

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-27347 Filed 10-30-01; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 01-2446, MM Docket No. 01-303, RM-10306]

#### Radio Broadcasting Services; Birch Tree, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 241A at Birch Tree, Missouri, providing the community with additional local FM service. The coordinates for Channel 241A at Birch Tree are 36-55-35 and 91-24-23. There is a site restriction 10.5 kilometers (6.5 miles) southeast of the community.

**DATES:** Comments must be filed on or before December 10, 2001, and reply comments on or before December 26, 2001.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-303, adopted October 10, 2001 and released October 19, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to 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 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 and 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Channel 241A at Birch Tree.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-27348 Filed 10-30-01; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[CS Docket No. 01-290; FCC 01-307]

#### Implementation of the Cable Television Consumer Protection and Competition Act of 1992 and the Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act—Sunset of Exclusive Contract Prohibition.

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission issues this document in accordance with section 628(c)(5) of the Communications Act of 1934, as amended. Section 628(c)(2)(D) generally prohibits, in areas served by a cable operator, exclusive contracts for

satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Under section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) will cease to be effective on October 5, 2002, unless the Commission finds that such prohibition continues to be necessary to preserve competition and diversity in the distribution of video programming. The document initiates a proceeding in order to make that determination.

**DATES:** Comments are due December 3, 2001 and reply comments are due January 7, 2002.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. 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 1-C804, 445 12th Street SW., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Edward C. Springer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Room 10236, NEOB, Washington, DC 20503 or via the Internet to [Edward.Springer@eop.gov](mailto:Edward.Springer@eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Karen A. Kosar, Cable Services Bureau at 202-418-1053 or via the Internet at [kkosar@fcc.gov](mailto:kkosar@fcc.gov). For additional information concerning the information collection(s) contained in this NPRM, contact Judy Boley at 202-418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of a Notice of Proposed Rulemaking (NPRM) initiating the proceeding in CS-Docket No. 01-290. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W. Room CY-B402, Washington, DC 20554.

This NPRM 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 NPRM, 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

NPRM; OMB notification of action is due December 31, 2001. 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.

OMB Control Number: 3060-0551.

Title: Section 76.1002 Specific Unfair Practices Prohibited.

Form No.: N/A.

Type of Review: Revision.

Respondents: Business or other for-profit.

Number of Respondents: 52 (26 petitions and 26 oppositions).

Estimated Time Per Response: 1 hour–25 hours. We estimate that the total burden for completion of all aspects of the proceeding will be no more than 25 hours. We estimate that 50% of entities will use outside counsel and will undergo a burden of 1 hour to coordinate information with outside counsel.

Total Annual Burden: 676 hours. (26 respondents with outside counsel  $\times$  1 hour = 26 hours. 26 respondents with outside counsel  $\times$  25 hours = 650 hours.

Total Annual Costs: \$97,500.00 26 respondents using outside counsel at \$150 per hour =  $26 \times 25 \times \$150 = \$97,500.00$ .

Needs and Uses: This information is used by Commission staff to determine on a case-by-case basis whether particular exclusive contracts for cable television programming comply with the statutory public interest standard of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 and Section 628 of the Communications Act, as amended. Section 301(j) of the 1996 Act amends the restriction in section 628 to include common carriers and their affiliates that provide video programming.

### Synopsis of the NPRM

1. This Notice of Proposed Rulemaking involves the possible sunset of section 628(c)(2)(D) of the Communications Act, which generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Pursuant to section 628(c)(5), the prohibition on exclusive

programming contracts contained in section 628(c)(2)(D) will cease to be effective on October 5, 2002, unless the Commission conducts a proceeding and finds that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

2. The program access provisions contained in section 628 of the Communications Act were adopted as part of the Cable Television Consumer Protection and Competition Act of 1992. When adopting the statute, Congress was concerned by its finding that a majority of cable operators enjoyed a monopoly in program distribution at the local level, and concluded that the use of exclusive contracts between vertically integrated programming vendors and cable operators served to inhibit the development of competition among distributors.

