

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY COMMENTS



I. INTRODUCTION

The American Cable Association (“ACA”) submits these reply comments in response to the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.¹ The purpose of this proceeding is to update the Commission’s cable proof-of-performance rules and basic signal leakage performance criteria to reflect the cable industry’s ongoing transition from analog to digital transmission systems.² The NPRM proposes adoption of rules requiring cable systems to demonstrate that they provide digital signals of a specified technical quality and to update the Commission’s signal leakage rules aimed at protecting aeronautical distress and safety frequencies from interference from cable systems’ digital signals.³

ACA agrees with the majority of industry commenters that the Commission should not

¹ *In the Matter of Cable Television Technical and Operational Requirements*, Notice of Proposed Rulemaking, MB Docket No. 12-217, 27 FCC Rcd 9678 (rel. Aug. 3, 2012) (“NPRM”).

² NPRM ¶ 1. The Commission recognizes that although the industry is likely to go all-digital in the future, the industry is presently only in various phases of its transition from analog to digital. Accordingly, the NPRM proposes rules that would apply to both “hybrid” and “all-digital” systems. *Id.* ¶ 2.

³ *Id.* ¶ 6.

require proof-of-performance testing for digital signals.⁴ ACA submits that the record overwhelmingly shows that the Commission has not established that applying proof-of-performance rules to digital cable transmission systems is either “necessary or desirable” given the lack of problems with digital signal quality, advances in cable technology that have improved digital signal quality and its monitoring, and the increased level of competition that has developed since 1992.

Rather than requiring “burdensome,”⁵ “needless”⁶ and “ineffective”⁷ proof-of-performance testing for digital signals, ACA recommends that the Commission follow NCTA’s suggestion and permit cable system operators to demonstrate compliance with the SCTE 40 technical standards through certifications. Consistent with Commission action in other areas, the Commission should require these certifications be completed annually, and require that the certifications be placed in a cable system’s public inspection file. Given the resource demands the proposed testing requirements would impose, particularly on smaller cable operators, if the Commission does not adopt NCTA’s proposal, ACA recommends that it should at least permit smaller cable operators, those with 400,000 or less subscribers company-wide, to demonstrate compliance through certifications.

Finally, in accordance with NCTA’s certification proposal, the Commission should

⁴ See *In the Matter of Cable Television Technical and Operational Requirements*, Notice of Proposed Rulemaking, MB Docket No. 12-217, Comments of CenturyLink at 4-9 (Dec. 10, 2012) (“CenturyLink Comments”); Comments of the National Cable & Telecommunications Association at 3-7 (Dec. 10, 2012) (“NCTA Comments”); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the National Telecommunications Cooperative Association at 2-6 (Dec. 10, 2012) (“OPASTCO/NTCA Comments”); Comments of Verizon at 2-9 (Dec. 10, 2012) (“Verizon Comments”).

⁵ NCTA Comments at 3.

⁶ CenturyLink Comments at 7.

⁷ Verizon Comments at 3.

streamline its recordkeeping and public inspection file requirements. Cable operators should be required to keep records showing compliance with the proof-of-performance rules for a maximum of two years.

By taking these steps, the Commission can promote compliance with the SCTE 40 digital signal technical standards, and at the same time avoid unnecessary and undesirable burdens on cable system operators.

II. THE RECORD SUPPORTS THAT PROOF-OF-PERFORMANCE TESTING FOR DIGITAL SIGNALS IS NOT “NECESSARY OR DESIRABLE”

NCTA, Verizon, CenturyLink, and OPASTCO/NTCA agree – the NPRM does not establish that proof-of-performance rules and reporting requirements for digital signals is either “necessary or desirable.”⁸ ACA concurs. Accordingly, the Commission should not require proof-of-performance testing for digital signals.

