period until such information has been received from the requestor. The 20-day processing period will recommence after receipt of the requested information.

* * * * *

(d) *Multitrack processing of requests.* The Secretary uses multitrack processing of FOIA requests. Requests which seek and are granted expedited processing are put on the expedited track. All other requests are designated either simple or complex requests based on the amount of time and/or complexity needed to process the request. A request may be considered simple if it involves records that are routinely requested and readily available.

(e) *Expedited processing of requests.* (1) The Secretary will provide for expedited processing of requests for records when the person requesting the records can demonstrate a compelling need.

* * * * *

(4) The Secretary shall determine whether to provide expedited processing, and provide notice of the determination to the person making the request, within ten (10) calendar days after the receipt date of the request.

* * * * *

■ 10. Amend § 503.34 by revising paragraph (a) to read as follows:

§ 503.34 Annual report of public information request activity.

(a) On or before February 1 of each year, the Commission must submit to the Attorney General of the United States, in the format required by the Attorney General, a report on FOIA activities which shall cover the preceding fiscal year pursuant to 5 U.S.C. 552(e).

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Subpart I—Public Observation of Federal Maritime Commission Meetings and Public Access to Information Pertaining to Commission Meetings

■ 11. Amend § 503.87 by revising paragraph (b) to read as follows:

§ 503.87 Effect of provisions of this subpart on other subparts.

* * * * *

(b) Nothing in this subpart shall permit the withholding from any individual to whom a record pertains any record required by this subpart to be maintained by the agency which record is otherwise available to such an individual under the provisions of subpart H of this part.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2015–16101 Filed 7–1–15; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 15–53; FCC 15–62]

Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission improves and expedites the Effective Competition process by adopting a rebuttable presumption that cable operators are subject to Competing Provider Effective Competition. This action implements 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: The FCC will publish a document in the **Federal Register** announcing the effective date of this final rule after OMB approval.

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.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Effective Competition Order, FCC 15–62, adopted on June 2, 2015 and released on June 3, 2015. The full text of this document 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. Copies of the materials can be obtained from the FCC's Reference Information Center at (202) 418–0270. 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).

Summary of the Order

I. Introduction

1. In this Report and Order (''Order''), we improve and expedite the effective competition process by adopting a rebuttable presumption that cable operators are subject to ''Effective Competition.'' [1] Specifically, we presume that cable operators are subject to what is commonly referred to as ''Competing Provider Effective Competition.'' As a result, each franchising authority [2] will be prohibited from regulating basic cable rates unless it successfully demonstrates that the cable system is not subject to Competing Provider Effective Competition. This change is justified by the fact that Direct Broadcast Satellite (''DBS'') service is ubiquitous today and that DBS providers have captured almost 34 percent of multichannel video programming distributor (''MVPD'') subscribers. This Order also implements section 111 of the STELA Reauthorization Act of 2014 (''STELAR''), which directs the Commission to adopt a streamlined Effective Competition process for small cable operators.[3] By adopting a rebuttable presumption of Competing Provider Effective Competition, we update our Effective Competition rules, for the first time in over 20 years, to reflect the current MVPD marketplace, reduce the regulatory burdens on all cable operators, especially small operators,[4] and more efficiently allocate the Commission's resources.

II. Background

2. In the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''), Congress adopted a ''preference for competition,'' pursuant to which a franchising authority may regulate basic cable service tier rates

[1] Effective Competition is a term of art that the statute defines by application of specific tests.

[2] A ''franchising authority'' is ''any governmental entity empowered by Federal, State, or local law to grant a franchise.'' *See* 47 U.S.C. 522(10).

[3] *See* Public Law 113–200, section 111, 128 Stat. 2059 (2014); 47 U.S.C. 543(o)(1) (''Not later than 180 days after December 4, 2014, the Commission shall complete a rulemaking to establish a streamlined process for filing of an effective competition petition pursuant to this section for small cable operators, particularly those who serve primarily rural areas.''). Accordingly, this rulemaking must be completed by June 2, 2015.

[4] Congress applied the definition of ''small cable operator'' as set forth in section 623(m)(2) of the Communications Act of 1934, as amended (the ''Act''), which is ''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.'' *See* 47 U.S.C. 543(m)(2), (o)(3).

and equipment only if the Commission finds that the cable system is not subject to Effective Competition.[5] Section 623(l)(1) of the Act defines the four types of Effective Competition, as follows:

- Low Penetration Effective Competition, which is present if fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;
- Competing Provider Effective Competition, which is present if 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;
- Municipal Provider Effective Competition, which is present if an 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; and
- Local Exchange Carrier (LEC) Effective Competition, which is present if 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 (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.

Section 623 of the Act does not permit franchising authorities to regulate any cable service rates other than the basic service tier rate and equipment used to receive the signal.

3. In 1993, when the Commission implemented the statute's Effective Competition provisions, the existence of Effective Competition was the exception rather than the rule. Incumbent cable operators had captured approximately 95 percent of MVPD subscribers. In the vast majority of franchise areas only a single cable operator provided service and those operators had ''substantial market power at the local distribution level.'' [6] DBS service had not yet entered the market, and local exchange carriers (''LECs''), such as Verizon and AT&T, had not yet entered the MVPD business in any significant way. Against this backdrop, 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 service tier rates must be certified by filing FCC Form 328 with the Commission. A cable operator that wishes to challenge the franchising authority's right to regulate its basic service tier rate bears the burden of rebutting the presumption and demonstrating that it is in fact subject to Effective Competition.

4. As described in the Notice of Proposed Rulemaking (''NPRM'') in this proceeding, the MVPD marketplace has changed in ways that substantially impact the test for Competing Provider Effective Competition. After the NPRM was released, the Commission adopted its most recent video competition report containing many of the same statistics cited in the NPRM. Specifically, the video competition report reached the following conclusions, among others:

- Slight increase in DBS subscribership. The number of DBS subscribers increased from year-end 2012 (34.1 million, or 33.8 percent of MVPD subscribers) to year-end 2013 (34.2 million, or 33.9 percent of MVPD subscribers).
- Significant increase in telephone MVPD subscribership. The number of telephone MVPD subscribers increased from year-end 2012 (9.9 million, or 9.8 percent of MVPD subscribers) to year-end 2013 (11.3 million, or 11.2 percent of MVPD subscribers).
- Widespread availability of DBS video service. 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.
- Consumer access to multiple MVPDs. Approximately 99.7 percent of homes in the U.S. have access to at least three MVPDs, and nearly 35 percent have access to at least four MVPDs.

As described in the NPRM, the Commission has found Effective Competition in more than 99.5 percent of the communities evaluated since the start of 2013. As stated in the NPRM, the Commission has issued affirmative findings of Effective Competition in the country's largest cities, in its suburban areas, and in its rural areas where subscription to DBS is particularly high.

5. The Commission released the NPRM in this proceeding seeking comment on adopting a presumption of Competing Provider Effective Competition. The Commission sought to establish a streamlined Effective Competition process for small cable operators and to adopt policies that would reduce unnecessary regulatory burdens on the industry as a whole while ensuring the most efficient use of Commission resources.

