Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Preserving the Open Internet	)	GN Docket No. 09-191
	)	
Broadband Industry Practices	)	WC Docket No. 07-52
	)	
Notices of Public Information Collection	)	OMB Control Nos. 3060-XXXX,
	)	3060-XXXX

COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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April 11, 2011

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The National Cable & Telecommunications Association (NCTA) hereby submits comments in response to two Notices of Public Information Collection that were published in the Federal Register on February 9, 2011.[1] Absent further clarification of the rules adopted in the *Open Internet Order* both Notices significantly understate the time and money that will be necessary for broadband providers to comply with the transparency requirements and complaint procedures adopted in the *Open Internet Order*.[2] NCTA encourages the Commission to clarify the rules as suggested below in order to reduce the burden on ISPs to the levels proposed in the two Notices.

INTRODUCTION AND SUMMARY

The Commission released the *Open Internet Order* on December 23, 2010. The order adopts "three basic rules" – (1) Transparency; (2) No Blocking; and (3) No Unreasonable Discrimination.[3] In adopting these rules, the Commission stated that it expected "the costs of compliance with our prophylactic rules to be small, as they incorporate longstanding openness

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[1] *Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested*, 76 Fed. Reg. 7206 (rel. Feb. 9, 2011) (*Complaint Procedures Notice*); Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested, 76 Fed. Reg. 7207 (rel. Feb. 9, 2011) (*Transparency Notice*).

[2] *Preserving the Open Internet*, GN Docket No. 09-191, Report and Order, 25 FCC Rcd 17905 (2010) (*Open Internet Order*).

[3] *Id*. ¶ 1.

principles that are generally in line with current practices and with norms endorsed by many broadband providers."[4] These rules will take effect 60 days after notice is published in the Federal Register that the Office of Management and Budget (OMB) has approved the collection of data that will result from imposition of the transparency requirements and the complaint procedures.[5]

On February 9, 2011, notice of the two data collections was published in the Federal Register. Specifically, as required by the Paperwork Reduction Act of 1995 (PRA), the Commission has requested comments with regard to the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information being collected will have "practical utility"; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents; and (e) ways to further reduce the information collection burden on small business concerns.

Each notice describes the proposed data collections and includes estimates of the number of affected parties, the estimated time per response, the total annual burden for all parties (in hours), and the total annual cost for all parties. Although not included in the Federal Register notice, the Commission also provided to NCTA, in response to our request, an explanation of the basis for these estimates.[6]

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[4] *Id*. ¶ 4.

[5] *Id*. ¶ 173.

[6] These documents (a cover e-mail and two attachments) are attached to this pleading. It does not appear that the Commission has posted these on its website or otherwise made them available to the public.

For the transparency requirements, the Commission estimates that each of the 1,519 affected companies will spend 10.3 hours each year on compliance.[7] The Commission states that there should be no additional cost for outside goods and services and estimates "in house" personnel costs of less than $1,000 per year for technical writers, engineers, and attorneys.[8] The Commission's explanation states that "[t]he Commission believes that most broadband providers already disclose most, and in some cases all, of the information required to comply with this rule."[9]

For the formal complaint procedures, the Commission estimates that a total of 10 parties will be affected each year, which will result in 15 submissions.[10] The estimate is based on an expectation of five formal complaints per year, with each case involving a pre-complaint notice, a complaint, and a response.[11] The total estimated cost for these five complaint proceedings is roughly $40,000 per year for the parties and less than $10,000 per year for the federal government.[12]

As a prerequisite to obtaining the required OMB approval, the Commission must review the information collections and provide OMB with a certification (including a record supporting such certification) that the information collections in question: (1) are necessary for the proper functioning of the Commission; (2) are not unnecessarily duplicative of information otherwise reasonably accessible to the Commission; (3) have actual (rather than merely theoretical or potential) practical utility as defined by regulation; and (4) reduce to the extent practicable and

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[7] *Transparency Notice*, 76 Fed. Reg. at 7207.

[8] Exhibit B (Transparency Calculations) at 1-2.

[9] *Id.* at 1.

[10] *Complaint Procedure Notice*, 76 Fed. Reg. at 7207.

[11] Exhibit C (Complaint Calculations) at 1.

