

Title: Section 76.59, Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules

Supporting Statement

A. Justification:

47 CFR Section 76.59 states that the Commission, following a written request from a broadcast station or a cable system, may deem that the television market of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market. In this respect, communities may be considered part of more than one television market.

History:

On March 29, 1993, the Commission released a *Report and Order*, FCC 93-144 in MM Docket Nos. 92-259, 90-4 and 92-295; Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Broadcast Signal Carriage Issues. Among other things, this *Report and Order* implemented procedures that enable the Commission to add communities to or subtract communities from a station's television market to better reflect marketplace conditions following a written request. Such written requests to modify a television station's must-carry market may be filed by television stations or cable operators pursuant to 47 CFR Section 76.59 of the Commission's rules.

On May 24, 1996, the Commission released a *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-197 in CS Docket No. 95-178; In the Matter of Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules, FCC 96-197. The *First Report and Order* established new television market definitions for purposes of the cable television signal carriage and retransmission consent rules. The Commission concluded that it was appropriate to change market definitions from Arbitron areas of dominant influence ("ADIs") to Nielsen Media Research designated market areas ("DMAs") for must-carry/retransmission consent elections beginning with the must-carry/retransmission consent cycle that is to commence on January 1, 2000. The *Further Notice* provided parties an opportunity to further consider issues relating to the transition to market designations based on DMAs and sought comment on procedures for refining the market modification process.

On May 26, 1999, the Commission released an *Order on Reconsideration and Second Report and Order*, FCC 99-116 in this proceeding. Among other things, this rulemaking establishes final rules for procedures for refining the market modification process by adopting a standardized evidence approach to the market modification process. The Commission sets forth specific information submission requirements for the market modification process, as detailed in amended 47 CFR Section 76.59. The intent of specific submission requirements is to bring

**OMB Control Number: 3060-0546
2008**

December

Title: Section 76.59, Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules

greater uniformity and certainty to the market modification process and to avoid unnecessary reconsideration petitions and appeals. This collection accounts for the paperwork burden imposed on entities when undergoing the market modification request process.

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

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 Section 4(i) of the Communications Act of 1934, as amended, and Section 614 of the Cable Television Consumer Protection and Competition Act of 1992.

2. Information furnished in market modification filings is used by the Commission to deem that the television market of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market.

3. The use of information technology is not feasible for this collection. Market modification request filings are unique in nature. The Commission does not institute the use of automated forms for any of the requirements accounted for in this collection.

4. This agency does not impose a similar information collection requirement on the respondents. There are no similar data available.

5. The requirements accounted for in this information collection do not have a significant impact on a substantial number of small businesses or other small entities.

6. If this collection of information were not sponsored by the Commission, then broadcast television stations and cable systems would not have filing procedures available to them to request modifications of their television markets to better reflect marketplace conditions.

7. There are no special circumstances associated with this information collection.

8. The Commission published a Notice (73 FR 59627) in the *Federal Register* on October 9, 2008. No comments were generated as a result of the Notice.

**OMB Control Number: 3060-0546
2008**

December

Title: Section 76.59, Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules

9. There are no payments or gifts given to respondents.
10. There is no need for confidentiality with this collection of information.
11. This information collection does not address any private matters of a sensitive nature.
12. We estimate that television stations and cable operators annually file approximately 75 market modification request filings with the Commission. We also account for the possibility of there being a commenting party in each proceeding.

Total Number of Annual Respondents: 75 TV Station/Cable Operators
75 Commenting Parties
150 respondents

Total Number of Annual Responses: 75 Market Modification Request Filing
75 Commenting Parties Filings
150 respondents

We estimate that 20% of filing parties and commenting parties will use “in-house” legal staff for the filing process, and that 80% of filing parties and commenting parties will use outside legal assistance. The average paperwork burden to undergo all aspects of each filing is estimated to be 80 hours. However, parties using outside legal assistance do not encounter the burden for the filings. Instead, those parties will undergo an estimated burden of 4 hours to coordinate information with their outside legal assistance.

30 parties (20% of 150 parties) x 80 hours = 2,400 hours
120 parties (80% of 150 parties) x 4 hours = 480 hours
Total Annual Burden Hours: 2,880 hours

Annual “In-House” Cost: We estimate an average hourly wage of \$48.08 for legal staff tasked with the market modification request filing requirements or with coordinating information with outside legal assistance.

30 parties (20% of 150 parties) x 80 hours x \$48.08/hour = \$115,392.00
120 parties (80% of 150 parties) x 4 hours x \$48.08/hour = \$ 23,078.40
Total Annual “In –house” Cost: \$138,470.40

Title: Section 76.59, Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules

13. Annual Burden Cost:

- (a) Total capital and start-up costs component: **None**
- (b) Total operation and maintenance and purchase of services component: We estimate that it will take the legal consultants 80 hours to research and prepare the market modification request filing requirements. Parties that use outside legal assistance for filings will pay an average of \$200 per hour for these legal services:

120 parties (80% of 150 parties) x 80 hours x \$200 hour = **\$1,920,000**

- (c) Total annualized cost requested: **\$1,920,000**

14. Cost to the Federal Government: We estimate that the Commission will use clerical staff at the GS-9, Step 5 grade level (\$26.13) and attorney or other professional staff at the GS-13, Step 5 grade level (\$45.05) to review these filings. We estimate that 75 market modification requests will be filed by cable operators/TV stations, and 75 commenting filings (i.e., petitions, comments, and objections) will be filed with the Commission each year. The average processing time for Commission staff of these filings is estimated at 40 hours.

	Number of Filings	Total hours Per Application	Cost per hour	Cost per Application
Professional	150	39 hours	\$45.05	\$263,542.50
Clerical	150	1 hour	\$26.13	\$ 3,919.50
				\$267,462.00

Total Cost to the Federal Government = \$267,462.00

- 15. There are no adjustments or program changes.
- 16. We do not plan to publish the results of this information collection requirement.
- 17. We do not seek approval to not display the expiration date for OMB approval of the information collection.
- 18. There are no exceptions to the Certification Statement in Item 19.

OMB Control Number: 3060-0546
2008

December

Title: Section 76.59, Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.