

on existing state and tribal bioassessment efforts, with the goal of collecting comparable data at a limited number of sites that can be pooled at a regional level. Pooling data enables more robust regional analyses and improves the ability to detect trends over shorter time periods. This document describes the development and implementation of the RMNs. It includes information on selection of sites, expectations for data collection, the rationale for collecting these data, data infrastructure, and provides examples of how the RMN data will be used and analyzed. The report concludes with a discussion on the status of monitoring activities and next steps.

Dated: February 19, 2016.

**Mary A. Ross,**

*Deputy Director, National Center for Environmental Assessment.*

[FR Doc. 2016-04087 Filed 2-26-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2011-0239; FRL-9942-71-OEI]

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Grain Elevators (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency has submitted an information collection request (ICR), “NSPS for Grain Elevators (40 CFR part 60, subpart DD) (Renewal)” (EPA ICR No. 1130.11, OMB Control No. 2060-0082), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 29, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32120) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before March 30, 2016.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2011-0239, to: (1) EPA online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), or by email to [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: [yellin.patrick@epa.gov](mailto:yellin.patrick@epa.gov).

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

**Abstract:** The New Source Performance Standards (NSPS) apply to each affected facility at any grain terminal elevator or any grain storage elevator. The facilities are each truck unloading station, truck loading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer and all grain handling operations that commenced construction, modification or reconstruction after August 3, 1978. Owners or operators of the affected facilities must make a one-time-only report of the date of construction or reconstruction, notification of the actual date of startup, notification of any physical or operational change to existing facility that may increase the rate of emission of the regulated pollutant, notification of initial

performance test; and results of initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction, or any period during which the monitoring system is inoperative.

**Form Numbers:** None.

**Respondents/affected entities:** Grain elevator operations.

**Respondent's obligation to respond:** Mandatory (40 CFR part 60, subpart DD).

**Estimated number of respondents:** 200 (total).

**Frequency of response:** Initially.

**Total estimated burden:** 460 hours (per year). Burden is defined at 5 CFR 1320.3(b).

**Total estimated cost:** \$46,000 (per year). There are no annualized capital/startup or O&M costs.

**Changes in the Estimates:** There is a decrease in the respondent and Agency burden in this ICR compared to the previous ICR. This is not due to program changes. The burden and cost decrease because we corrected the burden estimates by removing the annual summary report line item to more accurately reflect the Subpart DD regulatory requirements. The current Subpart DD NSPS does not impose any ongoing monitoring or reporting requirement.

**Courtney Kerwin,**

*Acting Director, Collection Strategies Division.*

[FR Doc. 2016-04241 Filed 2-26-16; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 16-41; FCC 16-19]

### Promoting the Availability of Diverse and Independent Sources of Video Programming

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** In this document, the Commission seeks comment on the principal issues that independent video programmers confront in gaining carriage in the current marketplace and possible actions the Commission or others might take to address those issues. The goal of this proceeding is to begin a conversation on the state of independent and diverse programming, and to assess how the Commission or others could foster greater consumer choice and enhance diversity in the evolving video marketplace by

eliminating or reducing any barriers faced by independent programmers in reaching viewers. The Commission seeks to explore ways to alleviate such barriers, as well as its legal authority to do so.

**DATES:** Comments are due on or before March 30, 2016; reply comments are due on or before April 19, 2016.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 16–41, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

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

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

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Calisha Myers or Raelynn Remy of the Policy Division, Media Bureau at (202) 418–2120 or [Calisha.Myers@fcc.gov](mailto:Calisha.Myers@fcc.gov); [Raelynn.Remy@fcc.gov](mailto:Raelynn.Remy@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Inquiry*, FCC 16–19, adopted and released on February 18, 2016. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or

calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

## Synopsis

### I. Introduction

1. Over the last quarter century, we have seen significant changes in the media landscape that have fundamentally altered the way in which Americans access and consume video programming. When Congress passed the 1992 Cable Act, the majority of American households had access to only one pay television service, and alternatives to that service were in their incipient stages. By contrast, consumers today can access video programming over multiple competing platforms, and the dominance of incumbent pay TV distributors has eroded. However, incumbent operators retain a very important position in the video programming marketplace. Although competition among video distributors has grown, traditional multichannel video programming distributor (MVPD) carriage is still important for the growth of many emerging programmers. Some independent video programmers<sup>1</sup> have expressed concern that certain carriage practices of cable operators and other MVPDs may limit their ability to reach viewers.

