

SUPPORTING STATEMENT**A. Justification:**

1. This submission supports the Office of Management and Budget (OMB) approval of the proposed information collection requirements contained in the Commission's proposed rules for closed captioning of video programming delivered using Internet protocol ("IP"), as required by the Twenty-First Century Communications and Video Accessibility Act of 2010 (the "CVAA"), MB Docket No. 11-154, FCC 11-138. The proposed rules would be codified at 47 C.F.R. § 79.4. Closed captioning is an assistive technology that provides individuals who are deaf or hard of hearing with access to television programming. Existing regulations require the use of closed captioning on television. The CVAA directs the Commission to revise its regulations to mandate closed captioning on IP-delivered video programming that was published or exhibited on television with captions after the effective date of the regulations.¹

The proposed information collection requirements consist of:**(a) Certifications if captions are not required.**

1. Pursuant to proposed 47 C.F.R. § 79.4(c)(1)(i), video programming owners must send program files to video programming distributors and providers either with captions as required by Section 79.4, or with a dated certification that captions are not required for a specified reason.
2. While a program may not be subject to the captioning requirements as of the effective date of the new rules, it might later become subject to the requirements, once the program is re-run on television with captions after the effective date. Accordingly, pursuant to proposed 47 C.F.R. § 79.4(c)(1)(ii), video programming owners must provide video programming distributors and providers with any revised certifications and newly required captions (if captions were not previously delivered) within seven days of the underlying change.
3. Pursuant to proposed 47 C.F.R. § 79.4(c)(2)(ii), video programming distributors and providers must retain all certifications received from video programming owners pursuant to proposed 47 C.F.R. § 79.4(c)(1)(i)-(ii) for so long as the video programming distributor or provider makes the certified programming available to end users through a distribution method that uses IP and thereafter for at least one calendar year.

(b) Petitions for exemption based on "economic burden."

1. Pursuant to proposed 47 C.F.R. § 79.4(e), a video programming provider or owner may petition the Commission for a full or partial exemption from the closed captioning requirements for IP-delivered video programming based upon a showing that they would be economically burdensome.
2. Petitions for exemption must be filed with the Commission, placed on Public Notice, and be subject to comment from the public.

(c) Complaints alleging violations of the closed captioning rules for IP-delivered video programming.

¹ CVAA at Title II, § 202(b).

Section 79.4, Closed Captioning of Video Programming Delivered Using Internet Protocol

1. Pursuant to proposed 47 C.F.R. § 79.4(f)(1), a complaint alleging a violation of the closed captioning rules for IP-delivered video programming may be filed with the Commission. Proposed 47 C.F.R. § 79.4(f)(1) would require such a complaint to be in writing, and to include:
 - i. The name and address of the complainant;
 - ii. The name and postal address, website, or email address of the video programming distributor, provider, and/or owner against whom the complaint is alleged, and information sufficient to identify the video programming involved;
 - iii. Information sufficient to identify the software or device used to view the program;
 - iv. A statement of facts sufficient to show that the video programming distributor, provider, and/or owner has violated or is violating the Commission's rules, and, if applicable, the date and time of the alleged violation;
 - v. The specific relief or satisfaction sought by the complainant; and
 - vi. The complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), e-mail, or some other method that would best accommodate the complainant).
2. After the Commission receives the complaint, proposed 47 C.F.R. § 79.4(f)(2) would require the Commission to forward the complaint to the named video programming distributor, provider, and/or owner, as well as to any other video programming distributor, provider, and/or owner that Commission staff determines may be involved. The video programming distributor, provider, and/or owner generally would have 30 days to reply. In response to a complaint, pursuant to proposed 47 C.F.R. § 79.4(f)(3), a video programming distributor, provider, and/or owner would be obligated to provide the Commission with sufficient records and documentation to demonstrate that it was (and remains) in compliance with the Commission's rules.

The statutory authority for this collection of information is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and Sections 4(i), 4(j), 303(r), and 713 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §§ 154(i), 154(j), 303(r), and 613.

