

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

In the Matter of	)	
	)	
FCC Form 325 Collection	)	MB Docket No. 17-290
	)	
Modernization of Media Regulation Initiative	)	MB Docket No. 17-105

**REPORT AND ORDER**

**Adopted: September 26, 2018**

**Released: September 26, 2018**

By the Commission: Chairman Pai and Commissioner O’Rielly issuing separate statements.

**I. INTRODUCTION**

1. In this Report and Order (*Order*), we take another important step in our efforts to modernize our media regulations<sup>1</sup> by eliminating the annual FCC Form 325 filing requirement for cable television systems. In November, the Commission issued a Notice of Proposed Rulemaking (*NPRM*) proposing to streamline or eliminate Form 325, Annual Report of Cable Television Systems, which collects operational information from cable television systems nationwide.<sup>2</sup> The majority of commenters support eliminating Form 325.<sup>3</sup> We conclude that eliminating Form 325 will advance the Commission’s goal of reducing outdated rules and unnecessary regulatory burdens that can impede competition and innovation in the media marketplace. On balance, we find that the utility of the form is limited and ultimately outweighed by the burden placed on cable operators to file, and on the Commission to process, this outmoded form.

**II. BACKGROUND**

2. The Commission first developed Form 325 in 1966<sup>4</sup> and adopted the form as an annual filing requirement in 1971<sup>5</sup> “to enable the Commission to keep abreast of [cable television system]

---

<sup>1</sup> See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome).

<sup>2</sup> *FCC Form 325 Data Collection*, Notice of Proposed Rulemaking, 32 FCC Rcd 9902, 9905, para. 6 (2017) (*2017 Form 325 NPRM*).

<sup>3</sup> See American Cable Association Comments (supporting elimination of Form 325) (ACA); ITTA – The Voice of America’s Broadband Providers Comments (supporting elimination of Form 325 or, in the alternative, measures to ease the burdensomeness of the Form 325 filing requirement) (ITTA); NCTA – The Internet & Television Association Comments (supporting elimination of Form 325) (NCTA); Verizon Comments (supporting elimination of Form 325); see also Letter from Mary C. Lovejoy, Vice President of Regulatory Affairs, American Cable Association, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105, 17-290, at 2 (filed Sept. 19, 2018) (expressing support for the Commission’s proposal to eliminate Form 325 and urging the Commission to adopt the draft Report and Order). *But see* Public Knowledge Reply (opposing elimination of Form 325).

<sup>4</sup> *Amendment of Subpart L, Part 91, to Adopt Rules and Regulations to Govern the Grant of Authorizations in the Business Radio Service for Microwave Stations to Relay Television Signals to Community Antenna Systems; Amendment of Subpart I, Part 21, to Adopt Rules and Regulations to Govern the Grant of Authorizations in the Domestic Public Point-To-Point Microwave Radio Service for Microwave Stations Used to Relay Television Broadcast Signals to Community Antenna Television Systems; Amendment of Parts 21, 74, and 91 to Adopt Rules and Regulations Relating to the Distribution of Television Broadcast Signals By Community Antenna Television Systems, and Related Matters*, Second Report and Order, 2 FCC 2d 725, 765, para. 99 (1966) (*CATV Second R&O*).

developments, fulfill its regulatory responsibilities in this field, and assist Congress in its consideration of related legislative proposals.”<sup>6</sup> Form 325 collects operational information from various cable television systems nationwide, including data about subscriber numbers, equipment information, plant information, frequency and signal distribution information, and programming information.<sup>7</sup> The form is required to be filed annually by: (1) all cable systems with 20,000 or more subscribers (which account for the vast majority of cable subscribers); and (2) a random sampling of smaller cable systems with fewer than 20,000 subscribers.<sup>8</sup> Each December,<sup>9</sup> the Commission sends a notification to each operator required to file Form 325 and instructs the operator to file the form electronically via the FCC’s Cable Operations and Licensing System (COALS) within 60 days from the date of the letter.<sup>10</sup> In 1999, upon completion of a rulemaking proceeding, the Commission retained the form, streamlined it, and introduced a sampling methodology, in lieu of an annual filing requirement, for systems with fewer than 20,000 subscribers.<sup>11</sup> The Commission found that this would reduce the burden on industry and on Commission resources while still providing sufficient information for the Commission to fulfill its regulatory functions.<sup>12</sup>

3. In the *NPRM*, the Commission sought comment on whether to eliminate Form 325 or, in the alternative, improve and streamline the form.<sup>13</sup> The Commission solicited input on “the continued utility of collecting Form 325 data”<sup>14</sup> in light of the substantial changes in the multichannel video programming distributor (MVPD) marketplace and in the operations of cable television systems since the Commission last examined the Form 325 data collection in 1999,<sup>15</sup> on the costs associated with completing Form 325,<sup>16</sup> on alternative sources for the information collected by the form,<sup>17</sup> and on whether

(Continued from previous page) \_\_\_\_\_

<sup>5</sup> *Amendment of Part 74, Subpart K, of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry Into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals*, Third Report and Order, 32 FCC 2d 13, 14, para. 5 (1971) (*CATV Third R&O*).

<sup>6</sup> *Id.* at 13, para. 2.

<sup>7</sup> See 47 CFR § 76.403. *FCC Form 325, Annual Report of Cable Television Systems*, is filed on the Commission’s website at <https://fcc.gov/coals/>. Instructions for Form 325 and a blank copy of Form 325 are available in the appendix of the *NPRM*. *2017 Form 325 NPRM*, Appx. B: Form 325 at 9921-25.

<sup>8</sup> See 47 CFR § 76.403.

<sup>9</sup> *2017 Form 325 NPRM*, 32 FCC Rcd at 9903, para. 2. Information is typically requested for the last week in December of the preceding year. See *id.*, Appx. B: Form 325 at 9921.

<sup>10</sup> See 47 CFR § 76.403. Filers have been required to file the form electronically via COALS since 2005. See *Media Bureau Implements Mandatory Electronic Filing of FCC Forms 320, 322, 324, and 325 Via COALS*, Public Notice, 19 FCC Rcd 13053 (MB 2004). Cable systems have filed the current version of Form 325 since 2008. See Federal Communications Commission, Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested, Notice, 73 FR 50814 (Aug. 28, 2008) (describing minor refinements made to Form 325). In light of the *NPRM* issued in November 2017, the Commission did not send out notices for the 2017 filing year; thus, the last Form 325 data collection was for filing year 2016.

<sup>11</sup> *1998 Biennial Regulatory Review -- “Annual Report of Cable Television Systems,” Form 325, Filed Pursuant to Section 76.403 of the Commission’s Rules*, Report and Order, 14 FCC Rcd 4720, 4725, para. 11 (1999) (*1999 Form 325 Order*); *1998 Biennial Regulatory Review -- “Annual Report of Cable Television Systems,” Form 325, Filed Pursuant to Section 76.403 of the Commission’s Rules*, Order on Reconsideration, 15 FCC Rcd 9707, 9707, para. 1 (2000) (upholding the requirements that all cable systems with 20,000 or more subscribers and a sample of cable systems with fewer than 20,000 subscribers file Form 325) (*2000 Form 325 Order on Reconsideration*).

<sup>12</sup> *1999 Form 325 Order*, 14 FCC Rcd at 4725, para. 11.

<sup>13</sup> *2017 Form 325 NPRM*, 32 FCC Rcd at 9902, para. 1.

<sup>14</sup> *Id.* at 9905, para. 6.

<sup>15</sup> *Id.* at 9905-06, para. 6-7.

