§ 23.138 How does the Paperwork Reduction Act affect this subpart?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–XXXX. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW., Washington, DC 20240.

Dated: March 16, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–06371 Filed 3–18–15; 11:15 am]

BILLING CODE 4310–6W–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2014–0712; FRL–9924–82–Region–4]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Tennessee has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). These changes correspond to certain Federal rules promulgated between July 1, 2004 and June 30, 2006 (also known as RCRA Clusters XV and XVI). With this proposed rule, EPA is proposing to grant final authorization to Tennessee for these changes.

DATES: Send your written comments by April 20, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2014–0712, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: merizalde.carlos@epa.gov.*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below)
- *Mail:* Send written comments to Carlos E. Merizalde, RCRA Corrective Action and Permitting Section, RCRA Cleanup and Brownfields Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
- *Hand Delivery or Courier:* Deliver your comments to Carlos E. Merizalde, RCRA Corrective Action and Permitting Section, RCRA Cleanup and Brownfields Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule in the ''Rules and Regulations'' section of this issue of the **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Carlos E. Merizalde, RCRA Corrective Action and Permitting Section, RCRA Cleanup and Brownfields Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303; telephone number: (404) 562–8606; fax number: (404) 562–9964; email address: *merizalde.carlos@epa.gov.*

SUPPLEMENTARY INFORMATION: Along with this proposed rule, EPA is publishing a direct final rule in the ''Rules and Regulations'' section of this issue of the **Federal Register** pursuant to which EPA is authorizing these changes. EPA did not issue a proposed rule before today because EPA believes this action is not controversial and does not expect comments that oppose it. EPA has explained the reasons for this authorization in the direct final rule. Unless EPA receives written comments that oppose this authorization during the comment period, the direct final rule in this issue of the **Federal Register** will become effective on the date it establishes, and EPA will not take further action on this proposal. If EPA receives comments that oppose this action, EPA will withdraw the direct final rule and it will not take effect. EPA will then respond to public comments in a later final rule based on this proposed rule. You may not have another opportunity to comment on these State program changes. If you want to comment on this action, you must do so at this time. For additional information, please see the direct final rule published in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

Dated: March 2, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–06511 Filed 3–19–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 15–53; FCC 15–30]

Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission asks whether it should adopt a rebuttable presumption that cable operators are subject to effective competition. A franchising authority is permitted to regulate basic cable rates only if the cable system is not subject to effective competition. This proceeding will also implement section 111 of the STELA Reauthorization Act of 2014, which directs the Commission to adopt a streamlined effective competition process for small cable operators.

DATES: Comments are due on or before April 9, 2015; reply comments are due on or before April 20, 2015. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 19, 2015.

ADDRESSES: You may submit comments, identified by MB Docket No. 15–53, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 15–30, adopted and released on March 16, 2015. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due May 19, 2015.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

OMB Control Number: 3060–0550.

Title: Local Franchising Authority Certification, FCC Form 328; Section 76.910, Franchising Authority Certification.

Form No.: FCC Form 328.

Type of Review: Revision of a currently approved collection.

Respondents: State, local or tribal governments; Businesses or other for-profit entities.

Number of Respondents and Responses: 7 respondents; 13 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 4(i) and 623 of the Communications Act of 1934, as amended.

Total Annual Burden: 26 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On March 16, 2015, the Commission released a Notice of Proposed Rulemaking, MB Docket No. 15–53; FCC 15–30. The Notice of Proposed Rulemaking sought comment on whether the Commission should adopt a rebuttable presumption that cable operators are subject to effective competition.

The proposed information collection requirements consist of: FCC Form 328. Pursuant to section 76.910, a franchising authority must be certified by the Commission to regulate the basic service tier and associated equipment of a cable system within its jurisdiction. To obtain this certification, the franchising authority must prepare and submit FCC Form 328. The NPRM seeks comment on revising section 76.910 to require a franchising authority filing Form 328 to submit specific evidence demonstrating its rebuttal of the proposed presumption in section 76.906 that the cable operator is subject to competing provider effective competition pursuant to section 76.905(b)(2). The franchising authority would bear the burden of rebutting the presumption that effective competition exists with evidence that effective competition, as defined in section 76.905(b)(2), does not exist in the franchise area. Unless a franchising authority has actual knowledge to the contrary, it may continue to presume that the cable operator is not subject to one of the other three types of effective competition.

Evidence establishing lack of effective competition. If the evidence establishing the lack of effective competition is not otherwise available, the proposed note to section 76.910(b)(4) as set forth in Appendix A of the NPRM provides that franchising authorities may request from a multichannel video programming distributor (''MVPD'') information regarding the MVPD's reach and number of subscribers. An MVPD must respond to such request within 15 days. Such

responses may be limited to numerical totals.

Franchising authority's obligations if certified. Section 76.910(e) of the Commission's rules currently provides that, unless the Commission notifies the franchising authority otherwise, the certification will become effective 30 days after the date filed, provided, however, that the franchising authority may not regulate the rates of a cable system unless it: (1) Adopts regulations (i) consistent with the Commission's regulations governing the basic tier and (ii) providing a reasonable opportunity for consideration of the views of interested parties, within 120 days of the effective date of the certification; and (2) notifies the cable operator that the franchising authority has been certified and has adopted the required regulations.

