3060-0519 **March 2010**

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, CG Docket No. 02-278

SUPPORTING STATEMENT

A. Justification

1. In the *Report and Order* (*R&O*) In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, issued in CC Docket No. 92-90, FCC 92-443, adopted September17, 1992, released October 16, 1992, the Commission implemented final rules pursuant to the requirements of the Telephone Consumer Protection Act of 1991 (TCPA), Pub. Law 102-243, Dec. 20, 1991, which added Section 227 to the Communications Act of 1934, as amended, to restrict the use of automatic telephone dialing systems (auto-dialers), artificial or prerecorded messages, facsimile machines, or other devices to send unsolicited advertisements.[1]

The rules prohibit prerecorded message calls to residences absent an emergency or the prior express consent of the called party. Exceptions to the prohibition apply if the call: (a) is not made for a commercial purpose; (b) does not transmit an unsolicited advertisement; (c) is made by a calling party with whom the called party has an established business relationship; or (d) is made by a tax-exempt nonprofit organization. 47 U.S.C. § 64.1200(a)(2) and (c).

The rules further require that telephone solicitors maintain and use company-specific lists of residential subscribers who request not to receive further telephone calls (company-specific do-not-call lists), thereby affording consumers the choice of which solicitors if any, they will hear from by telephone. Telephone solicitors also are required to have a written policy for maintaining do-not-call lists, and are responsible for informing and training their personnel of the existence and use of such lists. 47 U.S.C. § 64.1200(e)(i) and (e)(ii). Moreover, the rules require that those making telephone solicitations identify themselves to called parties, and that basic identifying information also be included in telephone facsimile transmissions. 47 U.S.C. §§ 64.1200(e)(iv), 68.318(d).

***History*:**

On March 11, 2003, the Do-Not-Call Implementation Act (Do-Not-Call Act)[2] was signed into law requiring the Commission to issue a final rule in its ongoing TCPA proceeding within 180 days of March 11, 2003, and to consult and coordinate with the Federal Trade Commission (FTC) to "maximize consistency" with the rule promulgated by the FTC in 2002.[3]

On July 3, 2003, the Commission released a *Report and Order* (*2003 TCPA Order*), In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, adopted June 26, 2003, CG Docket No. 02-278, FCC 03-153, revising the current TCPA rules and adopting new rules to provide consumers with several options for avoiding unwanted telephone solicitations.[4] The Commission established a national do-not-call registry for

[1] *See* 47 U.S.C. § 227.

[2] Do-Not-Call Implementation Act, Pub. Law 108-10, 117 Stat. 557 (2003).

[3] 16 C.F.R § 310.4(b).

[4] This item is referred to as a *Report and Order* because it is the first order to be adopted in CG Docket No. 02-278.

consumers who wish to avoid most unwanted telemarketing calls. This national do-not-call registry supplements the company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. The Commission also adopted a new provision to permit consumers to provide permission to call to specific companies by an express written agreement. The TCPA rules exempt from the "do-not-call" requirements nonprofit organizations, companies with whom consumers have an established business relationship, and calls to persons with whom the telemarketer has a personal relationship. Any company, which is asked by a consumer, including an existing customer, not to call again must honor that request for five (5) years. The Commission retained the calling time restrictions of 8 a.m. until 9 p.m.

To address the use of predictive dialers, the Commission determined that a telemarketer must not abandon more than three (3) percent of calls answered by a person, must deliver a prerecorded identification message when abandoning a call, and must allow the telephone to ring for 15 seconds or four (4) rings before disconnecting an unanswered call. The new rules also require all companies conducting telemarketing, with the exception of tax-exempt nonprofit organizations, to transmit caller identification information, when available, and they prohibit companies from blocking such information. The Commission reversed its earlier determination that an established business relationship constitutes express invitation or permission to send an unsolicited fax and determined that the recipient's express permission must be in writing and include the recipient's signature. The Commission also clarified when fax broadcasters are liable for the transmission of unlawful facsimile advertisements.

