



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

DATA QUALITY ACT CHALLENGE

In the Matter of

RE: Data Quality Act Challenge as Per the Triennial Review's Initial
Regulatory Flexibility Act Analysis.¹

Request for the FCC to do a Full Update of Its Information Pertaining to
the Size of the Internet Service Provider Markets:

NOTE: This filing is being done in conjunction with other related documents:

- Regulatory Flexibility Act/Triennial Review (01-338 unbundling) Comments,
- A Data Quality Act Challenge to the FCC's Broadband (706) Reports and Analysis.

By

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**Federal Communications Commission
445 12th Street SW
Washington, DC 20554**

RE: Data Quality Act Challenge as Per the Triennial Review's Initial Regulatory Flexibility Act Analysis.²

Request for the FCC to do a Full Update of Its Information Pertaining to the Size of the Internet Service Provider Markets:

Introduction: Bad Data and Lack of Responsibility Toward Competition

- *How many Internet Service Providers were there from 1997 through 2004 and how many companies did the FCC's policies help to put out of business?*
- *Why didn't the FCC change its analysis to update 8 year old data in its Triennial Review and how has it impacted every law the FCC has written or will consider?*

In 2002, Teletruth filed a Regulatory Flexibility Act challenge as part of 6 different Triennial Review proceedings, claiming, in part, that the FCC was using bad data in its analysis. For example, in the 02-338 proceeding,³ the FCC was quoting 1997 data about the size of the Internet Service Provider (ISP) market for 2002, and had other data that was from 1992. This gave a totally distorted view to the size of this market.

In fact, in the original Notice of Proposed Rulemaking for the Triennial Review, CC 01-338,⁴ December 2001, the FCC simply ignored almost any mention of Internet Service Providers in the entire document, including the "Initial Regulatory Flexibility Act Analysis". Based on discussions with the FCC staff, it is now clear that the FCC only included Internet Service Providers in the Triennial's decision in 2003 based on our complaint.⁵

However, it is 2004 and the FCC has never updated that same bad 1997 data in its current Triennial Review (Initial Regulatory Flexibility Act Analysis) — now 8 years old.

The data by the FCC in 1997 only found 2,751 companies. However, as we pointed out to the FCC in our 2002 filing, in 2001, Boardwatch published a listing of over 7300 ISPs.



And in 2001, ISP Planet found:⁶

"Of course, 54.2 percent of American's accessing the Internet and the World Wide Web do so through thousands of independent ISPs scattered across the country, which totals some 77.5 million subscribers nationwide."

(And to update that data for this Complaint, in Summer 2004, the current Independent ISP market was handling approximately 33% of the current 80 million household online users, according to Jupiter Research/ISP Planet.)

To see the current information:

<http://www.isp-planet.com/research/rankings/usa.html>

Also, as discussed herein, the Small Business Administration's Office of Advocacy in August 2002 showed that updated data from 1999 was available revealing 6,975 Small Internet Service Providers. This clearly demonstrated that the very source for the FCC data could have been easily updated, since the FCC was quoting old data from this very agency for its size of market. The FCC simply refused to do so.

In 2002 we requested that the FCC get an accurate assessment of the market, since the proposed laws would harm the entire ISP and CLEC market — thousands of small entrepreneurial businesses. Knowing how many companies were impacted and coming up with alternatives as is required by law, should be a major priority to the country's telecommunications and broadband interests.

In fact, the FCC is required by law – the Federal Regulatory Flexibility Act (as amended) —to make sure that ALL small telecom businesses have, not only a seat at the table of the regulatory agency, but have a voice and a role in helping to form laws.

However, as we have discussed in a related current Data Quality Act challenge of FCC-presented broadband information, the FCC has also left out the ISPs in virtually all reports dealing with the deployment of broadband — a rewrite of history to remove this group from their role in bringing America the Internet and broadband services.

Is it no wonder that the FCC has been hell bent on getting rid of competition in the form of new proposed laws known as the Triennial Review – first by removing line sharing, used by ISPs to provide broadband services over the same customer phone line, then removing all access to new upgraded fiber-based networks. These same networks that have been funded by customers are now being given to a private company for exclusive use, thus blocking competition.



Obviously then the FCC must think —the data is so useless or missing that we don't have to think or worry about an industry of thousands of small businesses.

But to add insult to injury, it is 2004, two years since our original Triennial comments, and yet we find the FCC is still quoting the same bad data about the ISP markets from 1997 — now 8 years old!