In 1992, when the Commission adopted the current analog proof-of-performance standards, it declined to impose proof-of-performance standards on digital cable systems, but retained the authority to do so “should the adoption of technical standards...appear necessary or desirable.”⁹ In this proceeding it is evident that the Commission has not considered the threshold question of whether such rules are “necessary or desirable” in light of today’s technology and market conditions.¹⁰ Lacking the foundational evidentiary demonstration of a

⁸ CenturyLink Comments at 3; NCTA Comments at 4-6; OPASTCO/NTCA Comments at 2; Verizon Comments at 3-5.

⁹ NPRM ¶ 5, *citing In the Matter of Cable Television Technical and Operational Requirements*, Report and Order, 7 FCC Rcd 2021, ¶ 16 (1992).

¹⁰ CenturyLink Comments at 2 (“[T]he NPRM [proposes] new proof-of-performance standards without evaluating whether they are necessary or desirable.”); NCTA Comments at 4 (“[The NPRM] states without explanation that ‘testing and documentation is essential to ensuring compliance and permitting effective enforcement of our proof-of-performance rules.’”); OPASTCO/NTCA Comments at 2 (“[T]he NPRM does not establish how or why the signal quality rules and reporting requirements it proposes may be ‘necessary or desirable,’ especially considering the competition that has developed since the adoption of

digital signal quality problem to remedy, there is no reasoned basis for imposing potentially burdensome digital proof-of-performance requirements on cable operators.

As the record reflects, proof-of-performance testing for digital signals is neither necessary nor desirable for the following reasons: (i) there has been no pattern of technical problems with digital signals; (ii) improvements in cable technology make adopting proof-of-performance rules for digital signals unnecessary; and (iii) today's competitive market ensures that cable providers have incentive to deliver superior video quality.

There is no pattern of technical problems with digital signals. NCTA and CenturyLink underscore that the NPRM neglects to identify any problem with the quality of cable television digital signals.¹¹ As NCTA observes, “unlike 1992, where a ‘pattern of technical problems with [analog] cable service led the Commission to regulate analog signal quality, the quality of cable television digital signals has not been an issue.’”¹² CenturyLink stresses that the NPRM “does not consider whether digital systems today fail to provide consistent, good quality signals.”¹³ NCTA further emphasizes that digital signal quality has not been an issue even though the FCC has required cable operators of systems of 750 MHz or greater to adhere to the SCTE 40 digital technical standards since 2003 without mandatory testing.¹⁴

The lack of any emphasis, or even discussion, in the NPRM on digital signal quality problems is even more glaring in light of Commission rules that require cable operators to notify

the original rules.”); Verizon Comments at 5 (“The Notice does not, as the Commission did in 1992, set forth any findings that new regulations is ‘necessary or desirable.’”).

¹¹ CenturyLink Comments at 2; NCTA Comments at 4.

¹² NCTA Comments at 4.

¹³ CenturyLink Comments at 2.

¹⁴ NCTA Comments at 4; *see also* 47 C.F.R. § 76.640(b)(1)(i).

customers about signal quality. Currently, cable operators must inform subscribers of the procedures for resolution of complaints about the quality of the television signal delivered by the signal operator.¹⁵ In addition, cable operators must (i) establish a process for resolving complaints from subscribers about the quality of the television signal delivered; (ii) make aggregate data based upon these complaints available for inspection by the Commission and franchise authorities, upon request; and (iii) maintain these records for at least one year.¹⁶ Despite the availability to the public of digital signal quality complaints, the NPRM contains not a single mention of such subscriber complaints.¹⁷ In the absence of this evidence, there is no basis for the Commission to adopt its proposed proof-of-performance testing rules for digital signals.

Improvements in cable technology since 1992 make proof-of-performance testing for digital signals unnecessary. The record establishes that digital signals are more robust and reliable.¹⁸ The record further establishes that the quantity of high-quality video available to consumers has continued to increase dramatically.¹⁹ In addition to better signal quality – a reason alone why proof-of-performance testing would be unnecessary – these technological

¹⁵ 47 C.F.R. § 76.1602(c).

