

Supporting Statement

A. Justification

1. Executive Order 12988, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Civil Justice Reform (February 7, 1996), requires federal agencies to make reasonable attempts to resolve disputes expeditiously when feasible through informal discussion, negotiation and settlement using an appropriate alternative dispute resolution technique. Moreover, 29 C.F.R. § 1614.102(b)(2) requires agencies to establish an alternative dispute resolution program to be available to individuals during the pre-complaint and formal complaint process. In order to process, track, and maintain the confidentiality of alternative dispute resolution requests, the Office of Workplace Diversity (OWD) of the Federal Communications Commission (FCC or Commission) collects this information on FCC Form 5628 (Alternative Dispute Resolution Intake Form).

The Commission is requesting the Office of Management and Budget (OMB) approval of this extension collection in order to obtain the full three-year clearance.

Records may include information about parties, e.g., personally identifiable information or PII, and the use(s) and disclosure of this information is governed by the requirements of a system of records notice or “SORN,” FCC/OWD-2, “Alternative Dispute Resolution Program.” There are no additional impacts under the Privacy Act.

Statutory authority for this information collection is contained in Administrative Dispute Resolution Act, 5 U.S.C. § 571 et seq.; Civil Justice Reform, Executive Order 12988; 29 CFR §§ 1614.102(b)(2), 1614.105(f), 1614.108(b), and 1614.603.

2. This information will be used by the OWD to process, track, and maintain the confidentiality of Alternative Dispute Resolution Intake Form requests.
3. Parties will have the ability to file and gain access to this information both electronically and through paper files. Initially, the information will be maintained in a paper filing system. Over the next several years, the FCC will transition to an online filing and reporting system. By using the electronic submission portal, participants will have immediate confirmation of the date their materials are received and will have 24-hour, 7 day access to the electronic portal to upload and download documentation and view the status of their requests.

However, in recognition that some parties cannot file electronically, the OWD will retain the ability for parties to file requests manually. This information will be uploaded into the Online Request portal by OWD personnel.

4. There is no duplication of information in the ADR Intake Form. Pursuant to 29 C.F.R. Part 1614 (EEO-MD-110), the Agency is required to establish an ADR Program to

operate independently of other equal employment opportunity (EEO) program services. The ADR Program may also provide ADR services for non-EEO matters.

5. The collection of this information will not have significant economic impacts on small businesses, organizations or other small entities. In order to determine whether alternative dispute resolution is appropriate, parties must provide certain information to allow the OWD to conduct a case-by-case analysis.
6. The information must be collected in order to comply with the Administrative Dispute Resolution Act, 5 U.S.C. § 571 et seq.; Civil Justice Reform, Executive Order 12988; 29 CFR Part 1614.
7. There are no special circumstances associated with this information collection.
8. The Commission solicited public comments on the Paperwork Reduction Act information collection requirements on May 20, 2021 (86 FR 27432). No comments were received from the public.
9. There will be no payments or gifts to parties in connection with this information collection.
10. Confidentiality of information will be provided in accordance with the Privacy Act.
11. The information requested in the Alternative Dispute Resolution Intake Form assists parties to provide information to ascertain if alternative dispute resolution, specifically mediation, is an appropriate forum to resolve the parties' dispute. Specifically, the FCC Form 5628 (Alternative Dispute Resolution Intake Form) provides information regarding the nature of the dispute, the parties to the dispute and the requested relief sought by the parties to resolve the dispute.

Although the provision of this information is voluntary, if the party fails to submit the information the OWD may be unable to ascertain if the party's dispute is appropriate for mediation consistent with the Administrative Dispute Resolution Act, 5 U.S.C. § 571 et seq.; Civil Justice Reform, Executive Order 12988; 29 CFR Part 1614.