3. Section 628(c) instructs the Commission to adopt regulations to prohibit a number of specific practices. For example, Congress absolutely prohibited exclusive contracts between vertically integrated programming vendors and cable operators in areas unserved by cable, and, pursuant to section 628(c)(2)(D), generally prohibited exclusive contracts within areas served by cable. Congress recognized, however, that in areas served by cable some exclusive contracts between vertically integrated programming vendors and cable operators may serve the public interest. Accordingly, in determining whether an exclusive contract is in the public interest for purposes of section 628(c)(2)(D), Congress instructed the Commission to consider the factors outlined in section 628(c)(4). The prohibition contained in section 628(c)(2)(D) regarding restrictions on exclusive contracts is not unlimited and Congress determined that after a ten-year period the Commission should determine in a proceeding conducted pursuant to section 628(c)(5) whether such prohibition continues to be necessary.

4. The Notice seeks comment on: (1) Whether section 628(c)(2)(D) of the Communications Act should cease to be effective pursuant to the sunset provision contained in section 628(c)(5); (2) the effect, if any, section 628(c)(2)(D) has had on competition in local and national markets; (3) the degree to which, if at all, clustering and the continuing consolidation within the communications industry should inform our decision on the possible sunset of the exclusivity prohibition; (4) the effects of exclusivity in the multichannel video programming

marketplace; (5) the impact the prohibition on exclusivity has had on diversity in programming; (6) whether it would be advisable, and consistent with the Commission's statutory authority, to retain the rule only for some types of programming or in some specific cases; (7) how other program access provisions would function should the exclusivity prohibition sunset; (8) what future procedures the Commission should undertake if the prohibition on exclusivity is retained; and (9) any other issues appropriate to our inquiry in accordance with section 628(c)(5).

### Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended, ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules referenced in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to this IRFA and must be filed by the deadlines for comments in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the IRFA (or summaries thereof) will be published in the **Federal Register**.

#### *I. Need for, and Objectives of, the Proposed Regulatory Approaches*

6. The purpose of section 628 of the Communications Act is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies. Specifically, this proceeding involves section 628(c)(2)(D), which prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators unless the Commission determines that such exclusivity is in the public interest. The exclusivity prohibition set forth in section 628(c)(2)(D) ceases to be effective after a 10-year period ending October 5, 2002. Section 628(c)(5) of the Communications Act requires that restrictions on exclusive contracts, within areas served by cable, are to sunset unless the Commission finds, in

a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. Pursuant to this statutory mandate and by this Notice of Proposed Rulemaking, we seek comment on whether section 628(c)(2)(D) should be retained or eliminated.

## II. Legal Basis

7. The authority for the action proposed in this rulemaking is contained in section 4(i), 303 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 548.

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

8. 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 proposed rules. The RFA 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").

9. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in annual 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 services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than \$11 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

10. *Cable Systems:* The Commission has developed, with SBA's approval, our 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. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have

grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this NPRM.

11. 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% 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 of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1450. 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 operators under the definition in the Communications Act.

12. *Open Video Systems:* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with \$11 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of those are currently 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. *Program Producers and Distributors:* The Commission has not developed a definition of small entities

applicable to producers or distributors of cable television programs. Therefore, we will use the SBA classifications of Motion Picture and Video Tape Production (NAICS Code 51211), Motion Picture and Video Tape Distribution (NAICS Code 42199), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 71132, 51229, 53249). These SBA definitions provide that a small entity in the cable television programming industry is an entity with \$21.5 million or less in annual receipts for NAICS Codes 51211, 42199 and 51212, and \$5 million or less in annual receipts for NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 51229, and 53249. Census Bureau data indicate the following: (a) There were 7,265 firms in the United States classified as Motion Picture and Video Production (NAICS Code 51211), and that 6,987 of these firms had \$16.999 million or less in annual receipts and 7,002 of these firms had \$24.999 million or less in annual receipts; (b) there were 1,139 firms classified as Motion Picture and Video Tape Distribution (NAICS Codes 42199 and 51212), and 1007 of these firms had \$16.999 million or less in annual receipts and 1013 of these firms had \$24.999 million or less in annual receipts; and (c) there were 5,671 firms in the United States classified as Theatrical Producers and Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 71121, 51229, and 53249), and 5627 of these firms had \$4.999 million or less in annual receipts.

14. Each of these NAICS categories are very broad and include firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated. Thus, we estimate that our rules may affect approximately 6,987 small entities primarily engaged in the production and distribution of taped cable television programs and 5,627 small producers of live programs that may be affected by the rules adopted in this proceeding.

15. *Direct Broadcast Satellite Service ("DBS"):* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with \$11 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those

licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

16. *Home Satellite Dish Service ("HSD")*: Because HSD provides subscription services, HSD falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with \$11 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

17. According to the most recently available information, there are approximately four program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 1,476,700 subscribers nationwide. This is an average of about 370,000 subscribers per program package. This is smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some

program packagers may be substantially smaller.

