OMB Control Number: 3060-XXXX **June 2007**
Title: **Section 76.41, Franchise Application Process**

SUPPORTING STATEMENT

A. Justification

1. The Commission adopted on December 20, 2006 a *Report and Order In the Matter of 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* ("R&O"), FCC 06-180, MB Docket 05-311. This R&O provides rules and guidance to implement Section 621 of the Communications Act of 1934, as amended. Section 621 of the Communications Act prohibits franchising authorities from unreasonably refusing to award competitive franchises[1] for the provision of cable services. The Commission has found that the current franchising process constitutes an unreasonable barrier to entry for competitive entrants that impede enhanced cable competition[2] and accelerated broadband deployment.[3]

New Information Collection Requirements:

47 CFR 76.41(b) requires a competitive franchise applicant to include the following information in writing in its franchise application, in addition to any information required by applicable state and local laws:

(1) the applicant's name;
(2) the names of the applicant's officers and directors;
(3) the business address of the applicant;
(4) the name and contact information of a designated contact for the applicant;
(5) a description of the geographic area that the applicant proposes to serve;
(6) the PEG[4] channel capacity and capital support proposed by the applicant;
(7) the term of the agreement proposed by the applicant;
(8) whether the applicant holds an existing authorization to access the public rights-of-way in the subject franchise service area;
(9) the amount of the franchise fee the applicant offers to pay; and
(10) any additional information required by applicable state or local laws.

[1] A competitive franchise is a cable franchise sought in an area currently served by another cable operator or cable operators. 47 C.F.R. § 76.41.

[2] Enhanced cable competition will promote the public interest, convenience and necessity by increasing competition and diversity in the multichannel video programming market. *See* 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, FCC 06-180, at ¶¶ 50-52 (rel. March 5, 2007).

[3] Accelerated broadband deployment refers to the reasonable and timely delivery of advanced telecommunications capability to all Americans. *See* Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157(a).

[4] PEG stands for public, educational, and governmental access channels. *See discussion* 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, FCC 06-180, at ¶¶ 110-120 (rel. March 5, 2007).

47 CFR 76.41 (d) states when a competitive franchise applicant files a franchise application with a franchising authority and the applicant has existing authority to access public rights-of-way[5] in the geographic area that the applicant proposes to serve, the franchising authority must grant or deny the application within 90 days of the date the application is received by the franchising authority. If a competitive franchise applicant does not have existing authority to access public rights-of-way in the geographic area that the applicant proposes to serve, the franchising authority must grant or deny the application within 180 days of the date the application is received by the franchising authority. A franchising authority and a competitive franchise applicant may agree in writing to extend the 90-day or 180-day deadline, whichever is applicable.

As noted on the OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Authority for this collection of information is contained in 47 U.S.C. §§ 151, 152, 154(i), 157nt, 201, 303(r), 531, 541 and 542.

2. Local franchising authorities will use this information to consider franchise requests. Local franchising authorities will review the information and use it as a starting point for franchise negotiations.

3. Local franchising authorities may, at their discretion, collect this information electronically. If local franchising authorities choose to collect the information electronically, those authorities must provide a mechanism to acknowledge receipt of the filing. This acknowledgment will provide necessary evidentiary support in the event of a conflict between a filer and a local franchising authority.

4. This agency does not impose similar information collection requirements on the respondents. While many local franchising authorities already require franchise applicants to include much of this information in a franchise application, this information collection requirement will not require any applicant to submit the same information twice. Rather, the information collection requirement will only have a substantive impact on applicants and local franchising authorities to the extent that a franchising authority does not currently require some of this information to be collected from franchise applicants.

5. The R&O provides that local franchising authorities should reasonably review franchise applications within 90 days for entities existing authority to access rights-of way, and within 180 days for entities that do not have such authority. This will result in decreasing the regulatory burdens on cable operators. The agency declined to adopt shorter deadlines that commenters proposed (*e.g.*, 17 days, one month) in order to provide small entities more flexibility in scheduling their franchise negotiation sessions. In the R&O, the agency also provides guidance on whether a local franchising authority may reasonably refuse to award a competitive franchise based on certain franchise requirements, such as build-out requirements and franchise fees. As an alternative, the agency considered providing no guidance on any franchising terms. The agency concluded that the guidance provided will minimize any adverse impact on small entities

[5] Public rights-of-way refers to publicly owned property such as roads, sidewalks, and park land.

because it clarifies the terms within which parties must negotiate, and should prevent small entities from facing costly litigation over those terms. Therefore, this collection of information does not have a significant economic impact on a substantial number of small entities/businesses.

