

**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 76.1001, Unfair Practices; 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 January 20, 2010, the Commission adopted a First Report and Order, *In the Matter of Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, MB Docket No. 07-198, FCC 10-17. In the First Report and Order, the Commission establishes rules, policies, and procedures for the consideration of complaints alleging unfair acts involving terrestrially delivered, cable-affiliated programming in violation of Section 628(b) of the Communications Act. The Commission also establishes procedures for the consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program access complainant seeking renewal of such a contract.

### **REVISED INFORMATION COLLECTION REQUIREMENTS:**

**47 CFR Section 76.1001(b)(2)** permits any multichannel video programming distributor to commence an adjudicatory proceeding by filing a complaint with the Commission alleging that a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor, has engaged in an unfair act involving terrestrially delivered, cable-affiliated programming (which, as defined in this R&O, includes exclusive contracts, discrimination, and undue or improper influence), which must be filed and responded to in accordance with the procedures specified in § 76.7, except to the extent such procedures are modified by §§ 76.1001(b)(2) and 76.1003. In program access cases involving terrestrially delivered, cable-affiliated programming, the defendant has 45 days from the date of service of the complaint to file an answer, unless otherwise directed by the Commission. A complainant shall have the burden of proof that the defendant's alleged conduct has the purpose or effect of hindering significantly or preventing the complainant from providing satellite cable programming or satellite broadcast programming to subscribers or consumers; an answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden. In addition, a complainant alleging that a terrestrial cable programming vendor has engaged in discrimination shall have the burden of proof that the terrestrial cable programming vendor is wholly owned by, controlled by, or under common control with a cable operator or cable operators, satellite cable programming vendor or vendors in which a cable operator has an attributable interest, or satellite broadcast programming vendor or vendors; an answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden. In addition, the R&O provides that a complainant that wants a currently pending complaint involving terrestrially delivered, cable-affiliated programming considered under the rules adopted in the R&O must submit a

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supplemental filing alleging that the defendant has engaged in an unfair act after the effective date of the rules. In such case, the complaint and supplement will be considered pursuant to the rules adopted in the R&O and the defendant will have an opportunity to answer the supplemental filing, as set forth in the rules. **(The R&O adds potential new complaints to this information collection and OMB review and approval are needed).**

**47 CFR Section 76.1003(c)(3)** requires a program access complaint to contain evidence that the complainant competes with the defendant cable operator, or with a multichannel video programming distributor that is a customer of the defendant satellite cable programming or satellite broadcast programming vendor or a terrestrial cable programming vendor alleged to have engaged in conduct described in § 76.1001(b)(1). **(The R&O applies this provision to the potential new complaints and OMB review and approval are needed).**

**47 CFR Section 76.1003(l)** permits a program access complainant seeking renewal of an existing programming contract to file a petition<sup>1</sup> along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint, to which the defendant will have the opportunity to respond within 10 days of service of the petition, unless otherwise directed by the Commission. **(This information collection requirement needs 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.** Pleadings<sup>2</sup> 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.

**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 rule changes.

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<sup>1</sup> The complainant shall have the burden of proof to demonstrate requirements in its petition as outlined in 47 CFR Section 76.1003(l)(1)(i) – (iv).

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

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**47 CFR Section 76.61(a)**<sup>3</sup> 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)<sup>4</sup> 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.

**47 CFR Section 76.61(a)(1)** states that whenever a local commercial television station or a qualified low power television station believes that a cable operator has failed to meet its carriage or channel positioning obligations, pursuant to Sections [76.56](#) and [76.57](#), such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or position such signal on a particular channel.

**47 CFR Section 76.61(a)(2)** states that the cable operator shall, within 30 days of receipt of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of the must-carry rules. If a refusal for carriage is based on the station's distance from the cable system's principal headend, the operator's response shall include the location of such headend. If a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue, in its response.

**47 CFR 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 procedures set forth in Section 76.7.

**47 CFR 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

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<sup>3</sup> See 47 CFR Section 76.61(a)(3)(i) – (iii) for the specific items that should be contained in the complaint.

