



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
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DA 09-44

Released: January 16, 2009

Media Bureau Seeks Comment on a Cable Subscribership Survey for the Collection of Information Pursuant to Section 612(g) of the Communications Act

MB Docket No. 07-269

Comment deadline: February 17, 2009
Reply comment deadline: March 14, 2009

1. As part of its 13th Annual Report to Congress on the status of competition in the market for the delivery of video programming, the Commission decided to require each cable operator to submit information necessary to determine whether the so-called “70/70 test” set forth in section 612(g) of the Communications Act, as amended, has been met.¹ By this Public Notice, we seek comment on the attached Cable Subscriber Survey form that we propose to use for this purpose.²

2. Section 612(g) of the Act states that: (1) “at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States” and (2) “are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources.”³

3. In the 13th Annual Report, the Commission noted that there is no disagreement that the first prong of the 70/70 test has been met.⁴ However, the Commission found that alternative estimates

¹ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, MB Docket Nos. 06-189, FCC 07-206 (rel. Jan. 16, 2009) at ¶ 43 (“13th Annual Report”).

² This information collection must be submitted to the Office of Management and Budget (“OMB”) for review under Section 3507(d) of the Paperwork Reduction Act of 1995 (“PRA”), Public Law 104-13 44; U.S.C. § 3507(d). The OMB process requires the Commission to first publish a notice in the Federal Register notifying the public of its intent to conduct this survey. The public will have 60 days to comment on this Federal Register notice. At the end of that comment period, the Commission will submit the survey questionnaire to OMB for review along with a Paperwork Reduction Act Submission (OMB Form 83-1) and a Supporting Statement that provides a justification for the information collection and an explanation of the reporting burdens it will impose.

³ 47 U.S.C. § 532(g). This provision was added to the Communications Act by the Cable Communications Policy Act of 1984 (“1984 Cable Act”), Pub. L. No. 98-549, 98 Stat. 2779.

⁴ See 13th Annual Report at ¶ 34.

yielded different conclusions about whether the second prong of the test had been met, *i.e.*, whether 70 percent of the households passed by cable systems with 36 or more channels subscribe to these systems.⁵ Specifically, the Commission found that based on data from Warren Communications News, the second prong of the 70/70 test has been met. Data from other sources, however, did not demonstrate that the second prong has been met.

4. As a result, the Commission found that the only way to accurately conclude that the 70/70 test has been met is to have the cable industry provide the relevant data directly to the Commission.⁶ The Commission stated that each cable operator must submit the following information, on a zip code basis, for each of its systems within 60 days.⁷ This information must be filed for years 2006 and 2007.⁸

1. Total number of homes the cable operator currently passes;
2. Total number of homes the cable operator currently passes with 36 or more activated channels;
3. Total number of actual subscribers, including all subscribers in MDUs; and
4. Total number of subscribers with 36 or more activated channels.⁹

Procedural Matters:

a. Ex Parte Rules

5. This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under section 1.1206(b) of the Commission’s rules.¹⁰ *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.¹¹ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

⁵ *Id.* at ¶¶ 35-42.

⁶ *Id.* at ¶ 43.

⁷ The required information must be filed within 60 days after OMB approves the information collection and survey form. We will announce the filing deadline in a subsequent Public Notice.

⁸ Any false certification made to the Commission may be punished by fine and/or imprisonment under 18 U.S.C. § 1001. We also emphasize that any false information provided to the Commission pursuant to the requirements set forth above may be similarly punished under 18 U.S.C. § 1621. A cable operator may certify to the Commission that it does not possess such information for calendar year 2006 and that it is not possible for the operator to compile such data for calendar year 2006.

⁹ 13th Annual Report at ¶ 43.

¹⁰ See 47 C.F.R. § 1.1206(b); see also 47 C.F.R. §§ 1.1202, 1.1203.

¹¹ See 47 C.F.R. § 1.1206(b)(2).

b. Filing Requirements

6. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.¹² Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.¹³

7. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

8. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

9. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

10. Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

¹² See 47 C.F.R. §§ 1.415, 1.419.

¹³ See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

11. Contact Information. For additional information, contact Marcia Glauberman or Dana Scherer, (202) 418-2330, Media Bureau, Industry Analysis Division. Press inquiries should be directed to Mary Diamond, (202) 418-2388. TTY: (202) 418-0432 or (888) 835-5322.

