

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

In the Matter of)	
)	
MB Data Review)	MB Docket No. 10-103
)	
WCB Data Review)	WC Docket No. 10-132
)	
WTB Data Review)	WT Docket No. 10-131
)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

Neal M. Goldberg
Diane B. Burstein
Jennifer K. McKee
National Cable &
Telecommunications Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431
(202) 222-2445

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The National Cable & Telecommunications Association (NCTA)¹ submits its comments on the Commission’s inquiry into its data collection and dissemination processes.²

INTRODUCTION AND SUMMARY

NCTA applauds this effort to “improve the way the Commission collects, uses and disseminates data.”³ The Commission has an on-going responsibility to ensure that the obligations it places on regulated industries in this area do not impose undue burdens.⁴ This

¹ NCTA is the principal trade association for the U.S. cable television industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of high-speed Internet service (“broadband”) after investing over \$160 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to over 20 million customers.

² *Pleading Cycle Established for Comments on Review of Media Bureau Data Practices*, MB Docket No. 10-103, Public Notice, DA 10-1195 (Media Bur., June 29, 2010) (*Media Public Notice*); *Pleading Cycle Established for Comments on Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132, Public Notice, DA 10-1189 (Wireline Comp. Bur., June 29, 2010) (*Wireline Public Notice*); *Pleading Cycle Established for Comments on Review of Wireless Telecommunications Bureau Data Practices*, WT Docket No. 10-131, Public Notice, DA 10-1223 (Wireless Tel. Bur., June 29, 2010) (*Wireless Public Notice*) (collectively *Data Public Notices*).

³ *Media Public Notice* at 1; *Wireline Public Notice* at 1, *Wireless Public Notice* at 1.

⁴ 44 U.S.C. § 3506.

Commission’s emphasis on “fact-based and data-driven” decision-making⁵ makes this data review initiative particularly timely and important.

Minimizing information collection burdens is not just a matter of good governance by the Commission, but is mandated as a matter of national policy through the Paperwork Reduction Act (“PRA”).⁶ The Commission’s information collection efforts should be continued only if the information collected has practical utility. Information that has been collected over a period of years but has been left largely unreviewed and uncited in the Commission’s policy process, even if of some possible theoretical value, does not qualify as having practical utility. Empirical research by the Commission as to actual use could aid in identifying information collections that can no longer be justified.

Information should also not be collected that is unnecessarily duplicative of information otherwise available to the agency. A review of the Commission’s information collection efforts suggest there are instances where the same, or very similar, information is now being collected on multiple forms or through multiple processes or is otherwise available through information collection elsewhere in the federal government. This type of duplication is unjustified.

The *Data Public Notices* identify the numerous information collections that cable operators currently must submit or maintain for their video, broadband and telephone service

⁵ Remarks of Chairman Julius Genachowski to the Staff of the Federal Communications Commission, at 4, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291834A1.doc (June 30, 2009) (stating that the Commission’s “policy decisions will be fact-based and data-driven”); Statement of Chairman Julius Genachowski, Federal Communications Commission All-Hands Meeting on Broadband Workshops, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292583A1.doc (Aug. 5, 2009) (stating that the creation of the National Broadband Plan would “be a deeply fact-based and data-driven process.”); Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, “Preserving a Free and Open Internet: A Platform for Innovation, Opportunity, and Prosperity,” The Brookings Institution, Washington, DC, at 7, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293568A1.pdf (Sept. 21, 2009) (pledging to “ensure that [the open Internet] rulemaking process will be fair, transparent, fact-based, and data-driven.”).

⁶ Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520.

offerings.⁷ These data collections can take the form of both routine and periodic requests from the agency to cable operators for specific information, notices to customers and franchising authorities, and maintenance of records. Many of these collections are highly labor-intensive, requiring cable system personnel to devote significant time to collecting and entering the requested data. NCTA highlights below several areas where information currently collected no longer is necessary to serve its original purpose and suggests that those filings be eliminated or consolidated. In particular, NCTA proposes that the Commission combine the Annual Report of Cable Television Systems (Form 325) and the Annual Price Survey (Form 333) and eliminate the CableCARD reporting requirement.

In addition, cable operators face sometimes duplicative reporting obligations from other agencies in addition to those from the Commission. The Commission can alleviate some of the burdens on operators of compiling detailed – and often duplicative – data for different agencies without sacrificing the quality of the information provided.

