

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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 August 1, 2011, the Commission adopted a Second Report and Order (“Second R&O”), *Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, MB Docket No. 11-131, FCC 11-119. In the Second R&O, the Commission took initial steps to improve the procedures for addressing program carriage complaints by: (i) codifying in the Commission’s rules what a program carriage complainant must demonstrate in its complaint to establish a *prima facie* case of a program carriage violation; (ii) providing the defendant with 60 days (rather than the current 30 days) to file an answer to a program carriage complaint; (iii) establishing deadlines for action by the Media Bureau and Administrative Law Judges (“ALJ”) when acting on program carriage complaints; and (iv) establishing procedures for the Media Bureau’s consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract.

REVISED INFORMATION COLLECTION REQUIREMENTS:

47 CFR Section 1.221(h) requires that, in a program carriage complaint proceeding filed pursuant to § 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, each party, in person or by attorney, shall file a written appearance within five calendar days after the party informs the Chief Administrative Law Judge that it elects not to pursue alternative dispute resolution pursuant to § 76.7(g)(2) or, if the parties have mutually elected to pursue alternative dispute resolution pursuant to § 76.7(g)(2), within five calendar days after the parties inform the Chief Administrative Law Judge that they have failed to resolve their dispute through alternative dispute resolution. The written appearance shall state that the party will appear on the date fixed for hearing and present evidence on the issues specified in the hearing designation order. **(This information collection requirement needs OMB review and approval).**

47 CFR Section 1.229(b)(3) requires that, in a program carriage complaint proceeding filed pursuant to § 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, a motion to enlarge, change, or delete issues shall be filed within 15 calendar days after the deadline for submitting written appearances pursuant to § 1.221(h), except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

the designation order in the Federal Register. **(This information collection requirement needs OMB review and approval).**

47 CFR Section 1.229(b)(4) provides that any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a), (b)(1), (b)(2), and (b)(3) of 47 C.F.R. § 1.229, shall set forth the reason why it was not possible to file the motion within the prescribed period. **(The Second R&O applies this provision to program carriage complaints and OMB review and approval are needed).**

47 CFR Section 1.248(a) provides that the initial prehearing conference as directed by the Commission shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date, except that for program carriage complaints filed pursuant to § 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the initial prehearing conference shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to § 1.221(h) or within such shorter or longer period as the Commission may allow on motion or notice consistent with the public interest. **(The Second R&O applies this provision to program carriage complaints and OMB review and approval are needed).**

47 CFR Section 1.248(b) provides that the initial prehearing conference as directed by the presiding officer shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date, except that for program carriage complaints filed pursuant to § 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the initial prehearing conference shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to § 1.221(h) or within such shorter or longer period as the presiding officer may allow on motion or notice consistent with the public interest. **(The Second R&O applies this provision to program carriage complaints and OMB review and approval are needed).**

47 CFR Section 76.7(g)(2) provides that, in a proceeding initiated pursuant to § 76.7 that is referred to an administrative law judge, the parties may elect to resolve the dispute through alternative dispute resolution procedures, or may proceed with an adjudicatory hearing, provided that the election shall be submitted in writing to the Commission and the Chief Administrative Law Judge. **(This information collection requirement needs OMB review and approval).**

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

47 CFR Section 76.1302(c)(1) provides that a program carriage complaint filed pursuant to § 76.1302 must contain the following: whether the complainant is a multichannel video programming distributor or video programming vendor, and, in the case of a multichannel video programming distributor, identify the type of multichannel video programming distributor, the address and telephone number of the complainant, what type of multichannel video programming distributor the defendant is, and the address and telephone number of each defendant. **(This information collection requirement needs OMB review and approval).**

47 CFR Section 76.1302(d) sets forth the evidence that a program carriage complaint filed pursuant to § 76.1302 must contain in order to establish a *prima facie* case of a violation of § 76.1301. **(This information collection requirement needs OMB review and approval).**

