

## SUPPORTING STATEMENT

### A. Justification

#### 1. *Circumstances that make collection necessary.*

Section 228 of the Communications Act of 1934, as amended, establishes federal requirements governing common carriers' billing and collection for interstate pay-per-call and other information services. These statutory requirements are codified – often virtually verbatim – in Part 64 of the Commission's rules, 47 CFR Part 64.

In 2004, the Commission initiated a new proceeding to review the effectiveness of our rules governing pay-per-call services, related audiotext information services, and toll-free numbers.<sup>1</sup> The Commission also closed CC Docket No. 96-146, a rulemaking initiated in 1996 to implement portions of the Telecommunications Act of 1996 governing pay-per-call and related information services.<sup>2</sup>

The Commission currently has one approved information collection related to the Pay-Per-Call rules, OMB Control No. 3060-0748. This collection focuses on the disclosure and dissemination of Pay-Per-Call information, the billing disclosure requirements for Pay-Per-Call and other information services, and the disclosure requirements for information services provided through toll-free numbers.

**47 CFR § 64.1504.** 47 CFR § 64.1504 of the Commission's rules incorporates the requirements of 47 U.S.C. 228(c)(7)-(10) that restrict the manner in which toll-free numbers may be used to charge telephone subscribers for information services.

Common carriers must prohibit the use of toll-free numbers in a manner that would result in the calling party being charged for information conveyed during the call, unless the calling party:

- (a) Has executed a written agreement that specifies the material terms and conditions under which the information is provided, or
- (b) Pays for the information by means of a prepaid account, credit, debit, charge, or calling card, and the information service provider includes in response to each call an introductory message disclosing specified information detailing the cost and other terms and conditions for the service.

Sections 228(c)(8)(A) and (c)(9) of the Communications Act contain, respectively, the required elements of the written agreement and the introductory message.

Section 228 of the Communications Act imposes standards on common carriers that either transmit and/or perform billing and collection for interstate information services.

- (a) The restrictions on toll-free numbers contained in section 228(c) impose disclosure requirements on information service providers, albeit indirectly.

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<sup>1</sup> See *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996*, CC Docket No. 96-146, CG Docket No. 04-244, CC Docket No. 98-170, RM-8783, ENF-95-20, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 04-162 (rel. July 16, 2004) (*NPRM*).

<sup>2</sup> See *id.*

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(b) Information service providers who choose to use toll-free numbers to provide their services must provide the required introductory message or written agreement. See 47 CFR § 1504 of the Commission's rules.

**47 CFR § 64.1509.** 47 CFR § 64.1509 of the Commission's rules incorporates the requirements of 47 U.S.C. 228(c)(2) and 228 (d)(2)-(3) of the Communications Act.

(a) Under these sections, common carriers that assign telephone numbers to pay-per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers.

(b) For each assigned number, common carriers must also make available:

- (1) a description of the pay-per-call service;
- (2) the total cost per minute or other fees associated with the service; and
- (3) the service provider's name, business address, and telephone number.

(c) In addition, carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services.

(d) Finally, the Commission's rules require carriers to provide statements of pay-per-call rights and responsibilities to new telephone subscribers at the time service is established and to all subscribers annually. See 47 CFR § 64.1509.

**47 CFR § 64.1510.** Under 47 CFR § 64.1510 of the Commission's rules, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges.

(a) Specifically, telephone bills identifying pay-per-call charges must include a consumer notification stating that:

- (1) the charges are for non-communication services;
- (2) local and long distance telephone services may not be disconnected for failure to pay such charges;
- (3) pay-per-call (900 number) blocking is available upon request; and
- (4) access to pay-per-call services may be involuntarily blocked for failure to pay such charges.

(b) In addition, each telephone call billed must show:

- (1) the type of service;
- (2) the amount of the charge; and
- (3) the date, time, and duration of the call.

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(b) Finally, the bill must display a toll-free number that subscribers may call to obtain information about pay-per-call services.

Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a “collect call” basis or accessed by subscribers through a toll-free number.

This collection does not affect individuals or households; thus there are no impacts under the Privacy Act because it does not require the collection of personal information from individuals.