<sup>16</sup> *2017 Form 325 NPRM*, 32 FCC Rcd at 9907, para. 8.

the benefits of the information collected outweighed those costs.<sup>18</sup> The Commission also sought comment on ways to improve the Form 325 data collection, if it were retained.<sup>19</sup> The Commission's proposals for modernizing Form 325 included upgrading the COALS system to pre-fill much of the data on the basis of other Commission filings, which would require operators only to verify accuracy and update information as needed,<sup>20</sup> and eliminating the channel lineup section of the form.<sup>21</sup> The Commission also tentatively concluded to eliminate the collection of cable modem and telephony subscriber data via Form 325 because similar data are collected via FCC Form 477, Local Telephone and Broadband Reporting.<sup>22</sup>

4. In response to the *NPRM*, the American Cable Association (ACA), ITTA – The Voice of America's Broadband Providers (ITTA), NCTA – The Internet and Television Association (NCTA), and Verizon filed comments in support of eliminating Form 325, and Public Knowledge filed reply comments opposing elimination of the form. Commenters supporting elimination of the form assert that the Commission has not recently relied upon information derived from Form 325 in any major policy decisions<sup>23</sup> and rarely relies on the data collected therein.<sup>24</sup> These commenters also express concern about the burden Form 325 places on cable operators,<sup>25</sup> particularly smaller operators.<sup>26</sup> Commenters supporting elimination of Form 325 additionally state that information the Commission has used in its published decisions has come from sources other than the Form 325 data, indicating that such information is largely available from other sources.<sup>27</sup> On the other hand, Public Knowledge proposes that the Commission task the forthcoming Office of Economics and Analytics<sup>28</sup> with compiling information from Form 325 in combination with other sources to create a more detailed picture of the cable industry for the Commission, Congress, and the public.<sup>29</sup> Public Knowledge further asserts that the Commission has an obligation to keep Congress, the public, and itself informed about the cable and broadband industry,<sup>30</sup> that Form 325 data are more reliable than data from other sources due to the certification required by the Commission filing,<sup>31</sup> that accumulating standardized information over time is of particular value,<sup>32</sup> and

(Continued from previous page)

<sup>17</sup> *Id.* at 9907-11, paras. 9, 15-19.

<sup>18</sup> *Id.* at 9907, 9908-11, paras. 9, 11-18.

<sup>19</sup> *Id.* at 9908-13, paras. 11-24.

<sup>20</sup> *Id.* at 9908, para. 12.

<sup>21</sup> *Id.* at 9911, para. 19.

<sup>22</sup> *Id.* at 9908-09, para. 15.

<sup>23</sup> ACA Comments at 4.

<sup>24</sup> Verizon Comments at 3; ITTA Comments at 2 (“The *NPRM* is only able to muster one order since 2013 wherein the Commission relied exclusively on Form 325 data to support a particular point”) (citing *2017 Form 325 NPRM*, 32 FCC Rcd at 9907, para. 9, n.32).

<sup>25</sup> See ACA Comments at 9-10; NCTA Comments at 2-4; Verizon Comments at 7; see also ITTA Comments at 3-5 (proposing that, should the Commission retain Form 325, it should adopt measures to alleviate its burdensomeness).

<sup>26</sup> ACA Comments at 10, 12; see also ITTA Comments at 4 (proposing that the Commission eliminate the requirement that small systems file Form 325 or change that filing requirement to once every five years for all small systems rather than random sampling done annually).

<sup>27</sup> ACA Comments at 4; ITTA Comments at 2; NCTA Comments at 7-8; Verizon Comments at 4.

<sup>28</sup> See *Establishment of the Office of Economics and Analytics*, MB Docket No. 18-3, Order, 33 FCC Rcd 1539, para. 1 (creating the Office of Economics and Analytics) (2018) (*Office of Economics and Analytics Order*).

<sup>29</sup> Public Knowledge Reply at 1.

<sup>30</sup> *Id.* at 2.

<sup>31</sup> Public Knowledge Reply at 1-2.

that the accessibility of data from other sources is limited.<sup>33</sup>

### III. DISCUSSION

5. With this *Order*, we eliminate the Form 325 filing requirement for cable television systems. As the Commission noted in the *NPRM*, Form 325 was first developed over 50 years ago<sup>34</sup> and the last significant modification of the form was nearly 20 years ago.<sup>35</sup> We find that marketplace, operational, and technological changes have overtaken Form 325 and rendered it increasingly obsolete, as reflected by the Commission's limited use of Form 325 data. Moreover, much of the information collected by the form can be obtained from alternative sources without the burden imposed on cable operators and the Commission by the Form 325 filing requirement. Therefore, we eliminate the requirement set forth in 47 CFR § 76.403 of our rules that the operator of every cable television system serving 20,000 or more subscribers and a sampling of operators with systems serving fewer than 20,000 subscribers file Form 325 with the Commission.<sup>36</sup>

#### A. Diminished Utility of Form 325

6. In light of substantial changes that have taken place in the MVPD marketplace and in the way that cable systems operate, we find that the information collected by Form 325 is far less relevant today than it was when the Commission last considered, and elected to retain, the form in 1999.<sup>37</sup> As NCTA states, Form 325, with its questions about analog operations and system-based organization, does not reflect the technical realities of present-day cable service where “individual systems are no longer representative of today’s cable network structure due to the use of fiber interconnects and the elimination of numerous standalone headends.”<sup>38</sup> Importantly, the last time the Commission voted to retain Form 325 in 1999, the cable industry was less than a decade removed from the passage of the Telecommunications Act of 1996 (1996 Act) and the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act)—a time during which the Commission had recently implemented, or was still in the process of implementing, the regulatory mandates of those statutes.<sup>39</sup> It was a time when the MVPD industry—and the prominence of cable operators as video providers—looked very different than it does today. Cable operators at the time accounted for approximately 82 percent of total MVPD subscribers<sup>40</sup> (as compared to roughly 55 percent today)<sup>41</sup> and today’s online video streaming services did not yet exist. Accordingly, the Commission noted at the time that Form 325 could be useful for monitoring

(Continued from previous page) \_\_\_\_\_

<sup>32</sup> *Id.* at 3.

<sup>33</sup> *Id.* at 4-5.

<sup>34</sup> See 2017 Form 325 *NPRM*, 32 FCC Rcd at 9903, para. 3 (citing *CATV Second R&O*, 2 FCC 2d at 765, para. 99; *CATV Third R&O*, 32 FCC 2d at 14, para. 5).

<sup>35</sup> *Id.* at 9904, para. 4.

<sup>36</sup> See 47 CFR § 76.403.

<sup>37</sup> See 2017 Form 325 *NPRM*, 32 FCC Rcd at 9902, para. 1; see, e.g., 1999 Form 325 *NPRM*, 14 FCC Rcd at 4742 (dissenting statement of Commissioner Harold Furchtgott-Roth) (noting that the Commission did not “identify any specific, statutorily-based purpose for this information once collected”), 4743 (dissenting statement of Commissioner Michael Powell) (questioning whether there was an “actual need” for the information collected).

<sup>38</sup> See NCTA Comments at 5-6.

<sup>39</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act); Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (Cable Act of 1992).

<sup>40</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixth Report, 15 FCC Rcd 978, 981, para. 5 (2000).

<sup>41</sup> S&P Global Market Intelligence, U.S. Multichannel Industry Benchmarks (last visited July 2, 2018).

forthcoming changes in the cable industry, including the introduction of digital cable services.<sup>42</sup> Similarly, the Commission believed that the form could prove useful in collecting information regarding the transition from analog to digital television broadcast signals.<sup>43</sup> Now, the 1996 Act and the 1992 Cable Act are more than 20 years behind us. The digital television transition for full-power broadcast stations occurred over nine years ago<sup>44</sup> and the transition from analog to digital cable service is now almost universal. According to one recent estimate, approximately 97 percent of cable subscribers currently have digital cable service.<sup>45</sup> Therefore, it is clear that many of the expected changes to the cable industry that Form 325 was designed to monitor have already taken place.