[12] *Complaint Procedure Notice*, 76 Fed. Reg. at 3-4.

appropriate the burden on respondents.[13] As explained in these comments, the analysis prepared by the Commission does not meet this standard. Notwithstanding the Commission's statement that it intended for "the costs of compliance with our prophylactic rules to be small," the broad and open-ended transparency rules and complaint procedures actually adopted in the *Open Internet Order* could impose a much greater burden on ISPs than contemplated. Absent clear guidance as to what providers must disclose, as well as some limitation on the scope of the complaint procedures and the availability of discovery, the estimates provided by the Commission are unrealistic. NCTA encourages the Commission to clarify the rules and/or amend its burden estimates before submitting these estimates to OMB for approval.

I. ABSENT CLARIFICATION, COMPLIANCE WITH THE TRANSPARENCY REQUIREMENTS WILL BE FAR MORE BURDENSOME THAN ESTIMATED BY THE COMMISSION

A. The Estimated Burden is Difficult to Reconcile with the Broad Scope of the Transparency Requirements

The transparency rule requires an ISP to disclose "information regarding the network management practices, performance, and commercial terms of its broadband Internet access service sufficient . . . for content, application, service, and device providers to develop, market, and maintain Internet offerings."[14] This vague, open-ended disclosure obligation could be read to require ISPs to provide virtually any information that any content, application, service, or device provider anywhere in the world decides is helpful to its business. The *Open Internet Order* includes a lengthy list of data that ***might*** be required as part of the disclosure obligation, but explicitly states that "this list is not necessarily exhaustive, nor is it a safe harbor – there may

[13] 44 U.S.C. § 3506(3) (A), (B), (C).

[14] *Open Internet Order* ¶ 54.

be additional information, not included above, that should be disclosed."[15] Thus, no matter how much information an ISP discloses, there is simply no way it can protect itself against the filing of complaints or ensure that it will be successful if a complaint is brought. The open-ended nature of the requirements also makes it exceedingly difficult for ISPs to quantify the costs of complying with the rules.

In addition to this general concern about the potential breadth of the disclosure obligation, and the resulting compliance costs, there are a variety of more specific concerns that arise under the rules. In this section we address three concerns that have particular relevance in estimating the burden created by these rules.

1. Speed/Latency Disclosure

The *Open Internet Order* requires disclosure of "actual" speed and latency,[16] but provides no guidance as to what is meant by "actual" or how it should be measured. Measuring the "actual" network performance of an ISP is a complex task. As described in the Commission's recent *USF/ICC NPRM*, for the last year the Commission has been working with a contractor, SamKnows, and a small group of ISPs to develop a hardware-based testing process.[17] The Commission is making good progress in developing this process, but much work remains to be done and, at this point, even the companies involved in the initial testing would be hard pressed to figure out how to comply with the requirement adopted in the *Open Internet Order*. Moreover, even when this test is completed, and the participants have made some initial determinations regarding how it may inform any future testing regime, this will still be an

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[15] *Id.* ¶ 56.

[16] *Id.*

[17] *Connect America Fund*, WC Docket No. 10-90, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, ¶ 115 (rel. Feb. 9, 2011) (*USF/ICC NPRM*).

entirely new exercise for the 99 percent of ISPs that are not involved in the current SamKnows test.

If the *Open Internet Order* contemplates that ISPs will disclose information comparable to what will be produced by the SamKnows testing, the *de minimis* commitment of resources (roughly 10 hours of employee time per year, with no equipment costs) estimated by the Commission would be totally inadequate to comply with the rules. To conduct hardware-based performance testing, an ISP would need to deploy one or more test servers and hundreds, if not thousands, of new routers in customers' homes. It also would need to devote resources to signing up customers to be test panelists and helping them properly install these routers. In addition, since the Commission has yet to develop a standard format for presenting this data, each ISP would need to review the raw test data and determine how it could be presented in a way that is meaningful to consumers and in compliance with the rules. Although it is impossible to provide a precise estimate, based on experience with the SamKnows testing, most ISPs likely would need to devote hundreds of hours annually to comply with this single requirement, far more than the 10 hours estimated by the Commission for the entire disclosure regime.

