

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

1. In the *1992 TCPA Order*, the Federal Communications Commission (Commission) implemented final rules pursuant to the requirements of the Telephone Consumer Protection Act of 1991 (TCPA), Pub. L. No. 102-243, Dec. 20, 1991.<sup>1</sup> The TCPA 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 transmissions.<sup>2</sup>

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.<sup>3</sup> In addition, the rules prohibit any call, absent an emergency or the prior express consent of the called party, using an automatic telephone dialing system or a prerecorded voice when calling emergency telephone lines, health care facilities, telephone numbers assigned to wireless services, and telephone numbers assigned to services for which the called party is charged for the call, among others.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

With respect to facsimile transmissions, the rules ban the use of a telephone facsimile machine, computer, or other device to send an unsolicited advertisement unless the sender has an established business relationship with the recipient, the facsimile number is voluntarily obtained in the course of the established business relationship or the number is obtained from the recipient's public distribution of its facsimile number, and the sender includes certain notification and disclosure information in the transmission.<sup>8</sup>

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<sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, 7 FCC Rcd 8752 (1992).

<sup>2</sup> See 47 U.S.C. § 227.

<sup>3</sup> 47 C.F.R. § 64.1200(a)(2), (c).

<sup>4</sup> 47 C.F.R. § 64.1200(a)(1).

<sup>5</sup> 47 C.F.R. § 64.1200(d)(5).

<sup>6</sup> 47 C.F.R. § 64.1200(d)(1)-(2).

<sup>7</sup> 47 C.F.R. §§ 64.1200(d)(4), 68.318(d).

<sup>8</sup> 47 C.F.R. 64.1200(a)(3).

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On March 11, 2003, the Do-Not-Call Implementation Act (DNCIA) was signed into law.<sup>9</sup> The DNCIA required the FCC to issue a final rule implementing a National Do-Not-Call Registry and to consult and coordinate with the Federal Trade Commission (FTC) to “maximize consistency” with the FTC’s National Do-Not-Call rules and registry.

On July 3, 2003, the Commission released the *2003 TCPA Order*, revising the current TCPA rules and adopting new rules that provide consumers with several options for avoiding unwanted telephone solicitations.<sup>10</sup> The Commission established a National Do-Not-Call Registry for consumers who wished to avoid most unwanted telemarketing calls. This National Do-Not-Call Registry supplemented the company-specific do-not-call rules for those consumers who wished 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 exempted 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 required all companies conducting telemarketing, with the exception of tax-exempt nonprofit organizations, to transmit caller identification information, when available, and they prohibited 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 National 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 its *2004 Safe Harbor Order* that established a limited safe harbor in which persons would not be liable for placing autodialed and prerecorded message calls to numbers ported from a wireline service within the previous 15 days.<sup>11</sup> The Commission also *amended* its existing National Do-Not-Call Registry safe harbor to require telemarketers to scrub their call lists against the National Do-Not-Call Registry every 31 days.

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<sup>9</sup> Do-Not-Call Implementation Act, Pub.-Law 108-10, 117 Stat. 557 (2003).

<sup>10</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*2003 TCPA Order*).

<sup>11</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 19 FCC Rcd 19215 (2004) (*Safe Harbor Order*).

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On June 17, 2008, the Commission released the *2008 TCPA Order* amending the Commission's TCPA rules 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.<sup>12</sup> Specifically, the Commission modified Section 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 National Do-Not-Call Registry administrator or the registration is cancelled by the consumer.

In accordance with the Do-Not-Call Improvement Act of 2007, the Commission extends this requirement indefinitely to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Registry to protect consumer privacy rights.

***Existing Information Collection Requirements That Have Been Approved by OMB and Have Not Changed Since Last Approved:***a) 47 C.F.R. § 64.1200. Delivery restrictions.

