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**VIA ELECTRONIC MAIL**

Ms. Cathy Williams  
Federal Communications Commission  
Office of Managing Director  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: OMB Control No. 3060-0849, Commercial Availability of Navigation Devices**

Dear Ms. Williams:

NCTA - The Internet & Television Association<sup>1</sup> hereby submits its comments pursuant to the Commission's Notice and Request for Comment regarding certain FCC information collection requirements.<sup>2</sup> As demonstrated below, applying the relevant Paperwork Reduction Act ("PRA") standards, the Commission should not renew its 2005 CableCARD reporting requirement which is now applicable to only four MVPDs and, in any event, has become outdated and unnecessary. Indeed, that requirement – which is not embodied in any FCC rule – should be terminated.

Under the Paperwork Reduction Act,<sup>3</sup> the Commission must demonstrate to the Office of Management and Budget ("OMB") "that it has taken every reasonable step to ensure that the proposed collection of information ... is the least burdensome necessary for the proper performance of the [Commission's] functions to comply with legal requirements and achieve program objectives" and that it has "practical utility."<sup>4</sup> The Commission must periodically conduct "an evaluation of the continued need for such collection" based upon the contemporary circumstances at the time it requests renewal by OMB,<sup>5</sup> and may not enforce information

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<sup>1</sup> NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving approximately 85 percent of the nation's cable television households, more than 200 cable program networks, and others associated with the cable industry.

<sup>2</sup> Notice and Request for Comments, Information Collection Being Reviewed by the Federal Communications Commission, 82 FR 12093-94 (Feb. 28, 2017).

<sup>3</sup> 44 U.S.C. §§ 3501-3520.

<sup>4</sup> 5 C.F.R. § 1320.5(d)(1).

<sup>5</sup> 5 C.F.R. § 1320.8(a)(1).

collection mandates that fail to be renewed under this standard.<sup>6</sup> Recent Commissioner statements have underscored the need to give rigorous scrutiny to information collection renewals for regulations that have outlived their purpose or usefulness. Chairman Pai has called for the Commission to “remove outdated and unnecessary regulations,”<sup>7</sup> and Commissioner O’Reilly, referring specifically to paperwork reduction reviews, has urged the Commission to “repeal or simplify existing regulations that are unnecessary, burdensome or harmful to the economy.”<sup>8</sup>

On February 28, 2017, the Commission issued a public notice seeking comment on the upcoming expiration of OMB’s approval of certain information collections associated with the Commission’s oversight of Section 629 of the Communications Act regarding the availability of competitive navigation devices.<sup>9</sup> NCTA respectfully submits that, under the standards of the PRA, the Commission should not seek renewal of OMB approval of the information collection for its 2005 CableCARD reporting requirement, which has become outdated and unnecessary.

### **The Commission Should Not Seek OMB Approval of the Outdated Quarterly CableCARD Reporting Requirement**

Twelve years ago, the Commission included a requirement (in a 2005 Order temporarily extending the integration ban) that the then-largest cable operators submit quarterly reports on CableCARD inventories, prices, and installations. Those reports have long since outlived their purpose and usefulness.

The 2005 Second Report and Order granted a second extension of the “integration ban” for twelve months until July 2007.<sup>10</sup> The integration ban required cable operators to stop using integrated security in their new set-top boxes, in order to promote confidence in the separable security CableCARDs provided to customers for use in customer-owned set-top boxes purchased at retail.<sup>11</sup> In connection with the extension of the integration ban, this order imposed three

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<sup>6</sup> 5 C.F.R. § 1320.6 (no person shall be subject to any penalty for failing to comply with a collection of information that is subject to the requirements of this part if: (1) The collection of information does not display ... a currently valid OMB control number assigned by the Director in accordance with the Act; or (2) The agency fails to inform the potential person who is to respond to the collection of information, in accordance with § 1320.5(b)(2), that such person is not required to respond to the collection of information unless it displays a currently valid OMB control number.”).

