

Disclosure of Network Management Practices, Preserving the Open Internet and Broadband Industry Practices, Report and Order, GN Docket No. 09-191 and WC Docket No. 07-52

## A. Justification

### Background

1. In 2009, the Federal Communications Commission (“Commission”) released a Notice of Proposed Rulemaking to determine whether and what actions might be necessary to preserve the characteristics that have allowed the Internet to grow into an indispensable platform supporting our nation’s economy and civic life, and to foster continued innovation and investment in the Internet’s physical networks and the content, applications, services, and devices that rely on those networks. On December 21, 2010, the Commission adopted the *Preserving the Open Internet and Broadband Industry Practices Report and Order* (“*Open Internet Order*”).<sup>1</sup> The *Open Internet Order* ensures that continued Internet openness and provide greater certainty to consumers, innovators, investors, and broadband providers, including the flexibility providers need to manage their networks effectively. The *Open Internet Order* builds on the Internet Policy Statement the Commission adopted in 2005. It concludes that high-level protections to ensure the continued vitality of the Internet are needed in light of instances of broadband providers interfering with the Internet’s openness, and the incentives providers may face to exert gatekeeper control over Internet content, applications, and services.

#### ***Information Collection Requirements:***

The transparency rule adopted in the *Open Internet Order* requires all broadband providers to publicly disclose network management practices, performance characteristics, and commercial terms (collectively referred to here as “network management practices”) of their broadband services. The rule ensures transparency and continued Internet openness, while making clear that broadband providers can effectively manage their networks and respond to market demands.

This collection does not affect individuals or households; thus there are no impacts under the Privacy Act because it does not require the collection of personally identifiable information (“PII”) from individuals.

The statutory authority for the information collection requirements is contained in 47 U.S.C. Sections 151, 152, 153, 154, 201, 218, 230, 251, 254, 256, 257, 301, 303, 304, 307, 309, 316, 332, 403, 503, 522, 536, 548, and 1302.

2. To fulfill their disclosure obligation, broadband providers must post their network management practices, as defined above, on their websites, and make that information available at their point-of-sale locations. This disclosure requirement serves the following purposes: (1) ensuring that consumers of broadband services can make informed choices regarding the purchase and use of the service; (2) building consumers’ and other users’ confidence in broadband services so as to increase investment in Internet infrastructure; (3) supporting innovation, investment, and competition by ensuring that edge providers<sup>2</sup> have the technical information necessary to create and maintain online content, applications, services,

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<sup>1</sup> *Preserving the Open Internet, Broadband Industry Practices, Report and Order*, 25 FCC Rcd 17905 (2010) (“*Open Internet Order*”).

<sup>2</sup> “Edge providers” are defined in the *Open Internet Order* as providers of content, applications, services, and devices accessed over or connected to broadband Internet access service. *Id.* at 17907, para. 4 n.2.

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and devices, and to assess the risks and benefits of embarking on new projects; (4) increasing the likelihood that broadband providers will abide by open Internet principles, and that the Internet community will identify problematic conduct and suggest voluntary fixes; and (5) enabling the Commission to collect information necessary to assess, report on, and enforce open Internet rules.

3. The disclosure requirement will be provided over the Internet, among other means. For the purposes of the transparency rule, the Commission is open to any disclosure methodology that reduces burdens on broadband providers and improves the quality and utility of the information provided to the public.
4. While certain elements of the information that must be disclosed may already be available to the public at scattered locations, the information is not all currently and consistently available in a form, and at a level of detail, that serves the purposes of the open Internet transparency rule. Thus, the disclosure requirements are not duplicative within the meaning of the Paperwork Reduction Act (“PRA”) and Office of Management and Budget (“OMB”) regulations.<sup>3</sup>
5. The impact of the disclosure requirement on small businesses or other small entities is not expected to be significant.
6. There are no statutory consequences if such information is not disclosed by broadband providers. All broadband providers, however, are potentially subject to enforcement action by the Federal Communications Commission’s Enforcement Bureau if they do not meet the applicable requirements. In addition, members of the public may file informal, or formal, complaints against providers.
7. The collections are not being conducted in any manner inconsistent with the guideline of 5 CFR Section 1320.
8. The Commission published a notice in the *Federal Register*, as required by 5 CFR Section 1320.8(d), on April 16, 2014 at 79 FR 21456, seeking comments from the public on the extension of the previous information collection requirements.
9. The Commission does not anticipate providing any payment or gift to respondents.
10. The Commission is not requesting that respondents submit confidential information to the Commission.
11. There are no questions of a sensitive nature with respect to the information collected. In fact, the transparency rule is fashioned specifically to avoid a mandate that providers disclose sensitive security information.<sup>4</sup>
12. Estimates of hour burden for the collection of information are as follows:

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<sup>3</sup> OMB PRA Guide at 42.

<sup>4</sup> See *Advisory Guidance* at 8.

