comment cycle in the MB Docket No. 16–41 proceeding closed in 2017. For example, what is the current state of the marketplace? Are independent programmers still experiencing the same obstacles to carriage that the record described in response to our inquiries in 2016? Has the availability of carriage on a variety of platforms, including OVDs and MVPDs, increased or decreased in the intervening years? Specifically, we seek information on how many independent programmers currently are carried exclusively by MVPDs, how many are carried exclusively by OVDs, and how many are carried by both MVPDs and OVDs. Has the number of independent programmers carried on each of these platforms increased or decreased since 2017? If it has decreased, what factor or factors have led to such decrease? Is there more or less independent and diverse programming available to consumers today than there was in 2017? Have changes in the marketplace exacerbated the difficulty of independent programmers in obtaining carriage? We note that in the *2022 Communications Marketplace Report,* NTCA asserts that a number of MVPDs have discontinued offering video service to its customers, and Rural Media Group contends that the vertical integration of MVPDs has restricted access to independent cable networks. Does the continued decrease in MVPD subscribers have any effect on the ability of independent programmers to obtain carriage?

4. In addition, the Commission seeks comment on whether it is more difficult for independent programmers to obtain carriage on certain types of MVPDs (*e.g.,* cable vs. non-cable MVPDs, or smaller vs. larger MVPDs). How does the level of competition among MVPDs impact the bargaining leverage of independent programmers in negotiations for carriage deals? To what extent does the ability of independent programmers to grow and thrive today depend on their ability to secure carriage on MVPDs? For each of these questions, the Commission requests that commenters support their responses with relevant information regarding specific independent program networks. The Commission also seeks comment on what, if any, difficulties independent programmers have experienced in gaining carriage on OVDs.

Marketplace Obstacles Faced by Independent Programmers

5. *Most Favored Nation Provisions.* MFN provisions generally authorize a contracting video programming distributor to modify a programming agreement to incorporate more favorable rates, contract terms, or conditions that the contracting programmer later agrees to with another distributor. The Commission seeks comment on the current usage of MFN provisions, both conditional and unconditional, in contracts for carriage of non-broadcast video programming. Has there been a notable change in the prevalence of MFNs provisions, particularly unconditional MFNs, since 2017? If unconditional MFN provisions are used less frequently today, what accounts for this change and is the downward trend in the use of such provisions expected to continue? Conversely, if unconditional MFN provisions are used more frequently today, what accounts

for this change and is the upward trend in the use of such provisions expected to continue? Are conditional and unconditional MFN provisions typically only included in carriage agreements between independent programmers and MVPDs or are they also included in agreements with OVDs? Do both cable and non-cable MVPDs require MFN provisions? Are MFN provisions in general, and unconditional MFNs in particular, more likely to be included in carriage contracts with independent programmers than in carriage contracts with vertically integrated programmers? Do certain types of MFN provisions restrain the ability of independent programmers to compete fairly and, if so, what types and how? To what extent does the size of the MVPD or the number of channels offered by an independent programmer impact whether MFN provisions are included in carriage contracts? Do MFN provisions in carriage agreements between MVPDs and independent programmers cover the terms of both other MVPD agreements and OVD agreements? If so, how often do such MFN provisions extend to OVD agreements?

6. Additionally, the Commission seeks comment on the current costs and benefits of both conditional and unconditional MFN provisions. What impact do conditional and unconditional MFNs have on the development and distribution of diverse and niche programming today? To what extent do MFN provisions limit the ability of independent programmers to experiment with new or unique distribution models or to tailor deals with smaller MVPDs or online distributors? Are there particular types of conditional MFN provisions that hinder the development and distribution of such programming and, if so, how do they have this effect? What impact do audits and other mechanisms used to enforce MFN provisions have on independent programmers' ability to compete in the marketplace? What benefits are associated with conditional and unconditional MFN provisions? Are there specific types of MFN provisions that are pro-competitive and enhance independent programmers' ability to gain MVPD carriage, making more diverse programming offerings available for consumers? How do MFN provisions ultimately affect consumers? What, if any, consideration, economic or non-economic, do independent programmers receive from MVPDs in exchange for agreeing to MFN provisions? To what extent do the benefits of MFN provisions, either conditional or unconditional, outweigh any harmful effects of such provisions?

