

FCC MAIL SECTION

Federal Communications Commission

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

In the Matter of)
)
1998 Biennial Regulatory Review--) CS Docket No. 98-61
)
"Annual Report of Cable Television)
System", Form 325, filed pursuant to)
Section 76.403 of the Commission's Rules)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 27, 1998

Released: April 30, 1998

Comment Date: June 30, 1998

Reply Comment Date: July 15, 1998

By the Commission: Commissioner Furchtgott-Roth Issuing a Separate Statement.

I. BACKGROUND

1. In this Notice of Proposed Rulemaking, we seek comment on a proposal to eliminate or modify the process of collecting Form 325, "Annual Report of Cable Television Systems," which is provided for in Section 76.403 of the Commission's rules.¹ Form 325 solicits basic operational information from all U.S. cable television system, including: the operator's name and address; system-wide capacity and frequency information; channel usage; and number of subscribers.

2. Section 11 of the 1996 Telecommunications Act, instructs the Commission "to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest."² Although Section 11 does not refer to the cable television rules generally, the Commission has determined that the first biennial review presents an opportunity for a thorough examination of all of the Commission's regulations.³ We believe that consideration of the continuing need

¹FCC Form 325, Schedule A, February 1994 (Approved by OMB 3060-0061)(expires 4/30/96). 47 C.F.R. §76.403 states in relevant part:

The operator of every operational cable television system shall correct and/or furnish information in response to forms, encompassing each community unit, mailed to said operator by the Commission. These include . . . "Annual Report of Cable Television Systems," Form 325 These forms shall be completed and returned to the Commission within 60 days after the date of mailing by the Commission.

²Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); 47 U.S.C. §161.

³See FCC News Release, 1998 Biennial Review Begun Early (November 18, 1997).

for the Form 325 information collection process is consistent with the Section 11 mandate.

3. Form 325 constitutes the Commission's basic annual reporting requirement for the cable television industry. The form was developed for use on a one time basis in 1966⁴ and was subsequently adopted as an annual filing requirement in 1971.⁵ The form was intended to provide the Commission with information that would be of value in the development of rules and policies applicable to the cable television industry. In addition, information as to both individual franchise areas and physical system operations was to be collected for use in connection with individual waiver or enforcement proceedings. The current Form 325 has also been used for two additional purposes: (1) to obtain subscribership data from which to calculate or review cable operator's annual federal regulatory fee payments⁶; and (2) to assist, through the acquisition of data as to the frequencies used within systems, in the Commission's signal leakage and interference elimination program.⁷

4. The current version of Form 325 is divided into four substantive parts. Part 1 collects the operator's name, address, and tax identification number for each franchised community served by the cable system. Part 2 requests specific information related to each franchised community, including the type of area served,⁸ population, subscribers, potential subscribers, cable plant length, and initial date of service. Part 3 outlines frequency and signal distribution information, such as the type and source of programming, and general channel information. Part 4 summarizes the cable system's ancillary services and users.

5. The Commission's rules anticipate that a Form 325 will be mailed annually to each cable system in the country -- at present, over 11,000 cable systems. In order to reduce the filing burden and increase the accuracy of the computer database to be assembled from the completed forms, a process was developed whereby each year preprinted and completed forms were to be sent to each operator reflecting the information in the Commission's database. The system operator would then only be required to correct information that had changed since the last filing.⁹ Although this process was intended to ease the burden on system operators and to be administratively efficient, it proved to be resource intensive on the part of

⁴*Second Report and Order* in Docket Nos. 14895, 15233, 15971, 2 FCC 2d 725, 765 (1966).

⁵*Third Report and Order* in Docket 18397, 32 FCC 2d 13 (1971).

⁶*In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Report & Order*, Docket 95-3, 10 FCC Rcd 13512 (Released June 19, 1995). Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy, rulemaking, and user information activities. *See* 47 U.S.C. §159(a).

⁷47 C.F.R. §76.615(a). The signal interference program is designed to minimize the potential of cable system's signal leakage from interfering with over-the-air services using similar frequencies.

⁸Type of area includes, for example, incorporated area, unincorporated area, private, and government reservation.

