

Transparency Rule Disclosures, Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, FCC 15-24 (Mobile Broadband Disclosures)

A. Justification

Background

1. The Federal Communications Commission seeks to modify the information collection associated with the Open Internet Transparency Rule, OMB Control No. 3060-1158.

In 2009, the Federal Communications Commission (“Commission”) released a Notice of Proposed Rulemaking to determine whether and what actions might be necessary to preserve the characteristics that have allowed the Internet to grow into an indispensable platform supporting our nation’s economy and civic life, and to foster continued innovation and investment in the Internet’s physical networks and the content, applications, services, and devices that rely on those networks. On December 21, 2010, the Commission adopted the *Preserving the Open Internet and Broadband Industry Practices Report and Order* (“2010 Order”).¹ The Commission concluded that high-level protections to ensure the continued vitality of the Internet were needed in light of instances of broadband providers interfering with the Internet’s openness, and the incentives providers may face to exert gatekeeper control over Internet content, applications, and services. It adopted three fundamental rules governing Internet service providers: (1) no blocking; (2) no unreasonable discrimination; and (3) transparency (the “Transparency Rule”). Subsequently, despite upholding the Commission’s authority and the basic rationale supporting the 2010 Order, the D.C. Circuit struck down the no blocking and no unreasonable discrimination rules in *Verizon v. FCC*.² The court upheld the Transparency Rule from the 2010 Order; it thus remains in full effect. The information collection related to the Transparency Rule, which is codified at 47 C.F.R. § 8.3, is approved under OMB Control No. 3060-1158. Most recently, on August 15, 2014, OMB approved the Transparency Rule information collection of 41,773 annual burden hours.³

Following the D.C. Circuit’s ruling, the Commission issued a Notice of Proposed Rulemaking to respond to the lack of conduct-based rules to protect and promote the Open Internet in the wake of *Verizon v. FCC*. On February 26, 2015, the Commission adopted the *Protecting and Promoting the Open Internet Report and Order on Remand, Declaratory Ruling, and Order* (“2015 Open Internet Order”).⁴ The 2015 Open Internet Order builds on the 2010 Order, concluding that threats to Internet openness remain today. On June 14, 2016 the D.C. Circuit upheld the 2015 Open Internet Order in its entirety.⁵

The 2015 Open Internet Order does not change the text of the Transparency Rule, but adopts certain incremental enhancements and clarifications concerning what is required to be disclosed under the Transparency Rule. In doing so, the 2015 Open Internet Order reaffirms

¹ *Preserving the Open Internet, Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905 (2010) (2010 Order).

² *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

³ Notice of Office of Management and Budget Action, Extension Without Change of a Currently Approved Collection, OMB Control Number 3060-1158, August 15, 2014.

⁴ *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601(2015 Open Internet Order).

⁵ *United States Telecommunications Association v. FCC*, 2016 WL 3251234 (D.C. Cir. 2016).

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the importance of ensuring transparency, ensuring that consumers are better able to make informed choices about broadband services and that edge providers⁶ have the information necessary to develop new content, applications, services, and devices that promote the virtuous circle of investment and innovation. The Commission believes that most broadband providers already disclose most, and in some cases all, of the required information in some manner. These disclosures, however, are not consistently provided in a manner that adequately satisfies the divergent informational needs of all affected parties; at times are ill-defined; do not consistently measure service offerings, making comparisons difficult; or are not easily found on provider websites.

The Commission therefore is requesting approval of a modified information collection associated with the Transparency Rule as clarified, interpreted, and applied in the *2015 Open Internet Order*. As discussed in more detail below, the Commission is revising upward its estimates of the burden associated with this information collection in order to account for the net incremental burden associated with the clarifications and enhanced disclosure requirements, and with the removal of one disclosure requirement. These estimates reflect full consideration of the comments filed in response to the 60 Day Federal Register Notice (*Notice*) and the guidance provided to respondents in the *2016 Guidance PN*.⁷ At least one commenter has publicly stated that the *2016 Guidance PN* addresses its concerns about the enhancements to the Transparency Rule and opined that the *2016 Guidance PN* “properly balanced the interests of consumers and smaller [broadband providers].”⁸

Information Collection Requirements:

The Transparency Rule adopted in the *2010 Order* requires all broadband providers to publicly disclose network management practices, performance characteristics, and commercial terms (collectively referred to here as “required disclosures”) of their broadband services. The rule ensures transparency and continued Internet openness, while making clear that broadband providers can effectively manage their networks and respond to market demands. Though the text of the Transparency Rule did not change, the *2015 Open Internet Order* provides clarifications of the rule’s requirements and interprets and applies the rule to require incremental, enhanced disclosures by broadband providers and to no longer require disclosure of the typical frequency of congestion. As a result, the Commission seeks to modify the previously approved information collection to account for the net incremental burden associated with these changes.

Under the Transparency Rule adopted in 2010, broadband providers must disclose information sufficient to enable consumers to make informed decisions and for “content, application, and device providers to develop, market, and maintain Internet offerings.”⁹ The

⁶ “Edge providers” are defined in the *2010 Order* as providers of content, applications, services, and devices accessed over or connected to broadband Internet access service. 25 FCC Rcd at 17907, para. 4 n.2.

⁷ *Guidance on Open Internet Transparency Rule Requirements*, GN Docket No. 14-28, Public Notice, DA 16-569 (May 19, 2016) (*2016 Guidance PN*).

⁸ American Cable Association, *ACA Commends FCC on Open Internet Transparency Rule Guidance*, (May 20, 2016), available at <http://www.americancable.org/node/5721> (*ACA Press Release*).

⁹ *2015 Open Internet Order*, 30 FCC Rcd at 5679, para. 176.

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enhanced disclosure requirements under the *2015 Open Internet Order* include specific commercial terms, network performance characteristics, and network management practices.¹⁰ The *2015 Open Internet Order* makes clear, however, that some of these disclosures may have already been required in some circumstance under the *2010 Order*.¹¹ In fact, some commenters in a related matter have stated that all the enhanced commercial terms disclosures already were required under the *2010 Order*.¹² Moreover, BIAS providers already possess, as a result of providing service, the information that the enhancements at issue require them to disclose. Performance metrics disclosures, including packet loss, are all metrics that providers already are measuring in order to properly engineer and operate their networks. Similarly, providers must already have created any network practices in order to implement them in their networks, and so already know the details of such practices. They also must know their commercial terms, including data caps and allowances, in order to properly bill consumers or slow broadband speeds when consumers exceed a data cap. As a result, the burdens associated with these disclosures are primarily related to making that information accessible to consumers and edge providers, not in developing policies or measuring performance of their networks. The burden of disclosing this information is not high and the burden of complying with the enhancements is very modest. In addition to these enhancements, the *2015 Open Internet Order* removes one disclosure requirement from the *2010 Order*: the typical frequency of congestion.

