

Before the
Federal Communications Commission
Washington, D.C. 20554

DOCKET FILED

In the Matter of)
)
Amendment of Part 76 of the Commission's Rules)
to Extend Interference Protection to the Marine and) MB Docket No: 03-50
Aeronautical Distress and Safety Frequency)
406 025 MHz)
)
)
)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 24,2003

Released: March 5,2003

Comment Date: 30 days from the date of publication in the Federal Register
Reply Comment Date: 45 days from the date of publication in the Federal Register

By the Commission:

I. INTRODUCTION

1. This Notice of Proposed Rule Making (Notice)proposes to modify Section 76.616 of our rules to include the international digital search and rescue frequency 406.025 MHz within the prohibition on cable system operation near the emergency and distress frequencies. As part of our continual review of our technical rules, this Notice also proposes streamlining and revising Part 76, Multichannel Video and Cable Television Service rules, and Part 78, Cable Television Relay Service rules, by eliminating outdated rules, correcting others, and maintaining consistency throughout different Commission Rule Parts.

II. BACKGROUND

2. The United States, Canada, France, and Russia use COSPAS/SARSAT¹ satellites to detect and locate distress signals from Emergency Position Indicating Radio Beacons (EPIRBs) and Emergency Locator Transmitters (ELTs).² Older EPIRBs and ELTs use analog signals and operate on

¹ "COSPAS" is an acronym for a Russian phrase meaning space system for search and distress vessels. "SARSAT" stands for Search And Rescue Satellite Aided Tracking. See Amendment of the Aviation Rules (Part 87) to Authorize the Use of the Frequency 406.025 MHz for Emergency Locator Transmitters (ELTs), 8 FCC Rcd 3185, n.3 (1993).

² Emergency position indicating radiobeacon stations are small battery powered transmitters used to send a distress signal that is used as an alerting signal and to assist search and rescue personnel. In the United States such beacons are named emergency locator transmitters (ELTs) when carried on an aircraft and emergency position indicating radiobeacons (EPIRBs) when carried on ships. ELTs and EPIRBs operate on the same internationally allocated frequencies and transmit identical distress signals See Amendment of the Aviation Rules, 8 FCC Rcd 3185.

121.5 MHz and 243.0 MHz. Section 76.616 of our rules is designed to protect the emergency frequencies at 121.5 MHz and 243.0 MHz from interference by cable television systems operating near these frequencies.³ The Commission adopted rules prohibiting the transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10 microwatts (10^{-5} watts) at any point in a cable television system within 100 kHz of the frequency 121.5 MHz and within 50 kHz of the frequency 243.0 MHz.⁴

3. Newer EPIRBs and ELTs use digital signals and operate on 406.025 MHz. Conforming to satellite use, the Commission adopted rules authorizing the use of the frequency 406.025 MHz for EPIRBs in the maritime radio services,⁵ aviation radio services,⁶ and for Personal Locator Beacons (PLBs).⁷ According to the U.S. Coast Guard, EPIRBs operating on the frequency 406.025 MHz account for four times the number of lives saved as 121.5/243.0 MHz EPIRBs and are responsible for only two percent of the total number of false alerts attributed to 121.5/243.0 MHz EPIRBs.⁸ This is due in part to the ability of rescue personnel to locate and detect the emergency signal more efficiently using the additional registration information contained in the 406.025 MHz signal that specifically identifies the beacon in distress. As a result, COSPAS/SARSAT announced that it would stop equipping new satellites with 121.5/243.0 MHz processors and plans to establish a date after which any remaining active processors will be turned off.⁹ Carriage of the 406.025 MHz EPIRB is already required aboard SOLAS-class merchant vessels¹⁰ and U.S. commercial fishing vessels.¹¹ The 406.025 MHz EPIRB is also being used aboard recreational vessels at an increasing rate.¹² In light of these special circumstances surrounding the exclusive use of 406.025 MHz as an emergency communication frequency, it is

³ 47 C.F.R. § 76.616.

