

## SUPPORTING STATEMENT

### A. Justification:

1. The Commission adopted on March 2, 2011 and released on March 3, 2011 a *Notice of Proposed Rulemaking*, MB Docket No. 11-43, FCC 11-36. The Commission takes an initial step to implement the Twenty-First Century Communications and Video Accessibility Act of 2010, by seeking comment on the mandated reinstatement of video description rules that would apply to MVPDs and network-affiliated broadcasters. This submission is being submitted to the Office of Management and Budget (OMB) for approval of the proposed information collection requirements contained in the Commission's video description rules that would be codified at 47 CFR § 79.3, as required by the Twenty-First Century Communications and Video Accessibility Act of 2010 (the "Communications and Video Accessibility Act" or "CVAA"). "Video description," which is the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses in the program's dialogue, makes video programming more accessible to individuals who are blind or visually impaired. In 2000, the Commission adopted rules requiring certain broadcasters and MVPDs to carry programming with video description. The United States Court of Appeals for the District of Columbia Circuit vacated the rules due to insufficient authority soon after their initial adoption. The CVAA directs the Commission to reinstate those rules, with certain modifications, on October 8, 2011.<sup>1</sup>

**The proposed information collection requirements that require OMB review and approval consist of the following:**

#### (a) Petitions for exemption based on "economic burden."

1. Pursuant to proposed 47 C.F.R. § 79.3(d), a video programming provider may petition the Commission for a full or partial exemption from the video description requirements based upon a showing that the provider would be economically burdensome.
2. Petitions for exemption must be filed with the Commission, placed on Public Notice, and be subject to comment from the public.

#### (b) Complaints alleging violations of the video description rules.

1. Section 79.3(e) of the proposed rules provides that a complaint alleging a violation of the video description rules may be transmitted to the Commission by "any reasonable means" that would best accommodate the complainant's disability, and that each complaint must include:
  - i. The name and address of the complainant;
  - ii. The name and address of the broadcast station against whom the complaint is alleged and its call letters and network affiliation, or the name and address of the MVPD against whom the complaint is alleged and the name of the network that provides the programming that is the subject of the complaint;
  - iii. A statement of facts sufficient to show that the video programming distributor has violated or is violating the Commission's rules, and, if applicable, the date and time of the alleged violation;
  - iv. the specific relief or satisfaction sought by the complainant;

---

<sup>1</sup> CVAA at Title II, sec. 202(a), § 713(f)(1-2).

Section 79.3, Video Description of Video Programming

- v. the complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's disability); and
  - vi. a certification that the complainant attempted in good faith to resolve the dispute with the broadcast station or MVPD against whom the complaint is alleged.
2. After the Commission receives the complaint, the Commission notifies the VPD of the complaint, and the VPD generally has 30 days to reply.

The statutory authority for this collection of information is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and Sections 1, 2(a), 4(i), 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 303, and 613.

2. The information submitted as part of, or in response to, a petition for exemption pursuant to the proposed 47 C.F.R. § 79.3(d) will be used by the FCC to determine whether an “economically burdensome” exemption is warranted. The FCC staff will use the data arising from complaints under the proposed 47 C.F.R. § 79.3(e) to enforce the proposed 47 CFR § 79.3. Viewers may file complaints alleging violation of this rule with the Commission. The Commission will notify video programming distributors of the complaint and the distributor will provide the Commission with a response to the complaint.

This information collection includes personally identifiable information (PII) with respect to complainants.

(a) As required by OMB Memorandum M-03-22 (September 26, 2003), the FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007, that gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the PII covered by these information collection requirements. The PIA may be reviewed at: [http://www.fcc.gov/omd/privacyact/Privacy\\_Impact\\_Assessment.html](http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html).

(b) Furthermore, as required by the Privacy Act, 5 U.S.C. § 552a, the FCC also published a system of records notice (SORN), FCC/CGB-1, “Informal Complaints and Inquiries”, in the *Federal Register* on December 15, 2009 (74 FR 66356), which became effective on January 25, 2010.<sup>2</sup>

3. Once placed on public notice, comments, oppositions, or replies relating to Petitions for exemption may be, but are not required to be, transmitted to the Commission electronically via the Electronic Comment Filing System (ECFS). Viewer complaints may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet email, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant’s disability.

4. No other agency imposes similar information collections on the respondents. There is no similar data available.

5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents. These collections will not impose a significant burden on small businesses or other small entities.

