

Federal Communications Commission.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98-61; FCC 98-79]

1998 Biennial Regulatory Review; Form 325—Annual Report of Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Notice of Proposed Rulemaking ("NPRM"), the Commission seeks comment on a proposal to eliminate or modify the process of collecting Form 325, "Annual Report of Cable Television Systems." This proceeding is initiated in conjunction with the Commission's 1998 biennial regulatory review. The intended effect of this proceeding is to reduce the regulatory burden on the Commission, as well as cable operators.

DATES: Comments are due on or before June 30, 1998. Reply comments are due on or before July 15, 1998. Written comments by the public on the proposed information collections are due June 9, 1998.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sunil Daluvoy, Consumer Protection and Competition Division, Cable Services Bureau, at (202) 418-1032. For additional information concerning the information collection contained in this NPRM, contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the NPRM in CS Docket No. 98-61, FCC 98-79 which was adopted on April 27, 1998 and released on April 30, 1998. A copy of the complete item is available for inspection and copying during normal business hours in the

FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857-3800. The complete Notice of Proposed Rulemaking also is available on the Commission's Internet home page (<http://www.fcc.gov>). The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and could potentially impose modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the proposed modifications to the information collection requirements contained in this NPRM, as required by the Paperwork Reduction Act of 1995. Public comments are due June 9, 1998. Written comments must be submitted by OMB on or before July 20, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-0061.

Title: Annual Report of Cable Television Systems—Form 325.

Total Estimated Annual Burden to Respondents: 28,000 hours. The average burden to respondents is estimated to be 2 hours per Form 325 filing. 14,000 filings \times 2 hours = 28,000 hours.

Total Estimated Annual Cost of Respondents: \$14,000. Postage, stationery and photocopying costs pertaining to this filing requirement are estimated to be \$1 per form. 14,000 \times \$1 = \$14,000.

Needs and Uses: The Form 325 is a preprinted form that has been used by the Commission to annually collect ownership, community unit, statistical, technical and services information from cable television systems on a physical system basis. Operators of every operational cable television system complete the form to verify, correct and/or furnish the Commission with the most current information on their respective cable systems. Here, we have

reported burden estimates to respondents as they are currently accounted for in the Commission's Information Collection Budget for Collection Number OMB 3060-0061. Depending on public comment generated in this proceeding, the Commission will either amend the content of Form 325, eliminate the Form 325 filing requirement or will reduce the scope or frequency of the filing requirement.

SUMMARY OF ACTION:

I. Background

1. On April 27, 1998, the Federal Communications Commission ("Commission") adopted a Notice of Proposed Rulemaking which sought comment on our proposal to eliminate or modify Form 325, "Annual Report of Cable Television Systems", which is provided for in 47 CFR § 76.403. The Notice of Proposed Rulemaking is summarized below.

A. Introduction

2. Section 11 of the 1996 Telecommunications Act, instructs the Commission "to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest." Although Section 11 does not refer to the cable television rules generally, the Commission has determined that the first biennial review presents an opportunity for a thorough examination of all of the Commission's regulations. We believe that consideration of the continuing need for the Form 325 information collection process is consistent with the Section 11 mandate.

B. Discussion

3. Form 325 constitutes the Commission's basic annual reporting requirement for the cable television industry. The form was developed for use on a one time basis in 1966 and was subsequently adopted as an annual filing requirement in 1971. The form was intended to provide the Commission with information that would be of value in the development of rules and policies applicable to the cable television industry. In addition, information as to both individual franchise areas and physical system operations was to be collected for use in connection with individual waiver or enforcement proceedings. The current Form 325 has also been used for two additional purposes: (1) to obtain subscribership data from which to calculate or review cable operator's

annual federal regulatory fee payments; and (2) to assist, through the acquisition of data as to the frequencies used within systems, in the Commission's signal leakage and interference elimination program.

4. The current version of Form 325 is divided into four substantive parts. Part 1 collects the operator's name, address, and tax identification number of each franchised community served by the cable system. Part 2 requests specific information related to each franchised community, including the type of area served, population, subscribers, potential subscribers, cable plant length, and initial date of service. Part 3 outlines frequency and signal distribution information, such as the type and source of programming, and general channel information. Part 4 summarizes the cable system's ancillary services and users.

5. The Commission's rules anticipate that a Form 325 will be mailed annually to each cable system in the country—at present, over 11,000 cable systems. In order to reduce the filing burden and increase the accuracy of the computer database to be assembled from the completed forms, a process was developed whereby each year preprinted and completed forms were to be sent to each operator reflecting the information in the Commission's database. The system operator would then only be required to correct information that had changed since the last filing. Although this process was intended to ease the burden on system operators and to be administratively efficient, it proved to be resource intensive on the part of the Commission, because the returned forms, many of which were deficient in some manner, had to be manually reviewed for technical and administrative accuracy before being entered into the computer system. As available Commission staff resources were reduced and priorities shifted, it became increasingly difficult to complete the data input process. Thus, the form has not been mailed out or data collected since 1994.