2. Video programming providers and distributors would use the certifications provided by video programming owners to determine whether captions are required for a particular IP-delivered video program. The information submitted as part of, or in response to, a petition for exemption pursuant to the proposed 47 C.F.R. § 79.4(e) would be used by the Commission to determine whether an "economically burdensome" exemption is warranted. The Commission staff would use the data arising from complaints under the proposed 47 C.F.R. § 79.4(f) to enforce the proposed 47 C.F.R. § 79.4. Viewers could file complaints alleging a violation of this rule with the Commission. The Commission would notify the video programming distributor, provider, and/or owner involved of the complaint and the distributor, provider, and/or owner would provide the Commission with a response to the complaint.

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

Section 79.4, Closed Captioning of Video Programming Delivered Using Internet Protocol

(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 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, 2010.²

3. Once placed on public notice, comments, oppositions, or replies relating to petitions for exemption may be, but are not proposed to be required to be, transmitted to the Commission electronically via the Electronic Comment Filing System (ECFS). The NPRM seeks comment on whether we should instead require electronic filing. Viewer complaints would be required to be transmitted to the Commission in writing, which may include transmission of complaints online, or by fax or postal mail. The NPRM seeks comment on whether we should instead permit viewers to file complaints about a failure to comply with the closed captioning rules for IP-delivered video programming by any reasonable means.

4. No other agency imposes similar information collections 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. Although the Commission's proposed requirements for closed captioning of IP-delivered video programming may have a significant impact on small entities, the specific information collection requirements associated with closed captioning provisions would not.

6. If these information collections were not conducted, the Commission would not be in compliance with Section 713 of the Act, and would be presented with significantly greater difficulty in any enforcement efforts under Section 713 pertaining to closed captioning of IP-delivered video programming.

7. Respondents theoretically could file complaints with the Commission more than quarterly depending on the frequency of alleged rule violations. Otherwise, there are no special circumstances associated with these proposed information collections.

8. The Commission published a Notice (76 FR 59963) in the *Federal Register* on September 28, 2011 seeking comments on the information collection requirements contained in this supporting statement. To date, no comments have been received from the public.

9. No payment or gift will be provided to respondents.

10. Some assurances of confidentiality are being provided to the respondents. The Commission proposes requesting that individuals (consumers/respondents) submit their names, addresses, and contact information,

² The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Section 79.4, Closed Captioning of Video Programming Delivered Using Internet Protocol

which the Commission's staff needs 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."

The PIA that the FCC completed on June 28, 2007 gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the PII, as required by OMB regulations contained in Memorandum M-03-22 (September 22, 2003) and the Privacy Act, 5 U.S.C. § 552a. The PIA may be viewed at: http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

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

12. Estimated Hour Burden and Hour Burden Costs for Respondents

(a) Certifications if captions are not required.

The owners of IP-delivered video programming would be required to send program files to video programming distributors and providers either with captions, or with a dated certification that captions are not required for a reason stated in the certification. Video programming owners would also be required to send certifications if a program newly requires captions, because the program is re-run on television with captions after the effective date of the new rules. The Commission estimates that, on average, approximately 20 video programming owners ("VPOs") will send approximately 500 certifications each to video programming distributors ("VPDs") and video programming providers ("VPPs") per year.

(1) Thus,

$$20 \text{ VPOs} \times 500 \text{ certifications/VPO} = \mathbf{10,000 \text{ certifications sent annually}}$$

The Commission estimates that the average burden on a VPO to prepare and send each certification may require approximately 0.25 hours. The Commission estimates that 100 percent of the certifications that VPOs prepare and send will be prepared "in house" using the VPO's staff.

$$10,000 \text{ certifications} \times 0.25 \text{ hours/certification} = \mathbf{2,500 \text{ hours}}$$

The Commission estimates that the "in house" staff that VPOs use to prepare these certifications earns a salary equivalent to a GS-14/Step 5 level in the Washington, DC area (\$57.13):

$$2,500 \text{ hours} \times \$57.13/\text{hour for "in house" staff} = \mathbf{\$142,825}$$

(2) One VPD or VPP will receive each certification. The Commission estimates that the 10,000 annual certifications will be allocated among approximately **20 VPDs/VPPs**, for an average of 500 certifications per VPD/VPP.

