

**Before the
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C.**

In the Matter of)
)
)
Notice of Information Collection Being) OMB Control No. 3060-0761
Submitted to the Office of Management and)
Budget for Review and Approval)
)

To: Nicholas A. Fraser, OMB
Nicholas.A.Fraser@omb.eop.gov

Cathy Williams, FCC
PRA@fcc.gov
Cathy.Williams@fcc.gov

**COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS
ON FCC INFORMATION COLLECTION SUBMISSION TO OMB**

I. Introduction and Summary.

The National Association of Broadcasters (NAB)¹ submits these comments in response to the above-captioned Notice of the Federal Communications Commission's (Commission or FCC) Information Collection submission to the Office of Management and Budget (OMB).² As shown below, OMB should reject, under the Paperwork Reduction Act (PRA), that portion of the Commission's approval request covering the proposed annual closed captioning compliance reports to be filed by Video

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² See Information Collection Being Submitted to the Office of Management and Budget for Review and Approval, Notice and Request for Comments, 77 Fed. Reg. 28386 (May 14, 2012) (*Notice*).

Programming Distributors (VPDs), including the television stations represented by NAB. The Commission has not provided any information regarding the substance or detail of these reports either in the relevant notice of proposed rulemaking or in its submission to OMB. There is simply no basis in law or common sense for OMB to approve a proposed information collection when neither OMB nor the public has any information whatsoever regarding the content of that information collection.

II. The Commission Has Provided No Detail Regarding the Proposed Compliance Reporting Requirements for Video Programming Distributors.

Consistent with the PRA,³ the Commission is asking for comment on, *inter alia*, “whether the proposed collection of information is necessary for the performance of the functions of the Commission, including whether the information shall have practical utility,” and on the “accuracy of the Commission’s burden estimate....”⁴ Based upon these comments, the Commission must certify to OMB that the collection of information meets the rigorous standards set forth in the PRA, which include, *inter alia*, that the collection “is necessary for the proper performance of the functions of the agency, including that the information has practical utility,” “reduces to the extent practicable and appropriate the burden,” and is “written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond.”⁵

The Commission, however, cannot meet these standards and thus cannot make the required certification. Here the agency has put the cart before the horse, submitting

³ 44 U.S.C. §§ 3501-3520.

⁴ *Notice* at 28386.

⁵ 44 U.S.C. § 3506(c)(3)(A),(C),(D).

the proposed compliance reporting requirement to OMB for approval in advance of providing any information about the substance or details of the reports that would have to be submitted by VPDs. Given that the FCC has not provided any information about the compliance reports themselves, OMB can hardly determine that the reporting requirement meets PRA standards. Because neither OMB nor the public knows anything about the details of the proposed compliance reporting requirement, OMB cannot determine that the reporting requirement serves a necessary function and has practical utility; that it will be unambiguous or understandable as to which data the FCC seeks to collect; or that it will not be unduly burdensome

In the FCC's still pending 2005 rulemaking notice regarding the proposed compliance reporting requirement, the Commission simply asked a series of broad questions governing captioning compliance reporting, and provided no details whatsoever about the details of any reports:

The Commission seeks comment on requiring video programming distributors to file compliance reports as to the *amount of closed captioning* they provide. *Should* the Commission require such reports to be filed? If so, *how often* should they be filed? *How* should they be filed? Should the reports include information relating to the *new non-exempt programming or only to information* pertaining to pre-rule non-exempt and Spanish-language programming? *How* would a reporting requirement be implemented? In the event we were to impose a reporting requirement for closed captioning, we seek comment on whether distributors would be able to *rely on certifications* from programmers that the programming contains closed captioning. *Are there alternative methods* to verify compliance? If we do or do not impose a reporting requirement, we seek comment on whether the Commission's rules should be amended to place a greater burden on video programming distributors to ensure that the programming they carry is captioned, regardless of the assurances they

receive from programmers. *We seek comment on any other issues regarding compliance reporting requirements.*⁶

