

SUPPORTING STATEMENT

The Commission is requesting an extension of this information collection from the Office of Management and Budget (OMB) in order to extend the three-year approval.

A. Justification:

1. *Circumstances that make collection necessary.* Section 253 of the Communications Act of 1934, as amended, 47 U.S.C. § 253, which was added by the Telecommunications Act of 1996, requires the Commission, with certain important exceptions, to preempt (to the extent necessary) the enforcement of any state or local statute or regulation, or other state or local legal requirement that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The Commission's consideration of preemption pursuant to section 253 typically begins with the filing of a petition by an aggrieved party. The Commission usually places such petitions on public notice and requests comment by interested parties. The Commission's decision is based on the public record, generally composed of the petition and comments. The Commission has considered a number of preemption items since the passage of the Telecommunications Act of 1996, and believes it is in the public interest to inform the public of the information usually necessary for full consideration of the issues likely to be involved in section 253 preemption proceedings.

The Public Notice establishes suggested guidelines concerning the information that petitioners seeking preemption under section 253 and parties commenting on such petitions should include in their filings. Consideration of a petition requesting Commission action pursuant to section 253 necessarily will involve state or local statutes, regulations, ordinances, or other legal requirements, as well as related information concerning the effect of these measures that will likely be unfamiliar to the Commission initially. In order to render a timely and informed decision, the Commission suggested that petitioners and commenters provide it with relevant information sufficient to describe the legal regime involved in the controversy and provide the other factual information usually necessary for a decision.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

The statutory authority for this collection is contained in Section 253 of the Communications Act of 1934, as amended, 47 U.S.C. § 253.

2. *Use of information.* The Commission will use the information to make decisions under section 253 relating to the preemption of state or local statutes, regulations or other state or local legal requirements.

3. *Technological collection techniques.* In addition to submitting paper copies of their voluntary submissions, petitioners and commenters are requested, but not required, to make submissions on a disc in Microsoft Word. Such computer readable submissions would allow for quicker staff processing and publication on the Commission's website. However, such computer readable submissions are not required in order to reduce the potential burden on petitioners and commenters.
4. *Efforts to identify duplication.* Each preemption petition is likely to commence a unique adjudication. To the extent that multiple entities contemporaneously request preemption of the same state or local statute or regulation, or other state or local legal requirement, the Commission will seriously consider consolidation of the relevant petitions. Even in such circumstances, different petitioners would likely be affected by the subject legal provision in different ways, necessitating individual presentation of their specific claims. In the event that the Commission takes preemption action pursuant to section 253, such action would establish relevant precedent for other similar situations involving state or local laws, regulations or other legal requirements that prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service., thereby reducing the potential for duplicative challenges.
5. *Impact on small entities.* Section 253 of the Communications Act, as amended, allows any entity to challenge certain laws, regulations or other legal requirements that prohibit or have the effect of prohibiting its ability to provide any interstate or intrastate telecommunications service. In some cases, small, new companies, may avail themselves of the Act's provisions. Some of the local legal requirements that are challenged in preemption petitions may be promulgated by small governmental bodies. The Public Notice seeks to inform all entities of the suggested guidelines for petitions and comments. The Commission is aware that some small local government entities whose ordinances are challenged will have limited funds for participation in the adjudicatory process. It is for precisely this reason that the Public Notice has been issued: to provide all interested parties with suggested guidelines concerning the information that they should provide in their petitions and/or comments.
6. *Consequences if information is not collected.* If petitioners and commenters do not file adequate information with the Commission, the Commission will not have the information that it needs to make an appropriate decision and may need to request additional information from parties on a piecemeal basis. If interested parties are not aware of the type of information the Commission is likely to find necessary to support a petition for preemption under section 253, parties may also file petitions that they cannot adequately support. These situations will result in the expenditure of additional resources by the Commission as well as by petitioners and commenters. Delay in the fulfillment of the Commission's statutory mandate under section 253 of the Communications Act, as amended, would also result. Such regulatory delay would undermine the development of competition in the telecommunications industry, as well as the deployment of advanced services, congressional objectives underlying the adoption of the Telecommunications Act of 1996.
7. *Special circumstances. Requiring more than three copies of each completed response (i.e. of each petition for preemption).* Six copies are requested in order to speed processing within the Commission. We anticipate that several staff members will be working on a petition simultaneously, and that petitions will be too voluminous for efficient copying by Commission

staff members in the time frames available for staff consideration. Additional copies are called for if the petitioner wants each Commissioner to receive a copy of the submission, as indicated in the Public Notice.