III. Discussion

A. Rebuttable Presumption That Cable Systems are Subject to Effective Competition

6. We adopt a rebuttable presumption that cable operators are subject to Competing Provider Effective Competition, finding that such an approach is warranted by market changes since the Commission adopted the presumption of no Effective Competition over 20 years ago. When the Commission adopted the presumption of no Effective Competition, incumbent cable operators had approximately a 95 percent market share of MVPD subscribers and only a single cable operator served the local franchise area in the vast majority of franchise areas, which is very different from today's marketplace. As explained above, the two-pronged test for 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.'' [7] Below we explain

[5] Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, 106 Stat. 1460 (1992); 47 U.S.C. 543(a)(2)(A). This Order contains references to the Commission's role in the franchising authority certification process. Although our rules refer to the Commission as having these responsibilities, the Media Bureau has delegated authority to act on certification matters pursuant to the rules established by the Commission, and in practice the Media Bureau evaluates certifications and related pleadings on behalf of the Commission. *See* 47 CFR 0.61.

[6] *Implementation of section 19 of the Cable Television Consumer Protection & Competition Act of 1992*, First Report, 9 FCC Rcd 7442, 7449, paragraph 13 (1994).

[7] 47 U.S.C. 543(l)(1)(B). The statute establishes the applicable test for each type of Effective Competition, and we thus cannot modify the tests, as some commenters request, nor can we base an Effective Competition decision on vague allegations of large cable operators' dominance. In addition, while some commenters state that the basic service tier rate increases more rapidly in communities with a finding of Effective Competition than in those without such a finding, we emphasize that the average rate for basic service is actually lower in communities with a finding of Effective Competition than in those without a finding, demonstrating that basic service tier rates remain reasonable where there is a Commission finding of Effective Competition. *See Implementation of*

how the current state of competition in the MVPD marketplace, particularly with regard to DBS, supports a rebuttable presumption that the two-part test is met.

7. At the outset, we note that out of the 1,440 Community Unit Identification Numbers (''CUIDs'') [8] for which the Commission has made an Effective Competition determination since the start of 2013, it found that 1,433 CUIDs (or more than 99.5 percent of the CUIDs evaluated) have satisfied one of the statutory Effective Competition tests.[9] For the vast majority of the CUIDs evaluated (1,150, or approximately 80 percent), this decision was based on Competing Provider Effective Competition.[10] Franchising authorities filed oppositions to only 18 (or less than 8 percent) of the total of 228 Effective Competition petitions considered during this timeframe.[11] Some commenters object to an analysis of data based on filed Effective Competition petitions, asserting that cable operators do not file petitions where they know the filings would be denied based on a lack of Effective Competition. However, given data that indicates a ubiquitous DBS presence nationwide, we have no reason to believe that the number of Effective Competition petitions granted in recent years is not representative of the marketplace on the whole. Marketplace realities cause us to believe that in nearly all communities where cable operators have declined to file Effective Competition petitions, Effective Competition is present but the cable operator has not found it worthwhile to undertake the expense of filing an Effective Competition petition, perhaps because the vast majority of franchising authorities have chosen not to regulate rates despite the existing presumption of no Effective Competition.

8. With regard to the first prong of the Competing Provider Effective Competition test as related to the new presumption, we find that the ubiquitous nationwide presence of DBS providers, DIRECTV and DISH Network, presumptively 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. Neither DIRECTV nor DISH Network is affiliated with each other.[12] To offer comparable programming, the Commission's rules provide that a competing MVPD must offer at least 12 channels of video programming, including at least one channel of non-broadcast service programming.[13] The programming lineups of DIRECTV and DISH Network satisfy this requirement. In addition, the widespread presence of DIRECTV and DISH Network justifies a rebuttable presumption that they each offer MVPD service to at least 50 percent of households in all franchise areas. As stated above, 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.[14] In the most recent video competition report, the Commission assumed that DBS MVPDs are available to all homes in the U.S., while recognizing that this slightly overstates the actual availability of DBS. Further, 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. Notably, the Commission has never determined that the presence of DIRECTV and DISH Network failed to satisfy the first prong of the competing provider test.

9. With regard to the second prong of the test, we will presume that more than 15 percent of the households in a franchise area subscribe to programming services offered by MVPDs other than the largest MVPD. Based on the data presented above, on a nationwide basis competitors to incumbent cable operators have captured approximately 34 percent of U.S. households, or more than double the percentage needed to satisfy the second prong of the competing provider test.[15] Nationally, DBS service alone has close to twice the necessary subscribership.[16] Further, NCTA has found that competing MVPDs have a penetration rate of more than 15 percent in each of the 210 Designated Market Areas (''DMAs'') in the United States, and most DMAs have a DBS penetration rate above 20 percent. NAB argues that a presumption based on national market share data lacks a

Section 3 of the Cable Television Consumer Protection and Competition Act of 1992: Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment, Report on Cable Industry Prices, 29 FCC Rcd 14895, 14902, paragraph 15 (2014). In addition, contrary to NAB's assertion, there is no evidence in the record that a finding of Effective Competition causes cable operators to increase their other fees or equipment rental charges. We also clarify that while commenters characterize their statistics as a comparison between communities with Effective Competition and communities without Effective Competition, the statistics in fact involve communities where the Commission has made a finding of Effective Competition and communities where the Commission has yet to make such a finding even though Effective Competition may be present.

[8] 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.

[9] The IAC's suggestion that the Commission has made incorrect Effective Competition findings is unsubstantiated. Intergovernmental Advisory Committee to the FCC, Advisory Recommendation No. 2015–7, at 2–3 (filed May 15, 2015) (''IAC Recommendation''). We clarify that any Commission grant of an Effective Competition petition, including an unopposed petition, is based on satisfaction of the statutory Effective Competition tests. *Id.* at 3.

[10] 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 was 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 necessarily 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 that context. In fact, cable operators often file Effective Competition petitions arguing that they are subject to more than one type of Effective Competition within a single franchise area. In such cases, if the Bureau finds that a cable operator has met its burden under one of the statutory tests, it forgoes making a finding under the alternate tests for Effective Competition.

[11] The IAC argues that a franchising authority may not oppose an Effective Competition petition for various reasons, including administrative delays. We emphasize, however, that the exceedingly small number of opposed petitions is just one of many factors that support a rebuttable presumption of Competing Provider Effective Competition, as detailed above.

[12] We recognize that DIRECTV and AT&T Inc. have filed applications for consent to assign or transfer control of licenses and authorizations. *See* MB Docket No. 14–90. That proceeding remains pending. Even if the DIRECTV and AT&T applications are granted, DIRECTV and DISH Network still will not be affiliated with each other and both of them may be considered as competing providers for purposes of the Competing Provider Effective Competition test.

[13] The NPRM did not seek comment on revisiting the meaning of ''comparable'' programming in this context, and thus we reject commenters' requests that we do so here.

[14] Even in the 13 markets where DIRECTV does not provide local broadcast channels, its channel lineup still satisfies the comparable programming requirement because its channel lineup contains substantially more than 12 channels including at least one channel of non-broadcast service programming.

[15] At year-end 2013 there were 34.2 million DBS subscribers and 11.3 million telephone MVPD subscribers, which yields a total of 45.5 million subscribers to competitors to incumbent cable operators. SNL Kagan estimates that there were 133.8 million households in this country in 2013. *See http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx?startYear=2012&endYear=2013* (visited Mar. 31, 2014). If we divide 45.5 million by 133.8 million, the data shows that competitors to incumbent cable operators have captured approximately 34 percent of U.S. households.

