

New collection entitled: Part 8, Disclosure of Network Management Practices

SUPPORTING STATEMENT

A. Justification:

1. With this submission, the Commission proposes new information collection requirements.

On October 22, 2009, the Commission adopted a *Notice of Proposed Rulemaking* proposing rules to govern the conduct of broadband Internet access service providers.¹ The *Notice* proposes one collection of information:

Disclosure of Network Management Practices. A provider of broadband Internet access service must disclose such information concerning network management and other practices as is reasonably required for users and content, application, and service providers to enjoy the protections specified in the *Notice*.²

Broadband Internet access service providers typically disclose some practices in their terms of service for subscribers, but these may be incomplete or difficult for subscribers to evaluate. In the past, the Commission has found evidence of providers concealing information that users would consider relevant in choosing a provider or a particular service option. For example, broadband Internet access service providers have blocked specific applications desired by users without informing them. Of major broadband Internet access service providers, only a handful appear to publicly disclose their network and congestion management practices.

In the absence of this information collection, we have no way of knowing the full extent of these practices. Nor do users. This information collection would thus enable broadband subscribers to understand and take advantage of the technical capabilities and limitations of the services they purchase. This information collection would benefit content, application, and service providers and investors by increasing access to information needed to develop and market new Internet offerings. This information collection would also benefit policy makers and the Internet users who rely on them by providing an empirical foundation for evaluating the effectiveness and necessity of ongoing policies.

Statutory authority is contained in sections 1, 2, 4(i)–(j), 201(b), 230, 257, 303(r), and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. §§ 151, 152, 154(i)–(j), 201(b), 230, 257, 303(r), 503, 1302. The statutory provisions and proposed regulations authorizing the information collection are attached as Appendix A.

2. The *Notice* proposes a new information collection. Therefore, the response below addresses how, by whom, and the purpose of the information collection.

Each broadband Internet access service provider must disclose information concerning network management and other practices so that users and content, application, and service providers may reasonably enjoy the protections specified in the *Notice*.

¹ *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 05-72, Notice of Proposed Rulemaking, FCC 09-93 (released Oct. 22, 2009) (*Notice*).

² *Id.*, Appendix A (proposed rule 8.17).

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3. The Commission encourages broadband Internet access service providers to use information technology to whatever extent possible to reduce the burden of this information collection.

The Commission expects that broadband Internet access service providers' disclosure of network management practices will be done over the Internet.

4. None of the information collected as a result of the *Notice* would be duplicative of other information. To the extent some broadband Internet access service providers already publicly disclose the contours of their network management practices so that users and content, application, and service providers may reasonably enjoy the protections specified in the *Notice*, those broadband Internet access service providers would not need to duplicate their past disclosures.
5. The Commission has attempted to balance the economic interests of small businesses with the public's great interest in knowing the broadband network management practices that could affect their use of broadband Internet access service. The Commission has taken several steps to minimize the information collection burden for small business concerns, including those with fewer than 25 employees.

For example, in requiring that broadband Internet access service providers disclose their network management practices, the *Notice* asks whether there are standard labeling formats that could be used to disclose network management practices to users. Such formats could reduce the compliance burden on small businesses that would otherwise need to develop their own formats. Similarly, the Commission expects that the disclosures of large broadband Internet access service providers may serve as blueprints for smaller providers.

Similarly, the Commission expects that equipment manufacturers that design network management hardware and software will create standard disclosure forms for small businesses that utilize their equipment.

The Commission also has proposed not to require disclosure from establishments (such as coffee shops, waiting rooms, or rest areas) that acquire broadband Internet access service from a facilities-based provider to enable their patrons or customers to access the Internet from their respective establishments. These considerations should substantially alleviate any burdens on small businesses, including those with fewer than 25 employees.

6. If a broadband Internet access service provider did not disclose its network management practices, individual users would not have sufficient information to create a functioning market for broadband Internet access service, content, application, and service providers would not have the technical information needed to innovate on the Internet in the most efficient manner, and the Commission would be disabled from overseeing compliance with the other rules proposed in the *Notice*.
7. Broadband Internet access service providers may have to disclose information more than quarterly if they choose to change their network management practices that frequently, although the Commission doubts many broadband Internet access service providers will choose to do so.

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8. The Commission has published the Notice of Proposed Rulemaking in the Federal Register on November 30, 2009 (74 FR 62638) soliciting comments on the proposed information collection. The Commission has not received comments in response to its solicitation.
9. The Commission will not pay or compensate respondents for complying with this information collection.
10. The Commission has not provided any assurance of confidentiality to respondents.
11. This information collection does not address any private matters of a sensitive nature.
12. We estimate that 1,674 entities currently provide broadband Internet access service.

Disclosure of Network Management Practices. Broadband Internet access service providers will need to develop, test, deploy, and maintain a system to measure actual (rather than advertised) transmission rates and capacity. Broadband Internet access service providers will also need to draft, update, and review the necessary disclosures regarding their network management practices.³ Although the burden for each provider will vary based on the size and complexity of its network and the frequency with which it chooses to modify its network management practices, we estimate the burdens on an industry-wide basis.

TOTAL NUMBER OF RESPONDENTS. In sum, the Commission expects there to be 1,674 respondents.

TOTAL NUMBER OF ANNUAL RESPONSES. The Commission expects there to be 1,674 responses per year.

TOTAL NUMBER OF ANNUAL BURDEN HOURS. The Commission expects the burden hours to be:

770,040 hours in 2010,
435,240 hours in 2011, and
435,240 hours in 2012.

We expect the cumulative burden hours to be: 546,840 hours.

TOTAL ANNUAL "IN-HOUSE" COST BURDEN. The Commission expects the total "in-house" cost burden to be:

\$46,619,561 in 2010,
\$25,738,085 in 2011, and
\$25,738,085 in 2012.

We expect the cumulative cost to be: \$32,698,577 per year.

Attached as Appendix B are details charting how the burden estimate reported here was calculated.

13. The Commission expects that many of the initial costs of broadband Internet access service providers will be covered by "in-house" staff (burden hours), and those expenditures are included under the "in-house" cost burden as discussed above under question 12. The only capital expenditure not so covered is the annual cost to providers for additional server space,

³ The Commission expects that many providers will be able to reduce the costs of compliance by relying on information provided by network equipment manufacturers; because such savings are difficult to calculate at this point, however, we do not include such cost savings in our calculations.

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memory, communications, and backup/recovery service associated with measurement reporting and disclosure, which the Commission estimates will cost each provider **\$2,800** per year.

TOTAL ANNUAL COST BURDEN. In sum, the Commission expects the total cost of complying with these requirements for the 1,674 broadband Internet access service providers to be: **\$4,687,200 per year.**

Attached as Appendix C are details charting how the burden estimate reported here was calculated.

14. The Commission expects to review the information collections from time-to-time.

TOTAL ANNUAL COST TO THE FEDERAL GOVERNMENT. The Commission expects the total cost to the federal government to be \$208,815.

Attached as Appendix D are details charting how the burden estimate reported here was calculated.

15. This is a new information collection resulting in a program change increase of 546,840 total annual hours and \$4,687,200 in annual costs.

16. The information collected will not be published for statistical use.

17. The information collection does not include any Commission forms; consequently, the Commission has no reason to seek approval to avoid displaying the expiration date for OMB approval of the information collection.

18. There are no exceptions to the Certification Statement in Item 19.

B. Collections of Information Employing Statistical Methods:

The information collection does not employ any statistical methods.