

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 76.1002, Specific Unfair Practices Prohibited; 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 March 20, 2012, the Commission adopted a Notice of Proposed Rulemaking (“NPRM”), *Revision of the Commission’s Program Access Rules*, MB Docket No. 12-68, FCC 12-30. In the NPRM, the Commission seeks comment on (i) whether to retain, sunset, or relax the prohibition on exclusive contracts between cable operators and satellite-delivered, cable-affiliated programming vendors; and (ii) potential revisions to the program access rules to better address alleged violations, including potentially discriminatory volume discounts and uniform price increases.

REVISED PROPOSED INFORMATION COLLECTION REQUIREMENTS:

47 CFR Section 76.1002(c)(5) provides that, to the extent the exclusive contract prohibition sunsets or is relaxed, a cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest must submit a “Petition for Exclusivity” to the Commission and receive approval from the Commission to preclude the filing of complaints alleging that an exclusive contract, or practice, activity or arrangement tantamount to an exclusive contract, with respect to areas served by a cable operator violates Section 628(b) of the Communications Act of 1934, as amended, and Section 76.1001(a) of the Commission’s Rules, or Section 628(c)(2)(B) of the Communications Act of 1934, as amended, and Section 76.1002(b) of the Commission’s Rules. The proposed rule specifies the requirements for the petition for exclusivity, provides that a competing multichannel video programming distributor affected by the proposed exclusivity may file an opposition to the petition for exclusivity within thirty (30) days of the date on which the petition is placed on public notice, and provides that the petitioner may file a response within ten (10) days of receipt of any formal opposition. **(This proposed information collection requirement needs OMB review and approval.)**

47 CFR Section 76.1002(c)(7) provides that, to the extent the exclusive contract prohibition is relaxed, a cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest seeking to remove the prohibition on exclusive contracts and practices, activities or arrangements tantamount to an exclusive contract set forth in Section 76.1002(c)(2) of the Commission’s Rules may submit a “Petition for Sunset” to the Commission. If the Commission finds that the prohibition is not necessary to preserve and protect competition and

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diversity in the distribution of video programming, then the prohibition set forth in Section 76.1002(c)(2) of the Commission's Rules shall no longer apply in the geographic area specified in the decision of the Commission. The proposed rule specifies the requirements for the petition for sunset, provides that a competing multichannel video programming distributor or other interested party affected by the petition for sunset may file an opposition to the petition within forty-five (45) days of the date on which the petition is placed on public notice, and provides that the petitioner may file a response within fifteen (15) days of receipt of any formal opposition. **(This proposed information collection requirement needs OMB review and approval.)**

47 CFR Section 76.1003(e)(1) provides that a cable operator, satellite cable programming vendor, or satellite broadcast programming vendor upon which a program access complaint is served shall answer within forty-five (45) days of service of the complaint if the complaint alleges a violation of Section 628(b) of the Communications Act of 1934, as amended, or Section 76.1001(a) of the Commission's rules. In addition, to the extent the exclusive contract prohibition sunsets or is relaxed, an increase in the number of complaints alleging a violation of Section 628(b) of the Communications Act of 1934, as amended, or Section 76.1001(a) of the Commission's rules is expected. **(This proposed information collection requirement needs OMB review and approval.)**

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

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.

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

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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 the designation order in the Federal Register.

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.

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.

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.

47 CFR Section 76.7. Pleadings¹ 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.

¹ A pleading is a formal written document that contains the factual and legal allegations of a party.

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47 CFR Section 76.7(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.

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)² 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)³ permits a qualified local noncommercial educational television station that believes a cable operator has failed to comply with the FCC's signal carriage or channel positioning requirements (Sections 76.56 through 76.57) to file a complaint with the FCC in accordance with the procedures set forth in Section 76.7.

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

47 CFR Section 76.61(a)(2) states that the cable operator shall, within 30 days of receipt of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of the must-carry rules. If a refusal for carriage is based on

² See 47 CFR Section 76.61(a)(3)(i) – (iii) for the specific items that should be contained in the complaint.

³ See 47 CFR Section 76.61(b)(1)(i) – (ii) for the specific items that should be contained in the complaint.

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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 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

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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.⁴

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)⁵ states that, in a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim.

47 CFR Section 76.1003(e)(1) requires cable operators, satellite cable programming vendors, or satellite broadcast programming vendors whom expressly reference and rely upon a document in asserting a defense to a program access complaint filed or in responding to a material allegation in a program access complaint filed pursuant to Section 76.1003, to include such document or

⁴ See 47 CFR Section 76.1003(c)(1) – (8) for the specific complaint content requirements.

⁵ See 47 CFR Section 76.1003(d)(2) – (3) for specific items to be filed with the complaint for recovery of damages.

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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)⁶ 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 year⁷ of the date on which one of three specified events occurs.

⁶ See 47 CFR Section 76.1003(e)(3)(i) – (iii) for specific requirements pertaining to answering a discrimination complaint.

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

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47 CFR Section 76.1003(h)⁸ 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 petition⁹ 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 first notify the potential defendant multichannel video programming distributor that it intends to

⁸ 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.

⁹ 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).

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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.¹⁰

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.

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.

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.

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.

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.

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.

¹⁰ See 47 CFR Section 76.1302(c)(1) – (3) for the specific content requirements for carriage agreement complaints.

