FOR FURTHER INFORMATION CONTACT: Stanley Weintraub, (410) 786–4498.

SUPPLEMENTARY INFORMATION:

Background.

In the **Federal Register** Document dated June 18, 1997, there were a number of technical errors. In Addendum B of the proposed rule, on pages 33195 through 33196, the proposed statistical linking methodology is discussed. In preparing the table entitled ''Linking Adjustment Factors by CPEP,'' the actual linking factors were not accurately stated. The actual factors are shown in the revised table in this document under the heading ''Correction of Errors.''

In addition, in Addendum C, on page 33288, we inadvertently printed incorrect information for CPT code 92543 (caloric vestibular testing).

The discussion on page 33183 of the proposed rule indicated that we are proposing to reduce the relative value units (RVUs) for CPT code 92543 to 25 percent of what the RVUs would otherwise have been. As explained in that material, we are making this proposal because we plan to permit physicians and suppliers to bill four units of service instead of the one until now permitted. The intent is to reduce billing confusion regarding these codes in a budget-neutral way.

In Addendum C of the proposed rule, the reduction to 25 percent of the RVUs otherwise applicable was reflected for the practice expense RVUs, but we incorrectly published unreduced RVUs for work and malpractice. The corrected RVUs appear in this document under the heading ''Correction of Errors.''

Correction of Errors

In FR Doc. 97–15817 of June 18, 1997 (62 FR 33158), insert the following revised table on page 33196:

ADDENDUM B.—LINKING ADJUSTMENT FACTORS BY CPEP

CPEP	Clinical labor linking adjustment	Administrative labor linking adjustment
CPEP #1	.84	.50
CPEP #2	.40	.36
CPEP #3	.42	.31
CPEP #4	1.03	.56
CPEP #5	.96	.52
CPEP #6	.80	.46
CPEP #7	1.00	1.00
CPEP #8	.44	.22
CPEP #9	.54	.35
CPEP #10	.91	.78
CPEP #11	.93	.39
CPEP #12	.55	.24
CPEP #13	.77	.44
CPEP #14	1.00	1.00
CPEP #15	1.07	.20

Make the following corrections in Addendum C for CPT code 92543 on page 33288:

ADDENDUM C.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION

CPT[1] / HCPCS[2]	MOD	Status	Description	Physician work RVUs[3 4]	Direct in office practice expense RVUs	Direct out of office practice expense RVUs	Total in office practice expense RVUs	Total out of office practice expense RVUs	Malpractice RVUs	Total in office	Total out of office
*			*	*	*	*	*	*	*	*	
92543		A	Caloric vestibular test	0.10	0.14	0.14	0.20	0.20	0.02	0.32	0.32
92543	26	A	Caloric vestibular test	0.10	0.02	0.02	0.05	0.05	0.01	0.16	0.16
92543	TC	A	Caloric vestibular test	0.00	0.12	0.12	0.15	0.15	0.01	0.16	0.16
*			*	*	*	*	*	*	*	*	

[1] CPT codes and descriptions only are copyright 1996 American Medical Association. All rights reserved. Applicable FARS/DFARS apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not for Medicare Payment.
[4] * Work RVUs increased in global surgical package.

Section 1848 of the Social Security Act (42 U.S.C. 1395w–4)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 6, 1997.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 97–21730 Filed 8–15–97; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 97–151; FCC 97–234]

Pole Attachments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rulemaking seeking comment on its continued implementation of the pole attachment provisions of the Telecommunications Act of 1996. We seek comment on a methodology to ensure just, reasonable, and nondiscriminatory maximum pole attachment and conduit rates for telecommunications carriers, and on how to ensure that rates charged for use of rights of way are just, reasonable and nondiscriminatory. The Commission explores this issue to fulfill its obligation under the Telecommunications Act of 1996 to adopt rules concerning pole attachments. The item will help the Commission create a record on this issue, which will assist the Commission in designing new or amending current regulations concerning pole attachments.

DATES: Comments are due on or before September 26, 1997 and reply comments on or before October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Larry Walke, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained herein, contact Judy Boley at 202–418–0217, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in CS Docket No. 97–151, FCC 97–234, adopted July 1, 1997 and released August 12, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, DC 20554, and may be

purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, DC 20554.

I. Introduction

1. In this Notice of Proposed Rulemaking (''NPRM''), the Commission continues its implementation of section 703 of the Telecommunications Act of 1996 (''1996 Act''), Pub. L. 104–104, 110 Stat. 61, 149–151 (February 8, 1996), by proposing amendments to the Commission's rules relating to pole attachments. The 1996 Act expanded the scope of section 224 of the Communications Act of 1934 (''Communications Act'') to telecommunications carriers and created a distinction between pole attachments used by cable systems solely to provide cable service and pole attachments used by cable systems or by telecommunications carriers to provide any telecommunications service. In this NPRM we seek comment on the implementation of a methodology to ensure just, reasonable, and nondiscriminatory maximum pole attachment and conduit rates for telecommunications carriers. We also seek comment on how to ensure that rates charged for use of rights of way are just, reasonable and nondiscriminatory.

2. The Commission must prescribe the new methodology for telecommunications carriers within two years of enactment of the 1996 Act, with these rules becoming effective five years from enactment. Section 224(d)(3) of the Communications Act applies the Commission's existing pole attachment methodology to both cable television systems and telecommunications carriers until the effective date of the new formula. We note that section 257 of the Communications Act provides that the Commission promote policies that eliminate ''* * * market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services. * * *''

II. Background

A. Prior to the 1996 Act

3. It is common practice for telecommunications carriers to lease space from utilities on poles or in ducts, conduits, or rights-of-way, in order to provide telecommunications services. The federal government did not regulate these arrangements until 1978, when Congress enacted section 224 of the Communications Act in response to concerns raised by cable television operators. Section 224 was enacted to stop utilities from ''unfair pole attachment practices * * * and to minimize the effect of unjust or unreasonable pole attachment practices on the wider development of cable television service to the public.''

