

Section 79.2, Accessibility of Programming Providing Emergency Information; Complaints Alleging Violations of the Apparatus Emergency Information and Video Description Requirements**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 Notice of Proposed Rulemaking, MB Docket No. 12-107, FCC 12-142 (the NPRM). The current emergency information rules, codified at 47 C.F.R. § 79.2, 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 In the NPRM, the Commission proposes rules to implement portions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (the CVAA) related to accessible emergency information,³ and apparatus requirements for emergency information and video description.⁴

The information collection requirements consist of:

(a) Complaints alleging violations of the emergency information rules.

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.

(b) Complaints alleging violations of the apparatus emergency information and video description requirements.

The NPRM proposes that consumers may file complaints alleging violations of the proposed rules containing

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).

³ Specifically, pursuant to Section 202 of the CVAA, the NPRM proposes to make emergency information accessible to individuals who are blind or visually impaired by requiring the use of a secondary audio stream to provide emergency information aurally that is conveyed visually during programming other than newscasts.

⁴ Specifically, pursuant to Section 203 of the CVAA, the NPRM seeks comment on how to ensure that television apparatus are able to make available video description, as well as to make emergency information accessible to individuals who are blind or visually impaired.

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apparatus emergency information and video description requirements, 47 C.F.R. §§ 79.105-79.106. A complaint filed with the Commission may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), e-mail, or some other method that would best accommodate the complainant's disability. Given that the population intended to benefit from the rules adopted would be blind or visually impaired, if a complainant calls the Commission for assistance in preparing a complaint, Commission staff would document the complaint in writing for the consumer and such communication would be deemed a written complaint. The NPRM proposes that such complaints should include certain information about the complainant and the alleged violation. The Commission will forward such complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that Commission staff determines may be involved, and may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violations of Commission 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 1, 2(a), 4(i), 4(j), 303, 307, 309, 310, 330(b) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 154(j), 303, 307, 309, 310, 330(b) and 613.

2. The FCC staff will use the data to enforce 47 C.F.R. §§ 79.2, 79.105, 79.106. Viewers may file complaints alleging a violation of 47 C.F.R. § 79.2 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. Similarly, if adopted, the Commission would use information received pursuant to the complaint procedures for violations of the apparatus requirements of sections 79.105 and 79.106 to enforce the Commission's apparatus emergency information and video description requirements.

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 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, 2010.⁵

3. Viewer complaints alleging violations of 47 C.F.R. § 79.2 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

⁵ 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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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.

Complaints alleging violations of the apparatus emergency information and video description requirements may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), e-mail, or some other method that would best accommodate the complainant's disability. Given that the population intended to benefit from the rules would be blind or visually impaired, if a complainant calls the Commission for assistance in preparing a complaint, Commission staff would document the complaint in writing for the consumer and such communication would be deemed to be a written complaint.

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. Although some of the Commission's proposed requirements may have a significant impact on small entities, the specific associated information collection requirements would not.
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. Additionally, the proposed information collections are necessary for the Commission to carry out the purposes of and to comply with the CVAA.
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 C.F.R. § 1320.5.
8. The Commission published a notice in the *Federal Register* on November 28, 2012 at 77 FR 70970 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. Regarding 47 C.F.R. § 79.2, the Commission is requesting that individuals (consumers/respondents) submit their names, addresses, and telephone numbers, which the Commission's staff needs to process the complaints. Regarding complaints alleging violations of the apparatus emergency information and video description requirements, the Commission proposes that complaints should include the name, postal address, and other contact information of the complainant. 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. Estimated House Burden and Hour Burden Costs for Respondents

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(a) Complaints alleging violations of the emergency information rules.

The Commission estimates that it will receive 30 complaints⁶ per year pursuant to 47 C.F.R. § 79.2. Complaints are not filed at specified intervals, rather they are filed as appropriate when a viewer believes a VPD has failed to comply with the emergency information requirements of 47 C.F.R. § 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.

30 viewers + 30 VPDs = **60 respondents**

30 complaints/yr + 30 complaint responses/yr = **60 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):

| | |
|--|------------------|
| 30 viewer complaints x 1 hour/complaint = | 30 hours |
| 30 complaint responses x 2 hours/response (in-house staff preparation) x 10% = | 6 hours |
| 30 complaint responses x 1 hour/response (consulting “outside” professional) x 90% = | <u>27 hours</u> |
| | 63 annual |

burden hours

| | |
|--|--|
| 6 hours (in-house staff preparation) x \$57.13/hour = | \$342.78 |
| 27 hours (staff consultation with “outside” professional) x \$57.13/hour = | \$1,542.51 |
| | + 30% overhead = <u>\$565.59</u> |
| | “In House” Annual Hourly Cost: \$2,450.88 |
| | (rounded to \$2,451) |

(b) Complaints alleging violations of the apparatus emergency information and video description requirements.

(1) Complaint respondents. The Commission estimates that 10 complaints will be filed with the Commission. To be most inclusive in its estimates, the Commission assumes that each complaint will be filed by a unique consumer against a unique manufacturer.

⁶ The Commission previously estimated 25 complaints per year alleging violations of section 79.2. We now estimate an additional 5 complaints per year as a result of the proposed revisions to section 79.2.

