

SUPPORTING STATEMENT

A. Justification

1. Section 207 of the Telecommunications Act of 1996 ("1996 Act") directs the Commission to promulgate rules prohibiting restrictions on viewers' ability to receive over-the-air signals by television broadcast, multichannel multipoint distribution, or direct broadcast satellite services.

In a *Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CS Docket No. 96-83, FCC 96-328, released August 6, 1996, the Commission fully implemented Section 207 of the 1996 Act by adopting final rules for a preemption of state, local and non-governmental regulations that impair viewers' ability to receive over-the-air signals. In doing so, the FCC acknowledged the necessity of allowing state, local and non-governmental entities to continue to enforce certain regulations and restrictions, such as those serving safety purposes, and therefore exempted them from its prohibition. Also, state, local and non-governmental entities were permitted to file petitions for waivers.

On September 25, 1998, the Commission released an *Order on Reconsideration*, FCC 98-214, in this proceeding that further modified and clarified Section 207 rules. Among other things, the *Order on Reconsideration* clarified how declaratory rulings¹ and waivers in this matter are to be served on all interested parties. If a local government seeks a declaratory ruling or a waiver, it must take steps to afford reasonable, constructive notice to residents in its jurisdiction (e.g., by placing notices in a local newspaper of general circulation). Certificates of service and proof of constructive notice also must be provided to the Commission with the petition. In this regard, the petitioner should provide the Commission with a copy of the notice and an explanation of where the notice was placed and how many people the notice might reasonably have reached.

Effective January 22, 1999, FCC 98-273, the Commission amended the rules so that it applies to rental property where the renter has an exclusive use area, such as a balcony or patio.

In FCC 00-366, the Commission then further amended the rule so that it applies to customer-end antennas that receive and transmit fixed wireless signals. This amendment became effective on May 25, 2001.

The Commission is seeking OMB approval/clearance for an additional three years for this information collection.

¹ Declaratory rulings are used by the Commission to determine if restrictions are complying with the rule and to enforce the rule in cases in which a governmental or non-governmental entity is attempting to impose a restriction that does not comply with the Commission's rules because it impairs installation, maintenance or use of an antenna covered by the rule.

OMB Control Number: 3060-0707
Over-the-Air Reception Devices (OTARD)

March 2011

Statutory authority for this collection of information is contained in Section 207 of the Communications Act of 1934, as amended.

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

2. Section 207 waivers are used by the Commission to determine whether the state, local or non-governmental regulation is unique in a way that justifies waiver of our rules prohibiting restrictions on the use of over-the-air reception devices. Declaratory rulings are used by the Commission to determine if restrictions are complying with the rule and to enforce the rule in cases in which a governmental or non-governmental entity is attempting to impose a restriction that does not comply with the Commission's rule because it impairs installation, maintenance or use of an antenna covered by the rule.
3. This collection of information is unique in nature, therefore, no automation or use of information technology is foreseen.
4. The Commission does not require that this information be submitted in any other manner or proceeding, and it is therefore not duplicated within the Commission.
5. This information collection could impact small businesses, local governmental or nongovernmental entities. The Commission has endeavored to keep the information request clearly and narrowly drawn.
6. Parties seeking to obtain a declaratory ruling or receive waivers of the rules will file information in support of their requests. If they do not file, no action is taken or needed by the Commission. Likewise, declaratory rulings are sought when there is a conflict concerning an antenna restriction and the Commission is requested to decide whether or not the restriction in question complies with the rule. Commission staff endeavor to resolve complaints and disputes informally as much as possible to limit the number of such filings.
7. There are no special circumstances associated with this collection of information.
8. The Commission published a Notice (76 FR 3890) in the *Federal Register* on January 21, 2011 on the information collection requirements contained in this supporting statement. No comments were received from the public as a result of this Notice.
9. Respondents will not receive gifts or payments.
10. There is no need for confidentiality with this information collection.
11. The information collection does not address matters of a sensitive nature.

**OMB Control Number: 3060-0707
Over-the-Air Reception Devices (OTARD)**

March 2011

12. We estimate 77 respondents to this collection of information. We expect respondents to prepare requests/comments to Declaratory Rulings and Petitions for waivers/comments to petitions as follows:

<u>Services</u>	<u>Number of Responses</u>	<u>Hrly. Burden</u>	<u>Total Burden Hours</u>	<u>Hrly. In-House Cost Burden</u>	<u>Total In-House Cost Burden</u>
Request for Declaratory Rulings	60 petitions ²	4 hours	240	\$48.08	\$11,539.20
	7 petitions ³	2 hours	14	\$48.08	\$ 673.12
Comments to Requests for Declaratory Rulings	2 comments ⁴	4 hours	8	\$48.08	\$ 384.64
	2 comments ⁵	2 hours	4	\$48.08	\$ 192.32
Petitions for Waivers	1 petition ⁶	6 hours	6	\$48.08	\$ 288.48
	1 petition ⁷	2 hours	2	\$48.08	\$ 96.16
Comments to Petitions for Waivers	2 comment filings ⁸	5 hours	10	\$48.08	\$ 480.80
	2 comment				

² 95% of the total 67 petitions for declaratory rulings will be prepared “in-house” by the respondent.

