

impose enormous burdens on small cable operators.² These burdens are far in excess of the resources and costs estimated by the Commission,³ and, pursuant to direction from the Office of Management and Budget (“OMB”), the Commission “should take meaningful steps to reduce paperwork and reporting burdens on...small businesses.”⁴ Further, requiring small operators to participate in the data collection is not necessary for the Commission to accomplish the objective in the *Data Collection Order*.⁵

In the AFR, NCTA asks the Commission to address and alleviate the paperwork and reporting burdens. The Commission took only limited steps to reduce these burdens when it adopted the *Data Collection Order*. Moreover, the Bureau’s review of the burdens on delegated authority was limited by the Commission.⁶ Accordingly, given the demonstrable, substantial burdens of the data collection, the Commission should revisit the Bureau’s decision to correct the serious harm it causes, especially to small cable operators. Such action will benefit the overall data collection process and will enable small operators to better use their scarce resources to deploy infrastructure and provide Dedicated and Best Efforts services.

² See Paperwork Reduction Act Comments of the American Cable Association on FCC 12-153, WC Docket No. 05-25 et al. (Apr. 15, 2013) (“ACA Comments”).

³ See Fed. Reg., Vol. 78, No. 236 at 73861 (Dec. 9, 2013).

⁴ See Reducing Reporting and Paperwork Burdens, Memorandum from Cass R. Sunstein, Administrator, Office of Management and Budget, at 1 (June 22, 2012). While this Memorandum stems from Executive Order 13610 regarding the elimination of unjustified regulatory requirements, its directives are applicable to newly adopted regulations as well. Specifically, the Commission should follow the directive and, for small operators, reduce “cumulative burdens,” provide exemptions when a collection may “disproportionately” burden small entities, and use sampling when it is not “desirable to collect data from every member of the population of interest.” *Id.*

⁵ See *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, FCC 12-153 (rel. Dec. 18, 2013) (“*Data Collection Order*”).

⁶ See *id.*, ¶ 52.

Oppositions to the AFR were filed by Sprint Corporation (“Sprint”), the United States Telecom Association (“US Telecom”), and the Independent Telephone & Telecommunications Association (“ITTA”).⁷ ACA responds to each:

Sprint – Sprint first raises procedural objections to the AFR, contending that the Bureau “properly exercised its delegated authority” and that OMB “is now the proper forum to raise PRA concerns.”⁸ Sprint, however, does not contend that the Commission lacks authority to consider and address the concerns raised in the AFR. Of course, the Commission has authority to consider the AFR, and, it should do so in light of the fact that, as NCTA correctly states, the Commission “adopted a template for the data collection without any consideration of whether that collection would pass muster under the PRA.”⁹

Sprint further alleges that the data collection will be delayed if the Commission addresses the AFR.¹⁰ However, since numerous specific comments about the burden of the data collection have already been submitted, the Commission can conduct its review expeditiously. Moreover, by alleviating undue burdens in the data collection in advance of the OMB PRA review, the Commission can both facilitate that review and the eventual data collection, which will expedite the Commission’s process of reviewing whether it should adopt new regulations governing the provision of special access services by price cap local exchange carriers.

⁷ See Opposition of Sprint Corporation to the National Cable & Telecommunications Association’s Application for Review, WC Docket No. 05-25 et al., at 4 (Dec. 24, 2013) (“Sprint Opposition”); Opposition of the United States Telecom Association, WC Docket No. 05-25 et al., at 2 (“US Telecom Opposition”); Opposition of the Independent Telephone & Telecommunications Alliance, WC Docket No. 05-25 et al. (“ITTA Opposition”).

⁸ Sprint Opposition at 3-4.

⁹ AFR at 3.

¹⁰ See Sprint Opposition at 1.

Sprint also comments that the Commission’s estimate of the average annual burden is reasonable and cites to its previous comments.¹¹ ACA disagrees with Sprint. As ACA has set forth in detail, the data collection is especially burdensome for small cable operators, and nowhere in its filing does Sprint rebut these comments, including by addressing the substantial time required to prepare fiber maps in the format specified in the data collection and to determine building locations and gather billing data.

US Telecom – US Telecom opposes the AFR because “similar burdens will fall on every entity that must comply with this data collection” and “cable companies have quickly become some of the preeminent participants in the business services marketplace.”¹² Even assuming that the burden of compliance is equal – a contention that ACA disputes as it applies to small cable operators – that does not mean the burdens are reasonable and the collection is in compliance with the PRA. As ACA demonstrated in its previous filing, the burdens are excessive and not in compliance with the PRA. Small cable operators will expend resources and time far in excess of that estimated by the Commission to comply with the collection. ACA also demonstrated that while small cable operators provide Dedicated and Best Efforts services, they have just begun to do so and have a very small share of the market in the limited number of markets where they provide these services.¹³ Thus, if they are excluded from the collection, the impact will be minimal.

ITTA – In its opposition, ITTA makes three principal points. First, ITTA notes that “the mandatory data request requires submission of a vast array of data, information, and documents”

¹¹ See Sprint Opposition at 6.

¹² US Telecom Opposition at 2-3.

¹³ See ACA Comments at 6.

and “the Commission has, without a doubt, drastically underestimated the amount of time it will take for all respondents to comply with the mandatory special access data collection.”¹⁴ ACA agrees with ITTA; its views support Commission action on the AFR. Second, ITTA argues that the Commission should not provide “targeted” relief for cable operators because it would “skew” the analysis of the market.¹⁵ As stated above, because of the minor role played by small cable operators in the market, ACA does not agree that exempting these operators or otherwise reducing their collection and reporting burden would materially alter the Commission’s analysis. Third, ITTA asks that if the Commission is “inclined to reduce some of the burdens associated with the data collection, it must do so in a manner that promotes regulatory parity, practicality, and fairness.”¹⁶ ACA does not believe any entity should be unduly burdened by the data collection, and therefore the Commission should use the AFR to address any concerns raised by ITTA in this regard.

In conclusion, the arguments in the oppositions are not persuasive. Given NCTA’s cogent arguments in support of review of the *Bureau Order*, the Commission should address the issues in the AFR and modify the data collection to reduce the undue burdens it continues to impose, especially on small cable operators. Not only would this ensure compliance with the PRA and facilitate the eventual data collection, but it would enable small operators to take resources they would use to comply with the data collection and use them to deploy additional

¹⁴ See ITTA Opposition at 2-3. ITTA adds: “As ITTA previously pointed out, compliance will require its members and other respondents to devote thousands of hours to gathering the requested data while diverting internal company resources away from other important functions in areas such as network improvement and optimization, carrier services, toll fraud, billing, and systems integration.” *Id.* at 3.

¹⁵ See *id.* at 4-5.

¹⁶ *Id.* at 5.

high speed networks for the provision of Dedicated and Best Efforts services.

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CERTIFICATE OF SERVICE

I, Joshua Guyan, do hereby certify that I have caused the foregoing Reply to Oppositions to the Application for Review of the National Cable & Telecommunications Association to be served via First Class United States mail, postage prepaid, on the parties listed on the attached service list.



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