By the Chief, Media Bureau

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ii. Number of homes passed plus unoccupied/seasonal homes _____

Select calculation method (check all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Company/System engineering database | <input type="checkbox"/> Data from State or Local Governments |
| <input type="checkbox"/> Company/System billing database | <input type="checkbox"/> System ride-out/walk-out or system map |
| <input type="checkbox"/> Other Company database (specify next to "other") | <input type="checkbox"/> Data provided by previous owner |
| <input type="checkbox"/> Data from the U.S. Census Bureau or other Federal Government source | <input type="checkbox"/> Data from commercial sources (specify next to "other") |
| | <input type="checkbox"/> Other (Specify) _____ |

b. Number of total subscribers _____

(Be sure to count individual homes that receive service even if the service is provided under a bulk rate.)

c. Number of video subscribers _____

(Be sure to count individual homes that receive service even if the service is provided under a bulk rate.)

6. For INCUMBENTS: For each Zip Code served by the PSID above, please provide the following information:

a. Zip Code	b. Homes passed by the system	c. Total subscribers to the system	d. Number of video subscribers to the system

7. For OVERBUILDERS: For each Zip Code served by the PSID above, please provide the following information:

a. Zip Code	b. Homes that do NOT have access to another cable operator's service	c. Total subscribers to the system	d. Number of video subscribers to the system

8. Certification

I certify that I have examined this data, and that all statements of fact contained herein are true, complete and correct to the best of my knowledge, information and belief, and are made in good faith. I understand that any false certification made to the Commission may be punished by fine and/or imprisonment under 18 U.S.C. § 1001 and/or 18 U.S.C. § 1621.

Full Name	Title	E-mail Address
Signature	Date (mm/dd/yyyy)	Telephone No.
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FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

We have estimated that each response to this collection of information will take an average of 2 hours per response. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Act Project (3060-xxxx), Washington, DC, 20554. We will also accept your comments via the Internet if you send them to Cathy.Williams@fcc.gov.

Remember, under 5 C.F.R. § 1320, you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number with this notice. This collection has been assigned OMB control number 3060-XXX.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, 44 U.S.C. § 3507.

Form xxxx Instructions

For each PSID (physical system identifier), please provide the following information:

- 1. PSID #** – The six-digit number assigned by the Commission to each headend.
- 2. Filing year** – Indicate which filing year the submitted data represents. Complete one form each for 2006 and 2007. You are required to fill out the form showing information about the cable system on a typical day in the last full week of December of the filing year.
- 3. Activated channels** – Please indicate (yes or no) whether the system has 36 or more activated channels. An activated channel is defined as a 6 MHz channel that is engineered at the headend of a cable system to provide services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided.
- 4. IPTV** – Please indicate (yes or no) whether the system is an IPTV based system. An IPTV based system is defined as video and ancillary services such as audio/text/data delivered over the Internet Protocol and offered as multiple channels of linear and/or non-linear (e.g., video-on-demand) programming of broadcast quality designed to be viewed on a television.
- 5. For the area served by the system identified by the PSID above please indicate:**

a. Number of homes passed – The number of homes passed within the PSID is defined with reference to the term "household" as used in Section 612(g) of the Communications Act of 1934 (47 U.S.C. § 532(g)) and should be calculated as the total number of occupied housing units that have access to the cable plant. A housing unit is occupied if a person or group of persons is living in it, i.e., they consider it their usual place of residence or have no usual place of residence elsewhere. The number of homes passed should not include unoccupied homes or dwellings that are used solely for seasonal, occasional, or recreational use, *see* C.F.R. § 76.905(c), nor should it include buildings or portions of buildings used for commercial purposes (such as hotels, bars, restaurants, and office buildings).

Select calculation method – Please check all boxes that describe the method(s) used to calculate this result. For "other company database," identify the type of database in the space provided by "other." For "data from commercial sources," identify the source in the space provided by "other." For "other" provide a written description of the calculation method used. If company records and system maps do not contain sufficient information to respond to questions 5.a, 5.a.i, and 5.a.ii, as requested, the cable operator should update or supplement company records with information from the U.S. Census Bureau, other Federal, State, or Local governmental agencies, commercial sources, or, where feasible, through a system ride-out/walk-out. Cable operators may provide good faith estimates based on the best available information and may rely on studies done for other purposes such as marketing and business plan information, demographic data, etc. or may conduct limited special studies to obtain the requested information. In particular, these sources may be used to determine unoccupied homes, dwellings that are used solely for seasonal, occasional, or recreational use, or buildings used for commercial purposes where company data do not include such information.

a.i. Number of unoccupied/seasonal homes – The total number of housing units that are unoccupied or used for seasonal, occasional, or recreational use. Do not include buildings or portions of buildings used for commercial purposes (such as hotels, bars, restaurants, and office buildings).

