



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 22-567

Released: May 23, 2022

MEDIA BUREAU SEEKS COMMENT ON PETITION FOR RULEMAKING TO ESTABLISH NEW CONTENT VENDOR DIVERSITY REPORT

MB Docket No. 22-209

Comment Date: July 22, 2022

Reply Comment Date: August 22, 2022

By this Public Notice, the Media Bureau seeks comment on the Petition for Rulemaking filed by FUSE, LLC et al. (Petitioners) on May 5, 2022.¹ The Petitioners request that the Commission establish an annual report on the diversity of video programming content vendors (content vendor diversity report or CVDR).

The Petitioners ask the Commission to require licensees and regulatees in broadcast, cable, broadband, and satellite services to collect diversity data from the content vendors they use for both their traditional, regulated platforms as well as for their affiliated or commonly owned streaming video distribution platforms.² According to the Petitioners, collecting such data “would serve the twin purposes of enhancing Commission decision-making and informing the public.”³ The Petitioners assert that content vendors relevant to the inquiry should include linear programming networks, such as programming services distributed on cable or satellite; over-the-top linear content sources, such as Free Advertiser-Supported TV (FAST) channels; applications made available on licensees’ or regulatees’ traditional or online platforms; production companies and studios providing content for distribution to consumers through advertiser-supported video-on-demand (AVOD) or subscription (SVOD); and other sellers of content to relevant platforms.⁴ The Petitioners suggest that, for purposes of tracking the vendors’ diversity, the Commission define “minority” using the Office of Management and Budget Statistical Policy Directive No. 15, which provides a common framework for consistent data on race and ethnicity throughout the federal government.⁵ In addition, they maintain that, at a minimum, the Commission should measure diversity along four parameters: ownership; board membership; senior

¹ Petition for Rulemaking of FUSE, LLC, Common Cause, National Hispanic Media Coalition, Public Knowledge, and United Church of Christ Media Justice Ministry, MB Docket No. 22-209 (filed May 5, 2022) (Petition).

² *Id.* at 5.

³ *Id.* at 1. Specifically, the Petitioners assert that collecting and publishing data on content vendor diversity would enhance the Commission’s ability to implement its goals of promoting competition and viewpoint diversity in the video marketplace. In addition, they assert that a CVDR would help to educate the public regarding the diversity practices of competing firms in the video market, allowing consumers to make informed decisions about the video services they use. *Id.* at 3.

⁴ *Id.*

⁵ *Id.* at 12-13.

leadership (i.e., executives in operational decision-making roles); and full-time employees.⁶ The Petitioners also state that the final CVDR published by the Commission should include (a) which licensees or regulatees failed to respond, including any reasons given for such refusal; (b) the total number of applicable vendors for any given licensee or regulatee; (c) the number of vendors that provided information; and (d) the findings in each diversity measurement category.⁷

The Petitioners contend that “[t]he Commission has ample authority to implement a content vendor diversity report.”⁸ Specifically, they argue that the collection of content vendor diversity data falls within the Commission’s authority under section 163 of the Communications Act of 1934, as amended, to issue biennial reports to assess “the state of competition in the communications marketplace.”⁹ In these biennial reports, the Commission must assess competition to deliver video among providers of multichannel video programming distributors and “other providers of communications services”¹⁰ and “assess whether laws, regulations, regulatory practices . . . , or demonstrated marketplace practices pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services.”¹¹ The Commission must also “consider market entry barriers for entrepreneurs and other small businesses in the communications marketplace in accordance with the national policy under section 257(b) of this title,”¹² which directs the Commission to promote policies “favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.”¹³

Additionally, the Petitioners assert that the Commission has the authority to collect content vendor diversity data under section 624(d) of the Act.¹⁴ Section 624(d) requires the Commission to prescribe rules specifying the terms under which a multichannel video programming distributor (MVPD) “shall, to the extent possible . . . encourage minority and female entrepreneurs to conduct business with all parts of its operation.”¹⁵ This section also requires the Commission to adopt rules requiring MVPDs to “analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women and explain any difficulties encountered in implementing its equal employment opportunity program.”¹⁶

The Petition is available electronically through the Commission’s Electronic Comment Filing System (ECFS) under the above-referenced docket number, which may be accessed on the Commission’s Internet website at <http://apps.fcc.gov/ecfs/>.

⁶ *Id.* at 4.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.* at 15. *See* 47 U.S.C. § 163(a).

¹⁰ 47 U.S.C. § 163(b)(1).

¹¹ *Id.* § 163(b)(3).

¹² *Id.* § 163(d)(3).

¹³ *Id.* § 257(b).

¹⁴ Petition at 17-18.

¹⁵ 47 U.S.C. § 554(d)(2)(E).

¹⁶ *Id.* § 554(d)(2)(F).

Filing Requirements. Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹⁷ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the ECFS.¹⁸

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹⁹
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Ex Parte Rules. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation.²¹ If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be

¹⁷ 47 CFR §§ 1.415, 1.419.

¹⁸ *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, GN Docket No. 97-113, 13 FCC Rcd 11322, 11324-25, para. 4 (1998).

¹⁹ *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

²⁰ 47 CFR §§ 1.1200 *et seq.*

²¹ *Id.* § 1.1206(b). Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *Id.* § 1.1206(b)(1).

found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the rules. In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For additional information, contact Kathy Berthot, Kathy.Berthot@fcc.gov, of the Media Bureau, Policy Division, (202) 418-7454. Direct press inquiries to Janice Wise at (202) 418-8165.