2. Disclosure at Point of Sale

The *Open Internet Order* states that all required disclosures must be made at the point of sale.[18] The order states that this requirement should not be burdensome for broadband providers because a single point of disclosure may satisfy the requirement and providers would merely need to post disclosures to a website.[19] That statement might be accurate if a single point of disclosure on the website applies to all customer sales, both on the web and over the phone. However, if the *Open Internet Order* were interpreted to require disclosure in the context of a

[18] *Open Internet Order* ¶¶ 57, 59.

[19] *Id*. ¶¶ 58-59.

phone order the burden would be far greater. In that scenario, it is unclear whether the customer service representative must read all the information that is disclosed on the web site or whether an abbreviated version of the web site disclosure would be considered sufficient. Moreover, even if it were clear what sort of disclosure is expected when a customer orders service over the phone, the minimal commitment of resources identified in the PRA analysis almost certainly would be insufficient. The 10-hour estimate fails to include adequate time or cost for drafting and updating new scripts to be used by customer service representatives, adequate time or expense for training those customer service representatives regarding when and how to make the required disclosures, or adequate time or expense for the additional time that now will be needed to complete each phone sale.[20]

3. Accessibility

The *Open Internet Order* requires all disclosures to be in an accessible format,[21] but provides no guidance as to what it means for a website to be "accessible." As a general matter, there is a great deal of uncertainty as to what it means for a web site to be accessible.[22] Only once has the Commission adopted a rule specifically addressing web site accessibility.[23] But that rule only was intended to apply to broadcasters and, three years after adoption, it has not taken

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[20] All of these same issues are present if a customer orders service in person, e.g., at a company retail store. In that scenario there also may be additional expense associated with printing the required materials.

[21] *Open Internet Order* ¶ 58 n.186.

22 In recognition of this uncertainty, the National Broadband Plan recommended that the Department of Justice "amend its regulations to clarify the obligations of commercial establishments under Title III of the Americans with Disabilities Act with respect to commercial websites." CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (March 2010) at 182. The Department of Justice subsequently issued an Advance Notice of Proposed Rulemaking on this topic in which it noted that "inconsistent court decisions, differing standards for determining Web accessibility, and repeated calls for Department action indicate remaining uncertainty regarding the applicability of the ADA to websites of entities covered by title III." *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations*, CRT Docket No. 110, 75 Fed. Reg. 43460 (July 26, 2010).

[23] *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168, Report and Order, 23 FCC Rcd 1274, ¶¶ 26-28 (2008).

effect because it has not been approved by OMB. Consequently, without any guidance as to what the Commission expects with regard to accessibility, it is almost impossible for ISPs to know what they must do to comply with this rule, nor are they in a position to estimate the costs of complying. Moreover, even if the Commission applied the same accessibility requirements that it sought to impose on broadcasters, this would be an entirely new Commission requirement for all of the companies subject to the *Open Internet Order* and therefore it is almost certain that compliance will involve far more than 10 hours of work per year.

B. Clarifying the Transparency Rules Would Ease Concerns Regarding the Accuracy of the Estimated Burden

The sheer breadth of the disclosure requirements, both in terms of the type of information that may be required and to whom the disclosure obligation runs, makes it exceedingly difficult to determine what is expected of ISPs and how much it will cost companies to comply. Notwithstanding that uncertainty, however, it is abundantly clear that companies will need to spend far more than 10 hours per year to comply.

One way for the Commission to help ease concerns about the accuracy of this estimate, and to ease the burden on providers, would be to clarify that the list of three topics and nine sub-topics identified in the *Open Internet Order* is, in fact, an exhaustive list.[24] Clarifying that these are the only types of disclosures that are required would help to eliminate some of the uncertainty associated with the new rules and would prevent complainants from raising issues that a provider would have no reason to anticipate.

The Commission also could help ease concerns about the potential burden these rules will impose by clarifying what is actually required or deferring application of the rule until it can

[24] *Id*. ¶ 56. The list includes the following: (1) Network Practices (Congestion Management; Application-Specific Behavior; Device Attachment Rules; and Security); (2) Performance Characteristics (Service Description and Impact of Specialized Services); and (3) Commercial Terms (Pricing; Privacy Policies; and Redress Options).

provide such guidance. For example, the Commission could clarify that the requirement to disclose "actual" network performance will not be enforced until after the Commission takes further action in its pending *Consumer Disclosure* proceeding. At that time, the Commission will be in a position to adopt a more specific requirement, if necessary, and to estimate the burden of such a requirement with more precision. Similarly, the Commission should defer implementation of the accessibility requirement until it is able to provide companies more guidance as to precisely what is expected. Finally, NCTA encourages the Commission to clarify that the point of sale disclosure requirement can be satisfied by providing the customer with a single point of disclosure on the web site, including a link to the site.

