

Transparency Rule Disclosures, Restoring Internet Freedom, Report and Order, WC Docket No. 17-108

A. Justification

Background

1. The Federal Communications Commission (“Commission”) seeks to modify the information collections associated with the Transparency Rule Disclosures, OMB Control Nos. 3060-1158 and 3060-1220.

On December 14, 2017, the Commission adopted the *Restoring Internet Freedom Declaratory Ruling, Report and Order, and Order* (“*Restoring Internet Freedom Order*”).¹ The *Restoring Internet Freedom Order* restores the light-touch regulatory framework that existed prior to the 2015 *Title II Order*,² which allowed the Internet to flourish for almost two decades. It concludes that light-touch regulation promotes investment and innovation better than applying costly and restrictive laws of a bygone era to broadband Internet access service.

Additionally, the *Restoring Internet Freedom Order* revises the information collection requirements applicable to Internet service providers (ISPs). The *Open Internet Order*,³ adopted in 2010, required ISPs to disclose certain network management processes, performance characteristics, and other attributes of broadband Internet access service. These transparency rule disclosure requirements were significantly increased by the *Title II Order*. The *Restoring Internet Freedom Order* eliminates the additional information collection obligations imposed by the *Title II Order* and adds a few discrete elements to the *Open Internet Order*’s information collection requirements.

The Commission therefore is requesting approval of a modified information collection associated with the transparency rule disclosures. The information collection related to the transparency rule is approved under OMB Control Nos. 3060-1158 and 3060-1220.⁴ Although this collection was bifurcated in 2016 with respect to fixed and mobile ISPs, the Commission seeks to have this collection encompass both fixed and mobile ISPs.

Information Collection Requirements:

The transparency rule adopted in the *Restoring Internet Freedom Order* requires an ISP to publicly disclose network management practices, performance characteristics, and commercial terms of its broadband Internet access service sufficient to enable consumers to make informed choices regarding the purchase and use of such services, and entrepreneurs and other small businesses to develop, market, and maintain Internet offerings. As part of these disclosures, the rule requires ISPs to disclose their congestion management, application-specific behavior, device attachment rules, and security practices, as well as any blocking, throttling, affiliated prioritization, or paid prioritization in which they engage.

¹ *Restoring Internet Freedom, Declaratory Ruling, Report and Order, and Order* (2017) (*Restoring Internet Freedom Order*).

² *Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order*, 31 FCC Rcd 1977 (2015) (*Title II Order*).

³ *Preserving the Open Internet, Broadband Industry Practices, Report and Order*, 25 FCC Rcd 17905 (2010) (*Open Internet Order*).

⁴ Prior to the *Restoring Internet Freedom Order*, the transparency rule was codified at 47 CFR § 8.3. It will now be codified at 47 CFR § 8.1.

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Specifically, the rule requires ISPs to disclose:

- *Blocking.* Any practice (other than reasonable network management elsewhere disclosed) that blocks or otherwise prevents end user access to lawful content, applications, service, or non-harmful devices, including a description of what is blocked.
- *Throttling.* Any practice (other than reasonable network management elsewhere disclosed) that degrades or impairs access to lawful Internet traffic on the basis of content, application, service, user, or use of a non-harmful device, including a description of what is throttled.
- *Affiliated Prioritization.* Any practice that directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, to benefit an affiliate, including identification of the affiliate.
- *Paid Prioritization.* Any practice that directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, in exchange for consideration, monetary or otherwise.
- *Congestion Management.* Descriptions of congestion management practices, if any. These descriptions should include the types of traffic subject to the practices; the purposes served by the practices; the practices' effects on end users' experience; criteria used in practices, such as indicators of congestion that trigger a practice, including any usage limits triggering the practice, and the typical frequency of congestion; usage limits and the consequences of exceeding them; and references to engineering standards, where appropriate.
- *Application-Specific Behavior.* Whether and why the ISP blocks or rate-controls specific protocols or protocol ports, modifies protocol fields in ways not prescribed by the protocol standard, or otherwise inhibits or favors certain applications or classes of applications.
- *Device Attachment Rules.* Any restrictions on the types of devices and any approval procedures for devices to connect to the network.
- *Security.* Any practices used to ensure end-user security or security of the network, including types of triggering conditions that cause a mechanism to be invoked (but excluding information that could reasonably be used to circumvent network security).