47 CFR Section 76.1302(e)(1) provides that a multichannel video programming distributor upon whom a program carriage complaint filed pursuant to § 76.1302 is served shall answer within sixty (60) days of service of the complaint, unless otherwise directed by the Commission. **(This information collection requirement needs OMB review and approval).**

47 CFR Section 76.1302(k) permits a program carriage complainant seeking renewal of an existing programming contract to file a petition¹ 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. To allow for sufficient time to consider the petition for temporary standstill prior to the expiration of the existing programming contract, the petition for temporary standstill and complaint shall be filed no later than thirty (30) days prior to the expiration of the existing programming contract. **(This information collection requirement needs OMB review and approval).**

¹ The complainant shall have the burden of proof to demonstrate in its petition the requirements as outlined in 47 CFR Section 76.1302(k)(1)(i) – (iv).

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

The following rule sections are also covered in this information collection but do not require additional OMB review and approval:

47 CFR Section 76.7. Pleadings² 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 76.459 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.

47 CFR Section 76.61(a)³ 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)⁴ 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

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

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

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

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

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 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 76.1001(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 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

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

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, a complainant that wants a currently pending complaint involving terrestrially delivered, cable-affiliated programming considered under the rules must submit a 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 and the defendant will have an opportunity to answer the supplemental filing, as set forth in the rules.

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.⁵

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).

47 CFR Section 76.1003(d)⁶ 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.

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

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

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

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 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)⁷ 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 year⁸ of the date on which one of three specified events occurs.

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

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

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

47 CFR Section 76.1003(h)⁹ 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 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 76.1003(l) permits a program access complainant seeking renewal of an existing programming contract to file a petition¹⁰ 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.

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

⁹ 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.

¹⁰ 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).

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

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.¹¹

47 CFR Section 76.1302(e)(2) states that an answer to a program carriage complaint 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.¹²

47 CFR Section 76.1302(f) 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.¹³

47 CFR Section 76.1302(h) 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.¹⁴

47 CFR Section 76.1302(j)(1) states that upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a 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.¹⁵

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

¹¹ See 47 CFR Section 76.1302(c)(1) – (3) for the specific content requirements for carriage agreement complaints.

¹² The Second R&O redesignates this subsection from subsection (d) to subsection (e).

¹³ The Second R&O redesignates this subsection from subsection (e) to subsection (f).

¹⁴ See 47 CFR Section 76.1302(h)(1) – (3) for the three events. The Second R&O redesignates this subsection from subsection (f) to subsection (h).

¹⁵ The Second R&O redesignates this subsection from subsection (g) to subsection (j).

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

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.¹⁶

47 CFR Section 76.1513(e) addresses answers to open video system complaints.¹⁷

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.¹⁸

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.

¹⁶ See 47 CFR Section 76.1513(d)(1) – (4) for specific requirements pertaining to the complaints.

¹⁷ See 47 CFR Section 76.1513(e)(1) – (2) for specific requirements pertaining to the open video system complaints.

¹⁸ See 47 CFR Section 76.1513(g)(1) – (3) for the three events.

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

History:

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 established 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 established 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.

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" signals¹⁹ 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.²⁰ 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

¹⁹ 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.

²⁰ See *1998 Biennial Regulatory Review: Part 76 - Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999).

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

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 Sections 4(i), 303(r), and 616 of the Communications Act of 1934, as amended.

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 and video programming markets, 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 carriage complaints. 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 carriage complainant seeking renewal of such a contract.

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

7. The Second R&O provides that in program carriage cases, the defendant has 60 days – rather than the former 30 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, with supporting evidence, to the evidence put forth by the complainant. In addition, the Second 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 submitted the 60 day Federal Register Notice to the Federal Register seeking public comment for the information collection requirements contained in this collection. Please see 76 FR 55061 published on September 6, 2011. Only one entity, the National Cable and Telecommunications Association (“NCTA”), submitted a comment. NCTA argues that (i) the Commission underestimated the hourly and financial burdens imposed by the procedures adopted in the Second R&O; and (ii) the new information collection requirements are more burdensome than necessary for the Commission to fulfill its functions. *See generally* NCTA Comments.

