

## SUPPORTING STATEMENT

### A. Justification:

1. Section 302 of the 1996 Telecommunications Act provides for specific entry options for telephone companies wishing to enter the video programming marketplace, one option being to provide cable service over an “open video system” (“OVS”).

**47 CFR 76.1502(a)** states an operator of an open video system must certify to the Commission that it will comply with the Commission's regulations in 47 CFR 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513. The Commission must approve such certification prior to the commencement of service at such a point in time that would allow the applicant sufficient time to comply with the Commission's notification requirements.

**47 CFR 76.1502(b)** states that certifications must be verified by an officer or director of the applicant, stating that, to the best of his or her information and belief, the representations made therein are accurate.

**47 CFR 75.1502(c)** require that certifications must be filed on FCC Form 1275 and must include:

- (1) The applicant's name, address and telephone number;
- (2) A statement of ownership, including all affiliated entities;
- (3) If the applicant is a cable operator applying for certification in its cable franchise area, a statement that the applicant is qualified to operate an open video system under Section 76.1501.
- (4) A statement that the applicant agrees to comply and to remain in compliance with each of the Commission's regulations in §§76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513;
- (5) If the applicant is required under 47 CFR 64.903(a) to file a cost allocation manual, a statement that the applicant will file changes to its manual at least 60 days before the commencement of service;
- (6) A list of the names of the anticipated local communities to be served upon completion of the system;
- (7) The anticipated amount and type (*i.e.*, analog or digital) of capacity (for switched digital systems, the anticipated number of available channel input ports); and
- (8) A statement that the applicant will comply with the Commission's notice and enrollment requirements for unaffiliated video programming providers.

**47 CFR 76.1502(d)(1)** requires that on or before the date an FCC Form 1275 is filed with the Commission, the applicant must serve a copy of its filing on all local communities identified and must include a statement informing the local communities of the Commission's requirements for filing oppositions and comments. Service by mail is complete upon mailing, but if mailed, the served documents must be postmarked at least 3 days prior to the filing of the FCC Form 1275 with the Commission.

**47 CFR 76.1502(d)(2)** states that parties are required to attach a cover sheet to the filing indicating that the submission is an open video system certification application. The only wording on this cover sheet shall be “Open Video System Certification Application” and “Attention: Media Bureau.” This wording shall be located in the center of the page and should be in letters at least 1/2 inch in size. Parties shall also include the words “open video systems” on their mailing envelope.

**47 CFR 76.1502(e)(1)** requires that comments or oppositions to a certification must be filed within five calendar days of the Commission's receipt of the certification and must be served on the party that filed the certification. If, after making the necessary calculations, the due date for filing comments falls on a holiday, comments shall be filed on the next business day before noon, unless the nearest business day precedes the fifth calendar day following a filing, in which case the comments will be due on the preceding business day.

**47 CFR 76.1502(e)(2)** requires parties wishing to respond to a FCC Form 1275 filing must submit comments or oppositions with the Office of the Secretary and the Bureau Chief, Media Bureau. Comments will not be considered properly filed unless filed with both of these Offices. Parties are required to attach a cover sheet to the filing indicating that the submission is a pleading related to an open video system application, the only wording on this cover sheet shall be “Open Video System Certification Application Comments.” This wording shall be located in the center of the page and should be in letters at least 1/2 inch in size. Parties shall also include the words “open video systems” on their mailing envelopes.

**47 CFR 76.1502(f)** states if the Commission does not disapprove the certification application within ten days after receipt of an applicant's request, the certification application will be deemed approved. If disapproved, the applicant may file a revised certification or refile its original submission with a statement addressing the issues in dispute. Such refilings must be served on any objecting party or parties and on all local communities in which the applicant intends to operate. The Commission will consider any revised or refiled FCC Form 1275 to be a new proceeding and any party who filed comments regarding the original FCC Form 1275 will have to refile their original comments if they think such comments should be considered in the subsequent proceeding.