Finally, the *Data Public Notices* also seek comment on the use and dissemination of data. When using third-party data as a basis for its decision-making, the Commission should ensure that commenters have sufficient opportunity to assess the accuracy of that information.

⁷ Cable operators are required to provide information to certain Bureaus that have not been included in any of the public notices. The Consumer and Government Affairs Bureau, for example, adopted rules that require cable operators to include specific contact information for resolution of closed captioning complaints in multiple locations. See *Closed Captioning of Video Programming*, CG Docket No. 05-231, ET Docket No. 99-254, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, 23 FCC Rcd 16674, 16685-87, ¶¶ 30-34 (2008) (requiring cable operators to include name, title, office telephone number, fax number, address, and e-mail address on websites, telephone directories, and billing statements, and continually update that information). The Commission should consider revising these burdensome requirements.

DISCUSSION

I. THE COMMISSION CAN REDUCE FILING BURDENS ON CABLE OPERATORS WITHOUT ADVERSELY AFFECTING DECISION-MAKING

The Commission has a statutory obligation to ensure that the burdens of its information collections on reporting entities are minimized, to the extent possible.⁸ Consistent with this requirement, the Commission should take steps to reduce those data collections that no longer serve their intended purpose.

A. The Commission Should Eliminate Certain Unnecessary Filings

1. Annual Report of Cable Television Systems

The Annual Report of Cable Television Systems, FCC Form 325, is sent to all cable operators with 20,000 or more subscribers and a sampling of smaller system operators.⁹ When it was first adopted, it was perhaps the only regularly-provided general information on cable systems that the Commission collected from cable operators.¹⁰ Over time, however, the number of forms collecting this or similar information has multiplied and much of the information Form 325 requests has become redundant or unnecessary.

For example, Part II of Form 325 requires operators to provide information about the number of subscribers served by the system and the number of homes passed. This same information is required by the annual cable price survey, Form 333. Form 325 similarly asks about the deployment of set-top boxes and how many video channels a system provides – questions nearly identical to those on the Form 333. And Part IV of the Form requires operators

⁸ 47 U.S.C. § 3506(b)(1)(A).

⁹ 1998 Biennial Regulatory Review, “Annual Report of Cable Television Systems,” Form 325, filed pursuant to Section 76.403 of the Communication’s Rules, CS Docket No. 98-61, Report and Order, 14 FCC Rcd 4720, 4725-26, ¶ 12 (1999) (*FCC Form 325 Streamlining Order*).

¹⁰ Amendment of Part 74, Subpart K, of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry Into The Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals, Docket No. 18397, Third Report and Order, 32 FCC 2d 13 (1971).

to provide detailed information about channel line-ups and identify each program service (of which there may be hundreds) and tier on which each program service is carried – again, duplicative information already collected in the Annual Price Survey Form 333.

To be sure, the information requested on Form 325 is not identical in all respects with that gathered in other forms. But much of the non-duplicative information that Form 325 requests – such as the miles of cable plant and how much of the plant is coaxial vs. fiber optic cable – no longer appears relevant. These questions appear to have been included to “enable the Commission to analyze cable operators’ technical capabilities and the systems’ technical potential for offering sophisticated services, including cable modem, IP telephony, and internet services as well as general telephony. This will aid the Commission in evaluating how, where, and how soon advanced digital services can be introduced.”¹¹ Given the widespread deployment of digital technology and services by the industry, and the availability of this data in other Commission filings, providing this information is no longer needed to assess the state of the cable industry. In any event, to the extent the Form 325 seeks relevant non-duplicative data, those questions can easily be combined with the annual price survey.

In short, Form 325’s separate data collection, with the attendant burdens placed on operators, is no longer justified and should be eliminated. Information can be collected on an “as needed” basis, rather than imposing unnecessary burdens on operators through requiring this annual submission.