7. While we acknowledge that Form 325 may have been useful at one time, and that the data collected by the form have been used by the Commission on various occasions through the years,<sup>46</sup> we find that it has become progressively less useful to, and less used by, the Commission over time and has now reached a point where its limited usefulness can no longer justify its retention. When the Commission elected not to eliminate the form nearly 20 years ago, it envisioned various uses for which the data collected by Form 325 might be useful to the Commission in the future, such as providing “an accurate picture of the entire cable industry at large,”<sup>47</sup> serving as an “in-house database” to supplement rulemaking proceedings,<sup>48</sup> or helping to “monitor the implementation of [] rules.”<sup>49</sup> These are all valid objectives and, for a time, Form 325 may have been a valuable tool for these purposes. Today, however, there is little evidence that the information collected by Form 325 continues to be essential for the purposes it once served or could have served. For instance, the Commission found in 1999 that cable modem and set-top box data collected by Form 325 could be useful for “assess[ing] technical capabilities of cable systems and the future of the industry” and that information on channel lineups could be used to “determine the impact of our must-carry and retransmission consent”<sup>50</sup> rules. Similarly, Public Knowledge contends that Form 325 provides information useful to the Commission in fulfilling its obligations under Section 629 to promote the competitive availability of navigation devices.<sup>51</sup> However, recent Commission rulemakings related to Section 629 and retransmission consent relied on third-party sources of data rather than Form 325 to inform their analysis.<sup>52</sup>

---

<sup>42</sup> 1999 Form 325 NPRM, 14 FCC Rcd at 4728-30, paras. 20-23.

<sup>43</sup> *Id.* at 4727-28, paras. 15-16.

<sup>44</sup> The digital television transition for full-power broadcast stations occurred on June 12, 2009.

<sup>45</sup> See S&P Global Market Intelligence, *Top Cable MSOs*, 12/17 Q; see also *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd 568, 593, para. 62 (MB 2017) (*18<sup>th</sup> Video Competition Report*) (stating that most major cable MVPDs had completed, or nearly completed, their all-digital transition at the end of 2015).

<sup>46</sup> See 2017 Form 325 NPRM, 32 FCC Rcd at 9907, para. 9, n.32.

<sup>47</sup> 1999 Form 325 Order, 14 FCC Rcd at 4730, para. 23.

<sup>48</sup> 2000 Form 325 Order on Reconsideration, 15 FCC Rcd at 9712, para. 11.

<sup>49</sup> *Id.* at 9712, para. 12.

<sup>50</sup> 1999 Form 325 Order, 14 FCC Rcd at 4728-29, paras. 20, 22.

<sup>51</sup> Public Knowledge Reply at 5.

<sup>52</sup> See generally *Expanding Consumers’ Video Navigation Choices et al.*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 31 FCC Rcd 1544 (2016) (seeking comment on rules to implement Section 629 of the Communications Act); *Implementation of Section 103 of the STELA Reauthorization Act of 2014 Totality of the Circumstances*, Notice of Proposed Rulemaking, 30 FCC Rcd 10327 (2015) (seeking comment on the totality of the circumstances test for evaluating good faith in retransmission consent negotiations); *Amendment of the Commission’s Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351 (2014) (revising the Commission’s retransmission consent rules to provide that joint

8. Indeed, recent instances where the Commission has cited Form 325 data in rulemaking proceedings are extremely limited, and in those instances where it has been cited, it is not clear that the data cited was critical to any major decision or that it was available exclusively via Form 325.<sup>53</sup> For instance, in the most recent example, the Commission cited Form 325 data in a single footnote of an order to estimate the number of low power television (LPTV) and Class A stations carried on cable systems pursuant to mandatory carriage<sup>54</sup> and one party in that proceeding directly questioned the accuracy of the Commission's estimate.<sup>55</sup> In another example, the Commission used information collected via Form 325 about the number of deployed set-top boxes to affirm a conclusion that applying IP closed captioning rules only to devices with built-in screens would exclude a common means by which consumers view programming.<sup>56</sup> Beyond these examples, the Commission has also, on occasion, used Form 325 data to determine how many subscribers could potentially be affected when providing regulatory relief to systems and operators<sup>57</sup> or to craft exemptions on the basis of number of subscribers served.<sup>58</sup> All of this, however, amounts to just a handful of fairly minor uses over the past six-plus years in instances where

(Continued from previous page)

negotiation by Top Four stations that are not commonly owned constitutes a violation of the statutory duty to negotiate retransmission consent in good faith).

<sup>53</sup> See ITTA Comments at 2 (noting that the *NPRM* in this proceeding only cites one order in the last five years wherein the Commission relied exclusively on Form 325 data to support a particular point). As discussed below, we believe that much of the information collected via Form 325 can be replicated through other sources.

<sup>54</sup> See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations; Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, Report and Order, 32 FCC Rcd 2637, 2644, para. 12, n.47 (2017). It should be noted that information related to carriage of broadcast stations would continue to be available in public inspection files. See *infra* note 85.

<sup>55</sup> See Letter from Rick Chessen, Senior Vice President, Law and Regulatory Policy, NCTA, to Marlene Dortch, Secretary, FCC, GN Docket No. 12-268, at 2 (filed Mar. 16, 2017) (asserting that the Commission "appear[ed] to understate the number of Class A and low-power stations with carriage rights").

<sup>56</sup> See *2017 Form 325 NPRM*, 32 FCC Rcd at 9907, para. 9, n.32 (citing *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787, 843, para. 96, n.382 (2012)).

<sup>57</sup> See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Fourth Further Notice of Proposed Rulemaking and Declaratory Order, 27 FCC Rcd 1713, 1717-18, 1722, 1728-29, paras. 9-10, 20, nn.32-33, 36, 66-68, Appx. B (2012) (using Form 325 data to determine the number of cable subscribers served by all-digital systems, the number of broadcast stations that elect or default to must carry on cable systems, and the number of small cable systems relying on the HD carriage exemption) (*Carriage of Digital Television Broadcast Signals Fourth FNPRM and Declaratory Order*); see also *Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, 17405, para. 117, n.473 (2013) (*User Interfaces R&O and FNPRM*) (citing Form 325 data for its estimate of the number of subscribers that would be affected by a longer phase-in period for smaller cable systems and operators in a 2013 order adopting accessible user interfaces requirements).

<sup>58</sup> See, e.g., *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222, 17244-46, 17253-54, paras. 35-37, 52-54 (2011) (allowing MVPD systems with fewer than 15,000 subscribers and that are not affiliated with a larger operator serving more than 10 percent of all MVPD subscribers to file streamlined financial hardship waivers to delay compliance from CALM Act rules for up to two years and excusing MVPD operators with fewer than 400,000 subscribers from the requirement to perform annual spot checks); *User Interfaces R&O and FNPRM*, 28 FCC Rcd at 17330, 17401, para. 114 (granting a five-year delayed compliance deadline to MVPD operators with 400,000 or fewer subscribers and to MVPD systems with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers).

such data could otherwise have been obtained from information requests or other inquiries.<sup>59</sup>

9. In addition, although the Commission has been statutorily required to produce an annual report to Congress on “the status of competition in the market for the delivery of video programming,”<sup>60</sup> rather than use the data from Form 325, the Commission has routinely opened a dedicated proceeding and issued a Public Notice to solicit information to compile the report.<sup>61</sup> As Verizon notes, the two most recent annual video competition reports did not cite to Form 325 *at all*,<sup>62</sup> relying instead on third-party sources for such statistics as subscribers to cable services and the number of homes passed.<sup>63</sup> Indeed, when the Commission sought to rely on the Form 325 data for more substantial use in its *13<sup>th</sup> Video Competition Report*, it concluded that the data were inadequate for assessing whether the homes passed and subscriber thresholds under the Section 612(g) “70/70 test”<sup>64</sup> had been met and instead concluded that an industrywide information collection would be necessary to compile the requisite data.<sup>65</sup> Even for the more discrete use of Form 325 data in the *14<sup>th</sup> Video Competition Report*—to show the percentage of households passed by incumbent cable systems that subscribe to these systems as well as the number of very small cable systems surveyed that offer neither Internet access nor telephone services<sup>66</sup>—the report itself noted that data from SNL Kagan could provide similar information.<sup>67</sup> Additionally, although the Media Bureau’s annual report on cable prices references Form 325 in a note to a table in the appendix,

---

<sup>59</sup> See, e.g., *infra* para. 12.