2. A central objective of multichannel video programming regulation is to foster a diverse, robust, and competitive marketplace for the delivery of multichannel video programming.<sup>2</sup> As the agency charged by statute with implementing this objective, we seek to start a fact-finding exercise on the current state of programming diversity. Through this *NOI*, we seek comment on the principal issues that independent video programmers confront in gaining carriage in the current marketplace and possible actions the Commission or others might take to address those issues. Our goal in this proceeding is to begin a conversation on the state of independent and diverse programming, and to assess how the Commission or others could foster greater consumer choice and enhance diversity in the evolving video marketplace by eliminating or reducing any barriers faced by independent programmers in

reaching viewers. For purposes of this *NOI*, we are particularly interested in starting a dialogue on barriers experienced by all types of independent programmers, including small programmers and new entrants. We seek to explore ways that the Commission can alleviate such barriers, as well as its legal authority to do so. Similar to the Commission's exploratory efforts in other proceedings, we also seek to be better informed to make any potential recommendations to other agencies, Congress, or the private sector, if we find that solutions to barriers exist that are beyond the authority of this agency. We also are interested in addressing challenges faced by a specific type of independent programmer—namely, public, educational, and governmental (PEG) channels—with respect to MVPD carriage.

### II. Discussion

#### A. State of the Marketplace for Independent Programming

3. The Commission seeks information on the current state of the marketplace for independent programming and the availability of such programming to consumers. Has the number of independent programmers grown or decreased? Has the diversity of programming available to consumers expanded or contracted? What percentage of non-broadcast networks are independent programmers? We also seek input on the manner in which independent programmers are carried by distributors and whether the answers to the following questions differ for independent programmers and vertically integrated programmers. To what extent are independent programmers carried by traditional MVPDs and to what extent are they carried by over-the-top (OTT) providers? How many of the independent networks distributed by MVPDs are also available on OTT platforms? Is it more difficult for independent programmers to gain carriage on certain MVPDs than others (e.g., cable vs. non-cable MVPDs, or smaller vs. larger MVPDs)? Does the size of the MVPD matter? Is there a disparity in the amount of independent programming on smaller versus larger MVPDs? Do large MVPDs have market power that has an effect on the ability of independent programmers to obtain carriage? Conversely, to what extent does the size of the independent programmer matter? Do large independent programmers have an easier time getting carried than smaller ones? Are there characteristics of independent programmers that enable some to gain MVPD carriage but not

<sup>1</sup> For purposes of this proceeding, we define an "independent video programmer" or "independent programmer" as one that is not vertically integrated with a MVPD.

<sup>2</sup> See, e.g., Telecommunications Act of 1996, Pub. L. 104–104, § 257(b), 110 Stat. 56, 77, (codified at 47 U.S.C. 257(b)); 47 U.S.C. 521; 47 U.S.C. 532(a); 47 U.S.C. 533(f)(2). See also 47 U.S.C. 521(a)(4), (b)(1) through (5); H.R. No. 102–862, at 2, 1992 U.S.C.A.N. 1231, 1232.

others? To what extent does the level of competition among MVPDs impact the bargaining leverage of independent programmers in negotiations for carriage deals? With regard to the foregoing questions, commenters should provide examples of and relevant information regarding specific independent program networks.