The Commission is seeking OMB approval for the proposed information collection requirements.

OMB Control Number: 3060–0560.

Title: Section 76.911, Petition for Reconsideration of Certification.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: State, local or tribal governments; Businesses or other for-profit entities.

Number of Respondents and Responses: 15 respondents; 25 responses.

Estimated Time per Response: 2–10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 4(i) and 623 of the Communications Act of 1934, as amended.

Total Annual Burden: 130 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On March 16, 2015, the Commission released a Notice of Proposed Rulemaking, MB Docket No. 15–53; FCC 15–30. The Notice of Proposed Rulemaking sought comment on whether the Commission should adopt a rebuttable presumption that cable operators are subject to effective competition. Reversing the rebuttable presumption and adopting the procedures discussed in the NPRM could result in changes to the information collection burdens.

The proposed information collection requirements consist of: petitions for reconsideration of certification, oppositions and replies thereto, cable operator requests to competitors for information regarding the competitor's reach and number of subscribers if evidence establishing effective competition is not otherwise available, and the competitors supplying this information.

Summary of the Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking (''NPRM''), we seek comment on how we should improve the effective competition process. Specifically, we ask whether we should adopt a rebuttable presumption that cable operators are subject to effective competition. Pursuant to the Communications Act of 1934, as amended (the ''Act''), a franchising authority is permitted to regulate basic cable rates only if the cable system is not subject to effective competition.[1] As a result, where effective competition exists, basic cable rates are dictated by the marketplace and not by regulation. In 1993, the Commission adopted a presumption that cable operators are not subject to effective competition, absent a cable operator's demonstration to the contrary.[2] Given the changes to the video marketplace that have occurred since 1993, including in particular the widespread availability of Direct Broadcast Satellite (''DBS'') service, we now seek comment on whether to reverse our presumption and instead presume that cable operators are subject to effective competition. Such an approach would reflect the fact that today, based on application of the effective competition test in the current market, the Commission grants nearly all requests for a finding of effective competition. If the Commission were to presume that cable operators are subject to effective competition, a franchising authority would be required to demonstrate to the Commission that one or more cable operators in its franchise area is not subject to effective competition if it wishes to regulate cable service rates. We intend to implement policies that are mindful of the evolving video marketplace.

2. In initiating this proceeding, we are also implementing part of the STELA Reauthorization Act of 2014 (''STELAR''), enacted on December 4, 2014. Specifically, section 111 of STELAR directs the Commission to adopt a streamlined effective competition petition process for small cable operators. Through this proceeding, we intend to fulfill Congress' goal that we ease the burden of the existing effective competition process on small cable operators, especially those that serve rural areas, through a rulemaking that shall be completed by June 2, 2015. We seek comment on whether the adoption of a rebuttable presumption of effective competition would reflect the current multichannel video programming distributor (''MVPD'') marketplace and reduce regulatory burdens on all cable operators—large and small—and on their competitors, while more efficiently allocating the Commission's resources and amending outdated regulations.

II. Background on Effective Competition Rules

3. In the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''), Congress adopted certain requirements for regulation of cable service rates. Specifically, section 623 of the Act indicates a ''preference for competition,'' pursuant to which a franchising authority may regulate basic cable service rates and equipment only if the Commission finds that the cable system is not subject to effective competition. Section 623(l)(1) of the Act defines ''effective competition'' to mean that:

- Fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; [3]
- the franchise area is (i) served by at least two unaffiliated [MVPDs] each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by [MVPDs] other than the largest [MVPD] exceeds 15 percent of the households in the franchise area; [4]
- a[n MVPD] operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area; [5] or
- a local exchange carrier or its affiliate (or any [MVPD] using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means

[1] *See* 47 U.S.C. 543(a)(2).

[2] *See* 47 CFR 76.906.

[3] This first type of effective competition is referred to as ''low penetration effective competition.'' 47 U.S.C. 543(l)(1)(A).

[4] This second type of effective competition is referred to as ''competing provider effective competition.'' *Id.* 543(l)(1)(B).

[5] This third type of effective competition is referred to as ''municipal provider effective competition.'' *Id.* 543(l)(1)(C).

(other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.[6] Section 623 of the Act does not permit franchising authority regulation of any cable service rates other than the basic service rate.