³ 5% of the total 67 petitions for declaratory rulings will be prepared by outside counsel. The respondent will meet with outside counsel to coordinate information to help with the preparation of the declaratory rulings.

⁴ 90% of the total 4 comments to requests for declaratory rulings will be prepared by the respondent.

⁵ 10% of the total 4 comments to requests for declaratory rulings will require the respondent to use outside counsel to prepare the comments. The respondent will have to consult with outside counsel to provide information to counsel to assist in preparing the comments.

⁶ 90% of the total 2 petitions for waivers filed will be prepared “in-house” by the respondent.

⁷ 10% of the total 2 petitions for waivers filed will be prepared by outside counsel. The respondent will consult with outside counsel to provide the necessary information to enable the attorney to prepare the petitions.

⁸ 90% of the total 4 comments to petitions for waivers will be prepared “in-house” by the respondent.

OMB Control Number: 3060-0707
Over-the-Air Reception Devices (OTARD)

March 2011

	<u>filings⁹</u>	2 hours	<u>4</u>	\$48.08	<u>\$ 192.32</u>
TOTALS:	77		288		\$13,847.04
	(responses)		hours		

Total Annual Number of Respondents: 77

Total Annual Number of Responses: 77 (responses)

Total Annual Burden Hours: 288 hours

Total "In-House Costs": \$13,847.04

The Commission estimates the respondent's annual salary to be \$100,000 per year (\$48.08/hour).

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

13. Annual Cost Burden:

(a) Total annualized capital/startup costs: None.

(b) Total annual costs (O&M):

It is estimated that 7 requests for declaratory rulings, 2 comments on requests for declaratory rulings, 1 petition for waivers, and 2 comments on petitions for waivers will be prepared each year through outside counsel at \$200 per hour. These estimated costs are illustrated as follows:

7 requests for declaratory rulings x 4 hours/outside attorney preparation x \$300/hr. =	\$8,400
2 comments filings x 4 hours/outside attorney preparation x 300/hr. =	\$2,400
1 petition for waiver x 6 hours/outside attorney preparation x \$300/hr.=	\$1,800
2 opposition filings x 5 hours/outside attorney preparation x \$300/hr. =	<u>\$3,000</u>
Total Attorney Cost =	\$15,600

Also here, we attempt to quantify the costs that are incurred if a local government seeks a

⁹ 10% of the total 4 comments to petitions for waivers will require the respondent to consult with out counsel for 2 hours to provide information to enable counsel to prepare the comments.

OMB Control Number: 3060-0707
Over-the-Air Reception Devices (OTARD)

March 2011

declaratory ruling or a waiver and places a notice of such event in a local newspaper in order to meet its notice requirement.

We estimate that this will occur no more than 6 times per year and that the space needed in a local newspaper to make notice of the filing can be assumed to cost an average of \$250.

\$250.00 per notice x 6 filing = \$1,500

Total Annual Cost Burden: \$15,600 + \$1,500 = \$17,100

14. Cost to the Federal Government: The cost to the Federal Government is as follows:

Requests for Declaratory Ruling (Including Comments)

Staff Attorney (GS-14, step 5): 20 hours x \$57.13/hour x 10 requests ¹⁰ =	\$11,426.00
Sr. Staff Attorney (GS-15, step 5): 15 hours x \$67.21/hour x 10 requests =	\$10,081.50
Other professional staff (GS-11, step 5) = 5 hours x \$33.92/hour x 10 requests =	\$ 1,696.00

Petitions for Waivers (Including Comments)

Staff Attorney (GS-14, step 5): 22 hours x \$57.13/hour x 6 requests =	\$ 7,541.16
Sr. Staff review(GS-15, step 5): 2 hours x \$67.21/hour x 6 requests =	<u>\$ 806.52</u>

\$31,551.18

Total Cost to the Federal Government = \$31,551.18

15. There are no program changes to this information collection. There are adjustments of + \$5,200 to the annual cost burden. These adjustments are due to increases in consulting fees.

¹⁰ This value omits those requests and comments filed with the Commission but resolved informally or dismissed, and reflects only those matters that are fully processed by the Commission and result in a published order or letter order.

Over-the-Air Reception Devices (OTARD)

16. Section 207 filings are primarily legal in nature, and for those matters not resolved informally, the result is published by the Commission in the form of an order or letter order. However, data will not be published for statistical use.

17. OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. 0.408.

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

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.