<sup>4</sup> See 47 CFR Section 76.61(b)(1)(i) – (ii) for the specific items that should be contained in the complaint.

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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.

**47 CFR Section 76.1003(b)** requires any aggrieved MVPD intending to file a complaint under this section to first notify the potential defendant cable operator, and/or the potential defendant satellite cable programming vendor or satellite broadcast programming vendor, that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in Sections 76.1001 or 76.1002 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

**47 CFR Section 76.1003(c)** describes the required contents of a program access complaint, in addition to the requirements of Section 76.7 of this part.<sup>5</sup>

**47 CFR Section 76.1003(d)**<sup>6</sup> states that, in a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim.

**47 CFR Section 76.1003(e)(1)** requires 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 complaint 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. Except as otherwise provided or directed by the Commission, any cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a program access complaint is served under this section shall answer within twenty (20) days of service of the complaint.

**47 CFR Section 76.1003(e)(2)** requires an answer to an exclusivity complaint to provide the defendant's reasons for refusing to sell the subject programming to the complainant. In addition, the defendant may submit its programming contracts covering the area specified in the complaint with its answer to refute allegations concerning the existence of an impermissible exclusive contract. If there are no contracts governing the specified area, the defendant shall so certify in

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<sup>5</sup> See 47 CFR Section 76.1003(c)(1) – (8) for the specific complaint content requirements.

<sup>6</sup> See 47 CFR Section 76.1003(d)(2) – (3) for specific items to be filed with the complaint for recovery of damages.

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its answer. Any contracts submitted pursuant to this provision may be protected as proprietary pursuant to Section 76.9 of this part.

**47 CFR Section 76.1003(e)(3)**<sup>7</sup> requires an answer to a discrimination complaint to state the reasons for any differential in prices, terms or conditions between the complainant and its competitor, and to specify the particular justification set forth in Section 76.1002(b) of this part relied upon in support of the differential.

**47 CFR Section 76.1003(e)(4)** requires an answer to a complaint alleging an unreasonable refusal to sell programming to state the defendant's reasons for refusing to sell to the complainant, or for refusing to sell to the complainant on the same terms and conditions as complainant's competitor, and to specify why the defendant's actions are not discriminatory.

**47 CFR Section 76.1003(f)** provides that, within fifteen (15) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

**47 CFR Section 76.1003(g)** states that any complaint filed pursuant to this subsection must be filed within one year<sup>8</sup> of the date on which one of three specified events occurs.

**47 CFR Section 76.1003(h)**<sup>9</sup> sets forth the remedies that are available for violations of the program access rules, which include the imposition of damages, and/or the establishment of prices, terms, and conditions for the sale of programming to the aggrieved multichannel video programming distributor, as well as sanctions available under title V or any other provision of the Communications Act.

**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 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

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<sup>7</sup> See 47 CFR Section 76.1003(e)(3)(i) – (iii) for specific requirements pertaining to answering a discrimination complaint.

<sup>8</sup> 47 CFR Section 76.1003(g)(1) – (3) specify the events that trigger the one-year period for filing the complaint.

<sup>9</sup> 47 CFR Section 76.1003(h)(3)(ii) states that the complainant must demonstrate with specificity the damages arising from the program access violation. Also, 47 CFR Section 76.1003(h)(3)(iii)(B)(1) – (3) specifies what should be submitted to the Commission within thirty days from the issuance of the damage methodology order.

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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.

**47 CFR Section 76.1302(a)** states that any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint.

**47 CFR Section 76.1302(b)** states that any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in Section [76.1301](#) of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

**47 CFR Section 76.1302(c)** specifies the content of carriage agreement complaints.<sup>10</sup>

**47 CFR Section 76.1302(d)** states that any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission. The answer shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised.

**47 CFR Section 76.1302(e)** states that within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

**47 CFR Section 76.1302(f)** states that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three events occurs.<sup>11</sup>

**47 CFR Section 76.1302(g)(1)** states that upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a

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<sup>10</sup> See 47 CFR Section 76.1302(c)(1) – (4) for the specific content requirements for carriage agreement complaints.