4. In 1993, the Commission implemented the statute's effective competition provisions. The Commission adopted a presumption that cable systems are not subject to effective competition and it provided that a franchising authority that wanted to regulate a cable operator's basic rates must be certified by the Commission. To obtain such certification, a franchising authority files with the Commission FCC Form 328, in which it indicates its belief that the cable system at issue is not subject to effective competition in the franchise area. Unless the franchising authority has actual knowledge to the contrary, under the current rules, it may rely on the presumption of no effective competition. If a cable operator wishes to prevent the franchising authority from regulating its basic service rate, it may rebut the presumption and demonstrate that it is in fact subject to effective competition. In addition to foreclosing regulation of the cable operator's basic rates, a Commission finding that a cable operator is subject to effective competition also affects applicability of other Commission rules.[7]

III. Changes in the Video Programming Landscape Since the 1992 Cable Act

5. In 1993, when the Commission adopted its presumption that cable systems are not subject to effective competition, incumbent cable operators had approximately a 95 percent market share of MVPD subscribers. Only a single cable operator served the local franchise area in all but ''a few scattered areas of the country'' [8] and those operators had ''substantial market power at the local distribution level.'' [9] DBS service had yet to enter the market, and local exchange carriers (''LECs''), such as Verizon and AT&T, had yet to enter the MVPD business in any significant way.

6. Today's MVPD marketplace is markedly different, with cable operators facing dramatically increased competition. The Commission has determined that the number of subscribers to MVPD service has decreased from year-end 2012 to year-end 2013 (from 101.0 million to 100.9 million) and this decrease is entirely due to cable MVPD subscribership, which fell from approximately 55.8 percent of MVPD video subscribers (56.4 million) to approximately 53.9 percent of MVPD video subscribers (54.4 million). In contrast, DBS's market share increased slightly from approximately 33.8 percent of MVPD video subscribers (34.1 million) to approximately 33.9 percent of MVPD video subscribers (34.2 million), and the market share for telephone MVPDs increased significantly from approximately 9.8 percent of MVPD video subscribers (9.9 million) to approximately 11.2 percent of MVPD video subscribers (11.3 million). DIRECTV provides local broadcast channels to 197 markets representing over 99 percent of U.S. homes, and DISH Network provides local broadcast channels to all 210 markets. According to published data, nearly 26 percent of American households in 2013 subscribed to DBS service. Given the 15 percent threshold needed to constitute competing provider effective competition, on a national scale DBS alone has close to double the percentage of subscribers needed for competing provider effective competition. As of year-end 2013, the two DBS MVPDs, DIRECTV and DISH Network, are the second and third largest MVPDs in the United States, respectively.

7. The current state of competition in the MVPD marketplace is further evidenced by the outcomes of recent effective competition determinations. From the start of 2013 to the present, the Media Bureau granted in their entirety 224 petitions requesting findings of effective competition and granted four such petitions in part; the Commission did not deny any such requests in their entirety. In these decisions, the Commission determined that 1,433 communities (as identified by separate Community Unit Identification Numbers (''CUIDs'')) have effective competition,[10] and for the vast majority of these communities (1,150, or over 80 percent) this decision was based on competing provider effective competition.[11] Franchising authorities filed oppositions to only 18 (or less than 8 percent) of the 228 petitions. In the four instances in which the Commission partially granted a petition for a finding of effective competition, the Commission denied the request for a total of seven CUIDs, or less than half a percent of the total number of communities evaluated. The Commission has issued affirmative findings of effective competition in the country's largest cities, suburban areas, and rural areas where subscription to DBS is high. To date, the Media Bureau has granted petitions for a finding of effective competition affecting thousands of cable communities, but has found a lack of effective competition for less than half a percent of the communities evaluated since the start of 2013. Against that backdrop, we seek comment on procedures that could ensure the most efficient use of Commission resources and reduce unnecessary regulatory burdens on industry.

IV. Discussion

A. Presumption That Cable Systems Are Subject to Effective Competition

8. As noted above, at the time of its adoption, the presumption of no effective competition was eminently supportable. We seek comment on whether market changes over the intervening two decades have greatly

[6] This fourth type of effective competition is referred to as ''local exchange carrier,'' or ''LEC,'' effective competition.'' *Id.* 543(l)(1)(D). In 1996 Congress added LEC effective competition to the statute.

[7] *See, e.g., id.* 47 U.S.C. 543(d) (A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system. This subsection does not apply to a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition); 47 CFR 76.921(a) (No cable system operator, other than an operator subject to effective competition, may require the subscription to any tier other than the basic service tier as a condition of subscription to video programming offered on a per channel or per program charge basis).

[8] *Implementation of Section 19 of the Cable Television Consumer Protection & Competition Act of 1992,* First Report, 9 FCC Rcd 7442, 7449, ¶ 15 (1994).

[9] *Id.* at 7449, ¶ 13.

[10] A CUID is a unique identification code that the Commission assigns a single cable operator within a community to represent an area that the cable operator services. A CUID often includes a single franchise area, but it sometimes includes a larger or smaller area. CUID data is the available data that most closely approximates franchise areas.