§ 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 National Do-Not-Call Registry administrator.

b) § 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 Registry, 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.

c) § 64.1200(g)(1) – Common carriers shall, when providing local exchange service, 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 do-not-call database maintained by the federal government and the methods by which such rights may be exercised by the subscriber. The notice must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on the national database.

d) § 64.1200(g)(2) – Common carriers shall, when providing service to any person or entity for the purpose of making telephone solicitations, make a one-time notification to such person or entity of the national do-not-call requirements, including, at a minimum, citation to 47 CFR 64.1200 and 16 CFR 310. Failure to receive such notification will not

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<sup>12</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 23 FCC Rcd 9779 (2008 DNC Order).

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serve as a defense to any person or entity making telephone solicitations from violations of this section.

- e) § 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 a 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.
- f) § 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.
- g) § 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. The rules, however, 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. Individuals that wish to avail themselves of the protections of the National Do-Not-Call Registry have the option of registering their telephone numbers with the registry either online or by calling a toll-free number from the telephone number that the consumer wishes to place on the registry. While individuals provide an email address for

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verification purposes when registering online, the only information stored in the National Do-Not-Call Registry and accessible to telemarketers and federal and state enforcement agencies are the telephone numbers provided and the date and time on which the individuals registered those numbers. Individuals are asked to provide no other personal information.

The Commission is requesting an extension of this information collection in order to receive the full three OMB approval/clearance for this collection.

The statutory authority for the information collection requirements is found in the Telephone Consumer Protection Act of 1991 (TCPA), Pub. L. No. 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 information collection requirements 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 will be used to determine telemarketers' compliance with the TCPA. Among other things, the data will show that companies are scrubbing their individual databases of numbers on the National Do-Not-Call Registry to avoid calling consumers who have expressed an objection to receiving telephone solicitations.

The information maintained in the National Do-Not-Call Registry (individuals' telephone numbers) will be 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 will not be 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 collection of information may contain personally identifiable information on individuals (PII).

(a) As required by OMB Memorandum M-03-22 (September 26, 2003), the FCC completed the Privacy Impact Assessment (PIA)<sup>13</sup> 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](http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html).

(b) 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.

(c) A system of records for the National Do-Not-Call Registry was created by the FTC under the Privacy Act. The FTC published a notice in the *Federal Register* describing the system (68 FR 37494, June 24, 2003).

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<sup>13</sup> The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions made to the SORN.

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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.
4. The information collection requirements are not duplicative of any currently existing federal regulatory obligation.
5. The Commission does not believe there will be a significant impact on a substantial number of small businesses/entities by this information 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 revised rules that 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 National 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.
6. The collection is 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 information collections for the National Do-Not-Call Registry and accompanying do-not-call rules, or if the collection was conducted less frequently, consumers would likely receive more unwanted telemarketing calls and would have few, if any, options for avoiding such calls as required under the TCPA.
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 C.F.R. §1320.8(d), the Commission published a 60 day *Federal Register* notice on July 7, 2011 76 FR 39872, seeking comments from the public on the information collection requirements contained in this supporting statement. No comments were received following publication.
9. The Commission does not anticipate providing any payment or gift to respondents.
10. Assurances of confidentiality are being provided to the respondents.

The PIA that the FCC completed on June 28, 2007 gives a full and complete explanation of how the FCC 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](http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html).

The FTC stores the submitted telephone numbers in the National Do-Not-Call Registry.

A system of records for the National Do-Not-Call Registry was created by the FTC 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 Registry for enforcement purposes. Sellers, telemarketers, and other third parties are permitted access to the information maintained in the National Do-Not-Call Registry for purposes

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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 National Do-Not-Call Registry 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.

11. This information collection does not raise any questions or issues of a sensitive nature.

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

The Commission reevaluated the burdens associated with this information collection and concluded that the total burden hours and total annual costs have increased due to an increase in the number of common carriers, number of telemarketers, and personnel costs.

