

**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 3060-0568
)
73 Fed. Reg. 22,945)

Attn: Cathy Williams
Nicholas A. Fraser

PAPERWORK REDUCTION ACT COMMENTS OF THE



Matthew M. Polka
President
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Nicole E. Paolini-Subramanya
Scott C. Friedman
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
4103 W Street, N.W., Suite 202
Washington, DC 20007
(202) 494-5661

Attorneys for the American Cable
Association

May 28, 2008

I. Introduction

In February 2008, the FCC released an order mandating new and highly burdensome information collection requirements for commercial leased access (“New Requirements”).¹ The New Requirements violate the Paperwork Reduction Act (“PRA”) and the OMB’s regulations² for a number of reasons, including:

- The FCC did not make efforts to reduce the burden of the New Requirements for small business concerns; and
- The FCC grossly underestimates the burden of the New Requirements on small and medium-sized cable operators.

Accordingly, the American Cable Association (“ACA”) requests that the OMB disapprove the New Requirements. In addition, ACA strongly supports the comments of the National Cable & Telecommunications Association (“NCTA”) and Comcast Corporation (“Comcast”) filed earlier in this docket.³

About the American Cable Association. ACA represents nearly 1,100 small and medium-sized cable companies that serve about 7.5 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators with small

¹ *In the Matter of Leased Commercial Access*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 2909 (2008). These requirements are summarized in *Notice of Public Information Collection Requirement Submitted to OMB for Review and Approval; Comments Requested*, 37 Fed. Reg. 22,945 (Apr. 23, 2008) (“Notice”).

² 5 C.F.R. §§ 1320.1 *et seq.*

³ *Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 73 Fed. Reg. 8315 (Feb. 13, 2008); *Paperwork Reduction Act Comments of the National Cable & Telecommunications Association*, (filed Apr. 14, 2008) (“NCTA’s PRA Comments”); *Letter of Comcast Corporation* (filed Apr. 14, 2008) (“Comcast’s PRA Comments”).

systems in small markets. More than half of ACA's members serve fewer than 1,000 subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets.

II. The FCC did not make efforts to reduce the burden of the New Requirements on small business concerns.

In its *Supporting Statement* filed in this proceeding,⁴ FCC staff estimates the total annual burden of the New Requirements to be a mere twenty-seven hours per cable system.⁵ These twenty-seven hours consist of an estimated six hours to maintain sufficient supporting documentation to justify leased access rates, one hour to identify a third-party billing and collection service and make that information available, fifteen hours to meet the customer service requirements in 47 C.F.R. § 76.972, and five hours to compile and file the annual report.⁶

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 (if that many). Even if FCC staff's meager burden estimates were correct, these very small cable operators do not have the administrative or financial resources to spend twenty-seven hours on leased access for each of their cable systems every year. Nonetheless, the FCC's New Requirements force these tiny companies to put together

⁴ *Federal Communications Commission Supporting Statement, Commercial Leased Access*, OMB Control Number: 3060-0568 (April 2008) (“*Supporting Statement*”).

⁵ This twenty-seven hour figure is for day-to-day leased access information collection requirements only. The *Supporting Statement* also includes estimates of the burden of defending against anticipated leased access complaints.

⁶ *Supporting Statement* at 8-9.

the same, voluminous information disclosures as Comcast and Time Warner, and the same extensive annual report.

In short, the FCC has virtually ignored its mandate under 44 U.S.C. § 3506(c)(3)(C) to reduce the burdens of the New Requirements on small entities, and its mandate under 44 U.S.C. § 3506(d) 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.⁷ Surely the public policy interest in commercial leased access is not so much stronger than that in equal employment opportunity and political matters.

For this reason alone, the OMB must disapprove the New Requirements. But there is another reason that the OMB must disapprove these information collection obligations: FCC staff's burden estimates are manifestly inaccurate.

III. The FCC grossly underestimates the burden of its commercial leased access information collection requirements on small and medium-sized cable operators.

Interviews with the cable operators that will actually have to carry out the New Requirements show that they are 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:

Buckeye CableSystem. Buckeye CableSystem is one of ACA's largest and well-staffed members. The company's two cable systems provide cable television, high-speed Internet, and digital telephone service to approximately 149,000 subscribers in Ohio. The company has just under 500 employees. Currently, Buckeye

⁷ See, e.g., 47 C.F.R. §§ 76.77, 76.1700.

CableSystem carries no leased access programming, although the company's systems do have local origination channels that carry city council meetings, programming on community issues, and programming provided by local churches.

The FCC estimates that Buckeye CableSystem will spend a total of fifty-four hours a year (twenty-seven hours for each of its two cable systems) on leased access.⁸

In contrast, Buckeye CableSystem's analysis shows that the company will need to hire an \$80,000/year full-time employee to handle the flood of leased access requests that it will face once word gets out that under the FCC's new rate formula, a leased access programmer can occupy a channel on Buckeye CableSystem's digital basic tier 24x7 for free.⁹

Liberty. Liberty provides cable television, high-speed Internet, and digital telephone service over a single cable system to over 120,000 subscribers in Puerto Rico. The company has approximately 470 employees. Currently, the company has no leased access programmers, and has had only one request for leased access in the last four years (the programmer opted not to purchase access). Despite the fact that leased access is non-existent in Liberty's service area,¹⁰ the FCC's new leased access regulations will require Liberty to compile a significant amount of information on rates,

⁸ See note 5, *supra*.

⁹ Buckeye CableSystem did not include the burden of responding to potential leased access complaints in its analysis. Leased access complaints would require additional financial and administrative resources.

¹⁰ Liberty's experience is not unique. The five cable operators interviewed for these comments by ACA collectively operate 24 cable systems serving nearly 800,000 subscribers. Not a single one had any leased access programming on any of their cable systems. Most hadn't had even a request for information on leased access in years. The dearth of interest from the public in leased access shows that, in violation of 5 C.F.R. § 1320.5(d)(1)(i) and (d)(1)(iii), the information collection mandated by the FCC is needlessly burdensome and has no practical utility in the real world. See also *Comcast's PRA Comments* at 11-15; *NCTA's PRA Comments* at 15-20.

how the rates were calculated, channel availability, the process for requesting leased access, etc. In addition, the company will be required to submit an extensive annual report on leased access to the FCC.¹¹

Like Buckeye CableSystem, Liberty has determined that the New Requirements will require Liberty to hire a new employee just to administrate leased access. This will cost Liberty approximately \$100,000 per year. And this is for just one cable system.¹²

IV. Conclusion

In violation of the PRA and OMB regulations, the FCC has failed to mitigate the burden that its New Requirements impose on small business concerns. Moreover, the FCC has grossly underestimated the burden that the New Requirements will impose on all cable operators. For these reasons, OMB must disapprove the New Requirements.

¹¹ For a description of the new information disclosures and annual reporting requirements, see 47 C.F.R. §§ 76.972(a) and 76.978. See also *NCTA's PRA Comments* at 4-7; *Comcast's PRA Comments* at 5-8.

¹² Liberty did not include the burden of responding to potential leased access complaints in its analysis. Leased access complaints would require additional financial and administrative resources.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION



By: _____

Matthew M. Polka
President
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Nicole E. Paolini-Subramanya
Scott C. Friedman
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
4103 W Street, N.W., Suite 202
Washington, DC 20007
(202) 494-5661

Attorneys for the American Cable
Association

May 28, 2008