7. The Commission proposes to adopt a rule prohibiting the inclusion of MFN provisions, either conditional or unconditional, in carriage agreements between MVPDs and independent programmers. The Commission proposes to define ''independent video programmer'' or ''independent programmer'' for purposes of this proceeding as ''a non-broadcast programmer that (1) is not vertically integrated with an MVPD and (2) is not affiliated with a broadcast network or entity that holds broadcast station licenses.'' The definition of ''affiliated'' set forth in 47 CFR 76.1300(a), which provides that ''entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities,'' would apply to the definition of ''independent programmers.'' For purposes of the prohibition on inclusion of MFN provisions in program carriage agreements, the Commission proposes to define ''most favored nation provision'' as ''a provision that entitles a multichannel video programming distributor to contractual rights or benefits that an independent video programming vendor has offered or granted to another multichannel video programming distributor or online video distributor, either conditionally or unconditionally.'' The Commission further proposes to define the terms (i) ''conditionally'' as ''subject to the multichannel video programming distributor's acceptance of terms and conditions that are integrally related, logically linked, or directly tied to the grant of such rights or benefits in the other video programming distributor's agreement, and with which the multichannel video programming distributor can reasonably comply technologically and legally,'' and (ii) ''unconditionally'' as ''without obligating the multichannel video programming distributor to accept any such terms and conditions.'' The Commission seeks comment on this proposal and the proposed definitions of ''most favored nation provision,'' ''conditionally,'' and ''unconditionally.'' In particular, the Commission seeks comment on how the proposed prohibition would enhance the ability of independent programmers to obtain MVPD carriage and compete in the marketplace. The Commission also seeks comment on whether the proposed prohibition would benefit consumers by, for example, facilitating the development and distribution of more diverse and niche programming. Would the proposed prohibition result in other benefits to consumers? Are there particular types of MFN provisions that should be excluded or exempted from the proposed prohibition because they provide procompetitive benefits that outweigh any harmful effects? What are the costs and benefits of the proposed prohibition to MVPDs, particularly small entities?

8. The Commission seeks comment on whether it should preclude MVPDs on a going forward basis from enforcing all MFN provisions in existing contracts. If so, should parties be afforded some period of time to reform their existing contracts before the prohibition takes effect? How much time would be reasonable? Commenters should explain the rationale for any time period proposed. The Commission proposes that complaints alleging violations of the prohibition on MFN provisions would be addressed under the program carriage complaint procedures. The Commission seeks comment on any amendments to the program carriage complaint procedures that would be necessitated by adoption of proposed prohibition on MFN provisions. What remedies and penalties should be imposed on an MVPD that violates the proposed prohibition on MFN provisions? To what extent, if any, would costs or other concerns associated with pursuing a program carriage complaint affect the ability of independent programmers to obtain relief if an MVPD violates the proposed prohibition?

9. *Alternative Distribution Method Provisions.* ADM provisions generally bar or restrict a video programming vendor from exhibiting its programming on alternative video distribution platforms (such as online platforms), often for a specified window of time following the programming's original linear airing, or until certain conditions are met. The Commission seeks comment on the prevalence and scope of ADM provisions in contracts for carriage of non-broadcast video programming today. Has there been any change in the usage or scope of ADMs since 2017? If ADM provisions are less common today, what accounts for this change and is the downward trend in usage of these provisions expected to continue? If ADM provisions are used more frequently today, what accounts for this change and is the upward trend in such usage expected to continue? Are ADM provisions today generally included only in carriage agreements between independent programmers and MVPDs or are they also included in carriage agreements between independent programmers and OVDs?

Do both cable and non-cable MVPDs require such provisions? Are ADM provisions more likely to be included in carriage contracts with independent programmers than in carriage contracts with vertically integrated programmers? Do certain types of ADM provisions restrain independent programmers from competing fairly? If so, what types of ADM provisions have this effect and how do such provision restrain independent programmers from competing fairly? Is there currently an industry standard for the windowing restrictions included in ADM provisions (*i.e.,* is there a particular window of time that is typically required in agreements today)? Are certain windowing restrictions more harmful to independent programmers' ability to compete than other windowing restrictions, and if so, why, and how common are such restrictions?

