

Sections 76.802 and 76.804, Home Wiring Provisions; Section 76.613, Interference from a Multi-channel Video Programming Distributor (MVPD)

SUPPORTING STATEMENT

A. Justification

1. **47 CFR 76.613(d)** requires that when Multichannel Video Programming Distributors (MVPDs) cause harmful signal interference MVPDs may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

47 CFR 76.802(b) states during the initial telephone call in which a subscriber contacts a cable operator to voluntarily terminate cable service, the cable operator—if it owns and intends to remove the home wiring—must inform the subscriber:

- (1) That the cable operator owns the home wiring;
 - (2) That the cable operator intends to remove the home wiring;
 - (3) That the subscriber has the right to purchase the home wiring; and
 - (4) What the per-foot replacement cost and total charge for the wiring would be (the total charge may be based on either the actual length of cable wiring and the actual number of passive splitters on the customer's side of the demarcation point, or a reasonable approximation thereof; in either event, the information necessary for calculating the total charge must be available for use during the initial phone call).
- (c) If the subscriber voluntarily terminates cable service in person, the procedures set forth in paragraph (b) of this section apply.
- (d) If the subscriber requests termination of cable service in writing, it is the operator's responsibility—if it wishes to remove the wiring—to make reasonable efforts to contact the subscriber prior to the date of service termination and follow the procedures set forth in paragraph (b) of this section.

47 CFR 76.804(a)(1) (Building-by-building disposition) states where an MVPD owns the home run wiring in an Multiple Dwelling Unit Building (MDU) and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the MDU owner, the MDU owner may give the MVPD a minimum of 90 days' written notice that its access to the entire building will be terminated to invoke the procedures in this section. The MVPD will then have 30 days to notify the MDU owner in

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writing of its election for all the home run wiring inside the MDU building: to remove the wiring and restore the MDU building consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first; to abandon and not disable the wiring at the end of the 90-day notice period; or to sell the wiring to the MDU building owner. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider shall notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the incumbent provider elects to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider that has elected to abandon its home run wiring may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the MDU owner declines to purchase the home run wiring, the MDU owner may permit an alternative provider that has been authorized to provide service to the MDU to negotiate to purchase the wiring.

47 CFR 76.804(a)(2) states if the incumbent provider elects to sell the home run wiring under paragraph (a)(1) of this section, the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. If the parties are unable to agree on a price within that 30-day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent provider chooses to abandon or remove its wiring, it must notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment shall become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. If the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first.

47 CFR 76.804(a)(3) states if the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90-day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner

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(or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures. If the incumbent fails to comply with any of the deadlines established herein, it shall be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period.

47 CFR 76.804(a)(4) states the MDU owner shall be permitted to exercise the rights of individual subscribers under this subsection for purposes of the disposition of the cable home wiring under §76.802. When an MDU owner notifies an incumbent provider under this section that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider shall, in accordance with our current home wiring rules: offer to sell to the MDU owner any home wiring within the individual dwelling units that the incumbent provider owns and intends to remove; and provide the MDU owner with the total per-foot replacement cost of such home wiring. This information must be provided to the MDU owner within 30 days of the initial notice that the incumbent's access to the building will be terminated. If the MDU owner declines to purchase the cable home wiring, the MDU owner may allow the alternative provider to purchase the home wiring upon service termination under the terms and conditions of §76.802. If the MDU owner or the alternative provider elects to purchase the home wiring under these rules, it must so notify the incumbent MVPD provider not later than 30 days before the incumbent's termination of access to the building will become effective. If the MDU owner and the alternative provider fail to elect to purchase the home wiring, the incumbent provider must then remove the cable home wiring, under normal operating conditions, within 30 days of actual service termination, or make no subsequent attempt to remove it or to restrict its use.

47 CFR 76.804(b)(1) (Unit-by-unit disposition of home run wiring) states where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes, the MDU owner may permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit in the MDU. The MDU owner must provide at least 60 days' written notice to the incumbent MVPD of the MDU owner's intention to invoke this procedure. The incumbent MVPD will then have 30 days to provide a single written election to the MDU owner as to whether, for each and every one of its home run wires dedicated to a subscriber who chooses an alternative provider's service, the incumbent MVPD will: remove the wiring and restore the MDU building consistent with state law; abandon the wiring without disabling it; or sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative provider to purchase it. If the alternative provider is permitted to purchase the wiring,

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it will be required to make a similar election within this 30-day period for each home run wire solely dedicated to a subscriber who switches back from the alternative provider to the incumbent MVPD.

47 CFR 76.804(b)(2) states that if the incumbent provider elects to sell the home run wiring under paragraph (b)(1), the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. During this 30-day negotiation period, the parties may arrange for an up-front lump sum payment in lieu of a unit-by-unit payment. If the parties are unable to agree on a price during this 30-day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring within 14 days. If subscribers wish to switch service providers after the expiration of the 60-day notice period but before the expert issues its price determination, the procedures set forth in paragraph (b)(3) of this section shall be followed, subject to the price established by the arbitrator. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures.

History:

On April 4, 2004, the Commission released a Report and Order, FCC 04-75, In the Matter of Extend Interference Protection to the Marine and Aeronautical Distress and Safety Frequency 406.025 MHz. In this document, the Commission removed the rule and the reporting requirements of 47 CFR 76.620 that was previously recorded in this collection.