<sup>11</sup> See 47 CFR Section 76.1302(f)(1) – (3) for the three events.

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video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming.

**47 CFR 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.

**47 CFR Section 76.1513(b)** provides that an open video system operator may not provide in its carriage contracts with programming providers that any dispute must be submitted to arbitration, mediation, or any other alternative method for dispute resolution prior to submission of a complaint to the Commission.

**47 CFR Section 76.1513(c)** requires that any aggrieved party intending to file a complaint under this section must first notify the potential defendant open video system operator that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in this part or in Section 653 of the Communications Act. The notice must be in writing and must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

**47 CFR Section 76.1513(d)** describes the contents of an open video system complaint.<sup>12</sup>

**47 CFR Section 76.1513(e)** addresses answers to open video system complaints.<sup>13</sup>

**47 CFR Section 76.1513(f)** states within twenty (20) days after service of an answer, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

**47 CFR Section 76.1513(g)** requires that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three events occurs.<sup>14</sup>

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<sup>12</sup> See 47 CFR Section 76.1513(d)(1) – (4) for specific requirements pertaining to the complaints.

<sup>13</sup> See 47 CFR Section 76.1513(e)(1) – (2) for specific requirements pertaining to the open video system complaints.

<sup>14</sup> See 47 CFR Section 76.1513(g)(1) – (3) for the three events.

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**47 CFR Section 76.1513(h)** states that upon completion of the adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, the requiring carriage, awarding damages to any person denied carriage, or any combination of such sanctions. Such order shall set forth a timetable for compliance, and shall become effective upon release.

**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” signals<sup>15</sup> of out-of-market broadcast stations to subscribers.

On January 8, 1999, the Commission streamlined the current procedural rules for petitions or complaints filed under part 76 of the Commission’s rules.<sup>16</sup> 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.

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.

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<sup>15</sup> 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-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.

<sup>16</sup> See *1998 Biennial Regulatory Review: Part 76 - Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999).



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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. The Commission previously noted 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 facilitate competition in the video distribution market and promote broadband deployment, therefore conferring benefits upon various MVPDs, including those that are smaller entities.
6. If this information were not to be collected, the Commission would be limited in its ability to consider program access complaints involving terrestrially delivered, cable-affiliated programming. Additionally, the Commission would be limited in its ability to consider requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program access complainant seeking renewal of such a contract.
7. The R&O provides that in program access cases involving terrestrially delivered, cable-affiliated programming, the defendant has 45 days – rather than the usual 20 days – from the date of service of the complaint to file an answer to ensure that the defendant has adequate time to develop a full, case-specific response. In addition, the R&O provides that a defendant will have 10 days from the date of service to answer a petition for a temporary standstill. 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 published a Notice (75 FR 10263) in the *Federal Register* on March 5, 2010 seeking public comment on the information collection requirements contained in this supporting statement. Only one entity, the National Cable and Telecommunications Association (“NCTA”), submitted a comment. NCTA argues that the Notice (i) did not accurately describe the extent of the information collection burdens; and (ii) underestimates the additional burden hours resulting from the R&O.

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**The Notice Accurately Described the Information Collection Burdens.**