4. Section 224(b)(1) grants the Commission authority to regulate the rates, terms, and conditions governing pole attachments to ensure that they are just and reasonable. Generally, the Commission does not have authority where a state regulates pole attachment rates, terms, and conditions. Section 224(d)(1) defines a just and reasonable rate as ranging from the statutory minimum (incremental costs) to the statutory maximum (fully allocated costs). Incremental costs include pre-construction survey, engineering, make-ready and change-out costs incurred in preparing for cable attachments. Congress expected pole attachment rates based on incremental costs to be low because utilities generally recover the make-ready or change-out charges directly from cable systems. Fully allocated costs refer to the portion of operating expenses and capital costs that a utility incurs in owning and maintaining poles that is equal to the portion of usable pole space that is occupied by an attacher.

5. In 1978, the Commission implemented the original section 224 by issuing rules governing pole attachment issues and establishing a basic formula for pole attachment rates. Subsequent Commission orders have reconsidered, amended and clarified the Commission's methodology for determining rates, the amount of usable and unusable space on a pole and the amount of space occupied by cable systems. In addition, the Commission has adjusted complaint procedures, including the information accompanying complaints.

B. The 1996 Act

6. The 1996 Act amended section 224 in important respects. Most prominently, it created a right of access for telecommunications carriers. New sections 224 (d)(3), (e), (f), (g), (h) and (i) proscribed expanded access and established a new methodology for determining just and reasonable rates for telecommunications carriers. The 1996 Act also amended the definitions of ''utility'' and ''pole attachment'' in sections 224 (a)(1) and (a)(4); recognized a State's authority to regulate pole attachments involving telecommunications carriers in sections 224 (c)(1) and (c)(2)(B); and added section 224(a)(5) to exempt incumbent local exchange carriers (''LECs'') from the definition of telecommunications carriers.

7. Under section 224(d)(3) the Commission's existing rules are applicable to both cable television systems and to telecommunications carriers until such time as the new rules become effective. On March 14, 1997, the Commission released a *Notice of Proposed Rulemaking, Amendment of Rules and Policies Governing Pole Attachments,* CS Docket No. 97–98 (''Pole Attachment NPRM''), 62 FR 18074 (April 14, 1997), relating to the existing formula for pole attachments. Parties need not file duplicate comments to address issues raised in that proceeding. We have determined that, to the extent such comments are relevant in the instant proceeding, they will be incorporated by reference within this proceeding. That proceeding specifically seeks comment on the Commission's use of the current presumptions, on carrying charge and rate of return elements of the formula, on the use of gross versus net data, and on a new conduit methodology. Commenters to the Pole Attachment NPRM are encouraged to distinguish their comments in that proceeding if they vary from those filed in response to this NPRM, as well as providing comment on the new and different issues raised in this NPRM as a result of 1996 Act. We invite further comment in this proceeding to establish a full record for attachments made by cable systems offering telecommunications services. In *Implementation of Section 703 of the Telecommunications Act of 1996,* CS Docket No. 96–166 (''Self-Effectuating Order''), 61 FR 43023 (August 20, 1996), the Commission amended its rules to reflect the self-effectuating additions and revisions to section 224. In *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (''Local Competition Provisions Order''), 61 FR 45476 (August 29, 1996), the Commission implemented the access provisions of the 1996 Act, sections 224 (c)(1), (f) and (h).

8. Most significantly for purposes of this NPRM, the 1996 Act added the following provisions of section 224(e):

(e)(1) The Commission shall, no later than 2 years after the date of enactment of the Telecommunications Act of 1996, prescribe regulations in accordance with this subsection to govern charges for pole attachments used by telecommunication carriers to provide telecommunications services, when the parties fail to resolve a dispute over such charges. Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for such pole attachments.

(e)(2) A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than usable space among

entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

(e)(3) A utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.

(e)(4) The regulations required under paragraph (1) shall become effective five years after enactment of the Telecommunications Act of 1996. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of five years beginning on the effective date of such regulations.

9. This NPRM considers the portion of the costs of a bare pole to be included in the pole attachment rate. Currently, a portion of the total annual cost of a pole is included in the pole attachment rate based on the portion of the usable space occupied by the attaching entity. This formula will continue to be applicable to cable systems providing only cable service. However, for cable systems and telecommunications carriers providing telecommunications services, the portion of the total annual cost included in the pole attachment rate will be determined under a more delineated method. This method differentially allocates the costs of the portion of the total pole cost associated with the usable portion of the pole and the portion of the total pole cost associated with the unusable portion of the pole. Generally, this is expected to result, at least initially, in the inclusion of greater portions of the carrying charge components in the rate. As the number of attaching entities increases, however, smaller portions of the carrying charge will be included in each entity's rate. As the carrying charge rate is spread amongst the attaching entities, the overall rate may become lower over time because the total cost will be spread over all attaching entities.

10. Section 224(e) requires two discrete steps. First, two-thirds of the costs relating to the other than usable space on the pole, duct, conduit or right-of-way will be apportioned equally among all attaching telecommunications carriers. Second, telecommunications carriers will also be apportioned the cost of usable space, according to the amount of usable space the entity requires.