¹⁶ 47 C.F.R. § 76.1713.

¹⁷ ACA notes that although NATOA claims that its members resolve hundreds of cable subscriber signal quality complaints, including digital signal complaints, it fails to provide any record evidence supporting this assertion. *See In the Matter of Cable Television Technical and Operational Requirements*, Notice of Proposed Rulemaking, MB Docket No. 12-217, Comments of the National Association of Telecommunications Officers and Advisors at 1-2 (Dec. 10, 2012). Even assuming that NATOA's members resolve hundreds of cable subscriber signal quality complaints annually, considering the fact that there are tens of millions of customers receiving dozens of digital channels on a round-the-clock basis, the burdens of the proposed digital signal testing and reporting obligations vastly outweigh the likely benefits, given the limited extent of the alleged problem.

¹⁸ NCTA Comments at 4-5.

¹⁹ Verizon Comments at 7.

advancements also allow cable system operators to monitor system performance more easily remotely.²⁰ Given the ease of remote monitoring, digital signal quality problems are likely to be timely diagnosed and addressed by the operators on a routine basis.²¹

Because of these technological advancements, ACA agrees with NCTA that the best course of action is for the Commission to use its statutory mandate to find that proof-of-performance testing is not necessary for digital signals.²² As NCTA explains, circumstances today differ significantly from those that led the Commission to adopt semi-annual proof-of-performance testing twenty years ago.²³ Unlike 1992, when analog cable systems typically relied on amplifiers to maintain signal quality, which could introduce noise and distortions to the programming as received, digital signal technology, with “its error correction capabilities,” provides a more consistent good quality signal.²⁴ Moreover, modern cable television distribution systems use technically-independent “nodes,” each typically serving at most a few hundred customers.²⁵ Consequently, performing proof-of-performance testing on one node will provide little, if any, information about the signal quality on other system nodes. And due to the high

²⁰ NCTA Comments at 5-6.

²¹ *Id.* at 5-6 (noting that cable operators already routinely deploy a variety of digital signal remote monitoring methods) and 8 (detailing that some digital signal testing is more easily performed at the headend); CenturyLink Comments at 6 (listing its digital signal monitoring processes).

²² 47 U.S.C. § 544(e) (“Within one year after October 5, 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems’ technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. No State or franchising authority may prohibit, condition, or restrict a cable system’s use of any type of subscriber equipment or any transmission technology.”).

²³ NCTA Comments at 4-5.

²⁴ *Id.* at 4.

²⁵ *Id.*

number of nodes on each system, performing a test on each node would create a substantial economic burden on operators with little offsetting benefit to consumers.

The record also illustrates how field testing is unnecessary given cable operators' existing strong economic incentives to ensure the best quality experience for their customers. Operators employ the latest technology to remotely monitor their systems on an on-going basis, including to find and fix potential problems before they become visible to the customer,²⁶ to verify signal quality,²⁷ and to perform standard maintenance.²⁸ These constant efforts are driven by a number of market-based incentives ranging from savings on subscriber acquisition costs by maintaining a high quality customer experience, thereby decreasing churn, to needing fewer truck rolls, resulting in lower operational expenses.²⁹ The Commission's proposal would result in nothing more than having the industry take a step back in its technological evolution and waste limited time and resources testing for problems that no longer need testing.

Accordingly, for these reasons, the Commission need not, and therefore should not, require proof-of-performance testing for digital signals to ensure adequate signal quality for cable consumers.

Today's competitive market ensures that video providers have incentives to deliver superior video quality. There is no justification for digital signal proof-of-performance testing requirements in light of today's competitive video market. Cable operators today

²⁶ *Id.*

²⁷ CenturyLink Comments at 6.

²⁸ Verizon Comments at 12.