6. As a consequence of the above developments we now prepare to either: (1) Abolish this data collection process entirely, or (2) reform the process so that the data that is deemed important may be collected in a more efficient, less resource intensive, manner. In general, it is vital that the Commission have accurate and timely information regarding the cable television industry, both to assist in the enforcement of existing requirements and for broader rulemaking and policy purposes. We seek comment, however, on whether it continues to be important for the

Commission to have access to the type of data reported on the current Form 325 and the extent to which this information is available from other sources. For instance, while not subject to accuracy and specificity requirements applicable to a governmental reporting system, information on the basic facts of cable television system operation is available from commercial sources such as S.C. Nielson and Warren Publishing. We seek comment on whether these commercial sources may rely for their information on the availability of the Commission's data base. Similarly, with regard to the signal interference program, the Commission already uses Form 320 (Basic Signal Leakage Performance Report) to gather a cable system's operational parameters in the event interference occurs to over-the-air services. On the other hand, we noted in our leased access proceeding, that the only official source of leased access information was in the Form 325. Given the possible availability of alternative sources of data, we seek comment on whether we should eliminate the current Form 325 entirely or revise it to obtain more focused information.

7. If Form 325 is retained, we seek comment on any changes that should be made to clarify and improve the usefulness of the data collected. For example, the questions and instructions with respect to channel capacity and use data, which is pertinent to a number of Commission's rules, including must-carry, leased access, and channel occupancy, have not always resulted in consistent responses. In addition, Form 325 does not require the operator to submit specific ownership information, which could be relevant to the Commission's horizontal ownership rules, among others. We seek comment on how to obtain more useful consistent or reliable data if the form is retained.

8. In addition, if the Form 325 is retained, we seek comment on ways to make the collection process less burdensome. For example, the data could be collected at less frequent intervals, a sampling process could be developed or an electronic filing system could be developed to reduce the resources devoted to the data collection process. Should, for example, we adopt a data collection process that applies only to cable systems that meet certain geographic, subscriber, channel capacity, or revenue criteria, or should such forms apply to a random subset of cable operators? We note that if data were collected only from systems with over 10,000 subscribers, approximately 80 percent of all subscribers would be covered yet only approximately one-

tenth of the present filings would be required.

II. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis For the Notice of Proposed Rulemaking

9. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and proposals in this *NPRM*. Written public comments concerning the effect of the proposals in the *NPRM*, including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Secretary shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

10. *Reasons Why Agency Action is Being Considered.* Section 11 of the 1996 Telecommunications Act requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest. Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an excellent opportunity for a thorough examination of all of the Commission's regulations.

11. *Need for Action and Objectives of the Proposed Rule Change.* The Commission invites comment on whether to eliminate or modify the requirement for cable systems operators to file the current "Annual Report of Cable Television," Form 325, pursuant to Section 76.403 of the Commission's rules ("Section 76.403"), because the Commission believes the current Form 325 provides limited value, imposes unnecessary burdens on the Commission and cable operators, and duplicates existing practices.

12. *Legal Basis.* The authority for the action proposed for this rulemaking is contained in Section 4(i)-(j) of the Communications Act of 1934, as amended.

13. *Description and Estimate of the Number of Small Entities Impacted.* The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term "small

entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. 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.

14. The proposal to either eliminate or modify the requirement to file Form 325 applies to all cable system operators. The Commission has developed, with SBA's approval, its own definition of a small cable system operator for rate regulation purposes. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the changes we are considering.

15. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% 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." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. *Reporting, Recordkeeping, and other Compliance Requirements:* The Commission is proposing to eliminate

certain recordkeeping or information collection requirements, and in the alternative, we are proposing to substantially reduce such burdens.

17. *Significant Alternatives Which Minimize the Impact on Small Entities and which are Consistent with Stated Objectives:* The NPRM solicits comments on alternatives to elimination of the FCC Form 325. Any significant alternatives presented in the comments will be considered.

18. *Federal Rules which Overlap, Duplicate, or Conflict with the Commission's Proposal:* None.

19. *Report to Congress.* The Commission shall send a copy of this IRFA along with this Notice in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. § 801(a)(1)(A). A copy of this IRFA will also be published in the **Federal Register**.

B. Paperwork Reduction Act of 1995 Analysis

20. The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and could potentially impose modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the proposed modifications to the information collection requirements contained in this Notice, as required by the 1995 Act. Public comments are due 21 days from date of publication of this Notice in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

21. Written comments by the public on the proposed and/or modified information collections are due June 9, 1998. Written comments must be submitted by the Office of Management and Budget ("OMB") on the proposed and/or modified information collections on or before [insert date 60 days after date of publication in the Federal Register.] In addition to filing comments with the Secretary, a copy of any

comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

C. Ex Parte Rules

22. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the rules. 47 CFR § 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR § 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

D. Filing of Comments and Reply Comments

23. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before June 30, 1998 and reply comments on or before July 15, 1998. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington, D.C. 20554. The Cable Services Bureau contact for this proceeding is Sunil Daluvoy at (202) 418-1032 or sdaluvoy@fcc.gov.

