Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment to the Commission's Rules Concerning Effective Competition	)	MB Docket No. 15-53
	)	
Implementation of Section 111 of the STELA Reauthorization Act	)	

NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking ("NPRM"), we seek comment on how we should improve the effective competition process. Specifically, we ask whether we should adopt a rebuttable presumption that cable operators are subject to effective competition. Pursuant to the Communications Act of 1934, as amended (the "Act"), a franchising authority[1] is permitted to regulate basic cable rates

[1] 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). A "local franchising authority" ("LFA") "is the local municipal, county, or other government organization that regulates certain aspects of the cable television industry at the state or local (continued….)

only if the cable system is not subject to effective competition.[2] As a result, where effective competition exists, basic cable rates are dictated by the marketplace and not by regulation. In 1993, the Commission adopted a presumption that cable operators are not subject to effective competition, absent a cable operator's demonstration to the contrary.[3] Given the changes to the video marketplace that have occurred since 1993, including in particular the widespread availability of Direct Broadcast Satellite ("DBS") service, we now seek comment on whether to reverse our presumption and instead presume that cable operators are subject to effective competition. Such an approach would reflect the fact that today, based on application of the effective competition test in the current market, the Commission grants nearly all requests for a finding of effective competition.[4] If the Commission were to presume that cable operators are subject to effective competition, a franchising authority would be required to demonstrate to the Commission that one or more cable operators in its franchise area is not subject to effective competition if it wishes to regulate cable service rates. We intend to implement policies that are mindful of the evolving video marketplace.

2. In initiating this proceeding, we are also implementing part of the STELA Reauthorization Act of 2014 ("STELAR"), enacted on December 4, 2014. Specifically, Section 111 of STELAR directs the Commission to adopt a streamlined effective competition petition process for small cable operators.[5] Through this proceeding, we intend to fulfill Congress' goal that we ease the burden of the existing effective competition process on small cable operators, especially those that serve rural areas, through a rulemaking that shall be completed by June 2, 2015.[6] We seek comment on whether the adoption of a rebuttable presumption of effective competition would reflect the current multichannel video programming distributor ("MVPD") marketplace and reduce regulatory burdens on all cable operators – large and small – and on their competitors, while more efficiently allocating the Commission's resources and amending outdated regulations.[7]

II. BACKGROUND ON EFFECTIVE COMPETITION RULES

3. In the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Congress adopted certain requirements for regulation of cable service rates.[8] Specifically, Section 623 of the Act indicates a "preference for competition," pursuant to which a franchising authority may regulate basic cable service rates and equipment only if the Commission finds that the cable system is not

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level." *See* Cable Television Fact Sheet, *Where to File Complaints Regarding Cable Service* (Aug. 15, 2013) (available at http://www.fcc.gov/guides/cable-television-where-file-complaints-regarding-cable-service).

[2] *See* 47 U.S.C. § 543(a)(2).

[3] *See* 47 C.F.R. § 76.906.

[4] *See infra* ¶ 7. Since the start of 2013, the Commission has found that there is effective competition in more than 99.5 percent of the communities for which it was asked to make this determination. *See id.*

[5] *See* Pub. L. No. 113-200, § 111, 128 Stat. 2059 (2014). STELAR was enacted on December 4, 2014 (H.R. 5728, 113th Cong.). 47 U.S.C. § 543(o)(1) ("Not later than 180 days after the date of the enactment of this subsection, 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.").

[6] *See id.* Congress applied the definition of "small cable operator" as set forth in Section 623(m)(2) of the Act. *See id.* § 543(o)(3).

[7] *See* Exec. Order No. 13,579, § 2, 76 Fed. Reg. 41,587 (July 14, 2011) ("[t]o facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned"); *Final Plan for Retrospective Analysis of Existing Rules,* 2012 WL 1851335 (May 18, 2012).

[8] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992); 47 U.S.C. § 543.

subject to effective competition.[9] Section 623(l)(1) of the Act defines "effective competition"[10] to mean that:

> (A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;[11]
>
> (B) 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;[12]
>
> (C) a[n MVPD] operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area;[13] or
>
> (D) 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.[14]

Section 623 of the Act does not permit franchising authority regulation of any cable service rates other than the basic service rate.[15]

4. In 1993, the Commission implemented the statute's effective competition provisions.[16] The Commission adopted a presumption that cable systems are not subject to effective competition[17] and

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[9] 47 U.S.C. § 543(a)(2)(A). The 1992 Cable Act requires cable operators to offer an entry-level basic service, which is known as the basic service tier. At a minimum, the basic service tier must include: (i) all signals that the cable operator is required to carry pursuant to the must-carry provisions of the Act; (ii) any public, educational, and governmental access programming that the franchising authority requires the cable system to provide subscribers; and (iii) any broadcast television station signal that the cable operator provides to any subscriber, excluding a signal that a satellite carrier transmits secondarily beyond the station's local service area. *Id.* § 543(b)(7)(A). *See also id.* § 522(3) ("the term 'basic cable service' means any service tier which includes the retransmission of local television broadcast signals"); *id.* § 522(17) ("the term 'service tier' means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator"); 47 C.F.R. § 76.901(a) (defining "basic service"). The Media Bureau most recently reported that the average monthly price for this entry-level basic cable service is $22.63. *See Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, 29 FCC Rcd 5280, 5286, ¶ 15 (MB, 2014).

[10] 47 U.S.C. § 543(l)(1). *See also* 47 C.F.R. § 76.905(b) (implementing the statutory provision).

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

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

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

[14] This fourth type of effective competition is referred to as "local exchange carrier," or "LEC," effective competition." *Id.* § 543(l)(1)(D). In 1996 Congress added LEC effective competition to the statute. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 115, § 301(b)(3) (1996).

