

Title: Section 76.7, Petition Procedures; Section 76.9, Confidentiality of Proprietary Information; Section 76.61, Dispute Concerning Carriage; Section 76.914, Revocation of Certification; Section 76.1003, Program Access Proceedings; Section 76.1302, Carriage Agreement Proceedings; Section 76.1513, Open Video Dispute Resolution

SUPPORTING STATEMENT

A. Justification

1. On September 11, 2007, the Commission adopted a Report and Order and a Notice of Proposed Rulemaking *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition; Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements*, MB Docket Nos. 07-29, 07-198, FCC 07-169. Section 628 of the Communications Act proscribes a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor from engaging in unfair methods of competition and deceptive practices and directs the Commission to, among other things, prescribe regulations to provide for an expedited Commission review of any complaints made under this section. Section 76.1003 contains the Commission’s procedural rules for resolving these program access complaints.

REVISED INFORMATION COLLECTION REQUIREMENTS:

The NPRM adds these proposed requirements to the information collection:

47 CFR Section 76.1003(e)(1) proposes to require cable operators, satellite cable programming vendors, or satellite broadcast programming vendors whom expressly reference and rely upon a document in asserting a defense to a program access complaint¹ filed or in responding to a material allegation in a program access complaint filed pursuant to Section 76.1003, to include such document or documents, such as contracts for carriage of programming referenced and relied on, as part of the answer. **(The NPRM adds a proposed information collection requirement and a new universe of filers to this information collection and OMB review and approval are needed).**

47 CFR Section 76.1003(j) states in addition to the general pleading and discovery rules contained in § 76.7 of this part, parties to a program access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The respondent shall have the opportunity to object to any request for documents that are not in its

¹ A program access complaint refers to a complaint filed pursuant to Section 76.1003 of the Commission’s rules which claims that an MVPD has engaged in conduct that violates Section 628 of the Communications Act, such as by improperly influencing the decision of an affiliated programmer to sell programming, discriminating in prices, terms, or conditions for the affiliated programming, or entering into an exclusive contract for the affiliated programming.

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control or relevant to the dispute. Such request shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the obligation to produce the disputed material is suspended. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection as described above, or who fails to respond to a Commission order for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice. **(These proposed information collection requirements need OMB review and approval).**

The following rule sections are also covered in this information collection but do not require additional OMB approval:

47 CFR Section 76.7. Pleadings² seeking to initiate FCC action must adhere to the requirements of Section 76.6 (general pleading requirements) and Section 76.7 (initiating pleading requirements). Section 76.7 is used for numerous types of petitions and special relief petitions, including general petitions seeking special relief, waivers, enforcement, show cause, forfeiture and declaratory ruling procedures. **(The requirement is approved by OMB and has not changed).**

47 CFR Section 76.9. A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the FCC must file a petition pursuant to the pleading requirements in Section 76.7 and use the method described in Sections 0.459 and 76.9 to demonstrate that confidentiality is warranted. The petitions filed pursuant to this provision are contained in the existing information collection requirement and are not changed by the proposed rule changes. **(The requirement is approved by OMB and has not changed).**

47 CFR Section 76.61. Section 76.61(a) permits a local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in accordance with the must-carry rules by a cable operator to file a complaint with the FCC in accordance with the procedures set forth in Section 76.7. Section 76.61(b) permits a qualified local noncommercial educational television station that believes a cable operator has failed to comply with the FCC's signal carriage or channel positioning requirements (Sections 76.56 through 76.57) to file a complaint with the FCC in accordance with the procedures set forth in Section 76.7. **(The requirement is approved by OMB and has not changed).**

47 CFR Section 76.914. Section 76.914(c) permits a cable operator seeking revocation of a franchising authority's certification to file a petition with the FCC in accordance with the

² A pleading is a formal written document that contains the factual and legal allegations of a party.