<sup>7</sup> *Remarks of FCC Commissioner Ajit Pai Before the Free State Foundation’s Tenth Anniversary Gala Luncheon*, Ajit Pai (Dec. 7, 2016) available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-342497A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-342497A1.pdf).

<sup>8</sup> *Taking Stock of FCC Paperwork Burdens*, FCC Blog, Michael O’Reilly, FCC Commissioner (Mar. 3, 2017) (stating that the Commission has a disproportionate amount of OMB-approved information collections in relation to other federal agencies, amounting to 73 million hours and \$800 million annually), available at <https://www.fcc.gov/news-events/blog/2017/03/03/taking-stock-fcc-paperwork-burdens>.

<sup>9</sup> Notice and Request for Comments, Information Collection Being Reviewed by the Federal Communications Commission, 82 FR 12093-94 (Feb. 28, 2017).

<sup>10</sup> *See Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd 6794 (2005) (Second Report and Order).

<sup>11</sup> *See Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14793 (1998) (First Report and Order).

separate reporting requirements on the cable industry, including the CableCARD reporting requirement, to assist the Commission in monitoring cable operator support for retail CableCARD-enabled devices and in evaluating any future request for further relief from the integration ban.<sup>12</sup>

The two other reporting requirements established by the Second Report and Order have since been discontinued. One had required cable operators to report on the progress towards a downloadable security solution. The Commission did not require subsequent reporting, and downloadable security has since been deployed by Cablevision and Charter. In 2010, the Commission also eliminated the second reporting obligation that had required NCTA and the Consumer Electronics Association to file reports on their negotiations, since those negotiations had concluded.<sup>13</sup>

Chairman Pai has identified the third reporting requirement as one squarely in line for removal as an outdated and unnecessary regulation. This reporting requirement – which is the subject of these Comments – called for the then-largest cable operators to submit quarterly reports on CableCARD inventories, prices, and installations, and on their progress in developing a multistream CableCARD.<sup>14</sup> This reporting requirement has outlived its usefulness. In his recent letter to Chairman Walden, Chairman Pai has explained that “eliminating the current CableCARD reporting requirement” is a prospect for immediate action.<sup>15</sup> Multistream CableCARDS were deployed in 2007 and are now the norm.<sup>16</sup> Cable operator support for retail CableCARD devices is routine and the quarter-to-quarter reports are repetitive and uninformative. And the integration ban rule that was a key motivating factor behind adoption of the reporting requirement was repealed by Congress in 2014.<sup>17</sup> Moreover, the Commission has

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<sup>12</sup> Second Report and Order, ¶36.

<sup>13</sup> *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Third Report and Order and Order on Reconsideration, 25 FCC Rcd 14657, 14682-83, ¶52 (2010) (Third Report and Order).

<sup>14</sup> Specifically, the Commission required the reports to include: (1) the general availability of CableCARDS; (2) the number of CableCARDS currently in service and how those devices are placed in service; (3) whether service appointments are required for all CableCARD installations; (4) the average number of truck rolls required to install a CableCARD; (5) the monthly price charged for a CableCARD and the average cost of installation; (6) problems encountered in deploying CableCARDS and how those problems have been resolved; (7) the process in place for resolving existing and newly discovered CableCARD implementation problems; and (8) the effort to develop and deploy a multistream CableCARD. *See* Second Report and Order at 6814-15, ¶39.

<sup>15</sup> Letter from Hon. Ajit Pai, Chairman, FCC, to Hon. Greg Walden, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (April 13, 2017) (“In particular, the FCC sought comment on eliminating the current CableCARD reporting requirement, and I do not want to impede our ability to take appropriate action with respect to this regulation in an efficient manner ...”)

<sup>16</sup> *See* Third Report and Order ¶33 (“All new devices require multi-stream CableCARDS, and multi-stream CableCARDS have been standard equipment since 2007.”); *see also* Letter from Judson D. Cary, Deputy General Counsel, CableLabs, to Marlene H. Dortch, Secretary, FCC, CS Docket No. 97-80 (Nov. 13, 2006) at 1 (reporting that CableLabs and consumer electronics parties “have reached an agreement for implementing a test suite for a unidirectional digital cable ready device (UDCP) to use a multi-stream CableCARD (‘M-Card’) in M-Mode”).