Background. In 1992, Congress passed Section 616 of the Communications Act of 1934, as amended (the “Act”), which required the Commission to adopt regulations that prohibit multichannel video programming distributors (“MVPDs”) from engaging in certain types of conduct with respect to their carriage of video programming vendors (the “program carriage” rules). 47 U.S.C. § 536. Congress also directed the Commission to establish procedures that provide for “expedited review” of complaints made by video programming vendors alleging a violation of the program carriage rules. 47 U.S.C. § 536(a)(4). In the Second R&O, the Commission concluded that its current program carriage complaint procedures are ineffective and in need of reform. *See* Second R&O at ¶ 8. Among other things, the Commission found that unpredictable delays in the Commission’s resolution of program carriage complaints and fear of retaliation were impeding the filing of legitimate complaints. *See id.* Accordingly, the Commission took steps to improve its procedures by: (i) codifying what a program carriage complainant must demonstrate in its complaint to establish a *prima facie* case of a program carriage violation; (ii) providing the defendant MVPD with 60 days (rather than the current 30 days) to file an answer to a program carriage complaint; (iii) establishing deadlines for action by the Media Bureau and Administrative Law Judges (“ALJ”) when acting on program carriage complaints; and (iv) codifying procedures for the Media Bureau’s consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract (the “standstill” procedures).

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

Response to NCTA's Comments. In its Comments, NCTA takes issue with only one of the procedures adopted in the Second R&O – the “standstill” procedures. Below, we respond to NCTA's Comments.

- **OMB has previously approved substantially similar procedures under the PRA.** As an initial matter, we note that the program carriage standstill procedures adopted in the Second R&O are substantially similar to the program *access* standstill procedures adopted by the Commission in January 2010.²¹ The Commission obtained OMB approval under the PRA for the program access standstill procedures on June 14, 2010.²²
- **A standstill petition could be filed and acted upon without the standstill procedures adopted in the Second R&O; the standstill procedures, however, provide guidance to all parties.** NCTA is wrong when it claims that the standstill procedures adopted in the Second R&O authorize “for the first time” the filing of a standstill petition in the program carriage context. NCTA Comments at 2; *see id.* at 4 (characterizing the standstill procedure as a “new right” for programmers); *id.* at 8 n.22 (claiming that the “prospect of mid-negotiation litigation will *now* be so much more likely” under the procedures adopted in the Second R&O) (emphasis added). As the Commission explained in the Second R&O, the Commission has statutory authority pursuant to Section 4(i) of the Act to impose a temporary standstill of an existing contract in appropriate cases pending resolution of a program carriage complaint. *See* Second R&O at ¶ 26. Accordingly, even without the procedures adopted in the Second R&O, a complainant could request, and the Commission could issue, a

²¹ *See* 47 C.F.R. § 76.1003(l); *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Rcd 746 (2010), *affirmed in part and vacated in part sub nom. Cablevision Sys. Corp. et al. v. FCC*, 649 F.3d 695 (D.C. Cir. 2011). “Program carriage” refers to Section 616 of the Act, and Commission rules and policies related thereto, which are intended, among other things, to prevent cable operators and other MVPDs from discriminating against unaffiliated video programming vendors on the basis of affiliation in the selection, terms, or conditions for carriage of video programming provided by such vendors. *See* 47 U.S.C. § 536; 47 C.F.R. § 76.1301. “Program access” refers to Section 628 of the Act, and Commission rules and policies related thereto, which are intended, among other things, to prevent cable-affiliated video programming vendors from discriminating against unaffiliated MVPDs with respect to the prices, terms, and conditions for sale of video programming. *See* 47 U.S.C. § 548; 47 C.F.R. § 76.1002. The Commission has explained that “there are important parallels between the program access and program carriage regimes, inasmuch as both are based on concerns with the impact of vertical integration on competition in the video distribution and video programming markets.” Second R&O at ¶ 25 n.100.

