

Cathy Williams

From: Andrea Person [aperson@cm-chi.com]
Sent: Friday, April 08, 2011 5:57 PM
To: Cathy Williams
Cc: 'Ross Lieberman'; Barbara Esbin; Jeremy Kissel
Subject: ACA PRA Open Internet Comments
Attachments: 2011 04 08 ACA Open Internet PRA Comments FINAL as filed.pdf

Ms. Williams:

We attach for filing ACA's Paperwork Reduction Act Comments as part of the Open Internet proceeding.

Please confirm the filing of these comments and let me know if you have any questions.

Best,

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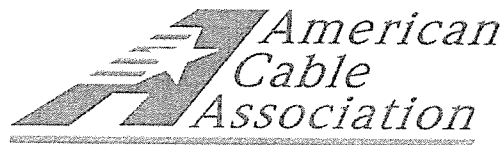
4/12/2011

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Notice of Public Information Collection)	
Being Reviewed by the Federal)	
Communications Commission,)	OMB Control Number 3060-XXXX
Comments Requested)	
)	
76 Fed. Reg. 7206		
76 Fed. Reg. 7207		

Attn: Cathy Williams

PAPERWORK REDUCTION ACT COMMENTS OF THE



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I. Introduction.

On December 23, 2010, the Federal Communications Commission (“Commission”) released an Order imposing “Open Internet” rules on all broadband Internet access service providers. Specifically, the Commission adopted three “high-level” rules: (i) transparency, (ii) no blocking, and (iii) no unreasonable discrimination. The Commission also created a formal process for addressing Open Internet disputes at the Commission.

On February 9, 2011, the Commission published notices in the Federal Register seeking comment on the burdens of two new information collections – (i) the Open Internet Order’s disclosure requirements, and (ii) responses to formal complaints – as part of the Paperwork Reduction Act review process.¹ The American Cable Association (“ACA”) files these comments in response to the Commission’s request for comment in order to assist the FCC in properly assessing the burdens of its new Open Internet rules on small cable companies. As detailed more fully herein, ACA believes the Commission has substantially underestimated the burden – in terms of both man-hours and costs – of the two new Open Internet information collection requirements.

American Cable Association. ACA represents nearly 900 small and medium-sized cable companies providing advanced video, telephony, and broadband Internet access services to smaller markets and rural areas throughout the United States. ACA’s membership encompasses a wide variety of businesses – family-owned companies serving small towns and villages, multiple system operators serving

¹ *Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested*, 76 Fed. Reg. 7206-07 (Feb. 9, 2011) (“Complaint Notice”); *Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested*, 76 Fed. Reg. 7207 (Feb. 9, 2011) (“Disclosure Notice”).

predominantly rural markets in several states, and hundreds of companies in between. Together, these companies serve more than 7 million households and businesses.

II. Fair Evaluation of Whether Rules Should be Approved by OMB Pursuant to the Paperwork Reduction Act Depends on Accurate Estimates of Information Collection Burdens.

Congress originally passed the Paperwork Reduction Act (“PRA”) in 1980, and subsequently reauthorized and revised the PRA in 1995.² The general purpose of the 1995 PRA Reauthorization was to “minimize the paperwork burden for individuals, [and] small businesses . . . resulting from the collection of information by or for the Federal Government.”³ Congress sought to “improve the quality and use of Federal information to strengthen decision making, accountability, and openness in Government and society.”⁴ To realize these goals, Congress included language requiring agencies to conduct reviews of proposed information collections. Specifically, Congress included language that required agencies to establish a process that could “evaluate fairly whether proposed collections of information should be approved.”⁵ Congress further required agencies to evaluate public comments and conduct an estimate of the burdens associated with the information collections.⁶

In the House Committee Report that accompanied the 1995 PRA Reauthorization bill, the House Committee on Government Reform and Oversight reported on the importance of burden estimates for small businesses, stating:

² Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 84 Stat. 2812 (1980); Paperwork Reduction Act of 1995, Pub. L. 104-13, 109 Stat. 163 (1995) (“1995 PRA Reauthorization”) (*codified at* 44 U.S.C. 3501, *et seq.*).