The rule also requires ISPs to disclose performance characteristics, including a service description and the impact of non-broadband Internet access services data services. Specifically, the rule requires ISPs to disclose a general description of the service—including the service technology, expected and actual access speed and latency, and the suitability of the service for real-time applications—as well as what non-broadband Internet access service data services, if any, are offered to end users, and whether and how any non-broadband Internet access service data services may affect the last-mile capacity available for, and the performance of, broadband Internet access service.

Finally, the rule requires ISPs to disclose commercial terms of service, including price of the service, privacy policies, and redress options. Specifically, the rule requires disclosure of, for example, monthly prices, usage-based fees, and fees for early termination or additional network services; a complete and accurate disclosure about the ISP's privacy practices, if any, including whether any network management practices entail inspection of network traffic, and whether traffic is stored, provided to third parties, or used by the ISP for non-network management purposes; and practices for resolving complaints and questions from

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consumers, entrepreneurs, and other small businesses. The rule requires ISPs to make such disclosures either via a publicly available, easily accessible website or through transmittal to the Commission, which will make such disclosures available via a publicly available, easily accessible website.

The *Restoring Internet Freedom Order* eliminates the additional reporting obligations adopted in the *Title II Order* and the related guidance in the 2016 Advisory Guidance⁵ and returns to the requirements established in the *Open Internet Order*. In addition, the *Restoring Internet Freedom Order* eliminated the direct notification requirement adopted in the *Title II Order*.

The transparency rule adopted in the *Open Internet Order* requires all ISPs to disclose publicly their network management practices, performance characteristics, and commercial terms of their broadband services. The *Restoring Internet Freedom Order* interprets and applies the rule to require ISPs additionally to disclose any blocking, throttling, affiliated prioritization, or paid prioritization in which they engage. The Commission anticipates that the revised disclosures will empower consumers and businesses with information about their broadband Internet access service, protecting the openness of the Internet.

The information collection will assist the Commission in its statutory obligation to report to Congress on market entry barriers in the telecommunications market.

This collection does not affect individuals or households; therefore, 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 47 U.S.C. Section 257.

2. To fulfill their disclosure obligation, ISPs must post their network management practices, performance characteristics, and commercial terms as defined above, on their websites or through transmittal to the Commission, which will make such disclosures available via a publicly available, easily accessible website. 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) supporting innovation, investment, and competition by ensuring that entrepreneurs and other small businesses 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; (3) increasing the likelihood that ISPs will abide by open Internet principles; and (4) aid the Commission in identifying and addressing potential market entry barriers for entrepreneurs and other small businesses in the provision and ownership of information services and in the provision of parts or services to information service providers.

⁵ The 2016 Advisory Guidance, released on delegated authority, provided examples of acceptable methodologies for disclosure of performance characteristics and offered guidance regarding compliance with the point of sale requirement. *Guidance on Open Internet Transparency Requirements*, Public Notice, 31 FCC Rcd 5330 (2016).

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3. The disclosure requirement will be provided over the Internet. ISPs will post their transparency rule disclosures on their websites or through transmittal to the Commission, which will make such disclosures available via a publicly available, easily accessible website.
4. Absent the transparency rule, while certain elements of the information that must be disclosed would already be available to the public at scattered locations, the information would not all be currently and consistently available 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.⁶
5. The impact of the disclosure requirement on small businesses or other small entities is not expected to be significant.
6. If such information is not disclosed by ISPs, the Commission will be hindered in its obligations pursuant to section 257. All ISPs are potentially subject to enforcement action by the Federal Communications Commission, the Federal Communications Commission’s Enforcement Bureau, and the Federal Trade Commission if they do not meet the applicable requirements. In addition, members of the public may file informal 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 January 18, 2018 at 83 FR 2638, seeking comments from the public on the information collection requirements. The Commission did not receive any comments in response to this notice. The Commission published a second notice in the *Federal Register* on March 28, 2018 at 83 FR 13278, seeking comments from the public on the information collection requirements, to which the Commission and the Office of Management and Budget received 14 comments in response. One commenter agreed with the new disclosures for blocking, throttling, paid prioritization, and affiliated prioritization as helping to enable regulatory oversight, while at the same time disagreeing with the Commission’s decision to eliminate disclosure requirements relating to technical performance of ISPs’ networks, without further explanation. Another commenter expressed support for a stronger transparency rule to promote accountability on the part of ISPs. The remainder of the comments did not address the questions on which the Commission sought comment, specifically, whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission’s burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. As such, the comments generally do not provide a basis on which to revise the information collection.

