



## **I. Introduction**

ACA members, especially those serving small and rural markets, face significant burdens to complete the Commission's proposed 70/70 reporting form.

ACA files this Reply to highlight the overwhelming support on the record for reducing the reporting burdens for small and medium-sized cable operators.

Nearly all commenters recognize that the Commission must decrease its reporting burdens. Moreover, in this Reply:

- (i) ACA supports proposals on the record that the Commission should collect only current data.
- (ii) ACA opposes Free Press' overreaching request to require cable operators to submit telephone, digital, and cable modem data.

**American Cable Association.** ACA represents more than 900 small and medium-sized cable companies that serve about 7 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. More than half of ACA's members serve fewer than 1,000 subscribers.

## **II. The record supports minimizing the reporting burdens for systems with 20,000 subscribers or less.**

In its comments in this docket, ACA suggested the following revisions to the 70/70 reporting requirements:

- (i) The Commission should permit systems with 20,000 or less subscribers to provide current data on customers served and homes passed, and best estimates on homes passed when necessary.
- (ii) The Commission should exempt systems with 20,000 or less subscribers from collecting data on unoccupied homes and bulk units.

As we show below, nearly all commenters agree with ACA that the Commission must decrease its proposed reporting burdens.

**What ACA says:**

The Commission's proposed reporting requirements – especially those requiring historical data for subscribers served and homes passed, and an accounting of homes receiving services under a bulk rate – will impose significant financial and administrative burdens on ACA's members who serve smaller markets and rural areas.<sup>1</sup>

**What other participants say:**

Joint Cable Commenters:

[M]ost of the information collected through the Survey Form, to the extent it is even available, will be of insufficient quality to justify the substantial burden imposed on cable operators in collecting it. . . .<sup>2</sup>

NCTA:

Any obligation to report on unoccupied homes would yield inaccurate information or would be overly burdensome and should not be required for these purposes.<sup>3</sup>

Verizon:

Requiring the level of detail required by the proposed survey does, however, add significantly to the difficulty and burden of compliance and also introduces more opportunity for inaccuracy.<sup>4</sup>

The consensus is clear: the Commission must alter its proposed form to

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<sup>1</sup> *Media Bureau Seeks Comment on a Cable Subscribers Survey for the Collection of Information Pursuant to Section 612(g) of the Communications Act*, MB Docket No. 07-269, Comments of the American Cable Association at 2 (filed Feb. 17, 2009) (“ACA Comments”).

<sup>2</sup> *Media Bureau Seeks Comment on a Cable Subscribers Survey for the Collection of Information Pursuant to Section 612(g) of the Communications Act*, MB Docket No. 07-269, Comments of Buckeye Cablevision, Inc. et al at 8 (filed Feb. 17, 2009) (“Joint Cable Comments”).

<sup>3</sup> *Media Bureau Seeks Comment on a Cable Subscribers Survey for the Collection of Information Pursuant to Section 612(g) of the Communications Act*, MB Docket No. 07-269, Comments of NCTA at 10 (filed Feb. 17, 2009) (“Joint Cable Comments”).

<sup>4</sup> *Media Bureau Seeks Comment on a Cable Subscribers Survey for the Collection of Information Pursuant to Section 612(g) of the Communications Act*, MB Docket No. 07-269, Comments of Verizon at 6 (filed Feb. 17, 2009) (“Verizon Comments”).

reduce the burdens on cable operators. To that end, ACA has proposed revisions that will greatly assist its members in completing the proposed form. The Commission should adopt them.

**III. ACA supports additional proposals raised on the record that the Commission should require only current data.**

NCTA and the Joint Cable Commenters both propose that the Commission eliminate the requirement to submit 2006 data and, instead, only require operators to submit current data.<sup>5</sup> Submitting current data will increase the accuracy of the responses while reducing the cost of compliance. ACA supports these proposals.

Because many small and medium-sized cable operators do not maintain historical data on customers served and homes passed, ACA has already requested that systems with 20,000 subscribers or less provide *current data* on customers served and homes passed, and *best estimates* on homes passed, when necessary. In conjunction with ACA's proposals, and as suggested by NCTA and the Joint Cable Commenters, the Commission should only require current data. For ACA members with systems larger than 20,000 subscribers, submitting current data will alleviate the significant reporting burdens each member faces to report historical data on homes passed and customers served that the member may not possess.

For these reasons, the Commission should eliminate the historical reporting requirement and only require the reporting of current data.

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<sup>5</sup> NCTA Comments at 5-6; Joint Cable Comments at 7-8.

#### **IV. ACA opposes Free Press' overreaching requests for additional information beyond the scope of this proceeding.**

ACA opposes Free Press' request for telephone, digital, and cable modem data, as well as Free Press' request that all data be made available to the public.<sup>6</sup> The Commission must deny these overreaching and harmful proposals.

As numerous other commenters state, the scope of this proceeding is limited to video.<sup>7</sup> Consequently, only video subscribers should count toward the Section 612 calculation. Free Press is fully aware of the statutory basis for this proceeding. Its attempt to seek additional data should be rejected.

Moreover, Free Press seeks to make all information collected by the Commission available to the public.<sup>8</sup> In support of this request, Free Press claims that cable operators routinely make this information available to the public.<sup>9</sup> This is false. Publicly owned cable operators make total subscriber counts available to investors, but privately held companies, like the majority of the ACA membership, do not. And while cable operators may submit aggregate subscriber counts to the Commission and the Copyright Office without requests for confidential treatment,<sup>10</sup> cable operators do not make this data available to the public in the detail that Free Press requests.<sup>11</sup> Moreover, making the

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<sup>6</sup> *Media Bureau Seeks Comment on a Cable Subscribers Survey for the Collection of Information Pursuant to Section 612(g) of the Communications Act*, MB Docket No. 07-269, Comments of Free Press at 5-8 (filed Feb. 17, 2009) ("*Free Press Comments*").

<sup>7</sup> *NCTA Comments* at 10; *Joint Cable Comments* at 11-12.

<sup>8</sup> *Free Press Comments* at 7.

<sup>9</sup> *Id.*

<sup>10</sup> Cable operators provide *total* subscriber counts semi-annually to the Copyright Office for royalties, and annually to the Commission for regulatory fees.

<sup>11</sup> The Section 612 inquiry does not require that otherwise confidential material be made public.

requested data public could harm many ACA members who compete directly against larger multi-channel video operators, including Comcast, Verizon, DISH, and DirecTV.<sup>12</sup> For example, with knowledge of homes passed and subscribers served, and, therefore, penetration rates, competitors could better facilitate targeted promotional offerings in ACA members' service areas.

Based on the foregoing, the Commission must reject these overreaching and harmful requests.

## **V. Conclusion**

The record supports ACA's proposals. The Commission should permit systems with 20,000 or less subscribers to provide current data on customers served and homes passed, and best estimates on homes passed when necessary, as well as exempt systems with 20,000 or less subscribers from collecting data on unoccupied homes and bulk units. Moreover, to provide for the most complete and accurate submissions, the Commission should require only current data to be submitted. Finally, the Commission must reject Free Press' overreaching and harmful requests.

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<sup>12</sup> In addition, the DBS providers are not required to report total subscriber counts for regulatory and copyright purposes.

Respectfully submitted,

**AMERICAN CABLE ASSOCIATION**



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