

SUPPORTING STATEMENT

A. Justification:

1. Sections 64.2500 and 76.2000 of the Commission's rules prohibit agreements between providers of communications services and owners of multiple tenant environments (MTEs) that grant the provider exclusive access and rights to provide service to an MTE. The Commission has amended those sections by adopting new rules that prohibit practices that undermine the Commission's longstanding prohibition on exclusive access contracts. Specifically, the Commission now prohibits common carriers and multichannel video programming distributors (MVPDs) subject to 47 USC § 628(b) from entering into exclusive and graduated revenue sharing agreements with MTE owners. In addition, the Commission now requires that covered providers include disclaimers on marketing materials distributed to MTE tenants and prospective tenants that inform them of the existence of an exclusive marketing arrangement (defined as an arrangement, either written or in practice, between an MTE owner and a service provider that gives the service provider, usually in exchange for some consideration, the exclusive right to certain means of marketing its service to tenants of the MTE). The Commission is mandating provider disclosure of exclusive marketing arrangements in order to remedy MTE tenant confusion regarding the impact of exclusive marketing arrangements, prevent the evasion of the exclusive access rules, and promote competition for communications services in MTEs.

The Commission is requesting OMB approval for a three-year term for this new collection.

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

Statutory authority for this collection is contained in sections 201(b) and 628(b) of the Communications Act of 1934, as amended.

2. The information required to be disclosed as a result of the revisions to 47 CFR §§ 64.2500 and 76.2000 will be used to remedy MTE tenant confusion regarding the impact of exclusive marketing arrangements, prevent the evasion of the exclusive access rules, and promote competition for communications services in MTEs.
3. This collection includes the use of automated, electronic, mechanical, and other technological collection techniques or forms of information technology, such as requiring provider disclosures on electronically delivered and produced written marketing material that is directed at tenants and potential tenants of an MTE where there is an exclusive marketing arrangement. Written marketing material is "directed at" a tenant or prospective tenant of an MTE if it (1) contains specific mention of the MTE; (2) is provided directly to the tenant or prospective tenant because of its relationship (or prospective relationship) to the MTE, regardless of the means by which it is provided (including, but not limited to, being sent via email, regular mail, mailbox insert, or door hanger); or (3) given to a third party, including the MTE owner, with the understanding it will be directed at tenants or prospective tenants of the MTE. It does not, however, include general-purpose marketing material that incidentally reaches tenants or prospective tenants of the MTE (e.g., general area media or online advertising, website promotions).
4. Duplication is avoided in this collection because the required information to be disclosed pursuant to the new rules is not available elsewhere, since only the provider and the MTE owner would know about the existence of the exclusive marketing arrangement. The information that must be provided

to MTE tenants and prospective tenants is in the possession of the provider and the provider is in the best position to distribute the required information, thus avoiding any duplication of efforts.

5. This required disclosure may have an impact on small providers. In compliance with the Paperwork Reduction Act of 1995, the Commission is making every effort to minimize the disclosure burden on all providers, regardless of size. For example, we adopted a disclosure requirement that will have minimal costs for providers, given that a provider simply needs to include a brief, legible disclosure of the exclusive marketing arrangement on marketing material it is otherwise planning to design, print (where appropriate), and send to tenants and prospective tenants of an MTE. In addition, the Commission did not adopt a more onerous disclosure requirement—such as an affirmative, recurring disclosure—because it found it was not necessary to achieve its objectives of reducing tenant confusion and encouraging competition in MTEs. Rather, the Commission found that the minimal requirements for disclosure will alleviate confusion by making MTE tenants aware of the existence of an exclusive marketing arrangement and helping them understand that it does not preclude competition for individual customers in an MTE.
6. If the required provider disclosure is not conducted, or conducted less frequently, then the Commission will not be able to achieve its goals of reducing MTE tenant confusion and encouraging competition for communication services in MTEs. In adopting the new disclosure rules, the Commission found that the costs to providers for implementing the disclosure requirement will be outweighed by the benefits to consumers and MTEs of having accurate knowledge of exclusive marketing arrangements and the corresponding impact of such arrangements. The Commission attempted to minimize the burden on providers by not adopting a more onerous disclosure requirement—such as an affirmative, recurring disclosure.
7. No special circumstances will apply to this collection.
8. The Commission published a notice in the *Federal Register* initiating a 60-day comment period on this collection on March 25, 2022 (87 FR 17085). No comments were received. A copy of the notice is included in the submission to OMB.
9. No gifts or payments will be given to providers as part of this required disclosure.
10. There is no need for confidentiality as part of this collection.
11. This collection does not address any private matters of a sensitive nature, nor are there any privacy impacts.
12. The required provider disclosure must (1) be included on all written marketing material from the provider directed at tenants or prospective tenants of the affected MTE; (2) identify the existence of the exclusive marketing arrangement and include a plain-language description of the arrangement and what it means; and (3) be made in a manner that it is clear, conspicuous, and legible. The term “written marketing material” includes electronic or print material.

Total number of unduplicated respondents: Providers required to comply with the disclosure requirement are common carriers, cable operators, and other providers of MVPD services that have exclusive marketing arrangements with an owner of an MTE. There are approximately 378 cable

operators/MVPDs¹ and 3,054 wired telecommunications carriers² in the United States. We estimate that approximately 50 percent of these entities provide service in MTEs, resulting in approximately 1,716 unduplicated respondents. Based on the record in this proceeding, we find that exclusive marketing arrangements are prevalent in the industry and estimate that 30 percent of these providers have an exclusive marketing arrangement with an MTE owner.³ Consequently, we calculate that the total number of unduplicated respondents required to give notice of an exclusive marketing arrangement is:

1,716 unduplicated respondents x 0.30 = 515 total number of unduplicated respondents.