[15] *See* 47 U.S.C. § 543. *See also id.* § 543(c)(4) (sunsetting upper tier rate regulation for cable programming services provided after March 31, 1999).

[16] *See Implementation of Section 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 (1993) ("*1993 Rate*

(continued….)

it provided that a franchising authority that wanted to regulate a cable operator's basic rates must be certified by the Commission.[18] To obtain such certification, a franchising authority files with the Commission FCC Form 328, in which it indicates its belief that the cable system at issue is not subject to effective competition in the franchise area.[19] Unless the franchising authority has actual knowledge to the contrary, under the current rules, it may rely on the presumption of no effective competition.[20] If a cable operator wishes to prevent the franchising authority from regulating its basic service rate, it may rebut the presumption and demonstrate that it is in fact subject to effective competition.[21] In addition to foreclosing regulation of the cable operator's basic rates, a Commission finding that a cable operator is subject to effective competition also affects applicability of other Commission rules.[22]

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Order"), *on reconsideration*, Third Order on Reconsideration, 9 FCC Rcd 4316 (1994), *rev'd in part, Time Warner Entertainment Co., L.P. v. FCC*, 56 F.3d 151 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1112 (1996). The Commission implemented LEC effective competition in 1999. *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, Report and Order, 14 FCC Rcd 5296, 5300-09, ¶¶ 7-22 (1999).

[17] *1993 Rate Order*, 8 FCC Rcd at 5669-70, ¶ 42; 47 C.F.R. § 76.906 ("In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition").

[18] *See* 47 C.F.R. § 76.910.

[19] *See id.* § 76.910(b)(4). FCC Form 328 is available at http://www.fcc.gov/Forms/Form328/328.pdf. Once the franchising authority submits Form 328, unless the Commission notifies it otherwise, it possesses the certification needed to begin regulating the cable operator's basic service rates 30 days after filing, so long as it complies with specified procedural requirements for doing so. *See id.* § 76.910(e) ("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.").

[20] *Id.* § 76.910(b)(4) (The franchising authority's written certification must indicate that "[t]he cable system in question is not subject to effective competition. 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.").

[21] This can be achieved by filing with the Commission a petition for reconsideration of certification or, after the franchising authority is certified, by filing a petition for determination of effective competition. *See id.* §§ 76.911, 76.907. The franchising authority may oppose the cable operator's petition filed under either Section 76.907 or Section 76.911 of the Commission's rules and, at the close of the pleadings, the Media Bureau issues a written decision granting or denying the petition. *See id.* §§ 0.61(f)(2), (h), 0.283. If a franchising authority's request for certification is denied or if its existing certification is revoked, the franchising authority may later file a petition for recertification demonstrating that circumstances have changed and the franchise area is no longer subject to effective competition. *Id.* § 76.916; *see, e.g.*, *County of New Hanover, North Carolina*, Memorandum Opinion and Order, 23 FCC Rcd 15348 (MB, 2008).

[22] *See, e.g.,* 47 U.S.C. § 543(d) ("A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system. This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition"); 47 C.F.R. § 76.921(a) ("No cable system operator, other than an operator subject to effective competition, may require the subscription to any tier other than the basic service tier as a condition of subscription to video programming offered on a per channel or per program charge basis").

III. CHANGES IN THE VIDEO PROGRAMMING LANDSCAPE SINCE THE 1992 CABLE ACT

5. In 1993, when the Commission adopted its presumption that cable systems are not subject to effective competition, incumbent cable operators had approximately a 95 percent market share of MVPD subscribers.[23] Only a single cable operator served the local franchise area in all but "a few scattered areas of the country"[24] and those operators had "substantial market power at the local distribution level."[25] DBS service had yet to enter the market,[26] and local exchange carriers ("LECs"), such as Verizon and AT&T, had yet to enter the MVPD business in any significant way.[27]

6. Today's MVPD marketplace is markedly different, with cable operators facing dramatically increased competition.[28] The Commission has determined that the number of subscribers to MVPD service has decreased from year-end 2012 to year-end 2013 (from 101.0 million to 100.9 million) and this decrease is entirely due to cable MVPD subscribership, which fell from approximately 55.8 percent of MVPD video subscribers (56.4 million) to approximately 53.9 percent of MVPD video subscribers (54.4 million).[29] In contrast, DBS's market share increased slightly from approximately 33.8 percent of MVPD video subscribers (34.1 million) to approximately 33.9 percent of MVPD video subscribers (34.2 million),[30] and the market share for telephone MVPDs increased significantly from approximately 9.8 percent of MVPD video subscribers (9.9 million) to approximately 11.2 percent of MVPD video subscribers (11.3 million).[31] 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.[32] According to published data, nearly 26 percent of American households in 2013 subscribed to DBS service.[33] Given the 15 percent threshold needed to constitute competing provider

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[23] *Implementation of Section 19 of the Cable Television Consumer Protection & Competition Act of 1992*, Third Annual Report, 12 FCC Rcd 4358, 4495 (App. F) (1997).

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

[25] *Id.* at 7449, ¶ 13.

[26] DIRECTV, the first DBS entrant, began offering service in 1994. *Id.* at 7474, ¶ 63.

[27] *Id.* at 7495, ¶¶ 103-04.

[28] *See, e.g., Amendment of the Commission's Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, 3353, ¶ 2 (2014) ("[W]hile consumers seeking to purchase video programming service typically formerly had only one option – a cable operator – today consumers may choose among several MVPDs. In addition to MVPD services, today's consumers also access video programming on the Internet.") (footnote omitted).

[29] MVPD data come from SNL Kagan, *U.S. Multichannel Industry Benchmarks*, http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx?startYear=2012&endYear=2013 (visited May 2, 2014).