On January 23, 2004, the Consolidated Appropriations Act of 2004 was signed into law, mandating that the FTC amend its Telemarketing Sales Rule to require telemarketers subject to the Telemarketing Sales Rule to obtain from the FTC the list of telephone numbers on the do-not-call registry once a month. The FTC shortly thereafter amended its safe harbor provision so that telemarketers and sellers would need to purge from their calling lists numbers appearing on the national registry every 31 days.

On September 21, 2004, the Commission released an *Order* (*2004 Safe Harbor Order*) in CG Docket No. 02-278, FCC 04-204, establishing a limited safe harbor in which persons will not be liable for placing autodialed and prerecorded message calls to numbers ported from a wireline service within the previous 15 days. The Commission also amended its existing national do-not-call registry safe harbor to require telemarketers to scrub their call lists against the do-not-call database every 31 days.

On June 17, 2008, the Commission released an *Order* in CG Docket No. 02-278, FCC 08-147, amending the Commission's rules under the TCPA to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five year registration period. Specifically, the Commission modified § 64.1200(c)(2) of its rules to require sellers and/or telemarketers to honor numbers registered on the Registry indefinitely or until the number is removed by the database administrator or the registration is cancelled by the consumer.

The following is a synopsis of the rules and requirements associated with these information collections that are currently approved by OMB:

a) 47 C.F.R. § 64.1200(a)(6) - Telemarketers that use auto-dialers, including predictive dialers, to sell goods or services are required to maintain records documenting compliance with the call abandonment rules. Telemarketers must ensure that they abandon no more than three (3) percent of all calls placed and answered by a person. A call will be considered abandoned if it is not transferred to a live sales agent within two (2) seconds of the called person's greeting. When a call is abandoned, a telemarketer must deliver a prerecorded identification message containing the telemarketer's name, telephone number, and statement that the call is for "telemarketing purposes." The telemarketer must allow the telephone to ring for 15 seconds or four (4) rings before disconnecting any call. Such records should demonstrate the telemarketer's compliance with a call abandonment rate of no less than three (3) percent, with the two-second-transfer rule, and with the ring duration requirement. Tax-exempt non-profit organizations are not subject to the call abandonment rules.

b) 47 C.F.R. § 64.1200(c)(2) - Pursuant to Section 64.1200(c)(2), a residential telephone subscriber may register his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government. Such do-not-call registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator.

c) 47 C.F.R. § 64.1200(c)(2)(i) and (ii) - No person may make a telephone solicitation to any residential telephone subscriber who has registered their telephone number on the national do-not-call registry. However, the rules adopt a "safe harbor" for telemarketers that have made a good faith effort to comply with the rules. Under this "safe harbor," a telemarketer will not be liable for violating the do-not-call rules if:

(i) it has established and implemented written procedures to comply with the do-not-call rules;

(ii) it has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the do-not-call rules;

(iii) the seller, or telemarketer acting on behalf of the seller, has maintained and recorded a list of telephone numbers the seller may not contact;

(iv) the seller or telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to the do-not-call rules employing a version of the do not call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process; and

(v) any subsequent call otherwise violating the do-not-call rules is the result of the error.

d) 47 C.F.R. § 64.1200(d) - Telemarketers must maintain their own company-specific do-not-call lists. The Commission reduced the period of time that businesses must retain company-specific do-not-call requests from 10 years to five (5) years and requires companies to process do-not-call requests within 30 days. Businesses that want to call consumers with whom they have no relationship, but who are listed on the national do-

not-call list, may obtain a consumer's express permission to call, evidenced by a signed, written agreement. Tax-exempt nonprofit organizations are not required to comply with the do-not-call rules, including the national do-not-call registry.

e) 47 C.F.R. § 64.1200(f)(4) - The "established business relationship," which permits telemarketers to call individuals listed on the national do-not-call registry, is limited in duration to 18 months from the date of any purchase or transaction with the telemarketer and three (3) months from the date of any inquiry or application from the consumer.

f) 47 C.F.R. § 64.1200(g) - Common carriers that provide local exchange service are required to provide an annual notice, via an insert in the subscriber's bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national database and the methods by which such rights may be exercised. Common carriers that provide service to any person or entity for the purpose of making telephone solicitations are required to make a one-time notification to such person or entity of the national do-not-call requirements.