18. *Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") and Local Multipoint Distribution Service ("LMDS")*: MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS"). LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

20. 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. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic 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 pay television services, which includes all such companies generating \$11 million or less in annual receipts. 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 \$11 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.

21. The SBA definition of small entities for pay television services, which includes such companies generating \$11 million in annual receipts, appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

22. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

23. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

24. *Satellite Master Antenna Television ("SMATV") Systems*. The SBA definition of small entities for "Cable and Other Pay Television Services" specifically includes SMATV services and, thus, small entities are defined as all such companies generating \$11 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of June 2000. 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.

#### *IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

25. The NPRM seeks comment on the sunset of section 628(c)(2)(D) of the Communications Act. The NPRM does not propose any specific reporting, recordkeeping or other compliance requirements.

#### *V. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered*

26. The RFA requires an agency to describe any significant alternatives that it has considered in proposing regulatory approaches, which may include the following four alternatives: (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 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. The NPRM seeks comment on whether section 628(c)(2)(D) should cease to be effective, pursuant to the sunset provision in section 628(c)(5), or whether section 628(c)(2)(D) should be retained. Thus, the NPRM invites comments on a number of issues that may significantly impact small entities. Specifically, the NPRM seeks comment in para. 8 on the effect, if any, section 628(c)(2)(D) has had on competition in local and national markets. The NPRM also seeks comment in para. 9 on the degree to which, if at all, clustering and the continuing consolidation within the communications industry should inform the Commission's decision on the possible sunset of the exclusivity prohibition. In para. 10, the NPRM seeks comment on the effects of exclusivity in the multichannel video programming marketplace. In para. 11, the NPRM seeks comment on the impact the prohibition on exclusivity has had on diversity of programming. In para. 12, the NPRM seeks comment on how the program access provisions would function should the exclusivity prohibition sunset. In para. 13, the NPRM seeks comment relationship of section 628(c)(2)(D) and section 628(c)(2)(C) of the Act, which affects areas not served by a cable operator. In para. 14, the NPRM seeks comment on how the proliferation of new programming services impacts

assumptions with regard to exclusivity. If section 628(c)(2)(D) is retained, the NPRM seeks comment in para. 15 on future procedures necessarily related to the retention of section 628(c)(2)(D).

#### *VI. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals*

27. There are no federal rules that specifically duplicate, overlap or conflict with the Commission's inquiry with regard to section 628(c)(2)(D).

#### *VII. Report to Congress*

28. The Commission will send a copy of the NPRM, 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 NPRM, including IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the NPRM and IRFA (or summaries thereof) will also be published in the **Federal Register**.

#### **Paperwork Reduction Analysis**

29. This NPRM contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, 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 NPRM; OMB comments are due December 31, 2001. Comments should address: (a) Whether the proposed collection 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.

#### **Ex Parte Presentations**

30. This proceeding will be treated as a "permit-but-disclose" proceeding, subject to the "permit-but-disclose" requirements under § 1.1206(b) of the Commission's rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are

generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

#### **Comment Dates**

31. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before December 3, 2001 and reply comments on or before January 7, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the 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. In completing the transmittal screen, commenters should include their full name, 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 for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

32. Written comments by the public on the proposed information collection are due on December 3, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before December 31, 2001. 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 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov) and to Edward Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to [edward.springer@omb.eop.gov](mailto:edward.springer@omb.eop.gov).

33. Parties who choose to file by paper must file an original and four

copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. 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. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554. The Cable Services Bureau contact for this proceeding is Karen A. Kosar at (202) 418-7200, TTY (202) 418-7172, or at [kkosar@fcc.gov](mailto:kkosar@fcc.gov).

34. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal

Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0270, TTY (202) 418-2555, or [bccline@fcc.gov](mailto:bccline@fcc.gov). Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

35. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418-7426, TTY (202) 418-7365, or [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

#### Ordering Clauses

36. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 4(i), 303 and 628 of the Communications Act of 1934, as

amended, 47 U.S.C. 154(i), 303 and 548, *Notice is hereby given* of the proposals described in this Notice of Proposed Rulemaking.

37. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 76

Administrative practice and procedure and Cable television.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 01-27225 Filed 10-30-01; 8:45 am]

**BILLING CODE 6712-01-P**