Total annual disclosures: Providers must make their disclosures to all tenants and prospective tenants in an MTE where there is an exclusive marketing arrangement. By MTE, we specifically mean commercial or residential premises such as apartment buildings, condominium buildings, shopping malls, or cooperatives that are occupied by multiple entities. The term MTE encompasses everything within the scope of two other terms the Commission has used in the past—multiple dwelling unit and multiunit premises. It is currently estimated that 33 percent of Americans live in condominiums or apartments, and millions more work in office buildings.⁴ We estimate there are 28 million individual units in residential MTEs⁵ and another 8 million MTE office tenants in 6 million commercial office buildings.⁶ If 33 percent of these tenants are in an MTE with an exclusive marketing arrangement, then providers will provide required disclosures to approximately 12 million MTE tenants (36 million MTE tenants times .33). We estimate that, on average, providers will send two pieces of marketing material to current and prospective tenants each year that must include the required disclosure. Thus, to calculate the total number of disclosures to be made annually, multiply the total number of tenants to receive the disclosures times the total number of times the disclosures will be sent to tenants annually:

12 million MTE tenants x two notices per year = 24 million total annual disclosures.

Disclosures sent per respondent: The average number of disclosures sent per respondent can be calculated by dividing the total number of disclosures to be made each year (24 million) by the total number of respondents (515) to arrive at 46,602 disclosures to be sent annually by each respondent.

¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false>.

³ See Consolidated Communications and Zply Fiber Comments, GN Docket 17-142, at 6-7 (rec. Oct. 20, 2021).

⁴ See *Improving Competitive Access to Multiple Tenant Environments; Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multiple Family Broadband Council*, GN Docket No. 17-142, MB Docket No. 17-91, Notice of Proposed Rulemaking and Declaratory Ruling, 34 FCC Rcd 5702, 5703, para. 1 (2019) (quoting INCOMPAS 2017 NOI Comments at 3 (citing United States Census Bureau, 2010-14 American Community Survey 5-Year Estimates, Units in Structure)).

⁵ See Megan Gallagher and Mica O'Brien, *How Landlords Can Help Close the Digital Divide for Their Tenants*, Housing Matters, an Urban Institute Initiative (Apr. 21, 2021), <https://housingmatters.urban.org/articles/how-landlords-can-help-close-digital-divide-their-tenants>

⁶ See *Commercial buildings have gotten larger in the United States, with implications for energy*, U.S. Energy Information Administration (Dec. 3, 2020), <https://www.eia.gov/todayinenergy/detail.php?id=46118>

Total annual burden hours: A provider simply needs to include a brief, legible disclosure of the exclusive marketing arrangement on marketing material it is otherwise planning to design, print (where appropriate), and send to tenants and prospective tenants of an MTE. While some initial time must be taken to draft the wording for the disclosure, once it has been finalized, it need only be added to the mark-up of the marketing material to be distributed to tenants and prospective tenants in an MTE (whether by directed email, mailbox insert, door hanger, posted leaflet, etc.). Thus, we estimate that, on average, it will take each provider approximately three hours to comply annually with the disclosure requirement. We estimate it will take one hour of an attorney's time to prepare the disclosure to be disseminated by the provider and approximately two hours for a marketing professional to determine where the disclosure should go on a provider's marketing material and then to disseminate the material.

The total annual burden hours can be calculated by multiplying **3 hours x 515 providers = 1,545 total annual burden hours.**

Average Burden Per Collection: Since we are requesting a three-year term for this collection, we estimate that the total burden of the collection is **1,545 annual burden hours x 3 years = 4,635 total burden hours for the collection.**

Annual Burden Per Respondent: Three hours.

Average Annual Cost Burden Per Respondent: As stated above, we estimate that, for each respondent, it will take annually one hour of an attorney's time to produce the disclosure and two hours for an in-house marketing professional to prepare and send the marketing materials. At \$175 per hour, we estimate that each provider will spend \$175 annually for the attorney, and we also estimate that each provider annually will pay an in-house marketing professional \$33.64 per hour for the marketing work.⁷

1 hour X \$175/hour for the attorney = \$175 average annual cost to each provider
2 hours X \$33.64/hour for the marketing professional = \$67.28 average annual cost to each provider
Total annual cost burden per provider = \$175 + \$67.28 = \$242.28.
Total annual cost burden for this collection = \$242.28 annual cost per provider X 515 providers = \$124,774.

13. We do not anticipate any other annual cost burdens to providers as a result of complying with the disclosure requirements.
14. There are no annualized costs to the federal government as a result of this collection.
15. This is a new information collection resulting in a program change/increase. Specifically, there are increases to this collection to the total number of respondents of 515, total annual responses of 24,000,000, and total annual burden hours of 1,545—all of which will be added to OMB's Active Inventory.
16. The Commission does not intend to publish any information at this time.

⁷ We estimate the hourly wage for an in-house marketing professional to be roughly equivalent to the pay of a federal government worker at the GS-9, step 5 level. See Office of Personnel Management, *Policy, Data, Oversight, Pay & Leave*, 2022 General Schedule (GS) Locality Pay Tables, 2022 Washington-Baltimore-Arlington, DC-MD-VA-WV-PA, Hourly Rate, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf.

17. The Commission does not intend to seek approval to not display the expiration date for OMB approval of this collection. The Commission publishes a list of OMB-approved information collections displaying the OMB control number, OMB expiration date, and title of each collection in 47 CFR § 0.408.
18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

This collection does not employ any statistical methods.