⁶ OMB PRA Guide at 42.

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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.
12. Estimates of hour burden for the collection of information are as follows:

Information Collection Requirements:

The rule adopted in the *Restoring Internet Freedom Order* requires all ISPs to publicly disclose their network management practices, performance characteristics, and commercial terms on their websites or through transmittal to the Commission, which will make such disclosures available via a publicly available, easily accessible website.

The Commission currently has two approved information collections related to the transparency rule: OMB Control No. 3060-1158, which applies to fixed ISPs, and OMB Control No. 3060-1220, which applies to mobile ISPs. Because the *Restoring Internet Freedom Order* eliminates the requirements that necessitated bifurcating the collection, the Commission seeks to eliminate the OMB Control No. 3060-1220 collection, and modify OMB Control No. 3060-1158 to reflect the changes made to the transparency rule in the *Restoring Internet Freedom Order* as applied to both fixed and mobile broadband services.

The currently approved information collection used information from the most recently available Economic Census (2007) to determine the number of providers. The Commission is now using the number of providers listed in the Internet Access Services Report, which is based on the number of providers filing an FCC Form 477.⁷ The Commission believes this provides a more accurate accounting of the number of ISPs affected by the transparency rule. The Commission used the Form 477 approach when determining the number of providers for the information collection following the 2010 *Open Internet Order*.

In addition to updating the number of providers subject to the information collection, the Commission has decreased the estimated number of hours required for a provider to comply. The Commission is decreasing the hourly estimate because the *Restoring Internet Freedom Order* eliminates the additional reporting obligations adopted in the *Title II Order* as well as the direct customer notification requirement. Despite new requirements to disclose blocking, throttling, paid prioritization, and affiliated prioritization, there is still a net decrease in the estimated number of hours required for a provider to comply. The Commission believes that newly required disclosure of blocking, throttling, paid prioritization, and affiliated prioritization practices should result in a minimal burden increase, as we are not aware of any ISP engaging in these practices, and many ISPs have pledged not to engage in most of these practices.

⁷ See Internet Access Services Report, Figure 30, page 27 at:
https://apps.fcc.gov/edocs_public/attachmatch/DOC-344499A1.pdf.

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The revised transparency rule permits ISPs to make the required disclosures available on either the ISP's website or to submit such disclosures to the Commission, for publication on a Commission webpage. Therefore, for those ISPs choosing to submit their disclosures to the Commission for publication on the Commission's webpage, the Commission will need to collect certain limited information about filers, including, for example, the ISP's name, trade name, or DBA name; the ISP's FCC Registration Number; and a brief description of the broadband service that is the subject of the disclosure. Such limited collection of information is necessary to allow for searchability for consumers. The Commission expects such information to result in a minimal burden on ISPs that choose to file their transparency rule disclosures with the Commission, and to approximate the burden imposed by posting such disclosures on the ISP's own webpage.

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

Number of Respondents: 1,919

There are approximately 1,919 broadband ISPs that will be required to comply with the *Restoring Internet Freedom Order* transparency rule.

