

**Title: Network Non-duplication Protection and Syndication Exclusivity: Sections 76.94, Notification; 76.95, Exceptions; 76.105, Notifications; 76.106, Exceptions; 76.107, Exclusivity Contracts; and 76.1609, Non-Duplication and Syndicated Exclusivity**

**SUPPORTING STATEMENT**

**A. Justification**

1. **47 CFR Sections 76.94(a) and 76.105(a)** require television stations and program distributors to notify cable television system operators of non-duplication protection and exclusivity rights<sup>1</sup> being sought. The notification shall include (1) the name and address of the party requesting non-duplication protection/exclusivity rights and the television broadcast station holding the non-duplication right; (2) the name of the program or series for which protection is sought; and (3) the dates on which protection is to begin and end.

**47 CFR Section 76.94(b) and 76.105(b)** require broadcasters entering into contracts providing for network non-duplication and exclusivity rights to notify cable systems within 60 days of the signing of such a contract. If they are unable to provide notices as provided for in Section 74.94(a), they must provide modified notices that contain the name of the network which has extended non-duplication protection, the time periods by time of day and by network for each day of the week that the broadcaster will be broadcasting programs from that network, and the duration and extent of the protection.

**47 CFR Section 76.94(d)** requires broadcasters to provide the following information to cable television systems under the following circumstances: (1) In the event the protection specified in the notices described in 47 CFR Section 76.94(a) or (b) has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the cable system in a notice pursuant to Section 76.94(b) for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means. (2) In the event the protection specified in the modified notices described in Section 76.94(b) has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each cable system operator that has previously received notice of all changes from the original notice.

**47 CFR Sections 76.94(e)(2) and 76.105(c)(2)** state that if a cable television system asks a

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<sup>1</sup> The term "non-duplication and exclusivity rights" refers to the Commission's rules which prohibit cable operators from importing programming of distant station for which local broadcasters have acquired exclusive broadcast rights.

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television station for information about its program schedule, the television station shall answer the request.

**47 CFR Sections 76.94(f) and 76.107** require a distributor or broadcaster exercising exclusivity to provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed. Providing copies of relevant portions of the contracts is assumed to be accomplished in the notification process set forth in Sections 76.94 and 76.105.

**47 CFR Section 76.95** states that the provisions of Sections 76.92 through 76.94 (including the notification provisions of Section 76.94) shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection against it.

**47 CFR Section 76.105(d)** requires that in the event the exclusivity specified in Section 76.105(a) has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the cable television system operator of the occurrence of the relevant contingency. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

**47 CFR Section 76.106(b)** states that the provisions of Sections 76.101 through 76.105 (including the notification provisions of Section 76.105) shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

**47 CFR Section 76.1609** states that network non-duplication provisions of Sections 76.92 through 76.94 shall not apply to cable systems serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication or syndicated exclusivity protection

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against it.

The Commission is requesting that the Office of Management and Budget (OMB) approve the revision of this collection for a three year time period. This collection is being revised to receive approval for the information collection requirements that are contain in 47 CFR 76.105(b).

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 Section 4(i) of the Communications Act of 1934, as amended.

2. The purpose of the various notification and disclosure requirements accounted for in this collection is to protect broadcasters who purchase the exclusive rights to transmit network or syndicated programming in their recognized market areas. The Commission's network non-duplication and syndicated exclusivity rules permit, but do not require broadcasters and program distributors to obtain the same enforceable exclusive distribution rights for network and syndicated programming that all other video programming distributors possess.

3. We do not believe the use of information technology is feasible for this collection, because of the unique nature of the notification and disclosure requirements.

4. This agency does not impose similar information collection requirements on the respondents.

5. This collection does not have a significant impact on a substantial number of small entities. The Commission's network non-duplication provisions and syndicated exclusivity provisions are not applicable to cable television systems serving fewer than 1,000 subscribers.

6. If the Commission did not sponsor this collection, broadcasters would have no process for exercising their network non-duplication and syndicated exclusivity rights.

7. The following special circumstances apply to this collection of information:

Sections 76.94(e) and 76.105(c) require a broadcaster to provide cable systems with information on programs subject to deletion within ten business days following the television station's receipt of the request or sixty days before the program is to be broadcast, whichever comes later. This is necessary because program schedules are subject to change on a short-term basis.