²⁹ See *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, Report and Order, 27 FCC Rcd 12786, ¶ 13 (2012) (explaining the operators' incentives to reduce truck rolls).

compete with DBS operators, all-digital telco MVPDs, and other competitive entrants.³⁰ Not surprisingly, the Commission has recognized the substantial growth in video competition and the introduction of multiple video offerings.³¹

In this highly competitive market, cable operators must compete with other distributors of video programming on the quality of their signals. As the Commission recently stated, “MVPDs further attempt to differentiate their products by claiming their products have superior quality.”³² Given the multitude of video options for consumers, if a cable operator provides poor signal quality, the consumer has options to obtain video programming elsewhere.³³ These marketplace incentives ensure that cable operators engage in on-going measures to provide and maintain good quality signals, regardless of any regulatory mandate.³⁴ In addition, as noted by OPASTCO/NTCA, programmers have an incentive to ensure that their viewers receive a quality signal from cable operators. Accordingly, most programming contracts for satellite-delivered cable services require that the cable operator retransmit the programming at a quality at least equal to the quality of the signal received at the cable system’s headend.³⁵ Poor signal

³⁰ NCTA Comments at 6.

³¹ *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourteenth Report, 27 FCC Rcd 8610, ¶¶ 27, 37, 40 (2012) (“14th Annual Report”).

³² 14th Annual Report ¶ 94.

³³ OPASTCO/NTCA Comments at 4-5.

³⁴ NCTA Comments at 6; see also Mike Farrell, *Cable One Offers 30-Day Money-Back Guarantee*, Multichannel News (Jan. 24, 2013), available at http://www.multichannel.com/cable-operators/cableone-offers-30-day-money-back-guarantee/141373?utm_source=twitterfeed&utm_medium=twitter (last visited Jan. 25, 2013) (outlining 30-day money back guarantee for new services – “We believe strongly in the reliability of our products and services and we’re committed to providing our customers with cutting-edge technology and on-going enhancements,” said Cable One vice president of marketing Joe Felbab in a statement. “We’re confident that our customers will be completely satisfied with their cable, internet and phone service. If for any reason they’re not satisfied within the first 30 days, we’ll be happy to refund their money.”).

³⁵ OPASTCO/NTCA Comments at 5.

quality can result in programmers revoking the right for the cable operator to retransmit the signal.³⁶ For the foregoing reasons, the Commission should not require proof-of-performance testing for digital signals.

III. INSTEAD OF REQUIRING PROOF-OF-PERFORMANCE TESTING THE COMMISSION SHOULD PERMIT CABLE OPERATORS TO SELF-CERTIFY COMPLIANCE WITH THE DIGITAL SIGNAL QUALITY STANDARDS

Rather than requiring proof-of-performance testing for digital signals, the Commission instead should follow NCTA's and Verizon's recommendation that cable operators be permitted to self-certify compliance with the digital technical standards.³⁷ Specifically, ACA supports NCTA's proposal that cable system operators be allowed to show compliance with the digital technical standards by certifying that the system is designed to provide good quality signals per SCTE 40 and that the system complies with those technical standards.³⁸

Ample Commission precedent exists to support NCTA's certification proposal. The Commission permits cable operators to certify compliance in analogous situations. For example, cable operators that install, utilize, and maintain in a commercially reasonable manner the equipment and associated software in compliance with Commission regulations are deemed in compliance with the CALM Act requirements.³⁹ Further, cable operators are permitted to rely on certifications from upstream programmers and third party local advertisement insertion

³⁶ *Id.*

³⁷ NCTA Comments at 7; Verizon Comments at 12.

³⁸ NCTA Comments at 7.