---

<sup>2</sup> The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

6. If these information collections were not conducted, the Commission might have no basis for enforcing its essential rules regarding television program accessibility for people with visual disabilities. A viewer complaint process is critical to such enforcement efforts. It might also have no basis for extending appropriate exemptions from these video description rules.
7. Respondents theoretically could file complaints to the Commission more than quarterly depending on the frequency of alleged rule violations. Otherwise, there are no special circumstances associated with these information collections.
8. The Commission published a Notice (76 FR 14856) in the Federal Register on March 18, 2011 seeking comments on the information collection requirements contained in this supporting statement. No comments were received from the public to date.
9. No payment or gift will be provided to respondents.
10. Some assurances of confidentiality are being provided to the respondents. The Commission is requesting that individuals (consumers/respondents) submit their names, addresses, and telephone numbers, which the Commission's staff need to process the complaints. Any use of this information is covered under the routine uses listed in the Commission's SORN, FCC/CGB-1, "Consumer Inquiries and Complaints Division."

The PIA that the FCC completed on June 28, 2007 gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the PII, as required by OMB regulations contained in Memorandum M-03-22 (September 22, 2003) and the Privacy Act, 5 U.S.C. § 552a. The PIA may be viewed at: [http://www.fcc.gov/omd/privacyact/Privacy\\_Impact\\_Assessment.html](http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html).

11. This information collection does not raise any questions or issues of a sensitive nature.

## 12. Estimated Hour Burden and Hour Burden Cost for Respondents

### (a) Petitions for exemption based on "economic burden."

Because of the low cost of providing video description, relative to the cost of producing and distributing new television programming, the Commission estimates that it will receive no more than one petition for exemption, per year, from video programming providers (VPPs) that create or are required to provide video description. Smaller broadcast stations and MVPDs that are only required to pass-through video description are slightly more likely to find the rules economically burdensome. However, they need only do so when they have the "technical capability" to do so. The Commission estimates that few, if any, MVPDs and broadcast stations will have the "technical capability" to pass-through video description, but still find it "economically burdensome" to do so. As a conservative estimate, the Commission estimates that an additional 12 video programming providers per year, representing more than one tenth of a percent of all MVPDs and broadcast stations, will file petitions for exemption due to the obligation to pass-through video description. This results in a total estimate of 13 annual petitions for exemption based on "economic burden."

(1) Thus,

13 VPPs x 1 petition/VPP = 13 petitions annually

The Commission estimates that the average burden to complete all aspects of each petition process, including filing any possible reply comments and associated certifications, may require 5 hours.

- (a) The Commission estimates that 90 percent of the petitions that VPPs file will be prepared “in house” using the VPP’s staff.

13 VPPs x 90% using “in-house” staff = 11.7 VPPs

11.7 VPPs x 5 hours/petition = 58.5 hours

The Commission estimates that the “in house” staff that VPPs use to prepare these petitions earns a salary equivalent to a GS-14/Step 5 level in the Washington, DC area (\$57.13):

58.5 hours x \$57.13/hour for “in house” staff = \$3,342.11

- (b) The Commission also estimates 10 percent of the petitions that the VPPs file will be prepared using outside legal counsel, *e.g.*, attorneys in private law firms.

13 VPPs x 10% using outside legal counsel = 1.3 VPPs

VPPs that use outside legal counsel are likely to spend an average of 2 hours per petition to coordinate with their outside legal counsel to prepare and submit the petitions, including any possible reply comments and associated certifications.

1.3 VPPs x 2 hours/petition per outside legal counsel = 2.6 hours

The Commission estimates that the “in house” staff VPPs use to prepare these petitions earn a salary equivalent to a GS-14/Step 5 level in the Washington, DC area (\$57.13):

2.6 hours x \$57.13/hour for “in house” staff = \$148.54

**Annual Burden Hours to Prepare Petitions:**

58.5 hours + 2.6 hours = **61.1 hours**

**Annual “In House” Cost:**

\$3,342.11 + \$148.54 = **\$3,490.65**

- (2) The Commission estimates that there is an average of one commenter filing a response or opposition to every petition. The Commission estimates that the average burden to

complete all aspects of the response process, including the certification, is five (5) hours.