Proposed Information Collection Requirement Which Require OMB Review and Approval.

On January 22, 2010, the Commission released a *Notice of Proposed Rulemaking* (*2010 NPRM*) in CG Docket No. 02-278, FCC 10-18, proposing amendments to the Commission's rules under the TCPA that would harmonize the Commission's rules with those of the Federal Trade Commission. In particular, the *2010 NPRM* proposes to amend section 64.1200(a)(1) and section 64.1200(a)(2) of the Commission's TCPA rules by requiring sellers and telemarketers, when obtaining telephone subscribers' prior express consent to receive prerecorded telemarketing calls, to obtain such prior express consent ***in writing*** (including electronic methods of consent).

The following is a synopsis of the rules proposed by the Commission in the *2010 NPRM* that have information collection requirements:

47 C.F.R. § 64.1200. Delivery restrictions.

Section 64.1200(a)(1). Pursuant to the Commission's proposed revision of Section 64.1200(a)(1), no person or entity may initiate any telephone call (other than a call made for emergency purposes) using an automatic telephone dialing system or an artificial or prerecorded voice to an emergency telephone line, a health care facility, or a number assigned to a cellular telephone service, without the prior express ***written*** consent of the called party.

Section 64.1200(a)(2). Pursuant to the Commission's proposed revision of Section 64.1200(a)(2), no person or entity may initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express ***written*** consent of the called party, unless the call is made for emergency purposes, is not made for a commercial purpose, is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation, or is made by or on behalf of a tax-exempt nonprofit organization.

The statutory authority for the proposed information collection requirements is found in the Telephone Consumer Protection Act of 1991 (TCPA), Pub. Law 102-243, December 20, 1991,

105 Stat. 2394, which added Section 227 of the Communications Act of 1934, [47 U.S.C. 227] Restrictions on the Use of Telephone Equipment.

2. The current and proposed information collections primarily apply to commercial telemarketers. The national do-not-call registry and company-specific do-not-call requirements do not apply to tax-exempt nonprofit organizations or to calls made by independent telemarketers on behalf of tax-exempt nonprofit organizations. The data generated by the information collections is used to determine telemarketers' compliance with the TCPA. Among other things, the data shows that companies are scrubbing their individual databases of numbers on the national do-not-call list to avoid calling consumers who have expressed an objection to receiving telephone solicitations.

The information maintained in the do-not-call database (individuals' telephone numbers) is used to assist telemarketers in complying with the rules and to allow government entities to monitor telemarketers' compliance. The information is necessary for the establishment and enforcement of the do-not-call program. Email addresses used to verify registrations are not disclosed to telemarketers and sellers, and are collected only for purposes of registering, verifying, or deleting a consumer's telephone number from the Registry.

The proposed information collections, which would require written consent to transmit prerecorded commercial solicitations, are necessary to ensure that prerecorded commercial solicitations are received only by those individuals or entities that wish to receive them.

The collection of information may contain individuals' personally identifiable information (PII).

(a) The FCC maintains an information system, including both paper files and electronic data, which is covered by a system of records notice (SORN), FCC/CGB-1, "Informal Complaints and Inquiries." The SORN covers the collection, purposes(s), storage, safeguards, and disposal of the PII that individuals (respondents) may submit to the Commission as part of filing informal complaints regarding potential violations of the Commission's TCPA rules.