⁴ *Amendment of Part 76 of the Commission's Rules to Add Frequency Requirements and Restrictions and to Require Monitoring for Signal Leakage from Cable Television Systems*, 65 F.C.C.2d 813, 827-28 (1977). The special offset requirements for cable television operation near the emergency communications frequencies at 121.500 MHz, 156.800 MHz and 243.000 MHz were originally codified under 47 C.F.R. § 76.611 but were later reinserted under the current reference section number at 47 C.F.R. § 76.616 (see *Amendment of Part 76 of the Commission's Rules to Add Frequency Requirements and Restrictions and to Require Monitoring for Signal Leakage from Cable Television Systems*, 101 F.C.C.2d 117 (1985)).

⁵ *Amendment of the Maritime Services Rules to Allow Ships to Use 406.025 MHz Emergency Position Indicating Radiobeacons for Distress Alerting and Search and Rescue Functions*, 3 FCC Rcd 5406 (1988).

⁶ *Amendment of the Aviation Rules*, 8 FCC Rcd 3185.

Amendment of Part 95 of the Commission's Rules to Authorize the Use of 406.025 MHz for Personal Locator Beacons (PLB), FCC 02-271; 2002 WL 31245985 (F.C.C.) (2002).

⁸ See *Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications*, 15 FCC Rcd 5942 (2000), citing, Letter from Joseph D. Hersey, Jr., Chief, Spectrum Management Division, U.S. Coast Guard, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, Dec. 22, 1999 (U.S. Coast Guard Letter).

⁹ *Id.* at 5957, citing, *Satellite Processing of 121.5MHz Emergency Beacons to be Phased Out*, National Oceanic and Atmospheric Administration (NOAA) 99-075, Nov. 10, 1999.

¹⁰ *Amendment of Parts 13 and 80 of the Commission's Rules to Implement the Global Maritime Distress and Safety System (GMDSS) to Improve the Safety of Life at Sea*, 7 FCC Rcd 951 (1992). The GMDSS was fully implemented in the United States as of February 1, 1999.

¹¹ 46 C.F.R. § 25.26-5.

¹² U.S. Coast Guard Letter, see note 8.

appropriate *to* consider revising our rules to protect 406.025 MHz against harmful interference by cable television systems and MVPDs.

111. DISCUSSION

4. Analog EPIRBs and ELTs designed to transmit on 121.5 MHz and 243.0 MHz transmit amplitude modulated continuous signals with an audio swept tone. The audio swept tone assists Search and Rescue (SAR) personnel by emitting a distinctive aural signal. These signals also provide distress alerting and homing assistance in emergency situations. Digital EPIRBs and ELTs designed to transmit on 406.025 MHz send short digital signals to provide distress alerting in emergencies and use 121.5 MHz to provide homing. The 406.025 MHz digital signal includes information on the type of emergency, the country and identification code of the beacon in distress, and other information to significantly aid SAR operations. In addition, 406.025 MHz distress signals can be stored on-board COSPAS/SARSAT satellites and then later retransmitted to a ground station, thereby eliminating the “blind spots”¹³ that exist with the older analog 121.5 MHz and 243.0 MHz EPIRBs and ELTs.

A. Protection of the International Digital Emergency Distress Frequency

5. Lifesaving efforts have been significantly aided by EPIRBs and ELTs operating on 406.025 MHz. The use of 406.025 MHz EPIRBs has been increasing rapidly, particularly as mandatory requirements come into effect. This has led the United States and the international community to consider transitioning to the exclusive use of 406.025 MHz EPIRBs in the near future.

6. We propose to amend Section 76.616 of our rules to extend protection to the additional emergency frequency at 406.025 MHz. In light of the special circumstances surrounding the use of this emergency frequency, we propose forbidding the transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10 microwatts (10^{-5} watts) at any point in the cable television system within 100 kHz of 406.025 MHz. Prohibiting cable television operation within this limited guard band will not substantially impact current cable television operation, as the closest cable television frequency in use is the color carrier of cable channel 54, which is approximately 800 kHz from 406.025 MHz.¹⁴ We request comment on this proposal.