#### *B. Principal Marketplace Obstacles Faced by Independent Programmers*

4. Independent programmers and others have alleged in various proceedings that cable operators and other MVPDs engage in program carriage practices that hamper the ability of programmers with limited bargaining leverage to obtain distribution of their content. They claim that these practices deprive consumers of the benefits of competition, including greater choice and diversity in programming content. We seek input below on several practices that independent programmers allege have an adverse impact on them.<sup>3</sup>

##### **1. Insistence on Contract Provisions That Constrain the Ability of Independent Programmers To Compete**

5. Independent programmers and others have asserted that certain MVPDs often demand that carriage agreements include certain contractual provisions, such as most favored nation (MFN) and alternative distribution method (ADM) clauses, that hinder programming competition, innovation, and diversity.

6. *Most Favored Nation Provisions.* In general, MFN provisions entitle the contracting video programming distributor to modify a programming agreement to incorporate more favorable rates, contract terms, or conditions that the contracting programmer later agrees to with another distributor.<sup>4</sup> These

provisions are the result of contractual agreements between programmers and distributors. MFN clauses historically were used to protect favorable carriage rates obtained by MVPDs that brought a large subscriber base to the programmer, but can be misused to anticompetitive means in some cases.<sup>5</sup> Independent programmers claim that some MVPDs increasingly have insisted on MFN treatment without regard to the concessions or commitments made by the programmer to secure those terms from another MVPD and without requiring the MVPD to deliver commensurate value to the programmer.

7. Some parties claim that MVPDs' insistence on MFN provisions precludes an independent programmer from making unique or innovative arrangements designed to achieve initial carriage of new programming, because those same unique terms could then be required to be extended to all MVPDs. They further argue that, given the proliferation of MFN provisions, an independent programmer that achieves some carriage is likely to have numerous MFN obligations, and that this can initiate a "domino effect" when a single term in an agreement with one MVPD or OTT service triggers the MFN obligations in a programmer's agreements with other MVPDs. In particular, the prospect of having to make the same concessions to all of the MVPDs with which an independent programmer has MFN obligations may impede the ability of independent programmers to negotiate carriage agreements with new-entrant distributors that have smaller subscriber bases, such as new OTT distributors. As a result, programmers and some advocacy groups claim, some MVPDs are able to demand MFN concessions from independent programmers that make OTT distribution economically infeasible, which deters independent programmers from developing new and innovative types of video programming, inhibits new distribution models, and limits the diversity of programming available to consumers. On the other hand, some antitrust analyses have noted that in some situations MFN provisions may yield benefits, such as

lower prices, reduced transaction costs, or the development of new products.<sup>6</sup>

8. We seek comment on the prevalence and scope of MFNs today in contracts for carriage of non-broadcast video programming. Are MFN provisions included in carriage contracts between independent programmers and OTT distributors, or do they tend to be included only in MVPD carriage contracts? Are MFN provisions more often included in carriage contracts involving independent programmers than those involving vertically integrated programmers? Does the size of the MVPD or independent programmer affect whether MFN provisions are included in carriage contracts? Do MFN provisions in carriage agreements between MVPDs and independent programmers cover the terms of both other MVPD agreements and OTT agreements? If so, how often do such MFN provisions extend to OTT agreements? Do both cable and non-cable MVPDs require MFN provisions? Do MFN provisions allow MVPDs to "cherry pick," *i.e.*, to take advantage of the lower price available in a separate carriage agreement without a reciprocal obligation? If so, how often? Will MVPDs accept some reciprocal obligations while refusing other reciprocal obligations?

9. We also seek comment on the costs and benefits of these provisions. Are there specific types of MFN provisions that particularly hinder the creation and distribution of new or niche programming? If so, how do those provisions have this effect? How do distributors enforce MFN provisions? Are there specific means of enforcement that are more common or more onerous to independent programmers than others?<sup>7</sup> What benefits are associated with MFN provisions, and are there contexts in which the benefits outweigh any harmful effects of such provisions? Do MFNs result in lower prices for consumers? Do they enhance the likelihood that a start-up independent programmer will be able to gain carriage on MVPDs? Do they reduce transaction costs between MVPDs and independent programmers? Do independent programmers receive any consideration, economic or non-economic, from