[11] Of the total number of CUIDs in which the Commission granted a request for a finding of effective competition during this timeframe, 229 (nearly 16 percent) were granted due to low penetration effective competition, and 54 (nearly 4 percent) were granted due to LEC effective competition. None of the requests granted during this timeframe were based on municipal provider effective competition. Where a finding of effective competition was based on one of the other types of effective competition besides competing provider effective competition, it does not mean that competing provider effective competition was not present. Rather, it means that the pleadings raised one of the other types of effective competition, and the Commission thus evaluated effective competition in the context of one or more of those other tests.

eroded, if not completely undercut, the basis for the presumption. Specifically, we ask whether we should adopt a presumption that cable systems are subject to competing provider effective competition, absent a franchising authority's demonstration to the contrary. Would such a presumption be consistent with current market realities, pursuant to which the Commission has found that there is effective competition in nearly all of the communities for which it was asked to make this determination since the start of 2013?

9. As explained above, a finding of competing provider effective competition requires that (1) the franchise area is ''served by at least two unaffiliated [MVPDs] each of which offers comparable video programming to at least 50 percent of the households in the franchise area;'' and (2) ''the number of households subscribing to programming services offered by [MVPDs] other than the largest [MVPD] exceeds 15 percent of the households in the franchise area.'' [12] We seek comment on whether the facts that over 99.5 percent of effective competition requests are currently granted, that over 80 percent of those grants are based on competing provider effective competition, and that DBS has a ubiquitous presence demonstrate that the current state of competition in the MVPD marketplace supports a rebuttable presumption that the two-part test is met. Is such a rebuttable presumption supported by the market changes since 1993, when the presumption of no effective competition was first adopted?

10. With regard to the first prong of the test, we invite comment on whether we should presume that the ubiquitous nationwide presence of DBS providers, DIRECTV and DISH Network, satisfies the requirement that the franchise area be served by two unaffiliated MVPDs each of which offers comparable programming to at least 50 percent of the households in the franchise area. The Commission has held in hundreds of competing provider effective competition decisions that the presence of DIRECTV and DISH Network satisfies the first prong of the test. In fact, the Commission has never determined that the presence of DIRECTV and DISH Network failed to satisfy the first prong of the competing provider test. Moreover, nearly all homes in the U.S. have access to at least three MVPDs. And many areas have access to at least four MVPDs. With respect to the second prong of the competing provider test, we invite comment on whether we should presume that MVPDs other than the largest MVPD have captured more than 15 percent of the households in the franchise area, given that on a nationwide basis competitors to incumbent cable operators have captured approximately 34 percent of U.S. households, or more than twice the percentage needed to satisfy the second prong of the competing provider test.[13] Although we recognize that not every franchise area has subscribership approaching 34 percent for MVPDs other than the incumbent cable operator, data show that nationwide subscription to DBS service alone is nearly twice that required to satisfy the second prong of the competing provider test. Further, out of the 1,440 CUIDs for which the Commission has made an effective competition determination since the start of 2013, it found that 1,150 CUIDs (or nearly 80 percent of the CUIDs evaluated) have satisfied the competing provider test. Given these facts, would adopting a presumption of competing provider effective competition be consistent with the current state of the market? [14]

11. Based on the analysis above, we seek comment on whether we should adopt a presumption that all cable operators are subject to competing provider effective competition. Is such a presumption warranted even though there may be some franchise areas that are not yet subject to effective competition? Based on market developments, is effective competition the norm throughout the United States today even though there still may be pockets of areas that may not be subject to effective competition? Is the most efficient process to establish a nationwide presumption that effective competition does exist, and to address these pocket areas on a case-by-case basis using the procedures we seek comment on below? We also seek comment on any proposals that we should consider in the alternative. For example, are there any areas in which DBS reception is so limited that the Commission should not presume DBS subscribership in excess of 15 percent of households? If there are any areas in which the Commission should not presume the existence of competing provider effective competition, what approach should the Commission take to the effective competition presumption in these areas? Should we retain in certain defined geographic areas the current presumption that cable operators are not subject to effective competition? If commenters support adoption of different rules in certain areas, we ask them to support such differentiated treatment with specific evidence and clear definitions for the areas in which the different rules would apply.

12. We seek comment on whether reversing the presumption would appropriately implement section 111 of STELAR. In section 111, Congress directed the Commission ''to establish a streamlined process for filing of an effective competition petition pursuant to this section for small cable operators,'' and reversing the presumption would establish a streamlined process for all cable operators including small operators. Congress also stated that ''[n]othing in this subsection shall be construed to have any effect on the duty of a small cable operator to prove the existence of effective competition under this section.'' Would changing the presumption fulfill the Commission's responsibilities under section 111? Or, in light of the language in section 111 quoted above, would the Commission need to rely on other statutory authority to change the presumption and thus be required to take action beyond changing the presumption to implement section 111? Does section 111 alter or impose any additional duty on a small cable operator to prove the existence of effective competition? We note that, if this provision were read to restrict the Commission from changing the presumption for small operators, it could have the perverse effect of permitting the Commission, consistent with market realities, to reduce burdens on larger operators but not on smaller ones. We also note that section 111 does not by its own terms preclude the Commission from altering the burden of proof with respect to effective competition. Rather, it simply states that nothing in that particular statutory provision shall be construed as speaking to the issue with respect to small cable operators.