Select calculation method – See instructions above.

a.ii. Number of homes passed plus unoccupied/seasonal homes – The total number of housing units passed within the PSID, whether or not they are occupied or used for seasonal, occasional, or recreational use. Do not include buildings or portions of buildings used for commercial purposes (such as hotels, bars, restaurants, and office buildings).

Select calculation method – See instructions above.

b. Number of total subscribers – The total number of subscribers within the PSID who have access to the cable plant and receive any type of service. Calculate the number of subscribers as follows: (1) number of occupied housing units that subscribe to any service, plus (2) the number of customers with courtesy and free basic cable service. For subscribers in MDUs (apartments, condominiums, mobile home parks, etc.), count the total number of occupied housing units that receive service even if the MDU pays the system a bulk rate for video service. Do not include subscribers in housing units that are used for seasonal, occasional, or recreational use. Do not include commercial subscribers (such as hotels, bars, restaurants, and office buildings).

c. Number of video subscribers – The number of subscribers, as defined above, who purchase video service (i.e., basic tier cable service). Include all such subscribers, including those who purchase additional services.

6. Incumbents: An “incumbent” is a cable operator that provided service before any other cable operator (i.e., an “overbuilder” as defined in 7 below) entered the market.

For each zip code within the incumbent’s system’s service area (including those zip codes only partially served), please provide the following information.

a. Zip Code – The 5-digit U.S. Postal Service zip code.

b. Homes Passed – The number of homes passed, as defined above, by the system within the zip code.

c. Number of total subscribers – The total number of subscribers, as defined above, to the system within the zip code.

d. Number of video subscribers – The number of video subscribers, as defined above, to the system within the zip code.

7. Overbuilders – A system is considered an “overbuilder” if, when the system first offered service to a potential subscriber, that potential subscriber had previously been offered service by any other cable system or systems (regardless of whether the household subscribed) and the pre-existing system(s) continues to offer service to that potential subscriber.

For each zip code within the overbuilder’s system’s service area (including those zip codes only partially served), please provide the following information.

a. Zip Code – The 5-digit U.S. Postal Service zip code.

b. Homes passed by the system that do NOT have access to an incumbent cable operator’s service – The number of homes passed, as defined above, by the overbuilder within the zip code, **if any**, that are not also passed by the incumbent cable operator.

c. Number of total subscribers – The total number of subscribers, as defined above, to the system within the zip code.

d. Number of video subscribers – The number of video subscribers, as defined above, to the system within the zip code.

8. Certification – Certification of this data is required. The form shall be certified by the individual owning the reporting cable system, if the system is individually owned; by a partner, if the system is a partnership; by an officer of the corporation, if the system is incorporated; or by a representative holding power-of-attorney in case the owner has a physical disability or an individual owner is absent from the United States. Any false certification made to the Commission may be punished by fine and/or imprisonment under 18 U.S.C. § 1001 and/or 18 U.S.C. § 1621.

Additional Information

Filing Information: This form must be completed for each PSID and for each of calendar years 2006 and 2007 and filed electronically with the Federal Communications Commission, Media Bureau, Washington, DC 20554 via the COALS electronic filing system (www.fcc.gov/coals).

Due Date: This form must be filed with the Commission by **[insert date]**. Failure to complete form by **[insert date]** may subject the operator to monetary forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended.

Confidentiality: The Commission will not publicly release any data provided in response to this survey except aggregated (non-company specific) data, or data that are provided at the PSID level, as these data are otherwise publicly available (responses to survey questions 1 through 5). No other company-specific information will be released to the public. Operators who wish to request that the information designated for release be withheld from public inspection must submit the request pursuant to 47 C.F.R. § 0.459 in a letter addressed to the Secretary, attn: Media Bureau, and state the fields to which the request applies. They also should provide, as required by the rules, a complete explanation of why such treatment is appropriate. Pursuant to § 0.459(c), casual requests will not be considered.

If You Need Help: If there are any questions regarding this form, contact the FCC's Media Bureau staff at (202) 418-2330 or (202) 418-7200.