10. The Commission also seeks comment on the current costs and benefits of ADM provisions. What effect do ADM provisions have on the video marketplace and the availability of independent programming today? Do ADM provisions thwart competition, diversity, or innovation? If so, how? Parties should describe in detail. To what extent are ADM provisions used to limit the ability of independent programmers to experiment with new or unique distribution models or to tailor deals with smaller MVPDs or OVDs, and how does that impact their ability to compete? For example, are certain types of ADM provisions aimed more at restricting new means of distribution than at facilitating efficient negotiations or protecting an MVPD's investment in programming? What benefits are associated with ADM provisions? Do independent programmers receive any consideration, economic or non-economic, from MVPDs in exchange for agreeing to ADM provisions? Do certain types of ADM provisions enhance independent programmers' ability to gain MVPD carriage and thereby increase the exposure of their programming by incentivizing MVPDs to carry new content? How are ADM provisions enforced? Are there particular enforcement mechanisms for ADM provisions that are more common to independent programmers than other enforcement mechanisms? Do certain types of enforcement mechanisms for ADM provisions have a uniquely harmful impact on independent programmers' ability to compete?

11. The Commission proposes to prohibit the inclusion of ''unreasonable'' ADM provisions in carriage agreements between MVPDs and independent programmers. The Commission further proposes to define ''alternative distribution method provision'' to mean ''a provision that prohibits or restricts a video programming vendor from exhibiting its programming on alternative, non-traditional video distribution platforms (such as OVDs) for a specified period of time following the programming's original linear airing, or until certain conditions are met.'' Under the proposed prohibition on ''unreasonable'' ADM provisions, the issue of whether a particular ADM clause is ''unreasonable'' would be fact-specific and decided in the context of a program carriage complaint proceeding brought under section 616 of the Act. In determining whether a particular ADM provision is ''unreasonable,'' the Commission proposes to consider, among other factors, the extent to which an ADM provision prohibits an independent programmer from licensing content to other alternative, non-traditional distributors, including OVDs. By prohibiting only those ADM provisions determined to be ''unreasonable,'' this proposal would recognize that some ADM provisions may serve the public interest by incentivizing MVPDs to invest in new or emerging programming sources, including independent or niche content, while other ADM provisions may have no pro-competitive justifications and hinder the provision of diverse programming to consumers.

12. The Commission seeks comment on the proposed prohibition on unreasonable ADM provisions. The Commission seeks comment on whether the proposed prohibition would enhance the ability of independent programmers, particularly small entities, to compete fairly in the marketplace for video programming. Alternatively, would prohibiting certain ADM provisions make it less likely that MVPDs would agree to carry independent programmers or incentivize MVPDs to seek exclusive programming arrangements with independent programmers (subject to the restrictions in 47 U.S.C. 536(a)(2)) that would limit rather than expand their carriage opportunities? Additionally, the Commission seeks comment on how the proposed prohibition would affect consumers. Would it be expected to result in a greater choice of programming sources or lower costs for consumers? How would the proposed prohibition on unreasonable ADM provisions likely affect MVPDs, including small MVPDs? What costs and benefits are associated with the proposed prohibition for each of the affected parties? Should the Commission provide additional guidance in this proceeding on what constitutes an ''unreasonable'' ADM provision or should we make such determinations on a case-by-case basis in the context of program carriage complaint proceedings as proposed above? In this regard, the Commission seeks comment on what factors should be considered in determining whether an ADM provision is ''unreasonable.'' Are there specific ADM provisions that should be deemed presumptively ''unreasonable''? Conversely, are there certain ADM provisions that should be considered to be presumptively reasonable?

13. The Commission seeks comment on whether it should preclude MVPDs on a going forward basis from enforcing existing contracts that contain unreasonable ADM provisions and, if so, whether it should afford the parties a specified period of time to revise their contracts to replace any unreasonable ADM provision with an ADM provision with reasonable terms before the prohibition takes effect. The Commission also seeks input on what, if any, amendments to the program carriage complaint procedures would be warranted if the proposed prohibition on unreasonable ADM provisions is adopted. In addition, the Commission seeks comment on what remedies and penalties should be imposed on an MVPD that violates the proposed prohibition on unreasonable ADM provisions. In such circumstances, would it be appropriate for the Media Bureau to simply order that an unreasonable ADM provision not be enforced or be replaced with an ADM provision with reasonable terms? Moreover, the Commission seeks comment on the extent to which costs or other concerns associated with pursuing a program carriage complaint would affect the ability of independent programmers to obtain relief if an MVPD violates the proposed ban on unreasonable ADM provisions.