Notably absent from the Commission's OMB submission and the *Supporting Statement*⁷ is *any* information articulating how the Commission intends to handle these threshold matters or any other substantive details regarding the reporting requirement for which it now seeks approval. For example, VPDs do not even know how much or what types of programming the compliance reports cover (e.g., English/Spanish; "new"/"pre-rule"; "exempt"/"non-exempt").⁸ As part of these reports, is the Commission requiring certification for the transmission of captioning errors or omissions, and/or certification for the captioning of emergency information, including breaking news, or other unscheduled events?⁹ How is the Commission handling reliance on certifications from other video programmers that the programs provided to VPDs contain closed

⁶ *In the Matter of Closed Captioning of Video Programming*, Notice of Proposed Rulemaking, CG Docket No. 05-231, 20 FCC Rcd 13211 (2005) at ¶ 43 (emphases added) (2005 NPRM).

⁷ See Supporting Statement, OMB Control Number 3060-0761, Section 79.1, Closed Captioning, CG Docket No. 05-231 (May 2012) (available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201205-3060-006 (last viewed June 8, 2012)) (*Supporting Statement*).

⁸ The FCC's requirements for the captioning of video programming differ depending on whether a program is in English or Spanish (or some other language); whether the program was first exhibited before or after certain specified dates; and whether a program is exempt from captioning requirements because it falls within one of a number of specific exemptions. See 47 C.F.R. § 79.1.

⁹ In addition to certification requirements, the Commission has also asked whether video programming distributors should be required to have in place "specific mechanisms" for monitoring and maintaining their captioning equipment and transmissions. 2005 NPRM at ¶ 25. Were the Commission to include monitoring specifications in an annual compliance report, the associated staffing costs would increase commensurately.

captioning? Has the Commission considered less burdensome alternatives? And these are but a sample of the myriad unanswered questions about the proposed compliance reporting requirements.¹⁰

Because the Commission has yet to provide any information answering these and other questions regarding the details of the proposed compliance reporting requirement, OMB lacks any factual basis upon which to evaluate the proposed requirement and its estimated burdens. Indeed, video programming distributors such as those represented by NAB are in no position even to comment meaningfully on the proposed information collection because they have no idea what it will entail.¹¹

¹⁰ In fact, in light of the paucity of information provided by the FCC, one fundamental question left answered is whether the annual collection of compliance information is “necessary” and has “practical utility.” 44 U.S.C. § 3506(c)(3)(A). For example, would consumers find practical utility in an annual collection of information identifying the specific legal reasons that non-captioned programs aired during the previous year were permitted to be non-captioned? If a viewer is interested in the presence or absence of captions in a particular program(s), more timely information easily can be obtained by contacting local stations or other VPDs. Commission rules already require VPDs to make available to the FCC and to consumers directly (via the VPDs’ websites and by other means) contact information for: (1) addressing consumers’ immediate captioning concerns, and (2) receiving and handling written captioning complaints. See 47 C.F.R. § 79.1. Given the FCC’s existing requirements and the absence of relevant information about the proposed compliance reports, there remain obvious unanswered questions as to whether these compliance reports are “necessary.” 44 U.S.C. § 3506(c)(3)(A).

¹¹ For example, in a separate proceeding, the FCC has sought comment on a proposal to have some VPDs (television broadcast licensees) affirmatively report on programming they air that is exempt from closed captioning, by providing the date, time, length of program, and the reason for exemption. The FCC also sought comment on a proposal that each station report on the type of captioning used (e.g., live, electronic news gathering or scripted captioning) to caption certain programming. See *In the Matter of Standardizing Program Reporting Requirements for Broadcast Licenses*, Notice of Inquiry, MB Docket No. 11-189, 26 FCC Rcd 16525 (2011), at ¶ 31. In this standardized broadcast program reporting proceeding and in the pending 2005 captioning proceeding, some parties additionally have advocated for captioning compliance reports to cover all programming, including commercials, which are exempted from the FCC’s current captioning rules. It remains entirely unclear from the FCC’s submission here whether the Commission has relied or will rely upon these

III. The Commission Has Likely Underestimated the Administrative Burdens Captioning Reporting Would Have on Video Programming Distributors.