²² *See Notice of Office of Management and Budget Action* for OMB Control No. 3060-0888 (approved June 14, 2010); http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201005-3060-007.

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

standstill order in a program carriage complaint proceeding. *See id.*²³ In the Second R&O, however, the Commission chose to codify uniform procedures to help expedite action on standstill requests and to provide guidance to complainant programmers and defendant MVPDs. *See id.* at ¶¶ 25-26, 30 n.118. For example, the procedures require that a complainant seeking a standstill of an existing programming contract must file its petition no later than thirty (30) days prior to the expiration of the existing contract to allow sufficient time for the Media Bureau to consider the petition prior to the expiration of the contract. *See* 47 C.F.R. § 76.1302(k)(1). Absent the procedures adopted in the Second R&O, a petition seeking a standstill of an existing contract could be filed at any time prior to expiration, creating uncertainty for potential defendants.²⁴

- **NCTA has overstated the burdens created by the standstill procedures.** There is no basis for NCTA’s claim that the standstill process is a “mini-adjudication” that requires “as robust a defense as a full-fledged hearing.” NCTA Comments at 7-8. As explained in the Second R&O, a standstill is an “extraordinary remedy that may only be awarded upon a clear showing” by the complainant that it meets the requirements for interim relief under the following four-factor test: (i) the complainant is likely to prevail on the merits of its complaint; (ii) the complainant will suffer irreparable harm absent a stay; (iii) grant of a stay will not substantially harm other interested parties; and (iv) the public interest favors grant of a stay. *See* 47 C.F.R. § 76.1302(k)(1)(i)-(iv); Second R&O at ¶ 27 n.110. While the procedures adopted in the Second R&O provide a defendant MVPD with the opportunity to oppose a standstill petition, the Commission’s rules make clear that the complainant, and not the defendant, “shall have the burden of proof to demonstrate” that the standstill request satisfies the four-factor test. 47 C.F.R. § 76.1302(k)(1).²⁵ The Commission specifically

²³ *See Game Show Network, LLC v. Cablevision Sys. Corp.*, DA 11-1993 (MB 2011) (acting on program carriage standstill request pursuant to Section 4(i) of the Act); *Sky Angel*, 25 FCC Rcd 3879 (MB 2010) (acting on program access standstill request pursuant to Section 4(i) of the Act).

²⁴ *See* Second R&O at ¶ 30 n.118 (“[A] complainant could request, and the Commission or Media Bureau could issue, a standstill order in a program carriage complaint proceeding today under the same procedures adopted herein. Thus, all of the alleged practical and policy problems raised by Comcast exist today and are not created by these procedural rules. Moreover, the procedural rules we adopt herein will help to mitigate these alleged practical and policy problems. By setting forth the standard that will be applied to a program carriage standstill request and establishing specific deadlines for submitting and responding to such a request, we provide certainty to both complainants and MVPDs with respect to the standstill process. While Comcast claims that requiring a complainant to file a standstill request no later than 30 days prior to the expiration of a contract will chill business negotiations by placing parties in litigation before a contract ends [], the fact is that, without the procedures we adopt herein, a program carriage standstill request could be filed at any time, thereby creating greater uncertainty for MVPDs.”).

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

recognized the “potential difficulty [for the complainant] in satisfying the requirements for a standstill.” See Second R&O at ¶ 27 n.110.