The Commission estimates that the average burden to file away and retain all certifications received from VPOs is minimal, and will take approximately 0.084 hours (five minutes) per certification. The Commission estimates that 100 percent of the certifications that VPDs/VPPs receive will be filed away and retained "in house" using the VPD/VPP's staff.

Section 79.4, Closed Captioning of Video Programming Delivered Using Internet Protocol

10,000 certifications received annually

10,000 certifications x 0.084 hours/certification = **840 hours**

The Commission estimates that the “in house” staff that VPDs/VPPs use to file away and retain these certifications earns a salary equivalent to a GS-5/Step 5 level in the Washington, DC area (\$18.50):

840 hours x \$18.50/hour for “in house” staff = **\$15,540**

INFORMATION COLLECTION REQUIREMENTS (certifications):

Total Number of Respondents: 20 VPOs + 20 VPDs/VPPs = **40 respondents**

Total Annual Number of Responses: **10,000 certifications** sent and received

Total Annual Hourly Burden: 2,500 + 840 = **3,340 hours**

Total Annual “In House” Costs: \$142,825 + \$15,540 = **\$158,365**

(b) Petitions for exemption based on “economic burden.”

- (1) The Commission estimates that approximately 40 VPPs and VPOs will file a total of 100 petitions annually requesting exemption from the IP closed captioning requirements.

40 VPPs and VPOs x 2.5 petitions/VPP and VPO = 100 petitions annually

The Commission estimates that the average burden to complete all aspects of each petition process, including filing any possible reply comments and associated certifications, may require 5 hours.

- (a) The Commission estimates that 90 percent of the petitions that VPPs and VPOs file will be prepared “in house” using the VPP or VPO’s staff.

100 petitions filed by VPPs and VPOs x 90% using “in-house” staff = 90 petitions filed by VPPs and VPOs

90 petitions filed by VPPs and VPOs x 5 hours/petition = 450 hours

The Commission estimates that the “in house” staff that VPPs and VPOs use to prepare these petitions earns a salary equivalent to a GS-14/Step 5 level in the Washington, DC area (\$57.13):

450 hours x \$57.13/hour for “in house” staff = \$25,708.50

Section 79.4, Closed Captioning of Video Programming Delivered Using Internet Protocol

- (b) The Commission also estimates 10 percent of the petitions that the VPPs and VPOs file will be prepared using outside legal counsel, *e.g.*, attorneys in private law firms.

100 petitions filed by VPPs and VPOs x 10% using outside legal counsel = 10 petitions filed by VPPs and VPOs

VPPs that use outside legal counsel are likely to spend an average of 2 hours per petition to coordinate with their outside legal counsel to prepare and submit the petitions, including any possible reply comments and associated certifications.

10 petitions filed by VPPs and VPOs x 2 hours/petition per outside legal counsel = 20 hours

The Commission estimates that the “in house” staff VPPs and VPOs use to prepare these petitions earn a salary equivalent to a GS-14/Step 5 level in the Washington, DC area (\$57.13):

20 hours x \$57.13/hour for “in house” staff = \$1,142.60

Annual Hourly Burden to Prepare Petitions: 450 hours + 20 hours = **470 hours**

Annual “In House” Costs: \$25,708.50 + \$1,142.60 = **\$26,851.10**

- (2) The Commission estimates that there is an average of one commenter filing a response or opposition to every petition. The Commission estimates that the average burden to complete all aspects of the response process, including the certification, is five (5) hours.

