

SUPPORTING STATEMENT

This collection is being submitted as an extension of a currently approved collection. The Commission is reporting an increase in the number of respondents/responses and the total annual burden hours.

A. Justification:

1. On March 13, 1997, the Commission adopted a *Report and Order* (FCC 97-80) establishing what accounting rules and ratemaking policies should apply to litigation costs incurred by carriers subject to Part 32 of its rules and regulations. The Commission adopted accounting rules that require carriers to account for adverse federal antitrust judgments and post-judgment special charges. With regard to settlements of such lawsuits, there will be a presumption that carriers can recover the portion of the settlement that represents the avoidable costs of litigation; provided that the carrier makes a required showing.

To receive recognition of its avoided cost of litigation a carrier must demonstrate, in a request for special relief, the avoided costs of litigation by showing the amount corresponding to the additional litigation expenses discounted to present value, that the carrier reasonably estimates it would have paid if it had not settled. Settlement costs in excess of the avoided costs of litigation are presumed not recoverable unless a carrier rebuts that presumption by showing the basic factors that enticed the carrier to settle and demonstrating that ratepayers benefited from the settlement. A carrier requesting recovery of the avoided costs of litigation must accompany its request with clear and convincing evidence that, without the settlement, it would have incurred the expenses it estimates. The evidence will vary according to the circumstances. Among the data a carrier may provide are: any avoidable cost estimates provided by the law firm representing the carrier; an estimate of attorney hours needed to complete the case along with the hourly rates for the attorneys involved; information regarding the discovery remaining to be completed; the amount of trial time scheduled by the judge; information regarding the number of witnesses or documents that would have been introduced at trial, including any pretrial statements filed with the court, costs of expert witnesses, travel time, and saved in-house counsel replacement costs; and any other material the carrier considers relevant. The avoided costs of litigation of a prejudgment settlement would include the anticipated costs of litigating until a judgment. The avoided cost of litigation of a post-judgment settlement would anticipate a successful appeal in the particular case.

As noted on the OMB Form 83i, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

The statutory authority for this collection is contained in 47 C.F.R. § 32.7300, Sections 1, 2, 4, 11, 201-205, and 218-220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 161, 201-205, and 218-220.

2. The information filed safeguards consumers against rates that are unreasonably high and guarantees carriers that they will not be required to charge rates that are so low as to be confiscatory. Carriers under the Commission's jurisdiction must be allowed to recover the reasonable costs of providing service to ratepayers, including reasonable and prudent expenses and a fair return on investment.

3. There is no improved technology to reduce the burden of collection. However, the Commission does not prohibit the use of improved technology where appropriate. We do note that carriers subject to

the ARMIS reporting requirements may also be required to report recordkeeping information required by the USOA (such as account 7370) in their ARMIS filings which is an automated reporting system.

4. There is no known duplication of effort. Also, there is no known information, already available, that would serve our regulatory purpose.

5. The information collection does not involve small business or other small entities as defined by the Regulatory Flexibility Act. Entities directly subject to the rules are engaged in the provision of local exchange and exchange access services. These entities are large corporations, affiliates of large corporations, or are dominant in their fields of operation, and thus, are not “small entities” as defined by the Act.

6. If the information is not collected, the Commission will not be able to carry out its responsibilities.

7. The collections are not being conducted in any manner inconsistent with the guidelines of 5 C.F.R § 1320.5(d)(1).

8. A 60-day notice was placed in the Federal Register pursuant to 5 C.F.R. § 1320.8 (d) on June 26, 2009 (see 74 FR 30571). No comments were received.

9. The Commission does not anticipate providing any payment or gift to respondents.

10. Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information under section 0.459 of the Commission’s rules.

11. The information may be of a sensitive nature. Carriers submitting information that they deem proprietary are instructed to label the data as such and submit it separately.

12. The following represents the estimated hour burden of the information collection. The following represents our best estimate:

a. **Recordkeeping Requirement:**

(1) Number of Respondents: 1.

(2) Frequency of Response: Recordkeeping requirement.

(3) Total number of responses annually: 1.

(4) Estimated Time Per Response: 36 hours.

(5) Total annual hour burden: **36 hours.**

The Commission estimates that one carrier would make one filing per year, which would take approximately 36 hours to perform the recordkeeping requirement.

1 respondent x 1 filing/year x 36 hours = 36 hours.

(6) Total estimate of “in house” cost to respondents: \$1,980.

(7) Explanation of calculation:

The Commission estimates that the average in-house cost for respondents is approximately \$55 an hour.

$$36 \text{ hours/ year} \times \$55 = \$1,980.$$

b. **Reporting Requirement:**

(1) Number of Respondents: 1

(2) Frequency of Response: On occasion reporting requirement.

(3) Total number of responses annually: 1.

(4) Estimated Time Per Response: 4 hours.

(5) Total annual hour burden: **4 hours.**

The Commission estimates that one carrier would make one filing per year, which would take approximately 4 hours to prepare and report.

$$1 \text{ respondent} \times 1 \text{ filing/year} \times 4 \text{ hours} = 4 \text{ hours.}$$

(6) Total estimate of “in house” cost to respondents: \$220.

(7) Explanation of calculation:

The Commission estimates that the average in-house cost for respondents is approximately \$55 an hour.

$$4 \text{ hours/ year} \times \$55 = \$220.$$

The following is a list of the total hour burden under this control number:

(a) Recordkeeping requirement:	36 hours
(b) Reporting requirement:	<u>+4 hours</u>
Total hours currently requested:	40 hours

Total annual hours for all collections under this control number: **40 hours.**

The following is a list of all responses under this control number:

(a) Recordkeeping requirement:	1 response
(b) Reporting requirement:	<u>+1 response</u>
Total responses currently requested:	2 responses

Total responses for all collections under this control number: **2 responses.**

13. Estimated operations and maintenance cost to respondents: \$0.
- (a) Total capital and start-up cost component (annualized over its expected useful life): \$0. The responding carriers will be maintaining this information in the normal course of business.
- (b) Total operation and maintenance and purchase of services component: \$0.
- Total annualized cost requested: \$0.
14. Estimated cost to the Commission:
- Review of submission: 1 (staff member to process submission) x \$40 (average grade and hourly salary of staff) x 36 (hours to process the response) = \$1,440.
15. The Commission has made the following adjustments to the previous submission:
- The total annual hour burden has been adjusted (increased) by four hours to accommodate the reporting component of this information collection. The previous submission mistakenly omitted any burden hours for the reporting requirement.
16. The Commission does not anticipate that it will publish any of the information proposed to be collected.
17. The Commission does not intend to seek approval not to display the expiration date for OMB approval of the information collection.
18. There are no exceptions to the certification statement.

B. Collection of Information Employing Statistical Methods:

Not applicable.