[30] *See id.*

[31] *See id.*

[32] DIRECTV Comments in MB Docket No. 14-16 at 3, 15; DISH Network, *SEC Form 10-K for the Year Ended December 31, 2013*, at 2 ("DISH Network 2013 Form 10-K").

[33] DIRECTV reported that it had 20.3 million subscribers in 2013. *See* DIRECTV Annual Report 2013 at 6, available at http://investor.directv.com/files/doc_financials/annual/DIRECTV%202013%20Annual%20Report.pdf. DISH Network reported that it had approximately 14.1 million pay television subscribers at the end of 2013. *See* DISH Network, Press Release, DISH Network Reports Year-End 2013 Financial Results, available at http://about.dish.com/press-release/financial/dish-network-reports-year-end-2013-financial-results (Feb. 21, 2014). 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

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effective competition,[34] on a national scale DBS alone has close to double the percentage of subscribers needed for competing provider effective competition. As of year-end 2013, the two DBS MVPDs, DIRECTV and DISH Network, are the second and third largest MVPDs in the United States, respectively.[35]

7. The current state of competition in the MVPD marketplace is further evidenced by the outcomes of recent effective competition determinations. From the start of 2013 to the present, the Media Bureau granted in their entirety 224 petitions requesting findings of effective competition and granted four such petitions in part; the Commission did not deny any such requests in their entirety.[36] In these decisions, the Commission determined that 1,433 communities (as identified by separate Community Unit Identification Numbers ("CUIDs")) have effective competition,[37] and for the vast majority of these communities (1,150, or over 80 percent) this decision was based on competing provider effective competition.[38] Franchising authorities filed oppositions to only 18 (or less than 8 percent) of the 228 petitions. In the four instances in which the Commission partially granted a petition for a finding of effective competition, the Commission denied the request for a total of seven CUIDs, or less than half a percent of the total number of communities evaluated.[39] The Commission has issued affirmative findings

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March 31, 2014). To calculate that nearly 26 percent of American households in 2013 subscribed to DBS, we divided the total number of reported DIRECTV and DISH subscribers (20.3 million + 14.1 million = 34.4 million) by the total number of households in the U.S. (133.8 million).

[34] *See supra* ¶ 3 (specifying the criteria for a finding of competing provider effective competition).

[35] DIRECTV, *SEC Form 10-K for the Year Ended December 31, 2013*, at 2; DISH Network 2013 Form 10-K at 4.

[36] The Commission did not receive or rule on any requests to recertify a franchising authority during this timeframe. *See* 47 C.F.R § 76.916.

[37] 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.

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

[39] In one of the four partial grants, the Media Bureau denied the petition as to three CUIDs because it found that the cable operator's "stated numbers of its own subscribers and the competing providers' subscribers show that their combined subscribers exceed 100 percent of the households" in the franchise area. *Time Warner Entertainment-Advance/Newhouse Partnership*, Memorandum Opinion and Order, 28 FCC Rcd 16776, 16779, ¶ 8 (MB, 2013). In the second partial grant, the Media Bureau denied the petition as to one CUID because its independent review of data on the U.S. Census Bureau website demonstrated that DBS subscribership in the community fell below the 15 percent level needed to demonstrate competing provider effective competition. *Time Warner Cable Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 3313, 3315, ¶ 7 (MB, 2013). In the third partial grant, the Media Bureau denied the petition as to two CUIDs, finding that (1) DBS subscribership in one of the communities fell below the 15 percent level needed to demonstrate competing provider effective competition, and (2) the Media Bureau's independent review of data on the U.S. Census Bureau website demonstrated that the petitioner's cable penetration in the other community was "well over the statutory maximum of 30 percent for low penetration effective competition." *Time Warner Cable Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 3123, 3125-26, ¶¶ 8, 11 (MB, 2013). In the fourth partial grant, the Media Bureau denied the petition as to one CUID based on the inclusion of seasonal housing units in the asserted DBS penetration rate. *Time Warner Cable Inc.*, Memorandum Opinion and Order, DA 15-164, ¶ 13 (MB, 2015).

of effective competition in the country's largest cities,[40] suburban areas,[41] and rural areas where subscription to DBS is high.[42] To date, the Media Bureau has granted petitions for a finding of effective competition affecting thousands of cable communities, but has found a lack of effective competition for less than half a percent of the communities evaluated since the start of 2013. Against that backdrop, we seek comment on procedures that could ensure the most efficient use of Commission resources and reduce unnecessary regulatory burdens on industry.

IV. DISCUSSION

A. Presumption that Cable Systems are Subject to Effective Competition

8. As noted above, at the time of its adoption, the presumption of no effective competition was eminently supportable.[43] We seek comment on whether market changes over the intervening two decades have greatly eroded, if not completely undercut, the basis for the presumption. Specifically, we ask whether we should adopt a presumption that cable systems are subject to competing provider effective competition, absent a franchising authority's demonstration to the contrary. Would such a presumption be consistent with current market realities, pursuant to which the Commission has found that there is effective competition in nearly all of the communities for which it was asked to make this determination since the start of 2013?[44]

9. As explained above, a finding of competing provider effective competition requires that (1) the franchise area is "served by at least two unaffiliated [MVPDs] each of which offers comparable video programming to at least 50 percent of the households in the franchise area;" and (2) "the number of households subscribing to programming services offered by [MVPDs] other than the largest [MVPD] exceeds 15 percent of the households in the franchise area."[45] We seek comment on whether the facts that

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[40] *See, e.g., Time Warner Cable Inc. and Time Warner Cable LLC*, Memorandum Opinion and Order, 23 FCC Rcd 13840 (MB, 2008) (finding effective competition in Queens and Staten Island, New York); *Time Warner Cable Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 17038 (MB, 2008) (finding effective competition in Brooklyn and Manhattan, New York); *Comcast Cable Communications, LLC*, Memorandum Opinion and Order, 22 FCC Rcd 694 (MB, 2007) (finding effective competition in parts of Los Angeles); *Comcast Cable Communications, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 5852 (MB, 2008) (finding effective competition in most of Chicago); *Texas Cable Partners, L.P.*, Memorandum Opinion and Order, 16 FCC Rcd 2975 (CSB, 2001) (finding effective competition in parts of Houston).