13. If we find that adopting a presumption of effective competition would not implement STELAR's effective competition provision, then how should we implement section 111? Specifically, we invite comment on what streamlined procedures, if any, we should adopt for small cable operators. We note that STELAR directs us to define a ''small cable operator'' in this

[12] 47 U.S.C. 543(l)(1)(B).

[13] *See supra* ¶ 6 ((34.2 million DBS subscribers + 11.3 million telephone MVPD subscribers)/133.8 million U.S. households = 34%, or more than twice the 15% threshold).

[14] The market changes since the adoption of the original presumption do not appear to support a presumption that any of the other effective competition tests (low penetration, municipal provider, or LEC) are met. We seek comment on the accuracy of this observation.

context as ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' If we adopt any streamlined procedures for filing an effective competition petition, should those procedures apply to all cable operators regardless of size? Overall, how can we make the effective competition process more efficient and accessible, particularly for small cable operators?

B. Procedures and Rule Changes To Implement a New Presumption

14. In this section, we invite comment on revised procedures and rule changes that would be necessary if we decide to implement a presumption of effective competition. At the outset, we note that many franchising authorities have certified to regulate basic service tier rates and equipment based on the existing presumption of no effective competition. We seek comment on the appropriate treatment of these certifications. If the presumption is ultimately reversed, should these certifications be administratively revoked on the effective date of the new presumption pursuant to sections 623(a)(1) and (2) because their reliance on the presumption of no effective competition would no longer be supportable? If such certifications are administratively revoked, the franchising authority would have to demonstrate that the cable operator is not subject to effective competition pursuant to the procedures we seek comment on below before it could regulate rates in a community. In such instances, we seek comment on whether -section 76.913(a) of our rules, which otherwise directs the Commission to regulate rates upon revocation of a franchising authority's certification, would apply. In this regard, we note that section 76.913(a) states that ''the Commission will regulate rates for cable services and associated equipment of a cable system not subject to effective competition,'' and here the revocation would be based on a presumption of effective competition. Would a finding that section 76.913(a) does not apply in this context be consistent with section 623(a)(6) of the Act, which requires the Commission to ''exercise the franchising authority's regulatory jurisdiction [over the rates for the provision of basic cable service]'' if the Commission either (1) disapproves a franchising authority's certification filing under section 623(a)(4) or (2) grants a petition requesting revocation of the franchising authority's jurisdiction to regulate rates under section 623(a)(5)? We note that here we would be administratively revoking the franchising authority's jurisdiction under -sections 623(a)(1) and (2), rather than based on a determination described in section 623(a)(5). Would the one-time revocation of existing certifications following adoption of the order in this proceeding necessitate any revisions to section 76.913(a) or any other Commission rules? [15]

15. Alternatively, we seek comment on whether certifications should be revoked 90 days after the effective date of the new presumption. During this 90-day period, a franchising authority with an existing certification would have the opportunity to file a new certification demonstrating that effective competition does not exist in a particular franchise area. If a franchising authority did not file such a new certification, then rate regulation would end in that community at the conclusion of the 90-day period. If a franchising authority did file a new certification, we seek comment on whether that franchising authority should retain the authority to regulate rates until the Commission completes its review of that certification. We also seek comment on whether such a transition process would be consistent with -section 76.913(a) of our rules and section 623(a)(6) of the Act and whether implementing it would require any revisions to section 76.913(a).

16. If we were to reverse the presumption, we seek comment on procedures by which a franchising authority may file a Form 328 demonstrating that effective competition does not exist in a particular franchise area. We seek comment on whether it would be most administratively efficient for franchising authorities, cable operators, and the Commission to incorporate effective competition showings within the certification process, rather than requiring a separate filing. Specifically, when a franchising authority seeks certification to regulate a cable operator's basic service tier and associated equipment, should it continue to file FCC Form 328? Should we revise Question 6 of that form to state the new presumption that cable systems are subject to effective competition, and to require a supplement to Form 328 which contains evidence adequate to satisfy the franchising authority's burden of rebutting the presumption of competing provider effective competition with specific evidence that such effective competition does not exist in the franchise area in question? [16] Unless a franchising authority has actual knowledge to the contrary, should we permit it to continue to presume that the cable operator is not subject to any other type of effective competition in the franchise area? Under such an approach, the franchising authority would not need to submit evidence rebutting the presence of effective competition under those other tests. Except as otherwise discussed herein, should we retain the existing provisions in section 76.910 of our rules, including that a certification will become effective 30 days after the date filed unless the Commission notifies the franchising authority that it has failed to meet one of the specified requirements? [17] Would such an approach be consistent with a presumption of effective competition, and with STELAR's requirement that we streamline the effective competition process for small cable operators? We invite comment on appropriate procedures, and we welcome commenters to propose alternate procedures for the Commission's consideration. For example, we note that section 623(a)(4)(B) of the Act provides that a certification does not become effective if the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that ''the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations.'' Based on a presumption of competing provider effective competition, should the Commission make such a finding of a lack of legal authority, and how could the Commission comply with the required notice and opportunity to comment as stated in the statute if it takes such an approach? Should we make any other changes to FCC Form 328, or to the rules or procedures that apply to franchising authority certifications? We note that

[15] *See, e.g.,* 47 CFR 76.914(b).