[16] If we divide 34.2 million by 133.8 million, the data shows that DBS operators have captured approximately 25.6 percent of U.S. households.

rational nexus to the question of whether more than 15 percent of the households in a specific franchise area actually subscribe to programming services offered by MVPDs other than the largest MVPD. We disagree, finding instead that, as NCTA states, ''an average figure is not conclusive evidence of the specific penetration in every community'' but ''it undeniably supports the Commission's proposed rebuttable presumption'' and ''is a strong predictor that competitors have garnered far in excess of the market share Congress deemed necessary to free cable operators from the vestiges of rate regulation.'' The level of competing MVPD penetration in all of the DMAs, along with their ubiquitous service availability, justifies placing the burden on franchising authorities to show a lack of Effective Competition. Under the rebuttable presumption adopted in this Order, local franchising authorities will be able to attempt to demonstrate that the Competing Provider Effective Competition test is not met in a given area. Thus, we will not be basing our finding on the nationwide statistics alone.

10. For all of the above reasons, we conclude that adopting a rebuttable presumption of Competing Provider Effective Competition is consistent with the current state of the video marketplace. We do not, however, find that market changes since the adoption of the original presumption would support a presumption that any of the other Effective Competition tests (low penetration, municipal provider, or LEC) is met. Although some commenters have asked that we also establish a rebuttable presumption of LEC Effective Competition in any franchise area where an LEC MVPD offers video service, we decline to do so at this time. The record lacks evidence to support a presumption that the service area of an LEC MVPD substantially overlaps that of the incumbent cable operator in a sufficient number of franchise areas where an LEC MVPD offers video service to make such a presumption supportable. Accordingly, our presumption of Effective Competition is limited to Competing Provider Effective Competition. Absent a demonstration to the contrary, we will continue to presume that cable systems are not subject to Low Penetration, Municipal Provider, or LEC Effective Competition.

11. Adoption of the presumption of Competing Provider Effective Competition is consistent with section 623 of the Act, which prohibits a franchising authority from regulating basic cable rates ''[i]f the Commission finds that a cable system is subject to effective competition.'' Contrary to the suggestion of some commenters, we see no statutory bar to applying a nationwide rebuttable presumption of Competing Provider Effective Competition in making this finding. In fact, the NPRM in the proceeding implementing section 623 of the Act initially proposed to require franchising authorities to demonstrate that Effective Competition was not present in the franchise area, explaining that such an approach would be reasonable because the Act ''makes the absence of effective competition a prerequisite to regulators' legal authority over basic rates.'' Specifically, the statute provides that ''[i]f the Commission finds that a cable system is not subject to effective competition, the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission . . . .'' Although the Commission ultimately took a different course, that decision was based on what was most efficient given the state of the marketplace at the time the presumption was adopted and it was not mandated by statute. Given the state of the video marketplace today, we find that it is appropriate to presume the presence of Competing Provider Effective Competition on a nationwide basis, provided that franchising authorities have an opportunity to rebut that presumption and demonstrate that the Competing Provider Effective Competition test is not met in a specific area. The franchising authority's ability to file a revised Form 328 pursuant to the procedures discussed below will ensure that the Commission will continue to receive evidence regarding a specific franchise area where the franchising authority deems it relevant. The fact that Effective Competition decisions apply to specific franchise areas does not preclude the Commission from adopting a rebuttable presumption of Competing Provider Effective Competition today based on the pervasive competition to cable from other MVPDs, just as it did not prevent the Commission from adopting a rebuttable presumption of no Effective Competition based on cable's national 95 percent share of the MVPD marketplace in 1993. In the NPRM, we sought comment on whether there were certain geographic areas in which we should not adopt a presumption of Competing Provider Effective Competition. No commenter addressed this issue, and thus we will not adopt different rules for any specific geographic areas.

12. We are not persuaded by commenters who argue that we should not adopt a rebuttable presumption of Competing Provider Effective Competition because of the potential impact of findings of Effective Competition on the basic service tier requirement found in section 623 of the Act. Several commenters argue that our action would enable cable operators to move broadcast stations that elect retransmission consent and public, educational, and governmental access (''PEG'') channels to a higher tier, leading to higher consumer prices. If a finding of Effective Competition results in elimination of the basic service tier requirement—a statutory interpretation issue that we do not address here—that conclusion would apply not only in communities where the new presumption of Effective Competition is not successfully rebutted but also in the thousands of communities in which we have already issued findings of Effective Competition. Despite these widespread findings of Effective Competition, commenters have not pointed to a single instance in which cable operators have even attempted to move broadcast stations or PEG channels off the basic service tier.[17] NAB argues that cable operators may not have moved broadcast stations or PEG channels to a higher tier in communities with a finding of Effective Competition at least in part because they do not wish to do so on a fragmented ''patchwork'' basis but they have provided no support for this assertion. Moreover, a patchwork of communities with and without Effective Competition will continue to exist after the adoption of this Order if any franchising authorities are able to rebut the new presumption and remain certified. We thus find that the concerns

[17] Similarly, while the IAC contends that consumers will be harmed because the uniform pricing provision and the tier buy-through provision do not apply following a finding of Effective Competition, they have not pointed to any instances of cable operators in the thousands of communities with Effective Competition findings using this flexibility to the detriment of subscribers in these communities. The IAC also claims that ''use of public rights of ways by [Satellite Master Antenna Television (''SMATV'')] operators serving individual properties may be allowed if there is a finding of effective competition.'' IAC Recommendation at 3; 47 CFR 76.501. IAC has failed to explain the significance of this or why such a possibility would be a reason to refrain from updating our processes to reflect market realities. Further, a SMATV issue has not manifested itself in the thousands of communities that the Commission has already determined are subject to Effective Competition. We also emphasize that both the prohibition against negative option billing and cable customer service standards, as a general matter, survive a finding of Effective Competition, per *Time Warner Entertainment Co., L.P.*, v. *FCC*, 56 F.3d 151, 192–196 (D.C. Cir. 1995). *See* IAC Recommendation at 3; 47 CFR 76.981, 76.309.

expressed by commenters in this regard are unpersuasive. Moreover, they do not speak to the key issue in this proceeding: whether maintaining a presumption of no Effective Competition is consistent with the current state of the MVPD marketplace. Accordingly, we do not believe that they provide a sound basis to retain rules that are no longer justified by marketplace realities and that place unwarranted burdens on cable operators and the Commission.

B. Implementation of Section 111 of STELAR

13. For the reasons stated above, section 623 of the Act provides the Commission with ample authority to adopt a rebuttable presumption of Competing Provider Effective Competition for both large and small cable operators. However, additional support for our decision today is found in STELAR. Specifically, we conclude that adopting a rebuttable presumption of Competing Provider Effective Competition fully effectuates the Commission's responsibilities under section 111 of STELAR. Section 111 directs the Commission ''to establish a streamlined process for filing of an effective competition petition pursuant to this section for small cable operators, particularly those who serve primarily rural areas.'' The new presumption of Competing Provider Effective Competition will establish a streamlined process for all cable operators, including small operators, by reallocating the burden of providing evidence of Effective Competition in a manner that better comports with the current state of the marketplace. The existing presumption of no Effective Competition requires cable operators to produce information about competing providers' service areas and numbers of subscribers, and to petition the Commission for an affirmative finding of the requisite competition in particular franchise areas. Changing the presumption—which is merely a procedural device—will streamline the process by shifting the burden of producing evidence with respect to Effective Competition. Under our modified rule, franchising authorities remain free to rebut the presumption by presenting community-specific evidence, which the cable operator would then have the burden to overcome based on its own evidence. The new process is streamlined for cable operators because they will be required to file only in response to a showing by a franchising authority that an operator does not face Competing Provider Effective Competition in the franchise area. The burden would then shift to the cable operator to prove Effective Competition. As ACA states:

> Despite widespread and obvious competition, many cable operators, particularly small operators, have not availed themselves of effective competition relief because of the burdens of overcoming the current presumption against effective competition. These burdens include the costs of purchasing the required zip code and competing provider penetration information, preparing a formal legal filing for submission to the Commission, paying a filing fee, and then waiting an uncertain amount of time for a decision. Congress recognized these burdens when it enacted Section 111 of STELAR and adoption of the Commission's proposal is the most effective and rational way to reduce these burdens and ensure that cable operators of all sizes that face effective competition obtain the relief to which they are entitled.

