

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

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 15-158
Competition in the Market for Delivery)	
of Video Programming)	
)	

REPLY COMMENTS



I. INTRODUCTION

The American Cable Association (“ACA”) submits this brief reply to comments filed by Public Knowledge in response to the Commission’s Public Notice (“PN”) soliciting data, information, and comment on the state of competition in the delivery of video programming for the Commission’s Seventeenth Report (“17th Report”).¹ The PN recites the various sources of data used in compiling these reports, and asks whether there are “additional sources of data, especially quantitative data, [the Commission] should use to report on the status of competition

¹ See *Media Bureau Seeks Comment on the Status of Competition in the Market for the Delivery of Video Programming*, Public Notice, MB Docket No. 15-158 (rel. Jul. 2, 2015) (“PN”); Comments of Public Knowledge (filed Aug. 21, 2015) (“Public Knowledge Comments”).

in the market for delivery of video programming.”² In response, Public Knowledge suggests that the Commission “consider whether it would be more appropriate for it to require that the companies it regulates turn over the information it needs [for the 17th Report] and attest to its accuracy.”³ Public Knowledge attempts to justify its request with unfounded speculation that companies strategically deny the Commission access to crucial data, that some of the best data comes from financial analysts with conflicts of interest, and that mandatory disclosures produce the best public information.⁴ The Commission should summarily reject the suggestion of Public Knowledge that a mandatory data collection is needed.

As discussed below, no matter what additional information the Commission may decide is needed, if any, it should not come through a new mandatory data collection request for multichannel video programming distributors (“MVPDs”), particularly smaller cable MVPDs. First, the Commission already collects vast amounts of data from cable operators, including much of the data that Public Knowledge proposes the Commission collect, which satisfies Commission needs to report to Congress on the state of competition in the video marketplace. Through these collections, public data sources and information in comments filed by interested parties, the Commission has successfully obtained the data it needs to complete sixteen video competition reports to Congress without the need to impose specific reporting and certification requirements. Second, Public Knowledge has identified no specific problem to be addressed and no corresponding public benefit to offset the costs of an additional mandated data collection, particularly with respect to smaller MVPDs. The types of data, the amount of it, and the entities required to provide data through existing Commission-required disclosures, which many ACA members already believe to be excessive and burdensome, were settled on through rulemakings that weighed the needs and costs of additional data collection against and the

² PN at 4.

³ Public Knowledge Comments at 4.

⁴ *Id.*

burdens of providing it, including for smaller MVPDs. Given the vast amount of data and information already available to the Commission and the lack of strong justification for collecting additional data or evidence from cable operators, together with the fact that the benefits of obtaining such data outweigh the burdens, strongly suggests that the Commission discount Public Knowledge's comments on this matter in their entirety.

II. THE COMMISSION ALREADY COLLECTS VAST AMOUNTS OF DATA FROM CABLE OPERATORS; DATA THAT HAS BEEN SUFFICIENT IN COMPLETING SIXTEEN PREVIOUS VIDEO COMPETITION REPORTS

ACA agrees with Public Knowledge "that a data-driven understanding of the industry is necessary to formulate good public policies." However, ACA disagrees with Public Knowledge's assertion, in response to the Commission's inquiry whether it should rely on additional sources of data in putting together its report, that the Commission lacks access to data and information possessed only by cable operators that it needs to complete its report.

As the Commission notes, its reports on the state of competition in the delivery of video programming are based on a variety of data sources, including mandatory data reporting requirements of cable operators. From the PN it is obvious that the Commission relies on data it collects from cable operators that must file FCC Form 325 and FCC Form 477. FCC Form 325 collects cable, broadband, and telephone subscriber information, the number of homes that the system passes, leased equipment statistics, and technical information.⁵ FCC Form 477 collects information about broadband connections to end user locations, wired and wireless local telephone services, and interconnected Voice over IP services. Nearly all cable and IPTV providers file this form, which was updated in recent years to provide more data on a more granular level. The data provided on both forms makes available a vast amount of information to the Commission to analyze in preparing its video competition reports.

⁵ See 47 C.F.R. § 76.403 (operators of every cable television system that serves 20,000 or more subscribers (and a random selection of smaller systems) must file FCC Form 325 annually with the Commission).

However, data from these data collections is not the only data available to the Commission. Cable operators also provide data on other mandatory forms. For example, prior to commencing operation of a system in an area, Commission regulations require a cable operator to file FCC Form 322 (a “Registration Statement”).⁶ Cable operators filing a Registration Statement must include seven pieces of information on the form, including the name of the community or area served and the county in which it is located.⁷ Upon receipt of a Registration Statement and filing fee, the Commission assigns a Community Unit Identifier (“CUID”) to the community, and the CUID information is maintained in the Media Bureau’s COALS database on a system-by-system basis. The Commission uses this information to report on the number of systems in operation and number of cable operators in its report.⁸

The data provided through these three forms, along with publicly available sources and the information the Commission publicly solicits, have sufficed thus far for the Commission to complete its required reports to Congress on the state of competition in the delivery of video programming. No new mandatory data collection requirements on cable operators, particularly smaller MVPDs, are necessary for the Commission to fulfill its statutory duty to assessment the status of competition in the market for delivery of video programming.

III. PUBLIC KNOWLEDGE FAILS TO ADVANCE ANY LEGITIMATE REASON TO REQUIRE NEW MANDATORY DATA DISCLOSURES FROM MVPDS

Public Knowledge suggests that MVPDs should be required to turn over additional data and information to the Commission to complete the video competition report, but provides no factual basis to support increasing the reporting burdens on cable operators. Public Knowledge claims that since most of the accurate data the Commission needs is held by companies with an

⁶ See 47 C.F.R. § 76.1801(a).

