

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matters of)	
)	
FCC Form 325 Data Collection)	MB Docket No. 17-290
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105
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**COMMENTS OF
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits these comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned dockets.¹ The *NPRM* seeks comment on whether the Commission should eliminate the FCC Form 325 or, in the alternative, on ways to modernize and streamline the form. ITTA again urges the Commission to eliminate the Form 325. In the event the Commission nevertheless retains it, ITTA supports various ways to streamline it and make it less burdensome.

I. THE COMMISSION SHOULD ELIMINATE FCC FORM 325

In the 2017 Modernization of Media Regulation Initiative proceeding, ITTA concurred with commenters advocating for elimination of the Form 325.² ITTA noted that the Form 325 dates back over 50 years and was last holistically reviewed in 1999,³ and as the Commission observes, in the intervening years there have been significant changes in the multichannel video

¹*FCC Form 325 Data Collection; Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 32 FCC Rcd 9902 (2017) (*NPRM*).

² See ITTA Reply Comments, MB Docket No. 17-105, at 8-9 (Aug. 4, 2017) (ITTA Reply Comments); see also NCTA Comments, MB Docket No. 17-105, at 29-30 (July 5, 2017); ACA Comments, MB Docket No. 17-105, at 26-27 (July 5, 2017) (ACA Comments); Verizon Comments, MB Docket No. 17-105, at 17-18 (July 5, 2017) (Verizon Comments), *NPRM*, 32 FCC Rcd at 9905, para. 5.

³ See ITTA Reply Comments at 8.

programming distributor (MVPD) marketplace and in the way cable systems operate.⁴ ITTA also pointed out that Form 325 requires cable operators to report information that is otherwise publicly available or provided to the Commission via other required filings.⁵ The *NPRM* acknowledges several commercial sources of cable operator-related data that the Commission “routinely” cites,⁶ as well as overlap between information that the Form 325 collects and information that the Commission receives via other data collections.⁷ Against the backdrop of transformations in the industry over the past couple of decades combined with the availability of cable operator-related data via commercial sources and other Commission-required collections, the burdens associated with compiling the information and completing the Form 325 simply are not justified.⁸

The balance towards elimination of the Form 325 tilts even further, however, when viewed in the context that the Commission rarely utilizes its fruits. 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.⁹ The Media Bureau has called the utility of the Form 325 into question, stating that it “yield[s] limited information about a small group of systems and may omit many relevant systems or geographic areas,” and “does not provide data on a granular level

⁴ See *NPRM*, 32 FCC Rcd at 9902, 9905-06, paras. 1, 6-7.

⁵ See ITTA Reply Comments at 8; see also ACA Comments at 27.

⁶ See *NPRM*, 32 FCC Rcd at 9902, 9907, paras. 1, 9.

⁷ See *id.* at 9906, para. 7; see also *id.* at 9928, Statement of Commissioner Michael O’Rielly (Commissioner O’Rielly Statement) (“All of th[e Form 325] information is publicly available from a host of alternative sources.”).

⁸ See *id.* at 9902, para. 1 (Commission considering continued need for Form 325 information collection and whether to eliminate it in light of transformations in the industry, commercial availability of cable operator-related data, and filing burdens).

⁹ See *id.* at 9907, para. 9 n.32.

such that it could be used for a DMA or county level analysis.”¹⁰ And Commissioner O’Rielly appropriately and succinctly notes that the Form 325 “does not serve an actual purpose.”¹¹

Following recent initiatives to streamline agency data collections in order to lessen burdens on regulatees,¹² Form 325 is a model candidate for elimination.

II. IN THE ABSENCE OF ELIMINATING THE FORM 325, THE COMMISSION SHOULD STREAMLINE IT AND ADOPT OTHER MEASURES TO REDUCE ITS BURDENSOMENESS

In the event the Commission does not eliminate the Form 325, the *NPRM* addresses numerous ways that it could be streamlined. For example, ITTA supports the *NPRM*’s tentative conclusion that the Form 325 should no longer include the collection of channel line-up information to the extent the form is retained.¹³ As the *NPRM* notes, programming information is available from cable operator websites and third-party guide services.¹⁴

ITTA also supports the *NPRM*’s tentative conclusion that if the form is retained, it should no longer collect modem and telephony subscriber data, in light of such data already being collected on the FCC Form 477.¹⁵ If, however, the Commission continues to require reporting of subscriber numbers on the Form 325, it should retain the existing instruction for how bulk rate

¹⁰ *Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014*, Report, 31 FCC Rcd 5463, 5479, para. 34 & n.116 (MB 2016). Due to more “pressing demands,” the Commission did not require operators to file the form for several years in the 1990s. *See 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, 4722, para. 4 (1999).