14. We agree with commenters that there is no statutory restriction on extending the same revised rebuttable presumption of Competing Provider Effective Competition to all cable systems. Section 111 of STELAR directs the Commission to establish streamlined measures for small cable operators within a certain deadline, but it ''neither expands nor restricts the scope of the Commission's authority to administer the effective competition process.'' [18] As commenters observe, ''reducing regulatory burdens on all cable operators, large and small,'' will ensure that Commission procedures ''reflect marketplace realities and allow for a more efficient allocation of Commission and industry resources.'' [19]

15. We recognize that STELAR provides 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.'' NAB argues that this provision ratifies the Commission's placement of the burden of proving Effective Competition on the cable operators, and prevents the Commission from shifting the burden. We do not read this language as limiting the Commission's authority to eliminate or modify the presumption for cable operators, large or small. The Commission adopted the presumption of no Effective Competition as a procedural mechanism, based in large part on the premise that ''the vast majority of cable systems'' in 1993 were ''not subject to effective competition.'' [20] The presumption was never mandated by Congress, and there is nothing in STELAR's provisions that suggests that Congress intended to withdraw the Commission's general rulemaking power to revisit its rules and modify or repeal them if it finds such action is warranted. In the clause that NAB relies on, Congress merely disavows any intent to alter or interfere with the Commission rule requiring proof of the existence of Effective Competition, as applied to small cable operators. It does not require the Commission to maintain the presumption of no Effective Competition. Rather, Congress only requires the Commission to streamline the process for ''small cable operators.'' Thus, Congress did not ''ratify'' or lock in place the current presumption. Indeed, if this provision were read to restrict the Commission from changing the presumption for small operators, as NAB urges, it would have the perverse effect of permitting the Commission to reduce burdens on larger operators but not on smaller ones, contrary to the clear intent and narrow focus of section 111. Thus, we find unpersuasive NAB's argument that section 111 of STELAR prohibits the rule modifications adopted in this Order.

16. In the NPRM, the Commission sought comment on alternate streamlined procedures that it could adopt for small cable operators pursuant to section 111. Some commenters proposed that we could implement section 111 through small cable operator Effective Competition reforms other than reversing the presumption, for example, by eliminating filing fees, automatically granting certain petitions, adopting a time limit for Commission review, or otherwise streamlining existing Effective Competition procedures. We have evaluated all of the alternate proposals set forth in the record and we conclude that, while some are already implemented, others would not have a sufficient impact on the costs that burden cable operators, particularly small cable operators, under the existing Effective Competition regime, including the costs of purchasing data indicating what zip codes make up the local franchising area, using the resulting list of zip codes to purchase penetration data, and preparing a formal legal filing. Accordingly, we have concluded that

[18] *See* NCTA Reply at 8.

[19] *See* ITTA Comments at 7.

[20] *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation,* Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5670, paragraph 43 (1993) (''*1993 Rate Order*''). *See also id.* at 5640, paragraph 10 (''We anticipate that the regulations we adopt today will change over time. In accordance with the statute, we will review and monitor the effect of our initial rate regulations on the cable industry and consumers, and refine and improve our rules as necessary.'').

adopting a rebuttable presumption of Competing Provider Effective Competition is the best approach to streamline the process for small cable operators.

C. Procedures To Implement the New Presumption

17. In this section, we adopt new procedures to implement the rebuttable presumption of Competing Provider Effective Competition. With certain exceptions discussed below, we adopt procedures largely comparable to those discussed in the NPRM. In short, a franchising authority will obtain certification to regulate a cable operator's basic service tier and associated equipment by filing a revised Form 328, which will include a demonstration rebutting the presumption of Competing Provider Effective Competition. A cable operator may continue to oppose a Form 328 by filing a petition for reconsideration of the form.

18. Specifically, as under our existing procedures, a franchising authority that seeks certification to regulate a cable operator's basic service tier and associated equipment will file Form 328. We will revise Question 6 of that form to include a new Question 6a, which will state the new presumption of Competing Provider Effective Competition. Question 6a will ask a franchising authority to provide an attachment containing evidence adequate to satisfy its burden of rebutting the presumption with specific evidence. A franchising authority may continue to rely on the current presumption that Low Penetration, Municipal Provider, and LEC Effective Competition are not present unless it has actual knowledge to the contrary. Hence, a franchising authority need not submit evidence regarding a lack of Effective Competition under those three tests; it need only submit evidence regarding the lack of Competing Provider Effective Competition. Question 6b of the revised form will state the presumption that cable systems are not subject to any other type of Effective Competition excluding Competing Provider Effective Competition, and it will retain the question in the current form asking the franchising authority to indicate whether it has reason to believe that this presumption is correct. We will revise the instructions for completing Form 328 to reflect the changes to Question 6. In addition, we note that instruction number 2 to the form was not previously updated to reference LEC Effective Competition, even though the form itself contains such an update. For accuracy and completeness, we will revise instruction number 2 to reference LEC Effective Competition.

19. Except as otherwise discussed, we will retain the existing provisions in section 76.910 of our rules governing franchising authority certifications. As stated in current section 76.910, the certification will become effective 30 days after the franchising authority files Form 328 unless the Commission notifies the franchising authority otherwise.[21] We find that this approach is consistent with a presumption of Competing Provider Effective Competition, because the franchising authority is required to submit a rebuttal of that presumption with Form 328. This approach also is consistent with the statutory requirement that in general, a franchising authority's certification must become effective 30 days after the date filed.[22] Once a franchising authority files revised Form 328, the Commission may deny a certification based on failure to meet the applicable burden, consistent with the Commission's authority to dismiss a pleading that fails on its face to satisfy applicable requirements. Accordingly, if a franchising authority files a revised Form 328 that fails to meet the required standards to regulate rates, we will promptly deny the filing and it thus will not become effective 30 days after filing. We see no need to require a franchising authority to wait one year before filing a new Form 328 after one is denied, as ACA requests; we believe that franchising authorities should remain able to file a new Form 328 at any time if circumstances change such that they can submit new data rebutting the presumption of Competing Provider Effective Competition.