Under the *2015 Order*, the Transparency Rule now requires disclosure of the following (enhancements, which might have previously been required in certain circumstances under the *2010 Order*, are in bold text¹³):

Commercial Terms¹⁴

- o **The full monthly service charge. Any promotional rates should be clearly noted as such, specify the duration of the promotional period, and note the full monthly service charge the consumer will incur after the expiration of the promotional period.**
- o **All additional one time and/or recurring fees and/or surcharges the consumer may incur either to initiate, maintain, or discontinue service, including the name, definition, and cost of each additional fee. These may include modem rental fees, installation fees, service charges, and early termination fees, among others.**
- o **Any data caps or allowances that are a part of the plan the consumer is purchasing, as well as the consequences of exceeding the cap or allowance**

¹⁰ *Id.* at 5672-5677, paras. 164-69.

¹¹ *See 2015 Open Internet Order*, 30 FCC Rcd at 5673, 5677, paras. 164, 169.

¹² *See* The Rural Broadband Provider Coalition Comments, GN Docket No. 14-28 at 6 (Aug. 5, 2015); WTA – Advocates for Rural Broadband Comments, GN Docket No. 14-28 at 4 (Aug. 5, 2015).

¹³ The *2015 Open Internet Order* clearly states that some of the disclosures may have previously been required in certain circumstances under the *2010 Order* in order to provide information “sufficient for consumers to make informed choices.” *2015 Open Internet Order*, 30 FCC Rcd at 5672-73, 5676-77, 5681 paras. 164, 169, 182.

¹⁴ *2015 Open Internet Order*, 30 FCC Rcd at 5672-73, para. 164.

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(e.g., additional charges, loss of service for the remainder of the billing cycle).

- Privacy Policy – for example, whether network management practices entail inspection of network traffic, and whether traffic information is stored, provided to third parties, or used by the carrier for non-network management purposes.
- Redress Options – practices for resolving end-user and edge provider complaints and questions.

Performance Characteristics¹⁵

- Providers must disclose the following for each broadband service (for mobile providers, this refers to separate disclosures for services with each technology (e.g., 3G and 4G)):
 - Speed
 - Latency
 - **Packet loss**
- **Actual network performance data should be reasonably related to the performance the consumer would likely experience in the geographic area in which the consumer is purchasing service.**
- **Network performance will be measured in terms of average performance over a reasonable period of time and during times of peak usage.**
- Impact of specialized services (non-BIAS data services)

Network Practices¹⁶

- **Disclosure of the purpose of the practice, which users or data plans may be affected, the trigger that activates the practice, types of traffic subject to the practice, and the practice’s likely effect on end users’ experiences for:**
 - **User-based practices: any practices that are applied to traffic associated with a particular user or user group, including any application-agnostic degradation of service to a particular end user.**
 - Application-based practices
- Device attachment rules
- Congestion Management Policies
- Security Policies

Means of Disclosure¹⁷

- **Providers must directly notify end users if their individual use of a network will trigger a network practice, based on their demand prior to a period of congestion, that is likely to have a significant impact on the end user’s use of the service.**

The Commission has provided some definitions, such as those for speed, latency, and packet loss, on the “Consumer Labels for Broadband Services” page on the FCC’s website, which

¹⁵ *Id.* at 5673-76, paras. 165-168.

¹⁶ *Id.* at 5676-77, paras. 169-170.

¹⁷ *Id.* at 5677, para. 171.

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also provides sample labels and instructions for providers, includes a tab defining the main terms used on the label. The site is available at <https://www.fcc.gov/consumers/guides/consumer-labels-broadband-services>.

In the *2015 Open Internet Order*, the Commission declined to specify testing or measurement methodologies that providers must use in regard to the performance characteristic disclosures because, as in 2010, it continues to believe that there is benefit in permitting measurement methodologies to evolve and improve over time, with further guidance from Commission Bureaus and Offices, similar to the guidance provided in 2011. This flexibility is not unbounded, however; the Commission made clear that the methodologies selected by a provider must be based upon sound engineering principles and must provide accurate information. The Commission also delegated authority to the Chief Technologist to work with other Bureaus and Offices of the Commission to provide guidance on acceptable methodologies. The first such guidance was released in May 2016. The Chief Technologist, in conjunction with other Bureaus and Offices, continues to have authority to provide guidance. In addition, the Commission retains the ability to take enforcement action against providers who violate the Transparency Rule's requirement to provide accurate information.

The *2015 Open Internet Order* also establishes a voluntary safe harbor for the format and nature of the required disclosures for consumers.¹⁸ This safe harbor for use of the Broadband Label does not change the information that must be disclosed and therefore does not increase the burdens associated with this information collection. To the extent that broadband providers avoid costs associated with developing their own disclosure formats, the safe harbor for use of the Broadband Label is likely to reduce the burdens.

Finally, the *2015 Open Internet Order* provides a temporary exemption until December 15, 2015 from these enhanced disclosure requirements for smaller providers with fewer than 100,000 broadband connections¹⁹ as reported on their most recent Form 477 submission. The Consumer & Governmental Affairs Bureau extended this exemption until December 15, 2016.²⁰

¹⁸ *Id.* at 5680, para. 179. The safe harbor provides that a broadband provider will be deemed to be in compliance with the transparency rule with regard to consumer-oriented disclosures if it provides “a consumer-focused, standalone disclosure” using the format developed with input from the Commission’s Consumer Advisory Committee and publicly released on April 4, 2016 (Broadband Label). See, *Consumer and Governmental Affairs Bureau, Wireline Competition, and Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels*, GN Docket No. 14-28, Public Notice, DA 16-357 (April 4, 2016) (*Consumer Broadband Label PN*).

¹⁹ In the *2015 Open Internet Order*, the Commission adopted a temporary exemption from the enhancements for providers with “100,000 or fewer broadband subscribers,” however, the Commission’s Consumer and Governmental Affairs Bureau has since clarified that the threshold should be measured in terms of broadband connections, rather than in terms of subscribers or subscriber lines. See, e.g. *Consumer and Governmental Affairs Bureau Seeks Comment on Small Business Exemption from Open Internet Enhanced Transparency Requirements*, GN Docket No. 14-28, Public Notice, 30 FCC Rcd 6409 (2015).

²⁰ *Open Internet Small Business Exemption Extension Order*, GN Docket No. 14-28, Report and Order, 30 FCC Rcd 14162 (CGB 2015) (*2015 Open Internet Small Business Order*).

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This collection does not affect individuals or households; thus there are no impacts under the Privacy Act because it does not require the collection of personally identifiable information (“PII”) from individuals.

The statutory authority for the information collection requirements is contained in sections 1, 2, 3, 4, 10, 201, 202, 301, 303, 316, 332, 403, 501, 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. Sections 151, 152, 153, 154, 160, 201, 202, 301, 303, 316, 332, 403, 501, 503, and 1302.