14. *Program Bundling.* The Commission seeks comment on what the current program bundling practices are today and how such practices affect the ability of MVPDs to carry independent and diverse programming and competition in the video distribution market. For example, is forced bundling prevalent today? What impact, if any, does the carriage of bundled channels have on the ability of MVPDs to carry independent channels? Are there examples of independent programmers being dropped or not carried at all due to the constraints placed on MVPD systems by bundling

since 2017? To what extent does bundling have a greater impact on smaller MVPDs than it does on large MVPDs? How much has MVPD channel capacity (*i.e.,* the number of MVPD channels available for programming) increased or decreased among both large and smaller MVPDs since 2017? To the extent there have been increases, will this alleviate the constraints placed on MVPD systems by bundling? Are there any plans for large and small MVPDs to increase capacity in the future? Alternatively, is MVPD capacity increasingly being used for broadband today, and does this consequently leave fewer additional channels available for independent programming? Are there other factors, such as financial resources, that continue to constrain the ability of MVPDs to carry independent programming as a result of bundling notwithstanding increases in channel capacity? How does bundling affect consumer choice? Does bundling raise or lower costs for consumers? What are the costs and benefits associated with program bundling? Commenters should describe the extent to which bundling may impede the ability of MVPDs to carry independent programming and whether this is outweighed by any associated benefits of this practice.

15. *Other Marketplace Obstacles.* The Commission seeks comment on other practices that may impede entry into the market by or growth of independent programmers, thereby harming competition and/or consumer choice. For example, what impact do tier placement and penetration requirements (*i.e.,* requirements in some programming agreements that programming be placed on a particular tier or that specify a minimum percentage of subscribers who must receive the programming) have on independent programmers? Are such requirements more typically found in programming agreements with independent programmers than in agreements with vertically-integrated programmers? Are there negotiation practices that hinder independent programmers' entry into the market? If so, what are these practices and how do they impede independent programmers' entry into the market? Do independent programmers that reject certain provisions or requirements in programming agreements face retaliatory conduct that impacts their ability to compete fairly? Are there other marketplace practices that limit the ability of independent programmers to reach consumers? What are the costs of such practices? In particular, do such practices have an adverse effect on diversity, competition, or innovation? What, if any, benefits do such practices offer and do the benefits outweigh the harms?

Legal Authority To Address Marketplace Obstacles to Independent Programming

16. The Commission seeks comment on its legal authority to take action to curb practices that may adversely impact the ability of independent programmers to compete fairly. In particular, the Commission seeks comment on its authority under section 616 of the Act to adopt rules prohibiting the use of MFN provisions and unreasonable ADM provisions in program carriage agreements between MVPDs and independent programmers, as proposed above. Section 616(a) directs the Commission to ''establish regulations governing program carriage agreements and related practices between cable operators or other [MVPDs] and video programming vendors.'' The Commission seeks comment on whether the grant of authority under section 616(a) to adopt rules ''governing program carriage agreements and related practices between [MVPDs] and video programming vendors'' is sufficiently broad to permit us to ban the use of MFN or unreasonable ADM provisions. The Commission notes that the prohibitions on MFN provisions and unreasonable ADM provisions proposed above would apply to agreements between MVPDs and independent programmers, which are encompassed within the term ''video programming vendors.'' Congress's goal in enacting section 616 was ''to stem and reduce the potential for abusive or anticompetitive actions [by MVPDs] against programming entities.'' Consistent with this objective, the proposed prohibitions on MFN provisions and unreasonable ADM provisions discussed above are intended to enhance competition in the video marketplace and reflect Congress's belief that ''competition is essential both for ensuring diversity in programming and for protecting consumers from potential abuses by cable operators possessing market power'' and other MVPDs.