13 VPPs filing petitions x 1 response/petition = 13 commenters filing responses

The Commission estimates that 10 percent of commenters filing responses prepare the responses themselves. The remaining 90 percent of commenters hire outside legal counsel to prepare and file the response:

- (a) 13 commenters x 10%/preparing their responses = 1.3 commenters

1.3 commenters x 5 hours/response preparation = 6.5 hours

The Commission estimates that the commenters use “in house” staff earning the equivalent of a GS-14/Step 5 level in the Washington, DC area (\$57.13) to prepare the responses:

6.5 hours x \$57.13/hour “in house” staff = \$371.35

- (b) 13 commenters x 90 percent using outside legal counsel to prepare responses = 11.7 commenters.

11.7 Responses x 2 hours/response per outside legal counsel = 23.4 hours

The Commission estimates that the commenters use “in house” legal and/or administrative staff earning the equivalent of a GS-14/Step 5 level in the Washington, DC area (\$57.13) to coordinate their responses with the outside legal counsel:

23.4 hours x \$57.13/hour for “in house” staff = \$1,336.85

- (c) The Commission estimates that 25 percent of 13 petitioners will file replies to oppositions by commenters. The hourly burdens for such replies are already encompassed in 12(a)(1). However, this will generate an additional 3.25 responses annually.

**Annual Burden Hours to Prepare and File Responses to Petitions:**

6.5 hrs + 23.4 hrs = **29.9 hours**

**Annual “In House” Cost:**

\$371.35 + \$1,336.85 = **\$1,708.20**

**FINAL INFORMATION COLLECTION REQUIREMENTS (economic burden exemption petitions):**

**Total Number of Respondents:** 13 VPPs + 13 commenters = **26 respondents**

**Total Annual Number of Responses:** 13 petitions + 13 reply comments + 3.25 replies to oppositions = 29.25 (**30 responses rounded up**)

**Total Annual Burden Hours:** 61.1 + 29.9 = **91 hours**

**Total Annual “In House” Cost:**

\$3,490.65 + \$1,708.20 = **\$5,198.85**

**(b) Complaints alleging violations of the video description rules.**

The Commission estimates that it will receive 25 complaints per year pursuant to 47 CFR § 79.3. Complaints would not be filed at specified intervals, but instead whenever a viewer believes a broadcast station or MVPD has failed to comply with the requirements of 47 CFR § 79.3 to provide or pass-through video description. The Commission believes that each complaint will, in turn, require a response from the appropriate broadcast station or MVPD, and the MVPD will generally have 30 days to file its response. To be most inclusive in its estimates, the Commission assumes that each complaint will be filed by a unique viewer against a unique broadcast station or MVPD. The Commission also estimates that each viewer will spend 1 hour preparing the complaint, and the broadcast station or MVPD will spend 2 hours on each response. These estimates are based on the FCC staff’s knowledge and familiarity with the availability of the data required.

**Total Number of Respondents:** 25 viewers + 25 Broadcast stations or MVPDs = **50**

**Total Annual Number of Responses:** 25 complaints/yr + 25 complaint responses/yr = **50 responses/yr**

The Commission assumes that the viewers themselves will prepare the complaint. The Commission also assumes that 90% of the company responses will be prepared by an attorney or in consultation with an attorney, an engineer, or similar media specialist. The Commission estimates that the respondent will spend 1 hour in consultation with this attorney.

The remaining 10% of company responses would be prepared by “in-house” staff of a VPD whose pay is comparable to a mid-to-senior level federal employee in the Washington, DC area (GS-14/Step 5 (\$57.13/hour), plus 30% overhead):

25 viewer complaints x 1 hour/complaint =	25 hours
25 complaint responses x 2 hours/response (in-house staff preparation) x 10% =	5 hours
25 complaint responses x 1 hour/response (consulting “outside” professional) x 90% =	<u>22.5 hours</u>
<b>Total Annual Burden Hours:</b>	<b>52.5 hours</b>
	<b>(53 hours rounded)</b>

5 hours (in-house staff preparation) x \$57.13/hour =	\$ 285.65
22.5 hours (staff consultation with “outside” professional) x \$57.13/hour =	\$1,285.43
+ 30% overhead =	<u>\$ 471.32</u>
<b>Total “In House” Annual Cost:</b>	<b>\$2,042.40</b>

**FINAL INFORMATION COLLECTION REQUIREMENTS (Complaints alleging violations of the video description rules):**

**Total Number of Respondents:** 25 viewers + 25 Broadcast stations or MVPDs = **50**

**Total Annual Number of Responses:** 25 complaints/yr + 25 complaint responses/yr = **50 responses/yr**

**Total Annual Burden Hours:** 52.5 hours (53 hours rounded)

**Total Annual "In House" Cost: \$2,042.40**

**Cumulative Totals for the Collection:**

**Total Number of Respondents:** 26 + 50 = 76

**Total Number of Responses:** 30 + 50 = 80

**Total Annual Burden Hours:** 91 + 53 = 144 hours

**Total "In-house" Cost:** \$5,198.85 + \$2,042.40 = \$7,241.25

**13. Estimated Cost Burden for Respondents**

(a) Petitions for exemption based on "economic burden."