[41] For example, in the Washington, DC metropolitan area, the Media Bureau has found effective competition in all or substantial parts of the adjacent suburban counties of Montgomery and Prince George's in Maryland and Arlington and Fairfax in Virginia; in the second ring counties of Calvert, Charles, and Howard in Maryland and Prince William in Virginia; and even in the third ring counties of Carroll and St. Mary's in Maryland and Stafford in Virginia. *See Comcast Cable Communications, LLC*, Memorandum Opinion and Order, 25 FCC Rcd 12783 (MB, 2010) (Carroll County); *Comcast of Potomac, LLC*, 24 FCC Rcd 12505 (MB, 2009) (Montgomery County); *CoxCom, Inc. d/b/a Cox Communications Northern Virginia*, Memorandum Opinion and Order, 23 FCC Rcd 12130 (MB, 2008) (Stafford County); *Comcast Cable Communications, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 9282 (MB, 2008) (Arlington County); *Comcast Cable Communications, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 5565 (MB, 2008) (Calvert, Howard, Prince George's, St. Mary's, and Prince William Counties); *CoxCom, Inc. d/b/a Cox Communications Northern Virginia*, Memorandum Opinion and Order, 22 FCC Rcd 4384 (MB, 2007) (Fairfax County); *Comcast Cablevision of Maryland, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7130 (MB, 2004) (Charles County).

[42] *See, e.g., Bresnan Communications, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 6127 (MB, 2011) (finding that the DBS penetration rate in the communities in Utah and Wyoming exceeded the 15 percent statutory threshold, with the rate frequently over 50 percent and, in one community, over 80 percent).

[43] *See supra* ¶ 5.

[44] *See supra* ¶ 7.

[45] 47 U.S.C. § 543(l)(1)(B).

over 99.5 percent of effective competition requests are currently granted, that over 80 percent of those grants are based on competing provider effective competition,[46] and that DBS has a ubiquitous presence demonstrate that the current state of competition in the MVPD marketplace supports a rebuttable presumption that the two-part test is met.[47] Is such a rebuttable presumption supported by the market changes since 1993, when the presumption of no effective competition was first adopted?

10. With regard to the first prong of the test, we invite comment on whether we should presume that the ubiquitous nationwide presence of DBS providers, DIRECTV and DISH Network, satisfies the requirement that the franchise area be served by two unaffiliated MVPDs each of which offers comparable programming[48] to at least 50 percent of the households in the franchise area. The Commission has held in hundreds of competing provider effective competition decisions that the presence of DIRECTV and DISH Network satisfies the first prong of the test.[49] In fact, the Commission has never determined that the presence of DIRECTV and DISH Network failed to satisfy the first prong of the competing provider test. Moreover, nearly all homes in the U.S. have access to at least three MVPDs.[50] And many areas have access to at least four MVPDs.[51] With respect to the second prong of the competing provider test, we invite comment on whether we should presume that MVPDs other than the largest MVPD have captured more than 15 percent of the households in the franchise area, given that on a nationwide basis competitors to incumbent cable operators have captured approximately 34 percent of U.S. households, or more than twice the percentage needed to satisfy the second prong of the competing provider test.[52] Although we recognize that not every franchise area has subscribership approaching 34 percent for MVPDs other than the incumbent cable operator, data show that nationwide subscription to DBS service alone is nearly twice that required to satisfy the second prong of the competing provider test.[53] Further, out of the 1,440 CUIDs for which the Commission has made an effective competition determination since the start of 2013, it found that 1,150 CUIDs (or nearly 80 percent of the CUIDs

[46] *See supra* n. 38.

[47] *See supra* Section III.

[48] In order to offer comparable programming, a competing MVPD must offer at least 12 channels of video programming, including at least one channel of non-broadcast service programming. 47 C.F.R. § 76.905(g). The programming lineups of DIRECTV and DISH Network satisfy this requirement. *See* www.directv.com/guide; http://www.dish.com/info/channels-list/.

[49] *See supra* ¶ 6; *see e.g.*, *Six Unopposed Petitions for Determination of Effective Competition*, Memorandum Opinion and Order, 29 FCC Rcd 5321 (MB, 2014); *Fifty-Five Unopposed Petitions for Determination of Effective Competition*, Memorandum Opinion and Order, 29 FCC Rcd 3140 (MB, 2014); *Time Warner Entertainment-Advance/Newhouse Partnership*, 28 FCC Rcd 16776.

[50] We estimate that in 2013, out of 133.8 million homes in the United States, approximately 133.4 million homes had access to at least three MVPDs. *See* SNL Kagan, http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx?startYear=2012&endYear=2013 (visited March 31, 2014) (providing data on the cable industry homes passed); AT&T *2013 Annual Report,* at 22; Verizon, *Investor Quarterly Fourth Quarter 2013*, Jan. 21, 2014, at 6.

[51] We estimate that in 2013, out of 133.8 million homes in the United States, approximately 45.6 million homes had access to at least four MVPDs. We assume that homes that have access to one of the two largest telephone MVPDs, AT&T and Verizon, also have access to a cable MVPD and the DBS MVPDs. Thus, our estimate is simply the number of homes that have access to the two largest telephone MVPDs (45.6 million). *See supra* n. 50 (citing the relevant AT&T and Verizon reports).