2. To fulfill their disclosure obligations, broadband providers must post their required disclosures, as defined above, on their websites, and make that information available at their point-of-sale locations.²¹ This disclosure requirement serves the following purposes: (1) ensuring that consumers of broadband services can make informed choices regarding the purchase and use of the service; (2) building consumers’ and other users’ confidence in broadband services so as to increase investment in Internet infrastructure; (3) supporting innovation, investment, and competition by ensuring that edge providers have the technical information necessary to create and maintain online content, applications, services, and devices, and to assess the risks and benefits of embarking on new projects; (4) increasing the likelihood that broadband providers will abide by open Internet principles, and that the Internet community will identify problematic conduct and suggest voluntary fixes; and (5) enabling the Commission to collect information necessary to assess, report on, and enforce open Internet rules.
3. The required disclosures will be provided over the Internet, among other means. For the purposes of the Transparency Rule, the Commission is open to any disclosure methodology that reduces burdens on broadband providers and improves the quality and utility of the information provided to the public. The Transparency Rule also provides for a voluntary safe harbor for the format and nature of the disclosures intended for end users for those providers who choose to use the Broadband Label for their disclosures to consumers. The safe harbor will not change the information that must be disclosed and therefore does not increase the burdens associated with this information collection. To the extent that broadband providers avoid costs associated with developing their own disclosure formats, the safe harbor for use of the Broadband Label is likely to reduce the burdens.
4. While certain elements of the information that must be disclosed may already be available to the public at scattered locations, the information is not all currently and consistently available at a location, in a form, and at a level of detail, that serves the purposes of the Transparency Rule. Thus, the disclosure requirements are not duplicative within the meaning of the Paperwork Reduction Act (“PRA”) and Office of Management and Budget (“OMB”) regulations.²²
5. The impact of the disclosure requirement, including enhancements, on small businesses or other small entities is not expected to be significant. Out of an abundance of caution, the

²¹ *2010 Order*, 25 FCC Rcd at 17939-40, para. 57. The *2015 Open Internet Order* does not alter the point-of-sale disclosure requirements. *2016 Guidance PN* at 8-10.

²² OMB PRA Guide at 42.

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Commission provided a temporary exemption until December 15, 2015 from the enhancements for providers having fewer than 100,000 broadband connections as reported on their most recent Form 477 submission.²³ The Commission's Consumer & Governmental Affairs Bureau extended this exemption until December 15, 2016.²⁴ Unless affirmatively extended, the temporary exemption will expire on December 15, 2016.

6. There are no statutory consequences if such information is not disclosed by broadband providers. All broadband providers, however, are potentially subject to enforcement action by the Commission's Enforcement Bureau if they do not meet the applicable requirements. In addition, members of the public may file informal or formal complaints against providers.
7. The collections are not being conducted in any manner inconsistent with the guideline of 5 CFR Section 1320.
8. The Commission published a *Notice* in the *Federal Register*, as required by 5 CFR Section 1320.8(d), on May 20, 2015 at 80 FR 29000, seeking comments from the public on the information collection requirements contained in this supporting statement.²⁵ To date, the Commission has received six comments in response to the *Notice*. The American Cable Association (ACA), AT&T, CTIA – The Wireless Association (CTIA), Mobile Future, United States Telecom Association (USTelecom), and the Wireless Internet Service Providers Association (WISPA) argue that the *Notice* did not accurately describe the extent of the information collection burdens and underestimated the additional burden hours resulting from the *2015 Open Internet Order*.

Clarification and Modification of the Estimated Burden.

The Transparency Rule adopted in the *2010 Order* requires all broadband providers to publicly disclose network management practices, performance characteristics, and commercial terms of their broadband services. Though the text of the Transparency Rule did not change, the *2015 Open Internet Order* provides clarifications of the rule's requirements and interprets and applies the rule to require incremental, enhanced disclosures by broadband providers and to no longer require disclosure of the typical frequency of congestion. These enhancements include specific commercial terms, network performance characteristics, and network management practices. The *2015 Open Internet Order* requires broadband providers to provide direct notification to consumers when a network management practice is likely to significantly affect their use of the service; to ensure that disclosures of network performance characteristics reflect performance during times of peak usage and are "reasonably related to the performance the consumer would likely experience in the geographic area in which the consumer is purchasing service;"²⁶ and specifically to disclose the following: promotional rates; all fees and/or surcharges; all data caps or data allowances; and packet loss, as a measure of network performance.²⁷ In addition to these enhancements, the *2015 Open*

²³ *2015 Open Internet Order*, 30 FCC Rcd at 5678-79, paras. 173-4.

²⁴ *2015 Open Internet Small Business Order*, 30 FCC Rcd at 14162.

²⁵ *See Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested*, 80 Fed. Reg. 29000 (May 20, 2015) (*Notice*).

²⁶ *2015 Open Internet Order*, 30 FCC Rcd at 5674, para. 166.

²⁷ *Id.* at 5672-77, paras. 164-171.

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Internet Order removes one disclosure requirement from the *2010 Order*: the typical frequency of congestion. The *2015 Open Internet Order* also establishes a voluntary safe harbor for the format and nature of the required disclosures for consumers.²⁸ This safe harbor for use of the Broadband Label does not change the information that must be disclosed and therefore does not increase the burdens associated with this information collection. To the extent that broadband providers avoid costs associated with developing their own disclosure formats, the safe harbor for use of the Broadband Label is likely to reduce the burdens. Finally, the *2015 Open Internet Order* provided a temporary exemption until December 15, 2015 from the enhanced requirements for providers having fewer than 100,000 broadband connections as reported on their most recent Form 477 submission.²⁹ The Consumer & Governmental Affairs Bureau extended this exemption until December 15, 2016.³⁰ Unless affirmatively extended, the temporary exemption will expire on December 15, 2016.

On May 19, 2016, the Commission's Chief Technologist, Office of General Counsel, and Enforcement Bureau released the *2016 Guidance PN* to provide guidance to broadband providers regarding compliance with the enhanced disclosure requirements adopted in the *2015 Open Internet Order*.³¹ The *2016 Guidance PN* offers initial guidance intended to help those broadband providers that may be seeking additional clarification regarding specific disclosure practices that will likely satisfy the rule. The *2016 Guidance PN* includes suggestions for how to comply with the requirement to disclose packet loss as a measure of network performance by providing guidance on appropriate methodologies for measuring packet loss. In addition, it establishes a safe harbor for mobile broadband providers participating in the mobile Measuring Broadband America (MBA) program (participation in the MBA program for fixed broadband services already is a safe harbor).³² Finally, the *2016 Guidance PN* addresses concerns regarding disclosure of commercial terms and network performance characteristics to consumers at the point of sale and clarifies that the *2015 Open Internet Order* made no changes to the Transparency Rule's point of sale requirement.

The *2016 Guidance PN* addresses a number of concerns and misunderstandings raised by the parties that filed PRA comments. Below, the Commission addresses the specific issues raised by these commenters and explains why some elements of the estimated burden have been modified:

- CTIA (7-10), Mobile Future (3-4), and AT&T (2-5, 10-14) fault the format and content of the *Notice* as being inadequate, asserting that the *Notice* lacks sufficient detail. The Commission

²⁸ *Id.* at 5680, para. 179. The safe harbor provides that a broadband provider will be deemed to be in compliance with regard to consumer-oriented disclosures if it provides "a consumer-focused, standalone disclosure" using the format developed with input from the Commission's Consumer Advisory Committee. That format was publicly released on May 19, 2016. *See Consumer Broadband Label PN*.

²⁹ *2015 Open Internet Order*, 30 FCC Rcd at 5678-79, paras. 173-74.

³⁰ *2015 Open Internet Small Business Order* at 1.

³¹ *2016 Guidance PN*.