The statutory authority(s) for the information collection requirements are found at 47 U.S.C. 228(c) (7) – (10); Pub. L. No. 192-556, 106 Sta. 4181 (1992), codified at 47 U.S.C. § 228 (The Telephone and Dispute Resolution Act of 1992).

2. *Use of Information.*

The disclosure requirements contained in 47 CFR §§ 64.1504, 64.1509 and 64.1510 of the Commission’s rules governing toll-free numbers are intended to ensure that consumers:

- (a) Know when charges will be assessed for calls to toll-free numbers; and
- (b) Are able to obtain information necessary to make informed choices about whether to purchase such information services.

In addition, the proposed information collections contained in the *NPRM* would minimize the burdens on audiotext information service providers that bill through the consumers’ telephone bills by permitting them to obtain oral verification from consumers that they agreed to the charges. The proposals would also allow records to be collected electronically, consistent with the E-sign Act.

3. *Technological Collection Techniques.*

Common carriers and information providers are free to explore use of information technology to meet disclosure obligations under section 228(c) of the Communications Act and the Commission’s pay-per-call rules.

4. *Efforts to Identify Duplication.*

The information collection requirements are not duplicative of any existing federal regulatory obligation.

5. *Impact on Small Entities.*

The disclosure requirements for 47 CFR § 64.1504 of the Commission’s rules may have a significant impact on a substantial number of small businesses or other small entities. These disclosure requirements will ensure that consumers receive the information necessary to make informed choices about whether to purchase information services available through toll-free numbers. The requirements are mandated by statute and are included in the Commission’s rules virtually verbatim. The Commission cannot waive or reduce statutory requirements. However, the Commission will continue to consider ways to minimize the impact on small businesses.

6. *Consequences if Information is Not Collected.*

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Without the disclosure requirements contained in 47 CFR §§ 64.1504, 64.1509 and 64.1510 of the Commission's rules, consumers might not be adequately informed about the cost and other terms associated with information services available over toll-free numbers. In fact, Congress enacted these requirements to address deception and abuse involving the use of 800 numbers to charge telephone subscribers for information services.

7. *Special Circumstances.*

The information collection is not conducted in any manner that is inconsistent with the guidelines in 5 C.F.R § 1320.

8. *Federal Register Notice; Efforts to Consult with Persons Outside of the Commission.*

The Commission published a Notice in the *Federal Register* pursuant to 5 C.F.R. 1320.8(d) seeking comment from the public on the information collection requirements contained in this supporting statement. See 77 FR 75433, December 20, 2012. The Commission did not receive any comments in response to the notice.

9. *Payments or Gifts to Respondents.*

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

10. *Assurances of Confidentiality.*

Assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals. The information that is required to be disclosed:

- (a) call detail data and recitation of federal pay-per-call requirements; and
- (b) terms and conditions under which information services available through toll-free numbers are provided, is not proprietary and does not implicate confidentiality or privacy concerns.

11. *Questions of a Sensitive Nature.*

There are no questions of a sensitive nature with respect to the information collected.

12. *Estimates of the Hour Burden of the Collection to Respondents.*

Estimates of the hourly burden for the collection of information are as follows:

**a. 47 CFR § 64.1504**

The Commission has only limited unverifiable information to predict the number of audiotext information service providers.

In 1996, the Commission staff estimated that there were approximately 10,000 to 20,000 audiotext information service providers operating in this area.

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(1) The Commission received no comments on that estimate during the 1996 comment process, as noted below.

(2) Taking the mean between these numbers, the Commission estimated a total of 15,000 potential respondents (common carriers).

The Commission estimated that one quarter (0.25) of those audiotext information service providers would develop and offer information services through toll-free numbers by levying a service charge:

$$15,000 \text{ entities} \times 0.25 = 3,750 \text{ information service providers}$$

Of that number, it is estimated that approximately 2,750 information service providers will offer services through debit, credit, or calling card transaction and, thus, be required to provide an introductory message. The Commission estimated that this process may take 2 hours to complete.

$$2,750 \text{ respondents} \times 2 \text{ hours} = 5,500 \text{ hours}$$

The Commission estimated that the remaining 1,000 information service providers will offer subscription to information services available on a toll-free number, and thus, be required to execute subscription agreements in writing. This process is estimated to take 5 hours to complete.