100 petitions filed by VPPs and VPOs x 1 response/petition = 100 commenters filing responses

The Commission estimates that 10 percent of commenters filing responses prepare the responses themselves. The remaining 90 percent of commenters hire outside legal counsel to prepare and file the response:

- (a) 100 commenters x 10% preparing their responses = 10 commenters

10 commenters x 5 hours/response preparation = 50 hours

The Commission estimates that the commenters use “in house” staff earning the equivalent of a GS-14/Step 5 level in the Washington, DC area (\$57.13) to prepare the responses:

50 hours x \$57.13/hour “in house” staff = \$2,856.50

Section 79.4, Closed Captioning of Video Programming Delivered Using Internet Protocol

- (b) 100 commenters x 90 percent using outside legal counsel to prepare responses = 90 commenters.

The 90 commenters using outside legal counsel are likely to take 2 hours to coordinate the preparation of their response with the outside legal counsel:

90 comments x 2 hours to coordinate with outside legal counsel = 180 hours

The Commission estimates that the commenters use “in house” legal and/or administrative staff earning the equivalent of a GS-14/Step 5 level (\$57.13) to coordinate their responses with the outside legal counsel:

180 hours x \$57.13/hour for “in house” staff = \$10,283.40

- (c) The Commission estimates that petitioners will file replies to 25 percent of the oppositions by commenters. The hourly burdens for such replies are already encompassed in 12(b)(1). However, this will generate an additional 25 responses annually.

Annual Hourly Burden to Prepare/File Responses to Petitions: 50 hrs + 180 hrs = **230 hours**

Annual “In House” Costs: \$2,856.50 + \$10,283.40 = **\$13,139.90**

INFORMATION COLLECTION REQUIREMENTS (economic burden exemption petitions):

Total Number of Respondents: 40 VPPs and VPOs + 100 commenters = **140 respondents**

Total Annual Number of Responses:

100 petitions + 100 responses or oppositions to petitions + 25 replies to oppositions = **225**

Total Annual Hourly Burden: 470 + 230 = **700 hours**

Total Annual “In House” Costs: \$26,851.10 + \$13,139.90 = **\$39,991.00**

(c) Complaints alleging violations of the closed captioning rules for IP-delivered video programming.

The Commission estimates that it will receive 1,000 complaints per year pursuant to proposed 47 C.F.R. § 79.4. Complaints would not be filed at specified intervals, but instead whenever a viewer believes a VPD, VPP, or VPO has failed to comply with the requirements of 47 C.F.R. § 79.4 to provide or enable the rendering or pass through of all required captions of IP-delivered video programming. The Commission believes that each complaint will, in turn, require a response from the appropriate VPD, VPP, or VPO, and the VPD, VPP, or VPO will generally have 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. The Commission also estimates that the complaints will be filed against a total of 20 VPOs and 20 VPDs/VPPs. The Commission also estimates that each viewer will spend 1 hour preparing the complaint, and the VPD, VPP, or VPO 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.

Section 79.4, Closed Captioning of Video Programming Delivered Using Internet Protocol

Total Number of Respondents: 1,000 viewers + 20 VPOs + 20 VPDs/VPPs = **1,040**

Total Annual Number of Responses: 1,000 complaints/yr + 1,000 complaint responses/yr = **2,000 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, VPP, or VPO whose pay is comparable to a mid-to-senior level federal employee in the Washington, DC area (GS-14/Step 5 (\$57.13/hour), plus 30% overhead):

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1,000 viewer complaints x 1 hour/complaint =		1,000 hours
1,000 complaint responses x 2 hours/response (in-house staff preparation) x 10% =		200 hours
1,000 complaint responses x 1 hour/response (consulting “outside” professional) x 90% =		<u>900 hours</u>
	Total Annual Burden Hours:	2,100
hours		

200 hours (in-house staff preparation) x \$57.13/hour =	\$11,426.00
900 hours (staff consultation with “outside” professional) x \$57.13/hour =	\$51,417.00
+ 30% overhead =	<u>\$18,852.90</u>

Total “In House” Annual Hourly Cost:

\$81,695.90

TOTAL INFORMATION COLLECTION REQUIREMENTS:

