Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28
	)	
Information Collection Being Submitted for Review and Approval to the Office of Management and Budget	)	OMB Control No. 3060-1158

To: The Commission

COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION
REGARDING THE PAPERWORK REDUCTION ACT

The Wireless Internet Service Providers Association ("WISPA"), pursuant to Sections 1.415 and 1.419 of the Commission's Rules[1] and Section 3507(d) of the Paperwork Reduction Act of 1995 ("PRA"),[2] hereby submits its Comments in response to the Notice and Request for Comments (OMB 3060-1158) ("*PRA Notice*")[3] regarding the information collection estimates applicable to the enhanced open Internet disclosure obligations adopted in the *2015 Order*.[4] As described below, the *PRA Notice* – like the Commission's earlier request for comment on its review of burden estimates[5] – is predicated on flawed and unsupported assumptions that grossly underestimate the information collection burdens and costs, especially for small broadband Internet access service providers. With the temporary exemption for small broadband providers scheduled to expire in three months, the interests of small broadband

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[1] *See* 47 C.F.R. §§ 1.415 and 1.419.
[2] *See* Paperwork Reduction Act of 1995, Public Law 104-13, codified at 44 U.S.C §§3501-20, at §3507(d).
[3] Information Collection Being Submitted for Review and Approval to the Office of Management and Budget, 81 Fed. Reg. 53145 (Aug. 11, 2016) ("*PRA Notice*").
[4] *Protecting and Promoting the Open Internet,* Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) ("*2015 Order*").
[5] *See* Information Collection Being Reviewed by the Federal Communications Commission, 80 Fed. Reg. 29000 (May 20, 2015) ("*2015 PRA Notice*"). WISPA filed Comments in response to the *2015 PRA Notice. See* Comments of WISPA, GN Docket No. 14-28 (filed July 20, 2015) ("WISPA PRA Comments").

providers must be addressed.[6] Nor can the Commission ignore the record below and allow its unreliable calculations to be the basis for Office of Management and Budget ("OMB") approval of the enhanced disclosure obligations adopted in the *2015 Order*.

Background

WISPA is the trade association of more than 850 members that represents the interests of WISPs that provide IP-based fixed wireless broadband services to consumers, businesses and anchor institutions across the country. WISPA estimates that WISPs serve more than 3,000,000 people, many of whom reside in rural areas where wired technologies like FTTH, DSL and cable Internet access services are not available. All but one or two of WISPA's members have 100,000 or fewer broadband subscribers and thus are temporarily exempt from compliance with the enhanced disclosure obligations the Commission adopted in the *2015 Order*[7] and which were subsequently extended to December 15, 2016.[8] Further, as WISPA has previously stated,[9] a majority of WISPA's members have fewer than 25 employees and are regarded as "small business concerns" under the PRA.[10] They exist on shoestring budgets and dedicate scarce resources to building and expanding broadband networks to unserved and underserved areas where demand is greatest. As WISPA previously stated:

> Unlike larger broadband access Internet providers that have nationwide or regional footprints, market power and increased financial human resources, WISPs are typically small, locally owned businesses with limited financial resources and small staff. Some are one-person shops in which the owner handles sales, marketing, tower-climbing, installation, billing and customer service. Many

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[6] *See Protecting and Promoting the Open Internet*, Report and Order, 30 FCC Rcd 14162 (2015) ("*Exemption Extension Order*").
[7] *See 2015 Order* at 5678.
[8] *See Exemption Extension Order*. The Commission explained that by the December 16, 2016 sunset date, "we expect the PRA process will be complete and that the full Commission will be able to consider whether and, if so, how best to address the exemption from the enhanced transparency requirements for small providers with the benefit of more complete information." *See id.* at 14165.
[9] *See* WISPA PRA Comments at 2; Comments of WISPA, GN Docket No. 14-28 (filed July 16, 2014).
[10] *Id.* at 9.

