

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Cable Television Technical and Operational ) MB Docket No. 12-217  
Requirements )

**COMMENTS OF CENTURYLINK**

To promote competition in the video distribution marketplace, CenturyLink, Inc. (“CenturyLink”) urges the Commission not to impose the new proof-of-performance standards proposed in the *Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>1</sup> In the NPRM the Commission has not considered whether new standards for digital signals are necessary or desirable. And, in fact, they are not. As discussed below, competitive video entrants, such as CenturyLink, have ample incentive to provide good quality signals and high video quality to consumers. In turn, imposing new testing and documentation requirements on competitive entrants would impose regulatory costs without corresponding benefits — contrary to the goals of regulatory balance expressed in Executive Order 13579.

**I. THE NPRM FAILS TO CONSIDER WHETHER NEW PROOF-OF-PERFORMANCE STANDARDS ARE NECESSARY OR DESIRABLE.**

As the NPRM recalls, when the Commission adopted the current proof-of-performance standards in 1992, it declined to impose proof-of-performance standards on digital cable systems but retained authority to do so at a later time “should the adoption of technical standards . . .

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<sup>1</sup> *In the Matter of Cable Television Technical and Operational Requirements*, MB Docket No. 12-217, 27 FCC Rcd 9678 (2012) (“NPRM”); 77 Fed. Reg. 61,351 (Oct. 9, 2012).

appear necessary or desirable.”<sup>2</sup> Curiously, however, the NPRM goes on to propose new proof-of-performance standards without evaluating whether they are necessary or desirable.

CenturyLink encourages the Commission to correct this oversight and first evaluate carefully whether new proof-of-performance standards are necessary or desirable in light of available qualitative and quantitative evidence. In the absence of such evidence, the Commission should not adopt the rules proposed in the NPRM.

In particular, the NPRM appears to rest the imposition of new proof-of-performance standards on the following line of reasoning:

1. Based on the evidence before it in 1992, the Commission appropriately determined that specific signal testing and documentation requirements were necessary as to the analog cable systems provided by monopoly cable incumbents;
2. Twenty years later, multichannel video programming distributors (“MVPDs”) increasingly are delivering services over digital cable systems; and thus
3. It is necessary and desirable for the Commission to regulate signal quality provided by digital cable systems.

CenturyLink submits that a key step is missing in this process: an examination of whether today there is evidence to support the need for regulation of signal quality in the context of digital cable systems. In adopting the analog rules in 1992, the Commission cited subscriber complaints arising from weakness of signals, the amount of electromagnetic noise contained in delivered signals, failure to maintain system equilibrium, poor maintenance of cable system plant, instability of color in the picture delivered to the consumer, and problems in interactions with subscriber receiving equipment.<sup>3</sup> In contrast, without citing any evidence of complaints in

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<sup>2</sup> See NPRM, 27 FCC Rcd at 9681 ¶5, citing *In the Matter of Cable Television Technical and Operational Requirements*, MM Docket No. 91-169, Report and Order, 7 FCC Rcd 2021, 2024 (1992) (“1992 Order”), at ¶16.

<sup>3</sup> 1992 Order, 7 FCC Rcd at 2023 ¶11.

recent years, the NPRM would impose new regulations on all MVPDs operating a digital system.<sup>4</sup> The Initial Regulatory Flexibility Analysis accompanying the NPRM likewise states that adoption of the rules for digital cable systems “will lead to benefits for consumers in the form of consistent, good quality signals,” yet does not consider whether digital systems today fail to provide consistent, good quality signals.<sup>5</sup>

In addition to proposing new substantive rules as to signal quality without evidence of need for such rules, the NPRM asserts that “testing and documentation” of cable systems “is essential to ensuring compliance and permitting effective enforcement” of the new rules.<sup>6</sup> Here again, this assertion was reached without considering whether there is qualitative and/or quantitative evidence justifying the need for such testing and documentation.

Imposing these new regulations without evidence of need runs counter to both the letter and the spirit of Executive Order 13579, Regulation and Independent Regulatory Agencies. That Executive Order encourages independent agencies to “consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”<sup>7</sup> Given that mandate, it would be an unfortunate irony if the result of

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<sup>4</sup> One consumer commenter, Stephen Simonin, requests that end users view all system Proof of Performance test results, but provides no reason why signal quality standards are necessary or desirable. *See Comments of Stephen Simonin*, MB Docket No. 12-217 (August 30, 2012).

<sup>5</sup> NPRM, 27 FCC Rcd at 9724, App. B, ¶15.

<sup>6</sup> *Id.* at 9684 ¶¶10, 11.