<sup>3</sup> Pursuant to section 103(c) of the STELA Reauthorization Act of 2014, the Commission recently issued a *Notice of Proposed Rulemaking* to review the totality of the circumstances test for evaluating whether broadcast stations and MVPDs are negotiating for retransmission consent in good faith. See *Implementation of section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test*, MB Docket No. 15–216, *Notice of Proposed Rulemaking*, 80 FR 59706 (2015) (*Totality of the Circumstances NPRM*). Some of the issues raised in this *NOI* regarding negotiations between MVPDs and programmers in general are similar to issues raised in the *Totality of the Circumstances NPRM*. However, we direct parties wishing to comment on issues relating to retransmission consent negotiations between broadcasters and MVPDs to file any comments on those issues in the *Totality of the Circumstances NPRM* docket.

<sup>4</sup> MFN rights can be conditional or unconditional. A conditional MFN provision entitles a distributor to certain contractual rights that the programmer has granted to another distributor, as long as the distributor also accepts equivalent or related terms and conditions contained in that other distributor's

agreement. An unconditional MFN provision, by contrast, contains no such requirement that the distributor entitled to MFN rights accept equivalent or related terms and conditions; it can elect to incorporate in its agreement any of the terms of the other distributor's agreement that it wants to incorporate.

<sup>5</sup> See *United States v. Apple*, 791 F.3d 290, 319 (2d Cir. 2015), citing *Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic*, 65 F.3d 1406, 141 (7th Cir. 1995).

<sup>6</sup> See Steven C. Salop & Fiona Scott Morton, *Developing an Administrable MFN Enforcement Policy*, 27 Antitrust 15, 15 (2013); Jonathan B. Baker & Judith A. Chevalier, *The Competitive Consequences of Most-Favored-Nation Provisions*, 27 Antitrust 20, 21–22 (2013).

<sup>7</sup> For example, some means of enforcement may include "self-policing" by the programmer, an inquiry initiated by the MVPD, or contractual rights that permit an MVPD to periodically audit the programmer.

MVPDs in exchange for agreeing to MFN provisions?

10. *Alternative Distribution Method Provisions.* An ADM provision restricts a programmer's ability to distribute its programming via an alternate platform, often explicitly prohibiting specific non-MVPD distribution methods (such as online platforms) and often for a specified period of time (commonly referred to as a "window") following the programming's original airing on a traditional distribution channel.<sup>8</sup> ADMs may take a variety of less-than-absolute forms. For example, some provisions may ban the distribution of content on a platform that carries fewer than a prescribed minimum number of channels. This type of restriction may have the effect of preventing a programmer from taking advantage of a desired distribution opportunity, such as OTT distribution. According to some industry observers, in some cases, a programmer that wishes to distribute its content online faces the risk that MVPDs will refuse to carry its network. Independent video programmers argue that limitations on the sharing or licensing of an independent network's content online reduce the network's ability to advertise and promote its content, as well as to share original reporting and newsgathering with other outlets. On the other hand, an ADM provision might encourage an MVPD to provide an independent programmer with distribution that it otherwise would not receive if it decided to also make its content available on alternative platforms.

11. We seek comment on the prevalence and scope of ADMs in contracts for carriage of non-broadcast video programming as well as the costs and benefits associated with such provisions. We request input on the extent to which ADM provisions vary, the consideration offered in exchange for such provisions, and the ways in which distributors enforce ADM provisions. Are ADM provisions included in carriage contracts between independent programmers and OTT distributors, or are they included only in MVPD carriage contracts? Are ADM provisions included only in carriage contracts involving independent programmers or are they included in contracts involving vertically integrated programmers as well? Do both cable and non-cable MVPDs require such provisions? Are there specific provisions or means of enforcement of ADM provisions that are more common

to independent programmers than others, or that have a different effect on independent programmers? Is there an industry standard for the windowing restrictions included in ADM provisions? Are certain window requirements more harmful to independent programmers than others, and if so, how prevalent are such requirements? In addition to carriage, do independent programmers receive any consideration, economic or non-economic, from MVPDs in exchange for agreeing to ADM provisions? By providing MVPDs with incentives to carry new or under-exposed content, can ADM provisions actually enable independent programmers to gain MVPD carriage and thereby increase the exposure of their programming? Are there other benefits associated with these provisions?