- o NCTA (at 1, 2) claims that the Notice does not recognize that “terrestrially-delivered programming networks [will be] subject[] . . . to the burdens of answering and defending complaints.” Despite NCTA’s claim, the R&O (at ¶ 57) establishes that terrestrially delivered programming networks will *not* be defendants to program access complaints filed pursuant to the rules adopted in the R&O. The R&O (at ¶ 57) specifically states that only one of the three entities listed in Section 628(b) of the Communications Act -- cable operators, satellite cable programming vendors in which a cable operator has an attributable interest, and satellite broadcast programming vendors – can be a defendant to a program access complaint involving terrestrially delivered, cable-affiliated programming. Thus, an entity such as a terrestrially delivered programming network that is not one of the three entities listed in Section 628(b) will not be a defendant under the rules adopted in the R&O.
- o NCTA (at 2, 3) claims that the Notice does not reflect that the R&O “directs all litigants . . . to compile and prepare regression analyses, consumer surveys, and other empirical studies regarding the competitive impact of the programming at issue. . . .” Despite NCTA’s claim, the R&O does *not* specify the evidence a litigant must submit. In any adjudicatory proceeding, including a program access complaint proceeding, a complainant (in its complaint) and a defendant (in its answers) are required to put forth evidence to prove or rebut claims. As NCTA admits (at 3 n.6), the R&O (at ¶ 56) simply provides “illustrative examples” of the evidence that complainants and defendants to program access complaints involving terrestrially delivered, cable-affiliated programming “might consider” providing. The R&O (at ¶ 56) specifically states that “not all potential complainants will have the resources to perform a regression analysis or market survey, thus, we reiterate that these examples should be considered illustrative only.” Nonetheless, as discussed below, the calculation of the burden hours takes into account the need to provide some form of evidence regarding the competitive impact of the programming at issue in a complaint filed pursuant to the new rules adopted in the R&O.
- o NCTA (at 2, 3-4) claims that the Notice does not reflect the additional discovery requests that will result from program access complaints involving terrestrially delivered, cable-affiliated programming. As an initial matter, discovery requests in program access complaint proceedings are governed by 47 C.F.R. § 76.1003(j). The discovery requirements that are contained in this rule have already been approved by OMB under the Paperwork Reduction Act (*see* OMB control number 3060-0888; the requirements were approved by OMB on February 15, 2008). In any event, while NCTA (at 3-4) implies that only defendants have

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access to relevant information and thus will be disproportionately burdened by discovery requests, the R&O (at ¶ 56) concludes the opposite. The R&O (at ¶ 56) specifically recognizes that “defendants, as well as complainants, are likely to have unique access to certain relevant evidence to rely on,” which *reduces* the need to obtain this information from an opposing party. While the R&O (at ¶ 56) recognizes that defendants are likely to have the best information about the competitive significance of programming they own, it also recognizes (at ¶ 56) that a complainant “has unique access to information about its own subscribership and the reasons consumers give for declining or terminating the [complainant’s] service.” Nonetheless, as discussed below, the calculation of the burden hours takes into account the potential for discovery in a complaint proceeding initiated pursuant to the new rules adopted in the R&O.

- o NCTA (at 2, 4-7) claims that the Notice did not consider or accurately describe the burdens for potential defendants, such as the possibility that in some cases a defendant will be required to rebut a presumption or to address a claim that the defendant controls a terrestrially delivered programmer. In any adjudicatory proceeding, including a program access complaint proceeding, a defendant in its answer must refute or rebut claims made by a complainant in its complaint. Rather than attempting to list every conceivable claim that a defendant might be required to refute or rebut in its answer, the Notice (at 10263-64) instead clearly stated that a defendant will be required to file an answer to a program access complaint involving terrestrially delivered, cable-affiliated programming and will be required to set forth reasons why the complainant has not carried its burdens. Moreover, as set forth in the R&O (at ¶ 8) and new rule 47 C.F.R. § 76.1001(b)(2)(i), the Notice (at 10263) stated that a defendant will have 45 days – rather than the usual 20 days – to ensure adequate time to develop this response. Thus, the Notice fully complies with the notice requirements in 5 U.S.C. § 1320.5(a)(1)(iv)(B), which require only a “summary” of the information collection. More importantly, however, the calculation of the burden hours takes into account all the potential burdens on defendants – including those mentioned by NCTA -- resulting from this information collection.

**The Estimated Burden Is Accurate.**

- o NCTA (at 7-8) remarks that the Notice estimated that the new requirements resulting from the R&O will increase the total number of annual respondents covered by this information collection by 40 (from 600 to 640) and will increase the total annual burden by 1760 hours (from 19,200 hours to 20,960 hours). From this, NCTA concludes that the Notice estimated that the annual burden for the average respondent will increase by less than one hour (from an

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average of 32 hours to an average of 32.75 hours). NCTA claims that the new burdens resulting from the R&O cannot be completed within this timeframe.