6. This information collection is necessary to ensure that competitive franchise applicants provide local franchising authorities with the minimal information that is necessary to review a franchise application. This information collection will help to ensure an efficient review of an applicant's franchise submission. .

7. This collection of information is consistent with the guidelines in 5 CFR Section 1320.5(d)(2).

8. The Commission published a Notice (72 FR 13282) in the *Federal Register* on March 21, 2007. The Commission received one comment from the National Association of Telecommunications Officers and Advisors ("NATOA") on May 21, 2007.[6]

9. There will be no payment or gifts given to respondents.

10. There is no need for confidentiality.

11. These information collection requirements do not address any private matters of a sensitive nature.

12. The public burden is as follows: **For 47 CFR 76.41(b)**, we estimate six (6) competitive franchise applicants and expect each applicant will require 0.5 hours to complete each franchise application. **For 47 CFR 76.41(d)**, we estimate 6,000 LFAs will take action on two franchise applications each and expect the LFAs will require 4 hours to review the federally required information contained in the application.

Total Number of Annual Respondents:

6 competitive franchise applicants
6,000 LFAs
6,006 respondents

Total Number of Annual Responses: For 47 CFR 76.41(b) 12,000 franchise applications
For 47 CFR 76.41(d) 12,000 franchise applications
24,000 franchise applications

Annual Burden Hours:

6 franchise applicants x 2,000 applications/applicant x 0.5 hrs./application = 6,000 hours
6,000 LFAs x 2 applications each x 4 hrs./application = 48,000 hours

[6] *See* question 15 of this supporting statement for the Commission's response to the comment received from NATOA.

Total Annual Burden Hours: 54,000 hours

Annual "In-House Cost": We estimate that each competitive franchise applicant will maintain in-house personnel to complete the franchise applications, at a cost of $100,000 per year, ($48.08 per hour). Each application will require 0.5 hours to complete. Also, each LFA will require in-house personnel to review the federally required information contained in the application, at a cost of $100,000 per year ($48.08 per hour). This process will require 4 hours/application to complete.

6 franchise applicants x 2,000 applications/applicant x 0.5 hrs./application x $48.08 = 288,480
6,000 LFAs x 2 applications each x 4 hrs./application x $48.08 = 2,307,840
Total Annual In-House Cost: 2,596,320

All estimates are based on Commission staff's knowledge and familiarity with the availability of the data required.

13. Annual Cost Burden:

(a) Total annualized capital/startup costs: None

(b) Total annual costs (O&M): None

(c) Total annualized cost requested: **None**

14. There is no cost to the Federal Government.

15. This is a new information collection therefore adding a program change of +54,000 hours to this information collection.

In response to the Federal Register Notice (72 FR 13282), we received one comment from the National Association of Telecommunications Officers and Advisors ("NATOA"). NATOA takes issue with the Commission's burden estimate, specifically with respect to the number of entities that will be burdened by these rules. We believe that our estimates were correct. In response to NATOA's specific complaint, our estimate with respect to the number of affected entities was taken from comments that we received in the rulemaking process, and also takes into account sweeping statewide laws in at least 17 states that greatly reduce the number of local franchising authorities that these rules will affect. *See, e.g.,* TEX. UTIL. CODE ANN. §§ 66.001, 66.003; CAL. PUB. UTIL. CODE § 401, et seq.; IND. CODE § 8-1-34-16 (each law provides that a single state-level agency is responsible for franchising in the state). Therefore, we do not believe that 90,696 entities will be burdened by these rules annually, as NATOA suggests. Additionally, the time provided to review the federally required information contained in the application as described by 47 CFR 76.41(b), and related in-house labor costs were made using the Commission staff's best estimates given the length and relative simplicity of information collection requirements imposed by that rule.

16. This data will not be published for statistical use.

17. We do not seek approval to not display the expiration date for OMB approval of this information collection.

18. The Commission published a 60 day Federal Register Notice on March 21, 2007 (72 FR 13282) and also published a 30 day Federal Register Notice on May 23, 2007 (72 FR 28971). The Commission stated the total annual burden hours as 46,000 hours and total annual respondents as 5,006 in the 60 day Federal Register Notice. We later corrected these numbers to read "54,000 hours" and "6,006 respondents" in the 30 day Federal Register Notice. There are no other exceptions to the Certification Statement in Item 19.

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.