(b) As required by OMB Memorandum M-03-22 (September 26, 2003), the FCC completed the Privacy Impact Assessment (PIA)[5] on June 28, 2007, that gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the Personally Identifiable Information (PII), as required by OMB regulations and the Privacy Act, 5 U.S.C. 552a. The PIA may be viewed at: http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

(c) Furthermore, as required by the Privacy Act, 5 U.S.C. § 552a, the FCC also published a system of records notice (SORN), FCC/CGB-1, "Informal Complaints and Inquiries", in the *Federal Register* on December 15, 2009 (74 FR 66356), which became effective on January 25, 2010.

(d) A system of records for the do-not-call registry was created by the Federal Trade Commission under the Privacy Act. The FTC published a notice in the *Federal Register* describing the system (68 FR 37494, June 24, 2003).

[5] The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

3. The Commission has determined that most records will continue to be kept electronically. Telemarketers and sellers are able to access the registry electronically and download information as often as they wish. In the proposed information collection requirements, the Commission has proposed that written consent agreements be obtained pursuant to any method allowed under the E-SIGN Act (*e.g.*, email, website form, telephone keypress, or voice recording) to afford telemarketing entities flexibility in determining the method of "written" consent that is best suited to those entities' marketing plans and business operations.

4. The current information collection requirements are not duplicative of any currently existing federal regulatory obligation. As noted in the Commission's *2010 NPRM*, the Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, and the Telemarketing Sales Rule adopted by the FTC also address certain telemarketing acts or practices. The *2010 NPRM* identifies aspects of the FTC's Telemarketing Sales Rule, as recently amended, that differ from the Commission's TCPA rules. Therefore, the Commission seeks comment in the *2010 NPRM* on whether it should revise its telemarketing rules to harmonize them with the FTC's rule. Amending the Commission's rules, as proposed, would reduce the inconsistencies that currently exist between the two sets of rules and remove certain differences in the treatment of entities that operate outside of the FTC's jurisdiction.

5. The Commission does not believe that the current information collections have a significant impact on a substantial number of small businesses/entities by the information that is being collected. The national do-not-call registry has been in effect since 2003, giving telemarketers, including small entities, sufficient time to take steps to comply with the rules. The rules which led to this information collection, simply require that telemarketers, including small entities, continue to access the registry as they always have. In addition, because the do-not-call registry is in electronic form and telemarketers may receive updates containing only new registrants on the registry, the burden to access the registry is not significant for most telemarketers, including small entities.

The proposed information collections may have a significant economic impact on small businesses to the extent that the proposed written consent requirement may entail additional recordkeeping requirements for covered entities that would be required to obtain and keep records of consumers' written consent to receive prerecorded message calls. As a practical matter, however, it appears that there may not be a significant change in this recordkeeping burden for at least two reasons. First, because a seller or telemarketer placing a prerecorded telemarketing call must be prepared to provide, under the Commission's current requirements, "clear and convincing evidence" that it received prior express consent from the called party, whether consent has been obtained orally or in writing, covered entities already are required to maintain records to demonstrate compliance with the existing express consent requirement. In addition, covered entities already maintain electronic or other records of the existence of an established business relationship in order to demonstrate compliance with current Commission requirements governing prerecorded message calls to established business relationship customers. In place of keeping records of "oral consent" or of "established business relationships" as a precondition for placing prerecorded telemarketing calls, the proposed rule change would require covered entities to maintain records of consumers' express written agreement to receive such calls. And because the Commission has proposed that these agreements may be obtained pursuant to the E-SIGN Act, minimal additional recordkeeping should be necessary. For these reasons, the proposed written consent requirement, as a practical matter, may not result in significant new reporting,

recordkeeping or other compliance requirements for sellers and telemarketers, including small entities.

6. The current and proposed collections are necessary to implement the Telephone Consumer Protection Act, Do-Not-Call Implementation Act, and Do-Not-Call Improvement Act by providing consumers with options for avoiding unwanted telemarketing calls. Without the current or proposed information collections for the national do-not-call registry and accompanying do-not-call rules, or if the collections were conducted less frequently, consumers would likely receive more unwanted telemarketing calls and would have fewer options for avoiding such calls as required under the TCPA. The proposed information collections also would benefit telemarketers and consumers by harmonizing the Commission's telemarketing rules with those of the FTC.