III. Preference for Negotiated Agreements

11. In proposing a methodology to implement section 224(e), we note that the Commission's role is limited to circumstances ''when the parties fail to resolve a dispute over such charges.'' Thus, negotiations between a utility and an attacher should continue to be the primary means by which pole attachment issues are resolved. We believe that an attacher must attempt to negotiate and resolve its dispute with a utility before filing a complaint with the Commission. However, we also note that in the 1996 Act, Congress recognized the importance of access in enhancing competition in telecommunications markets and that parties in a pole attachment negotiation do not have equal bargaining positions. Congress also recognized that the potential for significant barriers to competition emanating from the lack of access or unreasonable rates is significant. Accordingly, we propose to use our current rule, which requires a complainant to include a brief summary of all steps taken to resolve its dispute before filing a complaint. 47 CFR 1.1404(i). ''The complaint shall include a brief summary of all steps taken to resolve the problem prior to filing. If no such steps were taken, the complaint shall state the reason(s) why it believed such steps are fruitless.'' We seek comment on our tentative conclusions and on the proposed use of our current rule.

IV. Attachment Space Use

12. Attachment space use must conform to the standards of section 224(f)(2) with respect to safety, reliability and generally applicable engineering standards. When an attaching entity conforms to these standards, the issue remaining is whether a utility may impose additional limits on the use of the space. We note, for example, in the context of a pole attachment by a cable television system which also provides nonvideo communication, the Commission has determined that a utility may not charge different pole attachment rates depending on the type of service provided by the cable operator. *See Heritage Cablevision Assocs. of Dallas, L.P.* v. *Texas Utils. Elec. Co.,* 6 FCC Rcd. 7099 (1991), *aff'd sub nom. Texas Utils. Elec. Co.* v. *FCC,* 997 F.2d 925 (D.C. Cir. 1993). The Commission found that ''Section 224 protects TCI's pole attachments within its franchise service area which support equipment employed to provide nonvideo services in addition to video and other traditional cable television services'' and that the ''imposition of a separate charge for TCI's cable system pole attachments for nontraditional services violates section 224's prohibition against unjust and unreasonable pole attachment rates, terms and conditions.'' *Id.* at 7107. We seek comment on whether our holding in *Heritage* should be extended to other circumstances where utilities attempt to condition or limit the use of attachment space.

13. Given the pro-competitive intent of the 1996 Act, we tentatively conclude that telecommunications carriers should be permitted to overlash their existing lines with additional fiber when building out their system. If a telecommunications carrier is allowed to overlash its own lines, should it be permitted to allow third parties to use the overlashed facility? Moreover, we seek comment whether a cable system or telecommunications carrier may allow a third party to use dark fiber in its original lines. Where an attaching entity has overlashed with fiber, should it be permitted to allow third parties to use dark fiber within its overlashed line? We inquire whether a third party should be permitted to overlash to an existing cable system or telecommunications carriers' attachment. We also seek information whether there are inherent differences between the lines of cable systems and those of telecommunications carriers that warrant a difference in treatment between overlashing by cable systems and telecommunications carriers. Similarly, we request that commenters discuss whether, and to what extent, overlashing facilitates the provision of services other than cable service by cable operators, such as Internet access and local telephone service. We seek information on how these situations should be treated for the purpose of counting entities in the process of establishing a just and reasonable rate. We seek comment on the contractual obligations that utilities should be permitted to require of attaching entities who lease excess dark fiber or allow overlashing. We inquire how best to promote the rapid deployment of competitive telecommunications services in light of these issues.

V. Charges for Attaching

A. Presumptions

14. In a previous order, the Commission found that ''the most commonly used poles are 35 and 40 feet high, with usable spaces of 11 to 16 feet, respectively.'' The Commission recognized the NESC guideline that 18 feet of the pole space must be reserved for ground clearance and that six feet of pole space is for setting the depth of the pole. To avoid a pole by pole rate calculation, the Commission adopted rebuttable presumptions of an average pole height of 37.5 feet, an average

amount of usable space of 13.5 feet, and an average amount of 24 feet of unusable space on a pole.

15. A group of electrical utilities recently filed a Whitepaper (''Whitepaper'') in anticipation of this NPRM. The Whitepaper suggests that an increase in the current presumptive pole height is appropriate. The Whitepaper asserts that over time, and with increased demand, the average pole height has increased to an average of 40 feet. At the same time, the Whitepaper contends that the usable space presumption should also be changed from 13.5 feet to 11 feet. We seek comment in this proceeding to establish a full record for attachments made by telecommunications carriers under the 1996 Act. We also seek comment on an issue raised by Duquesne Light Company (''Duquesne'') in its reconsideration petition of the Commission's decision in the Local Competition Provisions proceeding. Specifically, Duquesne advocates that the number of physical attachments of an attaching entity is not necessarily reflective of the burden, and therefore the costs, relating to the attachment. Duquesne states that varying attachments place different burdens on the pole and proposes that any presumption include factors addressing weight and wind loads.

16. The presumptions were established because developing a data base for each utility is impractical. We seek comment on the need for presumptions and whether attachments by telecommunications carriers are sufficiently different or unique to cause us to reevaluate our presumptions. Specifically, we seek comment on the amount of usable space occupied by telecommunications carriers and on whether the presumptive one foot used for cable is applicable to telecommunications carriers generally.

17. We also propose that the Commission's approach to the safety space required to be maintained between power lines and communications lines should also apply to telecommunications carriers. The Commission has always recognized the NESC requirement that a 40 inch safety space must exist between electric lines and communication lines. The NESC requires a 40 inch safety space to minimize the possibility of physical contact by employees working on cable television or telecommunications attachments with the potentially lethal electric power lines. We tentatively conclude that the safety space emanates from a utility's requirement to comply with the NESC and should properly be assigned to the utility as part of its usable space.