2. CableCARD Status Reports

Another burdensome routine filing that should be eliminated is the CableCARD status report. Currently, the five largest cable operators – serving approximately 80% of the cable customers in the country – file these reports every 90 days. Because CableCARDs are deployed

¹¹ *FCC Form 325 Streamlining Order*, 14 FCC Rcd at 4728, ¶ 20.

at the system level, these cable companies must dedicate significant staff and other resources to gathering and evaluating CableCARD-related information from their cable systems around the country for their quarterly reports. Introduced over five years ago, the Commission directed certain MSOs to file with the Commission, “reports detailing CableCARD deployment and support” as well as “the effort to develop and deploy a multistream CableCARD.”¹² These reports must include company-specific information on “(1) the general availability of CableCARDS; (2) the number of CableCARDS currently in service and how those devices are placed in service; (3) whether service appointments are required for all CableCARD installations; (4) the average number of truck rolls required to install a CableCARD; (5) the monthly price charged for a CableCARD and the average cost of installation; (6) problems encountered in deploying CableCARDS and how those problems have been resolved; and (7) the process in place for resolving existing and newly discovered CableCARD implementation problems.”¹³ While the Commission said in the *2005 Order* that it would “indicate in a future proceeding when the CableCARD status reports will terminate,”¹⁴ to date it has not done so. The Commission should take this opportunity to eliminate this unnecessary filing.

The CableCARD Report is a vestige of the Commission’s implementation of a provision of the Telecommunications Act of 1996,¹⁵ which directed the Commission to promulgate rules aimed at facilitating a retail marketplace for set-top boxes and other navigation devices. In the cable context, the Commission required that cable operators supply a separate security device,

¹² *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Second Report and Order, 20 FCC Rcd 6794 (2005) (*2005 Order*). Recent CableCARD Reports have indicated the major cable operators have been deploying multi-stream CableCARDS since 2007 so this reporting requirement is now outdated.

¹³ *Id.* at 6814, ¶ 39.

¹⁴ *Id.*

¹⁵ That provision added section 629 to the Communications Act of 1934. *See* 47 U.S.C. § 549.

now known as a CableCARD, to customers who owned digital cable-ready devices purchased at retail in order to access one-way cable services. Aside from this “Separate Security Requirement,” the Commission further required cable operators to include CableCARDS in their own set-top boxes. This additional requirement, known as the “Integration Ban,” prohibits operators from deploying set-top boxes with integrated security. The Integration Ban was scheduled to go into effect in 2005, but was twice extended until July, 2007.

The Commission established the CableCARD reporting requirement in its *2005 Order* to help the agency monitor the level of cable operator support for retail CableCARD-enabled devices in light of its grant of an extension of the effective date of the Integration Ban in that same Order.¹⁶ The Commission also thought the reports would be useful if it were called upon to rule on a request for further relief from the Ban in the future.¹⁷ The Commission in addition noted that, once the Integration Ban went into effect and cable operators started deploying CableCARDS in their own set-top boxes, cable operators would have an incentive to support CableCARDS because they would be included in both retail and leased devices.¹⁸ And the Commission suggested that the CableCARD reports would give the Commission a means of further assessing the status of retail CableCARD-enabled devices and whether they were achieving the Commission’s goals in this area.¹⁹ None of these reasons supports continued filing of the CableCARD reports.

First, the reporting requirement is no longer needed to track cable operator support for CableCARDS in the absence of the Integration Ban because the Ban went into effect in 2007. In

¹⁶ As the Commission said, “[w]ith respect to the reporting requirements imposed on cable operators ... *we believe these reports are a critical component to the extension of the integration ban deadline.*” *Id.* at 6829, Appendix C (Final Regulatory Flexibility Analysis) (emphasis added).

¹⁷ *Id.* at 6813, ¶ 36.

¹⁸ *Id.* at 6809, ¶ 30.

¹⁹ *Id.* at 6794, ¶ 1.

particular, the CableCARD reports were to be considered if further relief was sought from the Ban before the 2007 deadline. Such relief was sought and was denied. To the extent the purpose of the CableCARD reports was to monitor cable operator support for CableCARDs in the absence of the Integration Ban and to provide support for any further request for relief, those reasons were both mooted when the Ban went into effect in 2007.

