this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 226C3 at Prineville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–5073 Filed 3–20–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–311; FCC 06–180]

Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on its proposal to apply the findings in Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05–311, FCC 06–180, *Report & Order*, (''*Order*'') to cable operators that have existing franchise agreements as they negotiate renewal of those agreements with LFAs. The Commission also seeks comment on the tentative conclusion that it cannot preempt State or local customer service laws that exceed the Commission's standards, nor can it prevent LFAs and cable operators from agreeing to more stringent standards.

DATES: Comments for this proceeding are due on or before April 20, 2007; reply comments are due on or before May 7, 2007.

ADDRESSES: You may submit comments, identified by MB Docket No. 05–311, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Holly Saurer, *Holly.Saurer@fcc.gov* or Brendan Murray, *Brendan.Murray@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking (FNPRM)*, FCC 06–180, adopted on December 20, 2006, and released on March 5, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

In this present document, we have assessed the effects of the application filing requirements used to calculate the time frame in which a local franchising authority shall make a decision, and find that those requirements will benefit companies with fewer than 25 employees by providing such companies with specific application requirements of a reasonable length. We anticipate this specificity will streamline this process for companies with fewer than 25 employees, and that these requirements will not burden those companies.

Summary of the Notice of Proposed Rulemaking

1. As discussed above, this proceeding is limited to competitive applicants under Section 621(a)(1). Yet, some of the decisions in this *Order* also appear germane to existing franchisees. We asked in the *Local Franchising NPRM* whether current procedures and requirements were appropriate for any cable operator, including existing operators. NCTA argues that if the Commission establishes franchising relief for new entrants, we should do the same for incumbent cable operators because imposing similar franchising requirements on new entrants and incumbent cable operators promotes competition. Somewhat analogously, the BSPA argues that any new franchise regulatory relief should extend to all current competitive operators and new entrants equally; otherwise, the inequities would effectively penalize existing competitive franchisees simply because they were the first to risk competition with the incumbent cable operator. The record does not indicate any opposition by new entrants to the idea that any relief afforded them also be afforded to incumbent cable operators. Some incumbent cable operators discussed the potential impact of Commission action under Section 621 on incumbent cable operators. For example, Charter argues that granting

competitive cable providers entry free from local franchise requirements would affect Charter's ability to satisfy its existing obligations; funds that Charter might use to respond to competition by investing in new facilities and services would instead be tied up in franchise obligations not imposed on Charter's competitors, which would undermine the company's investment and render its franchise obligations commercially impracticable. AT&T argues that competition will not harm incumbent cable operators: Cable has handled the competition that DBS presents, and analysts predict that the new wave of competition will not put them out of business.

2. We tentatively conclude that the findings in this *Order* should apply to cable operators that have existing franchise agreements as they negotiate renewal of those agreements with LFAs. We note that Section 611(a) states ''A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use'' and Section 622(a) provides ''any cable operator may be required under the terms of any franchise to pay a franchise fee.'' These statutory provisions do not distinguish between incumbents and new entrants or franchises issued to incumbents versus franchises issued to new entrants. We seek comment on our tentative conclusion. We also seek comment on our authority to implement this finding. We also seek comment on what effect, if any, the findings in this *Order* have on most favored nation clauses that may be included in existing franchises. The Commission will conclude this rulemaking and release an order no later than six months after release of this *Order*.

3. In the *Local Franchising NPRM*, we also sought comment on whether customer service requirements should vary greatly from jurisdiction to jurisdiction. In response, AT&T urges us to adopt rules to prevent LFAs from imposing various data collection and related requirements in exchange for a franchise. AT&T claims that LFAs have imposed obligations that franchisees collect, track, and report customer service performance data for individual franchise areas. AT&T states that it operates its call centers and systems on a region-wide basis, and that it is not currently possible or economically feasible for AT&T to comply with the various local customer service requirements on a franchise by franchise basis. AT&T also asks us to affirm that LFAs may not, absent the franchise applicant's consent, impose any local service quality standards that go beyond the requirements of duly enacted laws and ordinances. Verizon indicates that some localities have conditioned the grant of a franchise upon the submission of Verizon's data services to local customer service regulation.

4. NATOA opposes AT&T's request for relief from local customer service standards, and argues that the Act and the Commission's rules explicitly provide for local customer service regulation. Specifically, NATOA asserts that Section 632(d)(2) of the Cable Act allows for the establishment and enforcement of local customer service laws that go beyond the federal standards. Other parties assert that customer service regulation is necessary to ensure that consumers have regulatory relief.

5. Section 632(d)(2) states that:

> 22. [n]othing in this Section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission * * * Nothing in this Title shall be construed to prevent the establishment and enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section.
>
> 23. Given this explicit statutory language, we tentatively conclude that we cannot preempt state or local customer service laws that exceed the Commission's standards, nor can we prevent LFAs and cable operators from agreeing to more stringent standards. We seek comment on this tentative conclusion.