In any event, but certainly in the absence of further clarification, the current estimate is inadequate to satisfy the requirements imposed by the PRA. The Commission's low estimate, and its suggestion that most companies already are disclosing the required information, may reflect the type of rules the Commission intended to adopt, but they fail to recognize the real world implications that certain aspects of the rules would have on ISPs. Accordingly, before it can certify anything to OMB, the Commission must clarify the rules or provide a more detailed analysis of the estimated costs of compliance with these rules.

II. ABSENT CLARIFICATION, THE COMPLAINT PROCEDURES WILL BE FAR MORE BURDENSOME THAN ESTIMATED BY THE COMMISSION

A. The Estimated Burden is Difficult to Reconcile with the Broad Scope of the Rules

The rules adopted in the *Open Internet Order* represent the first time the Commission has imposed any substantive regulation on retail broadband Internet access services. As explained in

the order, these are "high-level rules."[25] Consequently, the order intentionally leaves many of the real-world implications of the rules for ISPs to be determined through case-by-case adjudication of complaints.

Given the importance of the formal complaint process to defining the ultimate scope of the rules, and the huge number of parties entitled to file a complaint,[26] the Commission's estimate that only five complaints per year will be filed seems unreasonably low. Indeed, before the rules have even taken effect, there already are a number of high-profile examples of the type of challenges that may be brought before the Commission. Less than two weeks after the *Open Internet Order* was released, for example, Free Press asked the Commission to investigate new wireless pricing plans introduced by MetroPCS.[27] Similarly, some companies already have attempted to portray routine commercial disputes as alleged violations of the *Open Internet* rules.[28] Given all of the activity before the rules have taken effect, to suggest that only five parties per year will request formal Commission intervention does not seem credible.[29]

The availability of discovery rights for complainants provides additional incentives for some parties to take advantage of the new complaint procedures – *e.g.*, as a way to obtain

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[25] *Open Internet Order* ¶10; id., Statement of Chairman Julius Genachowski ("Today, we are adopting a set of high-level rules of the road . . . .").

[26] *Id*., Appendix B, § 8.12 ("Any person may file a formal complaint alleging a violation of the rules in this part.").

[27] *See* Press Release, *Free Press Urges FCC to Investigate MetroPCS 4G Service Plans* (Jan. 4, 2011), at http://www.freepress.net/press-release/2011/1/4/free-press-urges-fcc-investigate-metropcs-4g-service-plans.

[28] *See, e.g.*, Letter from John M. Ryan, Level 3 Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 09-191, Attachment at 7 (Dec. 3, 2010) ("16. Q: Is the dispute part of the larger Net Neutrality Issue? A: Of course it is, especially the FCC's policy that local access providers cannot discriminate against different kinds of content."); *see also* Complaint of Zoom Telephonics v. Comcast Cable Communications (filed Nov. 29, 2011) at 4 (alleging that equipment testing requirements violate Open Internet principles).

[29] As Commissioner McDowell explained, "[u]sing these new rules as a weapon, politically favored companies will be able to pressure three political appointees to regulate their rivals to gain competitive advantage. Litigation will supplant innovation. Instead of investing in tomorrow's technologies, precious capital will be diverted to pay lawyers' fees. The era of Internet regulatory arbitrage has dawned." *Open Internet Order*, Dissenting Statement of Commissioner Robert M. McDowell.

information which providers otherwise have no obligation to disclose. The Commission wisely included a number of exceptions to the transparency requirements, including exceptions for competitively sensitive information and information that would compromise network security.[30] For example, while ISPs must disclose their network management practices, an ISP is not required to disclose "measures it employs to prevent spam practices at a level of detail that would enable a spammer to defeat those measures."[31]

But if an ISP attempts to rely on one of those exceptions as the basis for not disclosing particular information, the party seeking the information can simply file a complaint and seek to obtain the information through the discovery process. In that scenario, the availability of discovery completely undermines the policies that led the Commission to establish the exceptions. For a range of companies (including competitors and those looking to harm the network), the incentive to pursue complaints against an ISP as a vehicle for obtaining access to sensitive information may be extremely strong unless the Commission clarifies the limits on the availability of discovery.