¹¹ Commissioner O’Rielly Statement, 32 FCC Rcd at 9928.

¹² *See NPRM*, 32 FCC Rcd at 9902, para. 1 n.1.

¹³ *See id.* at 9911, para. 19.

¹⁴ *See id.*

¹⁵ *See id.* at 9909, para. 15.

customers are calculated for the form.¹⁶ In recent comments in the Commission's regulatory fees proceeding, ITTA advocated that the Commission keep the current bulk rate calculation, insofar as it continues to function reasonably well as a proxy for the number of subscribers in a multiple dwelling unit (MDU). Having now been in place for nearly a decade, it affords providers predictability. Elimination of the bulk rate calculation, forcing MVPDs to implement an alternative mechanism such as counting each subscriber within an MDU, would therefore impose unnecessary costs on MVPDs, with no corresponding benefit given ITTA's belief that the bulk rate calculation continues to function well.¹⁷

If it retains the Form 325, the Commission also should adopt measures to alleviate its burdensomeness. ITTA reiterates its call in its Modernization of Media Regulation Initiative proceeding comments that the Commission should no longer require the form to be completed for systems with less than 20,000 subscribers.¹⁸ If, nevertheless, the Commission continues to require some smaller systems to file the form, it should stagger the filings so that each smaller system need only file once every five years, rather than via random sampling.¹⁹ Staggering the filings would ensure that the Commission receives data each year, and ensure that no particular system is sampled disproportionately. Doing so every five years would reduce the burdens for many systems, yet still lead to the Commission receiving more data than it does now (if the Commission does not exempt systems with fewer than 5,000 subscribers). The Commission also

¹⁶ See *id.* (seeking comment on whether to change the approach relative to calculating bulk rate customers for reporting on Form 325).

¹⁷ See ITTA Comments, MD Docket No. 17-134, at 1-2 (Dec. 1, 2017).

¹⁸ See ITTA Reply Comments at 9 n.33. It therefore follows that ITTA supports the *NPRM's* tentative conclusion that, "at a minimum," the Commission should exempt systems that serve fewer than 5,000 subscribers and are not affiliated with a larger operator from filing Form 325. *NPRM*, 32 FCC Rcd at 9912, para. 22.

¹⁹ See *NPRM*, 32 FCC Rcd at 9912, para. 22 (seeking comment on whether, instead of randomly sampling smaller systems annually, the Commission should require smaller systems to file the report pursuant to set intervals).

should establish a fixed filing date if it retains the form.²⁰ Together with filing at staggered five-year intervals, this measure would provide system operators abundant advance notice of when they will have to file, correspondingly facilitating their planning.²¹

Finally, if the Commission retains Form 325, ITTA urges the Commission to automatically designate certain of the form's sections as confidential for all filers.²² Form 325 filings are "routinely" accompanied by confidentiality requests.²³ Automatically designating certain portions of the form as confidential will relieve burdens on filers to request confidentiality, as well as burdens on Commission staff to process those requests and ensure the forms are handled properly. If the Commission does not adopt this measure, at a minimum, it should provide a mechanism for filers to request confidentiality within the form, which would streamline the process and reduce burdens.²⁴

²⁰ *See id.* at para. 23.

²¹ *Id.* ("We believe this approach could simplify the annual reporting process and add certainty and efficiency to the operator's workflow and that of the Commission").

²² *See id.* at 9913, para. 24 (seeking comment on whether to adopt any standard confidentiality procedures for Form 325).

²³ *Id.*

²⁴ *See id.*

III. CONCLUSION

With the combined infirmities of the Form 325 being redundant, not serving any clear purpose, and involving several hours to complete, ITTA encourages the Commission to abandon it once and for all, consistent with recent actions clearing regulatory underbrush. If the Commission nevertheless retains the Form 325, it should streamline it considerably, as well as implement process changes to alleviate the burdensomeness of filing.

Respectfully submitted,

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