NCTA is wrong when it claims that opposing a standstill request will require a defendant MVPD to produce documents and hire expert witnesses and consultants. See NCTA Comments at 4, 6-8. The procedures adopted in the Second R&O do not require a defendant MVPD to put forth any specific evidence in opposing a standstill request. Rather, the defendant MVPD has discretion as to the amount and type of evidence it chooses to put forward in opposing a standstill request. While document production and expert witness testimony may be necessary depending on the facts of the case in defending against a program carriage complaint, there is no basis for NCTA’s assertion that a defendant must produce such evidence in opposing a standstill request.²⁶ As with any request for interim relief, the expedited nature of a standstill proceeding does not allow for the presentation of cases in full, and the decision on the standstill petition is not a decision on the merits of the underlying program carriage complaint.²⁷

NCTA also takes issue with the requirement that a defendant MVPD must respond to a standstill petition within ten days after the filing of the petition. See NCTA Comments at 3-4, 8, 11-12. As an initial matter, we note that the Commission also adopted a ten-day opposition period for program access standstill requests, which has been approved by OMB under the PRA.²⁸ Moreover, we note that the procedures adopted in the Second R&O

²⁵ See *Game Show Network, LLC v. Cablevision Sys. Corp.*, DA 11-1993 (MB 2011) (denying program carriage standstill request because complainant failed to satisfy its burden of demonstrating that interim relief is warranted).

²⁶ See *Game Show Network, LLC v. Cablevision Sys. Corp.*, DA 11-1993 (MB 2011) (denying a program carriage standstill request; neither document production nor expert witness testimony was required); *Sky Angel*, 25 FCC Rcd 3879 (MB 2010) (denying a program access standstill request; neither document production nor expert witness testimony was required).

²⁷ See *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (“The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits. . . . [T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits.”) (citations omitted); *U.S. Steel Corp. v. Fraternal Association of Steelhauers*, 431 F.2d 1046, 1048 (3d Cir. 1970) (“grant or denial of a preliminary injunction is almost always based on an abbreviated set of facts, requiring a delicate balancing of the probabilities of ultimate success at final hearing with the consequences of immediate irreparable injury which could possibly flow from the denial of preliminary relief”).

²⁸ See *supra* note 22; see also 47 C.F.R. § 76.1003(l)(2). NCTA’s members include defendants in both program access and program carriage complaint proceedings. While NCTA filed comments in response to the Notices

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

provide for a ten-day opposition period “unless otherwise directed by the Commission.” 47 C.F.R. § 76.1302(k)(2). Thus, the rule contemplates that a defendant MVPD may seek additional time to respond to a standstill petition. In addition, as discussed above, a standstill process is not a “mini-adjudication” nor do the procedures adopted in the Second R&O require a defendant to put forth any specific evidence in opposing a standstill request. In short, there is simply no basis for NCTA’s assertion that ten days is an insufficient amount of time for opposing a standstill request.

- **The Notice liberally estimated the burdens resulting from the procedures adopted in the Second R&O.** As initial matter, only twelve program carriage complaints have been filed in the approximately two decades since Congress passed Section 616 of the Act requiring the Commission to establish procedures for addressing such complaints. Nonetheless, NCTA claims that the Commission underestimated the hourly and financial burdens imposed by the procedures adopted in the Second R&O. *See* NCTA Comments at 5-8.²⁹

As indicated in the Notice, the procedures adopted in the Second R&O are estimated to increase the total number of annual respondents covered by this information collection by 28 (from 640 to 668) and to increase the total annual burden by 8356 hours (from 23,040 hours to 31,396 hours). The 28 additional average annual respondents resulting from the procedures adopted in the Second R&O will be divided between (i) standstill proceedings; and (ii) program carriage complaint proceedings. The calculations in the Notice assume seven program carriage standstill proceedings per year and seven program carriage complaint proceedings per year, half of each of which will be initiated by parties rather than outside counsel. For a program carriage standstill proceeding, the calculations estimate a burden of 60 hours for parties initiating their own filings. This is identical to the burden hours estimated for program access standstill proceedings for parties initiating their own filings, which has been approved

pertaining to the information collection that included the program access standstill procedures, it never objected to the estimated burdens for the standstill procedures, including the ten-day opposition period. *See* NCTA, Paperwork Reduction Act Comments, OMB Control Number 3060-0888 (May 4, 2010); Letter from Neal M. Goldberg, NCTA, to Nicholas A. Fraser, OMB, OMB Control Number 3060-0888 (June 7, 2010).