**47 CFR 76.1503(b)(1)** states an open video system operator shall file with the Secretary of the Federal Communications Commission a “Notice of Intent” to establish an open video system, which the Commission will release in a Public Notice. Parties are required to attach a cover sheet to the filing indicating that the submission is an Open Video System Notice of Intent. The only wording on this cover sheet shall be “Open Video System Notice of Intent” and “Attention: Media Bureau.” This wording shall be located in the center of the page and should be in letters at least 1/2 inch in size. Parties shall also include the words “open video systems” on their mailing envelopes. Parties must submit copies of the Notice of Intent with the Office of the Secretary

**Title: Open Video Systems Provisions, FCC Form 1275**

and the Bureau Chief, Media Bureau. The Notice of Intent shall include the following information:

- (i) A heading clearly indicating that the document is a Notice of Intent to establish an open video system;
- (ii) The name, address and telephone number of the open video system operator;
- (iii) A description of the system's projected service area;
- (iv) A description of the system's projected channel capacity, in terms of analog, digital and other type(s) of capacity upon activation of the system;
- (v) A description of the steps a potential video programming provider must follow to seek carriage on the open video system, including the name, address and telephone number of a person to contact for further information;
- (vi) The starting and ending dates of the initial enrollment period for video programming providers;
- (vii) The process for allocating the system's channel capacity, in the event that demand for carriage on the system exceeds the system's capacity; and
- (viii) A certification that the operator has complied with all relevant notification requirements under the Commission's open video system regulations concerning must-carry and retransmission consent (§76.1506), including a list of all local commercial and non-commercial television stations served, and a certificate of service showing that the Notice of Intent has been served on all local cable franchising authorities entitled to establish requirements concerning the designation of channels for public, educational and governmental use.

**47 CFR 76.1503(b)(2)** states that an open video system operator shall provide the following information to a video programming provider within five business days of receiving a written request from the provider, unless otherwise included in the Notice of Intent:

- (i) The projected activation date of the open video system. If a system is to be activated in stages, the operator should describe the respective stages and the projected dates on which each stage will be activated;
- (ii) A preliminary carriage rate estimate;
- (iii) The information a video programming provider will be required to provide to qualify as a video programming provider, e.g., creditworthiness;
- (iv) Technical information that is reasonably necessary for potential video programming providers to assess whether to seek capacity on the open video system, including what type of customer premises equipment subscribers will need to receive service;
- (v) Any transmission or reception equipment needed by a video programming provider to interface successfully with the open video system; and
- (vi) The equipment available to facilitate the carriage of unaffiliated video programming and the electronic form(s) that will be accepted for processing and subsequent transmission through the system.

**47 CFR 76.1504(d)** states complaints regarding rates shall be limited to video programming providers that have sought carriage on the open video system. If a video programming provider

**Title: Open Video Systems Provisions, FCC Form 1275**

files a complaint against an open video system operator meeting the above just and reasonable rate presumption, the burden of proof will rest with the complainant. If a complaint is filed against an open video system operator that does not meet the just and reasonable rate presumption, the open video system operator will bear the burden of proof to demonstrate, using the principles set forth below, that the carriage rates subject to the complaint are just and reasonable.

**47 CFR 76.1504(e)** states how reasonable rates subject to complaints are determined and what tests must be met for such determinations.

**47 CFR 76.1505(d)(8)** states the open video system operator and/or the local franchising authority may file a complaint with the Commission, pursuant to our dispute resolution procedures set forth in § 76.1514, if the open video system operator and the local franchising authority cannot agree as to the application of the Commission's rules regarding the open video system operator's public, educational and governmental access obligations under paragraph (d) of this section.

**47 CFR 76.1506(l)(2)** states must-carry/retransmission consent election notifications shall be sent to the open video system operator. An open video system operator shall make all must-carry/retransmission consent election notifications received available to the appropriate programming providers on its system.

(3) Television broadcast stations are required to make the same election for open video systems and cable systems serving the same geographic area, unless the overlapping open video system is unable to deliver appropriate signals in conformance with the broadcast station's elections for all cable systems serving the same geographic area.

(4) An open video system commencing new operations shall notify all local commercial and noncommercial broadcast stations as required under paragraph (l) of this section on or before the date on which it files with the Commission its Notice of Intent to establish an open video system.

**47 CFR 76.1506(m)(2)** states that notification of programming to be deleted pursuant to this section shall be served on the open video system operator. The open video system operator shall make all notifications immediately available to the appropriate video programming providers on its open video system. Operators may effect the deletion of signals for which they have received deletion notices unless they receive notice within a reasonable time from the appropriate programming provider that the rights claimed are invalid. The open video system operator shall not delete signals for which it has received notice from the programming provider that the rights claimed are invalid. An open video system operator shall be subject to sanctions for any violation of this subpart. An open video system operator may require indemnification as a condition of carriage for any sanctions it may incur in reliance on a programmer's claim that certain exclusive or non-duplication rights are invalid.