Pursuant to the *2008 TCPA Order*, the minor modification to section 64.1200(c)(2) has a negligible impact on the burden hours for this collection of information, therefore, there is no burden associated with this requirement. For purposes of the rest of the estimates described herein, Commission increases the estimate of telemarketers based on data from the FTC, increases the estimate of the number of common carriers providing telecommunications services based on the FCC Form 499-A data, and increases the personnel costs commensurate with the current pay-rate for a similarly situated federal employee. These adjustments result in approximately an 8 percent increase in burden hours submitted to OMB. In sum, the Commission estimates that the current total annual burden for the information collection requirements is as follows:

**Total Number of Respondents: 50,151 respondents<sup>14</sup>**

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

The Commission estimates that approximately 44,330 businesses (respondents) will maintain company-specific lists of consumers who do not wish to be contacted. The Commission assumes that respondents will receive approximately 133,000 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:** 133,000 do-not-call request/day x 260<sup>15</sup> recordkeeping days/year = **34,580,000 responses/year**

**Annual Burden Hours:** 133,000 do-not-call requests (responses)/day x .004 hours (15 seconds) per x 260 recordkeeping days/year = **138,320 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:

133,000 responses x \$.004 per hour/request x 260 recordkeeping days/year x \$21.50 per hour = **\$2,973,880.00**

<sup>14</sup> The total number of respondents is as follows: 5,821 common carriers and 44,330 telemarketers.

<sup>15</sup> 260 recordkeeping days per year is in terms of "business days" not "calendar days".

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2. 47 C.F.R. § 64.1200(g)(1) Requirement that 5,821 common carriers (respondents) inform 112,700,000 subscribers of the option to register with a National Do-Not-Call Registry and to inform any telemarketers to which they provide services of the do-not-call requirements. This requirement will be done annually and will require approximately 15 seconds (.004) per request to process.

**Annual Number of Responses:** 5,821 respondents x 19,361 notifications to subscriber/common carrier provider = **112,700,381 responses**

**Annual Burden Hours:** 5,821 respondents x 19,361 notifications to subscribers/common carrier provider x .004 per hour/notification = **450,802 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:

5,821 respondents x 19,361 notifications to subscribers/common carrier provider x .004 hours/notification/provider x \$21.50 per hour = **\$9,692,232.77**

3. 47 C.F.R. § 64.1200(g)(2) Requirement that common carriers that provide service to any person or entity for the purpose of making telephone solicitations make a one-time notification to such person or entity of the national do-not-call requirements.

The Commission assumes that 39,897 telemarketers (90 percent of 44,330) have been informed of the do-not-call requirements by common carriers since adoption of this rule. In addition, the Commission assumes that 291 common carriers (5% of 5,821 common carriers) will provide a one-time notification to 291 telemarketers.<sup>16</sup> This requirement will be done on occasion and will require approximately 15 seconds (.004) to comply.

**Annual Number of Responses:** 291 respondents (common carriers) will send x 1 notification (to 291 telemarketers) = 291 **responses/year**

**Annual Burden Hours:** 291 responses x .004 per hour/response = **1 hour/year**

**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:

291 responses x .004 per hour/response x \$21.50 per hour = **\$25.00**

<sup>16</sup> There is an estimated 4,433 telemarketers that have not been informed of the do-not-call requirements by common carriers. The Commission estimates that they will be informed over an extended period of time. Therefore, the Commission estimates that 291 telemarketers will be notified per year of the do-not-call requirements by common carriers.



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4. 47 C.F.R. § 64.1200(a)(6) Requirement that telemarketers (respondents) maintain records demonstrating their compliance with the call abandonment rules.

The Commission estimates that 44,330 telemarketers will maintain compliance records and that this requirement will account for 1 hour of recordkeeping burden per telemarketer. This process will be done “on occasion.”