²⁹ The Notice listed an estimated response time of 6 hours to 88 hours. This figure represents the *average* burden hours resulting from the many different filings covered by the present information collection (*i.e.*, OMB Control Number 3060-0888), of which the procedures adopted in the Second R&O are just one component. The 6 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 88 hour average figure applies to the average per filing burden for parties initiating their own filings. (As discussed below, these figures have been revised herein to 6.1 and 90.5, respectively.) Many of the covered filings will impose far less of a burden than a program carriage standstill or complaint proceeding, which has the effect of reducing the average burden hours.

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

by OMB under the PRA.³⁰ It is reasonable to estimate the same amount of burden hours for both program carriage and program access standstill requests because both involve the application of the same four-part test and a ten-day opposition period.³¹ For a program carriage complaint proceeding, the calculations estimate a burden of 1055 hours for parties initiating their own filings.³²

Despite NCTA's claims to the contrary, the Notice liberally estimated the burdens resulting from the procedures adopted in the Second R&O. First, as mentioned above, only twelve program carriage complaints have been filed in the approximately two decades since Congress passed Section 616 of the Act requiring the Commission to establish procedures for addressing such complaints.³³ Nonetheless, in light of the procedures adopted in the Second R&O, including the deadlines for action by the Media Bureau and ALJs, the burdens in the Notice are based on an estimate of seven program carriage complaints per year.³⁴ Second, while the burden estimates assume that a standstill petition will be filed along with every

³⁰ See Supporting Statement, OMB Control Number 3060-0888 (May 2010), Response to Question 8 (page 12), available at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=174107&version=1>. NCTA's members include defendants in both program access and program carriage complaint proceedings. While NCTA filed comments in response to the Notices pertaining to the information collection that included the program access standstill procedures, it never objected to the estimate of 60 burden hours for program access standstill proceedings for parties initiating their own filings. See NCTA, Paperwork Reduction Act Comments, OMB Control Number 3060-0888 (May 4, 2010); Letter from Neal M. Goldberg, NCTA, to Nicholas A. Fraser, OMB, OMB Control Number 3060-0888 (June 7, 2010).

³¹ Compare 47 C.F.R. § 76.1302(k)(1)(i)-(iv) with 47 C.F.R. § 76.1003(l)(1)(i)-(iv). Moreover, the Commission has explained that "there are important parallels between the program access and program carriage regimes, inasmuch as both are based on concerns with the impact of vertical integration on competition in the video distribution and video programming markets." Second R&O at ¶ 25 n.100.

³² This number is an estimated average annual number for a program carriage complaint proceeding for a party initiating its own filings. As described in the Second R&O, a program carriage complaint may be resolved in four possible ways: (i) if the Media Bureau determines that the complainant has not made a *prima facie* showing in its complaint of a violation of the program carriage rules, the Media Bureau will dismiss the complaint; (ii) if the Media Bureau determines that the complainant has made a *prima facie* showing and the record is sufficient to resolve the complaint, the Media Bureau will rule on the merits of the complaint based on the pleadings without discovery; (iii) if the Media Bureau determines that the complainant has made a *prima facie* showing but the record is not sufficient to resolve the complaint, the Media Bureau will outline procedures for discovery before proceeding to rule on the merits of the complaint; and (iv) if the Media Bureau determines that the complainant has made a *prima facie* showing but the disposition of the complaint or discrete issues raised in the complaint will require resolution of factual disputes in an adjudicatory hearing or extensive discovery, the Media Bureau will refer the proceeding or discrete issues arising in the proceeding for an adjudicatory hearing before an ALJ. See Second R&O at ¶ 6.

³³ See Second R&O at ¶ 6 n.27.

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

program carriage complaint, the procedures adopted in the Second R&O apply only in the renewal context.³⁵ Program carriage complaints, however, do not arise solely in the renewal context. For example, a program carriage dispute may result from a programmer's first-time request for carriage or in the middle of a contract term. *See* Second R&O at ¶¶ 27 n.108, 29. Any standstill petition filed with respect to a program carriage complaint outside of the renewal context is not covered by the standstill procedures adopted in the Second R&O.