17. Moreover, the Commission tentatively concludes that Congress did not intend to limit the Commission's authority under section 616(a) to the specific practices listed in that section. The introductory language in section 616(a) grants the Commission broad authority to ''establish regulations governing program carriage agreements and related practices between cable operators and multichannel video programming distributors and video programming vendors,'' and nothing in the statute expressly precludes the Commission from establishing rules apart from those specifically listed. Further, sections 616(a)(1)–(a)(3)—the subsections relating to substantive requirements—are introduced by the verbs ''include'' or ''contain,'' which suggests that such requirements are not exhaustive. In instances where Congress intends to limit the Commission's rulemaking authority to specified areas, it has done so expressly. The Commission seeks comment on this analysis.

18. The Commission also seeks comment on whether section 616(a)(3) provides a basis for our proposed bans on MFN provisions and unreasonable ADM provisions in carriage agreements between MVPDs and independent programmers. Section 616(a)(3) directs the Commission to adopt rules ''designed to prevent [an MVPD] from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.'' The Commission seeks comment on whether this provision authorizes it to adopt rules that prohibit vertically integrated MVPDs from including MFN and unreasonable ADM clauses in carriage agreements with independent programmers, where such MVPDs do not include the same clauses in carriage agreements with affiliated programming networks. If so, would the application of such rules only to vertically integrated MVPDs adequately address the competition and diversity concerns raised by restrictive MFN and ADM clauses? Would such rules be effective given that an MVPD could enter into the same restrictive MFN and/or ADM clauses with both an affiliated programming network and an independent programmer but simply not exercise its rights with respect to the affiliated network?

19. The Commission further seeks comment on whether section 628 provides legal authority for adoption of our proposed rules. Similar to our proposed rules, the purpose of section 628 is to ''increase[e] competition and diversity in the [[MVPD] market . . . and to spur the development of communications technologies.'' Section 628(b) precludes a cable operator, a common carrier or its affiliate that provides video programming, and an Open Video System (OVS) operator, as

well as a satellite-delivered programmer affiliated with one of those entities, from engaging in ''unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any'' MVPD from providing programming to subscribers or consumers. Section 628(c)(1) directs the Commission to ''prescribe regulations to specify particular conduct that is prohibited by [section 628(b)]'' in order to ''increase[e] competition and diversity in the [MVPD] market and the continuing development of communications technologies.'' Considering that section 628(b) appears to target only methods, acts, and practices that adversely affect MVPDs, the Commission seeks comment on whether it could lawfully invoke this provision to proscribe, as an ''unfair'' method, act or practice, the use of certain MFN and ADM provisions in agreements between MVPDs and independent programmers. Given that direct broadcast satellite (DBS) carriers are not subject to the provisions of section 628, the Commission seeks comment on whether reliance on that provision to limit the use of MFN and ADM provisions would result in a disparity in regulatory treatment among MVPDs.

20. Finally, the Commission seeks comment on whether there are other provisions in the Act that afford the Commission the authority to alleviate marketplace obstacles to the distribution of independent and diverse programming, including obstacles posed by MFN provisions and unreasonable ADM provisions. For example, section 335(a) provides the Commission with authority to ''impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming.'' Does the Commission have authority under other provisions of Title III? The Commission also seeks comment on whether it has—and should exercise—ancillary authority under section 4(i) of the Act to address MFN and ADM provisions.

Digital Equity and Inclusion

21. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the issues discussed herein. Specifically, we seek comment on how any Commission actions taken to address barriers to the distribution of independent and diverse programming may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

Initial Regulatory Flexibility Act Analysis

22. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of 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 (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

23. One of the Commission's primary objectives with respect to multichannel video programming is to foster a diverse, robust, and competitive marketplace for the delivery of such programming. We recognize that competition among distributors of video programming continues to evolve and consumers today have a wealth of video programming platforms from which to choose. Nevertheless, stakeholders continue to raise concerns that certain marketplace practices by distributors may hinder independent video programmers from reaching consumers and deprive them of access to their choice of diverse programming—one of the benefits of enhanced competition in the video marketplace. Specifically, independent programmers contend that their ability to thrive in the marketplace and reach consumers today depends on their ability to negotiate and secure carriage on multichannel video programming distributors (MVPDs) or online video distributors (OVDs). Despite the changes in the way that consumers access video programming—including via the growing number of platforms available to video consumers and the protracted decline in MVPD subscribers—independent video programmers have consistently asserted over the past several years that certain practices by incumbent cable operators and other MVPDs, particularly most favored nation (MFN) and alternative distribution method (ADM) clauses in program carriage agreements, have impeded their ability to reach consumers across all video platforms, leading to less competition and fewer choices for those who watch.