B. Allocating the Cost of Other Than Usable Space

18. Section 224(e)(2) states that ''[a] utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.'' This requirement translates to the following basic formula:

$$2/3 \times \frac{\text{Unusable Space}}{\text{Pole Height}} \times \frac{\text{Net Cost of a Bare Pole}}{\text{Number of Attachers}} \times \begin{matrix}\text{Carrying}\\ \text{Charges}\end{matrix}$$

19. Under section 224(e)(2), the number of entities with pole attachments on each pole affects directly the rate charged. Defining what an attacher is and establishing how to calculate the number of attachers is critical to formulating a proper cost allocation method pursuant to section 224(e)(2). The more attaching entities there are, the more widely the costs relating to the unusable space are spread. We propose, consistent with the statutory language, requiring equal apportionment of two-thirds of the costs of providing unusable space among all attaching entities, that any telecommunications carrier, or cable operator or LEC attaching to a pole be counted as a separate entity for the purposes of the apportionment of two-thirds of the costs of the unusable space. We also propose that such costs will be apportioned equally to all such attaching entities. We seek comment on these tentative conclusions. We also note that section 224(g) requires that a utility providing telecommunications services impute to its costs of providing service an amount equal to the rate for which such company would be liable under this section. We tentatively conclude that where a utility is providing telecommunications services, such entity would also be counted as an attaching entity for the purposes of allocating the costs of unusable space under section 224(e). We seek comment on this tentative conclusion.

20. We also tentatively conclude that an incumbent LEC with attachments on a pole should be counted for the purposes of apportionment of the costs of unusable space. We note that the definition of telecommunications carrier excludes incumbent LECs and a pole attachment is defined as any attachment by a cable television system or a provider of telecommunications service, and seek comment on how these definitions impact our tentative conclusion. We also seek comment on the general premise that counts any telecommunications carrier as a separate attaching entity for each foot, or partial increment of a foot, it occupies on the pole and on such a methodology's consistency with the statutory requirement in section 224(e)(2) for equal apportionment among all attaching entities. We also seek information on alternative methodologies to apportion costs, such as on a proportion of space occupied basis.

21. Similarly, we propose that attachments made by a government agency be included. A utility may be required under its franchise or statutory authorization to provide certain attachments for public use. These include traffic signals, festoon lighting, or specific pedestrian lighting. Often, the agency does not directly pay for the attachment. Since the government agency is using space on the pole, we propose that its attachments be counted for purposes of allocating the cost of the unusable space. This cost would be borne by the pole owner, since it relates to a responsibility under its franchise or statutory authorization. We seek comment on this tentative conclusion.

22. We seek comment on how entities that have either overlashed to an existing attachment or are using dark fiber within the initial attachment of another entity should be counted for the purpose of allocation of costs of unusable space. Should they be considered as separate attachers for purposes of counting the number of entities on a pole?

23. We believe a pole-by-pole inventory of the number of entities on each pole would be too costly. We propose that each utility develop, through the information it possesses, a presumptive average number of attachers on one of its poles. We also

propose that telecommunications carriers be provided the methodology and information by which a utility's presumption was determined. We seek comment on this proposal and whether any parameters should be established for a utility to develop its presumptive average. We also seek comment on whether a utility should develop averages for areas that share similar characteristics relating to pole attachments and whether different presumptions should exist for urban, suburban, and rural areas. We seek comment on the criteria to develop and evaluate any presumption. As an alternative to a pole by pole inventory by the facility owner, we seek comment on whether the Commission should determine the average number of attachments. We inquire whether the Commission should initiate a survey to gain the necessary data to develop a rebuttable presumption regarding the number of attachments. We seek comment on the difficulties of administrating a survey, any additional data required, and parameters of accuracy and reliability required for fair rate determination.

24. Where a presumptive number of attachers is developed by the Commission and used to determine attachment rates, we believe that a utility, telecommunications carrier or cable operator may challenge the presumption. The challenging party must initially establish that the presumption is not proper under the circumstances by identifying and calculating the number of attachments on the poles and submitting what it believes to be an appropriate average. Where the number of poles is large, and complete inspection impractical, a statistically sound survey should be submitted. Where a presumption is challenged, the challenged party will be afforded an opportunity to justify the presumption. Where a presumption is overcome either by submission of actual data or by survey, the resulting figures would be used as the factor (number of attachers) within the formula to calculate the rate. We seek comment on these issues.

C. Allocating the Cost of Usable Space

25. The Commission has adopted the following generally applicable formula for calculating the maximum rate:

$$\text{Maximum Rate} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \begin{matrix}\text{Net Cost of a}\\ \text{Bare Pole}\end{matrix} \times \begin{matrix}\text{Carrying}\\ \text{Charge}\\ \text{Rate}\end{matrix}$$

26. The first component of the formula, space occupied by attachment divided by the total usable space on a pole, is used to calculate the percentage of usable space that the attachment occupies on an average pole. The Commission's rules define usable space as the space on a utility pole above the minimum grade level that can be used for the attachment of wires, cables and associated equipment. As discussed, for cable television system attachments, the Commission's *Petition to Adopt Rules Concerning Usable Space on Utility Poles* assigned one foot of usable space per pole to cable systems.

27. The second component of the overall formula is the net cost of a bare pole. The component is derived from the gross investment in poles less accumulated depreciation and accumulated deferred income taxes. An adjustment is made to a utility's net pole investment to eliminate the investment in crossarms and other non-pole related items. To accomplish this, the Commission decided to reduce net pole investment by 15% for electric utilities and 5% for telephone companies. The two factors reflect the differences between telephone companies' and electric utilities' investment in crossarms and other non-pole investment that is recorded in the pole accounts. Electric utilities typically have more investment in crossarms than telephone companies. The 0.85 factor for electric utilities recognizes this difference. To arrive at the net cost of a bare pole, a factor, 0.85 for electric utilities or 0.95 for telephone companies, is multiplied by the net investment per pole, as shown in the following formula:

$$\begin{matrix}\text{Net Cost of a}\\ \text{Bare Pole}\end{matrix} = \frac{\text{Factor} \times \text{Net Pole Investment}}{\text{Number of Poles}}$$

This formula rearranges the Pole Attachment Order's net cost of a bare pole formula for presentation purposes. Net pole investment is defined as the gross investment in poles less accumulated depreciation and accumulated deferred income taxes with respect to pole investment. We seek comment on the use of these factors for arriving at the net cost of bare pole.