7. The collection is not conducted in any manner that is inconsistent with the guidelines in 5 C.F.R. § 1320.6.

8. Pursuant to 5 CFR 1320.8(d), the Commission published a notice in the *Federal Register* on March 22, 2010 (75 FR 13471). The Commission received no comments following publication of this notice.

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

10. Under the current information collections, confidentiality is an issue to the extent that individuals' and households' information is contained in the Commission's operations support for complaint analysis and resolution (OSCAR), consumer information management system (CIMS), and consumer case management system (CCMS) databases, which are covered under the Commission's system of records notice (SORN), FCC/CGB-1, "Informal Complaints and Inquiries."

(a) The Commission has requested that individuals (consumers/respondents) submit their names, addresses, and telephone numbers, which the Commission's staff need to process the complaints. A privacy statement is included on all FCC forms accessed through our Internet web site. However, consumers who want to provide sensitive information to the Commission are instructed to submit the form via mail rather than electronically.

(b) In addition, respondents are made aware of the fact that their complaint information may be released to law enforcement officials and other parties as mandated by law (*i.e*. court-ordered subpoenas). The PII covered by this system of records notice is used by Commission personnel to handle and to process informal complaints from individuals and groups. The Commission does not share this information with other federal agencies except under the routine uses listed in the SORN.

The PIA[6] that the Commission completed on June 28, 2007 gives a full and complete explanation of how the Commission collects, stores, maintains, safeguards, and destroys the PII, as required by OMB regulations and the Privacy Act, 5 U.S.C. § 552a. The PIA may be viewed at: http://www.fcc.gov/omd/privacyact/Privacy Impact_Assessment.html.

[6] As stated in fn. 5, the Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Telephone numbers for individuals that register with the do-not-call registry are stored in the National Do-Not-Call database, which is maintained by the Federal Trade Commission.

A system of records for the do-not-call registry was created by the Federal Trade Commission under the Privacy Act. The FTC published a notice in the *Federal Register* describing the system. *See* 68 FR 37494, June 24, 2003.

The FCC, FTC, and other state regulatory agencies are permitted access to the National Do-Not-Call database for enforcement purposes. Sellers, telemarketers, and other third parties are permitted access to the information maintained in the Do-Not-Call database for purposes of complying with the rules. When there is an indication of a violation or potential violation of the Commission's rules, records (telephone numbers) from the do-not-call database may be obtained for purposes of investigating a violation or for enforcing the rules and may be provided to the respondent/defendant for that same purpose.

The information collections proposed in the *2010 NPRM* would not impact or modify any of the confidentiality procedures detailed above.

11. Neither the existing nor proposed information collection requirements raise any questions or issues of a sensitive nature.

(a) Additionally, consumers are cautioned not to provide personal information such as social security numbers, credit card numbers, *etc*.

(b) As noted earlier, the Commission does require consumers (respondents) to provide their names, addresses, and telephone numbers so that Commission staff may process their complaints more expeditiously and if the Commission needs to contact the complainant for any additional information to resolve the complaint.

(c) In instances where consumers provide PII, the FCC has a SORN, FCC/CGB-1, "Informal Complaints and Inquiries," to cover the collection, use, storage, and destruction of the PII. A full explanation of the privacy safeguards may be found in the Privacy Impact Assessment that the FCC completed on June 28, 2007 and that may be viewed at: http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

12. Estimates of the burden hours for the collection of information are as follows:

Annual burden for currently approved information collection requirements is as follows:

Total Number of Respondents: 49,397 respondents (45,900 telemarketers +3,497 common carriers)

1. 47 C.F.R. § 64.1200(d) Hour burden for company-specific do-not-call requirements.