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procedures set forth in Section 76.7. **(The requirement is approved by OMB and has not changed).**

47 CFR Section 76.1003. Section 76.1003(a) permits any multichannel video programming distributor (MVPD) aggrieved by conduct that it believes constitute a violation of the FCC's competitive access to cable programming rules to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1003. **(The requirement is approved by OMB and has not changed).**

47 CFR Section 76.1302. Section 76.1302(a) permits any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitute a violation of the FCC's regulation of carriage agreements to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1302. **(The requirement is approved by OMB and has not changed).**

47 CFR Section 76.1513. Section 76.1513(a) permits any party aggrieved by conduct that it believes constitute a violation of the FCC's regulations or in section 653 of the Communications Act (47 U.S.C. 573) to commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1513. **(The requirement is approved by OMB and has not changed).**

History:

On February 7, 2005, the Commission adopted a *Notice of Proposed Rulemaking* ("NPRM"), *In the Matter of Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, MB Docket No. 05-49, FCC 05-24. The NPRM proposed rules to implement Section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"), which created Section 340 of the Communications Act of 1934, as amended ("the Act"), and amended the copyright laws to provide satellite carriers with the authority to offer FCC-determined "significantly-viewed" signals³ of out-of-market broadcast stations to subscribers.

³ The NPRM implemented the Satellite Home Viewer Extension and Reauthorization Act (SHVERA), which establishes for satellite carriers and subscribers the concept of "significantly viewed," which has applied in the cable context for more than 30 years. The concept of "significantly viewed" signals is used to differentiate between out-

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On January 8, 1999, the Commission streamlined the current procedural rules for petitions or complaints filed under part 76 of the Commission's rules.⁴ The general procedural requirements were consolidated in 47 CFR Sections 76.6 through 76.10. The Commission eliminated redundant requirements, expanded the types of submissions that are styled Petitions for Special Relief and filed under Section 76.7, and standardized the filing procedure for all petitions seeking a finding of effective competition under Section 76.7. The Commission also established a standard provision for Part 76 pleadings to provide a uniform filing format, deadlines, and other procedural requirements which most pleadings filed pursuant to Part 76 now follow.

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.

Statutory authority for this collection of information is contained in contained in Section 4(i), 303(r), and 628 of the Communications Act of 1934, as amended.

2. Information filed is used to make determinations on petitions and complaints filed with the Commission.
3. This collection of information does not involve the use of forms or surveys that can be completed electronically. The collection of information comprises of various pleadings to be filed before the Commission. Due to the unique nature of the pleadings, some of which contain confidential and highly proprietary documents, it is not feasible to file them in standardized electronic form format. In the *Order*, however, the Commission notes that parties may voluntarily submit electronic copies of their pleadings to staff via e-mail in order to expedite review.
4. This agency does not impose similar information collection requirements on the respondents. There are no similar data available.
5. This information collection will not have a significant impact on small businesses or other small entities. The information collection will facilitate the processing and resolution of program access complaints pursuant to Section 76.1003, thereby conferring benefits upon smaller entities.

of-market television broadcast stations that have significant over-the-air non-cable viewing and those that do not. The designation of "significantly viewed" status is important because it will enable a broadcast station assigned to one market to be treated as a "local" station with respect to a particular cable or satellite community in another market, and thus enable its cable or satellite carriage into that market.

⁴ See *1998 Biennial Regulatory Review: Part 76 - Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999).

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6. If this information were not to be collected, the Commission would be limited in its ability to facilitate the expeditious processing and resolution of program access complaints pursuant to Section 76.1003.

7. Neither the *Order* nor the *NPRM* proposes to change or affect the existing pleading cycle. The information collection will require respondents to submit information that they might deem confidential, such as programming contracts. The FCC's rules contain procedures for the protection of the information's confidentiality. See 47 C.F.R. § 0.459.

8. The Commission submitted the NPRM for Federal Register publication. The Notice will seek public comment on this information collection.

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

10. Any information submitted by parties as part of their petition, complaint or reply may be submitted pursuant to a request for confidentiality under Section 0.459 of the Commission's rules. See 47 C.F.R. § 0.459.