B. Clarifying the Formal Complaint Procedures Would Ease Concerns Regarding the Accuracy of the Estimated Burden

The high-level nature of the rules, as well as the potential for parties to seek discovery of information that a provider chooses not to disclose, means that the Commission's estimate of only five complaints per year does not appear to be realistic. One way the Commission can bring the number of complaints closer to its estimate would be to make clear that certain issues are not covered by the *Open Internet* rules. For example, as noted above, some parties have suggested that the rules somehow cover Internet peering arrangements or other commercial arrangements

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[30] *Open Internet Order* ¶55.

[31] *Id*.

unrelated to the retail service offered to consumers. If the full Commission were to make clear from the start that it will not entertain such complaints (for all the reasons NCTA and others have explained previously),[32] that should help to reduce the number of complaints. Similarly, the Commission likely would reduce the number of complaints if it made clear that it will not entertain challenges to ISPs' retail pricing plans, like the challenge by Free Press to new pricing plans offered by MetroPCS. Along with the suggested clarifications to the transparency rules in section II.B of these comments, these clarifications regarding the scope of the *Open Internet* rules would be helpful in giving all parties a much clearer sense of the circumstances in which it is appropriate to bring a complaint.

With respect to the concern about the misuse of discovery, and the incentive that discovery provides for companies to bring frivolous complaints, the Commission should clarify that discovery will not be available in cases where an ISP has refused to provide information on the basis of one of the exceptions to the transparency rules, even under a protective agreement. In cases where the availability of one of these exceptions is at issue, only Commission staff should be permitted to review the relevant information. In addition, the Commission should make clear that the same exceptions to the disclosure obligation apply in the context of a complaint alleging some other violation of the *Open Internet* rules. For example, in the context of a complaint regarding network management practices, an ISP should not have to turn over to a complainant any information that is competitively sensitive, would jeopardize network security, or otherwise would be excluded from the transparency requirements.

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[32] *See, e.g.*, Letter from James W. Cicconi, AT&T, and Kyle E. McSlarrow, NCTA, to Julius Genachowski, Chairman, Federal Communications Commission, GN Docket No. 09-191 (Feb. 14, 2011).

Even with the clarifications suggested above, the estimate of five complaints per year may prove to be too low. But without those clarifications, it is a near certainty that there will be far more than five complaints filed with the Commission.

CONCLUSION

The minimal compliance burden the Commission has estimated for these rules is almost impossible to reconcile with the potentially broad and open-ended nature of the transparency requirements and complaint procedures contained in the order. The clarifications suggested in these comments would bring the requirements in line with the intention to preserve the status quo and help to ease concerns about the accuracy of the Commission's estimates. In the absence of such clarification, the estimates are not an accurate portrayal of the time and money that companies will need to devote to compliance with the rules and the Commission should not certify to OMB that the requirements of the PRA have been satisfied.

Respectfully submitted,

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April 11, 2011

EXHIBITS

A. Cover E-mail from Cathy Williams, FCC, to Steven Morris, NCTA

B. FCC Calculations for Disclosure Requirements

C. FCC Calculations for Complaint Procedures

EXHIBIT A

Cover E-mail from Cathy Williams, FCC, to Steven Morris, NCTA

From: Cathy Williams <Cathy.Williams@fcc.gov>
Sent: Friday, February 18, 2011 11:18 PM
To: Steven Morris
Subject: Final Documents For the Complaint and Disclosure Collections
Attachments: Complaint PRA calculations - 2-18-11.doc; Disclosure PRA calculations - 2-17-11.doc

Steven,

As promised, the documents are attached for the complaint and disclosure burden hours and costs. Please let me know if you need anything else.

Thanks,

Cathy

EXHIBIT B

FCC Calculations for Disclosure Requirements

PRA Calculations for 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

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

Information Collection Requirements:

The rules adopted in the OI R&O require all broadband providers to publicly disclose their commercial terms, network management practices and performance characteristics on their websites and at the company's point of sale of services to the consumer.

Number of Respondents: 1,519

There are approximately 1,519 broadband providers that will be required to comply with the OI R&O transparency rule.