³² Broadband providers participating in the MBA program -- fixed and/or wireless—are deemed to be in compliance with regard to disclosure of network performance characteristics if they disclose the network performance information determined through the MBA program.

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disagrees with this assessment. The *Notice* follows the customary format and provides the information customarily included in such notices.

- US Telecom (5-6) argues that the description of the frequency of updates to the required disclosures as an “on occasion reporting requirement” inadequately specifies the frequency of response. The description of the reporting requirement as “on occasion” is both accurate and a commonly used description.³³ As the Commission stated in the *2015 Open Internet Order*, broadband providers must update their disclosures whenever there is a material change to the information being disclosed.³⁴ Thus, the exact frequency of updates will depend largely on factors such as variability in the performance of a provider’s network and how often a broadband provider chooses to change terms such as price or network management practices that are likely to significantly affect consumers’ use of the service.
- CTIA (7-8), WISPA (5), Mobile Future (3), AT&T (2), and USTelecom (5) argue that the Commission’s estimates result in total costs to each of the 3,188 respondents of approximately \$200 per year, result in an hourly wage that is below the federal minimum wage, or both. These assertions appear to be based upon a misunderstanding of the types of costs that properly are included in “Total Annual Cost.” Consistent with OMB’s instructions³⁵ and as is demonstrated by the Commission’s calculations made available to commenters upon request and attached to the comments filed by CTIA (Appendix A) and WISPA (Attachment A), the Commission’s estimate of “Total Annual Cost” includes capital, start-up, operation, and maintenance costs, and excludes hourly labor costs, which are estimated separately. The Commission estimated that only 25 of the 3,188 respondents would incur these costs.³⁶ Thus, this cost estimate cannot be used to calculate per capita costs to be incurred by each of the 3,188 respondents.
- CTIA (6-8, 10-11, 14), WISPA (4-5, 6), Mobile Future (4), USTelecom (5-9), AT&T (2, 4, 27-28), and ACA (5-7) argue generally that the FCC has underestimated the burdens associated with the transparency requirement. Commenters contend that the estimate of 28.9 hours per year to comply with the Transparency Rule – an increase of 4.5 hours over the 24.4 hours approved for this collection [OMB Control No. 3060-1158] prior to the clarifications, enhancements, and

³³ The frequency of response for the Transparency Rule collection was listed as “on occasion” in both the 60 Day and 30 Day Notices in 2011 and 2014. See Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested, 76 Fed. Reg. 7207 (Feb. 9, 2011); Information Collections Being Submitted for Review and Approval to the Office of Management and Budget, 76 Fed. Reg. 39873 (July 7, 2011); Information Collection Being Reviewed by the Federal Communications Commission, 79 Fed. Reg. 21456 (April 16, 2014); Information Collections Being Submitted for Review and Approval to the Office of Management and Budget, 79 Fed. Reg. 37737 (July 2, 2014).

³⁴ *2015 Open Internet Order*, 30 FCC Rcd at 5671, para. 161.

³⁵ Paperwork Reduction Act Submission, Form 83-I, Office of Management and Budget.

³⁶ This estimate is not new, nor is it associated with the “enhanced” disclosure requirements adopted in the *2015 Open Internet Order*. Instead, the Commission consistently has estimated that 25 larger wireline providers would incur these costs since the Transparency Rule was adopted in the *2010 Order*. See *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*, OMB Control No. 3060-1158 (July 2011); *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*, OMB Control No. 3060-1158 (July 2014).

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deletion adopted in the *2015 Open Internet Order* – understates the actual burden. As is discussed in more detail below, the *2016 Guidance PN* offers initial guidance regarding specific methods of disclosure that will be considered compliant with the Transparency Rule and thus addresses many specific concerns underlying these arguments. ACA also has publicly stated that the *2016 Guidance PN* addresses its concerns and properly balances the interests of consumers and smaller broadband providers.³⁷ Taking as a baseline the OMB-approved estimate of 24.4 hours for this collection [OMB Control No. 3060-1158] prior to the *2015 Open Internet Order* and considering the comments, the *2016 Guidance PN*, and the extension until December 15, 2016 of the exemption for smaller broadband providers serving fewer than 100,000 connections, we adjust upward the estimated average time it would take a broadband provider to collect, review, and disclose the information required by the Transparency Rule over the next three years to 31.2 hours³⁸ – recognizing that for larger broadband providers the actual burden might be higher than this estimate, while for smaller broadband providers the actual burden might be lower than this estimate.

- CTIA (21-23), Mobile Future (2), USTelecom (9, 11-15), and AT&T (15, 22-23) argue that the Commission has failed to demonstrate the benefits of the enhanced disclosure requirements. Mobile Future (2) and AT&T (15) argue that the Commission has failed to comply with Executive Order 13563. AT&T (22-23), USTelecom (9), and CTIA (22) assert that packet loss is not a useful measure of network performance. The Commission, on the basis of the extensive record developed in the Open Internet proceeding, found the enhanced disclosure requirements, including disclosure of packet loss, to be warranted to ensure that consumers and edge providers have the information they need to make informed decisions.³⁹ The Commission also found these enhancements to be modest increments to the information collection already approved under OMB Control No. 3060-1158.⁴⁰ Consequently, although Executive Order 13563 does not apply to the Commission as an independent agency,⁴¹ the Commission is satisfied that it has met its obligation to carefully consider regulatory burdens here.
- CTIA (17-20, 22-23), USTelecom (10-11, 15), and AT&T (6-7, 32-33, 36-41) assert that footnote 424 could be read to require providers to provide paper copies of all the required disclosures to consumers at the point of sale instead of providing web links to these disclosures, which would alter the requirements in the *2010 Order*. They therefore argue that the Commission should modify its estimates to account for this change, should clarify that footnote 424 makes no such change, or both. As the *2016 Guidance PN* explains, footnote 424 does not alter the disclosure requirements; it neither eliminates the option to provide links to disclosures

³⁷ *ACA Press Release*.

³⁸ A more detailed explanation of how the Commission estimated the average burden of 31.2 hours is provided in item 12 of this Supporting Statement.

³⁹ *2015 Open Internet Order* 30 FCC Rcd at 5672-77, paras. 163-69.

⁴⁰ *Id.* at 5647, para. 109.

⁴¹ Executive Order 13563, 76 Fed. Reg. 3821 (Jan. 21, 2011). A previous Chairman, however, stated that he expected the Commission “to perform its responsibilities consistent with its principles.” Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, Broadband Acceleration Conference, Washington, D.C. (Feb. 9, 2011) at 4, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304571A1.pdf.