B. Clean up of Parts 76 and 78 of the Commission’s Rules

7. As part of our effort to keep our rules consistent and up to date, we propose the following deletions and updates.

8. We are proposing to eliminate Sections 76.618 and 76.619 because the period allotted for grandfathered cable television operation ended on July 1, 1990.¹⁵ Consequently, we also are proposing to amend Section 76.610¹⁶ *to* remove the reference to Sections 76.618 and 76.619 found in the last sentence of the rule. In addition, we are deleting Note 2 of Section 76.610 because the exclusion of

¹³ “Blind spots” are a result of a satellite’s inability to see or provide radio coverage *to* every location on the earth continuously.

¹⁴ The nearest video carriers are at 403.25 MHz and 409.25 MHz, while the nearest aural carrier is at 407.75 MHz.

¹⁵ 47 C.F.R. §§ 76.618 and 76.619.

¹⁶ *Id.* § 76.610.

the frequency band 136-137 MHz expired on January 1, 1990.¹⁷ We also propose incorporating Section 76.620 into Section 76.610 as the requirements under Section 76.610 apply to all MVPDs (cable and non-cable).

9. We recognize the need to add a provision to Part 78 addressing the cancellation or forfeiture of unused or discontinued *CARS* licenses. We feel that this provision is necessary to help conserve spectrum and to reclaim unused spectrum. We seek comment on how the cancellation or forfeiture of unused or discontinued *CARS* licenses should be implemented. We note that Section 101.65 addresses the same issue for fixed microwave licenses.¹⁸

10. We also propose some miscellaneous corrections for various sections of the Commission's Rules as indicated in Appendix A.

IV. CONCLUSION

11. Our proposal to expand the safeguard provision to include the international digital emergency distress frequency at 406.025 MHz is intended to promote "safety of life and property through the use of wire and radio communication."¹⁹ In addition, the elimination of outdated regulations should increase regulatory efficiency.

V. PROCEDURAL MATTERS

1. Initial Regulatory Flexibility Analysis

12. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document.²⁰ The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions regarding the prevalence of small businesses in the affected industries.

13. Comments must be filed in accordance with the same filing deadlines as comments filed in this *Notice*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.²¹

¹⁷ *Id.* § 76.610 NOTE 2

¹⁸ *Id.* § 101.65. Section 101.65(a) states that a license is automatically forfeited if the licensee voluntarily removes or alters the facility so that the station is not in operation for a period of 30 days or more. Section 101.65(b) indicates that a licensee is responsible for canceling their license if the station discontinues operation on a permanent basis. Stations that have not been operational for one year or more are considered permanently discontinued.

¹⁹ 47 U.S.C. § 151

²⁰ 5 U.S.C. § 603 (1996).

²¹ *Id.*

2. Initial Paperwork Reduction Act of 1995 Analysis

14. This *Notice* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *Notice*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this *Notice*; OMB notification of action is due 60 days from date of publication of this *Notice* 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.

3. Ex Parte – Permit-But-Disclose Proceedings

15. This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

4. Comment Dates

16. Pursuant to 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **30 days from the date of publication in the Federal Register** and reply comments on or before **45 days from the date of publication in the Federal Register**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

17. Comments filed using ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. When completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties also may submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. 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, commenters must submit two additional copies for each additional docket or rulemaking number.

18. 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).

19. The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

-The filing hours at this location are 8:00 a.m. to 7:00 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

-All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

VI. ORDERING CLAUSES

20. IT IS ORDERED, that pursuant to the authority contained in Sections 4, 4(i), 157, 303, 303(g), 303(r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 154(i), 157, 303, 303(g), 303(r), 307, this *Notice of Proposed Rule Making* IS ADOPTED.

21. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a).

22. For further information concerning this *Notice*, contact Sarah Mahmood, (202) 418-7009, or Wayne McKee, (202) 418-2355, of the Engineering Division, Media Bureau.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Rules

Part 76 of Title 47 of the Code of Federal Regulations is to be amended as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. Section 76.5 (v) is revised by deleting the Note and adding a last sentence to read as follows:

§ 76.5 Definitions.

* * * * *

(v) * * * Terminal devices interconnected to subscriber terminals of a cable system must comply with the provisions of Part 15 of this Chapter for TV interface devices.

