

that would minimize the appearance of competition in the special access marketplace is erroneous and provides no basis for denying the AFR.

A. The Commission Should Reduce The Burden Of The Collection On All Parties, Not Just Cable Operators

Both USTelecom and ITTA generally agree with NCTA that the special access data collection will impose significant burdens on every party that is required to respond.² Both associations raise concerns, however, that the Commission might reduce the burden just for cable operators and not for incumbent LECs or their competitive LEC affiliates.³

NCTA addressed this same argument from the incumbent LECs many months ago. Specifically, in support of the proposal we made for modifying certain questions in the data collection, we stated:

[W]hile NCTA’s proposal obviously is informed by the experience of our member companies in assessing how to respond to the data request, the revisions that we proposed would apply to all competitive providers and all purchasers of special access services. Accordingly, if the Commission adopted the proposed changes to the questions, the significant burden associated with the data request would be reduced for thousands of companies. Given the evidence presented by numerous different types of companies of the crushing burden attributable to the current version of the data request, the telecommunications industry likely would save tens of millions of dollars if NCTA’s proposed changes were adopted.⁴

Our response today is no different. NCTA’s concerns, and our proposals for addressing those concerns, are informed by the experience of our member companies but they are not, and

² USTelecom Opposition at 2 (“No one denies that complying with the Bureau Order will be burdensome.”); ITTA Opposition at 2 (“NCTA raises valid concerns regarding both the burden associated with the special access data collection and the potential lack of security measures to protect highly sensitive data requested by the Commission”).

³ USTelecom Opposition at 8 (“[T]here is no basis for the Commission to fail to collect from cable companies the same data as it has proposed collecting from all other competitors.”); ITTA Opposition at 5 (“To the extent that 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 for all who must undertake this massive effort.”).

⁴ Letter from Steven F. Morris, NCTA, to Marlene Dortch, Federal Communications Commission, WC Docket No. 05-25 (Apr. 17, 2013) at 1 (footnotes omitted) (NCTA April 17 Letter).

were never intended to be, limited to those companies. Every competitive provider, including affiliates of the incumbent LECs that have opposed the AFR, would benefit significantly from the changes we have proposed.

Furthermore, NCTA has no objection to the Commission making comparable changes to the questions for incumbent LECs to the extent they are applicable. For example, for all the reasons explained by AT&T, the pricing and billing questions should be eliminated for all providers, including the incumbent LECs, because the requested information will not enable the Commission to perform a meaningful analysis of pricing trends.⁵

B. Cable Operators Play a Significant Role in the Marketplace and Are Willing to Provide Information Documenting that Participation

USTelecom also opposes the AFR on the ground that cable operators are a significant presence in the marketplace and that exempting cable operators from the request would interfere with the Commission's ability to analyze the marketplace.⁶

To the extent USTelecom is simply asserting that cable operators offer attractive alternatives to ILEC special access services, and that those services should be considered as part of any marketplace analysis, NCTA agrees. We disagree, however, with USTelecom's suggestion that NCTA's proposed modification of the data collection would understate the level of competition offered by cable operators and jeopardize the Commission's ability to analyze the marketplace. As we explained when USTelecom made the same argument last year:

[O]ur primary objection is to providing information that cable operators either do not maintain in the normal course of business or could not produce without extensive manual intervention. If our goal was to understate the presence of cable operators, presumably we would have objected to the obligation to identify every single commercial building a cable operator serves, but we did not. We also would have objected to questions regarding best efforts broadband services

⁵ See AT&T Comments, WC Docket No. 05-25 (filed Feb. 11, 2013).

⁶ USTelecom Opposition at 8-11.

(which USTelecom previously suggested are marketed by cable operators and purchased by customers as faster and less expensive alternatives to the special access services offered by the incumbent LECs), but we did not do that either. NCTA's focus now, as it has been for the last four years, is to ensure that the burden associated with any data request is reasonable and that the Commission is meeting its obligation under the Paperwork Reduction Act to reduce that burden "to the extent practicable and appropriate."⁷

Our response to the concerns raised in USTelecom's Opposition is the same today. Cable operators always have been willing to take reasonable steps to provide the Commission with information on the extent of their participation in the marketplace, which would supplement the significant amount of data that is already available (as documented by the numerous sources cited by USTelecom).⁸ But for all the reasons explained in the AFR and in NCTA's previous submissions in this proceeding, cable operators should not be compelled to spend tens of millions of dollars responding to a one-time data request that is highly unlikely to lead to a meaningful and timely marketplace analysis and that could be readily modified in ways that would produce meaningful information with far less burden.

II. SPRINT'S OPPOSITION MISSTATES THE BURDEN IMPOSED BY THE COLLECTION AND THE DATA SECURITY RISKS CREATED BY THE COLLECTION

Like the incumbent LECs, Sprint also concedes that the data collection will be burdensome and that the Commission will be collecting vast amounts of highly sensitive data.⁹ According to Sprint, however, all of this complies with the PRA, both procedurally and

⁷ NCTA April 17 Letter at 2.

