

SUPPORTING STATEMENT

A. Justification:

1. The Commission vacated an *Order on Reconsideration*, In the Matter of Implementation Of Section 25 Of The Cable Television Consumer Protection And Competition Act Of 1992, Direct Broadcast Satellite Public Interest Obligations, MM No. Docket 93-25 FCC 03-78, adopted April 9, 2003 and adopted in its place, in the same proceeding, a *Second Order on Reconsideration of the First Report and Order, Sua Sponte Order on Reconsideration* (“*Second Order*”) and accompanying rules FCC 04-44, released March 25, 2004. The *Second Order* differs from the *Order on Reconsideration* with respect to two issues: (1) the political broadcasting requirements, and (2) the guidelines concerning commercialization of children’s programming.

47 CFR 25.701(c)(1)(i)(C) states DBS providers may establish and define their own reasonable classes of immediately preemptible time so long as the differences between such classes are based on one or more demonstrable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstrable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time sensitive make goods. DBS providers may not use class distinctions to defeat the purpose of the lowest unit charge requirement. All classes must be fully disclosed and made available to candidates.

47 CFR 25.701(c)(1)(i)(D) states DBS providers may establish reasonable classes of preemptible with notice time so long as they clearly define all such classes, fully disclose them and make them available to candidates.

47 CFR 25.701(c)(1)(i)(E) states DBS providers may treat non preemptible and fixed position as distinct classes of time provided that they articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

47 CFR 25.701(c)(1)(i)(I) states DBS providers shall review their advertising records periodically throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. Where necessary, DBS providers shall issue such rebates or credits promptly.

47 CFR 25.701(c)(1)(i)(M) states DBS providers must disclose and make available to candidates any make good policies provided to commercial advertisers. If a DBS provider places a make good¹ for any commercial advertiser or other candidate in a more valuable program or daypart, the value of such make good must be included in the calculation of the lowest unit charge for that program or daypart.

47 CFR 25.701(c)(1)(ii) states at any time other than the respective periods set forth in paragraph (c)(1)(i) of this section, DBS providers may charge legally qualified candidates for public office no more than the charges made for comparable use of the facility by commercial advertisers. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, direct or indirect. A candidate shall be charged no more than the rate the DBS provider would charge for comparable commercial advertising. All discount privileges otherwise offered by a DBS provider to commercial advertisers must be disclosed and made available upon equal terms to all candidates for public office.

¹“Make goods” are defined as the rescheduling of preempted advertising.

Section 25.701 of the Commission's Rules, Direct Broadcast Satellite Public Interest Obligations, MB Dkt. 93-25

47 CFR 25.701(d) states each DBS provider shall keep and permit public inspection of a complete and orderly political file and shall prominently disclose the physical location of the file, and the telephonic and electronic means to access the file.

(1) The political file shall contain, at a minimum:

(i) A record of all requests for DBS origination time, the disposition of those requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased; and

(ii) A record of the free time provided if free time is provided for use by or on behalf of candidates.

(2) DBS providers shall place all records required by this section in a file available to the public as soon as possible and shall be retained for a period of four years until December 31, 2006, and thereafter for a period of two years.

47 CFR 25.701(e)(3) requires DBS providers airing children's programming must maintain records sufficient to verify compliance with this rule and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

47 CFR 25.701(f)(6) states that each DBS provider shall keep and permit public inspection of a complete and orderly record of:

(A) Quarterly measurements of channel capacity and yearly average calculations on which it bases its four percent reservation, as well as its response to any capacity changes;

(B) A record of entities to whom noncommercial capacity is being provided, the amount of capacity being provided to each entity, the conditions under which it is being provided and the rates, if any, being paid by the entity;

(C) A record of entities that have requested capacity, disposition of those requests and reasons for the disposition.

(ii) All records required by this paragraph shall be placed in a file available to the public as soon as possible and shall be retained for a period of two years.

The statutory authority which covers this information collection is contained in 47 USC 335 of the Communications Act of 1934, as amended.

The Commission is requesting an extension of this information collection in order to receive the full three year OMB approval/clearance for this information collection.

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.

2. The political broadcasting reporting, recordkeeping requirement, and third party disclosure requirements in this information collection will be used by the public to assess money expended and time allotted to a political candidate and by the Commission to ensure that equal access is afforded to other qualified candidates. The Commission will use the children's programming recordkeeping burden to verify compliance with the commercial limits established in 47 CFR § 25.701(e), and by the public to assess the DBS provider's compliance with the commercial limits.