* * * * *

2. Amend Section 76.605 as follows:

a. Section 76.605 (a) is revised as shown below;

b. Section 76.605 (a)(1)(ii) is revised as shown below;

c. Section 76.605 (a)(6) is revised and paragraphs (a)(6)(i) and (a)(6)(ii) are deleted;

d. Section 76.605 (a)(7) is amended by revising the introductory text; deleting paragraphs (a)(7)(i) through (iv); and renumbering paragraphs A, B, and C, as i, ii, and iii;

e. Note 3 is also revised

§ 76.605 Technical Standards.

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the output of the modulating or processing equipment (generally the headend) of the cable television system or otherwise as noted. The requirements are applicable to each NTSC or similar video downstream cable television channel in the system:

(1)(i) * * *

(ii) Cable television systems shall transmit signals to subscriber premises equipment on frequencies in accordance with the channel allocation plan set forth in the Electronics Industries Association's "Cable Television Channel Identification Plan, EIA/CEA-542 Revision A, April 2002" (CIA-342). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR Part 51. Cable systems are required to use this channel allocation plan for signals transmitted in the frequency range 54 MHz to 1002 MHz. Copies of EIA-542 Revision A may be obtained from: Global Engineering Documents, 15 Inverness Way East, Englewood, CO., 80112, 1-800-854-7179, <http://www.global.ihs.com>. Copies of EIA-542 Revision A may be inspected during normal business hours at the following locations: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or the Office of the Federal Register, 800

North Capitol Street, NW., Suite 700, Washington, DC 20001.

* * * * *

(6) The amplitude characteristic shall be within a range of 12 decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries. The amplitude characteristic shall be measured at the subscriber terminal.

(7) The ratio of RF visual signal level to system noise shall not be less than 43 decibels. For class I cable television channels, the requirements of this section are applicable only to:

* * * * *

NOTE 3 The requirements of this section shall not apply to devices subject to the TV interface device rules under Part 15 of this Chapter

* * * * *

3. Section 76.610 is revised by adding provisions and deleting the last sentence and Notes 1 and 2 to read as follows:

§ 76.610 Operation in the frequency bands 108-137 and 225-400 MHz – scope of application.

The provisions of §§ 76.605(a)(12), 76.611, 76.612, 76.613, 76.614, 76.616, 76.617, 76.1803 and 76.1804 are applicable to all MVPDs (cable and non-cable) transmitting carriers or other signal components carried at an average power level equal to or greater than 10^{-4} watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108-137 and 225-400 MHz for any purpose. Exception: Non-cable MVPDs serving less than 1000 subscribers and less than 1000 units do not have to comply with § 76.1804(g).

4. Section 76.616 is revised to read as follows:

§76.616 Operation near certain aeronautical and marine emergency radio frequencies.

The transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10^{-5} watts at any point in a cable television system is prohibited within 100 kHz of the two frequencies 121.500 MHz and 406.025 MHz, and is prohibited within 50 kHz of the two frequencies 156.800 MHz and 243.000 MHz.

5. Remove Section 76.618.

§ 76.618 [removed]

6. Remove Section 76.619

§ 76.619 [removed]

7. Remove Section 76.620.

§ 76.620 [removed]

8. Section 76.1510 is revised to include Section 76.611 as part of the requirements and should read as follows:

§ 76.1510 Application of certain Title VI provisions.

The following sections within part 76 shall also apply to open video systems; §§ 76.71, 76.73, 76.75, 76.77, 76.79, 76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ **76.503** and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302 (regulation of carriage agreements); § 76.611 (signal leakage restrictions); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

PART 78 - CABLE TELEVISION RELAY SERVICE

9. Amend Section 78.19(f)(2)(ii) to read as follows:

§ 78.19 Interference

* * * * *

(f) * * *

(2) * * *

(i) * * *

(ii) Within the rectangular areas defined as follows (vicinity of Denver, CO):

Rectangle 1:

41°30'00" N. Lat. on the north

103°10'00" W. Long. on the east

38°30'00"; N. Lat. on the south

106°30'00" W. Long. on the west

Rectangle 2:

38°30'00" N. Lat. on the north

105°00'00" W. Long. on the east

37°30'00" N. Lat. on the south

105°50'00" W. Long. on the west

Rectangle 3:

40°08'00" N. Lat. on the north

107°00'00" W. Long. on the east

39°56'00" N. Lat. on the south

107°15'00" W. Long. on the west

* * * * *

10. Amend Section 78.27(b)(1) to read as follows:

§ 78.27 License conditions.