20. We also find that deeming a certification effective 30 days after it is filed is consistent with STELAR's requirement that we streamline the Effective Competition process for small cable operators. We expect that few franchising authorities will file the revised Form 328 because they will be unable to produce the necessary evidence to rebut the presumption of Competing Provider Effective Competition in most franchise areas, due to the ubiquity of DBS service. Cable operators thus will likely need to address only a small number of filed Form 328s. In fact, if the Commission finds that the attachment accompanying a franchising authority's Form 328 fails to show the evidence required to rebut the presumption, and the Commission thus dismisses the form based on failure to meet the applicable burden, then the cable operator will not need to take any affirmative action. The new approach adopted herein thus will streamline the Effective Competition process for all cable operators, including small ones. The NPRM sought comment on whether a cable operator should have an opportunity before the 30-day period expires to respond to a franchising authority's showing. Commenters did not address this issue and we find it unnecessary to do so, given that a cable operator may file a petition for reconsideration that would automatically stay the imposition of rate regulation, as discussed below.

21. As discussed in the NPRM, under our current rules a cable operator may oppose a certification by filing a petition for reconsideration pursuant to section 76.911 of our rules, demonstrating that it satisfies any of the four tests for Effective Competition.[23] Similarly, under the new rules, the cable operator may file a petition for reconsideration in which it either (a) disagrees with a franchising authority's rebuttal of the presumption of Competing Provider Effective Competition, or (b) attempts to demonstrate the presence of one of the other types of Effective Competition (low penetration, municipal provider, or LEC). We see no need to make any revisions to existing section 76.911. The procedures set forth in section 1.106 of our rules for the filing of petitions for reconsideration will continue to govern petitions for reconsideration of Form 328 and responsive pleadings.[24] In addition, a cable operator's filing of a

[21] *See* 47 CFR 76.910(e). The franchising authority may not, however, regulate a cable system's rates unless it meets certain procedural requirements. *See id.* (''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 certification; and (2) Notifies the cable operator that the authority has been certified and has adopted the regulations required by paragraph (e)(1) of this section.''). *See also* 47 U.S.C. 543(a)(4).

[22] *See id.* Given this statutory provision, we cannot grant ACA's request that we provide cable operators with 30 days to oppose a revised Form 328 and franchising authorities with 15 days to respond, or that we automatically deny a Form 328 not acted on within 180 days.

[23] We see no benefit to eliminating the distinctions between petitions for reconsideration, petitions for revocation, petitions for recertification, and petitions for a determination of Effective Competition, as ACA advocates.

[24] 47 CFR 1.106(f), 76.911(a). Accordingly, the 30-day period for a cable operator to file its petition for reconsideration begins to run from the 30th day after the Form 328 is filed with the Commission. *1993 Rate Order,* 8 FCC Rcd at 5693, paragraph 88. *See also* 47 CFR 1.106(f).

petition for reconsideration alleging that Effective Competition exists will continue to automatically stay the imposition of rate regulation pending the outcome of the reconsideration proceeding. Although the NPRM sought comment on whether we should deem a petition for reconsideration granted if the Commission does not act on it within six months, we find that such an approach is unnecessary given the automatic rate regulation stay.

22. Our rules currently permit cable operators to request information from a competitor about the competitor's reach and number of subscribers, if the evidence necessary to establish Effective Competition is not otherwise available. We will retain that provision, while adding a similar provision to benefit franchising authorities now that they will bear the burden of demonstrating the lack of Competing Provider Effective Competition. Specifically, we will amend our rules to provide that, if a franchising authority filing Form 328 wishes to demonstrate a lack of Competing Provider 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. As currently required for such requests by cable operators, we will require the MVPD to respond to such a request within 15 days, and we will permit such responses to be limited to numerical totals related to subscribership and reach. Third-party MVPDs must timely respond to these requests, and the Commission may use its enforcement power to ensure compliance. We understand that currently, third-party MVPDs or their agents sometimes charge cable operators for access to this data. We will revisit the issue of the cost of the data if we receive complaints that the cost of such data makes the filing of Form 328 cost-prohibitive to franchising authorities.

23. Even under the new approach to Effective Competition adopted herein, we expect that cable operators still on occasion may wish to file petitions for a determination of Effective Competition pursuant to section 76.907 of our rules. In particular, if a franchising authority is certified under the new rules and procedures, a cable operator may at a later date wish to file a petition demonstrating that circumstances have changed and one of the four types of Effective Competition exists. Accordingly, we will retain existing section 76.907, but we will revise section 76.907(b) to reflect the new presumption. Once a franchising authority is certified under the new rules adopted herein, after having demonstrated a lack of Competing Provider Effective Competition, we agree with ACA that it would not make sense for a cable operator filing a decertification petition to benefit from the presumption of Effective Competition; rather, in this instance the cable operator must demonstrate that circumstances have changed and Effective Competition is now present in the franchise area.[25] We will clarify in revised section 76.907(b) that the new presumption of Competing Provider Effective Competition does not apply in this instance.

24. All of the new rules and procedures for Effective Competition will go into effect once the Commission announces approval by the Office of Management and Budget (''OMB'') of the rules that require such approval and of revised Form 328. Although some of the rules, such as the new rebuttable presumption of Competing Provider Effective Competition itself, do not require OMB approval, we conclude that none of the rules should go into effect until the OMB approval is obtained. Although some commenters have argued that cable operators generally should benefit from the new presumption as soon as it is adopted, we find that tying the effective date to the OMB approval is appropriate where, as here, all of the rules are so closely tied to the submission of a revised form that requires OMB approval.

25. Overall, we find that the new rules and procedures discussed above will create an Effective Competition process that is more efficient for cable operators, especially small cable operators, than the current approach. Cable operators will not be required to file petitions for a determination of Effective Competition in the first instance; instead, franchising authorities will have to rebut the presumption of Competing Provider Effective Competition in those limited locations in which the statutory test is not met. The record demonstrates that filing Effective Competition petitions has forced cable operators to incur significant costs, such as the cost of purchasing zip code and competing provider penetration data and preparing formal legal filings, merely to confirm what the marketplace data already suggests about the likely application of the statutory Effective Competition tests in almost all communities. According to ACA, only one cable operator with fewer than 1,000,000 total subscribers has filed an Effective Competition petition since December 30, 2011, even though such operators are likely subject to Effective Competition to the same degree as other, larger operators. Given the ubiquitous nationwide presence and penetration levels of DBS, we find that it no longer makes sense to burden cable operators with the costs of filing an Effective Competition petition in the first instance. It is far more efficient to require franchising authorities to rebut the presumption in those relatively rare instances where there may not be Effective Competition. Contrary to NAB's suggestion, the burdens imposed on cable operators under the current presumption, which is no longer supportable by marketplace data, justify adoption of the new presumption as the most efficient approach. The fact that cable operators benefit from a finding of Effective Competition does not alter this analysis. We expect that the volume of new Form 328s filed by franchising authorities will be far less than the volume of cable operator Effective Competition petitions currently filed, which will conserve resources of cable operators as well as the Commission. Contrary to the suggestion of some commenters, we do not expect franchising authorities in thousands of communities to file new Form 328s. Rather, we anticipate that few franchising authorities will be able to present data to rebut the presumption of Competing Provider Effective Competition, given the ubiquity and penetration of DBS. In this regard, we agree with NCTA that, ''[g]iven competitive conditions throughout the country and the relatively few [franchising authorities] that currently rate regulate, shifting the presumption is extraordinarily unlikely to unleash an avalanche of [franchising authority] filings.''