<sup>60</sup> 47 U.S.C. § 548(g) (requiring the Commission to “annually report to Congress on the status of competition in the market for the delivery of video programming”). *But see* Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 1862, 1865 (2018) (Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, or RAY BAUM’S Act) (requiring the Commission to “assess the state of competition in the communications marketplace, including competition to deliver voice, video, audio, and data services among providers of telecommunications, providers of commercial mobile service . . . , multichannel video programming distributors . . . , broadcast stations, providers of satellite communications, Internet service providers, and other providers of communications services” and publish on its website and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a biennial report on the state of the communications marketplace). Enacted on March 23, 2018, RAY BAUM’S Act amended Section 628 of the Act by deleting paragraph g — repealing the *Status of Competition in the Market for the Delivery of Video Programming Report (Video Competition Report)*.

<sup>61</sup> See, e.g., *Media Bureau Seeks Comment for 19<sup>th</sup> Video Competition Report*, Public Notice, 32 FCC Rcd 6654 (MB 2017) (*19<sup>th</sup> Video Competition Report Public Notice*).

<sup>62</sup> See Verizon Comments at 4; *see generally Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Seventeenth Report, 31 FCC Rcd 4472 (MB 2016) (*17<sup>th</sup> Video Competition Report*); *18<sup>th</sup> Video Competition Report*, 32 FCC Rcd 568.

<sup>63</sup> See Verizon Comments at 4 (citing *18<sup>th</sup> Video Competition Report*, 32 FCC Rcd at 570-71, 574-75, 595-96, paras. 2-5, 18-20, 68; *17<sup>th</sup> Video Competition Report*, 31 FCC Rcd at 4477-79, 4501-02, paras. 17-19, 73).

<sup>64</sup> 47 U.S.C. § 532(g) (granting the Commission authority to promulgate any additional rules necessary to provide diversity of information sources “at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of the households to which such systems are available”).

<sup>65</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Report, 24 FCC Rcd 542, 561, para. 43 (2009) (*13<sup>th</sup> Video Competition Report*); *see Media Bureau Seeks Comments on a Cable Subscribership Survey for the Collection of Information Pursuant to Section 612(g) of the Communications Act*, Public Notice, 24 FCC Rcd 217, 217-18, paras. 3-4 (MB 2009) (seeking comment on the Cable Subscriber Survey the Commission proposed to use to collect the information necessary to determine whether the 70/70 test had been met).

<sup>66</sup> See *2017 Form 325 NPRM*, 32 FCC Rcd at 9906, para. 7, n.29 (citing *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourteenth Report, 27 FCC Rcd 8610, 8641-42, 8658, paras. 70, 116, n.350 (2012) (*14<sup>th</sup> Video Competition Report*)).

<sup>67</sup> See *14<sup>th</sup> Video Competition Report*, 27 FCC Rcd at 8641, 8671-72, paras. 70, 142, nn.203, 467, Tbl. 6.

Bureau staff today relies primarily on other sources to compile the data presented in the table.<sup>68</sup> Noting that the Commission has not routinely or consistently used the Form 325 data over the years, we concur with the sentiment expressed nearly 20 years ago when the Commission last considered eliminating Form 325 that we “should not compile data for its own sake.”<sup>69</sup> Moreover, there is minimal public demand for the data presently available.<sup>70</sup>

10. In addition to being little used today, we note that the Form 325 data are subject to certain inherent constraints that render them less than ideal and limit the purposes for which they can be used.<sup>71</sup> As noted above, Form 325 data have not been collected universally across the entire cable industry since the 1990s, and Form 325 is not filed by many of the smallest cable systems, a fact that may render it somewhat less useful for purposes of assessing the latter segment of the cable industry in particular.<sup>72</sup> For example, in determining the carriage of in-state broadcast stations on cable systems for congressionally mandated reports pursuant to the Satellite Television Extension and Localism Act of 2010 (STELA) and the STELA Reauthorization Act of 2014 (STELAR), the Commission noted that many rural counties of interest for purposes of the required reports may be served by cable systems not subject to the Form 325 filing requirement.<sup>73</sup> Given the diminishing relevance of, and alternative sources for, the Form 325 data, any attempt to expand the data collection among the smallest cable systems in order to make the collection more comprehensive<sup>74</sup> would likely entail significant burdens for those systems least able to bear them in exchange for little, if any, offsetting benefit.<sup>75</sup> Moreover, in addition to not being filed by

---

<sup>68</sup> See *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, 31 FCC Rcd 11498, 11515, Attach. 1 (MB 2016) (*2016 Cable Price Survey*). But see RAY BAUM’s Act (modifying the statutory requirement for the Cable Price Survey to include it as part of a biennial report on the state of the communications marketplace), *supra* note 60.

<sup>69</sup> *1999 Form 325 Order*, 14 FCC Rcd at 4742 (dissenting statement of Commissioner Harold Furchtgott-Roth); see also *id.* at 4743 (dissenting statement of Commissioner Michael Powell) (questioning the Commission’s need for the data collected by Form 325).

<sup>70</sup> See *2017 Form 325 NPRM*, 32 FCC Rcd at 9907, para. 10 (noting that a single party annually files a Freedom of Information Act (FOIA) request for Form 325 data and that “other entities and individuals have periodically sought Form 325 data through FOIA requests”); see also *infra* para. 14 (noting that none of the commenters in this proceeding claim to currently use or recently have used Form 325 data).

<sup>71</sup> See, e.g., *Media Bureau Seeks Comment for Report Required by the STELA Reauthorization Act of 2014*, Public Notice, 30 FCC Rcd 1904, 1907 (MB 2015) (*STELAR Report Public Notice*) (noting that Form 325 data “do not correspond to census blocks, counties, DMAs, or other common geographic units and, therefore, cannot be aggregated or disaggregated to provide estimates for those geographic units or households”); *In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010*, Report, 26 FCC Rcd 11919, 11942, para. 40, n.129 (noting that the Commission has “no reliable method for converting the geographic area of a cable system to census blocks, counties, or other common geographic units”) (2011) (*2011 STELA Report*).

<sup>72</sup> See, e.g., *14<sup>th</sup> Video Competition Report*, 27 FCC Rcd at 8619, para. 24, n.35 (noting that for the 2010 filing year, Form 325 collected data from only 170 of the 4,427 cable systems with less than 5,000 subscribers).

<sup>73</sup> See, e.g., *STELAR Report Public Notice*, 30 FCC Rcd at 1907; *2011 STELA Report*, 26 FCC Rcd at 11942-43, paras. 40, 42, n.131. By contrast, we note that FCC Form 477 is required to be submitted by all broadband providers and thus paints a more complete picture of the broadband industry. See *infra* para. 11, note 78.

<sup>74</sup> See ITTA Comments at 4 (proposing staggered filing every five years for systems serving fewer than 20,000 subscribers in lieu of random sampling in the event that Form 325 were not eliminated).

<sup>75</sup> The Commission has previously stated that Form 325 data could be used to review operators’ annual regulatory fee payments. *1999 Form 325 Order*, 14 FCC Rcd at 4721, para. 3; *2000 Form 325 Order on Reconsideration*, 15 FCC Rcd at 9711, para. 10. However, we have found no evidence that Form 325 data are regularly used for this purpose. Moreover, while Form 325 subscriber data could, in theory, be used to audit some operators’ annual regulatory fee payments (e.g., if all of an operators’ systems had a Form 325 on file with the Commission), cable regulatory fees are assessed on a per-subscriber basis and, given that Form 325 does not collect subscriber



many of the smallest cable systems, Form 325 is not filed by non-cable video providers either (e.g., DBS operators), further limiting its ability to shed light on the overall video marketplace.