> others have staff of less than ten in which these responsibilities are shared, or perhaps certain tasks such as tower-climbing or installation are contracted to third parties.[11]

Introduction

In the *Exemption Extension Order*, the Consumer and Governmental Affairs Bureau ("CGB") on delegated authority made clear that the Commission "is proceeding through the PRA process, which involves estimating the burden of complying with the transparency rule enhancements *for providers of all sizes* and obtaining approval from the Office of Management and Budget (OMB)."[12] To this end, the Commission adopted the *PRA Notice*, in which the Commission estimates that the average time to respond to the information collection is 31.2 hours,[13] a slight and unexplained increase over the 28.9 hours it estimated in preparing the *2015 PRA Notice*.[14] The Commission also maintains its previous estimate that the total annualized capital, operation and maintenance cost burden is $640,000, or $200.75 per respondent.[15] In language identical to that used in the *2015 PRA Notice*, and in total disregard for the record in that proceeding, the Commission continues to presume that:

> small entities may have less of a burden, and larger entities may have more of a burden than the average compliance burden. This is because larger entities serve

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[11] *Id.* at 17.

[12] *Id.* (emphasis added). *See also* FCC Commissioner Mignon L. Clyburn Statement, "On Small Business Exemption for Open Internet's Transparency Rules" (Dec. 16, 2015) (given "concerns that additional burdens would place on these [small] entities . . . the Commission needs more information and analysis that ought to include resolution of the Paperwork Reduction Act (PRA) process").

[13] *See PRA Notice* at 53145. Although not explained, the 2.3 hour increase could be the result of the Enforcement Bureau's Public Notice providing "guidance" on compliance with the enhanced disclosure obligations. *See Public Notice*, "Guidance on Open Internet Transparency Rule Requirements," GN Docket No. 14-28, DA 16-569 (rel. May 19, 2016) ("*Guidance Public Notice*"). The *Guidance Public Notice*, which purports to "clarify what disclosure practices will satisfy the Transparency rule," is the subject of an Application for Review asserting that the "'guidance' includes new substantive rules issued without notice and comment , and the lack of public process has led to flawed and unworkable solutions." *See* Application for Review of CTIA, *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 1 (June 20, 2016).

[14] *See* "Initial Paperwork Act Calculations for Transparency Rule Disclosures," provided by Consumer and Governmental Affairs Bureau, FCC, to Steven Morris, Vice President and Associate General Counsel, National Cable & Telecommunications Association by email dated June 23, 2015, attached hereto as Attachment A ("Initial Calculations").

[15] *PRA Notice* at 53146. Dividing the total annual cost estimate ($640,000) by the estimated total number of respondents (3,188) yields a $200.75 annual cost per respondent.

> more customers, are more likely to serve multiple geographic regions, and are not eligible to avail themselves of the temporary exemption from the enhancements granted to smaller providers.[16]

This rationale fails to account for a number of other factors that, when properly considered, demonstrate that small providers would face burdens and costs that would far exceed the average.

The *PRA Notice* seeks comment on, among other things, the "accuracy of the Commission's burden estimate" and "ways to further reduce the information collection burden on small business concerns with fewer than 25 employees."[17] As before, serious questions about the accuracy of the burden estimates remain and concerns raised by commenters responding to the *2015 PRA Notice* are unacknowledged and unaddressed. As such, OMB cannot rely on the assumptions that apparently underlie the *PRA Notice*, which despite language in the *Exemption Extension Order*,[18] makes no effort to suggest "ways to further reduce the information collection on small business concerns."[19] To the contrary, there is a substantial record justifying a permanent exemption for small broadband providers from the enhanced disclosure obligations.

Discussion

I. THE COMMISSION DID NOT COMPLY WITH THE REQUIREMENTS OF THE PAPERWORK REDUCTION ACT.

Section 3506(c)(3)(C) of the PRA requires a federal agency to:

> certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the [OMB] Director . . . reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, *including with respect to small entities* . . . the use of such techniques as – (i) *establishing differing compliance or reporting requirements or timetables* that take into

[16] *Id. See also* Initial Calculations.
[17] *PRA Notice* at 53145.
[18] *See Exemption Extension Order* at 14166 (extending exemption to "avoid making a premature determination prior to PRA approval").
[19] *PRA Notice* at 53145.