- o As an initial matter, while the calculations reflected in the Notice resulted in an estimate that complaint proceedings involving terrestrially delivered, cable-affiliated programming would impose an average burden over four times greater than the other filings covered by this information collection, we have now *revised* these calculations, with anew estimate that these complaint proceedings will impose an average burden of *nine times* greater – or 540 hours on average for parties initiating their own filings.
- o The calculation of the additional burden hours takes into account two critical factors, among others. First, the 40 additional average annual respondents resulting from the new rules adopted in the R&O will be divided between (i) standstill proceedings; and (ii) program access complaint proceedings involving terrestrially delivered, cable-affiliated programming. Due to the discrete issues they raise, standstill proceedings are expected to impose far less of a burden on parties than complaint proceedings involving terrestrially delivered, cable-affiliated programming. Thus, for parties initiating their own filings, the calculations estimate a burden of 60 hours for standstill proceedings and 540<sup>17</sup> hours for program access complaint proceedings involving terrestrially delivered, cable-affiliated programming. Second, it is reasonable to assume that, of these 40 additional average annual respondents, standstill proceedings will far outnumber complaint proceedings involving terrestrially delivered, cable-affiliated programming because (i) standstill proceedings apply to both terrestrially delivered, cable-affiliated networks and satellite-delivered, cable-affiliated networks (which far outnumber terrestrially delivered networks); and (ii) the number of complaint proceedings involving terrestrially delivered, cable-affiliated programming is expected to be fairly limited because: (a) the total number of terrestrially delivered networks is relatively small at present compared to satellite-delivered networks; (b) only a fraction of these networks are cable-affiliated and therefore potentially the subject of a complaint pursuant to the rules adopted in the R&O; (c) the R&O (at ¶ 8) specifically cautioned potential complainants that they are unlikely to succeed in a complaint involving a terrestrially delivered, cable-affiliated network that offers replicable programming, such as local news programming; and (d) the R&O (at ¶ 69) explains that some terrestrially delivered, cable-affiliated networks are already subject to merger conditions that obviate the need to file complaints with respect to these networks. Thus, the calculations assume 15 standstill proceedings per year and 5 complaint proceedings per year involving terrestrially delivered, cable-affiliated programming, half of each of which will be initiated by parties

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<sup>17</sup> This number is an estimated average annual number for a program access complaint proceeding involving terrestrially delivered, cable-affiliated programming.

**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 76.1001, Unfair Practices; Section 76.1003, Program Access Proceedings; Section 76.1302, Carriage Agreement Proceedings; Section 76.1513, Open Video Dispute Resolution**

rather than outside counsel. Thus, taken together, these two factors mean that the vast majority of the 3840 additional burden hours will result from a relatively small number of complaint proceedings involving terrestrially delivered, cable-affiliated programming.

- o NCTA (at 7 n.20) also explains that the Notice estimated a response time of 4.1 to 61.4 hours, but claims that the time to prepare a regression analysis alone could take more than 250-300 hours. As an initial matter, as noted above, the R&O does not mandate that parties submit regression analyses. More importantly, the figures in the Notice cited by NCTA are not the burden hours resulting from only the new requirements adopted in the R&O; rather, these figures are the *average* burden hours resulting from the many different filings covered by the present information collection, of which the new requirements adopted in the R&O are just one component.<sup>18</sup> Many of the filings will impose far less of a burden than complaint proceedings involving terrestrially delivered, cable-affiliated programming, which has the effect of reducing the average burden hours.

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

10. Any information submitted by parties as part of their petition, complaint, answer 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 filing parties are generally involved.

We estimate that parties initiating their own filings will have a burden of 67.5 hours and parties using outside counsel will have a burden of 4.5 hours. We estimate that approximately 320 filings will be made annually in accordance with procedures in Sections 76.7, 76.9, 76.61, 76.914, 76.1001, 76.1003, 76.1302, and 76.1513.

**Total Number of Annual Respondents: 640 Broadcast Stations, Cable Operators, Satellite Carriers, MVPDs and Programming Vendors**

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<sup>18</sup> The 4.1 hour average figure applies to the average amount of time per filing that parties using outside legal counsel will spend coordinating filing information with outside legal counsel; the 61.4 hour average figure applies to the average per filing burden for parties initiating their own filings. As discussed above, these figures have been revised to 4.5 and 67.5, respectively.