$$1,000 \text{ respondents} \times 5 \text{ hours} = 5,000 \text{ hours}$$

**Total In-House Costs:**

The Commission assumes that the information service providers (respondents) will use “in house” personnel to perform all the necessary functions to comply with the reporting and recordkeeping requirements:

(a) Each respondent’s legal staff person will prepare a standard universal contract for customers to subscribe to the “toll free” information services. The Commission estimates that it will require the legal staff approximately five (5) hours at a salary comparable to a GS-14/Step 5 (\$57.13/hour) in the Federal salary scale to prepare the contracts and the other legal requirements for the customer’s services and to review these periodically as required:

$$1,000 \text{ respondents} \times 5 \text{ hrs/yr/legal staff} \times \$57.13/\text{hr} = \$285,650.00$$

(b) Each respondent’s legal staff person will prepare introductory messages. The Commission estimated that it will require the legal staff approximately two (2) hours at a salary comparable to a GS-14/Step 5 (\$57.13) in the Federal salary scale to prepare introductory messages, *e.g.* writing and recording.

$$2,750 \text{ respondents} \times 2 \text{ hrs/yr/legal staff} \times \$57.13/\text{hr} = \$314,215.00$$

**Section 64.1504 Totals are as follows:**

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**Total Number of Respondents: 3,750**

**Total number of Responses: 3,750**

**Total Estimated Number of Burden Hours: 10,500 hours**

**Total Estimated In-House Costs: \$599,865.00**

**b. 47 CFR § 64.1509**

The Commission estimated that there are approximately 25 common carriers that assign 900 numbers and, thus, are the respondents to these disclosure requirements:

The Commission estimates that each respondent will have three responses:

25 respondents x 3 responses/respondent = 75 responses/annum

**Total Number of Responses Annually: 75 responses**

The Commission prepared the following burden estimates for the respondent common carriers:

***Recordkeeping Requirements:***

Individual carriers can, within approximately 50 hours, compile the required list of all their 900 number assignments, along with identities of the associated information providers, their addresses, and business telephone numbers, using computerized databases and modern search engine software to gather these data.

25 respondents (common carriers) x 50 hrs/900 number assignment list = 1,250 hours/annum

Individual carriers updating their lists will require an additional 50 hours per year annually.

25 respondents x 50 hours/updating list/annum = 1,250 hours/annum

***Reporting Requirements:***

Individual carriers are currently obligated to maintain call lines to assist telephone subscribers with inquiries and complaints.

Respondents are obligated to increase the staff to handle increased volume from pay-per-call inquiries and provide training on pay-per-call matters, which may take approximately 5 hours per week, totaling 260 hours annually per respondent:

25 respondents x 260 hours annually = 6,500 hours/annum

***Third Party Disclosure Requirements:***

The burden for accomplishing annual consumer notifications is estimated to be approximately 50 hours annually per respondent.

25 respondents x 50 hours/year = 1,250 hours/annum

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**Total Annual Burden Hours:** 1,250 hours + 1,250 hours + 6,500 hours + 1,250 hours = **10,250 hours**

**Total In-House Cost:**

“In house” costs to respondents are difficult to estimate because common carriers generally consider cost information associated with non-communications activities to be competitively sensitive.

(a) Total cost estimates may be affected by unknown variables. For example, carriers may choose different methods to accomplish the annual consumer notifications.

(b) 47 CFR § 64.1509(b)(21)(iv) does not require that annual notifications be accomplished through any particular means, *i.e.*, billing inserts as opposed to through an information page in local telephone directories.

(c) In fact, in 1995, the Commission’s enforcement staff approved a request by several carriers to recognize publication of consumer education information in local telephone directories as an acceptable alternative to disclosures through inserts in monthly telephone bills.

(d) While total costs of complying with the disclosure requirements contained in 47 CFR § 64.1509 may vary considerably among carriers, the Commission believes that with recent advances in information technology and automation, the cost to comply with these requirements may cost the 25 respondents approximately \$500 per hour:

**Total “in house” costs to respondents:**

100 hours x \$500/hour/wages, disclosure materials/documents/internal software updates, *etc.* = **\$50,000**

Section 228 (f)(2) of the Communications Act specifically prohibits carriers from recovering the costs of implementing federal pay-per-call requirements from telephone ratepayers. However, carriers presumably pass on to information service providers the costs of complying with pay-per-call regulations.