> account the resources available to those who are to respond; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or (iii) *an exemption from coverage of the collection of information, or any part thereof.*[20]

The *PRA Notice* provides no evidence that the Commission properly considered its statutory obligations. To the contrary, the Commission attempts to brush off the interests of small providers by stating that "such providers may have less of a burden" for reasons including the fact that larger broadband providers "are not eligible to avail themselves of the temporary exemption from the enhancements granted to smaller providers"[21] – an exemption that, unless further extended or superseded by Congressional legislation, will expire on December 15.[22]

The lack of any discussion of "practicable and appropriate" means to reduce burdens on small providers or consider the possibility of extending exemptions available to such providers renders the *PRA Notice* defective – a flaw made worse by the Commission's disregard for the record and its attempt to deflect attention away from small broadband providers.

II. THE COMMISSION'S BURDEN ESTIMATES ARE INACCURATE.

The *PRA Notice* estimates the time per response (31.2 hours), the total annual burden (92,466 hours) and the total annual external cost ($640,000) for 3,188 broadband providers to comply with the enhanced disclosure obligations in the *2015 Order*.[23] The *PRA Notice* does not

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[20] 44 U.S.C. § 3506(c)(3)(C) (emphases added). *See also* 44 U.S.C. § 3506(c)(4) ("in addition to the requirements of this chapter regarding the reduction of information collection burdens for small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees").

[21] *PRA Notice* at 53146.

[22] *See* H.R. 4596, 114TH Cong. (2016). The "Small Business Broadband Deployment Act" passed in the House of Representatives on March 16, 2016 by a 411-0 vote. A similar bill is pending in the Senate.

[23] *PRA Notice* at 53145-46. The *PRA Notice* estimates that 3,188 broadband providers will be required to comply with the transparency rule. *Id.* According to the *2015 Order*, the 3,188 figure was taken from 2007 Census Bureau data. *See 2015 Order*, Final Regulatory Flexibility Analysis at ¶ 19. This nine-year-old data may not accurately reflect the number of current broadband providers. In the open Internet proceeding and more recently in the broadband privacy proceeding, WISPA has raised serious concerns about the Commission's reliance on outdated statistics and its total neglect of providers that use unlicensed spectrum to provide fixed broadband services. *See* Comments of the Wireless Internet Service Providers Association Regarding the Initial Regulatory Flexibility Analysis, GN Docket No. 14-88 (filed July 16, 2014); Comments of the Wireless Internet Service Providers

provide any documentation to support its request for approval of enhanced transparency rules, an irony that cannot be overlooked. But given the repetition of the same burden guesstimates with slight changes from the *2015 PRA Notice*, it can be assumed that the Commission is continuing to rely on the Initial Calculations.[24]

The burden estimates are predicated on flawed assumptions and suffer from a lack of factual basis, making them entirely unreliable. First, the Initial Calculations wrongly assume that providers "will generally use 'in-house' personnel whose pay is comparable to mid-and senior-level federal employees."[25] For small broadband providers with 25 or fewer employees, this statement bears no relationship to reality. Contrary to the Commission's assertion, most small broadband providers have no in-house legal counsel, engineers, technical writers, staff administrators or web administrators, and will need to hire outside expertise to comply, at substantially higher cost than the Commission estimates.[26] The costs to hire the necessary private sector resources are not comparable to the mid- to senior-level federal employee hourly rates that the Commission uses. For example, it is extremely unlikely that a broadband provider will be able to hire a qualified lawyer at $68.56 per hour to review the *2015 Order*, understand and interpret the disclosure obligations and draft a compliant disclosure statement.[27]

Association Regarding the Initial Regulatory Flexibility Analysis, PS Docket No. 15-18, ET Docket No. 04-35, PS Docket No. 11-82 (filed Aug. 26, 2016); WISPA PRA Comments.. *See also* Comments of CTIA – The Wireless Association on Proposed Information collection Requirements, GN Docket No. 14-28 (filed July 20, 2015) at 8 ("CTIA Comments") (stating that the numbers underpinning the Initial Calculations "defy credibility").

[24] *See* Initial Calculations. As explained above, the slight increase may result from the need to understand and follow the *Guidance Public Notice*.

