

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

## A. Justification

### Background

1.

On December 14, 2017, the Federal Communications Commission (“Commission”) adopted the *Restoring Internet Freedom Declaratory Ruling, Report and Order, and Order* (“*Restoring Internet Freedom Order*”).<sup>1</sup> The *Restoring Internet Freedom Order* restored the light-touch regulatory framework that existed prior to the 2015 *Title II Order*,<sup>2</sup> which allowed the Internet to flourish for almost two decades. It concluded 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* revised the information collection requirements applicable to Internet service providers (ISPs). The *Open Internet Order*,<sup>3</sup> 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* eliminated the additional information collection obligations imposed by the *Title II Order* and added a few discrete elements to the *Open Internet Order*’s information collection requirements.

The Commission is requesting renewal of the current information collection associated with the transparency rule disclosures from the Office of Management and Budget (OMB) for the three-year clearance. The information collection related to the transparency rule is approved under OMB Control No. 3060-1158.<sup>4</sup> Again, 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.

---

<sup>1</sup> *Restoring Internet Freedom, Declaratory Ruling, Report and Order, and Order* (2017) (*Restoring Internet Freedom Order*).

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

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

<sup>4</sup> Prior to the *Restoring Internet Freedom Order*, the transparency rule was codified at 47 CFR § 8.3. It is now codified at 47 CFR § 8.1.

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

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

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

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* eliminated the additional reporting obligations adopted in the *Title II Order* and the related guidance in the 2016 Advisory Guidance,<sup>5</sup> and returned 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 publicly disclose their network management practices, performance characteristics, and commercial terms of their broadband services. The *Restoring Internet Freedom Order* interpreted and applied the rule to additionally require ISPs to disclose any blocking, throttling, affiliated prioritization, or paid prioritization in which they engage. The Commission anticipated that the revised disclosures would 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.

---

<sup>5</sup> 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).

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

3. The disclosure requirement will be accomplished via 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.<sup>6</sup>
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 guidelines 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 December 4, 2020 at 85 FR 78331 seeking comments from the public on the information collection requirements. The Commission did not receive any comments in response to this notice.
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.

---

<sup>6</sup> OMB PRA Guide at 42.

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

The currently-approved information collection used information from the most recently available Internet Access Services Report, which is based on the number of providers filing an FCC Form 477.<sup>7</sup>

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: 2,165**

There are approximately 2,165 broadband ISPs that will be required to comply with the *Restoring Internet Freedom Order* transparency rule.

**Annual Number of Responses: 2,165 Responses**

2,165 respondents x 1 posting of information on website or submission to the Commission = 2,165 responses

**Annual Number of Burden Hours: 2,165 respondents x 1 posting of information on website or submission to Commission/respondent x 26 hours/year = 56,290 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: \$2,129.26**

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 \$61.55 (\$47.35 x 1.3) for technical writers, staff administrators, and web administrators;

---

<sup>7</sup> See Internet Access Services Report, Figure 30, page 27 at: <https://docs.fcc.gov/public/attachments/DOC-366980A1.pdf>

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

\$86.50 (\$66.54 x 1.3) for engineers; and \$101.75 (\$78.27 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 \$86.50/hr = **\$830.40**  
2.2 Technical Writer hrs x \$61.55/hr = **\$135.41**  
4.8 Staff Administrator hrs x \$61.55/hr = **\$295.44**  
2.2 Web Administrator hrs x \$61.55/hr = **\$135.41**  
7.2 Attorney hrs x \$101.75/hr = **\$732.60**  
Total = **\$2,129.26**

**Total Annual Number of Respondents: 2,165 respondents**  
**Total Annual Number of Annual Responses: 2,165 responses**  
**Total Annual Burden Hours: 56,290 hours**  
**Total Annual In-House Costs Per Respondent: \$2,129.26**

13. Although the Commission expected most reporting requirements would be met by respondents' in-house staff, it was also expected that some of the larger respondents might have external costs for deploying their own performance measurement testing program. When this information collection was initiated, the Commission estimated that large wireline broadband ISPs who opted to deploy their own performance testing would have total annualized capital/start-up costs of \$50,000. We believe that any such start-up costs will have been expended by now, leaving only estimated annual maintenance and operation costs for those ISPs, if any, who maintain their own performance measurement testing program.

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

**Total Annual External Cost for All Respondents: \$510,000**

14. There are no continuing costs to the Commission arising from this information collection.
15. The Commission has re-evaluated the assessment of the burdens for this information collection and determined there has been an adjustment/increase in the total annual number of respondents of 246 (from 1,919 to 2,165), based on the most recent data available from the Commission's Form 477. For the same reason, the Commission has determined there has been an increase of 246 in the total annual number of responses (from 1,919 to 2,165), and a concomitant increase in the total annual burden hours of 6,396 (from 49,894 to 56,290). However, we are reporting a decrease in the total annual external costs of 50,000 (from \$560,000 to \$510,000) to respondents due to the elimination of the start-up costs estimated when this collection was initiated, which we believe will have been expended by now.

There are no program changes this information collection.

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

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 this information collection will employ any statistical methods.