The Commission estimates that 30,000 businesses (respondents) will maintain company-specific lists of consumers who do not wish to be contacted. The Commission assumes that respondents will receive approximately 140,000 requests per day requiring 15 seconds (.004 hours) per request to process. This process will be done "on-occasion"; thus, the Commission assumes that most recordkeeping will be kept in computer form.

Annual Number of Responses: 140,000 do-not-call requests/day x 260[7] recordkeeping days/year = **36,400,000 responses/year**

Annual Burden Hours: 140,000 do-not-call requests (responses)/day x .004 hours (15 seconds) x 260 recordkeeping days/year = **145,600 hours**

Annual "In-House" Cost: The Commission assumes that respondents use "in-house" personnel to record do-not-call requests, whose pay is comparable to a federal employee GS-4/5, plus 30% overhead. Thus, the Commission estimates respondents' cost to be about $21.50 per hour to comply with the requirement:

140,000 responses x $.004 per hour/request x 260 recordkeeping days/year x $21.50 per hour = **$3,130,400.**

2. 47 C.F.R. § 64.1200(g) Requirement that 3,497 common carriers (respondents) inform 99,100,000 subscribers of the option to register with a national do-not-call list and to inform any telemarketers to which they provide services of the do-not-call requirements. This requirement will be done "on-occasion" and will require approximately 15 seconds (.004) per request to process.

Annual Number of Responses: 3,497 respondents x 28,339 notifications to subscribers/common carrier provider = **99,101,483 responses**

Annual Burden Hours: 3,497 respondents x 28,339 notifications to subscribers/common carrier provider x .004 per hour/notification = **396,406 hours**

Annual "In-House" Cost: The Commission assumes that respondents use "in-house" personnel to develop and send the notifications, whose pay is comparable to a federal employee GS-4/5, plus 30% overhead. Thus, the Commission estimates respondents' cost to be about $21.50 per hour to comply with the requirement:

3,497 respondents x 28,339 notifications to subscribers/common carrier provider x .004 hours/notification/provider x $21.50 per hour = **$8,522,727.54**

3. 47 C.F.R. § 64.1200(a)(6) Requirement that 30,000 telemarketers (respondents) maintain records demonstrating their compliance with the call abandonment rules.

The Commission estimates that this requirement will account for 1 hour of recordkeeping burden per telemarketer. This process will be done "on occasion."

[7] 260 recordkeeping days per year is in terms of "business days" not "calendar days".

Annual Number of Responses: 30,000 respondents x 1 record/respondent = **30,000 responses**

Annual Burden Hours: 30,000 responses x 1 hour/maintain record = **30,000 hours**

Annual "In-House" Cost: The Commission assumes that respondents use "in-house" personnel to ensure that the rate of abandoned calls is recorded, whose pay is comparable to a federal employee GS-4/5, plus 30% overhead. Thus, the Commission estimates respondents' cost to be about $21.50 per hour to comply with the requirement:

30,000 responses x 1 hour/maintain record x $21.50 = **$645,000**

4. 47 C.F.R. § 64.1200(f)(4) The rule that the "established business relationship" (EBR) is limited in duration to 18 months from any purchase or transaction and 3 months from any inquiry or application.

The Commission estimates that this "monitoring" requirement is done "on occasion" and will account for 15 minutes (0.25 hour) of recordkeeping burden per telemarketer.

Annual Number of Responses: 30,000 businesses (respondents) x 1/monitor EBR purchases or transactions = **30,000 responses**

Annual Hour Burdens: 30,000 responses x 0.25 hour/monitor EBR purchases or transactions= **7,500 hours**

Annual "In-House" Cost: The Commission assumed that respondents use "in-house" personnel to monitor the existence of their established business relationships, whose pay is comparable to a federal employee GS-4/5, plus 30% overhead. Thus, the Commission estimated respondents' cost to be about $21.50 per hour to comply with the requirement:

30,000 responses x 0.25 per hour/monitor EBR purchases or transactions x $21.50 per hour = **$161,250**

5. 47 C.F.R. § 64.1200(c)(2)(i) and (ii) Recordkeeping requirements in connection with the national do-not-call registry. Telemarketers must download the numbers in the registry and "scrub"[8] such numbers from their call lists once every 31 days. Once a telemarketer downloads the complete list, it need only obtain "updates" or newly added numbers each month. The Commission estimates that there are approximately 51,000 telemarketers (respondents) in the United States. The Commission believes that 90 percent will access the do-not-call registry and scrub their call lists. The Commission estimates that the requirements will account for 1 hour of recordkeeping burden on average per telemarketer.