<sup>7</sup> Exec. Order No. 13579, 76 Fed. Reg. 41,587, *available at* <http://www.whitehouse.gov/the-press-office/2011/07/11/executive-order-regulation-and-independent-regulatory-agencies> (July 11, 2011).

retrospective regulatory analysis in this proceeding were to be the adoption of new regulatory burdens lacking a basis in any “supporting data and evaluations.”<sup>8</sup>

Accordingly, the Commission should not impose new proof-of-performance rules on digital cable systems absent development of a record showing that they are necessary or desirable. And as discussed below, there is compelling evidence that such rules are neither necessary nor desirable, at least as to competitive entrants such as CenturyLink.

## **II. THE PROPOSED NEW PROOF-OF-PERFORMANCE RULES ARE BOTH UNNECESSARY AND UNDESIRABLE, PARTICULARLY AS TO NEW VIDEO ENTRANTS SUCH AS CENTURYLINK.**

The lack of evidence justifying imposition of new signal quality rules and recordkeeping requirements on digital cable systems is not surprising. In contrast to the monopoly cable environment in which the Commission developed analog proof-of-performance standards twenty years ago, today the competitive universe of MVPDs is much broader—creating strong competitive incentives to deliver a satisfactory consumer experience, including as to signal quality. The Commission should encourage such competition among MVPDs and the pro-consumer incentives it produces, not diminish it by imposing new regulatory burdens on competitive entrants such as CenturyLink.

### **A. New Entrants Have Strong Incentives to Deliver Signals of Good Quality, Both as a Technical and a Qualitative Matter.**

As the NPRM recognizes, “[a]t the time of the *1992 Order*, analog cable transmission was predominant and possessed uniform characteristics, which made adoption of technical standards relatively straightforward.”<sup>9</sup> That was twenty years ago, when cable commanded 95

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<sup>8</sup> *Id.*

<sup>9</sup> NPRM, 27 FCC Rcd at 9683 ¶9.

percent of the multichannel television market,<sup>10</sup> and by and large each household had access to only a single MVPD. Today, in contrast, most households have access to at least *three* competing MVPDs: a cable incumbent such as Comcast, and the two DBS operators, DirecTV and DISH. When a telco or other nontraditional video provider enters the market, it typically is the fourth or fifth provider.<sup>11</sup>

In this competitive environment, MVPDs—particularly new entrants—have strong incentives to deliver stellar signal quality and otherwise engage in best practices as to technical operations. CenturyLink is keenly aware of that imperative when it enters a market. Entry into the video market is expensive, requiring enormous and ongoing investment. Even maintaining current levels of service to existing customers depends on ongoing investment in facilities and programming. Earning a return on this investment requires CenturyLink to provide high quality signals—otherwise, it would be impossible to attract and retain customers.<sup>12</sup> In today’s video marketplace a competitive entrant cannot long survive unless it is consumer-focused and provides quality service. Given the high fixed costs involved, it would be foolish for a new MVPD entrant to overlook signal quality or other technological necessities of delivering a high-quality service.

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<sup>10</sup> NCTA, Issues, Video Competition, *available at* <http://www.ncta.com/IssueBriefs/VideoCompetition.aspx>.

<sup>11</sup> “More than 32 million consumers now subscribe to cable’s competitor as multiple video providers – including Direct Broadcast Satellite (DBS), alternative broadband providers like RCN and the nation’s two largest telephone companies – vie for customer loyalty, each trying to provide unique new products.” NCTA, Issues, Video Competition, *available at* <http://www.ncta.com/IssueBriefs/VideoCompetition.aspx?view=2>.

<sup>12</sup> See *In the Matter of Preserving the Open Internet; Broadband Industry Practices*, Reply Comments of CenturyLink, GN Docket No. 09-191, WC Docket No. 07-52, November 4, 2010, at 4-5 (“CenturyLink Open Internet Reply Comments”).

The steps that CenturyLink takes to deliver high-quality signals attest to these incentives, ensuring that our video service provides a satisfactory service to our subscriber. For example, CenturyLink has effective processes in place to monitor and ensure that it provides high quality signals to subscribers of its IPTV service, Prism TV.<sup>13</sup> CenturyLink operates Prism TV in eight U.S. markets and plans to expand that service into other markets in the coming months and years.<sup>14</sup> Among other steps:

- As CenturyLink activates a new channel, its engineering team tests and verifies that there is a high-quality signal on the channel.
- CenturyLink uses direct fiber feeds in retransmitting local television stations, while also maintaining backup, off-air antennas to receive local channels in the event of a fiber cut or other failure.
- At monthly, quarterly and annual intervals, CenturyLink conducts special testing and maintenance procedures with respect to equipment and signal quality.
- A Prism TV team monitors all of the channels airing on its systems—around the clock, 24 hours per day, seven days per week, 365 days per year. Every eight hours the team checks the audio and video of each channel to confirm that all channels are available, the electronic guide is correct, and the audio and video outputs are both of good quality. This team checks to ensure sound is clear and audible, and that video is clear without any screen pixelization or tearing.
- CenturyLink has in place vendor software to capture alarms for device failures and signal continuity issues (*e.g.*, any subtle changes in the video signal such as momentary picture freezing, tiling or audio issues). Capturing signal continuity errors enables CenturyLink to address issues proactively before they impact the video signal in a highly noticeable manner.