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

12. This collection accounts for general petitions filed pursuant to Section 76.7, as well as part 76 filings filed pursuant to specific rule sections. Two filings parties are generally involved in these filings.

We estimate that parties initiating their own filings will have a burden of 60 hours and parties using outside counsel will have a burden of 4 hours. We estimate that approximately 300 filings will be made annually in accordance with procedures in Sections 76.7, 76.9, 76.61, 76.914, 76.1003, 76.1302, and 76.1513.

Total Number of Annual Respondents:

300 filings x 2 parties/filing = **600 Broadcast Stations, Cable Operators, Satellite Carriers, MVPDs and Programming Vendors**⁵

Total Number of Responses = 300 filings x 2 parties/filing = 600 responses/filings⁶

⁵ The NPRM, FCC 07-169, adds 100 additional respondents to this information collection.

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Annual Burden Hours:

Parties Initiating Their Own Filings: We estimate that 50% of parties will initiate their own filings at an average of 60 hours per filing.

$$300 \text{ filings (50\% of 600 filings)} \times 60 \text{ hours/filing} = 18,000 \text{ hours}^7$$

Parties Using Outside Counsel: We estimate that 50% of parties will use outside legal counsel to initiate their filings. These parties will undergo an average burden of 4 hours to coordinate filing information with outside legal counsel.

$$300 \text{ filings (50\% of 600 filings)} \times 4 \text{ hours/filing} = 1,200 \text{ hours}^8$$

Total Annual Burden Hours: 18,000 hour + 1,200 hours = 19,200 hours

Annual “In-house” Cost: We estimate that an in-house attorney and paralegal will be involved in initiating the filings. We estimate an average hourly wage for paralegal staff at \$30.00 per and the legal staff at \$50.00 per hour.

$$\begin{aligned} \text{Paralegal: } & 19,200 \text{ hours} \times \$30/\text{hour} = \$ 576,000 \\ \text{Attorney: } & 19,200 \text{ hours} \times \$50/\text{hour} = \$ \underline{960,000} \\ \text{Total Annual “In-House” Cost: } & \$ \mathbf{1,536,000}^9 \end{aligned}$$

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

13. Annual Cost Burden:

⁷ The NPRM, FCC 07-169, adds 3,000 additional burden hours to this information collection.

⁸ The NPRM, FCC 07-169, adds 200 additional burden hours to this information collection.

⁹ The NPRM, FCC 07-169, adds an additional “in-house cost” of \$256,000 to this information collection.

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- a. Total capital and start-up costs: \$0
- b. Total operation and maintenance costs: **\$240,000**. Parties using outside legal counsel will pay an estimated \$200 per hour for 4 hours of work.

$$300 \text{ filings (50\% of 600 filings)} \times 4 \text{ hours of legal service/filing} \times \$200/\text{hr.} =$$

$$\$240,000$$

- c. Total Annualized Cost: **\$240,000¹⁰**

14. **Cost to the Government:** The Commission staff performing work that reviews these filings consists of attorneys at the GS-15, step 5 level (\$59.93/hour), paralegals at the GS-12, step 5 level (\$36.26/hour) and administrative personnel at the GS-5, step 5 level (\$16.50/hour).

Legal review: 600 filings x 10 hours/filing x \$59.93/hour	= \$359,580.00
Paralegal review: 600 filings x 3 hours/filing x \$36.26/hour	= 65,268.00
Admin. review: 600 filings x 2 hours/filing x \$16.50/hour	= <u>19,800.00</u>
Total Cost to the Federal Government:	\$444,648.00

15. As a result of the *NPRM*, FCC 07-169, the Commission had program changes to the total annual burden hours and total annual cost burden for this information collection. There are no adjustments to this information collection.

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

17. The Commission does not seek approval to not display the expiration date for this collection of information.

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

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.

¹⁰ The *NPRM*, FCC 07-169, adds an additional cost burden of \$40,000 to this information collection.