28. The final component of the overall pole attachment formula is the carrying charge rate. Carrying charges are the costs incurred by the utility in owning and maintaining poles regardless of the presence of pole attachments. The carrying charges include the utility's administrative, maintenance, and depreciation expenses, a return on investment, and taxes. To help calculate the carrying charge rate, we developed a formula that relates each of these components to the utility's net investment.

29. Section 224(e)(3) states that: ''[A] utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.'' This is the allocation methodology developed by the Commission as applicable to cable systems—except that under the Commission's method the allocation rate is applied to the full cost of the pole. As noted, in the Pole Attachment NPRM, we are seeking comment on various aspects of the current formula including the current space presumptions. We propose to continue using our current rate methodology, modified to reflect only the cost associated with the usable space, because we believe this methodology to be as applicable to telecommunications carriers as to cable systems. Thus, we would apply the following formula:

$$\frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \frac{\text{Usable Space}}{\text{Pole Height}} \times \begin{matrix}\text{Net Cost of a}\\ \text{Bare Pole}\end{matrix} \times \begin{matrix}\text{Carrying}\\ \text{Charges}\end{matrix}$$

30. Alternatively, as we did in the Pole Attachment NPRM, we seek additional comment in the context of this proceeding on calculating a telecommunications carrier pole attachment rate using gross book costs instead of net book costs. Under this approach the cost of a bare pole and most carrying charges are computed using gross book costs. The rate of return and the income tax carrying charges must continue to be computed using net book costs because utility prices are generally set to allow them to earn an authorized rate of return on their net book costs. We currently compute the carrying charge elements for maintenance, depreciation and administrative expenses, as well as for return on investment and taxes, using net book costs. Under the proposed alternative, the carrying charge elements for maintenance, depreciation and administrative expenses would be calculated using gross book costs for both total plant investment and pole investment. For example, the administrative expense element is currently calculated by dividing total administrative and general expenses by net book cost. This yields a percentage that is applied to the net book cost of a bare pole. In contrast, a gross book cost approach to allocation would divide total administrative and general expenses by gross book costs. The resulting percentage would then be applied to the gross book cost of the bare pole. Prior to the Pole Attachment Order, the Commission had decided certain cases using gross book costs to calculate maximum reasonable pole attachment rates. In addition, the Commission has stated that if both parties to a pole attachment complaint agree, the pole attachment rates may be computed using gross book costs. The use of gross book costs appears consistent with the legislative history supporting section 224, which indicates that the Commission has significant discretion in selecting a methodology for determining just and reasonable pole attachment rates. We seek comment on this alternative to ensure a complete record in order to create a reasonable telecommunications carrier pole attachment rate methodology. We note, however, that because of the way administrative costs are allocated, the application of gross book costs may produce a slightly higher rate. We seek comment on whether this assumption is true and if so what the impact of this change would be.

31. We also seek comment on the applicability of the above formula when an entity either has overlashed to an existing attachment or is using dark fiber within the initial attachment of another entity. Should we still continue to apply the presumptive one foot of space occupied by the attacher when allocating the cost of the usable space or should the entity overlashing or using dark fiber be considered a separate attacher, with each using one foot of usable space? As noted previously, if the presumptive one foot is not appropriate, we inquire as to what presumption should be used?

VI. Conduit Attachment Issues

A. Application of the Pole Attachment Formula to Conduits

32. Conduit systems are structures that provide physical protection for cables and also allow new cables to be added inexpensively along a route, over a long period of time, without having to dig up the streets each time a new cable is placed. Conduit systems are usually multiple-duct structures with standardized duct diameters. The duct diameter is the principle factor for determining the maximum number of cables that can be placed in a duct. We seek additional comment on the differences between conduit owned and/or used by cable operators and telecommunications carriers and conduit owned and or used by electric or other utilities. We understand that there are inherent differences in the safety aspects of the latter conduits and ducts, and we seek comment on physical limitations that would affect the rate for such facilities. Where such conduit is shared, we seek information on the mechanism for establishing a just and reasonable rate. We seek comment on the distribution of usable and unusable space within the conduit or duct and how the determination for such space is made. In this NPRM we are not addressing the access or safety provisions, as those issues are more appropriately addressed in the context of the Local Competition Provisions Order. Rather, we are interested in the application of our formula for the purpose of setting just and reasonable rates. Our present formula does not appear to take such differences into consideration, and our experience in resolving disputes relating to electric or other utility conduit has been limited.

33. Usable space is based on the number of ducts and the diameter of the ducts. Section 224(e)(3) states that the cost of providing usable space shall be apportioned according to the percentage of usable space required for the entity using the conduit. In the Pole Attachment NPRM, the Commission has sought comment on a proposed conduit methodology. Moreover, we propose a half-duct methodology as the amount of space used by a cable system or telecommunications carrier that is, the space occupied by a cable system was generally a half-duct.

34. The proposed usable space formula for users of conduits would thus be represented as follows:

$$\frac{\text{1 Duct}}{\begin{matrix}\text{Average Number of Ducts less}\\ \text{Adjustments for maintenance ducts}\end{matrix}} \times \frac{1}{2} \times \begin{matrix}\text{Net Linear Cost of}\\ \text{Usable Conduit Space}\end{matrix} \times \begin{matrix}\text{Carrying}\\ \text{Charges}\end{matrix}$$

We seek comment on this presumption's applicability in determining usable space and allocating cost to the telecommunications carrier.

