

## SUPPORTING STATEMENT

The Commission is requesting an extension of this information collection. There are no changes to the reporting requirement(s). There is no change in the number of respondents/responses and burden hours.

### **A. Justification:**

1. *Circumstances that make collection necessary.* Section 253 of the Communications Act of 1934, as amended, 47 U.S.C. 253, added by the Telecommunications Act of 1996, requires the Commission, with certain important exceptions, to preempt the enforcement of any state or local statute or regulation, or other state or local legal requirement (to the extent necessary) that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The Commission's consideration of preemption begins with the filing of a petition by an aggrieved party. The petition is placed on public notice and commented on by others. The Commission's decision is based on the public record, generally composed of the petition and comments. The Commission has considered a number of preemption items since the passage of the Telecommunications Act of 1996, and believes it in the public interest to inform the public of the information necessary to support its full consideration of the issues likely to be involved in preemption actions.

The Public Notice establishes guidelines relating to its consideration of preemption petitions. Consideration of a petition requesting Commission action pursuant to section 253 necessarily will involve state or local statutes, regulations, ordinances, or other legal requirements that will likely be initially unfamiliar to the Commission. In order to render a timely and informed decision, the Commission expects petitioners and commenters to provide it with relevant information sufficient to describe the legal regime involved in the controversy and to establish the factual basis necessary for decision.

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

The statutory authority for this collection is contained in: Section 47 U.S.C. 253 of the Communications Act of 1934, as amended.

2. *Use of information.* The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements.

3. *Technological collection techniques.* In addition to submitting paper copies of their voluntary submissions, petitioners and commenters are requested, but not required, to make submissions on a 3.5 inch computer diskette formatted in WordPerfect 5.1. Such computer readable submissions would allow for quicker staff processing and publication on the Commission's

Web Site. However, such computer readable submissions are not required in order to reduce the potential burden on petitioners and commenters.

4. *Efforts to identify duplication.* Each preemption petition is likely to commence a unique adjudication. To the extent that multiple entities contemporaneously request preemption of the same state or local statute or regulation, or other state or local legal requirement, the Commission will seriously consider consolidation of the relevant petitions. Even in such event, different petitioners would likely be affected by the subject legal provision in different ways, necessitating articulation of their specific claims. In the event that the Commission takes preemption action pursuant to section 253, such preemption would affect other potential petitioners aggrieved by the statute, thereby eliminating the need for duplicative challenges.

5. *Impact on small entities.* Section 253 of the Communications Act, as amended, allows any entity to challenge certain legal requirements that prohibit or have the effect of prohibiting its provision of any interstate or intrastate telecommunications service. In many cases, new companies, often small start-up companies, will avail themselves of the Act's provisions. Some of the local legal requirements that will likely be challenged in preemption petitions will have been promulgated by small governmental bodies. The Public Notice seeks to inform all entities of guidelines for petitions and comments. The Commission is aware that some small municipalities whose ordinances may be implicated will have at their disposal limited assets with which to participate in the adjudicatory process. It is for precisely this reason that the Public Notice has been issued: to serve as an informal guide to all involved in an adjudicatory process.

6. *Consequences if information is not collected.* If petitioners and commenters do not file adequate information with the Commission, the Commission will request the requisite information from parties on a piecemeal basis. This will result in the expenditure of additional resources by the Commission as well as by petitioners and commenters. Delay in the fulfillment of the Commission's statutory mandate under section 253 of the Communications Act, as amended, would also result. Such regulatory delay would impede the development of competition in the telecommunications industry, the congressional purpose underlying the adoption of the Telecommunications Act of 1996.

7. *Special circumstances. Requiring more than three copies of each completed response (i.e. of each petition for preemption).* Six copies are requested in order to speed processing within the Commission. We anticipate that several staff members will be working on a petition simultaneously, and that petitions will be too voluminous for efficient copying by Commission staff members in the time frames available for staff consideration. Additional copies are called for if the petitioner wants each Commissioner to receive a copy of the submission, as indicated in the Public Notice.

8. *Federal Register notice; effort to consult with person outside the Commission.* A 60 day notice soliciting public comment was published in the Federal Register as required by 5 CFR 1320.8(d) on February 9, 2009 (74 FR 6406). No comments were received.

9. *Payments or gifts to respondents.* The Commission does not anticipate providing any payment or gift to respondents.