Annual Number of Responses: 1,519 Responses

1,519 respondents x 1 posting of information on website and at point of sale = **1,519 responses**

Annual Number of Burden Hours: 15,646 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 approximately 17 hours in the first year of implementation. In subsequent years, respondents will be required to expend an average of approximately 7 hours to update disclosures. Thus, over the course of three years, respondents will expend an average of approximately 10.3 hours per year (17 + 7 + 7 = 31 hours / 3 = 10.3 hours/year).

1,519 respondents x 1 response/respondent x 10.3 hours/gathering and posting information = **15,646 hours**

Annual "In House" Cost Per Respondent: $734.97

The Commission believes that the respondents will 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 $52.86 for technical writers, $74.27 for engineers, and $87.37 for attorneys to gather and post commercial terms, network management practices, and performance characteristics on a website and make that information available at the point of sale.

<u>Year 1</u>

10 Engineer hrs x $74.27/hr = **$742.70**

5 Technical Writer hrs x $52.86/hr = **$264.30**

2 Attorney hrs x $87.37/hr = **$174.74**

Total = $1,181.74

<u>Years 2 and 3</u>

10 Engineer hrs x $74.27/hr = **$742.70**

2 Technical Writer hr x $52.86/hr = **$105.72**

2 Attorney hr x $87.37/hr = **$174.74**

Total = $1,023.16

Average annual cost = ($1,181.74 + $1,023.16) / 3 years = $734.97

Total Annual Number of Respondents: 1,519 respondents

Total Annual Number of Annual Reponses: 1,519 responses

Total Annual Burden Hours: 15,646 annual hours

Total Annual "In-House" Costs Per Respondent: $734.97

13. There are no annual external costs to respondents. The reporting requirements will be met by respondents' "in-house" staff. Therefore:

    (a) Total annualized capital/start-up costs: **None**

    (b) Total annual cost (O&M): **None**

    (c) Total annualized cost requested: **None**

EXHIBIT C

FCC Calculations for Complaint Procedures

PRA Calculations for Formal Complaint Procedures, Preserving the Open Internet and Boadband Industry Practices, Report and Order, GN Docket No. 09–191 and WC Docket No. 07–52

12. This collection accounts for petitions filed pursuant to Sections 8.12 et seq. This collection does not account for informal complaints that may be filed through the Commission's website, which are another avenue for consumers and other stakeholders to challenge practices that may violate open Internet rules. We anticipate that informal complaints will require less than one hour to prepare and submit and will be encompassed by OMB's clearance of our informal complaint procedures.[1] For petitions filed pursuant to Sections 8.12 et seq., two filing parties are generally involved (the complainant and the defendant/responding party).

We estimate that parties initiating their own formal filings will have an average burden of 40 hours and parties using outside counsel will have an average burden of 4.5 hours to assist their counsel, with some filings requiring considerably less time, and some requiring more time. We estimate that approximately 15 filings will be made annually in accordance with procedures in Sections 8.12 et seq.

Total Number of Annual Respondents: 10

Total Number of Annual Responses = 5 filings x 2 parties/filing = 10 responses/filings
5 pre-complaint notices = 5 notices
15 responses

ANNUAL BURDEN HOURS

Parties Initiating Their Own Filings

We estimate that 50% of parties initiating or responding to formal filings will do so on their own at an average of 40 hours per complaint filing. We assume that all parties that prepare their own complaints will also prepare their own pre-complaint notices, and will expend 4 hours per pre-complaint notice filing.

(3 complaints + 2 responses) x 40 hours/filing = 200 hours

3 pre-complaint notices[2] x 4 hours/filings = 12 hours

[1] *See* OMB Control No. 3060-0874,FCC Form 2000 A through F, FCC Form 475-B, FCC Form 1088 A through H, and FCC Form 501 – Consumer Complaint Forms: General Complaints, Obscenity or Indecency Complaints, Complaints under the Telephone Consumer Protection Act, and Slamming Complaints. Our current forms may require a non-substantive change.

[2] The Commission estimates that 3 parties will prepare and issue their complaints and pre-complaint notices to potential defendants without outside assistance.

Parties Using Outside Counsel

We estimate that 50% of parties initiating or responding to formal filings will use outside legal counsel. These parties will commit an average of 4.5 hours per complaint filing consulting with outside counsel. We assume that parties that use outside counsel to prepare complaints will also use outside counsel to prepare pre-complaint notices, and will expend 2 hours per pre-complaint notice filing to coordinate with outside legal counsel.