This challenge under Federal Data Quality Act is based on TeleTruth's conclusions that seriously flawed data has led to unduly selective and biased statistical analysis which has been presented to Congress, regulators, and the public. It has distorted ALL public policies in the United States toward broadband deployment and competition as well as harmed the entire financial health of the economy.

In short, Teletruth believes that the FCC's data and analysis fails the Federal Data Quality Act's basic tenets of quality, transparency, utility, reliability, objectivity, integrity, reproducibility, among other problems. (Read our other filing for more details.)

The data is critical because the new laws being written need to be stopped. They essentially will eliminate the remaining ISPs and small CLECs – How many companies are being put out of business if the FCC gets rid of 'line-sharing' or blocks these same companies from using any of the customer funded upgraded fiber-based networks?

Also, to date, we believe that the FCC has failed on multiple levels to make sure that these small independent companies' rights were being enforced. Our Petition, filed with the Texas ISP Association (TISPA), in 2003 clearly showed that the FCC had essentially been on a path to put these companies out of business, from lack of enforcement, to predatory pricing by the phone companies to use the current DSL networks.

We, in fact, claim that the FCC's bad data and analysis and lack of responsibility toward this entire market has helped to cause some 6000 companies to be put out of business since the high mark of the industry in 2001 – it also harmed the entire economy and helped to fuel the telecom crash and the country's economic recession.

We should point out that the FCC claims its action only indirectly affect ISPs.

“While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present analysis (FRFA)...”

The FCC also claims that that using old data from 1997 wouldn't impact its decisions.



“While certain 1997 census data became available in late 2000 and were not incorporated into the previous NPRM, this updating would not, we believe, have affected a small entity’s decisions concerning IRFA”.

This is, of course, the FCC picking winners and losers with bad data and no care about the entire industry —“*We don’t need accurate data. We’re the FCC and we don’t care about competition*” is the subplot that we will lay out with more evidence in this and other filings. Once again, two years since our last request, we now ask:

- *How many Internet Service Providers were there from 1997 through 2004 and how many companies did the FCC’s policies help to put out of business?*
- *Why didn’t the FCC change it’s analysis to update 8 year old data and how has it impacted every law the FCC has written or will consider?*



The Data:

1) 8 Year Old Data Fails the Data Quality Act's Tenet of Being "Reliable" and Having "Utility".

Here is the FCC's definition of the ISP market from the current Triennial Review dated August 2004 — Notice that it is using data that was created in 1997!

"Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments "primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others. Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999. Thus, under this size standard, the great majority of firms can be considered small entities."

This is the footnote for this quote. Notice it is using NAICS code 514191 with the Census information published in the year 2000.

"U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000)."

This is virtually identical to the materials that were published in the first Triennial Regulatory Flexibility Act analysis published in 2003, but also dated from 1997.

"775. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having \$21 million or less in annual receipts.²²⁹⁶ According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year.²²⁹⁷ Of this total, 2,659 firms had annual receipts of \$9,999,999 or less, and an additional 67 had receipts of \$10 million to \$24,999,999.²²⁹⁸ Thus, under this size standard, the great majority of firms can be considered small."



This was the excuse the FCC used in replying to our complaint. Good data would have mattered since the FCC's decision's mind was already made up.

"737. TeleTruth next complains that the IRFA used outdated census data from 1992 in estimating the number of small businesses that might be affected by the Commission's decisions here. **While certain 1997 census data became available in late 2000 and were not incorporated into the previous NPRM, this updating would not, we believe, have affected a small entity's decisions concerning IRFA**". (Emphasis added)

2) The FCC's Original 2001 Triennial for 01-338 Never Contained Any Information About ISPs.

Besides the current bad FCC data, the FCC took out the Internet Providers from the entire beginning of this process when they failed to even include this group as a class in its original analysis.

3) Other, More Recent Data was Available that the FCC Ignored.

As we previously wrote in 2002 —"According to Boardwatch's most recent survey of ISPs in March 2001, there were 7,288 ISPs listed in their directory."