26. We recognize that franchising authorities, including small franchising authorities, will face additional burdens in preparing revised Form 328 with an attachment rebutting the presumption of Competing Provider Effective Competition, and we also recognize that some franchising authorities have limited resources. We conclude that any such burdens are justified by the efficiency gained by conforming the presumption to marketplace realities. In 1993, the Commission stated that it was ''mindful of franchising authorities' concern that they do not have access to

[25] Thus, it would be inappropriate to automatically grant cable operator petitions for decertification that are not acted on within a certain timeframe, as ACA suggests, given that the franchising authority would have previously put forth evidence of a lack of Competing Provider Effective Competition in order to become certified in the first place.

the information or the resources necessary to show the absence of effective competition as a threshold matter of jurisdiction.'' [26] Today, in contrast, Effective Competition exists in the vast majority of franchise areas and we anticipate few franchising authorities will have a basis for filing a revised Form 328 demonstrating a lack of Competing Provider Effective Competition. In addition, we have ensured that franchising authorities will have access to the information needed to demonstrate a lack of Competing Provider Effective Competition by implementing procedures pursuant to which a franchising authority may request directly from an MVPD information regarding the MVPD's reach and number of subscribers in a particular franchise area. With regard to the burden on the franchising authorities, ACA explains that unlike cable operators, governmental entities can receive zip code data from the post office free of charge, and governmental entities likely know all of the zip codes within their jurisdiction in any event. Overall, the costs to franchising authorities will be outweighed by the significant cost-saving benefits of a presumption that is consistent with market data showing that the vast majority of communities would satisfy the Competing Provider Effective Competition standard. We will monitor the marketplace to determine whether the burdens of filing a revised Form 328 are dissuading franchising authorities from filing, and if so, we will reconsider whether changes should be made to reduce their costs.

D. Current Certifications and Pending Effective Competition Proceedings

27. Many franchising authorities were certified over 20 years ago to regulate the basic service tier rates and equipment based on the existing presumption of no Effective Competition. Based on the changes in the marketplace that have occurred in the last 20 years, discussed above, we believe that the factual foundation for those findings is no longer valid in most cases. Therefore, all franchising authorities with existing certifications that wish to remain certified must file revised Form 328, including the attachment rebutting the presumption of Competing Provider Effective Competition, within 90 days of the effective date of the new rules.[27] If a franchising authority with an existing certification does not file a new certification (Form 328) during the 90-day timeframe, its existing certification will expire at the end of that timeframe as long as there is not pending for the franchise area an opposed Effective Competition petition or an opposed or unopposed petition for reconsideration of certification, petition for reconsideration of an Effective Competition decision, or application for review of an Effective Competition decision.[28] The Media Bureau will issue a public notice at the conclusion of the 90-day timeframe identifying all franchising authorities that filed a revised Form 328 as well as those franchising authorities that are party to one of the above-listed pending proceedings, and stating its finding of Competing Provider Effective Competition applicable to all other currently certified franchising authorities. This public notice will address commenters' concerns that the Act requires the Commission to make a franchise area-specific finding of Effective Competition before revoking existing certifications. The Media Bureau's finding of Competing Provider Effective Competition will be based on the new presumption coupled with the franchising authority's failure to attempt to retain its certification by resubmitting Form 328 accompanied by the requisite showing of no Competing Provider Effective Competition. We thus find that the approach adopted herein, which the NPRM sought comment on in the alternative, is preferable to administratively revoking *all* existing certifications since it will afford franchising authorities an opportunity to rebut the new presumption while their existing certification is still in effect and requires a Commission finding of Effective Competition for each franchise area.

28. Where currently certified franchising authorities file revised Form 328, their certifications will remain valid unless and until the Media Bureau issues a decision denying the new certification request.[29] We will not automatically deny a Form 328 that we do not act on within a certain timeframe, finding that doing so would be inconsistent with the statutory requirement that franchising authority certifications become effective 30 days after the date filed and with the procedures adopted above. If a currently certified franchising authority files revised Form 328 and there is a pending cable operator Effective Competition petition, petition for reconsideration of certification, petition for reconsideration of an Effective Competition decision, or application for review of an Effective Competition decision applicable to the franchise area, the Media Bureau will consider the record from that filing along with the new certification in making its determination regarding whether the franchising authority has overcome the presumption of Competing Provider Effective Competition.[30] If a currently certified franchising authority files revised Form 328 but there is no applicable pending proceeding, the Media Bureau may consider the form itself as well as other relevant data available to the Bureau in making its determination.

29. Where existing franchising authority certifications expire pursuant to the procedures discussed above, the Commission itself will not regulate rates. Section 76.913(a) of the Commission's rules, which generally directs the Commission to regulate rates upon revocation of a franchising authority's certification, will not apply upon the expiration of existing certifications discussed above. The Act precludes a franchising authority or the Commission from regulating rates where Effective Competition is present, and the expirations will be based on just

[26] *1993 Rate Order*, 8 FCC Rcd at 5668, paragraph 41.

[27] ACA and NCTA support a comparable procedure. ACA claims that with regard to small cable operators the procedure should only apply to ''active'' franchising authorities, meaning those that have adopted a rate order in the previous 12 months. We find that such a limitation would be difficult for the Commission to administer and would not provide an offsetting benefit to small cable operators. We find further that the approach adopted here is preferable to the approach advocated by some commenters, in which all previously adjudicated Effective Competition decisions would remain valid until either the franchising authority or the cable operator affirmatively demonstrates a change. The approach adopted here will enable us to ensure more promptly that franchising authority certifications correspond to the current marketplace.

[28] We recognize that, while the franchising authority remains certified, it is possible that the Commission's rate regulation rules may require a rate filing in the normal course of business. Unless the franchising authority and cable operator reach an agreement to the contrary, the cable operator should continue to make any such required filing.

[29] Accordingly, a currently certified franchising authority that wishes to remain certified and to make use of its basic service tier rate regulation authority may do so pursuant to these procedures. The franchising authority's ability to regulate rates, however, would be automatically stayed if the filing of revised Form 328 impels the cable operator to file a petition for reconsideration of certification alleging the presence of Effective Competition. The Media Bureau will promptly dismiss cable operator petitions for reconsideration that do not rebut a franchising authority's demonstration that Competing Provider Effective Competition is not present in the franchise area.

[30] Prior to the effective date of the rules adopted herein, we note that the Media Bureau has authority to continue processing pending petitions for a determination of Effective Competition, petitions for reconsideration of certification, and petitions for reconsideration of an Effective Competition decision in the normal course of business pursuant to existing rules.

such a finding. Section 623(a)(6) of the Act does not apply to this situation because it requires the Commission to ''exercise the franchising authority's regulatory jurisdiction'' over cable basic service tier rates if the Commission either (1) ''disapproves a franchising authority'' due to specified legal or procedural infirmities, or (2) revokes the franchising authority's jurisdiction to regulate rates following petition by a cable operator or other interested party based upon a finding ''that the State and local laws and regulations are not in conformance with'' the Commission's basic service tier rate regulations. The expiration of existing franchising authority certifications based on a rebuttable presumption of Competing Provider Effective Competition combined with the franchising authority's subsequent failure to attempt to retain its certification is distinguishable from a Commission finding of legal or procedural infirmities following an initial certification submission. Contrary to NAB's suggestions, the expiration of existing franchising authority certifications is justified for the reasons discussed above, and it does not matter that the expirations will be unrelated to a petition by a cable operator or other interested party.