Aside from the impossibility of estimating the scope of a reporting requirement that has not been defined by the Commission, the estimated burden to be imposed on VPDs as briefly described in the *Supporting Statement* appears on its face to be too low. The Commission has estimated the annual compliance reporting response time to be 2 to 10 hours per respondent, with an average of 6 hours per respondent.¹² Dividing by 365 days (as most VPDs operate on a full-time basis), this equates to an estimate that each VPD only will spend between about 20 seconds and 1.64 minutes per day to keep track of the relevant information for the reports, whatever that information may be.¹³ Neither end of this range is likely to be a realistic estimate of the burdens of recordkeeping for VPDs.¹⁴

various proposals in formulating its compliance requirements for VPDs. If the FCC intends to include any such proposed requirements in the new VPD compliance reports, then the burdens of these reports will increase dramatically.

¹² *Supporting Statement* at 19.

¹³ NAB notes that this estimate appears inconsistent with the FCC's previous conclusion that "specific recordkeeping or filing requirements would be unnecessarily burdensome and administratively cumbersome." *In the Matter of Closed Captioning and Video Description of Video Programming*, Report and Order, MM Docket No. 95-176, 13 FCC Rcd 3272 (1997), at ¶ 244 (determining not to impose closed captioning reporting requirements).

¹⁴ Assuming that, *arguendo*, a video programming distributor can utilize computerized software (or form) for annual compliance reporting, it is highly doubtful that daily program monitoring and logging for exempted programming can be achieved in the miniscule timeframes allocated per diem by the Commission. Moreover, broadcast television stations typically receive programming from a number of sources (*e.g.*, syndicators, networks, local programmers). Depending on what would be required in the compliance reports, the time needed for program logging could be substantial per station. Certainly if television stations are not permitted, for purposes of the FCC's new compliance reports, to rely on program supplier certifications that the programs being

Depending on the amount of programming information that is required to be disclosed (a subject on which, as noted above, the Commission is utterly silent) virtually any recordkeeping for closed captioning reporting and compliance certification is likely to be significantly greater than estimated by the Commission.¹⁵ These undefined recordkeeping and reporting requirements, moreover, may be particularly burdensome “for small businesses.”¹⁶ The Commission has not shown here how it has satisfied its separate statutory obligation to “make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees.”¹⁷ The FCC’s mere unsubstantiated statement that the “proposed information collection requirements will not” have an impact on small entities,¹⁸ contradicts its own previous conclusions¹⁹ and clearly falls short of its statutory obligation.

supplied to the stations from various sources are, in fact, captioned, then the burden associated with these compliance reports will increase exponentially.

¹⁵ The FCC’s underestimation of the burden of its compliance reports may be especially severe for some stations that offer one, two or more program channels via the multicasting capability of digital television broadcasting. To date there are over 1,970 television stations operating multicast channels. BIA Media Access Pro (June 2012).

¹⁶ *In the Matter of Closed Captioning and Video Description of Video Programming*, Report and Order, MM Docket No. 95-176, 13 FCC Rcd 3272 (1997), at ¶ 244 (FCC declined to impose closed captioning recordkeeping and reporting requirements, noting that such requirements pose “additional” burdens, “particularly for small businesses”).

¹⁷ 44 U.S.C. § 3506(c)(4).

¹⁸ *Supporting Statement* at 8.

¹⁹ See *supra* n.16.

IV. Conclusion.

For the above stated-reasons, the Commission has not satisfied the PRA requirements for its proposed closed captioning compliance reports. Accordingly, OMB should not grant approval for information collection for these types of reports at this time.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

By:

A handwritten signature in black ink, appearing to read "Ann West Bobeck". The signature is written in a cursive style with a large, stylized initial "A". Below the signature is a solid horizontal line.

Jane E. Mago
Jerianne Timmerman
Ann West Bobeck
Kelly Williams
1771 N Street, NW
Washington, D.C. 20036
(202) 429-5430

June 13, 2012