The following represents the Commission's estimate of annual cost burdens to respondents resulting from respondents' consultation time with outside legal counsel:

**(A) Filing of Undue Burden Exemption Petitions**

In Section 12(a)(1)(b) above, the Commission estimates that 10% of 13 annual undue burden exemption petitions will be filed by outside legal counsel, who will prepare the petitions for exemption, reply comments and associated certifications. The Commission further estimates that these assignments may require 5 hours per petition, and that outside legal counsel will charge \$300.00 per hour for legal services:

1.3 petitions x 5 hours/petition = 6.5 hours

6.5 hours x \$300.00/hour legal services = \$1,950.00

**Annual Cost Burden: \$1,950.00**

**(B) Responses to Undue Burden Exemption Petitions**

In Section 12(a)(2)(b) above, the Commission estimates that 90 percent of 13 annual

oppositions to undue burden exemption petitions will be prepared using outside legal counsel. The Commission further estimates that these assignments may require 5 hours per petition, and that outside legal counsel will charge \$300.00 per hour for legal services:

11.7 responses x 5 hours/response = 58.5 hours

58.5 hours x \$300.00/hour “outside” legal fees = \$17,550.00

**Total Annual Cost: \$17,550.00**

**Annual Cost Burden:**

\$1,950.00 + \$17,550.00 = **\$19,500.00**

(b) Complaints alleging violations of the video description rules.

The Commission assumes that an attorney (or other media professional) would prepare the response to 90% of the complaints received. The Commission also estimates that the professional will bill 1 hour per response. The professional is estimated to have an average billing rate of \$300/hour.

**Annual Cost Burden:** 25 complaint responses x 1 hour/response x 90% x \$300/hour = **\$6,750**

(a) Total annualized capital/start-up cost: \$0

(b) Total annual cost (operation and maintenance): **\$19,500 + \$6,750 = \$26,250**

(c) **Total annualized cost requested for the collection: \$26,250**

**14. Estimated Cost Burden for Government**

(a) Petitions for exemption based on “economic burden.”

The Commission estimates that VPPs will submit approximately 13 petitions for exemption from the video description rules on the basis of “economic burden” to the Commission annually, and the Commission estimates that a response will be filed for each. The Commission will use staff at the GS-14/Step 5 level (\$57.13/hour) to review these petitions and the comments/responses. The Commission estimates that its attorneys spend 10 hours to review each of these petitions and their associated records (*i.e.*, including responses/opposition, replies, and any other filings associated with the petition):

**Cost to Federal Government for Petitions for Exemption Based on Economic Burden:**

13 petitions x 10 hours x \$57.13/hour = **\$7,426.90**

(b) Complaints alleging violations of the video description rules.

The Commission will use staff at the GS-14/Step 5 level (\$57.13/hour) to process these complaints and responses. Processing of each complaint and associated response, including intake, complaint service, and

review, is estimated at 3 hours per complaint.

**Cost to Federal Government for Complaints Alleging Violations of the Video Description Rules:**  
25 complaints x \$57.13/hour x 3 hours/complaint = **\$4,284.75**

**Total Cost to the Federal Government: \$7,426.90 + \$4,284.75 = \$11,711.65**

15. If the proposed information collection requirements are adopted by the Commission the following will be added to OMB's inventory: +76 to the number of respondents, +80 to the annual number of responses, +144 hours to the annual burden hours and +\$26,250 to the annual cost burden.

16. The Commission does not intend to publish the results of these collections of information.

17. The Commission is not seeking approval not to display the expiration date for OMB approval of these collections of information.

18. In the 60 day *Federal Register* Notice published on March 18, 2011 at 76 FR 14856, the Commission inadvertently omitted third party disclosure as a requirement from the notice. It should be included as apart of this information collection. There are no exceptions to the certification statement.

**B. Collections of Information Employing Statistical Methods:**

These information collections do not employ any statistical methods.