12. We also seek comment on the impact of MFN and ADM provisions on the video marketplace and on the availability of independent programming. Do such provisions thwart competition, diversity, or innovation? Or do they increase MVPD's willingness to contract with independent programmers? Do these types of provisions reflect a proper balance between an MVPD's legitimate interest in being the exclusive distributor of programming content for a set period of time and a programmer's legitimate interest in providing its programming to diverse distributors and platforms? We seek comment on whether MFN and ADM provisions may be used to limit the ability of independent programmers to experiment with new or unique distribution models or to tailor deals with smaller MVPDs or online distributors. In particular, how might MFNs or ADMs limit the ability of a programmer to license or distribute its programming over-the-top or via its own platforms, including as part of a direct-to-consumer Web site or application that offers linear or on-demand content? Are there specific types of provisions (e.g., unconditional MFNs or ADMs restricting paid distribution) that are aimed more at restricting new means of distribution than at facilitating efficient negotiations or protecting an MVPD's investment in programming? Are there specific types of MFN or ADM provisions that are pro-competitive and enhance independent programmers' ability to gain MVPD carriage?

13. *Other Contractual Provisions and OTT Carriage.* We also seek comment on whether there are other types of contractual provisions besides MFN and ADM provisions that are used today that impact, in a negative or positive way,

the ability of independent programmers to distribute their programming. Are there circumstances under which these limits actually end up enabling MVPD distribution of program content that might not otherwise be carried? Aside from contractual issues, are there other aspects of MVPD carriage that are preventing the creation and distribution of diverse, independent programming? Ensuring diverse and novel programming requires a viable, profitable business model, for both MVPDs and programmers. Is it possible to sustain a business model based upon carriage by a collection of small MVPDs, or is it necessary to obtain carriage by a larger MVPD in order to attract carriage by additional MVPDs? Is there a threshold level of MVPD carriage that is necessary to sustain a viable business model?

14. In addition, we request input on the costs and benefits to independent programmers of forgoing MVPD carriage to pursue OTT carriage. While OTT distribution has lower barriers to entry, it is still a nascent service in some respects. Is the OTT platform a viable business model? Is it a viable alternative to MVPD carriage? If not, what must happen before it can be considered a viable business model? Does the OTT platform provide an easier path to marketplace success? What benefits of carriage (e.g., level of viewership or advertising revenue) on OTT platforms are necessary for an independent programmer to remain viable? What are the difficulties new and emerging programmers face in negotiating for these benefits? How do the benefits of carriage on OTT platforms compare with the benefits of carriage on MVPD platforms? Do MVPDs offer favorable carriage terms that OTT platforms are unable to offer? If so, what are these terms and to what extent are these terms necessary to remain viable in today's marketplace? Can a successful OTT experience lead to future MVPD carriage and/or vice versa? To the extent possible, we request that commenters provide examples of independent programmers that have been able to launch and grow on OTT platforms. Despite such launch and growth, are there additional challenges that independent programmers face in gaining carriage and growing their viewership on OTT platforms? If so, what are they and what effect do they have? Are any of these challenges particular to diverse and niche programmers?