[16] The form's instructions for completing Question 6 would be revised accordingly. In addition, we note that instruction number 2 to the form has not been updated to reference LEC effective competition, even though the form itself contains such an update. For accuracy and completeness, we propose to revise instruction number 2 to reference LEC effective competition, in addition to making any necessary changes to Question 6.

[17] *See id.* 76.910(e). In practice, it is the Media Bureau that evaluates certifications and related pleadings on behalf of the Commission, and the Media Bureau would continue to do so. This NPRM contains references to the Commission's role in the franchising authority certification process. Although our rules refer to the Commission having these responsibilities, the Media Bureau has delegated authority to act on certification matters under 47 CFR 0.61.

the Commission has authority to dismiss a pleading that fails on its face to satisfy applicable requirements, and thus, the Commission on its own motion could deny a certification based on failure to meet the applicable burden. Should the cable operator have an opportunity before the 30-day period expires to respond to the franchising authority's showing?

17. We seek comment on procedures by which a cable operator may oppose a certification. Should we permit a cable operator to file a petition for reconsideration pursuant to section 76.911 of our rules, demonstrating that it satisfies any of the four tests for effective competition? Should the procedures set forth in section 1.106 of our rules continue to govern responsive pleadings thereto? If a franchising authority successfully rebuts a presumption of competing provider effective competition, a cable operator seeking to demonstrate that low penetration, municipal provider, or LEC effective competition exists in the franchise area would bear the burden of demonstrating the presence of such effective competition, whereas we would presume the presence of competing provider effective competition absent a franchising authority's demonstration to the contrary. We ask commenters whether we should retain the requirement in section 76.911(b)(1) that the filing of a petition for reconsideration alleging that effective competition exists would automatically stay the imposition of rate regulation pending the outcome of the reconsideration proceeding. Should we make any revisions to existing section 76.911 of our rules? If the Commission does not act on a section 76.911 petition for reconsideration within six months, should the petition be deemed granted based on the same finding that would underlie a presumption of competing provider effective competition, *i.e.,* that the ubiquitous nationwide presence of DBS providers has made effective competition the norm throughout the United States? We seek comment on whether a deemed granted process can be implemented consistent with the requirements of sections 623(a)(2) and/or 623(a)(4). As with any Commission action, the franchising authority would have the right to file a petition for reconsideration or an application for review to the full Commission of any certification denial or petition for reconsideration grant.[18] We seek comment on any other changes to our rules that would best effectuate the process for certification of franchising authorities to regulate the basic service tier and petitions for reconsideration of such certifications.

18. Our rules currently permit cable operators to request information from a competitor about the competitor's reach and number of subscribers, if the evidence establishing effective competition is not otherwise available. We invite comment on whether we should amend our rules to provide that if a franchising authority filing Form 328 wishes to demonstrate a lack of effective competition and necessary evidence is not otherwise available, the franchising authority may request directly from an MVPD information regarding the MVPD's reach and number of subscribers in a particular franchise area. What would be the costs and benefits of such an approach? As currently required for such requests by cable operators, should we require the MVPD to respond to such a request within 15 days, and should we retain the requirement that such responses may be limited to numerical totals related to subscribership and reach? Existing section 76.907(c), which governs such requests in the context of petitions for a determination of effective competition and which also applies to petitions for reconsideration of certification pursuant to section 76.911(a)(1), would remain in effect.

19. We ask commenters to indicate whether any other revisions to the rules would be necessary to implement a new effective competition framework in which we presume the existence of competing provider effective competition. In addition, we invite comment on whether the new rules and procedures for effective competition should go into effect once the Commission announces approval by the Office of Management and Budget (''OMB'') of the rules that require such approval.

20. Similarly, if the Commission adopts an order implementing the presumption that cable operators are subject to effective competition, how should we address cable operator petitions seeking findings of effective competition that are pending as of the adoption date? Should any such petitions that are pending as of the effective date of the new rules be granted? Or should such petitions be adjudicated on the merits under the new presumption of competing provider effective competition? Should different procedures apply if a pending petition seeking a finding of effective competition was opposed? We also seek comment on any other appropriate manner in which we should dispose of these pending petitions.

21. If the Commission adopts a new presumption, we invite comment on whether the new procedures we seek comment on above overall would be less burdensome for cable operators including small operators, and whether fewer effective competition determinations would require Commission adjudication. Approximately how many franchising authorities with current certifications will submit a new FCC Form 328, and for approximately how many CUIDs? We invite comment on whether we should retain section 76.907 of our rules, which governs petitions for a determination of effective competition. If a franchising authority is certified after a presumption of competing provider effective competition is adopted, a cable operator may at a later date wish to file a petition for a determination of effective competition demonstrating that circumstances have changed and one of the four types of effective competition exists. If we retain section 76.907 and adopt a presumption of competing provider effective competition, we would need to revise section 76.907(b) to reflect the new presumption.