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nor requires broadband providers to provide paper copies of disclosures to consumers at the point of sale.⁴²

- CTIA (13), Mobile Future (6-7), and AT&T (5, 16, 29-30) all note that the mobile MBA program is still being refined and has not yet been declared a safe harbor for mobile broadband providers in contrast to the existing safe harbor for participation in the fixed MBA program. AT&T (5, 29) further requests that the Commission postpone enforcement of the new requirements for wireless providers until the mobile MBA program is sufficiently established for providers to use the data reported through that program. The *2016 Guidance PN* clarifies that the mobile MBA program may be used as a safe harbor in certain circumstances.⁴³ The *2016 Guidance PN* also addresses the geographic granularity at which disclosures are required, clarifying that mobile broadband providers may disclose actual performance metrics for each Cellular Market Area in which the service is offered.⁴⁴ Mobile providers who do not take advantage of the safe harbor can satisfy requirements for disclosures of actual speed, latency, and packet loss by providing sufficient disclosures of aggregated actual network performance in low population density areas.⁴⁵ These clarifications reduce the burden for mobile broadband providers that serve a CMA for which the criteria have not been met for mobile MBA to serve as a safe harbor or that choose not to participate in the mobile MBA program. The increase in the Commission's burden estimates for the first and second years following OMB approval of this modified information collection are designed, in part, to account for the transition to a more robust mobile MBA program.
- Mobile Future (6) and AT&T (24-25) state that the Commission has not provided guidance as to how providers should determine and disclose packet loss. USTelecom (9) and AT&T (5, 22-23) each note that the burdens associated with collecting and disclosing packet loss data are potentially high. WISPA (5-6) expresses more general concerns about the need for guidance on disclosure format, particularly the safe harbor for consumer-focused disclosures. The *2016 Guidance PN* provides substantial guidance to broadband providers regarding measurement and disclosure of packet loss, among other network performance characteristics.⁴⁶ In addition, providers who take advantage of the fixed or mobile MBA safe

⁴² *2016 Guidance PN* at 8-10.

⁴³ *2016 Guidance PN* at 6. The *2016 Guidance PN* established that mobile broadband providers may disclose their results from the mobile MBA program as a sufficient disclosure of actual download and upload speeds, actual latency, and actual packet loss of a service if the results satisfy sample size criteria and if the MBA program has provided CMA-specific network performance metrics of the service in CMAs with an aggregate population of at least one half of the aggregate population of the CMAs in which the service is offered.

⁴⁴ *2016 Guidance PN* at 5. The *2016 Guidance PN* also notes that providers may rely on third-party testing, stating that, for those providers who, "instead of taking advantage of the MBA safe harbor, measure network performance by their own or third-party testing may disclose performance metrics for each CMA in which the service is offered, except that actual network performance may be aggregated among CMAs with a population density below 250 people per square mile." *Id.* at 7.

⁴⁵ *2016 Guidance PN* at 7. Specifically, the PN notes that "mobile BIAS providers that, instead of taking advantage of the MBA safe harbor, measure network performance by their own or third-party testing may disclose performance metrics for each CMA in which the service is offered, except that actual network performance may be aggregated among CMAs with a population density below 250 people per square mile." *Id.*

⁴⁶ *2016 Guidance PN* at 3-8.

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harbors will not need to measure packet loss independently, lowering the average burden. With regard to the form and format of disclosures of packet loss, the *Consumer Broadband Label PN*⁴⁷ provides details of how to disclose packet loss and other consumer-focused disclosures for those providers who choose to take advantage of the safe harbor for disclosures to consumers. For broadband providers who choose not to take advantage of the safe harbor associated with the Broadband Label, it is a modest burden to add packet loss to existing disclosures on webpages already containing disclosures of network performance characteristics in compliance with OMB Control No. 3060-1158. The same is true of adding packet loss to existing disclosure information accessed via links from webpages or at the point of sale. The increase in the Commission's burden estimates for the first and second years following OMB approval of this modified information collection are designed, in part, to account for implementation costs associated with this and the other enhanced disclosure requirements and the transition to a more robust mobile MBA program, recognizing that not all mobile broadband providers will be able to take advantage of the mobile MBA safe harbor immediately.

- CTIA (17-20) points out that paragraph 171, which includes the requirement for broadband providers to provide direct notification to consumers when a network management practice is likely to significantly affect their use of the service, was not included in the list of transparency enhancements that require OMB approval in the Final Rule Summary. CTIA (16), WISPA (6), and ACA (7-8) raise concerns regarding the costs of compliance with this requirement. ACA (8) states that its concern is limited to its smaller members with fewer than 100,000 BIAS customers, while WISPA (8) states its concerns as applying to smaller providers. CTIA is correct that the Final Rule Summary did not include paragraph 171 in the list of transparency requirements that require OMB approval. However, the Commission is actually seeking approval for the requirement contained in paragraph 171 and is refraining from enforcing it until OMB approval is obtained. Further, the comments demonstrate that CTIA and other commenters have actual notice of the requirement. The current small business exemption addresses WISPA's and ACA's concerns regarding smaller broadband providers until December 15, 2016. ACA also has publicly stated that the *2016 Guidance PN* addresses its concerns and properly balances the interests of consumers and smaller broadband providers.⁴⁸ Finally, the Commission believes the burden to comply is modest. A broadband provider should know what network management practices it has implemented in its own network and the triggers that would cause those practices to impact a consumer (*e.g.* reducing download speeds after a consumer exceeds a certain data usage level). The increase in the Commission's burden estimates for the first and second years following OMB approval of this modified information collection are designed, in part, to account for implementation costs associated with this and the other enhanced disclosure requirements and the currently temporary nature of the small provider exemption.
- CTIA (15) states that the required disclosures could present cybersecurity concerns related to malware, hacking, and other unspecified threats, but provides no explanation for its concern in its comments. We note that the *2015 Open Internet Order* did not modify the *2010 Order* with regard to the types of cybersecurity concerns CTIA mentions. The *2010 Order* states

⁴⁷ See *supra* n. 18.

⁴⁸ *ACA Press Release*.

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that “information that would compromise network security” need not be disclosed and indicates that disclosures can be made without having the level of specificity that would be necessary to compromise network security.⁴⁹ Under the circumstances, we find no reason to believe that the *2015 Open Internet Order* requires that providers make disclosures that would undermine network security.

- CTIA (13-14), Mobile Future (6), USTelecom (9), WISPA (5-6), and AT&T (4-5, 17-18, 20-21) express concerns that the burdens associated with the requirement that disclosures “be reasonably related to the performance the consumer would likely experience in the geographic area in which the consumer is purchasing service”⁵⁰ could be substantial depending on the size of the relevant geographic area. CTIA (13-14), Mobile Future (6), and USTelecom (9) raise particular concerns about the fact that the Commission has not established how large the geographic areas must be. The *2016 Guidance PN* addresses these concerns by providing guidance as to the size of the geographic area.⁵¹ For mobile providers, the geographic area is no smaller than a Cellular Market Area, and could be larger.⁵² Fixed providers can disclose “*actual* performance metrics for ‘each broadband service’ in each geographic area in which the service has a distinctive set of network performance metrics (operational area). We expect that operational areas will be determined by the technology used and by network management practices, and that many fixed BIAS providers will have a single operational area for each broadband service offered.”⁵³
- AT&T (5, 25-26) and CTIA (24-25) note that the Commission has not defined times of peak usage and that peak usage is fluid, potentially varying by relatively small geographic areas depending on whether the areas are residential or commercial. The *2016 Guidance PN* directly addresses this concern. Though the *2016 Guidance PN* does not define an exact peak usage period, it makes it clear that peak usage should be determined solely by the local time zone, that there is no requirement that it vary between residential and business areas, and that broadband providers retain flexibility to determine the times when peak usage occurs on their respective networks.⁵⁴
- AT&T (15, 22, 31) and CTIA (10, 14) state that the Commission has failed to account for external costs that are likely to be incurred by wireless providers. AT&T (5, 22) states that it does not currently collect packet loss data and that it would incur significant expense to do so. Mobile broadband providers who choose to take advantage of the safe harbor for participation in the MBA program need not measure packet loss independently. Further, the Commission understands that current drive testing equipment for mobile broadband providers is already capable of measuring packet loss. The Commission therefore does not believe that mobile providers will need to purchase equipment to measure packet loss. Instead, the Commission believes that mobile broadband providers might incur implementation costs to establish procedures for translating packet loss data into disclosures. The increase in the Commission’s burden estimates for the first and second years following OMB approval of

⁴⁹ *2010 Order*, 25 FCC Rcd 17937-38, para. 55.