Moreover, since 2007, cable operators have deployed over 21 million CableCARD-equipped set-top boxes (compared to just 500,000 CableCARDs for retail CableCARD-enabled devices). This massive deployment of CableCARDs, at a cost of over \$1 billion, assures operator support for CableCARDs in both leased and retail devices.²⁰

Second, as noted above, the CableCARD reporting requirement was also arguably useful to help gauge the success of CableCARD devices at retail. However, recently the Commission has examined this exact issue and stated that the “CableCARD is not a viable long-term solution for the current lack of compatibility between MVPD services and retail navigation devices”²¹ In response, the Commission initiated proceedings to consider a “successor technology to CableCARD”²² and to address some perceived shortcomings in the CableCARD regime.²³ These developments obviate the need for the CableCARD reports which are no longer necessary to assess the state of the navigation devices market.

²⁰ Cable operator support for CableCARDs is assured in another way. The Commission has made clear that it “takes seriously allegations that the cable industry, or individual cable operators, are failing to meet their obligations to deploy and support CableCARDs” and has cautioned that, “if specific allegations of CableCARD support violations are brought to the Commission, we will investigate such allegations and take appropriate action if necessary.” *Id.* at 6814, ¶ 39.

²¹ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, PP Docket No. 00-67, Fourth Further Notice of Proposed Rulemaking, 25 FCC Rcd 4303, 4307, ¶ 12 (2010) (*CableCARD FNPRM*).

²² *Video Device Competition, Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, MB Docket No. 10-91; CS Docket No. 97-80, PP Docket No. 00-67, Notice of Inquiry, 25 FCC Rcd 4275, 4276, ¶ 3 (2010) (*AllVid NOI*).

²³ *CableCARD FNPRM*, 25 FCC Rcd at 4303-04, ¶¶ 1-5.

For these reasons, the quarterly CableCARD reporting requirement imposes an unnecessary burden on the cable operators who are required to file them. The reporting requirement safely can be eliminated without reducing the effectiveness of the Commission's decision-making in this area.

B. The Commission Should Minimize Overlapping and Duplicating Reporting Obligations

The head of the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) recently testified about his Office's directive to agencies to minimize burdens on the public. Specifically, OIRA "asked agencies to develop initiatives to 'standardize inconsistent processes and requirements, eliminate duplicative reporting requirements, eliminate unnecessary complexity, and improve coordination among multiple offices that gather information from a common group of stakeholders.'"²⁴ The Commission should use this opportunity to better coordinate the filings required of cable operators.

To the extent Commission filings duplicate data collections mandated by other agencies, the Commission should harmonize the collections when possible. For example, both the Commission and NTIA seek data from cable operators and other providers related to broadband deployment and availability. Operators twice-yearly must file Form 477 with the Commission, which includes detailed information about the number of cable modem customers within a state by census tracts and cable modem speeds, as well as information about cable telephone customers. The Commission should ensure that the information it seeks does not duplicate that being requested from providers by NTIA.

²⁴ Testimony of Cass R. Sunstein, Administrator, Office of Information & Regulatory Affairs, Before the Committee on the Judiciary, Commercial & Administrative Law Subcommittee, U.S. House of Representatives (July 27, 2010).

Duplication is an issue within the agency, too, both across and within Bureaus. The Commission asks similar – if not identical – questions of cable operators on a variety of other forms. For example, Form 333, the Annual Cable Price Survey, asks for information on the number of cable customers taking telephone service and high-speed Internet access service as of the first of the year within certain surveyed community units. Meanwhile, the Annual Report of Cable Television Systems requires operators to provide information about the number of cable modem and telephony customers within the cable system for a “typical day in the last full week of December in the filing year.” Because filing deadlines may not coincide and the reporting units may not match up, this requires unnecessary duplication of effort. The Commission should streamline these reporting requirements and require operators to only report this information once.

C. Harmonizing Certain Filing Deadlines and Ensuring Consistent Reporting Will Enable the Commission to Collect Accurate Data And Reduce Unnecessary Burdens

The Commission should harmonize and clarify reporting deadlines to the extent possible so that reporting entities do not have multiple deadlines with which to comply.

For example, the Commission’s universal service high-cost support rules have specific deadlines for data to be filed for the majority of the high-cost support mechanisms, but there are different deadlines for one type of high-cost support.²⁵ Harmonizing these filing deadlines would reduce tracking and compliance obligations of filers and would reduce the Commission’s administrative burden as well, in that entities are less likely to miss and seek waivers of the filing deadlines.

