

**Before the
Office of Management and Budget
Washington, DC**

Transparency Rule Disclosures, Protecting and Promoting the Open Internet)))	GN Docket No. 14-28, FCC 15-24 OMB Control Number: 3060-1158
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**PAPERWORK REDUCTION ACT COMMENTS
OF THE AMERICAN CABLE ASSOCIATION
ON TRANSPARENCY RULE DISCLOSURES,
PROTECTING AND PROMOTING THE OPEN INTERNET,
GN DOCKET NO. 14-28, FCC 15-24, OMB CONTROL NO. 3060-1158**

The American Cable Association (“ACA”)¹ submits these Paperwork Reduction Act (“PRA”)² comments to the Office of Management and Budget (“OMB”) in response to the *FR*

¹ ACA represents over 750 small and medium-sized cable operators, incumbent telephone companies, municipal utilities, and other local providers of broadband Internet access service (“BIAS”), as well as video and voice communications services. To provide this array of services, ACA’s cable operator members employ a variety of robust technology platforms for their networks, including DOCSIS 3.0 over hybrid fiber coaxial networks and IP over passive optical networks. Cable-based platforms are engineered to provide to all users high-performance broadband service with high speeds, low latency and jitter, and minimal packet loss, and operators use standard industry practices to provide this level of performance on these platforms. ACA members offer service in smaller communities and rural areas, some of which may otherwise be unserved, as well as in urban and suburban markets by overbuilding other providers. In aggregate, these providers pass nearly 19 million homes and provide BIAS to nearly 7 million homes. As such, ACA and its members have a major interest in ensuring that any collection associated with the enhanced transparency requirements complies with the Paperwork Reduction Act, which among other things seeks to ensure that regulations minimize paperwork burdens on small businesses (44 U.S.C. §§ 3501(1), 3506(c)(2)).

² 44 U.S.C. §§ 3501-3520. The PRA’s purposes include: minimizing the federal paperwork burden on individuals, small businesses, and other governmental entities; ensuring the greatest public benefit from information collected by the federal government; coordinating federal information resources management policies; and

*Notice*³ seeking comment on the Federal Communications Commission’s (“Commission”) request for approval of a modified information collection associated with the Transparency Rule as clarified, interpreted, and applied in the *2015 Open Internet Order*.⁴ The Commission’s collection would require providers of broadband Internet service to publicly disclose information about network management practices, performance, and commercial terms of such service.

In its Initial PRA Comments submitted to the Commission last year, ACA identified burdens that new Transparency Rule requirements would impose on providers of broadband Internet access service (“BIAS”) – especially smaller providers – and suggested ways the Commission could alleviate these concerns.⁵ First, ACA explained that smaller BIAS providers would incur substantial costs to measure and disclose additional network performance characteristic requirements in the *2015 Open Internet Order*, including requirements to measure packet-loss and performance at a geographically granular level, if the Commission did not permit them to adopt appropriate measurement methodologies.⁶ ACA recommended that the

improving the quality of federal information and the use thereof. *See* 44 U.S.C. § 3501(1). The statute defines the term “burden” broadly, including “time, effort, and financial resources expended by persons to generate, maintain, or provide information.” 44 U.S.C. § 3502(2). In addition, the statute requires federal agencies to reduce the burden to the extent practicable with respect to small entities. *See* 44 U.S.C. § 3506(c)(3)(C).

³ Information Collection Being Submitted for Review and Approval to the Office of Management and Budget, Federal Register Notice, 81 FR 53145 (Aug. 11, 2016) (“*FR Notice*”).

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) (“*2015 Open Internet Order*”).

⁵ Comments of the American Cable Association, GN Docket No. 14-28, OMB Control No. 306-1158 (July 20, 2015) (“*Initial PRA Comments*”).

⁶ *See id.* at 3-5.

Commission could largely address this concern by affirming that its *2011 Advisory Guidance*⁷ on measurement methodologies applied to the additional performance characteristic requirements in the *2015 Open Internet Order*. The *2011 Advisory Guidance* permitted fixed BIAS providers not using the Measuring Broadband America safe harbor to use various alternative measurement methodologies to comply with the Transparency Rule’s performance requirements. In its subsequent *2016 Guidance*,⁸ the Commission accepted this recommendation, explaining that the “alternative” methodologies in the *2011 Advisory Guidance* could be used as the basis to measure actual performance, including the new performance characteristic requirements “provided that the methodology be disclosed and grounded in commonly accepted principles of scientific research, good engineering practices, and transparency.”⁹ ACA thus believes the Commission adequately responded to this concern.¹⁰

ACA also raised in its Initial PRA Comments concerns about burdens that would result from the imposition of other new transparency requirements. In the *2015 Open Internet Order*, the Commission additionally required that broadband providers must disclose promotional rates, all fees and/or surcharges, and all data caps and data allowances and that they provide specific

⁷ *FCC Enforcement Bureau and Office of General Counsel Issue Advisory Guidance for Compliance with Open Internet Transparency Rule*, GN Docket No. 09-191, WC Docket No. 07-52, Public Notice, 26 FCC Rcd 9411 (2011) (“2011 Advisory Guidance”).