## 2. Program Bundling

15. MVPDs claim that some large media entities with multiple program

<sup>8</sup> A traditional distribution channel typically offers linear programming—programming prescheduled by the programming provider.

offerings, including vertically-integrated programmers, are able to force MVPDs to carry less desirable content through bundling arrangements. In particular, these parties assert that such entities often leverage their marquee programming (e.g., premium channels or regional sports programming) to force MVPDs to carry additional channels that have little or no consumer demand. Some parties maintain that the proliferation of bundling arrangements limits programming choices and raises costs for consumers by forcing MVPDs to accept less desirable programming that may displace independent and diverse programming. Independent programmers argue that bundling arrangements drain the resources and monopolize the channel capacity of MVPDs to the detriment of independent programming. MVPDs that desire to cut costs then may drop independent programming from their lineups, refuse to carry new programming, or offer carriage only on terms less favorable to independent programmers. Other independent programmers argue that forced bundling is merely a pretext used by MVPDs in order to justify continued denial of carriage for independent programming. Along similar lines, some parties have claimed that programmers impose an extra charge on MVPDs for subscriber access to their online programming and that this has the potential to drain resources that might otherwise be devoted to carriage of independent programming. How pervasive is this practice?

16. Large programmers have defended the use of program bundles and refuted arguments that they have adverse effects on MVPDs or consumers. They maintain that, through the bundling of programming, MVPDs have the option of obtaining valuable programming at discounted prices. In this regard, such programmers contend that these programming bundles—offered to both small and large MVPDs—offer substantially greater value to MVPDs and consumers than standalone offers.

17. We invite comment on the impact of bundling practices. To what extent does bundling constrain MVPDs from carrying independent programming? Do smaller MVPDs feel the constraints of bundling more acutely than large MVPDs because of their limited capacity or limited resources? Does bundling benefit consumers by lowering prices for content? Are there any instances of independent programmers being dropped or not carried at all because of the constraints placed on MVPD systems as a result of bundling? To what extent do bundling practices, together with capacity constraints, result in

independent programmers being dropped from MVPDs' channel lineups? Are capacity constraints as significant as they were years ago? With technological changes, will capacity constraints be a less significant issue in the future?

18. Recently, the marketplace has trended away from large MVPD bundles. Some MVPDs have begun offering smaller programming packages, and programmers have launched a number of online *à la carte* and on-demand program offerings. We seek comment on what effect, if any, these trends have had on independent programmers. Some MVPDs have argued that these trends threaten independent programmers. They assert, among other things, that these trends undermine the economics of large MVPD bundles that have enabled MVPDs to carry independent programmers offering diverse and niche programming to consumers. Is there evidence to support the claims that marketplace trends toward smaller bundles and *à la carte* or on-demand offerings adversely impact independent programmers or reduce consumer choice in programming? Alternatively, is there any evidence suggesting that these trends may provide benefits to independent programmers?

#### *C. Other Marketplace Obstacles*

19. In a number of proceedings, independent programmers have cited other obstacles in their efforts to secure carriage by certain MVPDs or OTT providers. According to some programmers, for example, some MVPDs, rather than refusing carriage outright to a programmer (which might spur a complaint), instead will purposefully fail to respond to carriage negotiation requests in a timely manner or fail to acknowledge such requests entirely. Independent programmers further claim that when MVPDs do respond to carriage requests, they in some cases knowingly put forth inadequate counter offers. Independent programmers also claim that some MVPDs have employed a tactic of avoiding negotiations until just before the expiration of existing carriage agreements, thereby forcing independent programmers to accept uncertain, month-to-month carriage arrangements. We seek comment on whether these practices are being employed, and if so, the extent to which they are being used, as well as examples that demonstrate the impact of such practices. To what extent, if at all, do such practices impede entry by or successful growth of independent programmers? Are there other practices or marketplace issues (e.g., demands by

MVPDs for an ownership stake in independent programmers, channel placement, or tiering practices) that may impede the entry or growth of independent programmers? Are there practices that benefit the growth of independent programmers?

20. We also seek comment on the extent to which some independent programmers may have leverage over some MVPDs. For example, are there situations in which an independent programmer may condition any potential carriage arrangement on carriage by an MVPD of its suite of programming on distribution to a very high percentage of the MVPD's customers (i.e., minimum penetration requirements)? How would such practices affect the ability of MVPDs to offer "skinny" bundles that could be combined with OTT services that could include more diverse and independent programming? Similarly, we seek comment on assertions made by some MVPDs that certain programmers insist on tier placement commitments that compel MVPDs to place entire bundles in the most popular programming packages. How do programmers typically calculate the number of video subscribers that minimum penetration requirements are based on?

