

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

In the Matter of)	
)	
Special Access for Price Cap Local Exchange Carriers)	WC Docket No. 05-25
)	
Protective Order for Special Access Data Collection)	

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

The National Cable & Telecommunications Association (NCTA) opposes the Application for Review submitted by CenturyLink in the above-referenced proceeding. NCTA has demonstrated that the mandatory data request adopted by the Commission in 2012 violates the Paperwork Reduction Act (PRA). Although the September 2013 *Report and Order* adopted by the Wireline Competition Bureau (Bureau) falls well short of resolving the concerns identified by NCTA, the specific action that is being challenged by CenturyLink attempts to somewhat ameliorate these PRA concerns and therefore it is consistent with the authority delegated to the Bureau.

INTRODUCTION

Seven years after commencing this proceeding, the Commission last year adopted a mandatory data request that is intended to enable it to analyze competition in the special access marketplace.¹ The mandatory data request seeks an overwhelming amount of data, including highly detailed network maps and information on every rate element billed to every commercial

¹ *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-153 (rel. Dec. 18, 2012) (*Report and Order and Further Notice*).

customer in every building across America.² The Commission recognized that some changes might be needed before the data request was finalized and it delegated authority to the Bureau to make such changes, including authority to “amend the data collection based on feedback received through the PRA process.”³

In a notice published in the Federal Register on February 12, 2013, the Commission sought comment on whether the data request complies with the PRA.⁴ In response, NCTA and others explained that the overwhelming burden the request places on providers, combined with the limited value that much of the requested data would have in analyzing the special access market, resulted in a request that plainly violates the PRA.⁵ NCTA supported its pleading with sworn affidavits from company officials documenting the incredible burden that the data request will impose on cable operators.⁶

Based in part on the responses received to that notice, the Bureau adopted a *Report and Order* clarifying certain questions in the mandatory data request and establishing a set of instructions for respondents to follow.⁷ CenturyLink now challenges one aspect of this order – a decision by the Bureau not to collect data on commercial locations that: (1) are in areas not upgraded for Metro Ethernet services; (2) are connected to traditional hybrid fiber coax (HFC)

² *Id.* at ¶¶ 35-36.

³ *Id.* at ¶ 52.

⁴ Information Collection Being Reviewed by the Federal Communications Commission, 78 Fed Reg 9911 (rel. Feb. 12, 2013) (*PRA Notice*).

⁵ Comments of the National Cable & Telecommunications Association, WC Docket No. 05-25 (filed Apr. 15, 2013) (NCTA PRA Comments); *see also* Paperwork Reduction Act Comments of the American Cable Association on FCC 12-153, WC Docket No. 05-25, RM-10593, at 3-14; Paperwork Reduction Act Comments of AT&T, WC Docket No. 05-25, RM-10593, at 13-24; Paperwork Reduction Act Comments of NTCA-The Rural Broadband Association, WC Docket No. 05-25, at 2-7; Joint Comments of Smith Bagley, Inc., *et al.*, WC Docket No. 05-25, RM-10593, at 1-2.

⁶ NCTA PRA Comments, Exhibits A and B.

⁷ *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order, DA 13-1909 (rel. Sept. 18, 2013) (*Bureau Order*).

networks; and (3) potentially could receive dedicated services, but that do not currently receive such services.⁸

As explained in this Opposition, the change requested by CenturyLink would make the mandatory data request significantly more burdensome for cable operators, while providing the Commission with no meaningful new data. Accordingly, the Commission should reject the changes proposed by CenturyLink. Instead, the Commission should take further steps to reduce the burden imposed by the mandatory data request as suggested by NCTA and many other parties that are subject to the request.⁹

I. GRANTING CENTURYLINK'S REQUEST WOULD EXACERBATE CONCERNS UNDER THE PAPERWORK REDUCTION ACT

As NCTA has explained, and supported with undisputed affidavits, the data collection adopted by the Commission in 2012 would impose overwhelming burdens on cable operators and therefore should be rejected under the PRA. In particular, the Commission is proposing to collect location data (as well as massive amounts of billing data) on all dedicated services provided by cable operators.¹⁰ The Commission also is seeking census block data on best efforts broadband services which typically are purchased by smaller commercial customers.¹¹ In addition to this service-based data, the Commission also is requesting highly detailed network maps that show the location of all fiber routes and all nodes that are connected to other networks.¹²

⁸ Application for Review of CenturyLink, WC Docket No. 05-25 (filed Oct. 22, 2013) (CenturyLink AFR).

⁹ See note 5 above.

¹⁰ *Report and Order and Further Notice* at ¶ 36.

¹¹ *Id.* at ¶ 46.

¹² *Id.* at ¶ 35.

Notwithstanding the evidence submitted by NCTA and numerous other parties about the incredible burden these requests will impose, the *Bureau Order* generally leaves these requirements in place for all competitive providers. The Bureau recognized, however, that there was uncertainty as to what types of facilities are “capable” of being used for dedicated services and consequently the *Bureau Order* clarified the meaning of this ambiguous term for both competitive providers and incumbents. In particular, the Bureau determined that cable operators would not be required to submit data regarding locations in areas not upgraded for Metro Ethernet that are served by traditional HFC facilities that are capable of providing dedicated services but are not currently used for those services.¹³ CenturyLink now seeks to reverse that clarification.