35. As discussed above, section 224(e)(2) requires that two-thirds of the cost of the unusable space be apportioned equally among all attaching entities. The unusable space formula would then be represented as follows:

$$2/3 \times \frac{\text{Net Linear Cost of Unusable Conduit Space}}{\text{Number of Attachers}} \times \text{Carrying Charges}$$

We seek comment on what portions of duct or conduit are ''unusable'' within the terms of the 1996 Act. We propose that a presumptive ratio of usable ducts to maintenance ducts be adopted to establish the amount of unusable space. We seek comment on how this proposal impacts determining an appropriate ratio of usable to unusable space within a duct or conduit.

36. As with poles, defining what an attaching entity is and establishing how to calculate the number of attaching entities is critical. We also seek comment on the use an attaching entity may make of its assigned space, including allowing others to use its dark fiber. Consistent with the half-duct convention proposed in the Pole Attachment NPRM, we believe that each entity using one half-duct be counted as a separate attaching entity. We seek comment on this method of counting attaching entities for the purpose of allocating the cost of the unusable space consistent with section 224(e).

VII. Rights-of-Way Issues

37. The access and reasonable rate provisions of section 224 are applicable where a cable operator or telecommunications carrier seeks to install facilities in a right-of-way but does not make a physical attachment to any pole, duct or conduit. The Commission's proceedings and cases generally have addressed issues involving physical attachments to poles, ducts, or conduits. Our experience relating to solely rights-of-way circumstances is limited. We seek information regarding the degree rights-of-way access issues will arise and the range of circumstances that will be involved. We ask whether the Commission should adopt rules reflecting a methodology and/or formula to determine a just and reasonable rate, or whether rights-of-way complaints should be addressed on a case-by-case basis. We seek comment on whether rights-of-way cases will be of such number that a methodology is necessary, and whether the range of circumstances involving rights-of-way can be discerned into a generic methodology. If a methodology is appropriate, we seek comment on the elements, including any presumptions, that will calculate the costs relating to usable and unusable space. We also seek information regarding whether information necessary for any formula is available through a utility's accounting structure, as costs relating to rights-of-way may be different than poles, ducts and conduit.

VIII. Implementation

38. Section 224(e)(4) requires the Commission to implement the telecommunications carrier rate methodology on February 8, 2001. Section 224(e)(4) states that ''The regulations required under paragraph one shall become effective five years after enactment of the Telecommunications Act of 1996. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of five years beginning on the effective date of such regulations.'' The statutory language of section 224(e)(4) requires that any rate increase be phased in over five years in equal annual increments beginning on that date. We propose that the amount of increase should be phased in at the beginning of the five years and one-fifth of that amount should be added to the rate in each of the subsequent five years. We seek comment on this proposed five year phase in of the telecommunications carrier rate. We also seek comment on any other proposals that would equitably phase in the telecommunication carrier rate within the five years allotted by section 224(e)(4).

IX. Initial Regulatory Flexibility Act Analyses

39. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines established in paragraph 76 of this NPRM. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA.

40. *Need for Action and Objectives of the Proposed Rule.* In 1987, the Commission adopted its current pole attachment formula for calculating the maximum just and reasonable rates utilities may charge cable systems for pole attachments. In this NPRM, we seek comment as to whether the current pole attachment formula should be modified or adjusted to eliminate certain anomalies and rate instabilities particular parties assert have occurred. We have also tentatively proposed such possible modifications to the formula, should altering the formula become necessary, that would improve the accuracy of the formula. In addition, we propose changes to the formula to reflect the present part 32 accounting system that replaced the former part 31 rules in 1988. Finally, we propose a new conduit methodology that will determine the maximum just and reasonable rates utilities may charge cable systems and telecommunications carriers for their attachments to conduit systems.

41. *Legal Basis.* The authority for the action proposed for this rulemaking is contained in sections 1, 4(i), 4(j), 224, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 224, 303 and 403.

42. *Description and Estimate of the Number of Small Entities Impacted.* The RFA generally defines a ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' ''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 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). For many of the entities described below, the SBA has defined small business categories through Standard Industrial Classification (SIC) codes.

43. *Total Number of Utilities Affected.* Many of the decisions and rules proposed herein may have a significant effect on a substantial number of utility companies. Section 224 of the Statue defines a ''utility'' as ''any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.'' The SBA has provided the

Commission with a list of utility firms which may be affected by this rulemaking. Based upon the SBA's list, the Commission seeks comment as to whether all of the following utility firms are relevant to section 224.

44. *Electric Services* (SIC 4911). The SBA has developed a definition for small electric utility firms. The Census Bureau reported that 447 of the 1,379 firms listed had total revenues below five million dollars. The Census Bureau reports that a total of 1,379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992. *Electric and Other Services Combined* (SIC 4931). The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars. *Combination Utilities, Not Elsewhere Classified* (SIC 4939). The SBA defines this utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

45. *Natural Gas Transmission* (SIC 4922). The SBA's definition of a natural gas transmitter is an entity that is engaged in the transmission and storage of natural gas. The Census Bureau reports that a total of 144 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small natural gas transmitter is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 70 of the 144 firms listed had total revenues below five million dollars. *Natural Gas Transmission and Distribution* (SIC 4923). The SBA has classified this entity as a utility that transmits and distributes natural gas for sale. The Census Bureau reports that a total of 126 such entities were in operation for at least one year at the end of 1992. The SBA's definition of a small natural gas transmitter and distributer is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 43 of the 126 firms listed had total revenues below five million dollars. *Natural Gas Distribution* (SIC 4924). The SBA defines a natural gas distributor as an entity that distributes natural gas for sale. The Census Bureau reports that a total of 478 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small natural gas distributor is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 267 of the 478 firms listed had total revenues below five million dollars. *Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution* (SIC 4925). The SBA has classified this entity as a utility that engages in the manufacturing and/or distribution of the sale of gas. These mixtures may include natural gas. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small mixed, manufactured or liquefied petroleum gas producer or distributor is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 31 of the 43 firms listed had total revenues below five million dollars. *Gas and Other Services Combined* (SIC 4932). The SBA has classified this entity as a gas company whose business is less than 95% gas, in combination with other services. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small gas and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 24 of the 43 firms listed had total revenues below five million dollars.