24. The NPRM seeks comment on the state of the marketplace for independent and diverse programming and the availability of such programming to consumers today. The NPRM also seeks comment on the obstacles faced by independent programmers in reaching consumers and the actions the Commission can take to alleviate such obstacles. Specifically, the NPRM seeks comment on the current usage of MFN provisions, both conditional and unconditional, in contracts for carriage of non-broadcast video programming and on the costs and benefits of conditional and unconditional MFN provisions. Additionally, the NPRM requests comment on the prevalence and scope of ADM provisions in contracts for carriage of non-broadcast video programming today and on the current costs and benefits of ADM provisions. The NPRM seeks comment on what the current program bundling practices are today and how such practices affect the ability of MVPDs to carry independent and diverse programming. Further, the NPRM seeks comment on other practices that may impede entry into the market by or growth of independent programmers. Finally, the NPRM invites comment on the need for Commission action to address any obstacles to the distribution of independent and diverse programming, as well as the Commission's legal authority to take action to curb program carriage practices that may adversely impact the ability of independent programmers to compete fairly.

25. In order to alleviate marketplace obstacles that may hinder independent programmers from reaching consumers, the NPRM proposes to prohibit the use of MFN provisions, either conditional or unconditional, in carriage agreements between MVPDs and independent programmers. In addition, the NPRM proposes to bar unreasonable ADM provisions in carriage agreements between MVPDs and independent programmers. The NPRM proposes that the issue of whether a particular ADM clause is ''unreasonable'' would be fact-specific and decided in the context of a program carriage complaint proceeding brought under section 616 of the Act, taking into account, among other factors, the extent to which an ADM provision prohibits an independent

programmer from licensing content to other distributors, including OVDs. The NPRM also seeks comment on whether further guidance should be provided on the meaning of ''unreasonable'' in this context.

B. Legal Basis

26. The proposed action is authorized pursuant to sections 1, 4(i), 4(j),, 303, 307, 316, 335, 616 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303, 307, 316, 335, 536, and 548.

C. Description and Estimates of the Number of Small Entities To Which the Proposed Rules Will Apply

27. 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 proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' 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) satisfies any additional criteria established by the SBA.

28. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.

29. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

30. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses. The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years. Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses. One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.

31. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

32. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

33. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

34. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one 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.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, 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.

35. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

36. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

37. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service—DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation. DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

38. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service (UMFUS), Millimeter Wave Service (70/80/90 GHz), Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), 24 GHz Service, Multiple Address Systems (MAS), and Multichannel Video Distribution and Data Service (MVDDS), where in some bands licensees can choose between common carrier and non-common carrier status. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

39. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.

40. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

41. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the industry category of Wired Telecommunications Carriers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for

2017 show that there were 3,054 firms that operated for the entire year. Of this total, 2,964 firms operated with fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

42. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

43. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the internet exclusively or (2) operating websites that use a search engine to generate and maintain extensive databases of internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the internet exclusively. Establishments known as web search portals often provide additional internet services, such as email, connections to other websites, auctions, news, and other limited content, and serve as a home base for internet users. The SBA small business size standard for this industry classifies firms having 1,000 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were firms that 5,117 operated for the entire year. Of this total, 5,002 firms operated with fewer than 250 employees. Thus, under this size standard the majority of firms in this industry can be considered small.

44. *Open Video Systems.* The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is ''Wired Telecommunications Carriers.'' The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this total, 2,964 firms operated with fewer than 250 employees. Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

45. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers' industry which includes wireline telecommunications businesses. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this total, 2,964 firms operated with fewer than 250 employees. Thus under the SBA size standard, the majority of firms in this industry can be considered small.