⁹*In the Matter of Amendment of Part 76 of the Commission's Rules and Regulations to Alter Cable Television Reporting Requirements*, 61 FCC 2d 1014 (1976).

the Commission, because the returned forms, many of which were deficient in some manner,¹⁰ had to be manually reviewed for technical and administrative accuracy before being entered into the computer system. As available Commission staff resources were reduced and priorities shifted, it became increasingly difficult to complete the data input process. Thus, the form has not been mailed out or data collected since 1994.

II. PROPOSAL

6. As a consequence of the above developments we now prepare to either: (1) abolish this data collection process entirely, or (2) reform the process so that the data that is deemed important may be collected in a more efficient, less resource intensive, manner. In general, it is vital that the Commission have accurate and timely information regarding the cable television industry, both to assist in the enforcement of existing requirements and for broader rulemaking and policy purposes. We seek comment, however, on whether it continues to be important for the Commission to have access to the type of data reported on the current Form 325 and the extent to which this information is available from other sources. For instance, while not subject to accuracy and specificity requirements applicable to a governmental reporting system, information on the basic facts of cable television system operation is available from commercial sources such as A.C. Nielsen and Warren Publishing. We seek comment on whether these commercial sources may rely for their information on the availability of the Commission's data base. Similarly, with regard to the signal interference program, the Commission already uses Form 320 (Basic Signal Leakage Performance Report) to gather a cable system's operational parameters in the event interference occurs to over-the-air services. On the other hand, we noted in our leased access proceeding that the only official source of leased access information was in the Form 325.¹¹ Given the possible availability of alternative sources of data, we seek comment on whether we should eliminate the current Form 325 entirely or revise it to obtain more focused information.

7. If Form 325 is retained, we seek comment on any changes that should be made to clarify and improve the usefulness of the data collected. For example, the questions and instructions with respect to channel capacity and use data, which is pertinent to a number of Commission's rules, including must-carry, leased access, and channel occupancy,¹² have not always resulted in consistent responses. In addition, Form 325 does not require the operator to submit specific ownership information, which could be relevant to the Commission's horizontal ownership rules,¹³ among others. We seek comment on how to obtain more useful consistent or reliable data if the form is retained.

8. In addition, if the Form 325 is retained, we seek comment on ways to make the collection process less burdensome. For example, the data could be collected at less frequent intervals, a sampling

¹⁰Approximately 40% of the returned forms had some deficiency. This was caused in part by the dramatic changes in cable system's design and operation that were taking place.

¹¹*Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rule Making* in Docket 92-266, 11 FCC Rcd. 16933, ¶56 (1996).

¹²See 47 U.S.C. §532(a); 47 C.F.R. §§76.970-01, 76.975, 76.977; Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, 106 Stat. 1460, codified at 47 U.S.C. §§534, 535; 47 C.F.R. §76.56.

¹³See 47 U.S.C. § 533(f)(1)(A); 47 C.F.R. § 76.503(a).

process could be developed or an electronic filing system could be developed to reduce the resources devoted to the data collection process. Should, for example, we adopt a data collection process that applies only to cable systems that meet certain geographic, subscriber, channel capacity, or revenue criteria, or should such forms apply to a random subset of cable operators? We note that if data were collected only from systems with over 10,000 subscribers, approximately 80 percent of all subscribers would be covered yet only approximately one-tenth of the present filings would be required.

III. PROCEDURAL MATTERS

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

9. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. §603, the Commission is incorporating an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and proposals in this *Notice of Proposed Rule Making* ("NPRM"). Written public comments concerning the effect of the proposals in the NPRM, including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.¹⁴

10. *Reasons Why Agency Action is Being Considered.* Section 11 of the 1996 Telecommunications Act requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest.¹⁵ Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an excellent opportunity for a thorough examination of all of the Commission's regulations.

11. *Need for Action and Objectives of the Proposed Rule Change.* The Commission invites comment on whether to eliminate or modify the requirement for cable system operators to file the current "Annual Report of Cable Television," Form 325, pursuant to Section 76.403 of the Commission's rules ("Section 76.403")¹⁶, because the Commission believes the current Form 325 provides limited value, imposes unnecessary burdens on the Commission and cable operators, and duplicates existing practices.

12. *Legal Basis.* The authority for the action proposed for this rulemaking is contained in Section 4(i)-(j) of the Communications Act of 1934, as amended.¹⁷

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

¹⁴Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §601 *et seq.* (1981), as amended.