30. There are currently 58 pending cable operator petitions seeking a finding of Effective Competition, and a total of 17 pending petitions for reconsideration of certification, petitions for reconsideration of an Effective Competition decision, and applications for review of an Effective Competition decision. As explained above, if one of these pending proceedings involves a currently certified franchising authority that files revised Form 328, the record from the pending proceeding will be considered along with the revised Form 328 submission when the Media Bureau makes its certification determination. If, however, the pending proceeding involves a franchising authority that does not file revised Form 328 during the 90-day timeframe but either (i) the proceeding is an opposed cable operator Effective Competition petition, or (ii) the proceeding is a petition for reconsideration of certification, petition for reconsideration of an Effective Competition decision, or application for review of an Effective Competition decision, then the Media Bureau or the Commission will adjudicate the pending proceeding based on the record before it. With regard to pending *unopposed* cable operator Effective Competition petitions where the franchising authority does not file revised Form 328, the Media Bureau will grant such petitions based on a finding that the new presumption of Competing Provider Effective Competition applies and the franchising authority has not attempted to rebut it. The Media Bureau will issue a public notice at the conclusion of the 90-day timeframe for filing revised Form 328, granting all pending unopposed cable operator Effective Competition petitions where the franchising authority has not filed revised Form 328, with the grant based on a finding of Competing Provider Effective Competition. That finding will be premised on the new presumption of Competing Provider Effective Competition, as well as the franchising authority's failure to oppose the cable operator Effective Competition petition in the first instance.

IV. Procedural Matters

A. Final Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Notice of Proposed Rulemaking in this proceeding. The Federal Communications Commission (''Commission'') sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA, although some commenters discussed the effect of the proposals on smaller entities, as discussed below. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

32. In the Report and Order (''Order''), the Commission improves and expedites the effective competition process by adopting a rebuttable presumption that cable operators are subject to ''Effective Competition.'' [31] Specifically, we presume that cable operators are subject to what is commonly referred to as ''Competing Provider Effective Competition.'' As a result, each franchising authority [32] will be prohibited from regulating basic cable rates unless it successfully demonstrates that the cable system is not subject to Competing Provider Effective Competition. This change is justified by the fact that Direct Broadcast Satellite (''DBS'') service is ubiquitous today and that DBS providers have captured almost 34 percent of multichannel video programming distributor (''MVPD'') subscribers. The Order also implements section 111 of the STELA Reauthorization Act of 2014 (''STELAR''), which directs the Commission to adopt a streamlined Effective Competition process for small cable operators.[33] By adopting a rebuttable presumption of Competing Provider Effective Competition, we update our Effective Competition rules, for the first time in over 20 years, to reflect the current MVPD marketplace, reduce the regulatory burdens on all cable operators, especially small operators,[34] and more efficiently allocate the Commission's resources.

2. Summary of Significant Issues Raised By Public Comments in Response to the IRFA

33. No comments were filed in response to the IRFA. In response to the NPRM, some commenters discussed the effect of the proposals on smaller entities. Specifically, while some commenters advocated the benefits that a presumption of Competing Provider Effective Competition would have on cable operators, including small cable operators, other commenters expressed concern about the burdens that would be imposed on franchising authorities, including small franchising authorities. In addition, as explained above, section 111 of STELAR directs the Commission to adopt a streamlined Effective Competition process for small cable operators. While some commenters expressed their view that adopting a presumption of Competing Provider Effective Competition would best fulfill section 111, others advocated alternate ways to reform the Effective Competition process for small cable operators.

[31] Effective Competition is a term of art that the statute defines by application of specific tests.

[32] A ''franchising authority'' is ''any governmental entity empowered by Federal, State, or local law to grant a franchise.'' *See* 47 U.S.C. 522(10).

[33] *See* Public Law 113–200, section 111, 128 Stat. 2059 (2014); 47 U.S.C. 543(o)(1) (''Not later than 180 days after December 4, 2014, the Commission shall complete a rulemaking to establish a streamlined process for filing of an effective competition petition pursuant to this section for small cable operators, particularly those who serve primarily rural areas.''). Accordingly, this rulemaking must be completed by June 2, 2015.

[34] Congress applied the definition of ''small cable operator'' as set forth in section 623(m)(2) of the Communications Act of 1934, as amended (the ''Act''), which is ''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.'' *See* 47 U.S.C. 543(m)(2), (o)(3).

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

34. The RFA directs the Commission to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted in the Order. 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.

35. *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.

36. *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.'' 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.

37. *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.

38. *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.

39. *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.

40. *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.

41. *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

42. Certain rule changes adopted in the Order will affect reporting, recordkeeping, or other compliance requirements. Pursuant to the rules and policies adopted in the Order, the Commission will presume that cable operators are subject to Competing Provider Effective Competition, with the burden of rebutting this presumption falling on the franchising authority. A franchising authority seeking certification to regulate a cable operator's basic service tier and associated equipment will file revised FCC Form 328, including an attachment containing evidence adequate to satisfy its burden of rebutting the presumption with specific evidence. Franchising authorities are already required to file Form 328 to obtain certification to regulate a cable system's basic service tier, but the attachment rebutting the presumption of Competing Provider Effective Competition will be a new requirement. Cable operators, including small cable operators, will 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 will 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 for the filing of petitions for reconsideration will continue to govern petitions for reconsideration of Form 328 and responsive pleadings. While a certification will 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 will automatically stay the imposition of rate regulation pending the outcome of the reconsideration proceeding. All of the new rules and procedures will go into effect once the Commission announces approval by the Office of Management and Budget (''OMB'') of the rules that require such approval and of revised Form 328.

43. All franchising authorities with existing certifications that wish to remain certified must file revised Form 328, including the attachment rebutting the presumption of Competing Provider Effective Competition, within 90 days of the effective date of the new rules. At the conclusion of the 90-day timeframe, the Media Bureau will issue a public notice identifying all franchising authorities that filed a revised Form 328 as well as those franchising authorities that are party to a pending opposed Effective Competition petition or a pending opposed or unopposed petition for reconsideration of certification, petition for reconsideration of an Effective Competition decision, or application for review of an Effective Competition decision. The public notice will state the Media Bureau's finding of Competing Provider Effective Competition applicable to all other currently certified franchising authorities. Where currently certified franchising authorities file revised Form 328, their certifications will remain valid unless and until the Media Bureau issues a decision denying the new certification request. If a currently certified franchising authority files revised Form 328 and there is a pending cable operator Effective Competition petition, petition for reconsideration of certification, petition for reconsideration of an Effective Competition decision, or application for review of an Effective Competition decision applicable to the franchise area, the Media Bureau will consider the record from that filing along with the new certification in making its determination regarding whether the franchising authority has overcome the presumption of Competing Provider Effective Competition.[35] If a pending proceeding involves a franchising authority that does not file revised Form 328 during the 90-day timeframe but either (i) the proceeding is an opposed cable operator Effective Competition petition, or (ii) the proceeding is a petition for reconsideration of certification, petition for reconsideration of an Effective Competition decision, or application for review of an Effective Competition decision, then the Media Bureau or the Commission will adjudicate the pending proceeding based on the record before it. With regard to pending *unopposed* cable operator Effective Competition petitions where the franchising authority does not file revised Form 328, the Media Bureau will issue a public notice granting the petitions based on a finding of Competing Provider Effective Competition.

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

44. 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.'' The NPRM invited comment on the benefits and burdens of the approach we adopt herein on all entities, including small entities.