⁵⁰ *2015 Open Internet Order*, 30 FCC Rcd at 5674, para. 166.

⁵¹ *2016 Guidance PN* at 4-7.

⁵² *Id.* at 4-6.

⁵³ *Id.* at 4-5.

⁵⁴ *Id.* at 5.

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this modified information collection are designed, in part, to account for implementation costs associated with this and the other enhanced disclosure requirements and the transition to a more robust mobile MBA program, recognizing that not all mobile broadband providers will be able to take advantage of the mobile MBA safe harbor immediately.

- WISPA (4-6) states that the Commission has failed to account for external costs that are likely to be incurred by small providers that lack the in-house staff to perform certain work. CTIA (10) also notes that the Commission did not estimate external costs for outside consultants and attorneys. Neither CTIA nor WISPA provide information about the number of broadband providers that would rely on outside consultants or outside attorneys. CTIA provides no information about the costs of obtaining outside assistance. Apart from asserting that the Commission's hourly wage estimates for in-house staff are below the hourly costs associated with obtaining outside assistance, WISPA provides no information about the costs of obtaining such outside assistance. In addition, the small provider exemption relieves smaller broadband providers from complying with the enhanced disclosure requirements until December 15, 2016, while the availability of a safe harbor for participation in the mobile MBA program is likely to reduce the need for outside assistance as the transition to a more robust mobile MBA program continues. Considering those factors and in the absence of more specific information, the Commission continues to believe that broadband providers generally will rely on in-house staff and that any external costs associated with obtaining outside assistance will not be substantially different from the estimates of in-house costs. The Commission has increased its estimate of hourly wage rates, however, to reflect current General Schedule wage rates.
- AT&T (18-19) states that if applied to its Wi-Fi services, the enhanced disclosure requirements could be burdensome. To the extent that a specific Wi-Fi service is BIAS, the enhanced disclosure requirements would apply. The *2016 Guidance PN* mitigates potential concerns that broadband providers would have to make separate disclosures by numerous small geographic areas, especially if the services utilize the same equipment and network management practices.⁵⁵ The burden estimates herein, however, are expressly stated as averages, which accounts for potential variations among broadband providers. In addition, The Commission believes that this averaging, in light of the *2016 Guidance PN*, adequately accounts for the possibility that some providers might be required to make separate disclosures for Wi-Fi services.
- AT&T (14-26), CTIA (21-23), and USTelecom (12-15) argued in the comments in response to the *Notice* that the requirements that performance characteristic disclosures be "reasonably related to the performance the consumer would likely experience in the geographic area in which the consumer is purchasing service," that performance characteristics be measured "during times of peak usage," and that packet loss be disclosed have no practical utility or that the burdens far outweigh any practical utility. AT&T (5, 6, 24-27), USTelecom (11-13), and CTIA (18-21) make similar arguments in their comments in response to the 30-Day Notice. The Commission disagrees. Each of these disclosure requirements provides valuable information to consumers while balancing the cost to providers. First, requiring providers to disclose geographically relevant information enhances the accuracy of disclosures to

⁵⁵ *2016 Guidance PN* at 4-5.

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consumers, improving compliance with the existing requirement to disclose accurate information; provides guidance to providers about how to comply with the accuracy requirement and aids the Commission in enforcement; and reduces the potential for gerrymandering aimed at artificially inflating performance figures. The Commission declined to impose a rigid definition of geographic area for these purposes because there is no single specific geographic area that would in all cases ensure that consumers and edge providers receive accurate information about network performance they can expect to experience. For example, the *2016 Guidance PN* states that mobile providers are not required to make disclosures for a geographic area smaller than a CMA. Allowing for geographic areas to differ in size while requiring that they be defined based upon technical characteristics, such as spectrum and network design, affecting the network's actual performance helps to ensure that consumers receive accurate information about performance characteristics in the area in which they are purchasing service. Any lack of consistency across providers in terms of the geographic area measured is less important for accurate disclosures than the fact that actual performance varies by technical network characteristics. This approach means that consumers have accurate information about performance. The alternative of reporting according to a standardized, fixed geography would more likely to lead to inaccurate results, and consequently, inaccurate disclosures, undermining their utility to consumers. Second, requiring measurements to be taken "during times of peak usage" similarly has practical utility. Peak usage periods are those times in which the network experiences the greatest load, and therefore during the times when consumers are most likely to see a degradation in service. Providers routinely engineer their networks to handle the load at time times of peak usage, investing where necessary to ensure sufficient capacity. Therefore, providers know the peak usage period for their networks and there is no need for the Commission to define "peak usage period." The *2015 Open Internet Order* and the *2016 Guidance PN* acknowledge that peak usage might occur on different networks at different times of the day. Further, peak usage in a single network can change over time as end users change their usage habits. Prescribing a set period of time that is deemed the peak usage time therefore increases the likelihood that a provider would be required to disclose inaccurate information because performance would be measured outside of the actual peak usage time on that network. The *2016 Guidance PN* makes clear that providers "must disclose the peak usage period chosen." Again, this approach ensures that consumers have accurate information about actual performance. Third, requiring disclosure of packet loss has practical utility, especially to edge providers and to consumers who use real-time audio and video applications. Packet loss is widely considered to be one of the three main measurements of network performance. Packet loss may affect the perceived quality of applications that do not request retransmission of lost packets, such as voice calls over the Internet, video chat, some online multiplayer games, and some video streaming. For example, packet loss is important for deaf and hard-of-hearing consumers, who may use video chat to communicate using sign language or to read lips, where even a small amount of packet loss could cause a sufficient degradation in the video to interfere with the communication, potentially rendering it unintelligible. Latency measurements do not necessarily capture the effects of packet loss because a network can have low latency and high packet loss, or the reverse. For example, if a connection has a 10 millisecond delay (low latency) but 50% packet loss (high packet loss), a video stream is rendered unusable. However, a connection with 1000 millisecond delay (high latency) and 0% packet loss can stream video without significant problem. Moreover,

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BIAS providers already possess, as a result of providing service, the information that the enhancements at issue require them to disclose. Performance metrics disclosures, including packet loss, are all metrics that providers already are measuring in order to properly engineer and operate their networks. Similarly, providers must already have created any network practices in order to implement them in their networks, and so already know the details of such practices. They also must know their commercial terms, including data caps and allowances, in order to properly bill consumers or slow broadband speeds when consumers exceed a data cap. As a result, the burdens associated with these disclosures are primarily related to making that information accessible to consumers and edge providers, not in developing policies or measuring performance of their networks. The burden of disclosing this information is not high and the burden of complying with the enhancements is very modest.