³⁹ *In the Matter of Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222, ¶ 28 (2011) ("CALM Act Order") ("Any cable operator that "installs, utilizes, and maintains in a commercially reasonable manner the equipment and associated software in compliance with regulations issued by the Federal Communications Commission...shall be deemed in compliance.").

companies to demonstrate compliance with the Commission's CALM Act requirements.⁴⁰

Similarly, cable operators that provide telecommunications services demonstrate compliance with the Commission's Customer Proprietary Network Information ("CPNI") regulations by submitting an annual certification in Enforcement Bureau Docket 06-36.⁴¹ Accordingly, NCTA's certification process is consistent with this prior Commission action.

Under NCTA's proposal, the operator of each cable system would be required to complete a certification that the system is designed to provide good quality signals per SCTE 40 and that the system complies with those technical standards. Similar to the CPNI rules, the Commission could require that each cable system certification be signed by the cable system operator's representative or officer. Each cable system should be required to keep the certification in its public inspection file or, if the Commission directs otherwise, file the certification annually with the Commission. The cable system should also certify, as proposed by NCTA, that the system is subject to reasonable periodic maintenance and testing to ensure its continued proper operation.⁴² Finally, similar to the CALM Act, mandatory spot proof-of-performance testing should only be required by the Commission for systems lacking a certification or in response to a pattern of complaints.⁴³

By permitting cable system operators to demonstrate compliance through certifications

⁴⁰ CALM Act Order ¶¶ 34, 45.

⁴¹ 47 C.F.R. § 64.2009(e) ("The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the carrier must include an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI. This filing must be made annually with the Enforcement Bureau on or before March 1 in EB Docket No. 06-36, for data pertaining to the previous calendar year.").

⁴² NCTA Comments at 7.

⁴³ CALM Act Order ¶ 41.

in lieu of system-wide testing, the Commission will fulfill its statutory mandate while reducing cable operators' compliance burdens.⁴⁴ Accordingly, the Commission should adopt this proposal.

IV. IF THE COMMISSION DECLINES TO PERMIT ALL CABLE OPERATORS TO SELF-CERTIFY COMPLIANCE WITH THE DIGITAL SIGNAL QUALITY STANDARDS, IT SHOULD NONETHELESS PERMIT SMALLER CABLE OPERATORS TO RELY ON SELF-CERTIFICATIONS

The Commission's proposed proof-of-performance testing for digital signals would impose unnecessary burdens on all cable operators, but they would disproportionately affect smaller cable operators who typically serve less dense areas.⁴⁵ If the Commission adopts its proposed rules, it should at least mitigate the harm to smaller operators – those with 400,000 or fewer subscribers company-wide – by permitting them to demonstrate compliance with the digital signal quality standards through self-certifications.

Additional signal quality testing requirements would compound the economic challenges already faced by smaller cable operators who often serve smaller market and rural areas. These operators face unique challenges providing competitive video, broadband, and telephony services. As it stands, providing advanced services in these regions is already a financially difficult undertaking as the cost of system builds, upgrades, and maintenance in often sparsely populated and geographically dispersed areas can only be recouped through fees spread over a smaller subscriber base than that served by larger urban operators.⁴⁶ Smaller operators also

⁴⁴ Cable systems serving less than 1,000 subscribers, currently exempt from proof-of-performance testing for analog signals, should likewise be exempt from this certification requirement.

⁴⁵ ACA notes that the Commission did not seek comment on any specific ideas for minimizing testing obligations (in whole or part) on small cable operators.

⁴⁶ See, e.g., *In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd 6453, ¶ 118 (2000) (“The Commission has recognized that small systems serve areas that are far less densely populated areas than the areas served by large operators. A small rural

face comparatively higher costs from programmers and equipment manufacturers due to their inability to receive the same volume purchasing discounts as larger operators.⁴⁷

In addition to the higher costs to operate, small cable operators often face greater competition from the all digital DBS providers, DirecTV and DISH Network, who have higher penetration levels in rural area. DirecTV and DISH Network enjoy substantial advantages in economies of scale and likely lower per-capita infrastructure costs. Moreover, they offer more digital channels than their small cable competitors. In order for small cable operators to remain competitive, they must offer a quality service, including a quality signal, that can match the service of DBS providers, for whom neither Congress nor the FCC has imposed corresponding burdensome digital signal testing obligations.⁴⁸