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

[53] *See id.*

evaluated) have satisfied the competing provider test.[54] Given these facts, would adopting a presumption of competing provider effective competition be consistent with the current state of the market?[55]

11. Based on the analysis above, we seek comment on whether we should adopt a presumption that all cable operators are subject to competing provider effective competition. Is such a presumption warranted even though there may be some franchise areas that are not yet subject to effective competition? Based on market developments, is effective competition the norm throughout the United States today even though there still may be pockets of areas that may not be subject to effective competition?[56] Is the most efficient process to establish a nationwide presumption that effective competition does exist, and to address these pocket areas on a case-by-case basis using the procedures we seek comment on below? We also seek comment on any proposals that we should consider in the alternative. For example, are there any areas in which DBS reception is so limited that the Commission should not presume DBS subscribership in excess of 15 percent of households?[57] If there are any areas in which the Commission should not presume the existence of competing provider effective competition, what approach should the Commission take to the effective competition presumption in these areas? Should we retain in certain defined geographic areas the current presumption that cable operators are not subject to effective competition? If commenters support adoption of different rules in certain areas, we ask them to support such differentiated treatment with specific evidence and clear definitions for the areas in which the different rules would apply.

12. We seek comment on whether reversing the presumption would appropriately implement Section 111 of STELAR.[58] In Section 111, Congress directed the Commission "to establish a streamlined process for filing of an effective competition petition pursuant to this section for small cable operators,"[59] and reversing the presumption would establish a streamlined process for *all* cable operators including small operators. Congress also stated that "[n]othing in this subsection shall be construed to have any effect on the duty of a small cable operator to prove the existence of effective competition under this section."[60] Would changing the presumption fulfill the Commission's responsibilities under Section 111? Or, in light of the language in Section 111 quoted above, would the Commission need to rely on other

[54] *See supra* ¶ 7.

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

[56] *See supra* ¶ 7 (noting the Commission's finding of competing provider effective competition in over 80 percent of the CUIDs for which it has granted an effective competition petition since the start of 2013, and stating that with regard to the remaining less than 20 percent of CUIDs, competing provider effective competition may have been present but the pleadings raised one or more of the other types of effective competition).

[57] We note that the Commission has issued effective competition findings in every state with the exception of Alaska, for which it has not received any requests for a finding of effective competition. We also note, however, that the statute requires satellite carriers of a certain size to retransmit broadcast station television signals in the non-contiguous United States, *i.e.*, Alaska and Hawaii. *See* 47 U.S.C. § 338(a)(4) ("A satellite carrier that offers [MVPD] service in the United States to more than 5,000,000 subscribers shall (A) within 1 year after December 8, 2004, retransmit the signals originating as analog signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States, and (B) within 30 months after December 8, 2004, retransmit the signals originating as digital signals of each such station."); 47 C.F.R. § 76.66(b)(2) (implementing the above-cited statutory provision); *Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, Report and Order, 20 FCC Rcd 14242 (2005) (same).

[58] Pub. L. No. 113-200, § 111, 128 Stat. 2059 (2014).

[59] 47 U.S.C. § 543(o)(1).

[60] *See id.* § 543(o)(2).

statutory authority to change the presumption and thus be required to take action beyond changing the presumption to implement Section 111? Does Section 111 alter or impose any additional duty on a small cable operator to prove the existence of effective competition? We note that, if this provision were read to restrict the Commission from changing the presumption for small operators, it could have the perverse effect of permitting the Commission, consistent with market realities, to reduce burdens on larger operators but not on smaller ones. We also note that Section 111 does not by its own terms preclude the Commission from altering the burden of proof with respect to effective competition. Rather, it simply states that nothing *in that particular statutory provision* shall be construed as speaking to the issue with respect to small cable operators.

13. If we find that adopting a presumption of effective competition would not implement STELAR's effective competition provision, then how should we implement Section 111? Specifically, we invite comment on what streamlined procedures, if any, we should adopt for small cable operators. We note that STELAR directs us to define a "small cable operator" in this context as "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[61] If we adopt any streamlined procedures for filing an effective competition petition, should those procedures apply to all cable operators regardless of size? Overall, how can we make the effective competition process more efficient and accessible, particularly for small cable operators?

B. Procedures and Rule Changes to Implement a New Presumption

14. In this section, we invite comment on revised procedures and rule changes that would be necessary if we decide to implement a presumption of effective competition. At the outset, we note that many franchising authorities have certified to regulate basic service tier rates and equipment based on the existing presumption of no effective competition. We seek comment on the appropriate treatment of these certifications. If the presumption is ultimately reversed, should these certifications be administratively revoked on the effective date of the new presumption pursuant to Sections 623(a)(1) and (2) because their reliance on the presumption of no effective competition would no longer be supportable? If such certifications are administratively revoked, the franchising authority would have to demonstrate that the cable operator is not subject to effective competition pursuant to the procedures we seek comment on below before it could regulate rates in a community. In such instances, we seek comment on whether Section 76.913(a) of our rules, which otherwise directs the Commission to regulate rates upon revocation of a franchising authority's certification, would apply.[62] In this regard, we note that Section 76.913(a) states that "the Commission will regulate rates for cable services and associated equipment of a cable system *not subject to effective competition*," and here the revocation would be based on a presumption of effective competition. Would a finding that Section 76.913(a) does not apply in this context be consistent with Section 623(a)(6) of the Act, which requires the Commission to "exercise the franchising authority's regulatory jurisdiction [over the rates for the provision of basic cable service]" if the Commission either (1) disapproves a franchising authority's certification filing under Section 623(a)(4) or (2) grants a petition requesting revocation of the franchising authority's jurisdiction to regulate rates under Section 623(a)(5)?[63] We note that here we would be administratively revoking the franchising authority's jurisdiction under Sections 623(a)(1) and (2), rather than based on a determination described in Section

[61] *See id.* §§ 543(m)(2) and (o)(3).