* * * * *

(b) * * *

(1) The licensee of a *CARS* station shall notify the Commission in writing when the station commences operation. Such notification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited.

* * * * *

APPENDIX B

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²² the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice*. 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 *Notice* provided in paragraph 17 of the item. The Commission will send a copy of this *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).²³ In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.²⁴

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

2. The basis of this *Notice* is our concern to assess the need to protect the emergency and distress frequency at 406.025 MHz from cable system operations in order to promote the safety of life and property. We also aim to streamline the rules by eliminating outdated regulations and making some minor changes as detailed in Appendix A.

3. We seek comment on the following objectives which are proposed for consideration in this *Notice*:

- Whether to provide for the protection of emergency and distress frequency 406.025 MHz by updating § 76.616 to include that frequency in the group of protected frequencies;
- Whether the industry believes that unused or discontinued CARS licenses should be forfeited or cancelled²⁵;
- Whether to include signal leakage restrictions among the other requirements within Part 76 listed in § 76.1510 that apply to open video systems;
- Whether to eliminate of §§ 76.618 and 76.619 because the date after which operators on these were grandfathered to continue operations ended on July 1, 1990; and
- Whether to effect the miscellaneous amendments detailed in Appendix A which exclusively involve typographical errors or operations that have become obsolete.

B. Legal Basis

4. The proposed action is authorized under Sections 4, 4(i), 157, 303, 303(g), 303(r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 154(i), 157, 303, 303(g), 303(r), 307.

²² See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²³ See 5 U.S.C. § 603(a).

²⁴ See 5 U.S.C. § 603(a).

²⁵ CARS licenses are issued to those who meet the eligibility requirements set forth in 47 C.F.R. § 78.13

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

5. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein.²⁶ The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction” under Section 3 of the Small Business Act.” 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”).²⁸

6. A small organization is generally “any “not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”²⁹ Nationwide, as of 1992, there were approximately 275,801 small organizations.” “Small government jurisdiction” generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”³² As of 1992, there were approximately 87,525 governmental entities in the United States.” This number includes 38,978 counties, cities, and towns: of these, 37,566, or 96%, have populations of fewer than 50,000.³⁴ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulates, including cities, counties, farms, villages, and other small organizations that may be affected by these rules.

7. The rules we adopt as a result of this *Notice* protect the emergency and distress frequency 406.025 MHz from interference from cable system operations. The nearest cable frequency is a color carrier³⁵ approximately 800 kHz above the emergency and distress frequency at 406.83 MHz.

8. *Small MVPDs*. SBA has developed a definition of small entities for cable and other program distribution services, which includes such companies generating \$12.5 million or less in annual

²⁶ 5 U.S.C. § 603(b)(3)

²⁷ *Id.* § 601(3)(incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632.) Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies, “unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁸ 15 U.S.C. § 632.

²⁹ 5 U.S.C. § 601(4)

³⁰ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

³¹ 47 C.F.R. § 1.1162.

³² 5 U.S.C. § 601(5)

³³ U.S. Census Bureau, “2002 Census of Governments – Government Organization”

³⁴ *Id.*

³⁵ A color carrier is the subcarrier that contains the color information for the video signal

receipts." This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services¹⁷. According to the Census Bureau, there were **1,423** such cable and other program distribution services generating less than \$12.5 million in revenue.³⁸ We address below services individually to provide a more precise estimate of small entities.

9. The Commission has developed, with SBA's approval, 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 1439 cable operators that qualified as small cable companies at the end of 1995.⁴⁰ 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. The Commission's rules define a "small system," for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers." The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus *is* unable to estimate, at this time, the number of small cable systems nationwide.

10. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and *is* not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."~The Commission has determined that there are 68,500,000 subscribers in the United States.⁴³ Therefore, an operator serving fewer than 685,000 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.⁴⁴ Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450.⁴⁵ 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

³⁶ 13 C.F.R. § 121.201(NAICS code 517510, formerly NAICS code 513220).