I. Procedural Matters

6. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

7. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before 30 days after this *Further NPRM of Proposed Rulemaking* is published in the **Federal Register**, and reply comments on or before 45 days of publication. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large

print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

8. *Initial Paperwork Reduction Act Analysis.* This Further NPRM of Proposed Rulemaking does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

9. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Further NPRM of Proposed Rulemaking.* The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Second Further NPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA.

10. *Additional Information.* For additional information on this proceeding, please contact Holly Saurer, Media Bureau at (202) 418–2120, or Brendan Murray, Policy Division, Media Bureau at (202) 418–2120.

Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (the ''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact of the policies and rules proposed in the Further NPRM of Proposed Rulemaking (''Further NPRM'') on a substantial number of small entities. 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 on the Further NPRM provided in paragraph 145 of the item. The Commission will send a copy of the Further NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the Further NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

12. The Further NPRM continues a process to implement Section 621(a)(1) of the Communications Act of 1934, as amended, in order to further the interrelated goals of enhanced cable competition and accelerated broadband deployment as discussed in the Report and Order (''Order''). Specifically, the Further NPRM solicits comment on whether the Commission should apply the rules and guidelines adopted in the Order to cable operators that have existing franchise agreements, and if so, whether the Commission has authority to do so. The Further NPRM also seeks comment on whether the Commission can preempt state or local customer service laws that exceed Commission standards.

Legal Basis

13. The Further NPRM tentatively concludes that the Commission has authority to apply the findings in the Order to cable operators with existing franchise agreements. In that regard, the Further NPRM finds that neither Section 611(a) nor Section 622(a) distinguishes between incumbents and new entrants or franchises issued to incumbents and franchises issued to new entrants.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

14. 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 Small Business Administration (''SBA'').

15. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

16. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

17. The Commission has determined that the group of small entities possibly directly affected by the proposed rules herein, if adopted, consists of small governmental entities. A description of these entities is provided below. In addition the Commission voluntarily provides descriptions of a number of entities that may be merely indirectly affected by any rules that result from the Further NPRM.

Small Governmental Jurisdictions

18. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

Miscellaneous Entities

19. The entities described in this section are affected merely indirectly by our current action, and therefore are not formally a part of this RFA analysis. We have included them, however, to broaden the record in this proceeding and to alert them to our tentative conclusions.

Cable Operators

20. The ''Cable and Other Program Distribution'' census category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $13.0 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

21. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small-business-size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. The

most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

22. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, 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 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore is unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

23. *Open Video Services.* Open Video Service (''OVS'') systems provide subscription services. As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $13.0 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

24. We anticipate that any rules that result from this action would have at most a de minimis impact on small governmental jurisdictions (*e.g.*, one-time proceedings to amend existing procedures regarding the method of granting competitive franchises). Local franchising authorities (''LFAs'') today must review and decide upon competitive cable franchise applications, and will continue to perform that role upon the conclusion of this proceeding; any rules that might be adopted pursuant to this NPRM likely would require at most only modifications to that process.

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

25. 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 such small entities.''

26. As discussed in the Further NPRM, Sections 611(a) and 622(a) do not distinguish between new entrants and cable operators with existing franchises. As discussed in the Order, the Commission has the authority to implement the mandate of Section 621(a)(1) to ensure that LFAs do not unreasonably refuse to award competitive franchises to new entrants, and adopts rules designed to ensure that the local franchising process does not create unreasonable barriers to competitive entry for new entrants. Such rules consist of specific guidelines (*e.g.*, maximum timeframes for considering a competitive franchise application) and general principles regarding franchise fees designed to provide LFAs with the guidance necessary to conform their behavior to the directive of Section 621(a)(1). As noted above, applying these rules regarding the franchising process to cable operators with existing franchises likely would have at most a de minimis impact on small governmental jurisdictions. Even if that were not the case, however, we believe that the interest of fairness to those cable operators would outweigh any impact on small entities. The alternative (*i.e.*, continuing to allow LFAs to follow procedures that are unreasonable) would be unacceptable, as it would be inconsistent with the Communications Act. We seek comment on the impact that such rules might have on small entities, and on what effect alternative rules would have on those entities. We also invite comment on ways in which the Commission might implement the tentative conclusions while at the same time imposing lesser burdens on small entities.

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

27. None.

Report to Congress

28. The Commission will send a copy of the FNPRM, including this IRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FNPRM and IRFA (or summaries thereof) will also be published in the **Federal Register**.

II. Ordering Clauses

29. *It is ordered* that, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303r, 403 and 405 of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 303(r), 403, this *Further Notice of Proposed Rulemaking is adopted.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–5118 Filed 3–20–07; 8:45 am]

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