3. The Commission finds that the use of information technology is not appropriate for the recordkeeping requirements and third party disclosure requirements adopted in the *Second Order*. However, the *Second Order* does make provisions for the use of electronic technology in making information available to the

Section 25.701 of the Commission's Rules, Direct Broadcast Satellite Public Interest Obligations, MB Dkt. 93-25

public. For example, rather than responding to individual requests from members of the public to view political broadcasting files, the *Second Order* finds that DBS providers may place their political files on their webpage.

4. The Commission does not impose a similar information collection on the respondents. There are no similar data available.

5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize burdens on all respondents, regardless of size. As certified in the Final Regulatory Flexibility Analysis in Appendix B of the *Second Order*, the Commission finds that none of the effected licensees is a small business as defined by the Small Business Administration.

6. If this information collection was not collected the Commission would have no way of assuring that the public has access to the political broadcasting and children's programming information relating to DBS services. Equally important, the Commission would have no way of verifying whether DBS providers are complying with its political broadcasting and children's programming commercial limits. This could lead to favoritism in according political broadcast time, or an excessive, potentially harmful amount of commercials on children's programming.

7. Current data is consistent with 5 CFR § 1320.6.

8. The Commission published a Notice in the *Federal Register* on April 4, 2007 (72 FR 16361). The Commission received no comments following publication of the Notice. A copy of the Notice is attached.

9. Respondents will not receive any payments.

10. Although the Commission does not believe that any confidential information will need to be disclosed in order to comply with the information collection requirements, applicants are free to request that materials or information submitted to the Commission be withheld from public inspection. (See 47 CFR § 0.459 of the Commission's Rules).

11. This information collection does not address any private matters of a sensitive nature.

12. The public burden is as follows:

Number of Annual Respondents: 15 DBS Providers

Number of Annual Responses: 15 responses

- a) **47 CFR 25.701 (c)(1)(i)(C), 47 CFR 25.701(c)(i)(D), and 47 CFR 27701(c)(1)(i)(E)**
Establishment, Definition, and Disclosure of Classes: The Commission estimates 2 hours for each task: 1) establish, define, and disclose their own classes of immediately preemptible time for political candidates, 2) establish, clearly define, and disclose classes of preemptible with notice time for political candidates, and 3) clearly define and disclose the difference between non preemptible and fixed positions classes of time. This should be a one-time burden -- approximately 6 hours per licensee.

15 DBS provider x 6 hours/task = **90 hours**

Section 25.701 of the Commission's Rules, Direct Broadcast Satellite Public Interest Obligations, MB Dkt. 93-25

- b) **47 CFR 25.701(c)(1)(i)(I) Periodic Review of Advertising Records and Issuance of Rebates or Credits Where Appropriate:** The Commission estimates about 2 hours annually to conduct periodically a thorough review of advertising records and issue rebates or credits where appropriate.

15 DBS providers x 2 hours/task = **30 hours**

- c) **47 CFR 25.701(c)(1)(i)(M) Disclosure of "Make Good" Policies:** The Commission estimates about 1 hour to make available any make good policies. This should be a one-time burden.

15 DBS providers 1 hour = **15 hours**

- d) **47 CFR 25.701(c)(1)(ii) Disclosure of Other Discount Privileges:** The Commission estimates 1 hour annually for disclosure requirements.

15 licensees x 1 hour = **15 hours**

- e) **47 CFR § 25.701(d) Political File and Public Availability Burden:** The Commission estimates 10 hours annually to establish and maintain political broadcasting files..

15 DBS providers 10 hours = **150 hours**

- f) **47 CFR § 25.701(e)(3) Children's Programming Recordkeeping:** The Commission estimates 2 hours annually for the recordkeeping requirement

15 licensees x 2 hours = **30 hours**

- g) **47 CFR § 25.701(f)(6). Channel Capacity and Noncommercial Entity Recordkeeping Requirement:** The Commission estimates that this burden will take each DBS provider about 3 hours to comply with on an annual basis.

15 licensees x 3 hours/task = **45 hours**

Total Annual Burden Hours: 90 + 30 + 15 + 15 + 150 + 30 + 45 = **375 hours**

Annual "In-house" Cost: The Commission believes that all of the burdens will be carried out by management or sales staff of the DBS service provider at approximately \$26 per hour:

375 hours x \$26/hour for staff time = **\$9,750 Total Annual "In House" Costs**

Section 25.701 of the Commission's Rules, Direct Broadcast Satellite Public Interest Obligations, MB Dkt. 93-25

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. There are no program changes or adjustments.

16. The data will not be published.

17. OMB approval of the expiration of the information collection will be displayed at 47 CFR § 0.408.

18. There are no exceptions to the Certification Statement in Item 19.

B. Collections of Information Employing Statistical Methods

This information collection does not employ any statistical methods.