

Section 79.2, Accessibility of Programming Providing Emergency Information

SUPPORTING STATEMENT

A. Justification:

1. This submission supports extension of OMB approval of the information collection requirements contained in the Commission's emergency information rules codified at 47 CFR § 79.2. These rules are designed to ensure that persons with hearing and visual disabilities have access to the critical details of television programming containing emergency information. In 2000, the Commission adopted the rules to assist persons with hearing disabilities, in the *Second Report and Order* in MM Docket No. 95-176.¹ Later that year, the Commission modified the rules to assist persons with visual disabilities, in the *Report and Order* in MM Docket No. 99-339.²

The information collection requirements consist of:

Section 79.2(c) of the Commission's rules provides that a complaint alleging a violation of these rules may be transmitted to the Commission by "any reasonable means" that would best accommodate the complainant's disability, and that each complaint should include:

- the name of the video programming distributor (VPD) against whom the complaint is alleged;
- the date and time of the omission of the emergency information; and
- the type of emergency.

After the Commission receives the complaint, the Commission notifies the VPD of the complaint, and the VPD has 30 days to reply.

The Commission is requesting an extension of this information collection in order to receive the full three year OMB approval/clearance.

The statutory authority for this collection of information is contained in sections 1, 2(a), 4(i), 303, 307, 309, 310 and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309, 310, and 613.

2. The FCC staff will use the data to enforce 47 CFR § 79.2. Viewers may file complaints alleging violation of this rule with the Commission. The Commission will notify video programming distributors of the complaint and the distributor will provide the Commission with a response to the complaint. The Commission previously has taken enforcement actions for failure to comply with section 79.2, based on complaints filed by viewers.

This information collection includes personally identifiable information (PII) with respect to complainants.

- (a) As required by OMB Memorandum M-03-22 (September 26, 2003), the FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007, that gives a full and complete explanation of

¹ *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Accessibility of Emergency Programming*, MM Docket No. 95-176, Second Report and Order, 15 FCC Rcd 6615 (2000).

² *Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Report and Order, 15 FCC Rcd 15230 (2000).

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how the FCC collects, stores, maintains, safeguards, and destroys the PII covered by these information collection requirements. The PIA may be reviewed at:

http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

(b) Furthermore, as required by the Privacy Act, 5 U.S.C. § 552a, the FCC also published a system of records notice (SORN), FCC/CGB-1, "Informal Complaints and Inquiries", in the *Federal Register* on December 15, 2009 (74 FR 66356), which became effective on January 25, 2010.³

3. Viewer complaints may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet email, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. Consumers may also file their complaint using the FCC's web-based form, which many consumers experience as the least burdensome method. The web-based form is located on the Commission's website at https://esupport.fcc.gov/ccmsforms/form2000.action?form_type=2000C&request_locale=en.

4. No other agency imposes a similar information collection on the respondents. There is no similar data available.

5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents. This collection will not impose a significant burden on small businesses or other small entities.

6. If this information collection was not conducted, the Commission might have no basis for enforcing its essential rules regarding accessibility to people with hearing or visual disabilities of emergency information contained in television programming. A viewer complaint process is critical to such enforcement efforts.

7. Respondents theoretically could file complaints to the Commission more than quarterly depending on the frequency of alleged rule violations. Otherwise, this collection of information is consistent with the guidelines in 5 CFR § 1320.5.

8. The Commission published a notice in the *Federal Register* on May 4, 2010 at 75 FR 23761 seeking public comment on the information collection requirements contained in this supporting statement. The Commission received no comments from the public following publication of this notice.

9. No payment or gift was provided to respondents.

10. Some assurances of confidentiality are being provided to the respondents. The Commission is requesting that individuals (consumers/respondents) submit their names, addresses, and telephone numbers, which the Commission's staff need to process the complaints. Any use of this information is covered under the routine uses listed in the Commission's SORN, FCC/CGB-1, "Consumer Inquiries and Complaints Division."