Total Number of Respondents: **1,140** (20 VPOs + 20 VPDs/VPPs + 100 commenters filing responses to economic burden petitions + 1,000 viewers filing complaints)

Total Annual Number of Responses: **12,225** (10,000 certifications + 225 petitions and responses + 2,000 complaints and responses)

Total Annual Burden Hours: **6,140** (3,340 hours (certifications) + 700 hours (petitions and responses) + 2,100 (complaints and responses))

Total “In House” Annual Hourly Cost: **\$280,051.90** (\$158,365 (certifications) + \$39,991 (petitions and responses) + \$81,695.90 (complaints and responses))

13. Estimated Cost Burden for Respondents

(a) Certifications if captions are not required. The Commission estimates in Section 12(a) above that all burdens related to preparing, sending and receiving/retaining certifications will be handled by “in house” staff.

Section 79.4, Closed Captioning of Video Programming Delivered Using Internet Protocol

(b) Petitions for exemption based on “economic burden.” The following represents the Commission’s estimate of annual cost burdens to respondents resulting from respondents’ consultation time with outside legal counsel:

(A) Filing of Economic Burden Exemption Petitions

In Section 12(b)(1)(b) above, the Commission estimates that 10% of 100 annual economic burden exemption petitions will be filed by outside legal counsel, who will prepare the petitions for exemption, reply comments and associated certifications. The Commission further estimates that these assignments may require 5 hours per petition, and that outside legal counsel will charge \$300 per hour for legal services:

10 petitions x 5 hours/petition = 50 hours

Total Annual Cost: \$15,000 (50 hours x \$300/hour legal services)

(B) Responses to Economic Burden Exemption Petitions

In Section 12(b)(2)(b) above, the Commission estimates that 90 percent of 100 annual oppositions to economic burden exemption petitions will be prepared using outside legal counsel, who will prepare the responses, including the certification. The Commission further estimates that these assignments may require 5 hours per petition, and that outside legal counsel will charge \$300 per hour for legal services:

90 responses x 5 hours/response = 450 hours

Total Annual Cost: \$135,000 (450 hours x \$300/hour “outside” legal fees)

(c) Complaints alleging violations of the closed captioning rules for IP-delivered video programming.

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: 1,000 complaint responses x 1 hour/response x 90% x \$300/hour = **\$270,000**

Total Estimated Annual Cost Burden for the Requirements: \$420,000 (\$15,000 + \$135,000 + \$270,000)

14. **Estimated Cost Burden for Government**³

(a) Certifications if captions are not required. The Commission would not have any cost burden

³ Generally, each petition and its associated records will be part of a single proceeding, and each complaint and its associated records will be part of a single proceeding. The burden estimates in this section consider the total time Commission staff would allocate to each such proceeding.

Section 79.4, Closed Captioning of Video Programming Delivered Using Internet Protocol

imposed by requiring VPOs to send certain certifications to VPDs/VPPs, and by requiring VPDs/VPPs to retain the certifications for so long as the VPD/VPP makes the certified programming available to end users through a distribution method that uses IP.

- (b) Petitions for exemption based on “economic burden.” The Commission estimates that VPPs and VPOs will submit approximately 100 petitions for exemption from the IP closed captioning rules on the basis of “economic burden” to the Commission annually, and the Commission estimates that a response will be filed for each. The Commission will use staff at the GS-14/Step 5 level (\$57.13/hour) to review these petitions and the comments/responses. The Commission estimates that its attorneys spend 10 hours to review each of these petitions and their associated records (*i.e.*, including responses/opposition, replies, and any other filings associated with the petition):

100 petitions and associated records x 10 hours x \$57.13/hour = **\$57,130**

- (c) Complaints alleging violations of the closed captioning rules for IP-delivered video programming.

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

1,000 complaints and associated records x \$57.13/hour x 3 hours/complaint = **\$171,390**

Total Cost to Federal Government: \$228,520

15. This is a new collection of information.

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. There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods:

These information collections do not employ any statistical methods.