On January 29, 2003, the Commission issued a First Order on Reconsideration and Second Report and Order, *In the Matter of Telecommunications Services Inside Wiring; Customer Premises Equipment; In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring*, CS Docket No. 95-184, MM Docket No. 92-260, FCC 03-9, which grants in part and denies in part the petitions for reconsideration filed in response to the Report and Order. The Commission's home run wiring rules were modified in the First Order on Reconsideration to provide that in the event of sale, the home run wiring be made available to the MDU owner or alternative provider during the 24-hour period prior to actual service termination by the incumbent and that home run wiring

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located behind sheet rock is physically inaccessible for purposes of determining the demarcation point between home wiring and home run wiring. In the Second Report and Order, the Commission adopted a limited exemption for small non-cable MVPDs from the signal leakage reporting requirements and concluded that the cable and home run wiring rules should apply to all MVPDs in the same manner that they apply to cable operators.

On October 17, 1997, the Commission released a Report and Order and Second FNPRM, FCC 97-376. Among other things, this rulemaking finalizes the Commission's rules concerning the disposition of home run wiring and cable wiring in MDUs. These rules were expanded to apply to non-cable MVPDs. Additionally, this rulemaking also requires non-cable MVPDs to comply with the Commission's signal leakage rules but allows a five-year transition period from the effective date of these rules to afford non-cable MVPDs time to comply with our signal leakage rules other than § 76.613.

On August 28, 1997, the Commission released a FNPRM, FCC 97-304. Among other things, the FNPRM proposed rules regarding the disposition of home run wiring and home wiring in MDUs, and proposed to expand these rules to apply to non-cable MVPDs.

On January 26, 1996, the Commission issued a First Order on Reconsideration and FNPRM, FCC 95-503. Among other things, within the context of the Paperwork Reduction Act, this rulemaking clarified rules concerning the disposition of cable home wiring upon the voluntary termination of service.

Even though the information collection requirements may affect individuals or households, we do not believe that there are any impacts under the Privacy Act due to the type of information that is being collected.

Statutory authority for this collection of information is contained in Sections 1, 4, 224, 251, 303, 601, 623, 624 and 632 of the Communications Act of 1934, as amended.

2. The various disclosure, notification and election requirements in this collection are set forth in order to promote competition and consumer choice by minimizing any potential disruption in service to a subscriber switching video providers.
3. The disclosure requirements are usually conducted via telephone. The notification and election requirements will be unique filings in the form of written letters. Therefore, there is no opportunity to use automated or electronic collection techniques.

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4. The Commission does not impose similar requirements on respondents.
5. This information collection will not have a significant economic impact on a significant number of small businesses/entities.
6. These information collections are necessary in order to protect consumers from unnecessary disruption of service and expense caused by the removal of home wiring and to allow consumers to use the wiring for service received from alternative MVPDs.
7. There are no special circumstances that cause these collections of information to be conducted in a manner inconsistent with the requirements set forth in the Paperwork Reduction Act of 1995.
8. The Commission published a Notice (80 FR 63223) in the *Federal Register* on October 19, 2015 seeking comment from the public on the information collection requirements contained in this collection. No comments were received from the public as a result of the Notice.
9. There will be no payment or gifts to respondents in providing the necessary information.
10. There is no need for confidentiality with this information collection.
11. This collection does not address any private matters of a sensitive nature.
12. Public burden estimates:
 - a. **47 CFR 76.613** - We estimate that no more than 10 interference reports will be submitted annually to the Commission's EIC, each having an average burden of 2 hours to prepare.

10 reports x 2 hours/report = **20 hours**

- b. **47 CFR 76.802** - The burden to disclose the information at the time of termination will vary depending on the manner of disclosure, *e.g.* by telephone, customer visit or registered mail. The estimated average time consumed in the process of the MVPD's disclosure and subscriber's election is 5 minutes (0.083 hours). Estimated annual number of occurrences is 216,000.

216,000 x 0.083 hours/disclosure/subscriber election = **17,928 hours**

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c. **47 CFR 76.802** - The estimated average time for MDU owners to provide such notice is estimated to be 15 minutes (0.25 hours). The estimated average time consumed in the process of the MVPD's subsequent disclosure and the MDU owner or alternative provider's election is 5 minutes (0.083 hours).

$$2,000 \text{ notifications} \times 0.333 \text{ hours/notice/disclosure} = \mathbf{666 \text{ hours}}$$

d. **47 CFR 76.802** - The annual recordkeeping burden for these cost schedules is estimated to be 0.5 hours per MVPD.

$$10,000 \text{ cost schedules} \times 0.5 \text{ hours/recordkeeping requirement} = \mathbf{5,000 \text{ hours}}$$

e. **47 CFR 76.804** - We estimate that there will be approximately 12,500 notices and 12,500 elections made on an annual basis. We assume all notifications and elections (except when an individual subscriber is terminating service) will be in writing and take an average burden of 30 minutes (0.5 hours) to prepare.

$$25,000 \text{ notifications and elections} \times 0.5 \text{ hours} = \mathbf{12,500 \text{ hours}}$$

Total Number of Annual Respondents: 20,000 MVPDs + 2,000 MDU owners = **22,000**

Total Number of Annual Responses:

10 interference reports
216,000 disclosures to subscribers
2,000 advance notices
10,000 cost schedules
+ 25,000 notifications/elections
253,010 (responses)

Total Annual Hour Burden: 20 + 17,928 + 666 + 5,000 + 12,500 = **36,114 hours**

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

13. Cost burden to Respondents:

Total annualized capita/startup costs: **None**
Total annual costs (O&M): **None**
Total annualized cost requested: **None**

14. Cost to the Federal Government:

We estimate that professional staff at the GS-15, step 5 level (\$68.56/hour) will review the section 76.613 interference reports at one (1) hour per report.

10 reports x 1 hour x \$68.56 per hour = \$685.60

Total Cost to the Government: \$685.60

15. There are no program changes or adjustments to this information collection.

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

17. We are not seeking approval to not display the expiration date for OMB approval of the information collection.

18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.