[62] *See* 47 C.F.R. § 76.913(a).

[63] *See* 47 U.S.C. § 543(a)(6).

623(a)(5).[64] Would the one-time revocation of existing certifications following adoption of the order in this proceeding necessitate any revisions to Section 76.913(a) or any other Commission rules?[65]

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

16. If we were to reverse the presumption, we seek comment on procedures by which a franchising authority may file a Form 328 demonstrating that effective competition does not exist in a particular franchise area. We seek comment on whether it would be most administratively efficient for franchising authorities, cable operators, and the Commission to incorporate effective competition showings within the certification process, rather than requiring a separate filing. Specifically, when a franchising authority seeks certification to regulate a cable operator's basic service tier and associated equipment, should it continue to file FCC Form 328? Should we revise Question 6 of that form to state the new presumption that cable systems are subject to effective competition, and to require a supplement to Form 328 which contains evidence adequate to satisfy the franchising authority's burden of rebutting the presumption of competing provider effective competition with specific evidence that such effective competition does not exist in the franchise area in question?[66] Unless a franchising authority has actual knowledge to the contrary, should we permit it to continue to presume that the cable operator is not subject to any other type of effective competition in the franchise area?[67] Under such an approach, the franchising authority would not need to submit evidence rebutting the presence of effective competition under those other tests. Except as otherwise discussed herein, should we retain the existing provisions in Section 76.910 of our rules, including that a certification will become effective 30 days after the date filed unless the Commission notifies the franchising authority that it has failed to meet one of the specified requirements?[68] Would such an approach be consistent with a presumption of effective competition, and with STELAR's requirement that we streamline the effective competition process for small cable

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[64] *Id.* § 543(a)(5) ("If the Commission . . . determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority").

[65] *See, e.g.,* 47 C.F.R. § 76.914(b).

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

[67] *See* 47 C.F.R. § 76.910(b)(4) ("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."). We note that these other types of effective competition would be relevant if a franchising authority rebuts a presumption of competing provider effective competition, and the cable operator seeks to demonstrate that a different type of effective competition exists.

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

operators? We invite comment on appropriate procedures, and we welcome commenters to propose alternate procedures for the Commission's consideration. For example, we note that Section 623(a)(4)(B) of the Act provides that a certification does not become effective if the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that "the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations."[69] Based on a presumption of competing provider effective competition, should the Commission make such a finding of a lack of legal authority, and how could the Commission comply with the required notice and opportunity to comment as stated in the statute if it takes such an approach? Should we make any other changes to FCC Form 328, or to the rules or procedures that apply to franchising authority certifications? We note that the Commission has authority to dismiss a pleading that fails on its face to satisfy applicable requirements, and thus, the Commission on its own motion could deny a certification based on failure to meet the applicable burden. Should the cable operator have an opportunity before the 30-day period expires to respond to the franchising authority's showing?

17. We seek comment on procedures by which a cable operator may oppose a certification. Should we permit a cable operator to file a petition for reconsideration pursuant to Section 76.911 of our rules, demonstrating that it satisfies any of the four tests for effective competition?[70] Should the procedures set forth in Section 1.106 of our rules continue to govern responsive pleadings thereto? If a franchising authority successfully rebuts a presumption of competing provider effective competition, a cable operator seeking to demonstrate that low penetration, municipal provider, or LEC effective competition exists in the franchise area would bear the burden of demonstrating the presence of such effective competition, whereas we would presume the presence of competing provider effective competition absent a franchising authority's demonstration to the contrary. We ask commenters whether we should retain the requirement in Section 76.911(b)(1) that the filing of a petition for reconsideration alleging that effective competition exists would automatically stay the imposition of rate regulation pending the outcome of the reconsideration proceeding. Should we make any revisions to existing Section 76.911 of our rules? If the Commission does not act on a Section 76.911 petition for reconsideration within six months, should the petition be deemed granted based on the same finding that would underlie a presumption of competing provider effective competition, *i.e.*, that the ubiquitous nationwide presence of DBS providers has made effective competition the norm throughout the United States?[71] We seek comment on whether a deemed granted process can be implemented consistent with the requirements of Sections 623(a)(2)[72] and/or 623(a)(4).[73] As with any Commission action, the franchising authority would have the right to file a petition for reconsideration or an application for review to the full Commission of any certification denial or petition for reconsideration grant.[74] We seek comment on any other changes to our rules that would best effectuate the process for certification of franchising authorities to regulate the basic service tier and petitions for reconsideration of such certifications.

18. Our rules currently permit cable operators to request information from a competitor about the competitor's reach and number of subscribers, if the evidence establishing effective competition is not

[69] 47 U.S.C. § 543(a)(4)(B).

[70] *See supra* Section II; 47 C.F.R. §§ 76.911.

[71] *See supra* ¶¶ 8-11.

[72] *See* 47 U.S.C. § 543(a)(2) ("If the Commission *finds* that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission *finds* that a cable system is not subject to effective competition [the rates for basic cable service shall be subject to regulation].") (emphasis added).

[73] *See id.* § 543(a)(4) ("If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval").