## B. Alternative Sources for Information Currently Collected by Form 325

11. As mentioned above, the Commission has increasingly been turning to public and third-party sources of data to help guide its policymaking. In this regard, we note that information on subscribers, equipment, physical plant, frequency and signal distribution, or programming, such as that currently collected via Form 325, is available through alternative sources.<sup>76</sup> For instance, although Public Knowledge asserts that the data collected via Form 325 provide valuable information on the broadband industry,<sup>77</sup> the Commission noted in the *NPRM* that the cable modem and telephony subscriber data collected by Form 325 are similar, and likely inferior, to data collected via Form 477—the Commission’s primary vehicle for collecting information about the broadband industry.<sup>78</sup> In addition to Form 477, other sources of cable industry data include: information collected via FCC Forms 320,<sup>79</sup> 322,<sup>80</sup> 324,<sup>81</sup> 327,<sup>82</sup> and 333,<sup>83</sup> information provided pursuant to Section 76.1205<sup>84</sup> and Section 76.1709;<sup>85</sup> other governmental

(Continued from previous page) \_\_\_\_\_

information from many of the smallest cable systems, it likely could not be used to calculate a definitive subscriber count for a significant number of cable operators.

<sup>76</sup> The Media Bureau has previously acknowledged the existence of alternative sources for many of the pieces of information collected by Form 325. See, e.g., *Comcast Cable Communications, Inc., Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12165, 12167-68, paras. 9-10 (MB 2004) (finding that information collected via Form 325 related to number of subscribers, homes passed, upstream capacity, downstream capacity, and channel lineups was not confidential due to its availability from public sources).

<sup>77</sup> Public Knowledge Reply at 1-3. Contrary to Public Knowledge’s assertion that Form 325 collects data on “broadband speeds,” the form does not collect such information. See *id.* at 1.

<sup>78</sup> See *FCC Form 477: Local Telephone Competition and Broadband Reporting*, <https://transition.fcc.gov/form477/477inst.pdf>; see also *2017 Form 325 NPRM*, 32 FCC Rcd at 9908-09, para. 15 (noting that modem and telephony subscriber data collected by Form 325 are similar to data collected via Form 477). Form 477, the Commission’s “principal tool . . . to gather data on communications services[,]” is the subject of an open proceeding considering, among other topics, revising aspects of the data collection to “improve the value of the data we continue to collect, while also identifying and eliminating unnecessary or overly burdensome filing requirements.” See *Modernizing the FCC Form 477 Data Program*, Further Notice of Proposed Rulemaking, 32 FCC Rcd 6329, 6329-30, para. 1 (2017) (*Form 477 FNPRM*).

<sup>79</sup> See *FCC Form 320: Basic Signal Leakage Performance Report*, [www.fcc.gov/coalms](http://www.fcc.gov/coalms); 47 CFR §§ 76.1803, 76.611. At one time, prior to the *1999 Form 325 Order*, Form 325 had been seen as useful for identifying signals carried in the aeronautical frequency band, but because Form 325 is no longer filed by all cable systems, the Commission now uses Form 320 to monitor signal leakage issues in such bands. *1999 Form 325 Order*, 14 FCC Rcd at 4728, para. 17.

<sup>80</sup> See *FCC Form 322: Cable Community Registration*, [www.fcc.gov/coalms](http://www.fcc.gov/coalms); 47 CFR § 76.1801.

<sup>81</sup> See *FCC Form 324: Operator, Mail Address, and Operational Information Changes*, [www.fcc.gov/coalms](http://www.fcc.gov/coalms); 47 CFR § 76.1610.

<sup>82</sup> See *FCC Form 327: Cable Television Relay Service Station License*, [www.fcc.gov/coalms](http://www.fcc.gov/coalms); 47 CFR § 78.15; see also *Time Warner Cable Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, Order, 19 FCC Rcd 12172, 12173, para. 8 (MB 2004) (*Time Warner Cable Request for Confidentiality*) (noting that “[cable] systems that use microwave licenses in the Cable Television Relay Service (CARS) report channel capacity and compression ratio information with their applications, [i.e., FCC Form 327], which are routinely available to the public”).

<sup>83</sup> See *FCC Form 333: Cable Price Survey Questionnaire*, <https://specialreports.fcc.gov/mb/Form333/>.

<sup>84</sup> 47 CFR § 76.1205 (requiring disclosure “upon request in a timely manner” of certain technical information regarding a cable system to facilitate the use of navigation devices).

filings, such as Securities and Exchange Commission (SEC) filings<sup>86</sup> and Copyright Office Statements of Account;<sup>87</sup> information released by industry groups such as ACA and NCTA;<sup>88</sup> and information available through commercial sources such as SNL Kagan and S&P Global Market Intelligence (S&P Global), BIA/Kelsey (BIA Advisory Services), The Nielsen Company, and Television and Cable Factbook (Warren Communications).<sup>89</sup> In particular, as noted in the *NPRM*, channel lineup information, such as that collected by Form 325, is widely available from public sources that include cable operator websites and third-party guide services.<sup>90</sup> Additionally, information related to the carriage of leased access programming, the availability of which was once a concern underpinning the collection of channel lineup information,<sup>91</sup> is now available through at least one commercial source,<sup>92</sup> and the Commission also provides information on the average number of leased access channels in its *Cable Price Survey Report*.<sup>93</sup> We believe that these other sources available to the Commission generally offer the accuracy, timeliness, and ongoing availability that the Commission once looked to Form 325 to provide, as evidenced by the fact that both the Commission and industry stakeholders regularly rely upon such sources, not Form 325, for various purposes.<sup>94</sup> Specifically, we find that other sources besides Form 325 also provide voluminous, standardized information that can be used to conduct year-over-year comparisons, as the Commission routinely does.<sup>95</sup>

12. Of course, even after eliminating the Form 325 filing requirement, the Commission retains the ability to obtain data on an as-needed basis.<sup>96</sup> For example, the Commission regularly seeks

(Continued from previous page) \_\_\_\_\_

<sup>85</sup> 47 CFR § 76.1709 (requiring that the operator of every cable system maintain a list of broadcast stations carried pursuant to the must-carry requirements in its public inspection file).

<sup>86</sup> See *SEC Form 10-K*, <https://www.sec.gov/files/form10-k.pdf>; see also NCTA Comments at 7, n.28 (“[t]he number of homes passed by a cable operator is typically included in filings with the Securities and Exchange Commission”).

<sup>87</sup> See, e.g., *Cable SA1-2 Paper Short Form*, <https://www.copyright.gov/forms/sa1-2.pdf> (for use by cable television systems whose semiannual gross receipts are less than \$527,600); *Cable SA3 Paper Long Form*, <https://www.copyright.gov/forms/sa3.pdf> (for use by cable television systems whose semiannual gross receipts are \$527,600 or more); see also NCTA Comments at 7, n.28 (“[e]very cable system is required to file with the Copyright Office, on a semi-annual basis, certain information concerning activated channels”).

<sup>88</sup> See, e.g., NCTA Industry Data, <https://www.ncta.com/industry-data?industry=true>.

<sup>89</sup> See *2017 Form 325 NPRM*, 32 FCC Rcd at 9907, para. 9 (“the Commission routinely cites data from SNL Kagan, BIA/Kelsey, The Nielsen Company, and Warren Communications Television and Cable Factbook”); see also ACA Comments at 5-7, 9; ITTA Comments at 2; NCTA Comments at 7-8; Verizon Comments at 4.

<sup>90</sup> See *id.* at 9911, para. 19 (tentatively concluding that the Commission should eliminate the collection of channel lineup information to the extent that Form 325 were retained and noting that information about a cable system’s programming is available from online sources); see also ACA Comments at 9; ITTA Comments at 2; NCTA Comments at 7; Verizon Comments at 7; *Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4)*, Notice of Proposed Rulemaking, MB Docket No. 18-92 (2018) (noting the availability of channel lineup information from sources including on-screen electronic program guides, paper guides, and the online public inspection file).

<sup>91</sup> *1999 Form 325 Order*, 14 FCC Rcd at 4729, para. 22 (stating that at that time the number of leased access channels being used by leased access programmers was not available from commercial sources).

<sup>92</sup> See S&P Global Market Intelligence, *Network Carriage (Leased Access)* (last visited July 2, 2018).

<sup>93</sup> *2017 Form 325 NPRM*, 32 FCC Rcd at 9906, para. 7.

<sup>94</sup> See *1999 Form 325 Order*, 14 FCC Rcd at 4727, paras. 14-15.