46. *Water Supply* (SIC 4941). The SBA defines a water utility as a firm who distributes and sells water for domestic, commercial and industrial use. The Census Bureau reports that a total of 3,169 water utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small water utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 3,065 of the 3,169 firms listed had total revenues below five million dollars.

47. *Sewage Systems* (SIC 4952). The SBA defines a sewage firm as a utility whose business is the collection and disposal of waste using sewage systems. The Census Bureau reports that a total of 410 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sewerage system is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 369 of the 410 firms listed had total revenues below five million dollars. *Refuse Systems* (SIC 4953). The SBA defines a firm in the business of refuse as an establishment whose business is the collection and disposal of refuse ''by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials.'' The Census Bureau reports that a total of 2,287 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small refuse system is a firm whose gross revenues did not exceed six million dollars. The Census Bureau reported that 1,908 of the 2,287 firms listed had total revenues below six million dollars. *Sanitary Services, Not Elsewhere Classified* (SIC 4959). The SBA defines these firms as engaged in sanitary services. The Census Bureau reports that a total of 1,214 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sanitary service firms gross revenues did not exceed five million dollars. The Census Bureau reported that 1,173 of the 1,214 firms listed had total revenues below five million dollars.

48. *Steam and Air Conditioning Supply* (SIC 4961). The SBA defines a steam and air conditioning supply utility as a firm who produces and/or sells steam and heated or cooled air. The Census Bureau reports that a total of 55 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a steam and air conditioning supply utility is a firm whose gross revenues did not exceed nine million dollars. The Census Bureau reported that 30 of the 55 firms listed had total revenues below nine million dollars.

49. *Irrigation Systems* (SIC 4971). The SBA defines irrigation systems as firms who operate water supply systems for the purpose of irrigation. The Census Bureau reports that a total of 297 firms were in operation for at least one year at the end of 1992. According to SBA's definition, an irrigation service is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 286 of the 297 firms listed had total revenues below five million dollars.

50. *Total Number of Telephone Companies Affected* (SIC 4813). Many of the decisions and rules proposed herein

may have a significant effect on a substantial number of small telephone companies. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, except Radiotelephone) to be a small entity when it has no more than 1500 employees. 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. This number contains a variety of different categories of carriers, including local exchange carriers (LECs), 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.'' 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 this NPRM. Below, we estimate the potential number of small entity telephone service firms or small incumbent LEC's that may be affected by this service category.

51. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. Of the 2,321 non-radiotelephone companies listed by the Census Bureau 2,295 were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs, or small entities based on these employment statistics. 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 decisions or rules that come about from this NPRM.

52. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the *Telecommunications Relay Service* (TRS Worksheet). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. 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 LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by this NPRM.

53. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services. 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 IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules proposed in this NPRM.

54. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services. 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 CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules proposed in this NPRM.

55. *Wireless (Radiotelephone) Carriers.* Although wireless carriers have not historically affixed their equipment to utility poles, pursuant to the terms of the 1996 Act, such entities are entitled to do so with rates consistent with the Commission's rules discussed herein. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. 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 radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by this NPRM.

56. *Cellular Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular service carriers

nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 792 companies reported that they were engaged in the provision of cellular services. 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 cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules proposed in this NPRM.

57. *Mobile Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 117 companies reported that they were engaged in the provision of mobile services. 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 mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers that may be affected by the decisions and rules proposed in this NPRM.

58. *Broadband Personal Communications Services (PCS) Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission has defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

59. *Specialized Mobile Radio (SMR) Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this NPRM may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this NPRM.

60. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this IRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions proposed in this NPRM.

61. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services. 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 resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this NPRM.

62. *Cable Systems* (SIC 4841). The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than $11 million in revenue.

63. 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. Based on our most recent information, we estimate that there were 1,439 cable systems 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 systems. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this NPRM.

64. 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.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable systems serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable systems under the definition in the Communications Act.

65. *Municipalities:* The term ''small governmental jurisdiction'' is defined as ''governments of . . . districts, with a population of less than fifty thousand.'' There are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. We note that section 224 of the Act specifically excludes any utility which is cooperatively organized, or any person owned by the Federal Government or any State. For this reason, we believe that section 224 will have minimal if any affect upon small municipalities. Further, there are 18 States and the District of Columbia that regulate pole attachments pursuant to section 224(c)(1). Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000.

66. *Reporting, Recordkeeping, and other Compliance Requirements:* The rules proposed in this NPRM will require a change in certain record keeping requirements. A pole owner will now have to maintain specific records relating to the number of attachers for purposes of computing the usable and unusable space calculation for the telecommunications carrier rate formula. We seek comment on whether small entities may be required to hire additional staff and expend additional time and money to comply with the proposals set forth in this NPRM. In addition, we seek comment as to whether there will be a disproportionate burden placed on small entities in complying with the proposals set forth in this NPRM.