46. *Television Broadcasting.* This industry is comprised of ''establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small. 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. Of that number, 657 firms had revenue of less than $25,000,000. Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

47. As of September 30, 2023, there were 1,377 licensed commercial television stations. Of this total, 1,258 stations (or 91.4%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 4, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of September 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 380 Class A TV stations, 1,889 LPTV stations and 3,127 TV translator stations. The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

48. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this

industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

49. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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

50. The rule changes proposed in the NPRM, if adopted, will impose compliance obligations on small, as well as other entities. Specifically, the NPRM proposes to prohibit MFN provisions, either conditional or unconditional, in carriage agreements between MVPDs and independent programmers. The NPRM also proposes to prohibit unreasonable ADM provisions in carriage agreements between MVPDs and independent programmers. The NPRM proposes that a determination of whether a particular ADM provision is ''unreasonable'' would be fact-specific and decided in the context of a program carriage complaint proceeding brought under section 616 of the Act.

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

51. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

52. The proposals to prohibit MFN provisions and unreasonable ADM provisions, if adopted, would be expected to benefit small independent programmers by enhancing their ability to compete in the video marketplace and to create new, innovative program offerings. These proposals would also likely benefit small MVPDs and OVDs by removing barriers to mutually-beneficial carriage deals between these small entities and independent programmers. Nevertheless, the Commission seeks comment in the NPRM on how these proposals would affect small entities and expects to more fully consider the impact of these proposals and any alternatives on small entities, following review of the comments received in response to the NPRM.

53. The NPRM proposes to use the existing program carriage complaint procedures to address any complaints regarding violations of the proposed bans on MFN provisions and unreasonable ADM provisions. The NPRM seeks comment on whether costs or other concerns associated with pursuing a program carriage complaint would affect the ability of independent programmers, including small entities, to obtain relief if an MVPD violates the proposed ban on MFN provisions or unreasonable ADM provisions and asks whether any modifications to the program carriage complaint procedures are warranted.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

54. None.

Ordering Clauses

55. *It is ordered* that, pursuant to the authority found in sections 1, 4(i), 4(j), 303, 307, 316, 335, 616 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303, 307, 316, 335, 536 and 548, this Notice of Proposed Rulemaking *is adopted.*

56. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking in MB Docket No. 24–115 on or before thirty (30) days after publication in the **Federal Register** and reply comments on or before sixty (60) days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 76

Television

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308. 309. 312, 315, 317, 325, 335, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Amend § 76.1300 by:
■ a. Redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (g) and (h); and
■ b. Adding new paragraphs (b), (e) and (f).

The additions read as follows:

§ 76.1300 Definitions.

* * * * *

(b) *Alternative distribution method provision.* The term ''alternative distribution method provision'' means a provision that prohibits or restricts an independent video programming vendor from exhibiting its programming on alternative, non-traditional video distribution platforms (such as online video distributors) for a specified period of time following the programming's original linear airing, or until certain conditions are met. For purposes of this section, the term ''original linear airing'' refers to the initial prescheduled airing of the programming by the programmer.

* * * * *

(e) *Independent video programming vendor.* The term ''independent video programming vendor'' means ''a non-broadcast programmer that (1) is not vertically integrated with a multichannel video programming distributor and (2) is not affiliated with a broadcast network or entity that holds broadcast station licenses.''

(f) *Most favored nation provision.* The term ''most favored nation provision'' means ''a provision that entitles a

multichannel video programming distributor to contractual rights or benefits that an independent video programming vendor has offered or granted to another multichannel video programming distributor or online video distributor, either conditionally or unconditionally. The term ''conditionally'' means ''subject to the multichannel video programming distributor's acceptance of terms and conditions that are integrally related, logically linked, or directly tied to the grant of such rights or benefits in the other multichannel video programming distributor's or online video distributor's agreement.'' The term ''unconditionally'' means ''without obligating the multichannel video programming distributor to accept any such terms or conditions.''

* * * * *

■ 3. Amend § 76.1301 by adding paragraphs (d) and (e) to read as follows:

§ 76.1301 Prohibited Practices.

* * * * *

(d) *Most favored nation provisions.* No multichannel video programming distributor shall enter into an agreement with an independent video programming vendor that contains a most favored nation provision.

(e) *Unreasonable alternative distribution method provisions.* No multichannel video programming distributor shall enter into an agreement with an independent video programming vendor that contains an unreasonable alternative distribution method provision.

[FR Doc. 2024–09701 Filed 5–6–24; 8:45 am]

BILLING CODE 6712–01–P