Annual Number of Respondents: 51,000 respondents x 0.90 (90%) = **45,900 respondents**

Annual Number of Responses: 45,900 x 1/list to scrub = **45,900 responses**

[8] "Scrubbing" refers to comparing a do-not-call list to a company's call list and eliminating from the call list the telephone numbers of consumers who have registered a desire not to be called.

Annual Burden Hours: 45,900 respondents x 1/list to scrub = 45,900 responses x 1 hour/maintain record = **45,900 hours**

Annual "In-House" Cost: The Commission assumes that respondents use "in-house" personnel to access the do-not-call registry and scrub their call lists, whose pay is comparable to a federal employee GS-4/5, plus 30% overhead. Thus, the Commission estimates respondents' cost to be about $21.50 per hour to comply with the requirement:

45,900 responses x 1 hour/scrub list x $21.50 per hour = **$986,850**

Totals for currently approved information collection requirements:

Total Number of Respondents: 49,397 respondents

Total Number of Responses:

36,400,000 + 99,101,483 + 30,000 + 30,000 + 45,900 = **135,607,383**

Total Annual Burden Hours:

145,600 + 396,406 + 30,000 + 7,500 +45,900 = **625,406 hours**

Total Annual "In-House" Costs:

$3,130,400.00 + $8,522,727.54 + $645,000.00 + $161,250.00 + $986,850.00 = **$13,446,227.54**

Proposed Information Collection Requirements:

In the *2010 NPRM*, the Commission proposed changes to its TCPA rules that, if adopted, would increase the current total annual burden for the information collection requirements as follows:

47 C.F.R. § 64.1200(a)(1) and (a)(2) Proposed rule changes to require that prior express consent to receive prerecorded telemarketing messages be obtained in writing (currently, prior express consent may be obtained orally *or* in writing).

Under current Commission rules, a seller or telemarketer placing a prerecorded telemarketing call must be prepared to provide "clear and convincing evidence" that it received prior express consent from the called party, whether consent has been obtained orally or in writing. In addition, sellers and telemarketers already maintain electronic or other records of the existence of an established business relationship in order to demonstrate compliance with current Commission requirements governing prerecorded message calls to established business relationship customers. Therefore, under the proposed written consent requirement, covered entities that haven't already done so would be expected to make a one-time modification of their existing customer databases to include an additional field in which they would record consumers' written consent. Once this modification has been made, any ongoing incremental burden associated with obtaining and keeping records of consumers' written consent to receive prerecorded message calls should be minimal, especially due to the fact that the Commission has proposed that written consent may be

obtained in any manner allowed by the E-SIGN Act (*e.g.*, email, telephone key press). For these reasons, the Commission estimates that the proposed requirement would account for 1 hour of recordkeeping burden per year per respondent to obtain and keep the records required by the proposed rule (including the one-time modifications of existing databases). The Commission estimates that no more than half of the 51,000 telemarketers, or approximately 25,500 respondents, would be subject to the proposed rule changes.

