

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 October 5, 2012, the Commission adopted and released a Report and Order, *Revision of the Commission's Program Access Rules et al.*, MB Docket No. 12-68 et al., FCC 12-123 (Oct. 5, 2012) (“*R&O*”). In the *R&O*, the Commission declined to extend the preemptive prohibition on exclusive contracts for satellite-delivered programming between any cable operator and any cable-affiliated programming vendor in served areas beyond its October 5, 2012 expiration date (the “exclusive contract prohibition”). The expiration of the exclusive contract prohibition in served areas eliminates the filing of complaints alleging the existence of an impermissible exclusive contract in a served area. Although exclusive contracts in served areas are no longer preemptively prohibited as a result of the *R&O*, a multichannel video programming distributor (“MVPD”) may file a program access complaint with the Commission alleging that a particular exclusive contract violates Section 628(b) of the Communications Act of 1934, as amended (the “Act”), and Section 76.1001(a) of the Commission’s Rules. 47 U.S.C. § 548(b) (prohibiting “unfair acts” that have the “purpose or effect” of “significantly hindering or preventing” the complainant from providing satellite cable programming or satellite broadcast programming); 47 C.F.R. § 76.1001(a). **The Commission’s existing procedures for filing and responding to a complaint alleging a violation of Section 628(b) of the Act and Section 76.1001(a) of the Commission’s Rules were not revised in the *R&O*, other than (i) providing the defendant with up to 45 days – rather than the previously provided 20 days – to file an answer to the complaint; and (ii) requiring the Commission’s Media Bureau to act within six months from the date a complaint is filed.** 47 C.F.R. § 76.1003. This non-substantial change request is being submitted to OMB to reflect the change in the treatment of exclusive contracts in served areas and the increase in burden hours resulting from additional program access complaints that may be filed as a result of this change.

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

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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 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.

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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.

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.

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

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

47 CFR Section 76.914(c) permits a cable operator seeking revocation of a franchising authority's certification to file a petition with the FCC in accordance with the procedures set forth in Section 76.7.

47 CFR Section 76.1003(a) permits any multichannel video programming distributor (MVPD) aggrieved by conduct that it believes constitute a violation of the FCC's competitive access to cable programming rules to commence an adjudicatory proceeding at the FCC to obtain 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

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a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden. In addition, a complainant alleging that a terrestrial cable programming vendor has engaged in discrimination shall have the burden of proof that the terrestrial cable programming vendor is wholly owned by, controlled by, or under common control with a cable operator or cable operators, satellite cable programming vendor or vendors in which a cable operator has an attributable interest, or satellite broadcast programming vendor or vendors; an answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden. In addition, 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).

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

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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 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.

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

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

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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.

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.

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

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

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

47 CFR Section 76.1302(c) specifies the content of carriage agreement complaints.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.

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(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.¹¹

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 petition¹² 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,

¹¹ See 47 CFR Section 76.1302(h)(1) – (3) for the three events.

¹² 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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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.¹³

47 CFR Section 76.1513(e) addresses answers to open video system complaints.¹⁴

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.¹⁵

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 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

¹³ See 47 CFR Section 76.1513(d)(1) – (4) for specific requirements pertaining to the complaints.

¹⁴ See 47 CFR Section 76.1513(e)(1) – (2) for specific requirements pertaining to the open video system complaints.

¹⁵ See 47 CFR Section 76.1513(g)(1) – (3) for the three events.

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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” signals¹⁶ 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.¹⁷ The general procedural requirements were consolidated in 47 CFR Sections 76.6 through 76.10. The Commission eliminated redundant requirements, expanded the types of submissions that are styled Petitions for Special Relief and filed under Section 76.7, and standardized the filing procedure for all petitions seeking a finding of effective competition under Section 76.7. The Commission also established a standard provision for Part 76 pleadings to provide a uniform filing format, deadlines, and other procedural requirements which most pleadings filed pursuant to Part 76 now follow.

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

¹⁶ 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.

¹⁷ See *1998 Biennial Regulatory Review: Part 76 - Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999).

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Statutory authority for this collection of information is contained in Sections 4(i), 303(r), 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.
7. The *R&O* provides that in program access complaint proceedings alleging a violation of Section 628(b) of the Act and Section 76.1001(a) of the Commission's Rules, the defendant has 45 days – rather than the former 20 days – from the date of service of the complaint to file an answer. 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 on September 6, 2011 (76 FR 55061) and a 30 day Federal Register Notice on December 13, 2011 (76 FR 77529) seeking comments on the information collection requirements contained in this supporting statement.
9. There will be no payment or gifts given to respondents.

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

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 95.4 hours and parties using outside counsel will have a burden of 6.4 hours. We estimate that approximately 342 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.

Total Number of Annual Respondents: 684 Broadcast Stations, Cable Operators, Satellite Carriers, MVPDs and Programming Vendors

Total Number of Annual Responses = 342 filings x 2 parties/filing = 684 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 95.4 hours per filing.

$$342 \text{ filings (50\% of 684 filings)} \times 95.4 \text{ hours/filing} = 32,627 \text{ hours}$$

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 6.4 hours to coordinate filing information with outside legal counsel.

$$342 \text{ filings (50\% of 684 filings)} \times 6.4 \text{ hours/filing} = 2,189 \text{ hours}$$

$$\textbf{Total Annual Burden Hours } 32,627 \text{ hours} + 2,189 \text{ hours} = \textbf{34,816 hours}$$

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.

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

Paralegal: 17,408 hours x \$30/hour = \$522,240
 Attorney: 17,408 hours x \$50/hour = \$870,400
Total Annual "In-House" Cost: \$1,392,640

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/hour¹⁸ when initiating their filings (50% of 684 filings = 342 filings). Therefore, the total operation and maintenance costs = 342 filings x 30.8 hours x \$300/hr. = **\$3,160,080**.

c. Total Annualized Cost: **\$3,160,080**

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: 684 filings x 14 hours/filing x \$67.21/hour = \$643,602.96
 Paralegal review: 684 filings x 4.3 hours/filing x \$40.66/hour = \$119,589.19
 Admin. review: 684 filings x 2 hours/filing x \$18.50/hour = \$ 25,308.00
Total Cost to the Federal Government: \$788,500.15

15. This non-substantial change request is being submitted to OMB to reflect the change in the treatment of exclusive contracts in served areas and the increase in burden hours resulting from additional program access complaints that may be filed as a result of this change.¹⁹ Therefore, the total number of respondents have increased by +16, the total number of annual responses has

¹⁸ Attorneys are expected to take 30.8 hours to complete tasks.

¹⁹ Again, the Commission's existing procedures for filing and responding to a complaint alleging a violation of Section 628(b) of the Act and Section 76.1001(a) of the Commission's Rules were not revised in the R&O, FCC 12-123, other than (i) providing the defendant with up to 45 days – rather than the previously provided 20 days – to file an answer to the complaint; and (ii) requiring the Commission's Media Bureau to act within six months from the date a complaint is filed. 47 C.F.R. § 76.1003.

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

increased by +16 responses, the total annual burden hours increased by +2,552 and total annual cost burden increased by +\$454,680 for this information collection. There are no program changes 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. Because of this non-substantial change submission, the Commission has made adjustments to its burdens. The Commission now reports the number of respondents as 684; the number of responses as 684; the number of total annual burden hours as 34,816 hours and the annual cost as \$3,160,080. There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.