

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
Annual Assessment of the Status of ) **MB Docket No. 07-269**  
Competition in the Market for the )  
Delivery of Video Programming )

To: The Commission

**COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION**  
**RE COLLECTION OF INFORMATION FOR CABLE**  
**SUBSCRIBERSHIP SURVEY**

1. The Community Broadcasters Association (“CBA”) hereby submits these Comments on the Commission’s proposed form for collecting information pursuant to Section 612(g) of the Communications Act, regarding homes passed and cable subscribership, as invited by Public Notice DA 09-44, released January 16, 2009. CBA is the trade association of the nation’s Class A and Low Power Television (“LPTV”) stations.

2. CBA believes that the proposed collection of information is vital to enable the Commission to fulfill its statutory obligation to ensure that cable television systems properly serve the public interest. Without having accurate information necessary to make a factual determination as to whether the “70/70” test is met, the Commission cannot determine the scope of its authority and so cannot fully exercise its regulatory responsibilities.

3. CBA urges the Commission to make sure that large video systems operated by telephone companies, including in particular Verizon’s FiOS and AT&T’s U-verse, submit the requested data. The Commission has already determined that cable overbuilders must file.<sup>1</sup>

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<sup>1</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 08-206, released January 16, 2009, at ¶ 42.

FiOS and U-verse must be treated as overbuilders. From the consumer's point of view, there is no difference between these services and the services of incumbent cable systems or other overbuilders. All offer video, high-speed Internet, and telephone services. While FiOS and U-verse may utilize only digital distribution technologies, almost all incumbent cable systems of any size offer at least some digitally distributed video service;<sup>2</sup> and more and more incumbent systems and conventional overbuilders are abandoning analog distribution altogether in favor of all-digital distribution.<sup>3</sup>

4. MVPD systems which provide indistinguishable service to the public using converging technologies must be treated similarly, to adhere to principles of equal protection of the law. Thus to exclude FiOS and U-verse would make the data gathered by the Commission inaccurate and largely meaningless for purposes of Section 612(g).

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Respectfully submitted,



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<sup>2</sup> Indeed, incumbent cable systems must provide at least some digital service, because they are required to deliver high definition programming from digital broadcast television stations.

<sup>3</sup> See, e.g., <http://www.zatnotfunny.com/2008-06/comcast-is-going-all-digital/> and <http://www.rcn.com/digital/faqs>.