"Last year, we started the process of updating the database by deleting double entries. Even though we deleted a number of companies that had double entries, our ISP numbers still grew by over 2,200. This year we took the next step. Over the past six months, we proactively took steps to update our industry information. From July 2000 to March 2001, ISPworld Market Analyst Tisha White scrubbed the ISP list to find those providers that are out of business, were sold or took the time to register but did not provide any information. Because of this effort, for the first time since the Directory was published in 1997, the number of ISPs we are reporting in North America is down. **As of March 2001, 7,288 ISPs in North America have registered on our Web site.**" (Emphasis added)

However, there was a great deal of other updated data that could be found about this market. For example, the Small Business Administration's Office of Advocacy, in their Ex Parte Letter of August 2002 for a related rulemaking was able to provide data based on 1999 information, which they noted was also problematic since it was presenting a 'rapidly changing industry'.. And they noted that a) the FCC's data from 1997 was old, that other information showed 7,200 companies, and that their own data showed 6,975 under 500 employees, the cut off size for a telecom small business.⁷



“In the IRFA, using 1997 data, the Commission identifies small ISPs as an affected class of entities and estimates there are between 2,829 to 2,940 small ISPs.(16) One commenter noted that industry sources estimate the number of ISPs at more than 7,200. **The latest numbers available to Advocacy support this claim. Based on 1999 North American Industry Classification System ("NAICS") data broken down by firm size, there are a total of 7,099 ISP firms, of which 6,975 have less than 500 employees. While this number is based on data that is three years old in a rapidly changing industry, it supports the commenters' assertion that there are approximately 7,000 small ISPs.** (Emphasis added)

The FCC could have used any of this new data in their 2003 or 2004 materials. Instead, they relied on 8 year old data that was proven by another government agency to be too old to be reliable. In fact, the SBA data, which was supposed to be the FCC's own source for their own 1997 data, was contradicted by the very agency responsible for the original source materials.

Conclusion: Bad Data Creates Bad Regulations.

The ISP market has been hit with multiple regulatory threats that have essentially closed them out of the broadband markets. — good data would have made their plight known and the FCC might have been held more accountable had the FCC given Congress and the public an accurate assessment of the problems.

The data presented by the FCC is too old to be usable, therefore unreliable, failing a principle Data Quality Act standard of being reliable. This, combined with all of the other missing information about the Internet Service Providers discussed in our companion complaint, has given a totally distorted picture of the importance of this market, and the current harms being inflicted by bad regulation.

We are calling on the FCC to do a full investigation of all data pertaining to the Internet Service Provider (ISP) markets and correct every datapoint for the public interest. Once again, two years since our last request, we now ask:

- *How many Internet Service Providers were there from 1997 through 2004 and how many companies did the FCC's policies help to put out of business?*
- *Why didn't the FCC change it's analysis to update 8 year old data and how has it impacted every law the FCC has written or will consider?*



Links of Interest

See Appendix A of our related Complaint “Infrastructure Held Hostage” for a more complete collection of links.

- Petition to FCC with Texas ISP Asc. 2003
<http://www.newnetworks.com/PRISPPETITIONS.html>
- Letter, Senate Commerce, FCC Violates Small Business Laws, June 2003
<http://www.newnetworks.com/TeletruthPressReleaseMedia.htm>
- Comment on the FCC’s Triennial Review to Block Competition, 2003
<http://www.newnetworks.com/triennialfin.htm>
- FCC Comments/Reply Comments Over Broadband. 2002
<http://www.newnetworks.com/teletruthrfacomments.html>
- Analysis of Internet Broadband— "Small Telecom Business Impact Study", 2002
<http://www.newnetworks.com/smallbusinessimpactstudy.html>
- Ex Parte Presentation in a Non-Restricted Proceeding: Initial Regulatory Flexibility Analysis for Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (CC Dkt. No. 02-33), August 27, 2002
http://www.sba.gov/advo/laws/comments/fcc02_0827.html
- RE: Ex Parte Presentation in a Non-Restricted Proceeding Initial Regulatory Flexibility Analysis for Triennial Review of Unbundled Network Elements (CC Dkt. No. 01-338; CC Dkt. No. 96-98; CC Dkt No. 98-147), February 5th, 2003
http://www.sba.gov/advo/laws/comments/fcc03_0205.html

ENDNOTES:

¹ In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313 CC Docket No. 01-338, Order And Notice Of Proposed Rulemaking, Released: August 20, 2004

² In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313 CC Docket No. 01-338, Order And Notice Of Proposed Rulemaking, Released: August 20, 2004

³ Initial Regulatory Flexibility Analysis for Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (CC Dkt. No. 02-33)

⁴ FCC 01-361, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, December 20th, 2001



⁵ FCC 03-36, Report And Order And Order On Remand, And Further Notice Of Proposed Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange, Carriers CC Docket No. 01-338, August 2003

⁶ http://www.isp-planet.com/research/rankings/usa_history_q42001.html

⁷ http://www.sba.gov/advo/laws/comments/fcc02_0827.html RE: Ex Parte Presentation in a Non-Restricted Proceeding Initial Regulatory Flexibility Analysis for Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (CC Dkt. No. 02-33), August 27th, 2003