[25] Initial Calculations

[26] *See Protecting and Promoting the Open Internet*, Joint Petition for Stay of United States Telecom Association, *et al.*, GN Docket No. 14-28 (May 1, 2015), at Exhibits 1-3 and 5-7 (Declaration of Nathan Stooke, CEO of Wisper ISP, Inc.; Declaration of L. Elizabeth Bowles, President and Chairman of Aristotle Inc.; Declaration of Kenneth J. Hohhof, President of Express Dial Internet dba KWISP; Declaration of Clay Stewart, CEO of SCS Broadband; Declaration of Forbes H. Mercy, President of Washington Broadband, Inc.; and Declaration of Josh Zuerner, President and CEO of Joink LLC).

[27] For example, the U.S. Attorney's Office for the District of Columbia, where most FCC regulatory attorneys are based, estimates that the average hourly rate for an attorney with just 4-5 years of experience is $325, almost five

Further, the Commission does not even attempt to estimate the external costs that small businesses will be forced to incur, instead dismissing their interests based on the temporary exemption granted in the *Exemption Extension Order*. But what happens if the exemption expires? The Initial Calculations estimate that it will cost $640,000 ($200.75 per respondent) for *larger respondents* to deploy their own performance measurement testing.[28] Left unanswered are the questions of whether the Commission does not expect small providers to have these external costs at all, or if there are no current estimates for small providers. Whatever the case, the estimate is unexplained, an abdication of the Commission's responsibilities under the PRA and thus unreliable for OMB approval purposes. And to state the obvious, it is inconceivable that a small business with no in-house resources would be able to hire the external support for performance testing measurement for only $200.75.[29]

Second, as WISPA stated in response to the *2015 PRA Notice*, it is unclear whether and to what extent the Commission's estimates account for the complexity and differing architectures of broadband networks.[30] Even within a small WISP network, performance and congestion may vary on a site-by-site basis depending on factors such as geography, equipment, loading and customer use patterns. This creates variations in speeds and latency that may require, even within a single fixed wireless network, multiple disclosures of different network management practices. Over time, as equipment is replaced, new access points are added or other upgrades are made, the disclosure statement will need to be revised. The *2015 PRA Notice* and the Initial Calculations do not indicate whether ongoing changes to the disclosure obligations are included within additional time estimated.

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times the Commission's estimate. *See* USAO Attorney's Fees Matrix – 2015-2016, available at https://www.justice.gov/usao-dc/file/796471/download.

[28] *See* Initial Calculations.

[29] *See id.*

[30] WISPA PRA Comments at 6.

Third, the Commission's burden estimates ignore the record below. In particular, the American Cable Association ("ACA"), which represents small broadband providers, reported that its "members have estimated that to develop, draft, and revise the disclosures will require on average annual expenditures of 16-24 hours."[31] On top of this time commitment, which exceeds the Commission's estimate by a factor of three, "ACA members estimate that approximately .5 percent of customers will call each month with questions about notices and that customer representatives will spend approximately 5 minutes on average to respond to each customer."[32] Instead of using this information, the Commission appears to have resorted to its own estimates that were uniformly criticized.[33] The Commission cannot ignore the record to justify its presumptions, especially where the record contravenes those presumptions.

Finally, the potential for severe sanctions requires extreme diligence and expertise to appreciate the full impact of the disclosure rules.[34] Many WISPs and small broadband providers simply cannot afford the enormous time and huge expense of a Commission investigation, and even a $10,000 forfeiture for a minor and unintentional violation could cause them to curtail or cease providing broadband service to consumers. To mitigate this potential, small providers would not entrust compliance to inexperienced and non-expert in-house professionals, but must decide whether to spend money for outside legal counsel at the outset or face the increased risk of a Commission enforcement action. In either case, estimating a mere 6.8 hours for in-house

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[31] Comments of the American Cable Association, GN Docket No. 14-29 (filed July 20, 2015) ("ACA Comments") at 7.
[32] *Id.*
[33] *See* CTIA Comments at 16 ("the burden estimates in the PRA notice are not realistic"); Comments of the United States Telecom Association, OMB 3060-1158 (filed July 20, 2015) at 5 (Commission must employ "a more realistic estimate of burdens of the burdens broadband providers will incur to comply with the new requirements"); WISPA PRA Comments at 1 ("the [2015] *PRA Notice* is predicated on flawed assumptions that grossly underestimate the information collection burdens and costs, especially for small broadband Internet access service providers").
[34] *See AT&T Mobility, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 15-63 (rel. June 17, 2015).

personnel and $200.75 for outside resources is even more unreasonable in light of the severe sanctions that may ensue from faulty compliance.