Under section 76.94 (d)(1), if an affiliate decides to preempt or otherwise not to carry network programming during the hours specified in its notice, the affiliate must give the cable system notice

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as soon as possible. Additionally, under section 76.105(d), if a broadcaster has lost or abandoned its syndicated exclusivity rights to a program for which the broadcaster has previously requested protection, it must notify the cable system as soon as possible of the loss of any syndicated exclusivity protection that the broadcaster has previously claimed. This is necessary to allow cable systems ample time to plan their program schedules.

8. The Commission published a Notice (77 FR 65880) in the *Federal Register* on October 31, 2012 seeking comment from the public on the information collection requirements contained in this supporting statement. No comments were received from the public.

9. There will be no payment or gifts given to respondents.

10. There is no need for confidentiality with this collection of information.

11. This collection of information does not address any private matters of a sensitive nature.

12. The Commission estimates the annual paperwork burden for the various notification and disclosure requirements as follows:

Rule Sections	Total Number of Respondents	Estimated Number of Responses	Total Number of Responses	Estimated Hours for Respondent to Complete Information Collections	Total Annual Burden Hours	Hourly "In House" Cost	Total "In House" Costs
Section 76.94(a) & Section 76.105(a) (Notification of Rights)	1,304 Commercial TV Stations	12 Notifications	15,648 Notifications	1 hour/ notification	15,648 hours	\$18/hr.	\$281,664
Section 76.94(b) & Section 76.105(b) (Notification of New Contract)	763 Network Affiliated TV Stations	24 Notifications	18,312 Notifications	1 hour/ notification	18,312 hours	\$18/hr.	\$329,616
Section 76.94(d)							

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<b>&amp; Section 76.105(d) (Notification to Cable Systems of Change)</b>	763 Network Affiliated TV Stations	52 Notifications	39,676 Notifications	1 hour/ notification	39,676 hours	\$18/hr.	\$714,168
<b>Section 76.94(e) (2) and Section 76.105(c) (2) (Responses to Cable Systems)</b>	1,304 TV Stations Responding to Cable TV Request for Information	1 Response/TV Station	1,304 Responses	1 hour/response	1,304 hours	\$18/hr.	\$23,472
<b>Section 76.94(f) and 76.107 (Exact copy of contract to cable systems)</b>	4,251 Cable TV Systems	24 Request/ System for Copies of Contract	102,024 Requests	1 hour/request	102,024 hours	\$18/hr.	\$1,836,432
<b>Section 76.94(f) and 76.107 (Exact copy of contract to cable systems)</b>	1,304 TV Stations	24 response/ television station responding to cable television request for copies of contracts	31,296 Responses	.50 hours/response	15,648 hours	\$18/hr.	\$281,664
<b>Section 76.95 Section 76.106(b) (Exceptions)</b>	100 Cable TV Systems	1 Notice	100 Notices	2 hours/notice	200 hours	\$18/hr.	\$3,600
<b>Section 76.1609 (Termination of Small System Exceptions)</b>	100 Cable TV Systems	1 Notice	100 Notices	2 hours/notice	200 hours	\$18/hr.	\$3,600
<b>Totals:</b>			<b>208,460 Responses</b>		<b>193,012 hours</b>		<b>\$3,474,216</b>

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**Total Number of Respondents:** 1,304 Commercial TV Stations<sup>2</sup>  
4,251 Cable Systems  
5,555

**Total Number of Reponses: 208,460 (multiple responses)**

**Total Annual Burden Hours: 193,012 hours**

**Total Annual In-house Cost: \$ 3,474,216**

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

**13. Annual Cost Burden:**

- (a) Total annualized capital/startup costs: None
- (b) Total annual costs (O&M): None
- (c) Total annualized cost requested: **None**

14. There is no cost to the Federal Government.

15. There are program charges/increases to this collection of 9,156 to the number of annual responses and 9,156 to the annual burden hours which are due to the approval of the information collection requirements that are contain in Section 76.105(b). There are no adjustments to this collection.

16. These data will not be published for statistical use.

17. We do not seek approval to not display the expiration date for OMB approval of this information collection.

18. There are no exceptions to the Certification Statement.

**B. Collections of Information Employing Statistical Methods:**

<sup>2</sup> Network Affiliated TV Stations are included in the total count of Commercial TV stations.

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No statistical methods are employed.