[74] *See* 47 C.F.R. §§ 1.106 and 1.115. Cable operators would have the same recourse for certification grants.

otherwise available.[75] We invite comment on whether we should amend our rules to provide that if a franchising authority filing Form 328 wishes to demonstrate a lack of effective competition and necessary evidence is not otherwise available, the franchising authority may request directly from an MVPD information regarding the MVPD's reach and number of subscribers in a particular franchise area. What would be the costs and benefits of such an approach? As currently required for such requests by cable operators, should we require the MVPD to respond to such a request within 15 days, and should we retain the requirement that such responses may be limited to numerical totals related to subscribership and reach? Existing Section 76.907(c), which governs such requests in the context of petitions for a determination of effective competition and which also applies to petitions for reconsideration of certification pursuant to Section 76.911(a)(1), would remain in effect.

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

20. Similarly, if the Commission adopts an order implementing the presumption that cable operators are subject to effective competition, how should we address cable operator petitions seeking findings of effective competition that are pending as of the adoption date?[76] Should any such petitions that are pending as of the effective date of the new rules be granted? Or should such petitions be adjudicated on the merits under the new presumption of competing provider effective competition? Should different procedures apply if a pending petition seeking a finding of effective competition was opposed? We also seek comment on any other appropriate manner in which we should dispose of these pending petitions.

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

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

[75] *Id.* § 76.907(c) ("If the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach and number of subscribers.").

[76] We estimate that there are currently 58 such petitions pending.

"governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[77]

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

V. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),[78] the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") relating to this NPRM. The IRFA is set forth in Appendix B.

B. Initial Paperwork Reduction Act Analysis

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

C. Ex Parte Rules

26. Permit-But-Disclose. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[79] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission

[77] *See* 5 U.S.C. § 601(5).

[78] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 ("CWAAA").

[79] 47 C.F.R. §§ 1.1200 *et seq.*

staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Filing Requirements

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

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

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

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

E. Additional Information

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

VI. ORDERING CLAUSES

31. 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,[80] this Notice of Proposed Rulemaking **IS ADOPTED.**

32. **IT IS FURTHER ORDERED** that, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[80] Pub. L. No. 113-200, § 111, 128 Stat. 2059 (2014). 47 U.S.C. § 543(o)(1).

APPENDIX A

Proposed Rules

The Federal Communications Commission proposes to amend 47 CFR part 76 to read as follows:

PART 76 – Multichannel Video and Cable Television Service

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

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

2. Revise § 76.906 to read as follows:

§ 76.906 Presumption of effective competition.

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

3. Amend § 76.907 by revising paragraph (b) to read as follows (retaining the existing note to paragraph (b):

§ 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.

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4. Amend § 76.910 by revising paragraph (b)(4) and by adding a note to that paragraph to read as follows:

§ 76.910 Franchising authority certification.

* * * * *

(b) * * *

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

Note to paragraph (b)(4): The franchising authority bears the burden of rebutting the presumption that effective competition exists with evidence that effective competition, as defined in § 76.905(b)(2), does not exist in the franchise area. If the evidence establishing the lack of effective competition is not

otherwise available, franchising authorities may request from a multichannel video programming distributor information regarding the multichannel video programming distributor's reach and number of subscribers. A multichannel video programming distributor must respond to such request within 15 days. Such responses may be limited to numerical totals.

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APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[3]

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

2. In the NPRM, the Commission seeks comment on how it should improve the effective competition process. Specifically, it asks whether it should adopt a rebuttable presumption that cable operators are subject to effective competition. Pursuant to the Communications Act of 1934, as amended (the "Act"), a franchising authority[4] is permitted to regulate basic cable rates only if the cable system is not subject to effective competition.[5] As a result, where effective competition exists, basic cable rates are dictated by the marketplace and not by regulation. In 1993, the Commission adopted a presumption that cable operators are not subject to effective competition, absent a cable operator's demonstration to the contrary.[6] Given the changes to the video marketplace that have occurred since 1993, including in particular the widespread availability of Direct Broadcast Satellite ("DBS") service, we now seek comment on whether to reverse our presumption and instead presume that cable operators are subject to effective competition. Such an approach would reflect the fact that today, based on application of the effective competition test in the current market, the Commission grants nearly all requests for a finding of effective competition.[7] If the Commission were to presume that cable operators are subject to effective competition, a franchising authority would be required to demonstrate to the Commission that one or more cable operators in its franchise area is not subject to effective competition if it wishes to regulate cable service rates. We intend to implement policies that are mindful of the evolving video marketplace.

3. In initiating this proceeding, we are also implementing part of the STELA Reauthorization Act of 2014 ("STELAR"), enacted on December 4, 2014. Specifically, Section 111 of STELAR directs the Commission to adopt a streamlined effective competition petition process for small

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").

[2] *See* 5 U.S.C. § 603(a).

[3] *See id*.

[4] 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). A local franchising authority ("LFA") "is the local municipal, county, or other government organization that regulates certain aspects of the cable television industry at the state or local level." *See* Cable Television Fact Sheet, *Where to File Complaints Regarding Cable Service* (Aug. 15, 2013) (available at http://www.fcc.gov/guides/cable-television-where-file-complaints-regarding-cable-service).

[5] *See* 47 U.S.C. § 543(a)(2).

[6] *See* 47 C.F.R. § 76.906.

[7] *See* NPRM ¶ 7. Since the start of 2013, the Commission has found that there is effective competition in more than 99.5 percent of the communities for which it was asked to make this determination. *See id.*

cable operators.[8] Through this proceeding, we intend to fulfill Congress' goal that we ease the burden of the existing effective competition process on small cable operators, especially those that serve rural areas, through a rulemaking that shall be completed by June 2, 2015.[9] We seek comment on whether the adoption of a rebuttable presumption of effective competition would reflect the current multichannel video programming distributor ("MVPD") marketplace and reduce regulatory burdens on all cable operators – large and small – and on their competitors, while more efficiently allocating the Commission's resources and amending outdated regulations.[10]

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 543, and Section 111 of the STELA Reauthorization Act of 2014, Pub. L. No. 113-200, § 111, 128 Stat. 2059 (2014).