11. This information collection does not raise any questions or issues of a sensitive nature.

12. The Commission estimates that it will receive 25 complaints per year pursuant to 47 CFR § 79.2. Complaints are not filed at specified intervals, rather they are filed as appropriate when a viewer believes a

³ The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

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VPD has failed to comply with the emergency information requirements of 47 CFR § 79.2. The Commission believes that each complaint will, in turn, require a response from the appropriate VPD, and the VPD has 30 days to file its response. To be most inclusive in its estimates, the Commission assumes that each complaint will be filed by a unique viewer against a unique VPD. The Commission also estimates that each viewer will spend 1 hour preparing the complaint, and the VPD will spend 2 hours on each response. These estimates are based on the FCC staff’s knowledge and familiarity with the availability of the data required.

Total Number of Respondents: 25 viewers + 25 VPDs = **50**

Total Annual Number of Responses: 25 complaints/yr + 25 complaint responses/yr = **50 responses/yr**

The Commission assumes that the viewers themselves will prepare the complaint. The Commission also assumes that 90% of the company responses will be prepared by an attorney or in consultation with an attorney, an engineer, or similar media specialist. The Commission estimates that the respondent will spend 1 hour in consultation with this attorney.

The remaining 10% of company responses would be prepared by “in-house” staff of a VPD whose pay is comparable to a mid-to-senior level federal employee (GS-14/Step 5 (\$57.13/hour), plus 30% overhead):

25 viewer complaints x 1 hour/complaint =	25 hours
25 complaint responses x 2 hours/response (in-house staff preparation) x 10% =	5 hours
25 complaint responses x 1 hour/response (consulting “outside” professional) x 90% =	<u>22.5 hours</u>
Total Annual Burden Hours: 52.5 hours	
(53 hours rounded)	

5 hours (in-house staff preparation) x \$57.13/hour =	\$285.65
22.5 hours (staff consultation with “outside” professional) x \$57.13/hour =	\$1,285.43
+ 30% overhead =	<u>\$471.32</u>
Total “In House” Annual Hourly Cost: \$2,042.40	

13. The Commission assumes that an attorney (or other media professional) would prepare the response to 90% of the complaints-received. The Commission also estimates that the professional will bill 1 hour per response. The professional is estimated to have an average billing rate of \$300/hour.

Total Annual Costs: 25 complaint responses x 1 hour/response x 90% x \$300/hour = **\$6,750**

- (a) Total annualized capital/start-up cost: \$0
- (b) Total annual costs (operation and maintenance): \$6,750
- (c) Total annualized cost requested: **\$6,750**

14. The Commission will use staff at the GS-14/Step 5 level (\$57.13/hour) to process these complaints and responses.⁴ Processing of each complaint and associated response, including intake, complaint service, and review, is estimated at 3 hours per complaint.

⁴ The responses are filed as attachments to the complaints and not as separate documents.

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Total Cost to Federal Government: 25 complaints x \$57.13/hour x 3 hours/complaint = **\$4,284.75**

15. The Commission has re-evaluated its previous assessments of the various burdens for the existing information collection requirements. Due to this re-evaluation:

(a) the Commission's estimate for the total number of respondents has decreased by 50, from 100 to 50 respondents;

(b) the Commission's estimate for the total number of annual responses has decreased by 50, from 100 to 50 annual responses;

(c) the Commission's estimate for the total annual burden hours has decreased by 157, from 210 to 53 annual hours; and

(d) the Commission's estimate for the total annualized cost burden has decreased by \$15,750, from \$22,500 to \$6,750.

There are no program changes.

16. The Commission does not intend to publish the results of these collections of information.

17. The Commission is not seeking approval not to display the expiration date for OMB approval of these collections of information.

18. On May 4, 2010, the Commission published a 60 day *Federal Register Notice (Notice)* at 75 FR 23761. In the *Notice*, the Commission reported the following: number of respondents to be 100; number of responses to be 200, total annual burden to be 210 hours; and total annual cost to be \$22,500. The Commission now reports the number of respondents to be 50; the number of responses to be 50, the total annual burden to be 53 hours; and the total annual cost to be \$6,750. There are no other exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods:

This information collection does not employ any statistical methods.