**Section 64.1509 Totals are as follows:**

**Total Number of Respondents: 25**

**Total number of Responses: = 75 responses/annum**

**Total Annual Burden Hours: 10,250 hours**

**Total In-House Costs: \$50,000**

**c. 47 CFR § 64.1510**

Interexchange carriers (IXCs) generally hold contracts to perform pay-per-call billing and collection for information service providers. Typically, however, IXC subcontract those services to local exchange carriers (LECs) (as “third parties”) which actually issue bills to telephone subscribers.

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Thus, for purposes of assessing the burden associated with these disclosure requirements, it is probably most useful to list LECs as the respondents to the information collection requirements.

There are approximately 1,350 LECs that may be subject, indirectly, to the billing disclosure requirements. Modifications of billing systems to meet the pay-per-call billing disclosure requirements could likely be accomplished in approximately 20 hours per respondent.

$$1,350 \text{ respondents} \times 20 \text{ hours} = 27,000 \text{ hours}$$

**Total Annual “In House” Costs:**

(a) The Commission believes that the LECs will perform all of these reporting requirements using their “in house” staff.

(b) Initially, the cost of compliance is higher because each LEC must set up the processes and procedures to comply.

(1) The principal expenses are associated with modifying computerized billing systems to provide for inclusion of the required information.

(2) The Commission presumes that most LECs, as the billing carriers, have already made the required modifications since these reporting requirements under 47 CFR §§ 64.1510(a) and (b) took effect in 1993.

(3) Furthermore, 47 CFR §§ 64.1510(c) incorporates in the Commission’s Rules a statutory requirement that took effect upon enactment of the Telecommunications Act of 1996 in February 1996.

(c) The Commission estimates that once these computerized billing processes and business policies are in place, the annual recurring costs to comply with the reporting requirements associated with pay-per-call billing disclosure requirements should be minimal.

(d) The Commission estimates that the LECs will comply with the reporting requirements as follows:

Using business staff earning the equivalent of a GS-14/Step 5 (\$57.13/hour) to develop the procedures for the billing disclosure requirements and modification of billing systems which require approximately 30 hours per respondent to accomplish this work:

$$1,350 \text{ respondents} \times \$57.13 \times 30 \text{ hours/create business policy and billing procedures} = \$2,313,765.00$$

**Section 64.1510 Totals are as follows:**

**Total Estimated Number of Respondents: 1,350**

**Total Number of Responses: 1,350 responses/annum**

**Total Estimated Annual Burden Hours: 27,000 hours**



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**Total Estimated In-House Costs: \$2,313,765.00**

**Cumulative Totals for the Collection:**

**Total Estimated Number of Respondents: 5,125**

**Total Number of Annual Responses: 5,175**

**Total Estimated Annual Burden Hours: 47,750 hours**

**Total Estimated In-House Costs: \$2,963,630.00**

13. *Estimates of the Cost Burden of the Collection to Respondents.*

There are no recurring costs.

(a) Any new costs will be incurred only when information service providers develop new programs or change the terms and conditions of existing ones.

(b) The Commission believes respondents will make these changes in-house, with existing materials (*e.g.*, simply update software, not buying new equipment).

Thus, audiotext service providers can comply with the recordkeeping requirements using “in house” staff exclusively:

(a) Total annualized capital/start-up cost: **\$0.00**.

(b) Total annual cost (Operating & Maintenance): **\$0.00**

(c) Total annualized cost requested: **\$0.00**

14. *Estimates of the Cost Burden to the Commission.*

These disclosure requirements do not impose any costs on the Federal government.

15. *Program Change or Adjustment.*

There are no program changes or adjustments to this collection.

16. *Collection of Information Whose Results Will Be Published.*

There are no plans to publish the result of the collection of information.

17. *Display of Expiration Date of OMB Approval of Collection.*

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

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18. *Exception to the Certification statement for Paperwork Reduction Act Submissions.*

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.