- RootMetrics (2) and Nielsen (3, 6-7) argue in their comments in response to the 30-Day Notice that the mobile MBA safe harbor has no practical utility. Nielsen (3) specifically claims that “there is no evidence that the mobile MBA program meets the Commission’s data quality standards or produces accurate, reliable data that can be used to help consumers make informed choices about broadband services and assist edge providers in developing new services and applications.” The Commission disagrees. BIAS providers are not required to participate in the Commission’s MBA program; they may perform their own in-house measurements or contract with third-party measurement services. As the Commission found in the *2015 Open Internet Order*, “with the exception of small providers, mobile broadband providers today can be expected to have access to reliable actual data on performance of their networks representative of the geographic area in which the consumer is purchasing service – through their own or third party testing – that would be the source of the disclosure.”⁵⁶ The *2016 Guidance PN* expressly provides guidance for fixed and mobile BIAS providers not using the MBA safe harbors. Mobile providers may “measure their network by their own or third-party testing” and further provides additional specific guidance for providers who do not take advantage of the safe harbors. Thus, mobile providers may use services provided by third parties, may participate in the MBA program, or may utilize other options, such as in-house testing. Mobile MBA, including its designation as a safe harbor, represents one of multiple options available to providers. Although MBA was designated as a safe harbor for mobile in 2016, the program is not new. The Commission established the MBA program for fixed broadband in 2010. The Commission formally extended the MBA program to mobile in 2013. The Commission has contracted with Sam Knows to provide measurement services to the Commission for the fixed and mobile MBA programs. MBA has been a safe harbor for fixed broadband since 2011; that safe harbor was part of the information collection approved in 2011 and renewed in 2014. The establishment of the mobile MBA safe harbor is a natural outgrowth of the existing fixed MBA safe harbor and was specifically contemplated in the *2015 Open Internet Order*. It is not surprising that the Commission provided that the MBA program could serve as a safe harbor for mobile broadband: the Commission can ensure that it satisfies all requirements and that measurements are taken in accordance with Commission directives. Thus, while MBA became a safe harbor for fixed broadband in only one year, the Commission operated and refined MBA for mobile for three years before designating it a safe harbor for mobile. The Commission is committed to ensuring that the MBA program

⁵⁶ *2015 Open Internet Order*, 30 FCC Rcd at 5674, para. 166.

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provides accurate, reliable data, for both fixed and mobile broadband, and will continue its ongoing efforts to refine the program and to improve data quality. The *2016 Guidance PN* noted that the first mobile MBA report would be published soon; this will provide an opportunity for the Commission to continue to refine the program.

9. The Commission does not anticipate providing any payment or gift to respondents.
10. The Commission is not requesting that respondents submit confidential information to the Commission.
11. There are no questions of a sensitive nature with respect to the information collected. In fact, the Transparency Rule is fashioned specifically to avoid a mandate that providers disclose sensitive security information.⁵⁷
12. Estimates of hour burden for the collection of information are as follows:

Information Collection Requirements:

The Commission currently has one approved information collection related to the Transparency Rule, OMB Control no. 3060-1158, which the Commission seeks to modify to reflect the clarifications, enhancements, and deletion to the disclosure requirements under the Transparency Rule that were adopted by the *2015 Open Internet Order*. The currently approved information collection covered fewer respondents than are reflected in the estimate below due to a change in the source of data used by the Commission to determine the number of respondents. Previously, the Commission used the number of providers listed in the Internet Access Services Report,⁵⁸ which was based on the number of providers filing a Form 477. The Commission is now using information from the most recently available Economic Census.

In addition to updating the number of providers subject to the information collection, the Commission has increased slightly the estimated number of hours required for a provider to comply. The Commission is increasing the hourly estimate because the *2015 Open Internet Order* adopted certain incremental enhancements and clarifications concerning what is required under the codified Transparency Rule. These enhancements include requiring disclosure of commercial terms such as fees and surcharges; disclosure of performance metrics, such as packet loss, which are reasonably related to the performance the consumer would likely experience in the geographic area in which the consumer is purchasing service; disclosure of network management practices such as data caps; and direct notification to consumers likely to be significantly affected by use of a network management practice. The *2015 Open Internet Order* also removed the requirement to disclose the typical frequency of

⁵⁷ See *Enforcement Bureau Issues Advisory Guidance Regarding Compliance with Open Internet Transparency Rule*, GN Docket No. 09-191, WC Docket No. 07-52 (June 30, 2011) at 8.

⁵⁸ See Internet Access Services Report, Table 12, page 32 at:
http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-324884A1.pdf.

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congestion.⁵⁹ The disclosures required under this information collection will be updated on occasion.

The details of the modified collection for which the Commission seeks approval are set out below.

Annual Burden Hours Under the Enhanced Transparency Rule

Number of Respondents: 3,188

According to information available from the most recently available Economic Census, there are approximately 3,188 broadband providers that will be required to comply with the Transparency Rule as clarified, interpreted, and applied in the *2015 Open Internet Order*.

The smaller provider exemption in the *2015 Open Internet Order* applies to the approximately 1,729 Respondents that have fewer than 100,000 broadband connections according to their most recent FCC Form 477.⁶⁰ The Commission expects that some of these providers already disclose at least some of the required information, but the information is not all currently and consistently available at a location, in a form, and at a level of detail, that serves the purposes of the Transparency Rule. It also expects that others will choose not to take advantage of the exemption and will bring themselves into compliance within a short time. The calculations below take this factor into consideration, as well as balancing whether the exemption will continue after December 15, 2016. Those providers that choose to take advantage of the exemption from the enhanced requirements are still required to comply with the Transparency Rule from the *2010 Order*.

Annual Number of Responses: 3,188 Responses

3,188 respondents x 1 notification to consumers of relevant information at required places and times= **3,188 responses**

Annual Number of Burden Hours: 3,188 respondents x 1 notification to consumers of relevant information at required places and times/respondent x 31.2 hours/year = **99,466 hours**

⁵⁹ See 80 Fed. Reg. 19759-64, paras. 154-181 (discussing disclosures required by the transparency rule).

⁶⁰ While the Commission described the threshold using the terms “subscribers” and “subscriber lines,” it emphasized that the relevant metric should be that used on Form 477, *Local Telephone Competition and Broadband Reporting*. *2015 Open Internet Order* 30 FCC Rcd at 5678, para. 173. That metric is broadband “connections,” (see Form 477 Instructions, <https://transition.fcc.gov/form477/477inst.pdf>, at 4 (“FCC Form 477 collects information about broadband connections to end-user locations . . .”)) the broadband equivalent of subscriber lines, which the Commission used in the analogous exemption adopted in the Rural Call Completion Order. *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16168, para. 27 (2013). For these reasons, we make clear that the exemption from the enhanced transparency requirements applies to providers with 100,000 or fewer broadband connections. *Open Internet Small Business Exemption Extension Order*, Report and Order, 30 FCC Rcd 14162 (2015).