21. Consumer advocacy groups and PEG providers contend that MVPDs do not make PEG programming and information about PEG programming adequately available to subscribers. For example, they argue that some MVPDs often do not provide in their on-screen menus or guides basic information about PEG channels and programs, such as information about accessibility, channel names, or program names or descriptions. They assert that the failure by MVPDs to provide the same level of program description information for PEG channels that they offer for other programmers discriminates against PEG providers. In other proceedings, these parties have advocated that the Commission mandate a nondiscriminatory approach that would require MVPDs to provide PEG information on their program guides on the same terms and conditions as other programmers if a PEG programmer supplies program-specific information. We seek comment on MVPDs' practices with respect to making PEG programming information available to subscribers. To the extent that MVPDs do not make this information available, is this for technical reasons, and, if so, can the technical barriers be surmounted? Is the Congressionally-imposed prohibition against editorial control of PEG channels relevant to this

issue?<sup>9</sup> What is the source of the Commission's authority in this area, if any?

*D. Possible Regulatory Tools for Addressing Market Obstacles Faced by Independent Programmers*

22. What role, if any, should the Commission play in addressing any obstacles that prevent greater access by consumers to sources of independent and diverse programming? Are there other entities—including other agencies, Congress or private entities—that could play a role in addressing these obstacles? Can the marketplace evolution toward greater competition and choice among distribution platforms be expected to ease any obstacles, or may it exacerbate them in some respects? Are the Commission's existing regulatory tools adequate to address any obstacles? Are there actions that we could recommend that others explore in order to promote programming diversity? Is there a role for other federal agencies in this review? Are there concerns that would be appropriate to refer to the Department of Justice and/or the Federal Trade Commission?<sup>10</sup> We seek comment on any regulatory or other approaches the Commission should take to alleviate obstacles to the distribution of independent and diverse programming.

23. We also seek comment on the Commission's legal authority to alleviate any obstacles. Specifically, we seek comment on whether section 257 of the Communications Act of 1934, as amended (Act), provides the Commission with authority to impose regulations aimed at improving programming diversity. In particular, we seek comment on section 257(b), which directs the Commission to promote the policies and purposes of the Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.<sup>11</sup> We also request input on whether Section 616(a) of the Act provides the Commission with the authority to take action with respect to program carriage practices that may have an adverse impact on independent programmers. Specifically, we invite comment on section 616(a)'s mandate that the Commission establish regulations governing program carriage agreements and related practices

between cable operators or other multichannel video programming distributors and video programming vendors.<sup>12</sup> What other authority does the Commission or others have to alleviate obstacles to the distribution of independent and diverse programming?

### III. Procedural Matters

24. *Ex Parte Rules.* This is an exempt proceeding in which *ex parte* presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.<sup>13</sup>

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

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

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

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

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

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

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

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

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

28. *Additional Information.* For additional information on this proceeding, contact Calisha Myers or Raelynn Remy of the Policy Division, Media Bureau, at [Calisha.Myers@fcc.gov](mailto:Calisha.Myers@fcc.gov), or (202) 418-2120.

### IV. Ordering Clause

29. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 4(j), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C §§ 151, 154(i), 154(j), 303(r), 403, this *Notice of Inquiry* IS ADOPTED.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 2016-04331 Filed 2-26-16; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) V will hold its fourth meeting.

**DATES:** March 16, 2016.

**ADDRESSES:** Federal Communications Commission, Room TW-C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Goldthorp, Designated Federal

<sup>9</sup> 47 U.S.C. 533(e).

<sup>10</sup> We note that the Commission acts in a manner that is both complementary to the work of the antitrust agencies and supported by their application of antitrust laws. See generally 47 U.S.C. 152(b).

<sup>11</sup> 47 U.S.C. 257(b).

<sup>12</sup> 47 U.S.C. 536.

<sup>13</sup> 47 CFR 1.1204(b)(1).