³ 44 U.S.C. § 3501(1).

⁴ 44 U.S.C. § 3501(4).

⁵ 44 U.S.C. § 3506(c)(1).

⁶ 44 U.S.C. §§ 3506(c)(2), 3507(a)(1)(D)(V).

Particularly for small businesses, paperwork burdens can force the redirection of resources away from business activities that might otherwise lead to new and better products and services, and to more and better jobs. Accordingly, the Federal Government owes the public an ongoing commitment to scrutinize its information requirements to ensure the imposition of only those necessary for the proper performance of an agency's functions. Burden estimates and reduction goals can help OMB and agencies target particularly burdensome paperwork and focus agency efforts on achieving meaningful burden reductions.⁷

ACA agrees that paperwork and information collection requirements can – and do – affect small businesses. For ACA member companies – small and mid-sized companies providing advanced services in rural and smaller markets across the country – increased burdens can impact their ability to provide advanced video, telephony, and broadband Internet services to rural America. Consequently, calculating accurate estimates are critically important.

ACA files these PRA comments to assist the FCC in adequately evaluating the burdens its new Open Internet rules will have on small cable companies. As described more fully below, ACA believes the FCC has underestimated the burden of its Open Internet information collection requirements – in terms of both man-hours and costs. These comments seek to provide more accurate estimates of these burdens.

III. The FCC Significantly Underestimated the Burden of its Open Internet Information Collection Requirements.

The FCC's Open Internet rules require broadband Internet access service providers to comply with three general rules, including: (i) transparency, (ii) no blocking, and (iii) no unreasonable discrimination. The transparency rule requires disclosure of, among other things, network management practices, performance characteristics, and commercial terms. The no blocking and no unreasonable discrimination rules prevent persons engaged in the provision of fixed broadband Internet access service from

⁷ H. Rep. No. 104-37 (1995).

blocking lawful content, applications, services, or non-harmful devices, subject to reasonable network management. Providers may not unreasonably discriminate in transmitting lawful network traffic over a consumer's broadband Internet access service.

A. Formal Complaint Procedures.

The Open Internet Order established new formal complaint procedures to address Open Internet disputes.⁸ The purpose of the Open Internet complaint process is to provide for redress of Open Internet disputes that cannot be resolved through other means, including the informal complaint process.⁹ The Open Internet formal complaint processes permit *anyone* – including individual end-users and edge providers – to file a petition alleging that another party has violated a rule or rules, and asking the Commission to rule on the dispute.¹⁰ The procedures adopted are based on the Commission's Part 76 cable access complaint rules.¹¹

In response to the Open Internet Order, and in compliance with the PRA, the Commission released a burden analysis of the complaint process for violations of its Open Internet rules.¹² In analyzing the complaint process, the Commission estimated that 10 respondents would use the process annually, and that those respondents would file 15 responses.¹³ The Complaint Notice further estimates that each response will require two to 40 hours of work, or an annual, combined burden of 239 hours of time – an average of 15.9 hours per filing. The Complaint Notice also notes that the responses

⁸ Open Internet Order at ¶¶ 154-59.

⁹ Complaint Notice at 7207.

¹⁰ Open Internet Order at ¶ 154.

¹¹ Open Internet Order at ¶ 155.

¹² Complaint Notice at 7207.

¹³ *Id.*

will result in a monetary burden, and estimates the annual collective cost to respondents to be \$40,127.00, or \$167.90 per hour. In sum, the Complaint Notice provides that each of the 15 responses will take 15.9 hours on average to file, and that the cost of each response will therefore be approximately \$2,675.21.

