

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Protecting and Promoting the Open Internet)	GN Docket No. 14-28
)	
Disclosure of Network Management)	
Practices, Preserving the Open Internet)	
and Broadband Industry Practices)	

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 Rules¹ and Section 3507(d) of the Paperwork Reduction Act of 1995 (“PRA”),² hereby provides 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 open Internet disclosure obligations adopted in the *2015 Order*.⁴ As described below, the *PRA Notice* is predicated on flawed assumptions that grossly underestimate the information collection burdens and costs, especially for small broadband Internet access service providers. The Commission must not allow its premature and unreliable calculations to be the basis for imposing on small providers the enhanced disclosure obligations adopted in the *2015 Order*.

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 Reviewed by the Federal Communications Commission, 80 Fed. Reg. 29000 (May 20, 2015) (“*PRA Notice*”).

⁴ *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) (“*2015 Order*”).

Introduction

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*.⁵ Further, as WISPA stated in its comments in the open Internet proceeding,⁶ a majority of WISPA's members have fewer than 25 employees and are regarded as "small business concerns" under the PRA.⁷ They exist on a shoestring budget 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 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.⁸

In the *PRA Notice*, the Commission estimates that the average time to respond to the information collection is 28.9 hours,⁹ which includes an increase of 4.5 hours for the enhanced

⁵ See *2015 Order* at ¶ 174.

⁶ See Comments of WISPA, GN Docket No. 14-28 (filed July 16, 2014) ("WISPA Comments").

⁷ *Id.* at 9.

⁸ *Id.* at 17.

⁹ See *PRA Notice* at 29001.

obligations.¹⁰ The Commission also estimates that the total annual cost burden is \$640,000, or \$220.75 per respondent.¹¹ The Commission asserts 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 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.¹²

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. Accordingly, the Commission cannot rely on its estimated compliance burdens in considering whether and to what extent to extend the temporary exemption. Stated another way, any small provider that allocates only 4.5 hours and only \$220.75 to comply with the enhanced disclosure obligations – or less than that, if the Commission’s assumption is to be believed – likely would fall woefully short.

Discussion

THE COMMISSION’S UNINFORMED AND UNRELIABLE ESTIMATES OF INFORMATION COLLECTION BURDENS CANNOT BE THE BASIS FOR ENDING THE EXEMPTION FOR SMALL BROADBAND PROVIDERS.

The *PRA Notice* estimates the time per response (28.9 hours), the total annual burden (92,133 hours) and the total annual external cost (\$640,000) to comply with the enhanced

¹⁰ 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”).

¹¹ See *PRA Notice* at 29001. Dividing the total annual cost estimate (\$640,000) by the estimated total number of respondents (3,188) yields a \$220.75 annual cost per respondent.

¹² *Id.* See also Initial Calculations.

disclosure obligations in the *2015 Order*.¹³ The Commission attempts to support these estimates with the Initial Calculations, which are predicated on the assumption that providers will utilize the services of in-house personnel in developing and maintaining disclosure statements.¹⁴

The burden estimates are predicated on flawed assumptions and suffer from a lack of factual basis, making them entirely unreliable. First, the Commission wrongly assumes that providers “will generally use ‘in-house’ personnel whose pay is comparable to mid-and senior-level federal employees.”¹⁵ For those small broadband providers with only a handful of employees, this statement bears no relationship to reality. Contrary to the Commission’s assertion, most, if not all, small broadband providers have no in-house legal counsel, engineers, technical writers, staff administrators or web administrators, and will need to hire outside legal counsel, engineers and consultants to comply, at substantially higher cost than the Commission estimates.¹⁶ 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

¹³ *PRA Notice* at 29001. 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 eight-year-old data may not accurately reflect the number of current broadband providers.

¹⁴ *See Initial Calculations*.

¹⁵ *Id.*

¹⁶ *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).

hour to review the *2015 Order*, understand and interpret the disclosure obligations and draft a compliant open Internet disclosure statement.

Further, the Commission does not even attempt to estimate the external costs that small businesses will be forced to incur. The Initial Calculations estimate that it will cost \$640,000 (\$220.75 per respondent) for *larger respondents* to deploy their own performance measurement testing.¹⁷ Left unanswered is the question of whether the Commission expects that small providers will not have these external costs at all, or if there are no current estimates for small providers. In either case, the estimate is unexplained and thus is unreliable. 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 \$220.75.¹⁸

Second, it is impossible to develop accurate estimates in the absence of substantive “safe harbors” and a standardized disclosure form to reduce the enforcement risk and simplify the means by which broadband providers can provide adequate disclosure to the public. The *2010 Order* only adopted “guidance” and expressly declined to adopt “safe harbors.”¹⁹ The *2015 Order* pledges to establish a “voluntary safe harbor format,” yet declined “to mandate the exact format for such disclosures at this time” because “the record is lacking on specific details as to how such a disclosure should be formatted.”²⁰ It is premature for the Commission to assume that

¹⁷ See Initial Calculations.

¹⁸ See *id.*

¹⁹ See *Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905, 17938 (2010), *aff'd in part, vacated and remanded in part*, *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014) (“*2010 Order*”).

²⁰ See *2015 Order* at ¶ 179 and n.443. The *2015 Order* charges the Consumer Advocacy Committee to formulate and submit a *format* template for “safe harbor” by October 31, 2015, but is not charged with developing a *substantive* template or “safe harbor.” See *id.* at ¶ 179.

a provider will require an average of 4.5 hours to meet the enhanced disclosure requirements when the information to form an accurate factual basis is unavailable.

Third, it is unclear whether and to what extent the Commission's estimates account for the complexities of broadband networks. 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 use patterns. This creates variations in speeds and latency that may require, even within a single network, disclosure of different network management practices. Over time, as equipment is replaced, new access points added or other upgrades are made, the disclosure statement will need to be revised. The *PRA Notice* and the Initial Calculations do not indicate whether ongoing changes to the disclosure obligations are included within the 4.5 hour estimate.

Finally, in light of the Commission's recent decision to impose a \$100 million forfeiture against AT&T Mobility for alleged defects in its open Internet disclosure statement, it is clear that the potential for severe sanctions requires extreme diligence and expertise to appreciate the full impact of the disclosure rules.²¹ 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 4.5 hours for in-house personnel and \$220.75 for outside resources is even more unreasonable in light of *AT&T Mobility*.

²¹ See *AT&T Mobility, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 15-63 (rel. June 17, 2015) ("*AT&T Mobility*").

The Commission missed the boat in assuming that small businesses would have sufficient in-house personnel to meet the Commission's enhanced disclosure obligations, and it put the cart before the horse by developing estimates without an adequate factual foundation. These substantial shortcomings make it impossible for the Commission's estimates to be reliable. The *PRA Notice* and the Initial Calculations thus cannot justify elimination of the exemption granted to small providers in the *2015 Order*.

Conclusion

As the Initial Calculations expose, the *PRA Notice* is premised on flawed assumptions that render the information collection burden estimates totally unreliable. As the Commission considers whether and to what extent it should maintain the exemption for small businesses, it must consider the lack of in-house personnel, the high level of expensive expertise and the significant time it will take for small businesses to comply with any enhanced disclosure requirements.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

July 20, 2015

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Attachment A

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

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).

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)

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 Responses: 3,188 responses

Total Annual Burden Hours: 92,133 hours

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**