24. Parties are also asked to submit comments and reply comments on diskette, where possible. Such diskette

submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sunil Daluvoy of the Cable Services Bureau, 2033 M Street N.W., Room 700I, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comments or reply comments), and date of submission. The diskette should be accompanied by a cover letter.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 98-13168 Filed 5-18-98; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AE96

Migratory Bird Harvest Information Program; Participating States for the 1998-99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) herein proposes to amend the Migratory Bird Harvest Information Program (Program) regulations. The Service plans to require all States except Hawaii to participate in the Program annually, beginning with the 1998-99 hunting season. This regulatory action will continue to require all licensed hunters who hunt migratory game birds in participating States to register as migratory game bird hunters and provide their name, address, and date of birth to the State licensing authority. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds in participating States. The quality and extent of information about harvests of migratory game birds must be improved in order to better manage these populations. Hunters' names and addresses are necessary to provide a sample frame for voluntary hunter surveys to improve harvest estimates for all migratory game birds. States will gather migratory bird hunters' names and addresses and the

Service will conduct the harvest surveys.

DATES: The comment period for the proposed rule will end on July 20, 1998.

ADDRESSES: Written comments should be sent to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, MD 20708-4028. The public may inspect comments during normal business hours in Building 158, 10815 Loblolly Pine Drive (Gate 4, Patuxent Wildlife Research Center), Laurel, MD 20708.

FOR FURTHER INFORMATION CONTACT: Paul I. Padding, MBMO, (301)497-5980.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to expand the Program to include all States except Hawaii, beginning in the 1998-99 hunting season.

Background

The purpose of this cooperative Program is to annually obtain a nationwide sample frame of migratory bird hunters, from which representative samples of hunters will be selected and asked to participate in voluntary harvest surveys. State wildlife agencies will provide the sample frame by annually collecting the name, address, and date of birth of each licensed migratory bird hunter in the State. To reduce survey costs and to identify hunters who hunt less commonly-hunted species, States will also request that each migratory bird hunter answer a series of questions to provide a brief summary of his or her migratory bird hunting activity for the previous year. States are required to ask each licensed migratory bird hunter approximately how many ducks (0, 1-10, or more than 10), geese (0, 1-10, or more than 10), doves (0, 1-30, or more than 30), and woodcock (0, 1-30, or more than 30) he or she bagged the previous year, and whether he or she hunted coots, snipe, rails, and/or gallinules the previous year. States that have band-tailed pigeon hunting seasons are also required to ask migratory bird hunters whether they intend to hunt band-tailed pigeons during the current year. States are not required to ask questions about species that are not hunted in the State (for example, Maine does not allow dove hunting, therefore, the State of Maine is not required to ask migratory bird hunters how many doves they bagged the previous year). States will send this information to the Service, and the Service will sample hunters and conduct national hunter activity and harvest surveys.

A notice of intent to establish the Program was published on June 24,

1991 (56 FR 28812). A final rule establishing the Program and initiating a 2-year pilot phase in three volunteer States (California, Missouri, and South Dakota) was published on March 19, 1993 (58 FR 15093). The pilot phase was completed following the 1993-94 migratory bird hunting seasons in California, Missouri, and South Dakota. A State/Federal technical group was formed to evaluate Program requirements, the different approaches used by the pilot States, and the Service's survey procedures during the pilot phase. Changes incorporated into the Program as a result of the technical group's evaluation were specified in an October 21, 1994 final rule (59 FR 53334), that initiated the implementation phase of the Program. Implementation of the Program began with the addition of one State in 1994, three States in 1995 (60 FR 43318), seven States in 1996 (61 FR 46350), and five States in 1997 (62 FR 45706). Final implementation of the Program will be accomplished with the addition of 27 States (all except Hawaii) in this proposed rule.

Currently, all licensed hunters who hunt migratory game birds in participating States are required to have a Program validation, indicating that they have identified themselves as migratory bird hunters and have provided the required information to the State wildlife agency. Hunters must provide the required information to each State in which they hunt migratory birds. Validations are printed on, written on, or attached to the annual State hunting license or on a State-specific supplementary permit. The State may charge hunters a handling fee to compensate hunting-license agents and to cover the State's administrative costs. The Service's survey design calls for hunting-record forms to be distributed to hunters selected for the survey before they forget the details of their hunts. Because of this design requirement, States have only a short time to obtain hunter names and addresses from license vendors and to provide those names and addresses to the Service. Currently, participating States must send the required information to the Service within 30 calendar days of issuance of the migratory bird hunting authorization.

The Service has requested the cooperation of participating States to facilitate obtaining harvest estimates for hunters who are exempted from a permit requirement and those that are also exempted from State licensing requirements. This includes several categories of hunters such as junior hunters, senior hunters, landowners,