Although the Notice liberally estimated the burden hours resulting from the standstill procedures adopted in the Second R&O, we have tripled the estimated burden hours for program carriage standstill requests from 60 hours to 180 hours for parties initiating their own filings in light of NCTA's Comments. Thus, as revised herein, we now estimate that program carriage standstill proceedings will impose an average burden of three times greater than program access standstill proceedings for parties initiating their own filings.³⁶

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 90.5 hours and parties using outside counsel will have a burden of 6.1 hours. We estimate that approximately 334 filings will be made annually in accordance with procedures in Sections 1.221(h), 1.229(b)(3)-(4), 1.248(a)-(b), 76.7, 76.9, 76.61, 76.914, 76.1001, 76.1003, 76.1302, and 76.1513.

³⁴ In the Second R&O, the Commission found that unpredictable delays in the Commission's resolution of program carriage complaints and fear of retaliation were impeding the filing of legitimate complaints. *See id.* at ¶ 8. The procedures adopted in the Second R&O seek to address these concerns.

³⁵ 47 C.F.R. § 76.1302(k)(1) ("A program carriage complainant *seeking renewal of an existing programming contract* may file a petition 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.") (emphasis added).

³⁶ A similar proportional increase has been made for parties using outside counsel to initiate their filings.

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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 Respondents: 668 Broadcast Stations, Cable Operators, Satellite Carriers, MVPDs and Programming Vendors

Total Number of Annual Responses = 334 filings x 2 parties/filing = 668 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 90.5 hours per filing.

$$334 \text{ filings (50\% of 668 filings)} \times 90.5 \text{ hours/filing} = 30,227 \text{ hours}$$

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 6.1 hours to coordinate filing information with outside legal counsel.

$$334 \text{ filings (50\% of 668 filings)} \times 6.1 \text{ hours/filing} = 2,037 \text{ hours}$$

$$\textbf{Total Annual Burden Hours } 30,227 \text{ hours} + 2,037 \text{ hours} = \textbf{32,264 hours}$$

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.

$$\text{Paralegal: } 16,132 \text{ hours} \times \$30/\text{hour} = \$ 483,960$$

$$\text{Attorney: } 16,132 \text{ hours} \times \$50/\text{hour} = \underline{\$ 806,600}$$

$$\textbf{Total Annual “In-House” Cost: } \underline{\underline{\$1,290,560}}$$

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/hour³⁷ when initiating their filings (50% of 668 filings = 334 filings).

³⁷ Attorneys are expected to take 27 hours to complete tasks.

Title: Section 1.221, Notice of Hearing; Appearances; Section 1.229 Motions to Enlarge, Change, or Delete Issues; Section 1.248 Prehearing Conferences; Hearing Conferences; 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

Therefore, the total operation and maintenance costs = 334 filings x 27 hours x \$300/hr.
= **\$2,705,400.**

c. Total Annualized Cost: **\$2,705,400**

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: 668 filings x 13 hours/filing x \$67.21/hour	=	\$583,651.64
Paralegal review: 668 filings x 4 hours/filing x \$40.66/hour	=	108,643.52
Admin. review: 668 filings x 2 hours/filing x \$18.50/hour	=	<u>24,716.00</u>
Total Cost to the Federal Government:		\$717,011.16

15. As a result of the Second Report and Order, FCC 11-119, there are program changes to this collection. They are as follows: the total number of annual responses has increased by +28 responses, the total annual burden hours increased by +9,224 and total annual cost burden increased by +\$1,639,800 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 September 6, 2011 and December 13, 2011 seeking public comment for the information collection requirements contained in this supporting statement (see 76 FR 55061 and 76 FR 77529). 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 6.1 – 90.5 hours per response, the annual burden hours are 32,264 and the annual cost is \$2,705,400. There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.