

**Section 51.803 and Supplemental Procedures for
Petitions Pursuant to Section 252(e)(5) of the
Communications Act of 1934, as amended**

**3060-0807
January 2019**

The Commission is seeking an extension (no change in the reporting and/or third-party disclosure requirements) to obtain the three-year clearance from OMB. There is no change in the Commission's burden estimates.

SUPPORTING STATEMENT

A. Justification:

1. Any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act shall notify the Commission as follows:

(1) file with the Secretary of the Commission a detailed petition, supported by an affidavit, that states with specificity the basis for any claim that the state commission has failed to act; and (2) serve the state commission and other parties to the proceeding on the same day that the party serves the petition on the Commission. Within 15 days of the filing of the petition, the state commission and parties to the proceeding may file a response to the petition. See 47 U.S.C. § 252 and 47 C.F.R. § 51.803.

In a Public Notice, DA 97-2540, released December 4, 1997, the Commission set out procedures for filing petitions for preemption pursuant to section 252(e)(5) of the Communications Act of 1934, as amended (the Act). Section 252(e)(5) provides that "if a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of the proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission."

a. (1) Filing of Petitions for Preemption. Each party seeking preemption should caption its preemption petition, "Petition of {Petitioner's Name} pursuant to Section 252(e)(5) of the Communications Act." In addition, on the date of the petition's filing, the petitioner should serve a copy of the petition by hand delivery on the Wireline Competition Bureau, and send a copy to the Commission's contractor for records duplication and research services.

(2) Section 51.803(a)(2) of the Commission's rules requires each party seeking preemption pursuant to section 252(e)(5) to "ensure that the state commission and the other parties to the proceeding or matter for which preemption is sought are served with the petition . . . on the same date that the petitioning party serves the petition on the Commission." Therefore, each section 252(e)(5) petitioner should state in its certificate of service the steps it is taking to comply with this requirement (*e.g.*, hand delivery or overnight mail).

(3) Petitions seeking preemption must be supported by affidavit and state with specificity

the basis for the petition and any information that supports the claim that the state has failed to act. See 47 C.F.R. § 51.803. Each petitioner should append to its petition the full text of any State commission decision regarding the proceeding or other matter giving rise to the petition as well as the relevant portions of any transcripts, letters, or other documents on which the petitioner relies. Each petitioner should also provide a chronology of that proceeding or matter that lists, along with any other relevant dates, the date the petitioner requested interconnection, services, or network elements pursuant to section 251 of the Act, the dates of any requests for mediation or arbitration pursuant to section 252(a)(2) or (b)(1), and the dates of any arbitration decisions in connection with the proceeding or matter.

b. Submission of Written Comments by Interested Third Parties. Interested third parties may file comments on a preemption petition in accordance with a public notice to be issued by the Commission. Commenters should provide material identical to that required of petitioners to the extent the relevant documents or information is not already included in the record in the proceeding.

The Public Notice describes in detail all the requirements and procedures associated with this process.

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 252(e)(5) of the Act. 47 U.S.C. 252(e)(5).

2. All of the requirements are used to ensure that petitioners have complied with their obligations under the Act.

3. The collection of information does not involve the use of automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

4. There will be no duplication of information. The information sought is unique to each petitioner.

5. The collection of information may impact small businesses or other small entities. The burden is the same for all respondents.

6. Failing to collect the information could violate the language and/or intent of the Act to provide relief to petitioners on a timely basis.

7. The requirements do not impose any obligations that would require parties to submit information to the FCC more than once. Because of the shortness of the review period, petitioners are asked to submit a copy to the Wireline Competition Bureau and to the Commission's contractor for records duplication and research services, as well as provide notice that the proper state commission and other interested parties have been served with a copy of the petition. These requirements will allow expeditious processing of the petitions.

8. The Commission published a notice in the Federal Register as required by 5 CFR section 1320.8(d) on October 25, 2018 (83 FR 53871). No PRA comments were received.

9. The Commission does not anticipate providing any payment or gift to respondents.

10. The Commission is not requesting petitioners to submit confidential information to the Commission.

11. There are no questions of a sensitive nature with respect to the information collected.

12. The following represents the estimates of hour burden of the collections of information:

a. Filing of Petitions for Preemption:

(1) Number of respondents: 20.

(1) Frequency of response: On occasion reporting requirement; third party disclosure requirement.

(2) Annual hour burden per respondent: 40 hours per petition. Total annual burden is 800 hours.

(3) Total estimate of in-house cost to respondents for the hour burdens of collection of information: \$42,128. We assume the respondents would use in-house personnel comparable in pay to a GS-13/5 Federal employee.

(4) Explanation of calculation: We estimate that preparation time will be approximately 40 hours per petition at \$52.66 per hour (GS 13, Step 5). $40 \text{ hours/petition} \times \$52.66 \times 20 \text{ petitions} = \$42,128$.

b. Submission of Written Comment by Interested Third Parties.

(1) Number of respondents: 40.

(2) Frequency of response: On occasion reporting requirement; third party disclosure requirement. Probably only once for many respondents. A state commission will only file a response when a petition seeks to preempt the state commission's jurisdiction.

(3) Annual hour burden per respondent: 20 hours per respondent. Total annual burden is 800 hours.

(1) Total estimate of in-house cost to respondents for the hour burdens of collection of information: \$42,128. We assume the respondents would use in-house personnel comparable in pay to a GS-13/5 Federal employee.

(5) Explanation of calculation: We estimate that preparation time will be approximately 20 hours per comment at \$52.66 per hour (GS 13, Step 5). 20 hours/comment x \$52.66 x 40 petitions = \$42,128.

Total Respondents/Total Responses: 20 + 40 respondents/responses.

Total annual burden for this submission: 800 + 800 = 1,600 hours.

Total “in-house” cost to respondents: \$42,128 + \$42,128 = \$84,256

13. We estimate that there will not be capital or start-up costs for any of these requirements. We do not believe that these requirements will necessitate any additional equipment. We estimate that there will be no operating and maintenance or purchase of services costs of these requirements. There is no filing fee associated with these petitions.

14. The following represents the Commission’s estimates of the annual costs to the federal government as a result of the proposed requirements:

Review of submission: 400 hours to process submissions x \$28.46 per hour (Grade 8, Step 6) (average grade and hourly salary of staff) = \$11,384.

15. No change in burden. The burden continues to be 1,600 total annual burden hours.

16. The Commission will not publish any results from the information collected.

17. The Commission is requesting a waiver to display the OMB expiration date on the Public Notice. As mentioned above, the requirements are set out in a public notice. The Commission believes that costs can be saved by not having to re-issue a public notice periodically solely to update the OMB expiration date.

18. The Commission has no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

This information collection does not employ statistical methods.