III. THE RECORD SUPPORTS A PERMANENT EXEMPTION FOR SMALL BROADBAND PROVIDERS.

Though the Commission undoubtedly wishes it were not so, its burden estimates are inaccurate and cannot be the basis for imposing enhanced disclosure obligations on small businesses. The Commission has already approved a temporary exemption for providers serving 100,000 or fewer broadband connections[35] and has extended that exemption so it can complete the PRA process.[36] There is no public documentation supporting the Commission's time and money estimates, and the *PRA Notice* fails to acknowledge, much less address, countervailing evidence submitted by a trade association with members that are in a much better position than the Commission to provide reliable burden estimates.[37]

The discussion above and in the record below make clear that a permanent exemption will "further reduce the information collection burdens on small business concerns."[38] In the *Exemption Extension Order*, CGB recognized that "a few commenters cite specific requirements as being particularly burdensome for small providers" and cited to the comments of four trade associations representing small and rural broadband providers.[39] These "few" four trade associations represent the majority of small and rural broadband providers, and their burdens

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[35] *See 2015 Order* at 5577-79.
[36] *See Exemption Extension Order* at 14162.
[37] *See Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 31 FCC Rcd 5891 (2016), Statement of Commissioner Michael O'Rielly, Concurring in Part, Dissenting in Part, at 5948 (with respect to proposed broadband outage reporting obligations, "[f]rankly, I am more likely to believe the detailed analysis of those who actually file these [outage] reports as opposed to the Commission's ethereal analysis that this takes only two hours").
[38] *PRA Notice* at 53145.
[39] *See Exemption Extension Order* at 14166, *citing to* ACA Comments at 7; NTCA Comments at 4; WISPA Comments at 5; WTA Comments at 4.

cannot be so casually dismissed. As demonstrated above, the costs for small providers would be disproportionately higher for small providers that would be forced to divert scarce financial and human resources away for network expansion and upgrades. Moreover, providers will need to keep funds in reserve so they can address the increased compliance and enforcement risk.

Conclusion

Having failed miserably in its effort to justify compliance with the PRA last year, the Commission fares no better here. In fact, given the criticism and record below, one should have reasonably expected the Commission to demonstrate significant rigor and transparency to its analysis and estimates. It did neither.

The Commission's use of inaccurate and unreliable burden estimates cannot justify a sunset of the exemption the Commission approved in the *2015 Order* and extended in the *Exemption Extension Order*. To meet its obligations under the PRA and to "further reduce the information collection burdens on small business concerns," OMB should only approve rules that make the exemption permanent.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

September 12, 2016

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Attachment A

Initial Paperwork Reduction Act Calculations for Transparency Rule Disclosures, *Protecting and Promoting the Open Internet,* Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, FCC 15-24 (rel. Mar. 12, 2015)

12. Estimates of hour burden for the collection of information are as follows:

Information Collection Requirements:

The Commission currently has one approved information collection related to the transparency rule, OMB Control no. 3060-1158, which the Commission seeks to modify to reflect the enhancements to the transparency rule that were adopted by the *2015 Open Internet Order*. The currently approved information collection covered fewer respondents than are reflected in the estimate below due to a change in the source of data used by the Commission to determine the number of respondents. Previously, the Commission used the number of providers listed in the Internet Access Services Report,[1] which was based on the number of providers filing a Form 477. The Commission is now using information from the most recently available Economic Census.

In addition to updating the number of providers subject to the information collection, the Commission has increased slightly the estimated number of hours required for a provider to comply. The Commission is increasing the hourly estimate because the *2015 Open Internet Order* adopted certain incremental enhancements and clarifications concerning what is required under the codified transparency rule. These enhancements include requiring disclosure of commercial terms such as fees and surcharges; disclosure of performance metrics, such as packet loss, which are reasonably related to the performance the consumer would likely experience in the geographic area in which the consumer is purchasing service; disclosure of network management practices such as data caps; and direct notification to consumers likely to be significantly affected by use of a network management practice. The *2015 Open Internet Order* also removed the requirement to disclose the typical frequency of congestion.[2] The disclosures required under this information collection will be updated on occasion.