⁸ For example, USTelecom cites five different sources of information regarding cable participation in the special access marketplace – Light Reading, Frost & Sullivan, Bloomberg/BNA, Fierce Telecom, and Bernstein Research – as well as public statements from a number of cable operators.

⁹ Sprint Opposition at 7 ("Sprint certainly appreciates concerns regarding the collection and production of the information the Commission seeks, and will itself incur expense in complying with the data request."); *id.* at 8 ("Sprint shares NCTA's goal of protecting the highly confidential data that parties will submit to the Commission.").

substantively, and the Commission should proceed full speed ahead with the collection. For the reasons explained below, Sprint is wrong.

A. Sprint’s Assessment of the Burden Ignores the Record

Sprint argues that the AFR should be denied because the burden imposed by the data collection is reasonable and complies with the substantive obligations of the PRA.¹⁰ Simply put, Sprint’s assessment of the burdens that will be imposed by the data collection is not credible and is contradicted by virtually other every segment of the marketplace. As ITTA correctly states in its Opposition, “[t]he 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.”¹¹ The only industry segment that believes the Commission has not dramatically understated the burden of compliance are the competitive LECs that, like Sprint, are using this proceeding to seek government-mandated price reductions for the services they purchase.

Sprint’s suggestion that the burden of the data collection will fall only on a handful of large companies is not remotely accurate.¹² While NCTA submitted sworn declarations from two large cable operators, NCTA’s smaller members are no less concerned about the burden of complying with the data collection.¹³ Similarly, the American Cable Association provided extensive evidence documenting the burdens that small cable operators anticipate will result

¹⁰ *Id.* at 6.

¹¹ ITTA Opposition at 3.

¹² Sprint Opposition at 6-7.

¹³ NCTA PRA Comments at 5 (“While the Cox and Comcast declarations reflect the experience of two of NCTA’s larger member companies, we have every reason to believe that the rest of our member companies will be forced to bear the same type of burdens in compiling and submitting responses to the data request.”).

from the collection.¹⁴ Small telephone companies and wireless providers also have raised concerns, and a coalition of small purchasers is seeking reconsideration of the *Bureau Order*.¹⁵

B. Sprint Downplays the Severity of the Security Risks Associated with the Data Request

Sprint argues that the data security risks that NCTA identified in the AFR are already being handled by the Bureau in the context of developing a protective order and that no further action by the Commission is needed.¹⁶ While Sprint may be willing to submit highly detailed network maps and sensitive information on its customers' purchases based solely on the Bureau's vague assertions that it will take steps to secure the data, NCTA believes industry participants should be provided with far more detail on how the Commission plans to safeguard any sensitive data that is submitted.

Sprint's suggestion that these issues will be handled through the development of a protective order misunderstands the scope of the concern. While Sprint is correct that cable operators are concerned about the prospect of consultants and lawyers for their competitors accessing detailed information regarding cable customers,¹⁷ the concerns we raised in the AFR are different and go well beyond competitive concerns. The Commission is aggregating highly sensitive data that currently either does not exist or is stored by thousands of separate entities. By aggregating that data, the Commission is creating a massive risk of exposure that does not

¹⁴ ACA PRA Comments at 3 ("As discussed at length herein, the Commission's average estimate of the time to respond — 134 hours — is significantly below that of the members ACA has sampled. Based on lengthy reviews of Appendix A by its members, ACA estimates the average small operator will take at least 500 hours to respond.").

¹⁵ NTCA PRA Comments at 5 ("[I]t is likely that the average amount of time required to complete the information collection may exceed the 134 hours estimated in the notice, thereby forcing small providers to expend substantial resources to comply with the data request."); Small Purchasers Coalition Petition for Blanket Exemption or, in the Alternative, Petition for Reconsideration, WC Docket No. 05-25, RM-10593 (Dec. 9, 2013).

¹⁶ Sprint Opposition at 9-10.

¹⁷ Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed Nov. 16, 2012).

currently exist. Moreover, that risk of exposure does not come from the parties to this proceeding who might sign a protective order, but from hackers and other criminals who presumably have no intention of identifying themselves or complying with obligations contained in a protective order.

Sprint also suggests that any such concerns are broader than the special access data collection and should be raised with the Commission in a more general manner.¹⁸ Sprint is not wrong to suggest that similar concerns may arise in the context of mergers, equipment authorizations, and other proceedings. But as described above, the collection and aggregation of sensitive data that the Commission has proposed in this proceeding is creating a new and significant risk that does not exist today and that does not typically arise in the other contexts identified by Sprint. Accordingly, it is wholly appropriate for NCTA to raise these concerns with the Commission in the AFR and equally appropriate for the Commission to take steps to address those concerns before requiring any company to submit sensitive data.

CONCLUSION

For all the reasons explained above, the Commission should grant NCTA's Application for Review and make the requested changes to the mandatory special access data collection.

Respectfully submitted,

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¹⁸ Sprint Opposition at 10-11.

CERTIFICATE OF SERVICE

I, Gretchen Lohmann, do hereby certify that on this 8th day of January 2014, I caused a copy of the foregoing "Reply to Oppositions" of the National Cable & Telecommunications Association to be served by postage pre-paid mail on the following:

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