

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

Notice of Public Information Collection	)	
Requirements Submitted to OMB	)	
For Review and Approval	)	OMB Control Number 3060-XXXX
	)	
Cable Subscribership Survey	)	
	)	
74 Fed. Reg. 4437	)	
	)	
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**PAPERWORK REDUCTION ACT COMMENTS OF THE**



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March 27, 2009

## I. Introduction.

In January 2009, the FCC released a public notice soliciting comment on its proposed 70/70 reporting form requiring the submission of certain information for 2006 and 2007 (“New Requirements”).<sup>1</sup> In developing these proposed New Requirements, the FCC grossly underestimated the burden of collecting the data on small and medium-sized cable operators. Moreover, these proposed New Requirements, if imposed, would violate the Paperwork Reduction Act (“PRA”) and the OMB’s regulations<sup>2</sup> because the FCC did not make an effort to reduce the burden of the requirements for small business concerns.

Accordingly, absent changes to the proposed form,<sup>3</sup> the American Cable Association (“ACA”) requests that the OMB disapprove the New Requirements.

**About the American Cable Association.** Small markets and rural areas across the country are receiving video, high-speed broadband, and phone services from nearly 1,000 small and medium-sized independent operators represented by the ACA.

ACA’s membership comprises cable, phone, and fiber-to-the-home operators and municipalities, who deliver these affordable basic and advanced services, such as

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<sup>1</sup> *Media Bureau Seeks Comment on a Cable Subscribers Survey for the Collection of Information Pursuant to Section 612(g) of the Communications Act*, MB Docket No. 07-269 (rel. Jan. 16, 2009). These requirements are summarized in *Notice of Public Information Collection Requirement Submitted to OMB for Review and Approval; Comments Requested*, 74 Fed. Reg. 15 (Jan. 26, 2009) (“Notice”).

<sup>2</sup> 5 C.F.R. §§ 1320.1 *et seq.*

<sup>3</sup> In its comments and reply comments to the FCC, ACA suggested alleviating the burden on smaller operators through the following changes: (i) the Commission should permit systems with 20,000 or less subscribers to provide current data on customers served and homes passed, and best estimates on homes passed when necessary; and (ii) the Commission should exempt systems with 20,000 or less subscribers from collecting data on unoccupied homes and bulk units. See *Media Bureau Seeks Comment on a Cable Subscribers Survey for the Collection of Information Pursuant to Section 612(g) of the Communications Act*, MB Docket No. 07-269, Comments of the American Cable Association (filed Feb. 17, 2009) (“ACA Comments”) and Reply Comments of the American Cable Association (filed Mar. 13, 2009).

high-definition television, next generation Internet access, and digital phone, to more than 7 million households and businesses, some of whom have no other means of receiving these vital services.

ACA member operators range from family run businesses serving a single town to multiple system operators with small systems in small markets. More than half of ACA's members serve fewer than 1,000 subscribers.

**II. The FCC grossly underestimates the burden of the proposed New Requirements on small and medium-sized cable operators.**

FCC staff erroneously estimates the total response burden of the proposed New Requirements to be a mere two hours per cable system.<sup>4</sup> Because many operators, particularly those who are small- and medium-sized, do not maintain historical information, the New Requirements will be far more burdensome in the real world than projected by the FCC. For the sake of brevity, we provide just a couple of examples below showing how small and medium-sized cable operators will have a significantly larger time burden than estimated.

**Subscriber Data Requested.**<sup>5</sup> An overwhelming majority of ACA members rely on third parties for their billing system software. Generally, these systems do not retain subscriber data from prior years. While some operators may possess historical aggregate subscriber numbers,<sup>6</sup> most will not have the historical information broken down in the detail that the Commission desires. Because of this, to fulfill the

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<sup>4</sup> Notice at 4437.

<sup>5</sup> See *ACA Comments* at 3.

<sup>6</sup> Cable operators provide *total* subscriber counts monthly to programmers for license fees, semi-annually to the Copyright Office for royalties, and annually to the Commission for regulatory fees.

Commission's mandate would require ACA members to set aside significant financial and administrative resources.

**Homes Passed Information Requested.**<sup>7</sup> ACA members report that accurate homes passed data is often only available if calculated during system upgrades or when provided by a predecessor owner, and is unlikely to be available for the specific week in 2006 and 2007 being requested. Even to gather current data, a smaller operator must pay for a "walk-out" survey. Because ACA members in smaller markets and rural areas serve far fewer homes per mile than larger MVPDs, the cost and burden of collecting this information would be substantial.

These two examples provide a stark contrast to the meager two hour burden estimated by the FCC.

### **III. The FCC did not make an effort to reduce the burden of the New Requirements on small business concerns.**

As ACA explained in its comments and reply comments in the FCC proceeding, the proposed reporting requirements – especially those requiring historical data for subscribers served and homes passed, and an accounting of homes receiving services under a bulk rate – will impose significant financial and administrative burdens on ACA's members who serve smaller markets and rural areas.<sup>8</sup>

More than half of ACA's nearly 1,100 members serve fewer than 1,000 subscribers. Many of these are "mom and pop" operations with only two or three employees. Even if FCC staff's meager burden estimates were correct, many of these very small cable operators do not have the historical information broken down in the

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<sup>7</sup> See *ACA Comments* at 3-5.

<sup>8</sup> *ACA Comments* at 2.

detail that the Commission desires, and are only allowed to certify that they do not possess the information for 2006, not 2007. Nonetheless, the FCC's New Requirements force these small companies to track down the data and put together the same voluminous information disclosures as larger operators, like Comcast and Time Warner.

In short, the FCC has virtually ignored its mandate under 44 U.S.C. § 3506(c)(3)(C) to reduce the burdens of the proposed New Requirements on small entities, as well as its mandate under 44 U.S.C. § 3506(c)(4) to further reduce the burden on entities with fewer than 25 employees. This is in marked contrast to other FCC rulemakings, such as those on equal employment opportunity, the political file, and signal leakage, where the FCC significantly reduced recordkeeping and reporting requirements for small cable entities.<sup>9</sup> Surely the public policy interest here is not so much stronger than that in equal employment opportunity and political matters, especially since the data from small operators will likely have little to no statistical impact.

For this reason alone, the OMB must disapprove the proposed New Requirements unless changes are made, such as those suggested by the ACA.<sup>10</sup>

#### **IV. Conclusion.**

In violation of the PRA and OMB regulations, the FCC has failed to mitigate the burden that its proposed New Requirements impose on small business concerns. Moreover, the FCC has grossly underestimated the burden that the proposed New

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<sup>9</sup> See, e.g., 47 C.F.R. §§ 76.77, 76.1700.

<sup>10</sup> See note 4, *supra*.

Requirements will impose on all cable operators. Therefore, absent changes to the proposed form, OMB must disapprove the New Requirements.

Respectfully submitted,

**AMERICAN CABLE ASSOCIATION**



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