**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 76.1001, Unfair Practices; Section 76.1003, Program Access Proceedings; Section 76.1302, Carriage Agreement Proceedings; Section 76.1513, Open Video Dispute Resolution**

**Total Number of Annual Responses** = 320 filings x 2 parties/filing = **640 responses/filings**  
**Annual Burden Hours: Parties Initiating Their Own Filings:** We estimate that 50% of parties will initiate their own filings at an average of 67.5 hours per filing.

$$320 \text{ filings (50\% of 640 filings)} \times 67.5 \text{ hours/filing} = 21,600 \text{ hours}$$

**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 4.5 hours to coordinate filing information with outside legal counsel.

$$320 \text{ filings (50\% of 640 filings)} \times 4.5 \text{ hours/filing} = 1,440 \text{ hours}$$

$$\text{Total Annual Burden Hours } 21,600 \text{ hours} + 1,440 \text{ hours} = \text{23,040 hours}$$

**Annual “In-house” Cost:** We estimate that an in-house attorney and paralegal will initiate 50% of the filings and will also coordinate information with outside legal counsel for the remaining 50% of the filings. We estimate an average hourly wage for paralegal staff at \$30.00 per hour and the legal staff at \$50.00 per hour.

$$\begin{aligned} \text{Paralegal: } & 23,040 \text{ hours} \times \$30/\text{hour} = \$ 691,200 \\ \text{Attorney: } & 23,040 \text{ hours} \times \$50/\text{hour} = \$1,152,000 \\ \text{Total Annual “In-House” Cost: } & \mathbf{\$1,843,200} \end{aligned}$$

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

### 13. Annual Cost Burden:

- a. Total capital and start-up costs: \$0
- b. Half of the respondents are expected to receive assistance from consulting attorneys at costs of \$300/hour<sup>19</sup> when initiating their filings (50% of 640 filings = 320 filings). Therefore, the total operation and maintenance costs = 320 filings x 11.1 hours x \$300/hr. = **\$1,065,600.**

<sup>19</sup> Attorneys are expected to take 11.1 hours to complete tasks.

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**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 76.1001, Unfair Practices; Section 76.1003, Program Access Proceedings; Section 76.1302, Carriage Agreement Proceedings; Section 76.1513, Open Video Dispute Resolution**

c. Total Annualized Cost: **\$1,065,600**

14. **Cost to the Government:** The Commission staff performing work that reviews these filings consists of attorneys at the GS-15, step 5 level (\$67.21/hour), paralegals at the GS-12, step 5 level (\$40.66/hour) and administrative personnel at the GS-5, step 5 level (\$18.50/hour).

Legal review: 640 filings x 11.3 hours/filing x \$67.21/hour	=	\$486,062.72
Paralegal review: 640 filings x 3.4 hours/filing x \$40.66/hour	=	88,476.16
Admin. review: 640 filings x 2 hours/filing x \$18.50/hour	=	<u>23,680.00</u>
<b>Total Cost to the Federal Government:</b>		<b>\$598,218.88</b>

15. As a result of the R&O, FCC 10-17, there are program changes to this collection. They are as follows: the total number of annual responses has increased by +40 responses, the total annual burden hours increased by +3,840 and total annual cost burden increased by +\$825,600 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. The Commission published two notices (“*Notices*”) in the Federal Register on March 5, 2010 and May 7, 2010 seeking public comment for the information collection requirements contained in this supporting statement (*see* 75 FR 10263 and 75 FR 25250). The Commission made changes to some of its items that were published in the *Notices* to take into consideration the comment received from NCTA. Therefore, with this submission to OMB, the Commission corrects some of the items that were published in the *Notices* as follows: the estimated time per response is 4.5 – 67.5 hours per response, the annual burden hours are 23,040 and the annual cost is \$1,065,600. There are no other exceptions to the Certification Statement.

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

No statistical methods are employed.