³⁷ Cable subscription services NAICS code 5171 20, formerly NAICS code 513210.

³⁸ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE. Series UC92-S-1, Firm Size 1-123 (1995) ("1992 Census") See Memorandum *Opinion and Order and Notice of Proposed Rule Making*, Implementation of Sections of the Cable Telecommunications Consumer Protection and Competition Act of 1992, Rate Regulation and Cable Pricing Flexibility, MM Docket No. 92-266 and CS Docket No. 96-157, 11 FCC Rcd 9517, 9531 (1996).

³⁹ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. See *Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket No. 92-266 and 93-215, 10 FCC Rcd 7393 (1995).

⁴⁰ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995)

⁴¹ 47 C.F.R. § 76.901(c)

⁴² 47 U.S.C. § 543(m)(2)

⁴³ *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, FCC 17 FCC Rcd. 1255 (2001) ("Eighth Annual Report")

⁴⁴ 47 C.F.R. § 76.1403(b).

⁴⁵ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

11. *Satellite Master Antenna Television Systems ("SMATV")*. The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating \$12.5 million or less in annual receipts.⁴⁶ Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995.⁴⁷ Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001.⁴⁸ The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000-4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities

12. *Open Video System ("OVS")*. Because OVS operators provide subscription services,⁴⁹ OVS falls within the SBA-recognized definition of cable and other program distribution services.⁵⁰ This definition provides that a small entity is one with \$ 12.5 million or less in annual receipts." The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

13. *Multichannel, Multipoint Distribution Service ("MMDS")*. MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS.⁵² In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than \$40 million in the previous three calendar years." This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁵⁴ The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic

⁴⁶ 13 C.F.R. § 121.201 (NAICS code 517510, formerly NAICS code 513220).

⁴⁷ See *Third Annual Report*, 12 FCC Rcd at 4403-4.

⁴⁸ See *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 17 FCC Rcd 1244, 1281 (2001) ("*Eighth Annual Report*").

⁴⁹ See 47 U.S.C. § 573.

⁵⁰ 13 C.F.R. § 121.201 (NAICS code 517510, formerly NAICS code 513220).

⁵¹ *Id*

⁵² *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, 10 FCC Rcd at 9589, 9593 (1995) ("*ITFS Order*").

⁵³ 47 C.F.R. § 21.961(b)(1).

⁵⁴ See *ITFS Order*, 10 FCC Rcd at 9589

Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for program distribution services, which includes all such companies generating \$12.5 million or less in annual receipts.⁵⁵ This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

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

14. This *Notice* proposes no changes in reporting, recordkeeping or compliance

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

15. The RFA requires an agency to describe any significant 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 or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."''

16. We believe that the rules proposed in this *Notice* will have a negligible economic effect on all entities regardless of size. The majority of the rule changes proposed in this *Notice* include the deletion of outdated rules as well as some corrections for typographical errors and consistency.

17. The revision to § 76.616 concerning operation near certain aeronautical and marine emergency radio frequencies (i.e. 405.025 MHz) should have a minimal or negligible effect on small or large entities since all such operations are already well outside of the boundaries defined by the proposed rule. It is in the interest of public safety to protect the digital search and rescue frequency 406.025 MHz; the alternative of not protecting the frequency 406.025 MHz is unacceptable.

18. The revision of § 76.1510 to include signal leakage restrictions for open video systems is also in the interest of public safety, thus the alternative of non-restriction is unacceptable.

19. In this *Notice* we ask for comment on whether discontinued or unused *CARS* licenses should be forfeited or cancelled. The alternative would be to leave the *CARS* licenses as they are, which would result in unused or wasted spectrum as it would not be available for other licensees.⁵⁷

⁵⁵ 13 C.F.R. § 121.201 (NAICS code 517510, formerly NAICS code 513220)

⁵⁶ See 5 U.S.C. § 603(c)

⁵⁷ The proposed miscellaneous amendments and the grandfathering termination deadline to not require discussion of alternatives because (1) the amendments are essentially typographical and (2) the grandfathering deadline is self-executing.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

20. None.

G. Ordering Clause

21. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Norice*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy ~~of~~ the Small Business Administration.