

**NON-SUBSTANTIVE CHANGE REQUEST FOR INFORMATION  
COLLECTION 3060-0888**

The Federal Communication Commission (FCC) is seeking a non-substantive change request for information collection 3060-0888. In areas served by a cable operator, Section 628(c)(2)(D) of the Communications Act of 1934, as amended (the “Act”), preemptively prohibits exclusive contracts for satellite cable programming or satellite broadcast programming between any cable operator and any cable-affiliated programming vendor (the “exclusive contract prohibition”). 47 U.S.C. § 548(c)(2)(D). Section 628(c)(5) of the Act provides that this prohibition would expire after ten years (on October 5, 2002), unless the Commission found that it “continue[d] to be necessary to preserve and protect competition and diversity in the distribution of video programming.” 47 U.S.C. § 548(c)(5). On two previous occasions, first in 2002 and again in 2007, the Commission found that the prohibition remained necessary and thus extended it for an additional five-year term on each occasion. On October 5, 2012, however, the FCC issued a decision declining to extend the exclusive contract prohibition beyond its October 5, 2012 expiration date.<sup>1</sup>

Prior to the expiration of the exclusive contract prohibition on October 5, 2012, a multichannel video programming distributor (“MVPD”) could file a program access complaint with the FCC alleging that a cable operator had entered into an exclusive contract for a served area that was preemptively prohibited by the exclusive contract prohibition. 47 C.F.R. § 76.1003(a), (c)(6). The expiration of the exclusive contract prohibition in served areas eliminates these complaints because exclusive contracts in served areas are no longer preemptively prohibited.

An MVPD, however, may continue to challenge exclusive contracts in served areas under a different provision of the FCC’s existing rules. Specifically, Section 628(b) of the Act and Section 76.1001(a) of the Commission’s Rules prohibit “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 U.S.C. § 548(b); 47 C.F.R. § 76.1001(a). Although exclusive contracts in served areas are no longer preemptively prohibited, an MVPD may file a program access complaint with the FCC alleging that a particular exclusive contract violates Section 628(b) of the Act and Section 76.1001(a) of the Commission’s Rules. 47 C.F.R. § 76.1003(a), (c)(7). 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 FCC’s October 5, 2012 decision, other than (i) providing the defendant to a complaint with up to 45 days – rather than the previously provided 20 days – to file an answer to the complaint; and (ii) requiring the FCC’s Media Bureau to act within six months from the date a complaint is filed.

---

<sup>1</sup> See *Revision of the Commission’s Program Access Rules et al.*, MB Docket No. 12-68 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 12-123 (Oct. 5, 2012).

This non-substantial change request is being submitted to OMB to reflect the change in the treatment of exclusive contract 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.