10. *Assurances of confidentiality.* Pursuant to 47 C.F.R. section 0.459, a participant in a preemption adjudication may request that information submitted to the Commission not be put in the public record. The party must state the reasons, and the facts on which those reasons are based, for withholding the information from the public record. The appropriate Bureau or Chief Officer of the Commission will grant a confidentiality request that presents, by a preponderance of the evidence, a case for non-disclosure consistent with the Freedom of Information Act, 5 U.S.C. 552. If a confidentiality request is denied, the party has five days to appeal the decision before the Commission. If the appeal before the Commission is denied, the respondent has five days to seek a judicial stay.

11. *Questions of a sensitive nature.* The Public Notice does not suggest (much less require) that petitioners or commenters submit information of a sensitive nature (including but not limited to, information relating to sexual behavior or attitudes, religious beliefs, or other matters that are commonly considered private).

12. *Estimates of the hour burden of the collection to respondents.*

a. Filing of Petitions for Preemption:

- (1) Number of respondents: approximately 20.
- (2) Frequency of response: on occasion reporting requirement.
- (3) Annual hour burden per respondent: 125 hours per submission. Total annual burden is 2,500.
- (4) Total estimate of annualized cost to respondents for the hour burdens of collection of information: \$150,000.
- (5) Explanation of calculation: Total annual burden 2,500 (hours) x \$60 (per hour) = \$150,000.

b. Submission of Written Comments on Petitions:

- (1) Number of respondents: approximately 60.
- (2) Frequency of response: on occasion reporting requirement.
- (3) Annual hour burden per respondent: 63 hours per submission. Total annual burden is 3,780.
- (4) Total estimate of annualized cost to respondents for the hour burdens of collection of information: \$226,800.
- (5) Explanation of calculation: Total annual burden 3,780 (hours) x \$60 (per hour) = \$226,800.

**Total annual burden: 2500 + 3780 = 6,280 hours.**

13. *Estimates on the cost burden of the collection to respondents (i.e. petitioners and commenters).* We estimate that there will be no capital or start-up costs associated with providing information to the Commission as described in the Public Notice. We do not believe following the Public Notice guidelines will necessitate any additional equipment. We

estimate there will be no operation or maintenance costs associated with conformity to the guidelines. Some petitioners and commenters may decide to purchase outside services (perhaps econometric or legal) to supplement their internal assess in the preparation of their filings. However, we do not have sufficient information to provide an estimate for this supplementation or augmentation at this time.

14. *Estimates of the cost burden to the Commission.* There will be no additional costs imposed on the Commission as a result of petitioner and commenter compliance with the guidelines contained in the Public Notice. The Public Notice will not cause petitions to be filed that would not be filed without it, nor will it cause additional comments to be filed. The Commission anticipates that compliance with the guidelines will *reduce* the costs of processing and analysis by helping to ensure that the Commission has all relevant facts available to it upon completion of the public comment cycle. This will eliminate the need to query the petitioner and commenters in order to elicit additional, necessary information not provided in the initial filings.

Notwithstanding the foregoing, based on the experience of the Commission to date, and including the reduction in costs associated with promulgation of the Public Notice, we estimate that the Commission will expend an average of 1,000 hours on each preemption petition, including review, analysis and decision making. Using the cost basis described in Item 12 above, this amounts to \$60,000 per petition. At 20 petitions per year, this represents a cost to the Commission of \$1.2 million annually.

15. *Program changes or adjustments.* No change in burden is requested. Public burden for the collections continues to be estimated at 6,280 burden hours.

16. *Collections of information whose results will be published.* At present, the Commission makes all preemption petitions and subsequent comments available to the public. The Public Notice will not change this practice.

17. *Display of expiration date of OMB approval of information collection.* The Commission seeks continued approval *not* display the expiration date for OMB approval of the information collection. Display the expiration date will create waste because it will require the Commission to re-print the Public Notice unnecessarily.

18. *Exceptions to the certification statement for Paperwork Reduction Act submissions (Item 19 of OMB Form 83-1). Indicating the retention periods for recordkeeping requirements.* The Public Notice does not indicate a retention period for preemption petitions and comments because those documents will form part of the public record. We are requesting respondents to submit more than three copies of their filings to aid the Commission in reviewing the filings in a timely manner. See item 7 above.

## **B. Collections of Information Employing Statistical Methods:**

The Commission does not anticipate that the collection of information will employ statistical methods.