The Commission should further its goals of promoting competition in the market for MVPD services, particularly in smaller markets and rural areas, and ensuring its regulations do not unreasonably burden small businesses, by not burdening small cable operators with the proposed proof-of-performance testing for digital signals. If the Commission does not permit all cable operators to self-certify compliance, it should at least permit cable operators with 400,000 or fewer subscribers to do so – a form of relief that is consistent with prior Commission action

operator might serve half of the homes along a road with only 20 homes per mile, but might need 30 poles to reach those 10 subscribers.”); *In the Matter of Caribbean Communications Corp., Petition for Special Relief*, Memorandum Opinion and Order, 17 FCC Rcd. 7092, ¶ 14 (2002) (noting that systems with more than 15,000 subscribers average 68.7 subscribers per mile, while small systems service on average only 35.3 subscribers per mile.).

⁴⁷ See *In the Matter of Basic Services Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, WT Docket No. 00-67, Reply Comments of the American Cable Association at 5-7 (Dec. 12, 2011) (outlining higher costs smaller cable operators face when purchasing and installing equipment).

⁴⁸ See NCTA Comments at 6, *citing* 47 C.F.R. § 25.211.

alleviating burdens on smaller cable operators.⁴⁹

V. CABLE SYSTEMS SHOULD ONLY BE REQUIRED TO KEEP PROOF-OF-PERFORMANCE RECORDS FOR TWO YEARS

In the NPRM, the Commission seeks comment on what, if any, changes should be made to its proof-of-performance recordkeeping rules.⁵⁰ Specifically, the Commission seeks comment on whether the rules should be modified to make these records more available or to alter the length of time the records must be retained.⁵¹ ACA submits that the Commission should reduce its proof-of-performance recordkeeping retention requirement from five years to two years.⁵²

As NCTA notes, most Commission recordkeeping rules require a much shorter retention period.⁵³ While proof-of-performance testing records must be kept for five years, signal leakage logs, in contrast, generally must be kept for only two years. Moreover, due to constant changes in technology, the results of proof-of-performance tests from five years earlier have little relevance to a cable system's current performance. Since the Commission already requires that cable operators be "prepared to show, on request by an authorized representative of the Commission or the local franchising authority, that the system does, in fact, comply with the technical standards rules in part 76, subpart K," there should be no issue with a shorter

⁴⁹ See, e.g., CALM Act Order ¶ 37 (exempting MVPDs with fewer than 400,000 subscribers from commercial loudness spot checks because doing so would be "both unnecessary and more burdensome than asking the same of larger parties").

⁵⁰ NPRM ¶ 22.

⁵¹ *Id.*

⁵² In reducing the required retention period, ACA does not suggest that the Commission eliminate its small system exemptions. Cable systems serving less than 1,000 subscribers should continue to be exempt from this recordkeeping requirement, and cable systems with more than 1,000 subscribers but fewer than 5,000 subscribers should continue to be required to provide the records only upon request.

⁵³ NCTA Comments at 17.

retention period.⁵⁴ Such a change will reduce the burdens on cable operators, promote more uniform public inspection file requirements, and have no negative effect on the public and Commission.

VI. CONCLUSION

For the forgoing reasons, the Commission should adopt digital signal quality rules that do not depend on burdensome mandatory periodic proof-of-performance testing, but rather rely on cable operator self-certification that the system is designed to provide good quality signals per SCTE 40 and that the system complies with those technical standards. At the very least, if the Commission does adopt such testing requirements, it should permit smaller cable operators serving 400,000 or fewer subscribers to self-certify signal quality. In addition, to further reduce operator burdens, the Commission should shorten its proof-of-performance recordkeeping requirements from five to two years.

⁵⁴ 47 C.F.R. § 76.1717.

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