⁷ See 47 C.F.R. § 76.1801(a)(5).

⁸ See, e.g., *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, ¶ 23 n.28 (2015) (noting that the number of active, registered cable systems listed in the report comes from the Commission’s COALS database).

interest in the Commission's policies, and that since disclosures in this context "appear to be voluntary," any data these companies turn over "must be assumed to be strategic."⁹ These claims are ill-informed, incorrect and purely speculative.

First, as discussed, not all disclosures in this context are voluntary. The Commission relies on a wide and diverse range of data sources for its video competition reports, including data collected through mandatory forms.¹⁰ Second, Public Knowledge has identified no specific problem that additional reporting obligations would solve or strategic advantages that cable operators might gain by withholding information.¹¹ While Public Knowledge is undoubtedly correct that the Commission should take a data-driven approach to formulating public policies, this observation alone offers too slender a reed upon which to build an entirely new mandatory data collection program (or programs). ACA acknowledges that there may be some well defined reasons for the Commission to collect data from the companies it regulates on a regular basis and that harms to competition or consumers may arise that may require the Commission to gather additional data from these companies from time to time; however, Public Knowledge's suggestion in its comments for additional data collection(s) meets neither of these rationales. Public Knowledge only observes that "[a] data-driven understanding of the industry is necessary

⁹ Public Knowledge Comments at 4.

¹⁰ PN at 4 ("The data reported in previous reports on the status of competition for the delivery of video programming were derived from various sources, including data the Commission collects in other contexts (e.g., FCC Form 477 and FCC Form 325), comments filed in response to notices of inquiry, and other Commission proceedings; publicly available information from industry associations; company filings, news releases, and websites; Securities and Exchange Commission filings; data from trade associations and government entities; data from securities analysts and other research companies and consultants; corporate presentations to investors, newspaper and periodical articles; scholarly publications; vendor product releases; white papers; and various public Commission filings, decisions, reports, and data.") (footnotes omitted).

¹¹ Nor did the PN identify any particular shortcomings in the types or quality of data voluntarily submitted by providers in the market for video programming that would arguably support a mandatory data collection of participants.

to formulate good public policies.”¹² Without more, the Commission must ignore the group’s call.

Not only is the collection of additional data and information from cable operators unjustified, but additional data collection would be burdensome, particularly on smaller operators. The Commission has long been cognizant of the burdens of reporting requirements on small cable operators. In particular, for years the Commission required every cable system, regardless of size, to annually file FCC Form 325.¹³ In 1999, however, the Commission revised FCC Form 325 and excluded systems with less than 20,000 subscribers from the mandatory filing obligation on the grounds that a “mandatory requirement to have all of these systems file Form 325 would be costly and burdensome for the industry as well as for the Commission.”¹⁴

Moreover, as Congress has repeatedly recognized, it is important to limit data collection requirements on companies, particularly smaller ones.¹⁵ Accordingly, federal agencies must obtain Office of Management and Budget (“OMB”) approval before implementing standardized data collection requirements.¹⁶ Federal agencies, such as the Commission, must justify their information collection proposals to OMB by including, among other items, a supporting statement that sets forth the calculated average burden per respondent.¹⁷

¹² Public Knowledge Comments at 4.

¹³ *1998 Biennial Regulatory Review – “Annual Report of Cable Television Systems, “ Form 325, filed pursuant to Section 76.403 of the Commission’s Rules, Report and Order, 14 FCC Rcd 4720, ¶ 3 (1999) (Form 325 serves as the Commission’s basic annual reporting requirement for the cable television industry. The form was first developed for use in 1966 and was subsequently adopted as an annual filing requirement in 1971.”) (footnotes omitted).*

¹⁴ *Id.*, ¶ 12. The Commission stated that instead it would use a stratified sampling technique to collect the required information from systems serving less than 20,000 subscribers. *Id.*

¹⁵ See Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 94 Stat. 2812, *codified at* 44 U.S.C. § 3501 *et seq.*; Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (amending 1980 Act); Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729, *codified at* 44 U.S.C. § 3506(c).

¹⁶ See 44 U.S.C. § 3507(a)(3) (“An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information – obtained from the Director [of OMB] a control number to be displayed upon the collection of information.)

¹⁷ See 44 U.S.C. § 3506(c)(1)(B)(iii).

Cable operators already spend a vast number of manhours on paperwork requirements annually to provide data and information to the Commission, and a new data reporting would increase such burdens. From forms filed by the Commission and approved by the OMB, we can see that the Commission calculates the average burden per FCC Form 325 to be two hours and 10 minutes, per FCC Form 322 to be 30 minutes and per FCC Form 477, which is filed twice a year, to be 387 hours.¹⁸ This adds up to nearly 800 total hours of paperwork requirements annually just for these three forms, certainly a heavy burden on smaller MVPDs. It logically follows that any new reporting requirement(s) in this instance could be both substantial in itself and increase an already heavy burden of mandatory reportings.

The heavy compliance costs of providing data to the Commission, combined with the lack of justification put forth by Public Knowledge and the fact that the Commission has been able to obtain the data it needs to complete its first sixteen video competition reports without any additional mandatory reporting burdens, shows that Public Knowledge's request should be rejected.

¹⁸ See FCC Form 322 Supporting Statement, *available at* http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201411-3060-004; FCC Form 325 Supporting Statement, *available at* http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201403-3060-009; FCC Form 477 Supporting Statement, *available at* http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201404-3060-028.

IV. CONCLUSION

The Commission should reject Public Knowledge's requests to load additional compliance and paperwork burdens on video marketplace participants, including cable operators. The Commission already collects the information it needs to complete its video competition report, as it has done successfully sixteen times. Moreover, Public Knowledge's request lacks any basis and would impose substantial additional compliance burdens on cable operators.

Respectfully submitted,

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