45. Overall, we expect that the approach the Commission adopts today will lessen the number of Effective Competition determinations addressed by the Commission and thus will reduce regulatory burdens on cable operators, and will more efficiently allocate the Commission's resources. In paragraph 25 of the Order, the Commission finds that the new rules and procedures will create an Effective Competition process that is more efficient for cable operators, especially small cable operators, since they will not be required to file petitions for a determination of Effective Competition in the first instance. The Commission explains the significant costs imposed on cable operators by the current Effective Competition process,

[35] Prior to the effective date of the rules adopted in the Order, we note that the Media Bureau has authority to continue processing pending petitions for a determination of Effective Competition, petitions for reconsideration of certification, and petitions for reconsideration of an Effective Competition decision in the normal course of business pursuant to existing rules.

and it explains how the new presumption will alleviate those costs.

46. In paragraph 26 of the Order, the Commission discusses the impact of the new rules and procedures on franchising authorities, including small franchising authorities. The Commission concludes that the burdens of filing revised Form 328 are justified by the efficiency gained by conforming the presumption to marketplace realities. The Commission also anticipates that few franchising authorities will have a basis for filing a revised Form 328 demonstrating a lack of Competing Provider Effective Competition as a result of the presence of Effective Competition in the vast majority of franchise areas. In addition, the Commission states that it has ensured that franchising authorities will have access to the information needed to demonstrate a lack of Competing Provider Effective Competition.[36] Overall, the costs to franchising authorities will be outweighed by the significant cost-saving benefits of a presumption that is consistent with market data showing that the vast majority of communities would satisfy the Competing Provider Effective Competition standard. The Commission states that it will monitor the marketplace to determine whether the burdens of filing a revised Form 328 are dissuading franchising authorities from filing, and if so, it will reconsider whether changes should be made to reduce their costs.

47. Finally, we note that the Commission considered alternate means to implement section 111 of STELAR. After evaluating all of the alternate proposals set forth in the record, in paragraph 16 the Commission concludes that while some proposals are already implemented, others would not have a sufficient impact on the costs that burden cable operators, particularly small cable operators, under the existing Effective Competition regime. Accordingly, the Commission has concluded that adopting a rebuttable presumption of Competing Provider Effective Competition is the best approach to streamline the process for small cable operators.

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

48. None.

7. Report to Congress

49. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[37] In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.[38]

B. Final Paperwork Reduction Act of 1995 Analysis

50. We analyzed this Order with respect to the Paperwork Reduction Act of 1995 (''PRA''),[39] and it contains modified information collection requirements.[40] It will be submitted to the Office of Management and Budget (''OMB'') for review under section 3507(d) of the PRA.[41] The Commission, as part of its continuing effort to reduce paperwork burdens, will invite OMB, the general public, and other interested parties to comment on the information collection requirements contained in this document in a separate published **Federal Register** notice. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,[42] we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

C. Congressional Review Act

51. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

D. Additional Information

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

V. Ordering Clauses

53. 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, Public Law 113–200, section 111, this Order *is adopted,* effective upon announcement in the **Federal Register** of OMB approval and the effective date of the rules.

54. *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, Public Law 113–200, section 111, the Commission's rules *are hereby amended* as set forth in Appendix A.

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

56. *It is further ordered* that the Commission *shall send* a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 76

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

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 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, 338, 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:

[36] In addition, in paragraph 22 of the Order, the Commission explains that third-party MVPDs or their agents sometimes charge cable operators for access to subscribership and reach data. The Commission states that it will revisit the issue of the cost of the data if it receives complaints that the cost of such data makes the filing of Form 328 cost-prohibitive to franchising authorities.

[37] *See* 5 U.S.C. 801(a)(1)(A).

[38] *See id.* 604(b).

[39] The Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[40] Relevant information collections include those pertaining to Form 328 and the franchising authority certification (OMB Control No. 3060–0550), and to petitions for reconsideration of certifications (OMB Control No. 3060–0560).

[41] 44 U.S.C. 3507(d).

[42] The Small Business Paperwork Relief Act of 2002 (''SBPRA''), Public Law 107–198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. 3506(c)(4).

§ 76.906 Presumption of effective competition.

In the absence of a demonstration to the contrary cable systems are presumed: (a) To be subject to effective competition pursuant to section 76.905(b)(2); and (b) Not to be subject to effective competition pursuant to section 76.905(b)(1), (3) or (4).

■ 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, except that where a franchising authority has rebutted the presumption of competing provider effective competition as defined in § 76.905(b)(2) and is certified, the cable operator must demonstrate that circumstances have changed and effective competition is present in the franchise area.

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).

* * * * *

■ 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 section 76.905(b)(2). Unless a franchising authority has actual knowledge to the contrary, the franchising authority may rely on the presumption in § 76.906 that the cable operator is not subject to effective competition pursuant to section 76.905(b)(1), (3), or (4). The franchising authority bears the burden of submitting evidence rebutting the presumption that competing provider effective competition, as defined in § 76.905(b)(2), exists 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.

* * * * *

[FR Doc. 2015–15806 Filed 7–1–15; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–HQ–MB–2015–0032; FF09M21200–156–FXMB1231099BPP0]

RIN 1018–BA90

Migratory Bird Permits; Update of Falconry Permitting Reporting Address

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The State of California has implemented an online permitting and reporting system compatible with the system that we, the U.S. Fish and Wildlife Service (Service), use for reporting take of raptors from the wild for falconry. We change the Web address for falconers in California to report takes, acquisitions, transfers, and losses of falconry birds.

DATES: This rule is effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ron Kokel at 703–358–1967.

SUPPLEMENTARY INFORMATION:

Background

We published a final rule in the **Federal Register** on October 8, 2008 (73 FR 59448), to revise our regulations governing falconry in the United States, found in title 50 of the Code of Federal Regulations (CFR) at § 21.29. In 2013, we added the State of California to the list of States to which we delegate permitting for falconry to the State, as provided under the regulations (78 FR 72830, December 4, 2013).

This Rule

In the falconry regulations at 50 CFR 21.29, we offer two methods to submit required reports or other information: (1) Electronically, by entering the required information in our electronic database at *http://permits.fws.gov/186A*; and (2) by hard copy, by submitting a paper form 3–186A to the falconer's State, tribal, or territorial agency that governs falconry. The State of California has developed and implemented an online permitting and reporting system that is compatible with the system we use for reporting take of raptors from the wild for falconry (our electronic database at *http://permits.fws.gov/186A*). Allowing California residents to use that State's reporting system should result in a small savings of resources for both the State and the Service. Therefore, with this rule, we change the web address for falconers in California to report takes, acquisitions, transfers, and losses of falconry birds.

Administrative Procedure

This action is administrative in nature. We are providing regulated entities and the general public with an accurate web address to report take, loss, or transfers of raptors by falconers in California. We delegated the State of California permitting authority for falconry under the regulations at 50 CFR 21.29 (see 78 FR 72830, December 4, 2013). This rule facilitates that State's permitting and reporting requirements, and will enable reporting with our system for reporting take, acquisition, loss, or transfer of any bird for falconry. The change should slightly reduce administration costs for both the State and the Service. The delegation of permitting authority to the State of California has already been subject to public notice-and-comment procedures, and this change simply adds an Internet address to the regulations at 50 CFR 21.29 to allow full use of California's permitting and reporting system. Under 5 U.S.C. 553(b), rules of agency organization, procedure, or practice may be made final without previous notice to the public. This is a final rule.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The