67. *Significant Alternatives Which Minimize the Impact on Small Entities and Which Are Consistent With State Objectives:* The 1996 Act requires the Commission to propose a telecommunications carrier methodology within two years of the enactment of the 1996 Act. We seek comment on various alternative ways of implementing the statutory requirements and any other potential impact of these proposals on small business entities. We seek comment on the implementation of a methodology to ensure just, reasonable and nondiscriminatory pole attachment and conduit rates for telecommunications carriers. We also seek comment on how to develop a rights-of-way rate methodology for telecommunications carriers.

68. *Federal Rules which Overlap, Duplicate, or Conflict with the Commission's Proposal:* None.

X. Initial Paperwork Reduction Act of 1995 Analysis

69. This NPRM contains either proposed or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens and to obtain regular Office of Management and Budget (''OMB'') approval of the information collections, invites the general public and OMB to comment on the information collections contained in this rulemaking, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments relating to this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

XI. Procedural Provisions

70. *Ex parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

71. 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 or before September 26, 1997 and reply comments on or before October 14, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. Parties are also asked to submit, if possible, draft rules that reflect their positions. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Larry Walke of the Cable Services Bureau, 2033 M Street, NW., Room 408A, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC 20554.

72. Parties are also asked to submit comments and reply comments on diskette, where possible. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Larry Walke of the Cable Services Bureau, 2033 M Street, NW., Room 408A, Washington, DC 20554. Such a submission must be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of

submission. The diskette should be accompanied by a cover letter.

73. Written comments by the public must be submitted at the same time as those of the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after publication of the NPRM in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

XII. Ordering Clauses

74. *It is ordered* that pursuant to sections 1, 4(i), 4(j), 224, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 224, 303 and 403, *notice is hereby given* of the proposals described in this Notice of Proposed Rulemaking.

75. *It is further ordered* that the Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act, 5 U.S.C. 603 (2).

76. For additional information regarding this proceeding, contact Larry Walke, Policy and Rules Division, Cable Services Bureau (202) 418–7200.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Note: This attachment will not be published in the Code of Federal Regulations.

Attachment—Pole Attachment Formulas (Modified as Proposed)

Telecommunications Companies:

Maximum Rate = (Space Occupied by Attachment × Carrying Charge Rate × Net Pole Investment × .95) ÷ Total # of Poles

Total Carrying Charge Rate = Administrative + Maintenance + Depreciation + Taxes + Return

Administrative Carrying Charge Rate = (Total Administrative and General (Accounts 6710+6720 + 6110+6120 + 6534+6535)) ÷ (Gross Plant Investment − Accum. Depreciation, Account 3100 − Accum. Deferred Taxes, Plant)

Maintenance Carrying Charge Rate = (Account 6411 − Rental Expense, Poles) ÷ Net Pole Investment

Depreciation Carrying Charge Rate = Depreciation Rate, Poles

Tax Carrying Charge Rate = Operating Taxes, Account 7200 ÷ (Gross Plant Investment − Accum. Depreciation, Account 3100 − Accum. Deferred Taxes, Plant)

Return Carrying Charge Rate = Applicable Rate of Return

Space Occupied by Attachment = 1 foot

Total Usable Space = 13.5 feet (Subject to Rebuttal)

Gross Plan Investment = Account 2001

Gross Pole Investment = Account 2411

Net Pole Investment = Account 2411 − Accum. Depreciation, Poles − Accum. Deferred Income Taxes, Poles

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 960730210–7194–03; I.D. 012595A]

RIN 0648–XX65

Endangered and Threatened Species: Notice of Partial 6-Month Extension on the Final Listing Determination for Several Evolutionarily Significant Units (ESUs) of West Coast Steelhead

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

ACTION: Proposed rule; partial extension of final determination.

SUMMARY: NMFS has made final listing determinations for five Evolutionarily Significant Units (ESUs) of west coast steelhead under the Endangered Species Act (ESA). The ESUs listed as threatened or endangered species are the Upper Columbia River (endangered), Snake River Basin (threatened), Central California Coast (threatened), South-Central California Coast (threatened) and Southern California (endangered).

NMFS has also determined that substantial scientific disagreement exists regarding the sufficiency and accuracy of data relevant to listing five other west coast steelhead ESUs. Specifically, NMFS has determined that substantial scientific disagreements exist regarding the sufficiency and accuracy of data relevant to final listing determinations for the Lower Columbia River, Oregon Coast, Klamath Mountains Province, Northern California, and California's Central Valley ESUs. These scientific disagreements concern the data needed to determine the status of these species, the threats to their continued existence, and the geographic boundaries of certain ESUs. Consequently, NMFS extends the deadline for a final listing determination for these ESUs for 6 months to solicit, collect, and analyze additional information from NMFS scientists, co-management scientists, and scientific experts on this species enabling NMFS to make the final listing determination based on the best available data.

Several efforts are underway that may resolve scientific disagreement regarding the sufficiency and accuracy of data relevant to these listings. NMFS has undertaken an intensive effort to analyze data received during and after the comment period on the proposed ESUs from the States of Washington, Oregon, and California, as well as from peer reviewers. This work will include evaluating new population models, analyzing population abundance trends where new data are available, and examining new genetic data relative to the relationship between winter and summer steelhead and between hatchery and wild fish. Results of these analyses are anticipated within the next two to three months. NMFS will also receive and analyze additional genetic samples for California's Central Valley ESU as well as rigorously evaluate ecological characteristics to determine if further subdivision of this ESU is warranted.

During the 90-day comment period following the published proposed listings rule on August 9, 1996, NMFS held sixteen public hearings at which testimony was heard from 188 commenters. Additionally, NMFS received and continues to analyze 939 written comments.

DATES: The new deadline for final action on the deferred ESUs of west coast steelhead is February 9, 1998.

ADDRESSES: Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503–231–2005, Craig Wingert, 310–980–4021, or Joe Blum, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

Historically, steelhead likely inhabited most coastal streams in