<sup>17</sup> Section 106 of the STELA Reauthorization Act of 2014, Pub. L. 113-200, 128 Stat. 2063 (2014).

appeared to recognize the diminishing utility of the reports. In this regard, the Media Bureau barely cited to the reports in its latest Video Competition Report, which used them only to report on the number of CableCARDS provided by the ten largest cable operators for use in retail devices and the number of CableCARDS they had deployed in their own set-top boxes in accordance with the Commission's integration ban – a rule that the report acknowledged had been repealed.<sup>18</sup>

In addition, the data from the CableCARD reports no longer provide an accurate picture of MVPD support for consumer use of retail navigation devices. The number of retail CableCARD-enabled devices is now dwarfed by the millions of tablets, smartphones, Smart TVs, gaming stations, and other video devices that consumers now routinely use to access their MVPD service via MVPD apps. As of mid-2015, there had been more than 56 million downloads of MVPD apps to iOS and Android devices alone, with millions more occurring every month.<sup>19</sup> Roku – a retail navigation device that includes apps by Comcast, Charter, and many other video providers – alone has more than 13 million active accounts.<sup>20</sup>

Beyond giving an inaccurate snapshot of customer usage of retail devices to get their MVPD service, the required report only covers a limited subset of MVPD providers. The CableCARD reports are now only required to be submitted by four companies out of all MVPDs, and not by AT&T, now the largest MVPD in the country, or the other satellite or telco providers, which now collectively serve half the multichannel market. In this significantly-changed marketplace, the CableCARD reports no longer have any “practical utility” and are not “necessary for the proper performance of the functions of the Commission.”<sup>21</sup>

The production of these detailed reports every ninety days imposes a significant, needless burden on the four cable operators still under this mandate. They have been required to track and compile data from millions of transactions over the course of preparing the 250 reports that have been filed over the past 43 quarters, the most recent one last week. At a time when the Commission is explicitly seeking to review and eliminate unnecessary burdens imposed by outdated information collections, under the standards of the PRA, the Commission should not seek an extension of approval for this continued information collection.

No rulemaking is required to allow PRA approval for this reporting requirement to expire. The Commission never codified the reporting requirement in its rules. Instead, it indicated that it would later terminate the requirement in a future proceeding, and cited PRA's

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<sup>18</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, DA 17-71 at ¶¶192-193 (Jan. 17, 2017).

<sup>19</sup> DSTAC Final Report at 262 (DSTAC WG4 at 127).

<sup>20</sup> Roku Ends Milestone Year With 1 Billion Monthly Streaming Hours (Feb. 28, 2017), available at <http://newsroom.roku.com/press-release/press-releases-usa/roku-ends-milestone-year-1-billion-monthly-streaming-hours>.

<sup>21</sup> 44 U.S.C. § 3504.

requirement for reapproval every three years.<sup>22</sup> When the Commission sought comment in 2016 on whether it should eliminate this quarterly reporting requirement, only one party, the Consumer Video Choice Coalition (CVCC), commented in favor. It did so almost as an afterthought, with no explanation of any benefit of the reports.<sup>23</sup> The record is more than adequate to determine that the requirement should finally expire.

### **Conclusion**

For the foregoing reasons, the Commission should not seek OMB approval for further information collections associated with the quarterly CableCARD report from the largest cable operators and that requirement should be terminated.

Respectfully submitted,

**/s/ Neal M. Goldberg**

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<sup>22</sup> Second Report and Order, ¶39 (“The Commission will indicate in a future proceeding when the CableCARD status reports will terminate.”) and n.168 (“We note that under the Paperwork Reduction Act, the Office of Management and Budget grants approval for such document collections for three years, subject to renewal.”).

<sup>23</sup> CVCC Comments at 48, MB Docket No. 16-42 (filed Apr. 25, 2016) (stating only that “[t]he Commission should retain its CableCARD support and reporting rules”).