12. The average number of Alternative Dispute Resolution requests filed for Fiscal Years 2019 and 2020 was 2. Typically, parties complete the forms themselves. The OWD attributes the low ADR request numbers, in large part, to two significant external circumstances – namely, an extended federal government-wide shutdown in 2019 and the worldwide onset of the COVID-19 pandemic. Significantly, beginning March 2020, the FCC established employee mandatory full-time telework in the interest of public safety. With ongoing access to conflict resolution methods and training encouraging collaboration and communication to resolve conflicts early through mediation, the OWD has observed a steady increase in the number of requests for FY 2021. With a little over 50% of the fiscal year completed, the OWD has received 5 requests and projects increased employee engagement in the mediation process. Accordingly, the projection for FY 2021 is 14.

| Fiscal Year | Alternative | Dispute | Resolution | Intake | Form |
|--------------|--|--|-----------------------|-------------------------------|---------------------|
| | Annual Filings (Responses without an Attorney) | Annual Filings (Responses with Attorney) | Frequency of Response | Average Response Time (Hours) | Annual Burden Hours |
| 2019 | 2 | | 1 | 3 | 6 |
| | | 2 | 1 | 6 | 12 |
| 2020 | 1 | | 1 | 3 | 3 |
| | | 1 | 1 | 6 | 6 |
| 2021 | 12 | | 1 | 3 | 36 |
| | | 2 | 1 | 6 | 12 |
| Total | 20 | | | | 75 |
| Average | 6.6 rounded up to 7 | | | | 25 |
| Annual Total | 7 requests | | | | 25 |

The Alternative Dispute Resolution Intake Form is an existing form. OWD estimates the average number of Alternative Dispute Resolution Intake Form requests to be filed is 7. The Commission estimates that 7 parties will file an ADR Intake Form annually and that the average burden per response is 3 hours. This response time includes obtaining documentation from personnel preparing and reviewing the request. The total annual burden hours for the 7 requests is 25 hours. The Commission estimates that 71% (5) of the parties will complete and file the form themselves without assistance. The Commission estimates the average per response for parties to complete the form without assistance is approximately 3 hours. The Commission estimates that 29% (2) of the parties will complete and file the form themselves after consultation with an attorney. The Commission estimates the average per response for parties to complete the form including consultation with an attorney is approximately 6 hours. The Commission estimates that 3 hours is allotted to the consultation with the attorney for the ADR Intake Form.

Total Parties: 7 requester

Total Annual applications: 7 requests

Total Annual Burden Hours: 25 hours

- The remaining 29% (2) parties will hire a law firm or outside agency to assist the party with completing and submitting the ADR Intake form. The typical fee is \$400 an hour for representation, plus the cost of supplies (envelopes, postage, cover letter, etc.). For that party hiring a law firm, we estimate a burden of approximately 12.5 hours for the attorney to discuss the request with the party, and represent the party in mediation and settlement. The Commission estimates that 3 hours is spent in the consultation with the attorney (12.5 hours). Thus, the Commission estimates the cost for the preparation

submission and representation for the ADR Intake form is \$5,000 per response and \$10,000 annually for all responses.

Total Cost to Parties for FCC Form 5628 (Alternative Dispute Resolution Intake Form):

- (a) Total annualized capital/startup costs: None.
- (b) Total annual costs (O&M): \$10,000
- (c) Total annualized cost requested: \$10,000

Cost to the parties:

2 parties x 12.5 hours x \$400 attorney/hour = \$10,000

Total Cost to parties: \$10,000

- 14. Cost to the Federal Government Upon receipt of the form, the Commission uses the completed form at varying stages to prepare memoranda, orders, provide copies to the EEOC and district court, to compile data for reports, etc. Accordingly, the Commission staff use the forms throughout the year to perform their duties.

FCC Form 5628 estimated to be filed: 7

| | |
|--|----------------------|
| 7 forms x 45 hours @ \$78.27 per hour (GS-15 Step 5) for processing By an Attorney Advisor | = \$24,655.05 |
| 7 forms x 20 hours @ \$26.69 per hour (GS-7 Step 5) for review By a Reading Assistant | = \$3,736.60 |
| Total | = \$28,391.65 |

Total Cost to the Federal Government: \$24,655.05 + \$3,736.60 = \$28,391.65

- 15. The Commission is reporting adjustments to this information collection. The total number of respondents increased by +2, the total annual responses increased by +2, the total annual burden hours increased by +7 hours and the total annual costs increased by + \$6,250. These calculations are based on the most currently available data to the Commission.
- 16. The Commission will publish data regarding the number of requests filed and demographic information in the annual Equal Employment Opportunity EEO Program Status Report (MD-715 Report). However, no personally identifiable information is included in the data that is submitted in connection with any of these reports.
- 17. The Commission is not seeking to limit display of the expiration date of the OMB approval nor requesting an exception to the compliance certification in 5 C.F.R. § 1320.9 and related provisions of 5 C.F.R. § 1320.8(b)(3).
- 18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.