

SUPPORTING STATEMENT

A. Justification:

1. On May 3, 1993, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-177; *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation*. Among other things, the *Report and Order* implemented Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 wherein a franchising authority must file with the Commission a written certification when it seeks to regulate basic service cable rates. FCC Form 328 is used by franchising authorities to request certification. On June 3, 2015, the Commission released a *Report and Order* (“Order”), MB Docket No. 15-53, FCC 15-62; *In the Matter of Amendment to the Commission’s Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*. The Order adopts a rebuttable presumption that cable operators are subject to competing provider effective competition. This Supporting Statement reflects changes to FCC Form 328, which must be revised as a result of the Order. It also incorporates Section 76.910 as part of this information collection, including the revisions to the rule as set forth in the Order.

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 3 of the Cable Television Consumer Protection and Competition Act of 1992 (47 USC 543), as well as Sections 4(i), 4(j), and 623 of the Communications Act of 1934, as amended, and Section 111 of the STELA Reauthorization Act of 2014.

The information collection requirements consist of:

(a) FCC Form 328. Pursuant to Section 76.910, a franchising authority must be certified by the Commission to regulate the basic service tier and associated equipment of a cable system within its jurisdiction. To obtain this certification, the franchising authority must prepare and submit FCC Form 328. The Order revises Section 76.910 to require a franchising authority filing Form 328 to submit specific evidence demonstrating its rebuttal of the presumption in Section 76.906 that the cable system is subject to competing provider effective competition pursuant to Section 76.905(b)(2). The franchising authority bears the burden of submitting evidence rebutting the presumption that competing provider effective competition, as defined in Section 76.905(b)(2), exists in the franchise area. Unless a franchising authority has actual knowledge to the contrary, it may rely on the presumption in Section 76.906 that the cable system is not subject to one of the other three types of effective competition.

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(b) Evidence establishing lack of effective competition. If the evidence establishing the lack of effective competition is not otherwise available, the new note to Section 76.910(b)(4) provides that franchising authorities may request from a multichannel video programming distributor (“MVPD”) information regarding the MVPD’s reach and number of subscribers. An MVPD must respond to such request within 15 days. Such responses may be limited to numerical totals.

(c) Franchising authority’s obligations if certified. Appendix A of the Order does not revise Section 76.910(e) of the Commission’s rules. That paragraph provides that, unless the Commission notifies the franchising authority otherwise, the certification will become effective 30 days after the date filed, provided, however, that the franchising authority may not regulate the rates of a cable system unless it: (1) adopts regulations (i) consistent with the Commission’s regulations governing the basic tier and (ii) providing a reasonable opportunity for consideration of the views of interested parties, within 120 days of the effective date of the certification; and (2) notifies the cable operator that the franchising authority has been certified and has adopted the required regulations.

2. Commission staff members use the data in FCC Form 328 filings to ensure that a franchising authority meets the criteria specified in Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 for regulating basic service rates.

3. The use of information technology is not feasible for this collection. The Commission makes FCC Form 328 available on diskette, via the FCC website under FCC Forms, and by mail. A signed FCC Form 328 must be mailed (or otherwise delivered) to the Commission; however, the form cannot be filed electronically. A signed and complete FCC Form 328 received by the Commission initiates the certification process.

4. The Commission does not impose a similar information collection on the respondents. There are no similar data available.

5. This collection of information does not significantly impact small businesses or other small entities. The paperwork burden and frequency of response to this collection is minimal.

6. If this collection of information was not conducted, the Commission would be unable to carry out its statutory responsibilities pursuant to the Cable Television Consumer Protection and Competition Act of 1992.

7. There are no special circumstances associated with this information collection.

8. The Commission published a 60-day notice in the *Federal Register* (80 FR 14894) on March 20, 2015, seeking comments on the information collection requirements contained in this supporting statement. No comments were received from the public.

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- 9. Respondents will not receive any payment or gift.
- 10. There is no need for confidentiality with this collection of information.
- 11. This information collection does not address any private matters of a sensitive nature.
- 12. We estimate franchising authorities annually will file no more than 5 FCC Form 328's.¹ We estimate that the average burden to complete all aspects of each Form 328 is 2 hours per form, including the time necessary to fulfill the obligations referenced in 1(c) above.

We estimate that no more than 4 franchising authorities may, if evidence establishing effective competition is not otherwise available, need to request from one of 2 different MVPDs information regarding the MVPD's reach and number of subscribers.² The burden associated with supplying this information is estimated to be 2 hours per request per party.

Total Number of Annual Respondents: 5 Form 328 filers
2 MVPDs
7 respondents

Total Number of Annual Responses: 5 Form 328's
4 requests from franchising authorities
4 MVPD responses to requests
13 responses

Total annual burden hours:

5 Form 328's x 2 hours/form = 10 hours
4 information requests x 2 parties each³ x 2 hours/party = 16 hours
26 hours

Total "In-house" Cost: We estimate that in-house attorneys or other staff paid at an average hourly wage of \$100.00 per hour will implement this information collection.

¹ All franchising authorities with existing certifications that wish to remain certified must file revised Form 328 within 90 days after the effective date of the rules adopting the new presumption of competing provider effective competition. We expect that the Commission will receive significantly more than 5 Form 328's during that time period.

² We expect that there will be significantly more than 4 requests from franchising authorities and MVPD responses to such requests during the initial 90-day period. After the initial 90-day period, however, we expect to receive no more than 5 Form 328's annually, and thus no more than 4 resulting requests from franchising authorities for MVPD reach and subscribership information.

³ There is a party requesting information and a party responding to the request.

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5 Form 328's x 2 hours/form x \$100/hour = \$1,000
 4 requests x 2 parties each⁴ x 2 hours/party x \$100/hour = \$1,600
\$2,600

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

13. Annual Cost Burden:

- (a) Total annualized capital/startup costs: None
- (b) Total annual costs (operation and maintenance): None
- (c) Total annualized cost requested: None

14. Cost to the Federal Government: The Commission will use professional staff at the GS-14, step 5 level (\$58.28/hour), and paraprofessional staff at the GS-13, step 5 level (\$49.32/hour) to process these certifications.

	Total Forms Filed	Hourly Burden Per Form	Total FCC Staff Burden Hours	Hourly Cost Burden	Total Cost Burden
GS-14 Staff	5 forms	0.5 hours	2.5 hours	\$58.28	\$145.70
GS-13 Staff	5 forms	1.25 hours	6.25 hours	\$49.32	<u>\$308.25</u>

Total cost to the Federal Government: \$453.95

15. The following figures will be added to OMB's inventory as a result of the information collection requirements adopted in FCC 15-62: the total number of annual respondents covered by this information collection will decrease by 13, the total number of annual responses will decrease by 7, and the total annual burden hours will increase by 16 hours.

There are no adjustments to this collection.

16. The results of this information collection requirement are not planned to be published.

17. We request extension of the waiver not to publish the expiration date on the form. This will obviate the need for the Commission to update forms upon the expiration of the clearance. OMB approval of the expiration date of the information collection will be displayed at 47 CFR § 0.408.

⁴ There is a party requesting information and a party responding to the request.

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18. There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.