8. *Federal Register notice; effort to consult with persons outside the Commission.* A 60-day notice soliciting public comment was published in the Federal Register as required by 5 CFR § 1320.8(d) on September 15, 2020 (85 FR 57213). No PRA comments were received as a result of the notice.
9. *Payments or gifts to respondents.* The Commission does not anticipate providing any payment or gift to respondents.
10. *Assurances of confidentiality.* Pursuant to 47 C.F.R § 0.459, a participant in a preemption adjudication may request that information submitted to the Commission not be put in the public record. The party must state the reasons, and provide facts that support withholding the information from the public record. The appropriate Bureau or Office Chief of the Commission will grant a confidentiality request that presents, by a preponderance of the evidence, a case for non-disclosure consistent with the Freedom of Information Act, 5 U.S.C. § 552. If a confidentiality request is denied, the party has five days to appeal the decision to the Commission. If the appeal to the Commission is denied, the respondent has five days to seek a judicial stay.
11. *Questions of a sensitive nature.* The Public Notice does not suggest (much less require) that petitioners or commenters submit information of a sensitive nature (including but not limited to, information relating to sexual behavior or attitudes, religious beliefs, or other matters that are commonly considered private).
12. *Estimates of the hour burden of the collection to respondents.*

a. Filing of Petitions for Preemption:

- (1) Number of respondents: approximately 3.
- (2) Frequency of response: on occasion reporting requirement.
- (3) Annual hour burden per respondent: 125 hours per submission.
Total annual burden is **375 hours**.
- (4) Total estimate of annualized cost to respondents for the hour burdens of collection of information: \$29,058.75.
- (5) Explanation of calculation: The Commission estimates that respondents will use personnel comparable in pay to a GS-15/Step 5 Senior Attorney Advisor (\$77.49/hour) to prepare petitions for preemption.

Total annual burden: 375 (hours) x \$ 77.49 per hour = \$29,058.75.

b. Submission of Written Comments on Petitions:

- (1) Number of respondents: approximately 21.

- (2) Frequency of response: on occasion reporting requirement.
- (3) Annual hour burden per respondent: 63 hours per submission.

Total annual burden is **1,323 hours**.

- (4) Total estimate of annualized cost to respondents for the hour burdens of collection of information: \$102,519.27.
- (5) Explanation of calculation: The Commission estimates that respondents will use personnel comparable in pay to a GS-15/Step 5 Senior Attorney Advisor (\$77.49/hour) to prepare written comments on preemption petitions.

Total annual burden: 1,323 (hours) x \$ 77.49 per hour = \$102,519.27.

Total respondents: 21 + 3 = 24 respondents

Total responses: 21 + 3 = 24 responses

Total in-house cost: \$29,058.75 + \$102,519.27 = \$131,578.02

Total annual burden: 375 + 1,323 = 1,698 burden hours

- 13. *Estimates on the cost burden of the collection to respondents (i.e. petitioners and commenters).*
We estimate that there will be no capital or start-up costs associated with providing information to the Commission as described in the Public Notice. We do not believe following the Public Notice suggested guidelines will necessitate any additional equipment. We estimate there will be no operation or maintenance costs associated with conforming to the suggested guidelines. Some petitioners and commenters may decide to purchase outside services (perhaps economic or legal) to supplement the work of their own personnel in the preparation of their filings. However, we do not have sufficient information to provide an estimate for this supplementation or augmentation at this time.
- 14. *Estimates of the cost burden to the Commission.* There will be no additional costs imposed on the Commission as a result of petitioner and commenter compliance with the suggested guidelines contained in the Public Notice. The Public Notice will not cause additional petitions to be filed that would not be filed without it, nor will it cause additional comments to be filed. The Commission anticipates that compliance with the suggested guidelines will *reduce* the costs of deciding petitions for preemption under section 253 by helping to ensure that the Commission has all relevant facts available to it upon completion of the public comment cycle and discouraging the filing of petitions that cannot be adequately supported. This will eliminate the need for the Commission to request additional, necessary information not provided in the initial filings, and will help to ensure that parties do not file petitions that cannot be adequately supported.

Notwithstanding the foregoing, based on the experience of the Commission to date, and including the reduction in costs associated with promulgation of the Public Notice, we estimate that the Commission will expend an average of 1,000 hours on each preemption petition, including review, analysis and decision making. Using the cost basis described in Item 12 above, this amounts to \$100,000 per petition. At 3 petitions per year, this represents a cost to the Commission of \$300,000 annually.

15. *Program changes or adjustments.* There are no program changes or adjustments to this information collection.
16. *Collections of information whose results will be published.* At present, the Commission makes all preemption petitions and subsequent comments available to the public. The Public Notice will not change this practice.
17. *Display of expiration date of OMB approval of information collection.* The Commission seeks continued approval *not* to display the OMB expiration date for this information collection. Display of the expiration date will create waste because it will require the Commission to re-print the Public Notice unnecessarily (each time this information collection is submitted to OMB for review and approval).
18. There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods:

The Commission does not anticipate that the collection of information will employ statistical methods.