⁸ *Guidance on Open Internet Transparency Rule Requirements*, GN Docket No. 09-191, Public Notice, DA 16-569 (May 19, 2016) (“2016 Guidance”).

⁹ *Id.*

¹⁰ *See 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, at 2, n. 8 (Aug. 2016) (“FCC OMB Submission”) where the Commission cites to ACA’s support for the Commission’s guidance on this issue. *See also* American Cable Association Comments on Applications for Review, GN Docket No. 14-28, DA 16-259, at 3-7 (July 5, 2016).

notification to consumers that a "network practice" is likely to significantly affect their use of the service.¹¹ The Commission originally estimated BIAS providers will take an additional 4.5 hours on average each year to comply with these two additional disclosure requirements, as well as the new network performance requirement discussed above.¹² In the *FCC OMB Submission*, the Commission, in responding to comments from ACA and others, increased that amount to 6.8 hours. The Commission also stated that it believes any burdens to comply with these requirements are "modest."¹³

ACA appreciates the Commission's recognition that its original estimate did not adequately reflect the burden on providers, but ACA members continue to believe this estimate understates the amount of time that BIAS providers expect to spend to comply with the new measurement and disclosure requirements. With respect to the collection and disclosure of additional information about network practices, smaller providers believe this will require the continuous expenditure of time and resources because these practices and their effects on customers and other entities in the Internet ecosystem will evolve as new types of traffic and traffic flows emerge as new content, applications, and devices that connect to the network are offered and customers alter the services they access, requiring frequent review and revision of each operator's disclosures. ACA members estimate that to develop, draft, and revise the

¹¹ See *2015 Open Internet Order*, ¶ 24.

¹² See Initial Paperwork Reduction Act Calculations for 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, Response 12 (rel. March 12, 2015).

¹³ See *FCC OMB Submission* at 10.

disclosures will require on average annual expenditures of approximately 20 hours.¹⁴ Further, while smaller providers may be able to have in-house operations and network personnel work on this task, out of an abundance of caution, ACA members are likely to need to engage outside legal counsel to review these wide-ranging (and often subjective) requirements. In addition, should the Commission permit the small provider exemption to expire before (or even soon after) the enhanced transparency requirements become effective,¹⁵ smaller providers would not have the benefit of reviewing and using disclosures of larger BIAS providers, which have significantly greater resources to expend on producing disclosures that are compliant.

As for direct notification to customers when their usage may trigger a network practice, ACA members expect to accomplish this task by developing and implementing an automated mechanism that monitors each customer's usage and sends an email, web browser notice, and/or some other communication. Not only will there be this one-time cost, but there will be recurring costs to respond to customers' questions and issues after a notice is received. Based on experience, ACA members estimate that each month approximately 0.5 percent of customers will receive notices and then call with questions about their notices and that customer representatives will spend approximately five minutes on average to respond to each customer.¹⁶ For an ACA member with 10,000 BIAS customers, that means they will expend approximately 4 hours each month (or 48 hours per year) as a result of the direct notifications – an amount much greater than

¹⁴ See Initial PRA Comments at 7.

¹⁵ See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order, DA 15-1425 (Dec. 15, 2015). The exemption applies to BIAS providers with fewer than 100,000 customers and would lapse on December 15, 2016 unless extended.

¹⁶ See Initial PRA Comments at 8.

the Commission estimates to comply with all requirements associated with the Transparency Rule.¹⁷

In addition to these known burdens on smaller BIAS providers, these providers believe, based on their experiences in implementing the original Transparency Rule, that they are certain to face additional burdens driven by as yet unknown circumstances or events, such as the need for a BIAS provider to assess and disclose the impact on the performance of their service from the introduction of new offerings by edge providers.¹⁸ Smaller providers, as discussed above, have limited resources that they can dedicate to regulatory compliance, and thus they will face greater challenges in dealing with these unknowns. Accordingly, while ACA appreciates the Commission's efforts to lessen burdens on smaller BIAS providers with regard to measuring and disclosing additional network performance characteristics, ACA requests that OMB work with the Commission in the PRA process to alleviate the remaining substantial burdens imposed by the network practice and notification requirements. Further, given that smaller providers will face significant burdens, as well as uncertainties regarding compliance requirements which may

¹⁷ See *FCC OMB Submission* at 8 (“we adjust upward the estimated average time it would take a broadband provider to collect, review, and disclosure the information required by the Transparency Rule over the next three years to 31.2 hours”).

¹⁸ See *Application for Review of CTIA*, GN Docket No. 14-28, DA 16-259, at 5, 9 (June 20, 2016). ACA shares CTIA's concern that the *2016 Guidance* adopts a requirement that consumers “actually receive” the disclosures, which would require providers “to modify systems and processes at an enormous cost.”

prove unduly burdensome, the Commission should again extend the small provider exemption for at least another year.¹⁹

Respectfully submitted,



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¹⁹ See 2015 Open Internet Order, ¶¶ 172-175.