Annual Number of Responses: 1,919 Responses

1,919 respondents x 1 posting of information on website or submission to the Commission = 1,919 responses

Annual Number of Burden Hours: 1,919 respondents x 1 posting of information on website or submission to Commission/respondent x 26 hours/year = **49,894 hours**

The Commission believes that most ISPs already disclose most, and in some cases all, of the information required to comply with the rule. As calculated below, the Commission therefore estimates that complying with the transparency requirement will require an average of 26 hours to update disclosures each year. This average incorporates estimates for the largest ISPs, who may incur greater burdens than the average to ensure compliance with the rule, as well as for small ISPs, who may incur fewer burdens than the average.

Annual "In House" Cost Per Respondent: \$1,991.34

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, plus 30% overhead). Therefore, the Commission estimates respondents' hourly costs to be about \$57.56 (\$44.28 x 1.3) for technical writers, staff administrators, and web administrators; \$80.90 (\$62.23 x 1.3) for engineers; and \$95.16 (\$73.20 x 1.3) for attorneys to gather and post network management practices on a website, or prepare such disclosures for submission to the Commission's website.

9.6 Engineer hrs x \$80.90/hr = **\$776.64**

2.2 Technical Writer hrs x \$57.56/hr = **\$126.63**

4.8 Staff Administrator hrs x \$57.56/hr = **\$276.29**

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2.2 Web Administrator hrs x \$57.56/hr = **\$126.63**

7.2 Attorney hrs x \$95.16/hr = **\$685.15**

Total = **\$1,991.34**

Total Annual Number of Respondents: 1,919 respondents

Total Annual Number of Annual Responses: 1,919 responses

Total Annual Burden Hours: 49,894 hours

Total Annual "In-House" Costs Per Respondent: \$1,991.34

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 Commission makes the following estimate for external costs for large wireline broadband ISPs, who the Commission expects may choose to deploy their own performance measurement testing program using techniques similar to those used in the Commission's broadband performance measurement project (and 13 of whom participated in the broadband performance measurement project and may, for some period of time, choose to use the results of that project for disclosure of their actual performance):

- (a) Total annualized capital/start-up costs for all respondents who will have these costs:
\$50,000

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 \$25 per device = \$10,000 capital cost per respondent who will have this capital cost.

\$10,000 capital cost per respondent / 5-year lifespan of devices = \$2,000 in annualized costs per respondent who will have this capital cost.

\$2,000 capital costs per respondent x 25 respondents = \$50,000 in total annualized capital/start-up costs for all respondents who will have this capital cost.

- (b) Total annual cost (Operation & Management) 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 Annual External Cost for All Respondents: \$50,000 + \$510,000 = \$560,000**

14. The Commission has determined that the cost to the Federal Government for creating and maintaining a web page for displaying disclosures sent to the Commission by ISPs will be approximately \$17,830.40. The breakdown for this number is:

Labor Category: Front-end developer

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Rate per hour: \$114.27

Hours: 80

Cost: \$9,141.60

Labor Category: Software Engineer

Rate per hour: \$108.61

Hours: 80

Cost: \$8,688.80

Total Annual In-House Cost to Federal Government: \$17,830.40

15. The Commission has re-evaluated the assessment of the burdens for this information collection and determined there has been a decrease in the total annual number of respondents of 1,269 (from 3,188 to 1,919), as a result of changing the underlying source data on which it relies—from census data to the Commission’s Form 477 data—for purposes of accuracy. For the same reason, the Commission has determined there has been a 1,269 decrease in the total annual number of responses (from 3,188 to 1,919). The Commission has determined that there has been a decrease in the total annual burden hours by 49,572 (from 99,466 to 49,894), as a result of the Commission’s elimination of the *Title II Order*’s additional reporting requirements and the new calculation for the number of respondents. The Commission has also determined that there has been a decrease of \$80,000 to the total annual cost from \$640,000 per year to \$560,000 per year as a result of the elimination of the *Title II Order*’s additional reporting requirements.
16. The rule adopted by the Commission provides two options to broadband ISPs. ISPs can either post their transparency rules disclosures on their websites or through transmittal to the Commission, which will make such disclosures available via a publicly available, easily accessible website.
17. The Commission is not seeking approval to avoid displaying the expiration date for OMB approval of the information collection because the collection does not include a form number.
18. There are no 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.