The FCC's analysis significantly underestimates the likely hourly and cost burdens of the Open Internet complaint process. Just a year ago, the Commission reviewed the costs of the same complaint process in a Supporting Statement to OMB regarding information collections related to the Commission's Part 76 complaint procedures.¹⁴ In that instance, the Commission broke down the response burdens for parties that used outside counsel and parties who used in-house counsel.¹⁵ For parties that used outside counsel, the Commission's 2010 analysis estimated that companies would spend 4.5 hours internally to coordinate filing information, and that it would take outside counsel an additional 11.1 hours to prepare responses. Thus, the Commission estimated the total time for preparing responses to be 15.6 hours when outside counsel was used. Alternatively, the 2010 analysis reviewed the burden to a company that used only in-house counsel to file responses. Under that analysis, the Commission estimated that it would take companies an average of 67.5 hours to file responses.

In contrast, the Complaint Notice fails to make the critical distinction between parties that utilize in-house counsel versus outside counsel in providing its estimated burden. As the 2010 Part 76 Supporting Statement showed, the type of counsel used to respond to complaints had a dramatic impact on the burdens associated with filing a

¹⁴ Section 76.7, Petition Procedures, *Supporting Statement*, OMB 3060-0888, at 14 (May 2010), available at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=174107&version=1> ("2010 Part 76 Supporting Statement") (last visited Apr. 8, 2011).

¹⁵ 2010 Part 76 Supporting Statement at 14.

response. The Complaint PRA Notice does not recognize this important variable; instead, it merely provides a general maximum response time of 40 hours for the complaint process. While it is unclear what type of counsel would prepare Open Internet complaint responses, the Commission's estimated number falls 27.5 hours short of the 2010 Part 76 Supporting Statement estimate for parties that used in-house counsel under the same procedural rules without any detailed rationale.

Additionally, the Complaint PRA Notice estimates that, at a minimum, the response will take two hours. Here again, the estimate appears to be significantly too low. In the 2010 Part 76 Supporting Statement, the Commission estimated a minimum burden of 15.6 hours when companies used outside counsel to respond to complaints. While ACA does not offer its own estimate of what the minimum burden would or should be, a 13.6-hour difference in the burden estimates indicates that a more thorough analysis is required for any Supporting Statement submitted to OMB for information collections related to the Open Internet complaint process.

B. Disclosure of Network Management Practices, Performance Characteristics, and Commercial Terms.

The Open Internet Order also requires all providers of broadband Internet access service to, at a minimum, disclose accurate information regarding the network management practices, performance, and commercial terms of their broadband Internet access services sufficient for consumers to make informed choices regarding the use of such services and for content, application, service and device providers to develop, market, and maintain Internet offerings.¹⁶ This transparency requirement mandates that a broadband Internet access service provider include a disclosure statement on the

¹⁶ Open Internet Order at ¶ 54.

company's website and at the point-of-sale that provides the required information to consumers and third parties. While the Open Internet Order does not specifically identify what will constitute a valid disclosure statement, it does offer numerous suggestions on information to be included in the disclosure (e.g., network management practices, performance characteristics, and commercial terms of the service).¹⁷ The Open Internet Order makes clear, however, that (i) the suggested categories are just that – suggestions – and are not necessarily exhaustive; (ii) the suggested disclosures do not constitute a safe harbor; and (iii) the appropriate level of detail is left, at the first instance, to the provider.¹⁸ This very flexibility in implementation, however beneficial from a policy perspective, is likely to significantly increase the initial compliance and information collection and dissemination burden on providers.

The Disclosure Notice estimates that the new disclosure rule will result in 1,519 responses.¹⁹ Additionally, the Disclosure Notice estimates that each response will require an average of 10.3 hours of work. As a result, the Disclosure Notice estimates the disclosure requirement burden will equal 15,646 hours of work, annually. Despite the amount of time the Commission recognizes each disclosure will take, the Disclosure Notice estimates that there will be no monetary cost for outside goods and services associated with the Open Internet disclosure requirements. A zero-burden estimate appears to be grossly inaccurate.

