

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 )

**REPLY COMMENTS OF FREE PRESS ON CABLE SUBSCRIBERSHIP  
SURVEY FOR THE COLLECTION OF INFORMATION PURSUANT TO  
SECTION 612(G) OF THE COMMUNICATIONS ACT**

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March 13, 2009

## **I. Introduction**

### **A. The Commission Should Move Forward With Its Data Collection**

In our initial comments, we reviewed the importance of basing policy decisions on reliable, Commission-collected information. The Commission has repeatedly recognized the dangers of third party data collection.<sup>1</sup> The controversy that occurred in crafting the *13<sup>th</sup> Annual Report* once again illustrated this reality.<sup>2</sup> Third party collection lacks enforcement and accountability. Furthermore, important policy decisions must not rely on figures that the Commission has no methodological control over. Unfortunately, the comments from the cable industry illustrate that they have failed to learn from this experience. The Commission should not make a similar error here, and should move forward with its cable subscribership form. Through proper implementation, the Commission will gain a reliable indicator of the subscribership levels within the MPVD industry.

### **B. The Benefits of the Cable Subscribership Survey**

This survey offers the Commission an opportunity to gain insight into critical factors surrounding cable subscribership. As we reviewed in our initial comments, this form has the potential to inform Commission policymaking in crucial areas beyond just video subscribership.<sup>3</sup> Additionally, the Commission will obtain data that can be used to independently assess claims made by self-interested stakeholders. The value of this subscribership information is indisputable, yet the burden of providing the data will be

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<sup>1</sup> Comments of Free Press at 2-3.

<sup>2</sup> *Id.* at 3-4.

<sup>3</sup> *Id.* at 5-7.

minimal.<sup>4</sup> No data point can be easier to provide than simply the number of subscribers. The Commission's form would not require the reporting of the type of video package taken by subscribers nor the speed of an Internet service, just the fact that a subscriber has subscribed to a service. A data collection such as this places a minimal burden on providers, with maximum benefit to the public.

## II. Discussion

As is often the case in the Commission's data proceedings, operators questioned the need for the Commission to collect this information.<sup>5</sup> This opposition comes despite significant disagreement between cable operators and other MVPDs over whether serious cable concentration limits have been met.<sup>6</sup> Cable industry commenters continue their use of third party data unabated, invoking the likes of Kagen and Nielsen data.<sup>7</sup> As was illustrated in the debate leading up to the *13<sup>th</sup> Annual Report*, relying on third-party data results in arguments over data sources, not over the associated policy choices.

Even when invoking the data collected by the Commission through Form 325, operators must use third party data to make their case. Although Form 325 is only collected from a subset of cable operators, the NCTA asserts that even if every subscriber takes the service from those operators who aren't currently required to report this

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<sup>4</sup> Broadband providers claimed similar burden in reporting broadband subscribership information, yet options have emerged that could hardly be described as burdensome. See "COMPTTEL PLUS: TMI Solution Simplifies Form 477 Filing," *xchange Magazine*, March 2, 2009, available at <http://www.xchangemag.com/hotnews/comptel-tmi-solution-simplifies-form-477.html>.

<sup>5</sup> See e.g. Comments of NCTA at 2 ("No survey is necessary to prove that a variety of competitors have substantially eroded – and continue to erode – the share of the video distribution marketplace that traditional cable operators serve, which inevitably leads to the conclusion that the second prong of the test is not met.").

<sup>6</sup> See e.g. Ex Parte of AT&T, MB Docket No. 06-189, Nov. 16, 2007.

<sup>7</sup> See e.g. NCTA Comments at 3.

information, the threshold would still not be met. However, in making this assertion the NCTA once again relies on third party data.<sup>8</sup> Thus, the Commission’s original finding continues to ring true. “[T]he only way to accurately conclude that the 70/70 test has been met is to have the cable industry provide us with the data with respect to their systems.”<sup>9</sup>

In implementing this survey, the Commission should also consider the level of detail with which operators will report this information. Although the Commission has used ZIP Code level data in the past and has expressed an intention to do so here, other data reporting efforts by the Commission have migrated towards census-based metrics.<sup>10</sup> Census-based metrics offer the Commission the ability to merge the information with the variety of data collected by the Census Bureau, gaining further insight into potential factors surrounding the uptake of these services. However, any change in the level of reporting should ensure that the Commission maintains an adequate level of granularity. For example, a move from ZIP codes to Census Tracts will result in less detailed information for rural areas.<sup>11</sup> Thus, the Commission would best served by moving to a Census Block Group or Census Block level.

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<sup>8</sup> NCTA relies on data from a Nielson database. *Id.* at 4, n.15.

<sup>9</sup> *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, FCC 07-206 (Jan. 16, 2009), ¶43.

<sup>10</sup> *See Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*, WC Docket No. 07-38, ¶2.

<sup>11</sup> *See Further Comments of Free Press et al.*, WC Docket No. 07-38, July 17, 2008, p. 13-17.

### **III. Conclusion**

The Commission should move forward with its collection of cable subscribership information. As the comments submitted by the industry make clear, the only way to obtain reliable information on cable subscribership is through FCC collection of this data from all providers.

Respectfully submitted,

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Dated: March 13, 2009