CenturyLink’s request would add significant new burdens to a collection that already is in clear violation of the PRA, while providing the Commission with no meaningful data beyond what it otherwise would collect. CenturyLink’s approach would require cable operators to identify every commercial building that is connected to an HFC network, but that is not currently receiving dedicated service, and assess whether the facilities are capable of providing dedicated services to that location. Such a requirement is particularly burdensome because the facilities at issue are not being used (or were not being used during the relevant time period) to serve active customers. Consequently, companies generally will not be able to rely on their billing systems to identify the relevant locations and are therefore likely to have to gather such data manually. Under the terms of the *Bureau Order*, cable operators already will have to confront this problem for areas that have been upgraded for Metro Ethernet and CenturyLink would compound the problem by potentially extending this burden to every area in which an operator provides service.

¹³ *Bureau Order* at ¶ 27.

The Commission and NTIA previously have recognized the difficulty and expense associated with providing address-level data on broadband availability. In creating the National Broadband Map, NTIA initially required that state mapping entities collect data on broadband availability at the address level. In response to a proposal from an industry coalition that included every major incumbent local exchange carrier trade association,¹⁴ the agency subsequently revised its approach and stated that it would accept availability data at the census block level.¹⁵ The Commission’s recent order transitioning the collection of broadband availability data from NTIA to the semi-annual FCC Form 477 filing preserves this approach. Specifically, the Commission found that “many providers do not maintain broadband network deployment data on an address-by-address basis” and therefore “the added complexity and burden are unlikely at this time to provide a significant insight” into the state of broadband deployment.¹⁶

While the burden of collecting the data that CenturyLink is seeking would be substantial, the benefits of collecting the requested information are minimal. The requested location data is unnecessary to identify where a cable operator potentially could provide services to commercial customers because such services generally can be provided to any building served by an HFC network. Specifically, as the Bureau correctly explained, this data adds nothing beyond what is revealed by the census block data on best efforts broadband, which also is provided over

¹⁴ See Letter from Matt Polka, et al. to Larry Strickling, NTIA (August 6, 2009) (citing “significant burdens” and “high likelihood of error” in providing broadband availability data at the street-address level”), at http://www.ntia.doc.gov/legacy/broadbandgrants/correspondence/JointProviderLetter_090807.pdf.

¹⁵ NTIA Notice of Funds Availability Clarification (Aug. 7, 2009) (“In lieu of reporting address-specific data, Awardees may satisfy the requirements of this section of the Technical Appendix by providing NTIA, for each facilities-based provider of broadband service in their state, a list of all census blocks of no greater than two square miles in area in which broadband service is available to end users.”), at http://www2.ntia.doc.gov/files/NTIA_MappingFAQ_NOFAClarity.pdf.

¹⁶ *Modernizing the FCC Form 477 Program*, WC Docket No. 11-10, Report and Order, FCC 13-87 (rel. June 27, 2013) at ¶ 35.

traditional HFC facilities.¹⁷ The location data requested by CenturyLink also is unnecessary to identify where a cable operator potentially could provide more advanced commercial services, such as Metro Ethernet or fiber-based services. As the Bureau recognized, to provide such services over a traditional HFC network in an area where the node has not been upgraded for Metro Ethernet, a cable operator would be required to expend significant time and investment and consequently such facilities should not be counted as potential competition for those services.¹⁸

II. THE BUREAU'S DECISION TO EXCLUDE CERTAIN DATA FROM THE COLLECTION IS WITHIN ITS DELEGATED AUTHORITY

CenturyLink makes no serious attempt to show that the burdens of imposing additional collection obligations on cable operators will result in any significant improvement in the Commission's ability to analyze the special access marketplace. Instead, it primarily relies on a formalistic reading of a single footnote in the *Report and Order and Further Notice*. Specifically, while conceding that the Bureau was delegated authority to address concerns raised during the PRA process, CenturyLink suggests footnote 112 of the *Report and Order and Further Notice* prohibits the clarification the Bureau adopted.¹⁹

CenturyLink's interpretation of the order should be rejected. The fundamental purpose of the PRA is to limit the ability of agencies to burden companies with excessive and unnecessary paperwork. Because the *Report and Order and Further Notice* adopted a mandatory data request before the Commission had sought comment on the PRA issues associated with such a request, it was entirely rational for the Commission to grant the Bureau the authority necessary to bring the

¹⁷ *Bureau Order* at ¶ 27.

¹⁸ *Bureau Order* at ¶ 27.

¹⁹ CenturyLink AFR at 7.

request into compliance with the PRA, as it did in the text of the order.²⁰ Reading the footnote language to modify this delegation makes no sense because the specific examples in the footnote suggest the Bureau can only maintain or increase the burdens on respondents,²¹ which would increase the likelihood that the collection will be rejected by the Office of Management and Budget pursuant to the PRA. Rather than exacerbating the burden on competitive providers, the Commission should affirm this aspect of the *Bureau Order* and take additional steps to bring the data request into compliance with the PRA.

CONCLUSION

For all the reasons explained in this Opposition, the Commission should reject CenturyLink’s Application for Review. Instead, it should take additional steps to reduce the burden on cable operators and other competitive providers so that the data collection and analysis is more manageable for respondents and for Commission staff.

Respectfully submitted,

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²⁰ *Report and Order and Further Notice* at ¶ 52.

²¹ *Id.* at ¶ 52 n.112 (“For example, if the PRA process revealed that there were substantial special access facilities deployed to places that are not buildings or cell sites (such as walls or mines), it would be consistent with this Report and Order for the Bureau to amend the data collection to collect information about facilities deployed to such places as well as to “locations.” In contrast, even if the PRA process suggested that it would be less burdensome to collect special access facilities deployment at the census block level, it would not be consistent with this Report and Order for the Bureau to amend the data collection to require census block information rather than location-by-location information required by paragraph 31 about such facilities.”).