**Title: Open Video Systems Provisions, FCC Form 1275**

**47 CFR 76.1508(c)** states any provision of §76.94 that refers to a “cable system operator” or “cable television system operator” shall apply to an open video system operator. Any provision of §76.94 that refers to a “cable system” or “cable television system” shall apply to an open video system except §76.94 (e) and (f) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding the exercise of network non-duplication rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

**47 CFR 76.1509(c)** states any provision of §76.155 that refers to a “cable system operator” or “cable television system operator” shall apply to an open video system operator. Any provision of §76.155 that refers to a “cable system” or “cable television system” shall apply to an open video system except § 76.155(c) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding exercise of syndicated program exclusivity rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

**47 CFR 76.1513(a)** states any party aggrieved by conduct that it believes constitute a violation of the regulations set forth in this part or in section 653 of the Communications Act ([47 U.S.C. 573](#)) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The Commission shall resolve any such dispute within 180 days after the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in [§ 76.7](#) of this part with the following additions or changes.

**47 CFR 76.1513(b)** requires 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 76.1513(c)** states 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 76.1513(d)** states that in addition to the requirements of [§ 76.7](#) of this part, an open video system complaint shall contain:

(1) The type of entity that describes complainant (e.g., individual, private association, partnership, or corporation), the address and telephone number of the complainant, and the address and telephone number of each defendant;

(2) If discrimination in rates, terms, and conditions of carriage is alleged, documentary evidence shall be submitted such as a preliminary carriage rate estimate or a programming contract that demonstrates a differential in price, terms or conditions between complainant and a competing video programming provider or, if no programming contract or preliminary carriage rate estimate is submitted with the complaint, an affidavit signed by an officer of complainant alleging that a differential in price, terms or conditions exists, a description of the nature and extent (if known or reasonably estimated by the complainant) of the differential, together with a statement that defendant refused to provide any further specific comparative information;

Note to paragraph (d)(2): Upon request by a complainant, the preliminary carriage rate estimate shall include a calculation of the average of the carriage rates paid by the unaffiliated video programming providers receiving carriage from the open video system operator, including the information needed for any weighting of the individual carriage rates that the operator has included in the average rate.

(3) If a programming contract or a preliminary carriage rate estimate is submitted with the complaint in support of the alleged violation, specific references to the relevant provisions therein.

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (c) of this section has been made.

**47 CFR 76.1513(e)(1)** requires that any open video system operator upon which a complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

**47 CFR 76.1513(e)(2)** states that an answer to a discrimination complaint shall state the reasons for any differential in prices, terms or conditions between the complainant and its competitor,

**Title: Open Video Systems Provisions, FCC Form 1275**

and shall specify the particular justification relied upon in support of the differential. Any documents or contracts submitted pursuant to this paragraph may be protected as proprietary pursuant to § 76.9 of this part.

**47 CFR 76.1513(f)** states that 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 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 the following events occurs

(1) The open video system operator enters into a contract with the complainant that the complainant alleges to violate one or more of the rules contained in this part; or

(2) The open video system operator offers to carry programming for the complainant pursuant to terms that the complainant alleges to violate one or more of the rules contained in this part, and such offer to carry programming is unrelated to any existing contract between the complainant and the open video system operator; or

(3) The complainant has notified an open video system operator that it intends to file a complaint with the Commission based on a request for such operator to carry the complainant's programming on its open video system that has been denied or unacknowledged, allegedly in violation of one or more of the rules contained in this part.

This information collection does not affect individuals or household; thus, there are no impacts under the Privacy Act.

The statutory authority for this information collection can be found in Section 302 of the Communications Act of 1934, as amended.

2. The information collections contained herein are necessary to implement the statutory provisions for Open Video Systems contained in the Telecommunications Act of 1996.