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***Information Collection Requirements:***

The rules adopted in the *Open Internet Order* require all broadband providers to publicly disclose their network management practices on their websites and at the company's point of sale of services to the consumer.

**Number of Respondents: 1,712**

There are approximately 1,712 broadband providers that will be required to comply with the *Open Internet Order* transparency rule.

**Annual Number of Responses: 1,712 Responses**

1,477 respondents x 1 posting of information on website and at point of sale = **1,712 responses**

**Annual Number of Burden Hours:** 1,712 respondents x 1 posting of information on website and at point of sale/respondent x 24.4 hours/year = **41,773 hours**

The Commission believes that most broadband providers already disclose most, and in some cases all, of the information required to comply with the rule. As calculated below, the Commission therefore estimates that complying with the transparency requirement will require an average of 24.4 hours to update disclosures each year. This average incorporates estimates for the largest broadband providers, who may incur greater burdens than the average to ensure compliance with the rule, as well as for small broadband providers, who may incur lesser burdens than the average.

**Annual "In House" Cost Per Respondent: \$1,721.66**

The Commission believes that the respondents will generally use "in-house" personnel whose pay is comparable to mid- to senior-level federal employees (GS12/5, GS14/5, and GS15/5, plus 30% overhead). Therefore, the Commission estimates respondents' hourly costs to be about \$53.39 for technical writers, staff administrators, and web administrators; \$75.01 for engineers; and \$88.24 for attorneys to gather and post network management practices on a website.

8.9 Engineer hrs x \$75.01/hr = **\$667.59**  
 2.1 Technical Writer hrs x \$53.39/hr = **\$112.12**  
 4.8 Staff Administrator hrs x \$53.39/hr = **\$256.27**  
 2.1 Web Administrator hrs x \$53.39/hr = **\$112.12**  
 6.5 Attorney hrs x \$88.24/hr = **\$573.56**  
 Total = **\$1,721.66**

**Total Annual Number of Respondents: 1,712 respondents**  
**Total Annual Number of Annual Responses: 1,712 responses**  
**Total Annual Burden Hours: 41,773 hours**  
**Total Annual "In-House" Costs Per Respondent: \$1,721.66**

13. Although the Commission expects most reporting requirements will be met by respondents' "in-house" staff, some of the larger respondents may have external costs for deploying their own performance measurement testing program. The Commission makes the following

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estimate for external costs for large wireline broadband providers, who the Commission expects may choose to deploy their own performance measurement testing program using techniques similar to those used in the Commission's recent broadband performance measurement project (and 13 of whom participated in the broadband performance measurement project and may, for some period of time, choose to use the results of that project for disclosure of their actual performance):

- (a) Total annualized capital/start-up costs for all respondents who will have these costs: **\$50,000**

The Commission estimates that some providers will invest in consumer premises testing equipment, such as home router measurement devices. (The Commission estimates that most respondents will not make such investments and will have no capital costs.)

400 measurement devices x \$25 per device = \$10,000 capital cost per respondent who will have this capital cost.

\$10,000 capital cost per respondent / 5 year lifespan of devices = \$2,000 in annualized costs per respondent who will have this capital cost.

\$2,000 capital costs per respondent x 25 respondents = \$50,000 in total annualized capital/start-up costs for all respondents who will have this capital cost.

- (b) Total annual cost (Operation & Management) for all respondents who will have this annual cost: **\$510,000**

\$14,400 server lease costs + \$6,000 consumer panel maintenance costs = \$20,400 annual costs per respondent who will have this annual cost

\$20,400 annual costs per respondent x 25 respondents = \$510,000

- (c) **Total Annual External Cost for All Respondents:** \$50,000 + \$510,000 = **\$560,000**

14. The Commission has determined there are no costs to the Federal Government for requiring respondents to comply with those requirements.
15. The Commission has re-evaluated the assessment of the burdens for this information collection and determined there has been an increase in the total annual number of respondents of +235, from 1,477 to 1,712 respondents; an increase in the total annual number of responses of +235, from 1,477 to 1,712 responses; a decrease in the total annual burden hours by -5,491, from 47,264 hours to 41,773 hours; and because the Commission is now calculating the total annual cost on annual basis, and not on a per year basis (annualized), the change in calculation methodology has resulted in an increase in the total annual cost of +**\$88,400**, from \$471,600 per year to \$560,000 per year.

With this submission, the Commission used more concrete and precise numbers based on the Internet Access Services Report.<sup>5</sup> The decrease in the total annual burden hours is due to the decrease in the number of hours it will now take respondents to update disclosures each year.

<sup>5</sup> See Internet Access Services Report, Table 12, page 32 at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-324884A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-324884A1.pdf).

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There are no program changes.

16. There are no plans to publish the result of the collection of information.
17. The Commission is not seeking approval to not display the expiration date for OMB approval of the information collection because the collection does not include a form number.
18. There are no exceptions to the Certification Statement.

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

The Commission does not anticipate that the collection of information will employ any statistical methods.