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

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[11] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[12] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[13] 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] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *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."[15] Census Bureau data for 2011 indicate

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[8] *See* Pub. L. No. 113-200, § 111, 128 Stat. 2059 (2014). STELAR was enacted on December 4, 2014 (H.R. 5728, 113th Cong.). 47 U.S.C. § 543(o)(1) ("Not later than 180 days after the date of the enactment of this subsection, 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.").

[9] *See id.* Congress applied the definition of "small cable operator" as set forth in Section 623(m)(2) of the Act. *See id.* § 543(o)(3).

[10] *See* Exec. Order No. 13,579, § 2, 76 Fed. Reg. 41,587 (July 14, 2011) ("[t]o facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned"); *Final Plan for Retrospective Analysis of Existing Rules,* 2012 WL 1851335 (May 18, 2012).

[11] 5 U.S.C. § 603(b)(3).

[12] *Id.* § 601(6).

[13] *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[14] 15 U.S.C. § 632.

[15] 5 U.S.C. § 601(5).

that there were 89,476 local governmental jurisdictions in the United States.[16] We estimate that, of this total, a substantial majority may qualify as "small governmental jurisdictions."[17] Thus, we estimate that most governmental jurisdictions are small.

7. *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."[18] The SBA has developed a small business size standard for wireline firms within the broad economic census category, "Wired Telecommunications Carriers."[19] 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.[20] Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.[21] Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

8. *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.[22] According to SNL

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[16] U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007).

[17] The 2007 U.S Census data for small governmental organizations indicate that there were 89,476 local governments in 2007. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Table 428. The criterion by which the size of such local governments is determined to be small is a population of fewer than 50,000. 5 U.S.C. § 601(5). However, since the Census Bureau, in compiling the cited data, does not state that it applies that criterion, it cannot be determined with precision how many such local governmental organizations are small. Nonetheless, the inference seems reasonable that a substantial number of these governmental organizations have a population of fewer than 50,000. To look at Table 428 in conjunction with a related set of data in Table 429 in the Census's Statistical Abstract of the U.S., that inference is further supported by the fact that in both Tables, many sub-entities that may well be small are included in the 89,476 local governmental organizations, *e.g.* county, municipal, township and town, school district and special district entities. Measured by a criterion of a population of fewer than 50,000, many of the cited sub-entities in this category seem more likely than larger county-level governmental organizations to have small populations. Accordingly, of the 89,746 small governmental organizations identified in the 2007 Census, the Commission estimates that a substantial majority are small.

[18] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[19] 13 C.F.R. § 121.201 (NAICS code 517110).

[20] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5; available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

[21] *Id*.

[22] 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer*

(continued….)

Kagan, there are 1,258 cable operators.[23] Of this total, all but 10 incumbent cable companies are small under this size standard.[24] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[25] Current Commission records show 4,584 cable systems nationwide.[26] 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.

9. *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,"[27] 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.[28] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[29] Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.[30] 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.[31] Currently, only two entities provide DBS service, which

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Protection and Competition Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[23] Data provided by SNL Kagan to Commission Staff upon request on March 25, 2014. Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. *See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10505-06, ¶ 24 (2013) ("*15th Annual Video Competition Report*").

[24] SNL Kagan, U.S. Multichannel Top Cable MSOs, http://www.snl.com/interactivex/TopCableMSOs.aspx (visited June 26, 2014). We note that when this size standard (*i.e.*, 400,000 or fewer subscribers) is applied to all MVPD operators, all but 14 MVPD operators would be considered small. *15th Annual Video Competition Report*, 28 FCC Rcd at 10507-08, ¶¶ 27-28 (subscriber data for DBS and Telephone MVPDs). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. *See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222, 17245-46, ¶ 37 (2011) (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

[25] 47 C.F.R. § 76.901(c).

[26] The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on July 1, 2014. A cable system is a physical system integrated to a principal headend.

[27] *See* 13 C.F.R. § 121.201, NAICS code 517110 (2007). The 2007 NAICS definition of the category of "Wired Telecommunications Carriers" is in paragraph 7, above.

[28] 13 C.F.R. § 121.201, NAICS code 517110 (2007).

[29] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5; available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

[30] *Id*.

[31] 13 C.F.R. § 121.201; NAICS code 517510 (2002).

requires a great investment of capital for operation: DIRECTV and DISH Network.[32] 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.

10. *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.[33] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[34] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."[35] 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.[36] Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.[37] 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.[38] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[39] 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.

11. *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."[40] 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.[41] We have therefore included small

[32] S*ee 15th Annual Video Competition Report*, 28 FCC Rcd at 10507, ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id*. at 10507, 10546, ¶¶ 27, 110-11.

[33] 47 U.S.C. § 571(a)(3)-(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Thirteenth Annual Report, 24 FCC Rcd 542, 606, ¶ 135 (2000) ("*13th Annual Video Competition Report*").

[34] *See* 47 U.S.C. § 573.

[35] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[36] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5; available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

[37] *Id*.

[38] A list of OVS certifications may be found at http://www.fcc.gov/mb/ovs/csovscer.html.

[39] *See 13th Annual Video Competition Report*, 24 FCC Rcd at 606-07, ¶ 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[40] 15 U.S.C. § 632.

[41] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into

(continued….)

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.

12. *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.[42] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[43] Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.[44] Therefore, under this size standard, the majority of such businesses can be considered small entities.

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

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

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

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its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 C.F.R. § 121.102(b).

[42] 13 C.F.R. § 121.201 (2007 NAICS code 517110).

[43] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5; available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table .

[44] *Id*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

15. 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."[45]

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

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

17. None.

[45] 5 U.S.C. § 603(c)(1)-(c)(4).