3. The use of information technology is feasible when filing FCC Form 1275 and any attachments.

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

**Title: Open Video Systems Provisions, FCC Form 1275**

5. It is anticipated that the information collection requirements contained in this collection will not have an impact on small entities/businesses.
6. If the Commission did not conduct these information collection requirements, we would not be in compliance with Section 302 of the Telecommunications Act of 1996.
7. To streamline the OVS review process, FCC Form 1275 certification applications and any attachments must be filed with the Commission in a specific computer format. Applications and any attachments must be filed on 3.5 inch diskettes in an IBM compatible format using Microsoft Windows with Word attachments and Excel software. Oppositions to a prospective OVS operator's certification application must be filed within 5 calendar days of receipt of such certification at the Commission. Oppositions are required to be filed within this brief period of time because the Commission is statutorily required to approve or disapprove certifications within 10 days of their receipt at the Commission. To make potential oppositioners aware of the certification filing as soon as possible, the Commission will immediately post the certification filing on the Commission's Internet site. OVS operators must file copies of Form 1275 with the local communities that they intend to serve at the time Form 1275 is filed with the Commission. When filing Notices of Intent, prospective OVS operators must include with the Notice of Intent a certificate of showing that the notice has been provided to all local commercial and non-commercial televisions entitled to must-carry treatment, and local cable franchising authorities located in the anticipated service area of the open video system.
8. The Commission published a Notice in the *Federal Register* on April 19, 2010 (75 FR 20352) seeking public comment on the information collection requirements contained in this supporting statement. No comments were received as a result of the Notice.
9. Respondents will not receive any payments.
10. There is no need for confidentiality with this collection of information.
11. The information collection requirements do not address any private matters of a sensitive nature.
12. We estimate the total number of respondents as follows:

<b>Respondents</b>	
OVS Operators	14
Video programming providers	250
Broadcast station licensees	6
Local Franchising Authority	10
<b>TOTAL NUMBER OF RESPONDENTS</b>	<b>280</b>

Rule Sections		No. of filings
76.1502	Certification filings/refilings/filings served on all local communities	14
76.1502(e)(1) and (e)(2)	Oppositions/comments filed on certifications	28
76.1503(b)(1)	Notices of Intent	10
76.1503(b)(2)	Requests for additional Notice of Intent information	250
76.1503 (b)(2)	Responses to requests for additional Notice of Intent information	250
76.1504(d) and (e)	Rate complaints, justifications and determinations	100
76.1506	Carriage elections and notifications	60
76.1506	Must-carry recordkeepers	10
76.1506	Must-carry list requests	300
76.1506	Provisions of must-carry lists	300
76.1508(c) and 76.1509(c)	Notifications and Information on network non-duplication rights and syndicated program exclusivity rights to OVS operators	3,200
76.1506(m)(2)	Programming provider notifications of invalid rights claimed	100
76.1505(d)(8), 76.1513	Complaints, Notifications, Answers and Reply Responses regarding OVS operator's PEG access obligation	50
<b>TOTAL NUMBER OF RESPONSES</b>		<b>4,672</b>

**47 CFR 76.1502 Certifications:** Annually, we estimate that a total of 14 prospective OVS operators will submit certification filings, re-filings and filings served on all local communities. The average burden is 2 hours for all aspects of the filing/re-filing process, including serving copies to appropriate entities. In addition, we estimate an average of 2 oppositions to each filing/re-filing with a burden of 4 hours.

14 filings and refilings x 2 hours/filing/re-filing/comments filed = 28 hours

14 filings/re-filings/comments filed x 2 oppositions per filing/refilling x 4 hours/each filing =

112 hours

**Annual Burden:**  $28 + 112 = 140$  hours

**47 CFR 76.1503 Notices:** Annually, we estimate 10 OVS operators will file with the FCC Notices of Intent to establish an OVS. This burden is 8 hours. In addition, OVS operators will notify on average 45 prospective video programming providers of this intent. This burden is 8 hours. These OVS operators will receive 25 written requests each. It will take the operator 2 hours to review these requests from video programmers concerning the Notices of Intent. The average burden is estimated at 8 hours for each OVS operator to provide the additional information to the entire group of prospective video programming providers who requested additional information.

10 Notices of Intent x 8 hours/Notice = 80 hours

10 OVS operators sending Notices of Intent x 45 video programming providers x 8 hours/notice = 3600 hrs

10 OVS operators x 25 written request each from video programmers x 2 hours review time/written request = 500 hours

10 OVS operators x 25 requests for additional information from video programmers x 8 hrs to provide additional information = 2000 hours

**Annual Burden:**  $80 + 3600 + 500 + 2000 = 6180$  hours

**47 CFR 76.1504 Complaints:** We estimate 5 complaints by video programming providers against each OVS operator. It will take the OVS operators 1 hour to review each complaint. In addition, we estimate 20 hours for OVS operators to undergo all aspects of the rate justification process.