**Annual Number of Responses:** 44,330 respondents x 1 record/respondent = **44,330 responses**

**Annual Burden Hours:** 44,330 responses x 1 hour/maintain record = **44,330 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:

44,330 responses x 1 hour/maintain record x \$21.50 = **\$953,095**

5. 47 C.F.R. § 64.1200(f)(4) 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 a telemarketer must demonstrate its compliance with this requirement “on occasion” and will account for 15 minutes (.25 hour) of recordkeeping burden per telemarketer.

**Annual Number of Responses:** 44,330 businesses (respondents) x 1/monitor EBR purchases or transactions = **44,330 responses**

**Annual Hour Burdens:** 44,330 responses x .25 hour/monitor EBR purchases or transactions = **11,083 hours**

**Annual “In-House” Cost:** The Commission assumes 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 estimates respondents’ cost to be about \$21.50 per hour to comply with the requirement:

44,330 responses x .25 per hour/monitor EBR purchases or transactions x \$21.50 per hour = **\$238,273.75**

6. 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”<sup>17</sup> 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 44,330 telemarketers (respondents) in the United States. The Commission believes that 90 percent will access the National Do-Not-Call

<sup>17</sup> “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.

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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:** 44,330 respondents x 0.90 (90%) = **39,897 respondents**

**Annual Number of Responses:** 39,897 x 1/list to scrub = **39,897 responses**

**Annual Burden Hours:** 39,897 respondents x 1/list to scrub x 1 hour/maintain record = **39,897 hours**

**Annual “In-House” Cost:** The Commission assumes that respondents use “in-house” personnel to access the National 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:

39,897 responses x 1 hour/scrub list x \$21.50 per hour = **\$857,785.50**

**Total Number of Respondents: 50,151 respondents**

**Total Number of Responses:**

34,580,000 + 112,700,381 + 291 + 44,330 + 44,330 + 39,897 = **147,409,229 responses**

**Total Annual Burden Hours:**

138,320 + 450,802 + 1 + 44,330 + 11,083 + 39,897 = **684,433, hours**

**Total Annual “In-House” Costs:**

\$2,973,880 + \$9,692,232.77 + \$25.00 + \$953,095 + \$238,273.75 + \$857,785.50 = **\$14,715,292.02**

13. The Commission estimates that there are approximately 44,330 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 Registry. 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

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

4,433 telemarketers (10% of 44,330) x \$900/year = **\$3,989,700.**

(c) Total annualized cost requested: **\$3,989,700**

14. The National Do-Not-Call Registry is administered by the FTC, which selected Lockheed Martin as the vendor for the National Do-Not-Call Registry. 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 National 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.

15. The Commission corrected and reevaluated the burdens associated with this information collection. For example, the burden hours and costs associated with 47 C.F.R. § 64.1200(g) compliance increased significantly because the prior calculation did not reflect the annual notification requirement, but instead indicated that the notification would occur “on occasion.” With respect to other information collection requirements contained herein, the Commission makes the following assessments described herein:

(1) The Commission’s estimate for the total annual number of respondents has increased by +754, from 49,397 respondents to 50,151 respondents;

(2) The Commission’s estimate for the total annual number of responses has increased by +11,801,846 from 135,607,383 responses to 147,409,229 responses;

(3) The Commission’s estimate for the total annual burden hours has increased by +59,027 from 625,406 hours to 684,433 hours; and

(4) The Commission’s estimate for the total annual costs has decreased by -\$600,300, \$4,590,000 to \$3,989,700.

With this submission, the Commission used data from FCC Form 499-A filings and the FTC’s Biennial Report to Congress to reexamine and reevaluate the data in this supporting statement. There are no program changes.

16. There are no plans to publish the result of the collection of information.<sup>18</sup> Publishing of recordkeeping data maintained by telemarketers is not mandated by the TCPA or required by Commission’s rules.

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<sup>18</sup> 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 National Do-Not-Call Registry. 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.

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

17. The Commission does not intend to seek approval to omit the OMB-approval expiration date.
18. There are no 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.