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The Commission believes that most broadband providers already disclose most, and in some cases all, of the required information in some manner, and that the incremental enhancements to the disclosures required under the Transparency Rule will not be a significant extra burden. The Commission, however, also believes that the information is not all currently and consistently available at a location, in a form, and at a level of detail, that serves the purposes of the Transparency Rule and that making the changes required by the enhancements may entail implementation costs for the first two years. As calculated below, the Commission therefore estimates that complying with the transparency requirement will require an average of approximately 33.4 hours in the first year of implementation. In year two, we expect respondents will expend an average of approximately 31.2 hours to update disclosures. We expect respondents will expend an average of approximately 28.9 hours to update disclosures in year three. Thus, over the course of three years respondents will expend an average of approximately 31.2 hours per year ($33.4 + 31.2 + 28.9 = 93.5 \text{ hours} / 3 = 31.2 \text{ hours/year}$). The currently approved collection [OMB 3060-1158] is for 24.4 hours per year, and the Commission is requesting an increase of an average of 6.8 hours per year based on the enhancements. This average incorporates estimates for the largest broadband providers, which might incur greater than average compliance burdens, as well as for smaller broadband providers, which might incur lesser than average burdens. This is because larger entities serve more customers, are more likely to serve multiple geographic regions, are more likely to offer more service tiers, and are not eligible to avail themselves of the temporary exemption from the enhancements granted to smaller providers.

Annual “In House” Cost Per Respondent: \$1,701.72

The Commission believes that the respondents will generally use “in-house” personnel whose pay is comparable to mid- to senior-level federal employees (GS12/5, GS14/5, and GS15/5). Therefore, the Commission estimates respondents’ hourly costs to be about \$42.08 for technical writers, staff administrators, and web administrators; \$59.13 for engineers; and \$69.56 for attorneys to gather and post required disclosures on a website.

Year 1

14 Engineer hrs x \$59.13/hr = **\$827.82**
3 Technical Writer hrs x \$42.08/hr = **\$126.24**
6 Staff Administrator hrs x \$42.08/hr = **\$252.48**
3.5 Web Administrator hrs x \$42.08/hr = **\$147.28**
6.9 Attorney hrs x \$69.56/hr = **\$479.96**
Total = **\$1,833.78**

Year 2

11.8 Engineer hrs x \$59.13/hr = **\$697.73**
3 Technical Writer hrs x \$42.08/hr = **\$126.24**
6 Staff Administrator hrs x \$42.08/hr = **\$252.48**
3.5 Web Administrator hrs x \$42.08/hr = **\$147.28**
6.9 Attorney hrs x \$69.56/hr = **\$479.96**
Total = **\$1,703.69**

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Year 3

9.5 Engineer hrs x \$59.13/hr = **\$561.74**
3 Technical Writer hrs x \$42.08/hr = **\$126.24**
6 Staff Administrator hrs x \$42.08/hr = **\$252.48**
3.5 Web Administrator hrs x \$42.08/hr = **\$147.28**
6.9 Attorney hrs x \$69.56/hr = **\$479.96**
Total = **\$1,567.70**

Annualized Costs = (\$1,833.78 + \$1,703.69 + \$1,567.70) / 3 Years = \$1,701.72

Total Annual Number of Respondents: 3,188 respondents
Total Annual Number of Annual Responses: 3,188 responses
Total Annual Burden Hours: 99,465.6 (99,466 hours rounded)
Total Annualized “In-House” Costs Per Respondent: \$1,701.72

13. Although the Commission expects most reporting requirements will be met by respondents’ “in-house” staff, some of the larger respondents may have external costs for deploying their own performance measurement testing program. The *2015 Open Internet Order* interprets and applies the Transparency Rule to require disclosure of performance metrics, such as packet loss, which are reasonably related to the performance the consumer would likely experience in the geographic area in which the consumer is purchasing service. The Commission does not expect this to require additional measurement devices, but estimates that the cost of measurement devices has increased since the Commission last sought OMB approval. The Commission makes the following estimate for external costs for large wireline broadband providers, which the Commission expects may choose to deploy their own performance measurement testing program using techniques similar to those used in the Measuring Broadband America program (and 13 of whom participated in the MBA program and may, for some period of time, choose to use the MBA program results for disclosure of their actual performance):

(a) Total annualized capital/start-up costs for all respondents who will have these costs:
\$130,000

The Commission estimates that some providers will invest in consumer premises testing equipment, such as home router measurement devices. (The Commission estimates that most respondents will not make such investments and will have no capital costs.)

400 measurement devices x \$65 per device = \$26,000 capital cost per respondent who will have this capital cost.

\$26,000 capital cost per respondent / 5 year lifespan of devices = \$5,200 in annualized costs per respondent who will have this capital cost.

\$5,200 capital costs per respondent x 25 respondents = \$130,000 in total annualized capital/start-up costs for all respondents who will have this capital cost.

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- (b) Total annual costs (Operation & Maintenance, excluding labor hours) for all respondents who will have this annual cost: **\$510,000**

\$14,400 server lease costs + \$6,000 consumer panel maintenance costs = \$20,400 annual costs per respondent who will have this annual cost
\$20,400 annual costs per respondent x 25 respondents = \$510,000

- (c) **Total Annualized Capital, Operation, and Maintenance Costs Requested for All Respondents:** \$130,000 + \$510,000 = **\$640,000**

14. The Commission has determined there are no costs to the Federal Government for requiring respondents to comply with those requirements.
15. The Commission has recalculated the burdens for this information collection based on: 1) the enhancements set forth in the *2015 Open Internet Order*, as discussed previously; and 2) the changed source of data for the number of respondents. Therefore, below are the program changes for this information collection:

The Commission has determined that there has been an increase in the total annual number of respondents of + **1,476** from 1,712 to 3,188 and an increase in the total annual number of responses of + **1,476** from 1,712 to 3,188. The Commission has further determined there will be an increase in the estimated time per response of + **6.8** from 24.4 to 31.2 and an increase in the total annual burden hours of + **57,693** from 41,773 to 99,466. These increases are due to a change in the source of data used by the Commission to determine the number of respondents and marginal increases in the estimates of employee hours required to comply with the clarifications, enhancements, and one deletion of disclosure requirements under the Transparency Rule. Previously, the Commission used the number of providers listed in the Internet Access Services Report⁶¹, which was based on the number of providers filing a Form 477. The Commission is now using information from the most recently available Economic Census.

The Commission has determined that there is an increase in the total annualized capital cost of + **\$80,000** from \$560,000 per year to \$640,000 to reflect the increase in cost of measurement devices.

16. There are no plans to publish the result of the collection of information.
17. The Commission is not seeking approval to not display the expiration date for OMB approval of the information collection because the collection does not include a form number.
18. On May 20, 2015, the Commission published a *Notice* at 80 FR 29000. In its *Notice*, the Commission reported the estimated time per response to be **28.9 hours** and the total annual burden hours to be **92,133 hours**. The Commission now reports the estimated time per

⁶¹ See Internet Access Services Report, Table 12, page 32 at:
http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-324884A1.pdf.

Transparency Rule Disclosures, Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, FCC 15-24 (Mobile Broadband Disclosures)

response to be **31.2 hours** and the total annual burden hours to **99,466 hours**. There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

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