(2 complaints + 3 responses) x 4.5 hours/filing = 22.5 hours

2 pre-complaint notices[3] x 2 hours/filing = 4 hours

Total Annual Burden Hours = 200 hours + 12 hours + 22.5 hours + 4 hours = **238.5 hours (239 hours rounded)**

ANNUAL "IN-HOUSE" COST

We estimate that an in-house attorney and paralegal will initiate 50% of the formal filings without outside assistance and the remaining filings will be coordinated with outside legal counsel.

Filings Done In House

For formal filings done without outside assistance, we estimate that parties will use paralegal staff whose pay is comparable to mid- to senior-level federal employees (GS 12/5, plus 30% overhead), about $52.86 per hour. We estimate that parties will use an average of 5 hours of in-house paralegal time per complaint filing or response and 1 hour per pre-complaint notice filing. We estimate that parties will use legal staff whose pay is comparable to senior level federal employees (GS 15/5, plus 30% overhead), about $87.37 per hour. We estimate that respondents will use an average of 35 hours of in house legal staff time per complaint or response filing and 3 hours per pre-complaint notice filing.

Paralegal: 5 hours x 5 complaints/responses x $52.86/hour = $ 1,321.50
Attorney: 35 hours x 5 complaints/responses x $87.37/hour = $15,289.75
Total Annual "In-House" Cost for in-house complaint filings: $16,611.25

Paralegal: 1 hour x 3 pre-complaint filings x $52.86/hour = $158.58
Attorney: 3 hours x 3 pre-complaint filings x $87.37/hour = $786.33
Total Annual "In-House" Cost for in-house pre-complaint filings: $944.91

[3] The Commission estimates that 2 parties will rely on outside counsel to prepare and issue complaints and pre-complaint notices and these parties will spend 4.5 hours per complaint filing and 2 hours per pre-complaint notice filing to coordinate with outside legal counsel.

Filings Done by Outside Counsel

For the half of filings done by outside counsel, we estimate that parties will use 4.5 hours of in-house lawyer time for complaints and responses and 2 hours per pre-complaint notice filing to consult with outside counsel.

Attorney:	4.5 hours x 5 complaints/responses x $87.37/hour =	$1,965.83
Attorney:	2 hours x 2 pre-complaint filings x $87.37/hour =	$ 349.48
		$2,315.31

Total In-House Cost for all Filings: $19,871.47

These estimates are based on Commission's staff knowledge and familiarity with the availability of the data required.

13. Annual Cost Burden:

a. Total capital and start-up costs: $0

b. Half of the respondents are expected to receive assistance from consulting attorneys at costs of $300/hour when initiating their filings (50% of 10 filings = 5 filings), and outside paralegals at the cost of $52.86 per hour. We estimate that, on average, outside attorneys will spend 25 hours per complaint, and outside paralegals will spend 5 hours per complaint. We estimate that 2 of the 5 respondents will require outside counsel to prepare the pre-complaint notices. We estimate that, on average, outside attorneys will spend 2 hours per pre-complaint notice, and outside paralegals will spend 1 hour per complaint.

Therefore, the total operation and maintenance costs are

5 complaints/responses x 25 hours x $300/hr + 5 complaints/responses x 5 hours x $52.86/hour = 37,500 + 1321.50 = $38,821.50

2 pre-complaint filings x 2 hours x $300 + 2 pre-complaint filings x 1 hour x $52.86/hour = 1,200 + 105.72 = $1,305.72

c. Total Annualized Cost: **$40,127.22 ($40,127.00 rounded)**

14. **Cost to the Government**: The Commission staff performing work that reviews these filings consists of attorneys at the GS-15, step 5 level ($67.21/hour), paralegals at the GS-12, step 5 level ($40.66/hour) and administrative personnel at the GS-5, step 5 level ($18.50/hour).

Legal review:	10 filings x 11.3 hours/filing x $67.21/hour =	$7,594.73
Paralegal review:	10 filings x 3.4 hours/filing x $40.66/hour =	$1,382.44
Admin. review:	10 filings x 2 hours/filing x $18.50/hour =	$ 370.00
	Total Cost to the Federal Government:	**$9,347.17**