¹⁵47 U.S.C. §161; FCC News Release (Nov. 18, 1997).

¹⁶47 C.F.R. §76.403.

¹⁷47 U.S.C. §§154(i)-(j).

the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.¹⁸ Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁹

14. The proposal to either eliminate or modify the requirement to file Form 325 applies to all cable system operators. The Commission has developed, with SBA's approval, its own definition of a small cable system operator for rate regulation purposes. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.²⁰ Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995.²¹ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules we are adopting.

15. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²² The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.²³ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450.²⁴ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

¹⁸5 U.S.C. §601(3) (1980) (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 small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after an opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes definitions in the Federal Register."

¹⁹Small Business Act, 15 U.S.C. §632.

²⁰47 C.F.R. §76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995).

²¹Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

²²47 U.S.C. §543(m)(2).

²³47 C.F.R. §76.1403(b) (SIC 4833).

²⁴Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

16. *Reporting, Recordkeeping, and other Compliance Requirements:* The Commission is proposing to eliminate certain recordkeeping or information collection requirements, and in the alternative, we are proposing to substantially reduce such burdens.

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

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

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

B. Paperwork Reduction Act of 1995 Analysis

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

21. Written comments by the public on the proposed and/or modified information collections are due [21 days after Federal Register publication]. Written comments must be submitted by the Office of Management and Budget ("OMB") on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

C. Ex Parte Rules

22. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the rules. 47 C.F.R. §1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must

contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. §1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

D. Filing of Comments and Reply Comments

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

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

E. Ordering Clause

25. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i)-(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i)-(j), **NOTICE IS HEREBY GIVEN** of proposed elimination or modification of Form 325, in accordance with the proposals, discussions and statements of issues in this *Notice of Proposed Rulemaking*, and that **COMMENT IS SOUGHT** regarding such proposals, discussions and statements of issues.

26. **IT IS FURTHER ORDERED** that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§601 *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Separate Statement of Commissioner Harold W. Furchtgott-Roth**In re: Notice of Proposed Rulemaking****1998 Biennial Regulatory Review -- "Annual Report of Cable Television System," Form 325,
Filed Pursuant to Section 76.403 of the Commission's Rules**

I support adoption of this Notice of Proposed Rulemaking. To my mind, any reduction in paperwork obligations or simplification of our procedural rules for regulated entities -- or "streamlining" -- is always a plus. To that extent, this item is good policy and I am all for it.

This item should not, however, be mistaken for compliance with section 11 of the Communications Act.

First of all, section 11 requires a review of all regulations that govern the operations of "any provider of telecommunications service." 47 U.S.C section 161. It does not by its terms apply to regulations governing broadcast and cable companies. I therefore understand this cable item to be premised not on section 11 (notwithstanding the caption, which might suggest otherwise) but on our general authority to change our rules when appropriate under section 4(i) and related provisions of the Communications Act.

Second, this item focuses, as do some pure section 11 items that we have issued,²⁵ on procedural rules governing filings at the Commission as opposed to substantive rules that limit what companies can do in the marketplace, *e.g.*, regulations that restrict market entry or limit market share. As stated above, it is certainly important that in the course of the Biennial Review we evaluate our procedural rules and modify or eliminate them if necessary. But section 11 requires us to look at *both* procedural and substantive rules and make an affirmative finding of their continued necessity.

If all we do is "streamline" certain procedures at the Commission, without also examining all pertinent substantive rules and making the statutorily-required determinations of necessity, we will fail to meet the express directive of section 11.

As I have previously explained, I question whether the FCC is prepared to meet its statutory obligation to review all of the regulations covered by section 11 in 1998. *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, __ FCC Rcd __ (1998) (released Jan. 30, 1998). To my knowledge, the FCC has no plans to review affirmatively *all* regulations applicable to the operations or activities of telecommunications providers and to make specific findings as to their continued necessity. Nor has the Commission issued general principles to guide our "public interest" analysis and decisionmaking process across the wide range of FCC regulations.

²⁵By this I mean items regarding rules applicable to telecommunications providers.

We should not let this item, which does not relate to telecommunications rules and focuses only on procedural matters, or any other limited Commission analysis be mistaken for full compliance with Section 11.

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