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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.

47 CFR Section 76.1302(k) permits a program carriage complainant seeking renewal of an existing programming contract to file a petition¹¹ 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.

47 CFR Section 76.1513(a) permits any party aggrieved by conduct that it believes constitute a violation of the FCC's regulations or in section 653 of the Communications Act (47 U.S.C. 573) to commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1513.

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

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

¹¹ 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).

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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.¹²

47 CFR Section 76.1513(e) addresses answers to open video system complaints.¹³

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.¹⁴

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

History:

On 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.

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

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

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

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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" signals¹⁵ 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.¹⁶ The general procedural requirements were consolidated in 47 CFR Sections 76.6 through 76.10. The Commission eliminated redundant requirements, expanded the types of submissions that are styled Petitions for Special Relief and filed under Section 76.7, and standardized the filing procedure for all petitions seeking a finding of effective competition under Section 76.7. The Commission also established a standard provision for Part 76 pleadings to provide a uniform filing format, deadlines, and other procedural requirements which most pleadings filed pursuant to Part 76 now follow.

¹⁵ 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.

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

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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), 616, and 628 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 access complaints and petitions to relieve cable operators and their affiliated programmers of certain obligations under Section 628 of the Act.
7. The NPRM provides that in complaints alleging a violation of Section 628(b) of the Communications Act of 1934, as amended, or Section 76.1001(a) of the Commission's rule, the defendant will have 45 days – rather than the current 20 days – from the date of service of the complaint to file an answer to ensure that the defendant has adequate time to develop a response. In addition, the NPRM provides that, to the extent the exclusive contract prohibition sunsets or is relaxed, a cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest must submit a "Petition for Exclusivity" to the Commission and receive approval from the Commission to preclude the filing of complaints alleging that an exclusive contract, or practice, activity or arrangement tantamount to an exclusive contract, with respect to

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areas served by a cable operator violates Section 628(b) of the Communications Act of 1934, as amended, and Section 76.1001(a) of the Commission's Rules, or Section 628(c)(2)(B) of the Communications Act of 1934, as amended, and Section 76.1002(b) of the Commission's Rules. A competing multichannel video programming distributor affected by the proposed exclusivity may file an opposition to the petition for exclusivity within thirty (30) days of the date on which the petition is placed on public notice, and the petitioner may file a response within ten (10) days of receipt of any formal opposition. In addition, the NPRM provides that, to the extent the exclusive contract prohibition is relaxed, a cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest seeking to remove the prohibition on exclusive contracts and practices, activities or arrangements tantamount to an exclusive contract set forth in Section 76.1002(c)(2) of the Commission's Rules may submit a "Petition for Sunset" to the Commission. A competing multichannel video programming distributor or other interested party affected by the petition for sunset may file an opposition to the petition within forty-five (45) days of the date on which the petition is placed on public notice, and the petitioner may file a response within fifteen (15) days of receipt of any formal opposition. The information collection will require respondents to submit information that they might deem confidential, such as programming contracts. The FCC's rules contain procedures for the protection of the information's confidentiality. See 47 C.F.R. § 0.459.

8. The Commission published a 60 day Federal Register Notice in the Federal Register seeking public comment on the proposed requirements contained in this supporting statement. Please see [77 FR 24302] published on April 23, 2012. To date, no comments have been received from the public.

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.

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We estimate that parties initiating their own filings will have a burden of 98 hours and parties using outside counsel will have a burden of 6.8 hours. We estimate that approximately 414 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, 76.1002, 76.1003, 76.1302, and 76.1513.

Total Number of Annual Respondents: 828 Broadcast Stations, Cable Operators, Satellite Carriers, MVPDs and Programming Vendors

Total Number of Annual Responses = 414 filings x 2 parties/filing = 828 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 98 hours per filing.

414 filings (50% of 828 filings) x 98 hours/filing = 40,572 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 6.8 hours to coordinate filing information with outside legal counsel.

414 filings (50% of 828 filings) x 6.8 hours/filing = 2,815 hours

Total Annual Burden Hours 40,572 hours + 2,815 hours = 43,387 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.

Paralegal: 21,694 hours x \$30/hour = \$ 650,820

Attorney: 21,693 hours x \$50/hour = \$1,084,650

Total Annual “In-House” Cost: \$1,735,470

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

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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/hour¹⁷ when initiating their filings (50% of 828 filings = 414 filings). Therefore, the total operation and maintenance costs = 414 filings x 38 hours x \$300/hr. = **\$4,719,600.**

c. Total Annualized Cost: **\$4,719,600**

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

Legal review: 828 filings x 15 hours/filing x \$67.21/hour=	\$834,748.20
Paralegal review: 828 filings x 4.2 hours/filing x \$40.66/hour =	\$141,399.22
Admin. review: 828 filings x 2 hours/filing x \$18.50/hour =	<u>\$ 30,636.00</u>
Total Cost to the Federal Government:	\$1,006,783.42

15. As a result of the NPRM, FCC 12-30, there are program changes to this collection. They are as follows: the number of respondents increased by +160 respondents, the total number of annual responses increased by +160 responses, the total annual burden hours increased by +11,123 and total annual cost burden increased by +\$2,014,200 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.

¹⁷ Attorneys are expected to take 38 hours to complete tasks.

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

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.