The details of the modified collection for which the Commission seeks approval are set out below.

Annual Burden Hours Under the Enhanced Transparency Rule

Number of Respondents: 3,188

There are approximately 3,188 broadband providers that will be required to comply with the transparency rule as interpreted and applied in the *2015 Open Internet Order*.

The smaller provider exemption in the *2015 Open Internet Order* applies to the approximately 1,729 Respondents that have fewer than 100,000 subscribers according to their most recent FCC Form 477.[3] The Commission expects that some of these providers already

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[1] *See* Internet Access Services Report, Table 12, page 32 at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-324884A1.pdf.

[2] *See* 80 Fed.Reg. 19759-64, para. 154-181 (discussing disclosures required by the transparency rule).

disclose at least some of the required information, but the information is not all currently and consistently available at a location, in a form, and at a level of detail, that serves the purposes of the transparency rule. It also expects that others will choose not to take advantage of the exemption and will bring themselves into compliance within a short time. The calculations below take this factor into consideration, as well as balancing whether the exemption will continue after December 15, 2015. Those providers that choose to take advantage of the exemption from the enhanced requirements are still required to comply with the transparency rule from the *2010 Order*.

Annual Number of Responses: 3,188 Responses
3,188 respondents x 1 notification to consumers of relevant information at required places and times= **3,188 responses**

Annual Number of Burden Hours: 3,188 responses x 28.9 hours = **92,133 hours**

The Commission believes that most broadband providers already disclose most, and in some cases all, of the required information in some manner, and that the incremental enhancements of the 2015 transparency rule will not be a significant extra burden. The Commission, however, also believes that the information is not all currently and consistently available at a location, in a form, and at a level of detail, that serves the purposes of the transparency rule. The Commission therefore estimates that complying with the transparency requirement will require an average of 28.9 hours to make the required disclosures each year. The currently approved collection was for 24.4 hours per year, and the Commission is requesting an increase of 4.5 hours a year based on the enhancements. 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 smaller broadband providers, who may incur lesser burdens than the average. This is because larger entities serve more customers, are more likely to serve multiple geographic regions, and are not eligible to avail themselves of the temporary exemption from the enhancements granted to smaller providers.

Annual "In House" Cost Per Respondent: $1,545.22

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). Therefore, the Commission estimates respondents' hourly costs to be $41.48 for technical writers, staff administrators, and web administrators; $58.28 for engineers; and $68.56 for attorneys to gather and post network management practices on a website.

9.5 Engineer hrs x $58.28/hr = **$553.66**
3 Technical Writer hrs x $41.48/hr = **$124.44**
6 Staff Administrator hrs x $41.48/hr = **$248.88**
3.5 Web Administrator hrs x $41.48/hr = **$145.18**
6.9 Attorney hrs x $68.56/hr = **$473.06**
Total = **$1,545.22**

Total Annual Number of Respondents: 3,188 respondents
Total Annual Number of Annual Reponses: 3,188 responses
Total Annual Burden Hours: 92,133 hours

Initial Paperwork Reduction Act Calculations for Transparency Rule Disclosures, *Protecting and Promoting the Open Internet,* Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, FCC 15-24 (rel. Mar. 12, 2015)

Total Annual "In-House" Costs Per Respondent: $1,545.22

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 *2015 Open Internet Order* interprets and applies the transparency rule to require disclosure of performance metrics, such as packet loss, which are reasonably related to the performance the consumer would likely experience in the geographic area in which the consumer is purchasing service. The Commission does not expect this to require additional measurement devices, but estimates that the cost of measurement devices has increased. The Commission makes the following estimate for external costs for large wireline broadband providers, which 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: **$130,000**

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 $65 per device = $26,000 capital cost per respondent who will have this capital cost.
$26,000 capital cost per respondent / 5 year lifespan of devices = $5,200 in annualized costs per respondent who will have this capital cost.
$5,200 capital costs per respondent x 25 respondents = $130,000 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:** $130,000 + $510,000 = **$640,000**