²⁵ Compare 47 C.F.R. § 54.307(c) (setting filing deadlines of July 31, September 30, December 30, and March 30) with 47 C.F.R. § 54.802(a) (requiring filings on a quarterly basis on the last business day of March, June, September and December for Interstate Access Support).

The Commission should endeavor to harmonize its data collections with those of other agencies where possible. As discussed above, both the Commission and NTIA collect data from providers related to broadband deployment and availability. To the extent the Commission continues to require the filing of information separate and apart from that being collected by NTIA, the Commission should attempt to reconcile the filing deadlines to minimize burdens on filers. As an additional step to improve data collections and minimize burdens on reporting entities, the Commission should coordinate with NTIA to ensure that the agencies are requesting broadband data based on the same upload and download speed ranges.²⁶

Another area to consider for improvement relates to scheduling the release of forms. For example, the annual cable price survey form is issued at different times each year. Establishing a schedule for the form's release at the same time each year will help operators better plan for staffing for completing the forms. Moreover, it would be useful if the Commission ensured that its forms and related instructions use the same defined terms in order to cut down on confusion.²⁷

D. The Commission Should Align Its Data Collection Requests With the Release of Commission Reports

The Commission currently requires entities to file data on the Local Telephone Competition and Broadband Report form, Form 477, twice a year, on March 1st and September 1st. The Commission does not however, issue reports on the data or make it available on a semi-annual basis. The most recent Commission report based on Form 477 data, issued in February 2010, relied on data from December 2008, which were filed on March 1, 2009. As discussed

²⁶ Compare Instructions for Local Telephone Competition and Broadband Reporting (FCC Form 477), at 18, <http://www.fcc.gov/Forms/Form477/477inst.pdf> (last visited Aug. 11, 2010) (Form 477 Instructions) (listing 9 upload speed tiers and 8 download speed tiers) with *State Broadband Data and Development Grant Program*, NTIA, Notice of Funds Availability, 74 Fed. Reg. 32545, 32559 (July 8, 2009) (listing 11 upload speed tiers and 9 download speed tiers).

²⁷ The annual price survey, for example, uses terminology such as “limited basic” or “bundled basic” that may not have the same meaning industry-wide. The Commission instead should use defined terms such as “basic service tier” (47 U.S.C. § 543(b)(7)) and “cable programming service” (47 U.S.C. §543(l)).

above, the Commission should align its data requests with the uses of that data. If the Commission's resources allow it to process and report on this data only on an annual basis, then the Commission should correspondingly reduce the burden on filing entities by requiring the data to be filed only once a year as well. It does not benefit the public or the Commission, and places unnecessary burdens on filers, to require entities to file data every six months that will not be used by the Commission or made available to the public in a timely manner.

E. Changes To The Forms and Web-Based Filing Systems Can Ease Reporting Burdens and Yield Better Data

The Commission over time has moved to more of a web-based system (COALS) for reporting on certain cable operations. While this method has been more efficient than prior reports for some operators with few systems, it has caused difficulties for others, particularly operators with large numbers of discrete systems. In addition, some Commission data bases and forms do not provide a way for users to delete or revise information once it has been submitted. Finally, some forms could benefit from clearer instructions to allow filers to provide accurate information to the Commission. Highlighted below are miscellaneous filings that could benefit from revisions.

1. FCC Form 160

All entities conducting transactions with the Commission must file the FCC Form 160, the Commission Registration System (CORES) form to request an FCC Registration Number (FRN). The FRN is mandatory and is used by all Commission systems that handle financial, authorization of service, and enforcement activities. Currently there is no method for entities to cancel FRNs, and, as a result, operators may have duplicate FRNs for the same entity. The form

and electronic system should be modified to allow entities to cancel out-of-date or duplicate FRNs.²⁸

2. FCC Form 333

The Commission recently revised and streamlined its annual cable price survey.²⁹ The revised survey eliminates some of the more burdensome – and irrelevant – questions that had been included in prior year survey instruments.