<sup>95</sup> See generally *18<sup>th</sup> Video Competition Report*, 32 FCC Rcd 568; *2016 Cable Price Survey*, 31 FCC Rcd 11498; see also Public Knowledge Reply at 3 (noting the “value of accumulating standardized information over time”).

<sup>96</sup> See ACA Comments at 6-8; NCTA Comments at 7; Verizon Comments at 4. See, e.g., 47 U.S.C. §§ 154(i) (authorizing the Commission to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions”), § 154(j) (authorizing the

detailed market-by-market information from applicants in transactions involving MVPDs or Internet service providers regarding homes passed, numbers of subscribers, services provided, and competitors faced, among other things.<sup>97</sup> The Commission often seeks similar information from third-party competitors as well.<sup>98</sup> Thus, in instances of specific transactions, the Commission does not rely on Form 325 data, but rather solicits the most up-to-date information directly from the parties involved. This is ultimately a more cost-effective and targeted approach than trying to collect data through an industrywide mechanism such as Form 325. In addition, the Commission also retains the ability to collect information and data through rulemakings, inquiries, and other collections,<sup>99</sup> which may yield more current data than Form 325.

13. In short, we believe the information available through all of these alternative sources is sufficiently reliable that we can confidently eliminate Form 325. We therefore disagree with Public Knowledge's assertions that information collected in rulemakings and other proceedings cannot be considered a sufficiently reliable alternative to Form 325 data because firms are not compelled to disclose the information and are not subject to a certification of accuracy.<sup>100</sup> First, we note that there is an expectation that parties submitting comments or data in Commission proceedings will not provide false or misleading information to the Commission, and even if a party provides information that arguably could be seen as biased or one-sided in some way, respondents in Commission proceedings have an opportunity to set the record straight by highlighting such bias for the Commission or submitting their own contrary analyses.<sup>101</sup> Moreover, we note that making false statements to the United States government is

(Continued from previous page)

Commission to “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice”), § 218 (authorizing the Commission to inquire into the management of the business of wire and radio carriers and to obtain “full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created”), § 403 (authorizing the Commission “at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing” within its jurisdiction).

<sup>97</sup> See, e.g., Letter from William T. Lake, Chief, FCC Media Bureau, to Michael H. Hammer, Esq., et al., Counsel to Comcast Corporation, MB Docket No. 10-56, at 1 (May 21, 2010), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-298336A1.doc](https://apps.fcc.gov/edocs_public/attachmatch/DOC-298336A1.doc).

<sup>98</sup> See, e.g., Letter from William T. Lake, Chief, FCC Media Bureau, to William H. Johnson, Esq., Vice President & Associate General Counsel, Verizon Corporation, Inc., MB Docket No. 14-57 (Oct. 7, 2014), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-329838A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-329838A1.pdf); Letter from William T. Lake, Chief, FCC Media Bureau, to Joseph O. Kahl, Sr. Director, Regulatory & External Affairs, RCN Telecom Services, LLC, MB Docket No. 14-57 (Oct. 7, 2014), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-329839A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-329839A1.pdf).

<sup>99</sup> See, e.g., Letter from Michelle Carey, Chief, FCC Media Bureau, to Mark Goldstein, Director, Physical Infrastructure Issues, Government Accountability Office, U.S. Government Accountability Office Report to Congressional Requesters, *Video Programming: FCC Should Conduct Additional Analysis to Evaluate Need for Set-Top Box Regulation*, Appx. II, GAO-17-785 (agreeing that “the Commission’s annual video competition report proceedings are an appropriate forum to gather data and solicit comment on issues relevant to whether there is a need for further regulation to ensure the commercial availability of devices to access MVPD programming”); Letter from William T. Lake, Chief, FCC Media Bureau, to Kathryn H. Zachem, Senior Vice President, Regulatory and State Legislative Affairs, Comcast Corporation, MB Docket No. 12-68, at 1 (June 27, 2012) (requesting data for a rulemaking proceeding, *Revision of the Commission’s Program Access Rules*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 12605 (2012)); see generally *19th Video Competition Report Public Notice*, 32 FCC Rcd 6654.

<sup>100</sup> See Public Knowledge Reply at 1-4, 6 (noting that comments filed in rulemaking proceedings may cherry pick data to support an advocacy position).

<sup>101</sup> See, e.g., 47 CFR §§ 1.17 (providing that applicants seeking Commission authorizations or engaging in activities that require Commission authorizations must provide truthful and accurate information in all interactions with the Commission), 76.939 (applying the truthfulness requirements of Section 1.17 to certain cable operator rate regulation filings); *Joint Application of Securix Investment Holdings, LLC, et al. for Grant of Authority to Transfer Indirect Ownership and Control of Licensees*, Memorandum Opinion and Order, 32 FCC Rcd 9564, 9571, para. 16 (2017) (stating that “[p]roviding false and misleading information to the Commission in connection with filed

punishable by law;<sup>102</sup> therefore, many of the other federal filings mentioned above likely would be at least as reliable and accurate as Form 325 filings, and thus could serve a cross-check function similar to that which Public Knowledge asserts Form 325 data fulfill.<sup>103</sup>

14. In addition, we find that other publicly available sources, including those mentioned above, are likely to be more useful than the information collected by Form 325 in keeping the public informed about the cable industry. Such sources generally present a more up-to-date picture of the industry than Form 325 data, which are currently withheld from the public for three years due to competitive concerns.<sup>104</sup> Furthermore, we note that no commenters in this proceeding state that they are currently using, or have recently used, the Form 325 data for any purpose, which is not surprising given the datedness of the information and the abundance of other sources available. Lastly, although Public Knowledge correctly notes that proprietary information from commercial sources can be expensive and subject to restrictive licensing terms,<sup>105</sup> the Commission analyzes such sources in producing video competition reports and other documents available to the public,<sup>106</sup> and many alternatives to Form 325 data are available to and have been used by commenters in Commission proceedings.<sup>107</sup>

15. While we agree with Public Knowledge that the Commission has a responsibility—and Congress and the public have an interest—in remaining informed about the nature and evolution of the cable industry,<sup>108</sup> we find today that Form 325 does not remain necessary to fulfilling that responsibility.<sup>109</sup>

### C. Burdens Imposed by Form 325 Data Collection

16. According to commenters, Form 325 is a significant burden to cable operators.<sup>110</sup> ACA reports that smaller cable operators generally spend three to five times the amount of time estimated by

(Continued from previous page) \_\_\_\_\_  
applications can be disqualifying to an applicant and may be grounds for denying an application”); *Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4021-22, para. 13 (2003) (noting that the Commission “expect[s] parties to be truthful in rulemakings and declaratory ruling proceedings” even though Section 1.17 does not apply specifically to such proceedings).

<sup>102</sup> 18 U.S.C § 1001(a) makes willful false statements to the government of the United States punishable by fine or imprisonment. This provision of the United States Code is cited in the certification section of Form 325. *See FCC Form 325, supra* note 7.

<sup>103</sup> *See* Public Knowledge Reply at 2, 4-5.

<sup>104</sup> *See 2017 Form 325 NPRM*, 32 FCC Rcd at 9907, 9913 paras. 10 (noting that the Commission does not provide Form 325 data in response to FOIA requests until three years after the initial filing date due to confidentiality requests that are routinely filed by cable operators), 24 (citing *Request for Confidentiality for Information Submitted on Forms 325 for the Year 2004*, Order, 21 FCC Rcd 2312, para. 12 (MB 2006)); *see also Time Warner Cable Request for Confidentiality*, 19 FCC Rcd at 12173, para. 11 (determining that three years is an appropriate time to withhold disclosure of data due to a “fast changing competitive environment”).

<sup>105</sup> *Id.* at 3.

<sup>106</sup> *See generally 18<sup>th</sup> Video Competition Report*, 32 FCC Rcd 568.