22. We invite comment on whether franchising authorities, including small franchising authorities, would face significant, unreasonable burdens in preparing revised Form 328, including the attachment rebutting a presumption of competing provider effective competition. Would any such burdens be justified given the prevalence of effective competition in the market today? Should we take any actions to mitigate the burdens on franchising authorities, particularly small franchising authorities, or do so few franchising authorities expend the resources needed to regulate basic cable rates that separate procedures are not needed? If commenters seek different rules applicable to small franchising authorities, what rules should we adopt and how should we define ''small franchising authority'' in this context? For example, the Regulatory Flexibility Act (''RFA'') defines ''small governmental jurisdictions'' as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''

23. What are the costs and benefits that would result from the adoption of a presumption of competing provider effective competition? Would such a presumption ease significant burdens that cable operators currently face in filing effective competition petitions

[18] *See* 47 CFR 1.106 and 1.115. Cable operators would have the same recourse for certification grants.

under the current presumption that is inconsistent with market realities? Would such a presumption also conserve Commission resources by significantly reducing the number of effective competition determinations that the Commission needs to adjudicate? While franchising authorities would face the costs of demonstrating a lack of competing provider effective competition, we invite comment on whether these costs would be modest given the small number of affected franchise areas due to the prevalence of effective competition throughout the nation, and whether they would be outweighed by the significant cost-saving benefits of a presumption that is consistent with today's marketplace. Finally, what would be the costs and benefits associated with streamlining the effective competition process for small cable operators?

V. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), *see* 5 U.S.C. 603, the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (''NPRM''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). *See* 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

25. In the NPRM, the Commission seeks comment on how it should improve the effective competition process. Specifically, it asks whether it should adopt a rebuttable presumption that cable operators are subject to effective competition. Pursuant to the Communications Act of 1934, as amended (the ''Act''), a franchising authority is permitted to regulate basic cable rates only if the cable system is not subject to effective competition.[19] As a result, where effective competition exists, basic cable rates are dictated by the marketplace and not by regulation. In 1993, the Commission adopted a presumption that cable operators are not subject to effective competition, absent a cable operator's demonstration to the contrary.[20] Given the changes to the video marketplace that have occurred since 1993, including in particular the widespread availability of Direct Broadcast Satellite (''DBS'') service, we now seek comment on whether to reverse our presumption and instead presume that cable operators are subject to effective competition. Such an approach would reflect the fact that today, based on application of the effective competition test in the current market, the Commission grants nearly all requests for a finding of effective competition. If the Commission were to presume that cable operators are subject to effective competition, a franchising authority would be required to demonstrate to the Commission that one or more cable operators in its franchise area is not subject to effective competition if it wishes to regulate cable service rates. We intend to implement policies that are mindful of the evolving video marketplace.

26. In initiating this proceeding, we are also implementing part of the STELA Reauthorization Act of 2014 (''STELAR''), enacted on December 4, 2014. Specifically, section 111 of STELAR directs the Commission to adopt a streamlined effective competition petition process for small cable operators. Through this proceeding, we intend to fulfill Congress' goal that we ease the burden of the existing effective competition process on small cable operators, especially those that serve rural areas, through a rulemaking that shall be completed by June 2, 2015. We seek comment on whether the adoption of a rebuttable presumption of effective competition would reflect the current multichannel video programming distributor (''MVPD'') marketplace and reduce regulatory burdens on all cable operators—large and small—and on their competitors, while more efficiently allocating the Commission's resources and amending outdated regulations.

2. Legal Basis

27. The proposed action is authorized pursuant to sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 543, and section 111 of the STELA Reauthorization Act of 2014, Public Law 113–200, section 111, 128 Stat. 2059 (2014).

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

28. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

29. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, a substantial majority may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

30. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''

[19] *See* 47 U.S.C. 543(a)(2).

[20] *See* 47 CFR 76.906.

The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the entire year. Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

31. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rate regulation rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. According to SNL Kagan, there are 1,258 cable operators. Of this total, all but 10 incumbent cable companies are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,584 cable systems nationwide. Of this total, 4,012 cable systems have fewer than 20,000 subscribers, and 572 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

32. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the entire year. Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled ''Cable and Other Program Distribution.'' The 2002 definition of Cable and Other Program Distribution provided that a small entity is one with $12.5 million or less in annual receipts. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

33. *Open Video Systems.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the entire year. Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

34. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

35. *Incumbent Local Exchange Carriers (''ILECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the entire year. Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

36. The NPRM invites comment on whether the Commission should presume that cable operators are subject to competing provider effective competition, with the burden of rebutting this presumption falling on the franchising authority. If such an approach is adopted, a franchising authority seeking certification to regulate a cable system's basic service would file FCC Form 328, including a demonstration that the franchising authority has met its burden. Franchising authorities are already required to file FCC Form 328 to obtain certification to regulate a cable system's basic service, but the demonstration rebutting a presumption of competing provider effective competition would be a new requirement. Cable operators, including small cable operators, would retain the burden of demonstrating the presence of any other type of effective competition, which a cable operator may seek to demonstrate if a franchising authority rebuts the presumption of competing provider effective competition. A cable operator opposing a certification would be permitted to file a petition for reconsideration pursuant to section 76.911 of our rules, as is currently the case, demonstrating that it satisfies any of the four tests for effective competition. The procedures set forth in section 1.106 of our rules would continue to govern responsive pleadings thereto. While a certification would become effective 30 days after the date filed unless the Commission notifies the franchising authority otherwise, the filing of a petition for reconsideration based on the presence

of effective competition would automatically stay the imposition of rate regulation pending the outcome of the reconsideration proceeding.