While the survey form has been simplified (resulting in a reduction in the reported “annual burden hours”), there remain mechanical and logistical issues regarding submission of the data requested that could be improved. Many cable systems that are surveyed are owned by Multiple System Operators (MSO), which own other systems as well. Moving the form to a web-based system has introduced some administrative difficulties. For example, the web-based system does not contain a means for operators to save the completed form electronically. Because it is password protected, MSOs filing on behalf of multiple systems have difficulty completing the form from a centralized location. Moreover, the nature of the system forces operators to expend significant resources to input data manually that may already exist in a different electronic format. The Commission should provide operators an option to upload this data in another format, particularly the detailed channel line-up information.³⁰

²⁸ The Commission should ensure that entities can use the relevant forms to cancel licenses or applications. For example, the Application for Cable Television Relay Service Station License, FCC Form 327, should be amended to allow entities to notify the Commission of cancellations.

²⁹ OMB recently approved the new form. OMB Control No. 3060-0647.

³⁰ See PRA, 44 U.S.C. § 3506(c)(3)(E) (“information collection “is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond.”). Moreover, the Commission should identify inconsistencies with previously-submitted data so operators can quickly determine whether the new information was submitted in error.

3. FCC Form 499

To aid in its collection of data and to facilitate the consolidated filing of information for affiliated companies, the Commission should amend the Telecommunications Reporting Worksheet, Form 499, to allow entities with multi-state operations to associate separate Service Provider Identification Numbers (SPINs) with a single FRN. Some entities have separate SPINs for each state in which they operate, but these SPINs are associated with a single FRN. At the current time, there is no way to list separate SPINs on the Form 499, and filers must instead file letters notifying the Universal Service Administrative Company (USAC) which SPINs are associated with a company's FRN. Rather than requiring this manual work-around, and to ensure that affiliated entity information is clearly available to the Commission, the Form 499 should be amended to allow companies to provide SPIN information.

II. THE COMMISSION SHOULD ENSURE THAT IT COLLECTS AND USES ACCURATE DATA TO HELP GUIDE ITS DECISIONS

Decisions based on facts and data are only as good as the facts and data on which they are based. If the Commission relies on inaccurate, faulty or stale data, its decisions will suffer as well.

A. The Commission Should Rely on Up-to-Date Data

In its report on the availability of advanced telecommunications capability, released less than three weeks ago, the Commission relied on data from 2008 to conclude (erroneously, we believe) that such services are not being deployed on a reasonable and timely basis.³¹ This reliance on 2008 data is especially troubling given that the Commission has, since that data was filed, twice collected updated data from reporting entities. On September 1, 2009, entities

³¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137, Sixth Broadband Deployment Report, FCC 10-129 (July 20, 2010) (706 Report).

reported data as of June 30, 2009, and on March 1, 2010, entities reported data as of December 31, 2009.³² The Commission therefore has more recent data within its possession but based its conclusion on outdated data.

Given the rapid pace at which advanced telecommunications services are being deployed, data depicting the state of deployment from 19 months ago are not likely to provide an accurate assessment of the current state of deployment, and certainly are far less accurate than data from only seven months ago. The Commission should bear this in mind and ensure that it uses the most up-to-date information available in future reports.³³

B. Data Use Must Be Open and Transparent

The Commission must also ensure that its use of data is transparent and open to the public to the extent possible.³⁴ When the Commission relies on data sources, whether staff-compiled reports or data acquired from third parties, the Commission should make these sources available to the public. The public interest is not served, nor are the Commission's actions open and transparent, if decisions are made based on data that is available only to Commission staff. For example, both the National Broadband Plan and the *706 Report* cite to and rely on a cost model that has not been publicly disclosed and which, based on descriptions of the model that have been released, may contain inaccurate results due to the limited nature of the data on which the model is based.³⁵ In addition, in drawing conclusions about the relationship between "actual"

³² Form 477 Instructions at 19.

³³ The Commission recently commenced the proceeding for its next advanced telecommunications capability report. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability for all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Deployment Notice of Inquiry, FCC 10-148 (rel. Aug. 6, 2010).

³⁴ Some cable company-supplied data may contain sensitive information for which confidential treatment is warranted.