<sup>107</sup> *See, e.g.*, Public Knowledge Comments, MB Docket No. 16-42, CS Docket No. 97-80, at 41-42 (Apr. 22, 2016) (citing non-FCC sources in discussing the deployment of MVPD-provided and third-party devices); Petition to Deny of Free Press, MB Docket No. 15-149, at 26 (Oct. 13, 2015) (citing SNL Kagan in discussing all-digital cable deployments); Petition to Deny of Consumer Federation of America et al., MB Docket No. 14-57, at 29-48 (Aug. 25, 2014) (citing commercial sources and company annual reports in analysis of cable subscriber share and investment).

<sup>108</sup> Public Knowledge Reply at 2.

<sup>109</sup> *Id.*

<sup>110</sup> *See* ACA Comments at 10-11; NCTA Comments at 3-4; Verizon Comments at 7.

the Commission on completing Form 325.<sup>111</sup> NCTA reports member estimates of time required to complete Form 325 as averaging four to five hours for some operators and eight to ten hours for smaller operators.<sup>112</sup> Additionally, NCTA notes that larger operators may be required to file 200 or more Form 325s, “which represents 20 weeks of employee time, compressed into the Commission’s tight 60-day turn-around time.”<sup>113</sup> According to NCTA, even if the Commission’s two-hour estimate for completion of a Form 325 reflected operators’ experience, larger operators “would still need to devote 10 weeks’ worth of employee time” to complete the required forms.<sup>114</sup> Verizon estimates that completing one Form 325 takes the company approximately 12 hours—six times the Commission’s estimate—for a total of 144 hours when multiplied over 12 Physical System Identification Numbers (PSIDs).<sup>115</sup> ACA points to “several reasons for this lengthy timeframe,” including that the form requires gathering of information that is not used in the typical course of business and collaboration among employees who do not typically interface.<sup>116</sup> According to ACA, such a burden is particularly challenging for smaller operators with fewer resources at their disposal.<sup>117</sup> NCTA also asserts that, “[d]epending on internal workload and resources, some operators must hire contract workers to input data.”<sup>118</sup> In addition, both NCTA and ACA point to the need for operators to retain outside counsel “to ensure that sensitive Form 325 data is provided confidential treatment.”<sup>119</sup> While commenters did not provide estimates of the monetary costs associated with completing and filing Form 325, the limited utility of the data collected therein<sup>120</sup> cannot justify the number of hours expended by operators with limited resources in completing Form 325. Further, even the Commission’s lower estimate of two hours to complete a Form 325 for each PSID represents a burden that likely outweighs the limited usefulness of Form 325 data today. Finally, we note that the Form 325 data collection also places significant burdens on Commission staff to collect, compile, and maintain the data.<sup>121</sup>

17. Nearly 20 years ago, in the face of calls for Form 325’s elimination as a “relic of a bygone era,” the Commission elected to retain and revise it. But now, in light of the Commission’s current information needs, we find that the time has come to eliminate the form rather than attempt to resuscitate it once again. In the *NPRM*, the Commission sought comment on ways to improve Form 325, if it were retained.<sup>122</sup> In response, Public Knowledge suggests that rather than eliminate Form 325, the Commission should improve it and make better use of the data collected.<sup>123</sup> Specifically, Public Knowledge suggests that the Commission should task the forthcoming Office of Economics and

---

<sup>111</sup> Compare ACA Comments at 10 with 2017 Form 325 NPRM, Appx. B: Form 325 at 9925 (estimating the amount of time to fill out a Form 325 for one PSID as taking two hours).

<sup>112</sup> NCTA Comments at 3-4

<sup>113</sup> *Id.* at 4.

<sup>114</sup> *See id.*

<sup>115</sup> Verizon Comments at 7.

<sup>116</sup> ACA Comments at 10.

<sup>117</sup> *Id.* at 12.

<sup>118</sup> NCTA Comments at 3.

<sup>119</sup> *Id.*; see also ACA Comments at 11 (noting that “operators routinely file Motions of Confidentiality along with Form 325,” which “requires additional man hours, and in some cases the advice and assistance of outside counsel”).

<sup>120</sup> *See supra* paras. 6-10.

<sup>121</sup> *See, e.g., 2017 Form 325 NPRM*, 32 FCC Rcd at 9904, para. 4 (noting that “the processing and compilation of Form 325 data was ‘a labor intensive process for the Commission’”) (citing *1999 Form 325 Order*, 14 FCC Rcd at 4726, para. 12).

<sup>122</sup> *2017 Form 325 NPRM*, 32 FCC Rcd at 9908-13, paras. 11-24.

<sup>123</sup> Public Knowledge Reply at 5-6.

Analytics with compiling the Form 325 data, in combination with other sources, to inform and advise the Commission's decisions.<sup>124</sup> However, we find that any attempt to overhaul Form 325 to make it more up-to-date and useful would be substantial and would likely result in creating a form that would duplicate other similarly up-to-date and useful sources that already exist. At the same time, we note that our action today does not obviate the need or legal obligation to file other data with the Commission, nor does it preclude future collection of relevant cable system information by the Office of Economics and Analytics<sup>125</sup> once it is up and running.

18. In sum, we find that the Form 325 is outdated and imposes significant burdens on both cable operators and Commission staff. Because this filing requirement no longer provides sufficient offsetting benefits to justify its retention, we find that its elimination is in the public interest.

#### IV. PROCEDURAL MATTERS

19. *Final Regulatory Flexibility Act Analysis.*—As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>126</sup> the Commission has prepared an Final Regulatory Flexibility Analysis (FRFA) relating to this *Order*. The FRFA is set forth in Appendix B.

20. *Paperwork Reduction Analysis.*—This document eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 44 U.S.C. § 3501-3520. In addition, therefore, it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. § 3506(c)(4).

21. *Congressional Review Act.*—The Commission will send a copy of this *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

22. *Additional Information.*—For additional information on this proceeding, contact Jamile Kadre, [Jamil.Kadre@fcc.gov](mailto:Jamil.Kadre@fcc.gov), of the Media Bureau, Industry Analysis Division, (202) 418-2245.

#### V. ORDERING CLAUSES

23. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 303, this *Order* **IS ADOPTED**.

24. **IT IS FURTHER ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 303, the Commission's rules **ARE AMENDED** as set forth in Appendix A, effective as of the date of publication of a summary in the Federal Register.<sup>127</sup>

25. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

26. **IT IS FURTHER ORDERED** that, pursuant to Section 801(a)(1)(A) of the

---

<sup>124</sup> *Id.* at 1-2.

<sup>125</sup> *See Office of Economics and Analytics Order*, 33 FCC Rcd at 1539, para. 1 (creating the Office of Economics and Analytics to “enhance . . . the use and management of data” at the Commission). Similarly, our action today does not preclude future collection of relevant data from cable operators providing broadband and telephony services in the context of Form 477. *See 2017 Form 325 NPRM*, 32 FCC Rcd at 9906, para. 7; *supra* para. 11, note 78.

<sup>126</sup> *See* 5 U.S.C. § 604.

<sup>127</sup> These rules serve to “reliev[e] a restriction.” 5 U.S.C. § 553(d)(1).

Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of the *Order* to Congress and to the Government Accountability Office.

27. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 17-290 **SHALL BE TERMINATED** and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Final Rules**

The Federal Communications Commission amends Parts 0, 1, and 76 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

**PART 0 — COMMISSION OPERATIONS**

1. Remove § 0.408(b), OMB control no. 3060-0061, FCC form no. FCC 325.

§ 0.408(b), OMB control no. 3060-0061, FCC form no. FCC 325 **[Removed]**

**PART 1 — PRACTICE AND PROCEDURE**

and 1455, unless otherwise noted.

1. Amend § 1.1703 to read as follows:

**§ 1.1703 Definitions.**

\*\*\*\*\*

(e) Filings. Any application, notification, registration statement, or report in plain text, or, when as prescribed, on FCC Forms, 320, 321, 322, 324, or 327, whether filed in paper form or electronically.