10 OVS operators x 5 complaints x 1 hour/review = 50 hours

10 OVS operators x 5 justifications x 20 hours/justification = 1000 hours.

**Annual Burden:**  $50 + 1,000 = 1050$  hours.

**47 CFR 76.1505 and 76.1513 Complaints, Notifications, Answers and Reply Responses regarding OVS operator's PEG access Obligation:** We estimate that a total of 50 documents will be filed relating to OVS operator's PEG access obligation.

10 OVS operators x 5 documents x 1 hour/review = 50 hours

**Annual Burden: 50 hours.**

**47 CFR 76.1506 Elections and Notification of Programming to be Deleted:** We estimate 6 broadcast stations will notify OVS operators of election for must carry or retransmission consent which will take 2 hours/notification. We expect OVS operators will receive 30 written requests for additional information. It will take 0.25 hours to review these requests. Also, their responses to the written requests will require 0.25 hours to complete. In addition, we estimate four (4) hours of annual recordkeeping burden for OVS operators to maintain list of its broadcast stations carried in fulfillment of must-carry requirements. Also, OVS operators shall make all notifications of programming to be deleted immediately available to the appropriate video programming providers on its open video system. Making these notices available to the providers is estimated to take the OVS 0.25 hours to complete.

10 OVS operators x 6 broadcast stations sending notifications to stations x 2 hours/election = 120 hours

10 OVS operators x 30 written requests for additional information x 0.25 hours/request/review = 75 hours

10 OVS operators x 30 responses to written requests x 0.25 hours/response = 75 hours

10 OVS operators x 4 hours/recordkeeping requirement = 40 hours.

10 OVS operators x 10 notices to programming providers x 0.25 hours/notice = 25 hours

**Annual Burden: 120 + 75 + 75 + 40 + 25 = 335 hours.**

**47 CFR 76.1508/47 CFR 76.1509 Notifications:** We estimate six (6) broadcast stations will make 20 annual notifications each to 10 OVS operators each that exclusive or non-duplication rights are being exercised. This burden is 30 minutes (0.50 hr). In addition, we estimate 100 programming providers will file notices with OVS operators notifying them that the sports exclusivity rights claimed are invalid. This burden will be 30 minutes. We also estimate that each OVS operator may make notifications available to all programming providers on their systems. This notification will require one hour.

6 broadcast stations x 20 notifications each x 10 OVS operators x .50 hours/notification = 600 hours

100 programming providers x 1 notice/provider /notification x 0.50 hours x 10 OVS operator = 500 hours

10 OVS operators x 1 hour/notification x 100 providers that require additional notifications = 1000 hours

**Annual Burden:** 600 + 500 + 1000 + 2,200 = **2100 hours.**

**Total Annual Burden Hours:** 140 + 6180 + 1050 + 50 + 335 +2100 = **9,855 hours**

**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. Costs to the Federal Government**

**Section 76.1502 Certification:** Legal staff @ \$57.13/hr. (GS-14, step 5) to put certifications of compliance on the Internet and to review certifications and subsequent oppositions to certifications:

14 filing/refiling certifications and oppositions x 10 hours/filing/refiling x \$57.13= \$7,998.20

**Section 76.1503 Carriage of video programming providers on open video systems:** Professional staff @ \$40.66/hr. (GS-12, step 5) to make Notices of Intent available via Public Notice:

10 Notices x 1 hour/Notice x \$40.66 = \$406.60

**Section 76.1504 Rates, terms and conditions of carriage on open video systems:** Legal staff @ \$57.13/hr. to review rate complaints and decide on rate justifications:

100 complaint and justification filings x 10 hours/filing x \$57.13 = \$57,130

**Sections 76.1505 and 76.1513 Complaints on PEG access obligation:** Legal staff @ \$57.13/hr. to review complaints and other related documents:

50 documents filed x 1 hour/filing x \$57.13 = \$2,856.50

**Total Cost to Federal Government:** \$7,998.20 + 406.60 + \$57,130 + 2,856.50 = **\$68,391.30**

15. There are no program changes to this information collection. There are adjustments of +600 to the annual number of responses and +75 hours to the annual burden hours due to the Commission re-evaluation of the number of responses and burden hours for this collection.

16. The FCC does not plan to publish the results of these information collection requirements.

17. We seek approval not to display the expiration date for OMB approval on the FCC Form 1275. This will save the Commission the cost and logistics of printing new forms in the event that the form is not modified at the time of its next OMB approval.

18. There are no other exceptions to the Certification Statement.

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

This information collection does not employ any statistical methods.