In March 2008, the Commission released a Supporting Statement discussing the burdens associated with the implementation of the Commission's Customer Proprietary

¹⁷ *Id.* at ¶ 57.

¹⁸ Open Internet Order at ¶ 56.

¹⁹ Disclosure Notice at 7207.

Network Information (CPNI) rules.²⁰ While the CPNI rules apply to different service providers than the Open Internet rules (e.g., Interconnected VoIP providers), the disclosure requirements are similar.²¹

For example, like the new Open Internet transparency rules, the CPNI rules require customer notification and disclosure.²² In the 2008 CPNI Supporting Statement, the Commission estimated that CPNI disclosure notification would take approximately two hours to design, and 0.75 hours to transmit. To produce the notification, the 2008 Supporting Statement estimated the cost of designing the notice at \$51.12 per hour, per notice, or \$102.24 per notice. In addition, to transmit the notice, the 2008 Supporting Statement estimated the cost to be \$20.51 per hour, per notice, or \$15.38 per notice. In sum, the 2008 Supporting Statement estimated the cost to design and transmit each notice at \$117.62.

The 2008 CPNI Supporting Statement contained an analysis of the burdens and costs associated with preparing CPNI disclosure statements. Key to the analysis was the Commission's recognition that there is a cost to draft and transmit disclosure statements. In the recent Disclosure PRA Notice, however, the Commission fails to recognize this critical point. Instead, the Disclosure PRA Notice estimates there is **no cost** to design and transmit the Open Internet Order disclosure statement.²³ Even assuming the Commission has correctly estimated that the time burden will be a mere

²⁰ Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96-115, *Supporting Statement*, OMB 3060-0715 (Mar. 2008), available at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=75758&version=1> ("2008 CPNI Supporting Statement") (last visited Apr. 8, 2011).

²¹ *Id.* at 11.

²² *Id.*

²³ Disclosure Notice at 7207.

10.3 hours (and it is likely that this underestimates the actual burden), it seems wholly inaccurate to estimate that the cost of the design and transmission of a disclosure statement is zero. To be effective, the Open Internet disclosure statements must be carefully drafted and reviewed by both in-house personnel and counsel (and outside counsel in many cases) to ensure compliance with the Open Internet disclosure requirements.

Further, the cost of transmission of the disclosure statement is not insignificant. While the Open Internet rules do not require additional disclosure to current customers beyond disclosing certain information on a broadband Internet access service provider's website, they do require broadband Internet service providers to disclose the information to new customers at the point-of-sale. Additionally, the disclosures are aimed to satisfy the needs of third-party Internet content, applications, services, and device providers – a group that may not previously have been targeted by a broadband Internet access service provider's terms of use, privacy policies, and acceptable use policies.

Based on the foregoing, it is wholly inaccurate to conclude that there will be no cost associated with the preparation or transmittal of the disclosures required under the Commission's Open Internet rules.

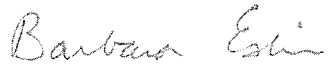
IV. Conclusion.

The information collection requirements associated with the Open Internet transparency and complaint response rules will increase the paperwork burdens on small and rural cable operators. Calculating accurate man-hour and financial cost estimates for new information collection requirements is a critically important part of the Commission's responsibilities under the PRA. Without accurate assessments from the

Commission, OMB, in turn, will be unable to perform its PRA responsibility to evaluate fairly whether the proposed information collections should be approved. ACA's comments are intended to assist the Commission in adequately evaluating the burdens its new Open Internet rules will have on small cable companies. Based on comparisons to calculations the Commission has previously submitted to OMB for comparable information collection requirements, ACA believes the Commission has substantially underestimated the likely information collection burdens associated with the Open Internet Order's complaint processes and disclosure requirements. ACA hopes that its assessments of the more likely magnitude of the transparency and complaint response information collection burdens will assist the Commission in preparation of the PRA Supporting Statement it will file with OMB in support of the Open Internet rules.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

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