2. Remove § 1.1705(b)(5).

§ 1.1705(b)(5) **[Removed]**

**PART 76 — MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

1. Remove § 76.403 and Note to § 76.403.

§ 76.403 and Note to § 76.403 **[Removed]**



## APPENDIX B

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)* in MB Docket 17-290.<sup>2</sup> The Commission sought written public comments on proposals in the *NPRM*, including comment on the IRFA. The Commission received no direct comments on the IRFA, although some commenters discussed the effect of the proposals on smaller entities, as discussed below. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

**A. Need for, and Objectives of, the Report and Order**

2. The *Report and Order (Order)* arises from a Public Notice issued by the Commission in May 2017, launching an initiative to modernize the Commission's media regulations.<sup>3</sup> The majority of the parties that filed comments in this proceeding agree that the information collection requirement at issue is outdated and unnecessary and should be eliminated. The *Order* finds that marketplace, operational, and technological changes have overtaken Form 325 and rendered it increasingly obsolete, as reflected by the Commission's limited use of Form 325 data and reliance on alternative sources of data that offer the accuracy, timeliness, and ongoing availability that the Commission once looked to Form 325 to provide. In addition, the *Order* finds that efforts to make Form 325 more up-to-date and useful would be substantial and would likely result in creating a form that would duplicate other similarly up-to-date and useful sources that already exist. The *Order* concludes that the Form 325 data collection represents a significant burden on cable operators, as well as on Commission staff, and that this burden outweighs the limited usefulness of Form 325 data. Accordingly, the *Order* adopts the *NPRM's* proposal to eliminate Form 325. Specifically, the *Order* eliminates: (i) the requirement that the operator of every operational cable television system that serves 20,000 or more file with the Commission a Form 325 soliciting general information and frequency and signal distribution information on a Physical System Identification Number ("PSID") basis;<sup>4</sup> and (ii) the requirement that Form 325 be filed by any cable operator with less than 20,000 subscribers selected by random sampling.<sup>5</sup>

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

3. No comments were filed in direct response to the IRFA.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>6</sup> The Chief Counsel did not file any comments in response to this proceeding.

---

<sup>1</sup> See 5 U.S.C. § 603. The RFA, see U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

<sup>2</sup> *FCC Form 325 Data Collection*, Notice of Proposed Rulemaking, 32 FCC 9916 (2017), Appx. A.

<sup>3</sup> *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

<sup>4</sup> 47 CFR § 76.403.

<sup>5</sup> Note to 47 C.F.R. § 76.403.

<sup>6</sup> 5 U.S.C. § 604(a)(3).

#### D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted.<sup>7</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>8</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>9</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>10</sup> The final rules adopted herein affect small television and radio broadcast stations and small entities that operate daily newspapers. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

6. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.<sup>11</sup> In addition, under the Commission's rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>12</sup> Industry data indicate that there are currently 4,300 active cable systems in the United States.<sup>13</sup> Of this total, 3,550 cable systems have fewer than 15,000 subscribers, and 750 systems have 15,000 or more subscribers.<sup>14</sup> Thus, we estimate that most cable systems are small entities.

7. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250 million.”<sup>15</sup> There are approximately 51,859,070 cable video subscribers in the United States today.<sup>16</sup> Accordingly, an operator serving fewer than 518,590 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>17</sup> Based on available data, we find that all but six incumbent cable

---

<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. § 601(6).

<sup>9</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>10</sup> 15 U.S.C. § 632.

<sup>11</sup> 47 CFR § 76.901(e).

<sup>12</sup> 47 CFR § 76.901(c).

<sup>13</sup> August 24, 2017 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>14</sup> *Id.*

<sup>15</sup> 47 U.S.C. § 543(m)(2); see 47 CFR § 76.901(f) & nn.1-3.

<sup>16</sup> See S&P Global Market Intelligence, *Multichannel Industry Benchmarks*, <https://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx> (last visited Mar. 19, 2018).

<sup>17</sup> See 47 § CFR 76.901(f) & nn.1-3.

operators are small entities under this size standard.<sup>18</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>19</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

**E. Description of Reporting, Record Keeping, and Other Compliance Requirements for Small Entities**

8. The *Order* eliminates the rule requiring cable system operators to complete Form 325. Accordingly, the *Order* does not impose any new reporting, recordkeeping, or compliance requirements for small entities. The *Order* thus will not impose additional obligations or expenditure of resources on small businesses.

**F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>20</sup>

10. In this proceeding, the Commission has three chief alternatives available for Form 325—eliminate the form, modernize and streamline it, or retain it. The Commission finds that marketplace, operational, and technological changes have overtaken Form 325 and rendered it increasingly obsolete, as reflected by the Commission’s limited use of Form 325 data and reliance on alternative sources of data that offer the accuracy, timeliness, and ongoing availability that the Commission once looked to Form 325 to provide. The Commission finds further that eliminating the form will benefit small entities by reducing the burden and costs of compliance. Thus, the *Order* eliminates the obligation for cable systems to file Form 325. Eliminating this requirement is intended to modernize the Commission’s regulations and reduce costs and recordkeeping burdens for affected entities, including small entities. According to commenters, small entities spend as many as ten hours completing Form 325.<sup>21</sup> Under the revised rules, affected entities no longer will need to expend time and resources collecting, maintaining, and organizing the information requested in the form or completing the form. Therefore, removing this information collection requirement will help small entities in particular to cut unnecessary costs related to gathering the information requested in Form 325 and completing the form. Thus, we anticipate that affected small entities will benefit from these revisions.

**G. Report to Congress**

11. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>22</sup> In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the

---

<sup>18</sup> See S&P Global Market Intelligence, *Top Cable MSOs*, <https://platform.mi.spglobal.com/web/client?auth=inherit#industry/topCableMSOs> (last visited Mar. 19, 2018).

<sup>19</sup> The Commission receives such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator. See 47 CFR §§ 76.901(f), 76.990(b).

<sup>20</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>21</sup> See ACA Comments at 10; NCTA Comments at 3-4.

<sup>22</sup> See 5 U.S.C. § 801(a)(1)(A).

*Order* and FRFA (or summaries thereof) will also be published in the Federal Register.

**H. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule**

12. None.

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *FCC Form 325 Collection*, MB Docket No. 17-290; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105

The musician Frank Zappa wrote, “It isn’t necessary to imagine the world ending in fire or ice. There are two other possibilities: one is paperwork, and the other is nostalgia.” Now, I’ll admit that my statements sometimes invoke nostalgia. But the FCC is doing what it can to ensure that the world doesn’t end in paperwork.

At the vanguard of that effort is our Modernization of Media Regulation Initiative. For some time, we’ve been looking to free cable operators and broadcasters from unnecessary paperwork. And today, we advance this goal by eliminating something called Form 325.

Back when cable television was young, the FCC began collecting data via Form 325 to see how cable systems were developing. Among other things, Form 325 tracks information on subscriber numbers, equipment, frequency, and signal distribution. But the cable industry has changed drastically over the past half-century. So too has information about them: There are plenty of other sources of industry information.

That’s why the Commission in recent years has rarely used the data collected by Form 325. Instead, we’ve relied on information from other authoritative sources. In sum: It is a burden to submit and collect this information, with little benefit for all involved. So today, we make the logical decision to free cable operators from the burden of filling out Form 325.

I’d like to thank the dedicated Commission staff for their ongoing work to modernize our media regulations and save the world from ending in paperwork. From the Media Bureau, thank you to Ty Bream, Michelle Carey, Martha Heller, Brendan Holland, Tom Horan, Jamile Kadre, and Holly Saurer, and from the Office of General Counsel, Susan Aaron and Dave Konczal.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *FCC Form 325 Collection*, MB Docket No. 17-290; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105

The premise at the heart of this rather innocuous, but important, proceeding is eliminating a reporting requirement that no longer makes any sense. Arguments can be made that the Form 325 data is duplicative or that is no longer relevant. Under either scenario, the action taken in the item is appropriate and earns my strong support.

On a larger note, this item is part of a series of proceedings to help modernize existing Commission regulations imposed on broadcast and cable companies. It is both appropriate and exciting to see this one completed, and I hope that we can quickly move to the eight or so other items that have already been briefed and should be ready to go to final action. Concurrently, we should turn our attention to finding the next dozen, and the next dozen, and the dozen after that of unnecessary rules and reporting requirements that can be eliminated.