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<sup>13</sup> CenturyLink does not address here the question of whether IPTV systems such as Prism TV provide “cable service” or are “cable systems,” as those terms are defined in Section 602 of the Communications Act of 1934, as amended, 47 U.S.C. § 522. These comments should not be construed as agreement that any new regulations of non-QAM based digital signals would apply to Prism TV or other IPTV services.

<sup>14</sup> See *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Comments of CenturyLink, MB Docket No. 12-203 (September 10, 2012) (“CenturyLink Competition Report Comments”).

Of course, if CenturyLink receives a signal quality inquiry from a customer, the company's video engineers also are available at any time via a phone call or pager and promptly investigate and work to resolve any issue as quickly as possible.

As new entrants in competitive video delivery markets, CenturyLink and other new providers of digital cable services have little, if anything, in common with the incumbent cable operators targeted by the analog proof-of-performance standards adopted in 1992. Yet the NPRM does not acknowledge the role of competitive entrants or the pro-consumer incentives they have with respect to signal quality, much less recognize that these incentives make new digital cable standards unnecessary. In short, the Commission has not identified any industry-wide problem as to the signal quality delivered by digital cable systems, and thus no new regulations are necessary.

**B. The Proposed New Standards Are Also Undesirable Because They Would Discourage Competitive Entry and Growth in the MVPD Marketplace.**

The proposed new proof-of-performance rules not only are unnecessary; they also are undesirable because they would jeopardize the Commission's laudable objectives for competition and attention to customer service.<sup>15</sup> Because the market already establishes a competitive incentive to provide customers with good signal quality, the Commission should not risk undermining the provision of innovative new specialized services—nor risk losing the benefits of investment, innovation and competition—by imposing needless proof-of-performance regulations.

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<sup>15</sup> See generally *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 27 FCC Rcd 8581, 8590-91, 8607 at ¶¶23, 83, MB Docket No. 12-203 (July 20, 2012) (“2012 Cable Competition NOI”).

In its latest Notice of Inquiry concerning the Status of Competition in the Market for the Delivery of Video Programming, the Commission recognizes that regulations have an effect on entry and rivalry in the video programming delivery market.<sup>16</sup> Consistent with this recognition, the Commission should tread carefully in imposing new regulations on competitive MVPDs. Yet, the proposed proof-of-performance regulations pose substantial risks to entry into the market, because additional rules reduce operational flexibility, introduce uncertainty, and limit opportunities to generate investment returns.

For example, any operator of a non-QAM system would be subject to a “case-by-case approach whereby the non-QAM digital cable systems would demonstrate that they are providing a ‘good quality signal’ to their customers by submitting a plan for Commission approval.”<sup>17</sup> At a minimum, the plan would have to include “electrical signal characteristics, MPEG stream characteristics or other metrics to demonstrate signal quality.”<sup>18</sup> And regardless of the circumstances or state of competition in the markets where the non-QAM system operator serves customers, “the non-QAM system proof-of-performance plan must include a testing and documentation component.”<sup>19</sup> These requirements, like all regulation, carry costs. The Initial Regulatory Flexibility Analysis curiously asserts that this requirement will *reduce* compliance burdens for non-QAM systems because it will alleviate the requirement to file a waiver of analog standards.<sup>20</sup> Yet, whether in the form of a waiver petition or a compliance requirement, regulating without cause in this area fails the most elementary cost/benefit analysis: it imposes

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<sup>16</sup> *Id.*

<sup>17</sup> NPRM, 27 FCC Rcd at 9686 ¶15 (footnote omitted).

<sup>18</sup> *Id.* at 9687 ¶15 (footnote omitted).

<sup>19</sup> *Id.* at 9686 ¶15.

<sup>20</sup> *Id.* at 9724-25, App. B, ¶15.

costs, but produces no corresponding benefit. The rules, by definition, will be “excessively burdensome” at their creation.

## CONCLUSION

In contrast to the environment in which the Commission adopted the analog proof-of-performance rules in 1992, today there are entrants, such as CenturyLink, making significant investments to compete against incumbent cable operators. These entrants have strong incentives to provide good quality signals to consumers, making regulation in this area unnecessary. Further, the NPRM does not identify any evidence of, nor makes any findings that there are significant, industry-wide problems with digital signal quality that might support regulation in this area—further rendering such regulation unnecessary. The proposed new rules also are undesirable because they would impose regulatory costs without corresponding benefits. CenturyLink respectfully urges the Commission not to impose the proof-of-performance standards proposed in the NPRM.

Respectfully submitted,

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