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10 consumers + 10 manufacturers = **20 respondents**

- (2) Complaints. The Commission estimates that each consumer will need 1 hour to prepare and submit a complaint to the Commission, including responding to any Commission request for additional information.

10 complaints = **10 responses**

10 responses x 1 hour/complaint = **10 hours**

Annual "In House" Costs: **\$0**

- (3) Responses to complaints. The Commission assumes it will forward complaints to the manufacturer and assumes that the manufacturer will respond to each forwarded complaint.

- (i) The Commission expects that manufacturers will use "in house" personnel to respond to 50% of the 10 complaints forwarded by the Commission.

10 x 50% = **5 responses to complaints prepared by "in house" personnel**

The Commission estimates that an average of 3 hours will be needed for "in house" personnel to respond to a complaint, including responding to any Commission request for additional information.

5 responses to complaints x 3 hours/response = **15 hours**

The Commission assumes that respondents use "in house" personnel whose pay is comparable to mid-senior-level federal employees (GS-15/5, plus 30% overhead); therefore, the Commission estimates respondents' costs to be about \$87.37 per hour.

15 hours x \$87.37/hour for "in house" staff = **\$1,310.55 (rounded to \$1,311)**

- (ii) The Commission expects that manufacturers will use outside legal counsel to respond to 50% of the 10 complaints forwarded by the Commission.

10 x 50% = **5 responses to complaints prepared by outside legal counsel**

Manufacturers are likely to spend an average of 1 hour per complaint to coordinate with their outside legal counsel to prepare and submit the response.

5 responses to complaints x 1 hour/response = **5 hours to consult with outside legal counsel**

The Commission assumes that respondents use "in house" personnel whose pay is comparable to mid-senior-level federal employees (GS-15/5, plus 30% overhead); therefore, the Commission estimates respondents' costs to be about \$87.37 per hour.

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5 hours x \$87.37/hour for “in house” staff = **\$436.85 (rounded to \$437)**

Total Number of Respondents:

30 viewers + 30 VPDs + 10 consumers + 10 manufacturers = **80 respondents**

Total Annual Number of Responses: 80 responses

Total Annual Hourly Burden: 63 hours + 10 hours + 15 hours + 5 hours = **93 hours**

Total Annual “In House” Costs: \$2,451 + 0 + \$1,311 + \$437 = \$4,199

13. Estimate of the total annual cost burden to the respondents resulting from the collection of information:

(a) Complaints alleging violations of the emergency information rules.

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.

30 complaint responses x 1 hour/response x 90% x \$300/hour = **\$8,100**

(b) Complaints alleging violations of the apparatus emergency information and video description requirements.

The Commission estimates that 50% of 10 responses to complaints forwarded to manufacturers by the Commission will be prepared using outside legal counsel. The Commission estimates 3 hours will be needed to prepare and submit these responses, including responding to any Commission request for additional information. The Commission estimates that outside counsel will charge approximately \$300 per hour.

50% of 10 responses = 5 responses x 3 hours = 15 hours x \$300 = **\$4,500**

Total annualized capital/start-up cost: \$0

Total annual costs (operation and maintenance): \$8,100 + \$4,500 = \$12,600

Total annualized cost requested: \$8,100 + \$4,500 = \$12,600

14. Estimates of annualized costs to the Federal government:

(a) Complaints alleging violations of the emergency information rules.

The Commission will use staff at the GS-14/Step 5 level (\$57.13/hour) to process these complaints and responses.⁷ Processing of each complaint and associated response, including intake, complaint service, and review, is estimated at 3 hours per complaint.

⁷ The responses are filed as attachments to the complaints and not as separate documents.

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30 complaints x \$57.13/hour x 3 hours/complaint = \$5,141.70 (rounded to \$5,142)

(b) Complaints alleging violations of the apparatus emergency information and video description requirements.

The Commission estimates that it will forward 10 complaints to manufacturers for a response. The Commission will use GS 13/5 (\$48.35) staff analysis to review and forward these informal complaints to manufacturers. The Commission estimates that this will require 1 hour per complaint.

10 complaints x 1 hour/complaint x \$48.35/hour = \$483.50 (rounded to \$484)

The Commission will use GS 15/5 (\$67.21) staff attorneys to review the responses and documents submitted by manufacturers. The Commission estimates that this will require 2 to 4 hours (average 3 hours) for this review per response.

10 responses x 3 hours/response x \$67.21/hour = \$2,016.30 (rounded to \$2,016)

Total Cost to Federal Government: \$7,642

15. The Commission proposes the following program changes to this collection as a result of the proposed information collection requirements contained in FCC 12-142:

- (a) the Commission's estimate for the total number of respondents would increase by 30, from 50 respondents to 80 respondents;
- (b) the Commission's estimate for the total number of annual responses would increase by 30, from 50 to 80;
- (c) the Commission's estimate for the total annual burden hours would increase by 40, from 53 to 93; and
- (d) the Commission's estimate for the total annualized cost burden would increase \$5,850, from \$6,750 to \$12,600.

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:

The Commission does not anticipate that the information collection will employ any statistical methods.