37. Some franchising authorities have current certifications that will be in place as of the effective date of the new rules. The NPRM asks whether, if the presumption is ultimately reversed, these certifications should be administratively revoked on the effective date of the new presumption. The NPRM also asks how the Commission should address cable operator petitions seeking findings of effective competition that are pending as of the adoption date of a presumption of competing provider effective competition, including whether the Commission should grant any such petitions.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

38. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

39. Overall, the Commission seeks to adopt an approach that will more closely correspond to the current marketplace, and it aims to lessen the number of effective competition determinations addressed by the Commission and thus to reduce regulatory burdens on cable operators and their competitors, and to more efficiently allocate the Commission's resources and amend outdated regulations. In paragraphs 21–23 of the NPRM, the Commission considers the impact of procedures implementing a presumption of competing provider effective competition on all entities, including small entities. The Commission invites comment on whether the new procedures it seeks comment on overall would be less burdensome for cable operators, including small operators, and whether fewer effective competition determinations would require Commission adjudication. The NPRM asks whether franchising authorities, including small franchising authorities, would face significant, unreasonable burdens in preparing revised Form 328, including the attachment rebutting a presumption of competing provider effective competition. The NPRM asks whether any such burdens would be justified given the prevalence of effective competition in the market today, and whether the Commission should take any actions to mitigate the burdens on franchising authorities, particularly small franchising authorities. If commenters seek different rules applicable to small franchising authorities, the Commission asks what rules it should adopt and how it should define ''small franchising authority'' in this context. Overall, the Commission solicits alternative proposals, and it will welcome those that would alleviate any burdens on small entities. The Commission will consider alternatives to minimize the regulatory impact on small entities. For example, the NPRM seeks comment on any proposals that it should consider in the alternative, including whether there are any areas in which DBS reception is so limited that the Commission should not presume DBS subscribership in excess of 15 percent of households. Additionally, the NPRM asks whether the Commission should implement an alternate approach of presuming that the franchising authority lacks legal authority to adopt rate regulations, based on a presumption of competing provider effective competition.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

40. None.

B. Initial Paperwork Reduction Act Analysis

41. This document contains proposed new or revised information collection requirements, including the processes that would apply if the Commission adopts a rebuttable presumption of effective competition. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

C. Ex Parte Rules

42. *Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Filing Requirements

43. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

44. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

45. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

E. Additional Information

46. For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

VI. Ordering Clauses

47. Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 543, and section 111 of the STELA Reauthorization Act of 2014, this Notice of Proposed Rulemaking *is adopted.*

48. *It is further ordered* that, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Revise § 76.906 to read as follows:

§ 76.906 Presumption of effective competition.

In the absence of a demonstration to the contrary, cable systems are presumed to be subject to effective competition pursuant to § 76.905(b)(2).

■ 3. Amend § 76.907 by revising paragraph (b) to read as follows:

§ 76.907 Petition for a determination of effective competition.

* * * * *

(b) If the cable operator seeks to demonstrate that effective competition as defined in § 76.905(b)(1), (3) or (4) exists in the franchise area, it bears the burden of demonstrating the presence of such effective competition. Effective competition as defined in § 76.905(b)(2) is governed by the presumption in § 76.906.

Note to paragraph (b): The criteria for determining effective competition pursuant to § 76.905(b)(4) are described in Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96–85, FCC 99–57 (released March 29, 1999).

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■ 4. Amend § 76.910 by revising paragraph (b)(4) to read as follows:

§ 76.910 Franchising authority certification.

* * * * *

(b) * * *

(4) The cable system in question is not subject to effective competition. The franchising authority must submit specific evidence demonstrating its rebuttal of the presumption in § 76.906 that the cable operator is subject to effective competition pursuant to § 76.905(b)(2). Unless a franchising authority has actual knowledge to the contrary, the franchising authority may presume that the cable operator is not subject to effective competition pursuant to § 76.905(b)(1), (3) or (4).

Note to paragraph (b)(4): The franchising authority bears the burden of rebutting the presumption that effective competition exists with evidence that effective competition, as defined in § 76.905(b)(2), does not exist in the franchise area. If the evidence establishing the lack of effective competition is not otherwise available, franchising authorities may request from a multichannel video programming distributor information regarding the multichannel video programming distributor's reach and number of subscribers. A multichannel video programming distributor must respond to such request within 15 days. Such responses may be limited to numerical totals.

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