Totals for proposed information collection requirement:

Proposed Annual Number of Respondents: 51,000 respondents x 0.50 (50%) = **25,500 respondents**

Proposed Annual Number of Responses: 25,500 x 1 record/respondent = **25,500 responses**

Proposed Annual Burden Hours: 25,500 respondents x 1 hour/maintain record = **25,500 hours**

Proposed Annual "In-House" Cost: The Commission assumes that respondents would use "in-house" personnel to ensure that consumers' written consent is obtained and recorded. The pay of such personnel is comparable to a federal employee GS-4/5, plus 30% overhead. Thus, the Commission estimates respondents' cost to be about $21.50 per hour to comply with the requirement:

25,500 responses x 1 hour/maintain record x $21.50 = **$548,250**

Totals for Currently Approved and Proposed Information Collection Requirements:

Total Number of Respondents: 49,397 respondents

Total Number of Responses:

36,400,000 + 99,101,483 + 30,000 + 30,000 + 45,900 + 25,500 = **135,632,883**

Total Annual Burden Hours:

145,600 + 396,406 + 30,000 + 7,500 +45,900 + 25,500 = **650,906 hours**

Total Annual "In-House" Costs:

$3,130,400.00 + $8,522,727.54 + $645,000.00 + $161,250.00 + $986,850.00 + $548,250 = **$13,994,477.54**

13. The Commission has estimated that there are approximately 51,000 telemarketers that may be affected by these rules. The potential cost to telemarketers of complying with the national do-not-call registry may depend on whether they hire a third party to "scrub" their call lists against the telephone numbers in the national do-not-call database. The Commission anticipates that

large telemarketers continue to have longer lists to scrub against the national registry, but that they may be more inclined to hire in-house staff to perform this function. Smaller telemarketing businesses may be able to "scrub" their lists themselves if they have sufficient staff to dedicate to this task. It is unclear how many telemarketers may hire third parties to "scrub" their call lists; however, the Commission estimates that approximately 10 percent of telemarketers may hire a third party to perform this function. The Commission also believes that such telemarketers vary in size and in the number of calls they make. The Commission estimates that the requirement that telemarketers access the national registry every 31 days results in costs on average of $900 to hire third parties to "scrub" from their call lists 250,000 telephone numbers on the national registry.

(a) Total annualized capital/start-up costs: $0

(b) Total annual costs (maintenance and operation), calculated as follows:

5,100 telemarketers (10% of 51,000) x $900/year = **$4,590,000**.

(c) Total annualized cost requested: **$4,590,000**

14. The national do-not-call list is administered by the FTC, which selected Lockheed Martin as the vendor for the database. The Do-Not-Call Implementation Act authorized the FTC to collect fees from telemarketers sufficient to implement and enforce the provisions of the national do-not-call registry. In 2003, Congress initially appropriated $18 million to operate the do-not-call registry. Currently, fees paid by telemarketers to the FTC are used to cover the costs of the registry. Therefore, the Federal Government does not incur any cost for the registry. Likewise, under the proposed information collection requirements, the Federal Government would incur no additional costs.

15. With the release of the *2010 NPRM*, the Commission proposed to increase the total annual burden hours and the total annual number of responses as described herein:

(1) The Commission's estimate for the total annual burden hours has increased from 625,406 hours to 650,906 hours. Therefore, there is a program change of +25,500 hours to the annual burden hours.

(2) The Commission's estimate for the total annual number of responses has increased from 135,607,383 to 135,632,883 responses. Therefore, there is a program change of +25,500 to the annual number of responses.

16. There are no plans to publish the result of the collection of information.[9] Publishing of recordkeeping data maintained by telemarketers is not mandated by the TCPA or required by Commission's rules.

[9] The national do-not-call registry contains telephone numbers of those individuals who have voluntarily placed their numbers on the registry to avoid receiving telemarketing calls. Telemarketers are required to access the numbers in the registry and scrub their call lists of such numbers in order to comply with the Commission's rules. The collection of information relates only to the requirement on telemarketers to download the telephone numbers in the database. While the Commission may access the registry directly, or request that a telemarketer produce the numbers it obtains from the registry for enforcement purposes, this collection of information will not be made available to the public.

17. The Commission does not intend to seek approval not to display the expiration date for OMB approval of this information.

18. There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods.

The Commission does not anticipate that the collection of information will employ statistical methods.