³⁵ *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, at 136, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (Omnibus Broadband Initiative, Mar. 16,

and “advertised” broadband speeds, the National Broadband Plan relied on non-public data from a third party source.³⁶ For outside parties to review the basis for the conclusions in the National Broadband Plan, this data had to be purchased at considerable expense and, upon analysis, was found to contain several significant errors.³⁷ As NCTA previously commented, “Relying on undisclosed data and methodologies to reach such broad conclusions not only runs counter to the principles of transparency espoused in the Plan, but it also seems to contravene the Commission’s own Information Quality Guidelines.”³⁸

C. Necessary Data Related to the Use of Universal Service High-Cost Support

As NCTA stated in its reply comments in the Commission’s universal service high-cost support proceeding, the Commission must develop the capability to compare high-cost support distributions with broadband deployment statistics for a given geographic area, something it cannot easily do today, and it must gather data on the level of rate regulation, if any, to which high-cost support recipients are subject, so that it can better determine whether federal subsidies continue to be necessary for providers whose rates may no longer be constrained by regulation.³⁹

The National Broadband Plan stated that “[t]he FCC . . . should enhance its data collection and reporting to ensure that the nation’s funds are being used effectively to advance

2010) (National Broadband Plan); *706 Report*, FCC 10-129 at ¶¶ 16-18; “The Broadband Availability Gap,” OBI Technical Paper No. 1 at 24-25 (Omnibus Broadband Initiative, Apr. 2010) (“Since the statistical regression relies on a small number of states, to the extent that the tie between demographics and network availability in the rest of the country is not the same as these states, the regression will not be accurate. [T]here is no way to verify our outputs without additional data.”).

³⁶ See National Broadband Plan at 44, 64 n.54.

³⁷ Letter from Neal M. Goldberg, Vice President and General Counsel, NCTA, to Joel Gurin, Chief, Consumer and Governmental Affairs Bureau, FCC, GN Docket No. 09-51, CG Docket No. 09-158 (Mar. 26, 2010).

³⁸ *Id.* at 2 (citing *Implementation of Guidelines for Ensuring and Maximizing Quality, Objectivity, Utility, and Integrity of Information Pursuant to Section 515 of Public Law No. 105-554, Information Quality Guidelines*, 17 FCC Rcd 19890, 19896 (2002) (“data should have full, unbiased, reliable, accurate, transparent documentation”)).

³⁹ Reply Comments of the National Cable & Telecommunications Association, Connect America Fund NOI/NPRM, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, 9-12 (filed Aug. 11, 2010).

defined programmatic goals.”⁴⁰ To enable the Commission and the public to better monitor the use of high-cost support, the Commission must develop the ability to compare broadband deployment and high-cost support distribution using a common geographic metric. The Commission also must find a way to compare data from NTIA and RUS regarding census blocks that have received ARRA funding with areas receiving high-cost support. Only by compiling and reporting all of this data on a common basis will the Commission be able to create a complete picture of where government support for broadband is being directed and whether it is being appropriately targeted to those areas most in need, something that it has never done before but which is long overdue.

A second gap in the Commission’s data collection from high-cost support recipients is the lack of information regarding the rate regulation regime, if any, that applies to the various services provided over supported networks. The central premise of the high-cost support regime is that, absent government funding, carriers would need to raise rates to unreasonable levels to recover the cost of providing supported services. The assumption that support is necessary to offset costs that cannot be recovered from consumers may be reasonable in areas where rates are artificially constrained by cost-based regulation. But that assumption no longer holds in areas where regulators have determined that competition exists and deregulation is appropriate, allowing providers to charge whatever rate the market will bear. The Commission should require high-cost recipients to report on what type of rate regulation, if any, they are subject to in areas for which they are currently receiving high-cost support. These reports should specify the services that are regulated, the circumstances under which such regulation applies, and the geographic scope of such regulation. By identifying areas where rates no longer are constrained

⁴⁰ *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, at 144, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (Omnibus Broadband Initiative, Mar. 16, 2010) (National Broadband Plan).

by cost-based regulation, the Commission will be able to establish a much clearer picture of where high-cost support is needed to preserve reasonable rates and where such support no longer is necessary.

CONCLUSION

As discussed above, NCTA urges the Commission to eliminate unnecessary reporting requirements, including the Annual Report of Cable Television Systems – Form 325 and the CableCARD status reports, minimize duplicative reporting requirements, and collect and rely on accurate and timely data that are as open and transparent to the public as possible.

Respectfully submitted,

/s/ Neal M. Goldberg

Neal M. Goldberg
Diane B. Burstein
Jennifer K. McKee
National Cable &
Telecommunications Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431
(202) 222-2445

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