

## Section 64.201, Regulations Concerning Indecent Communications by Telephone

## SUPPORTING STATEMENT

## A. Justification

1. Under Section 223 of the Communications Act of 1934, as amended, telephone companies are required, to the extent technically feasible, to prohibit access to indecent communications from the telephone of a subscriber who has not previously requested access. Moreover, fines and penalties are imposed on those who knowingly use the telephone to make obscene or indecent communications for commercial purposes. The fines and penalties are applicable to those who use the telephone, or permit their telephone to be used, for obscene communications to any person and to those who use the telephone for indecent communications to persons under 18 years of age or to adults without their consent.

As authorized by Section 223, the Commission adopted 47 CFR Section 64.201 to establish defenses to prosecution for the provision of indecent communications under section 223 of the Communications Act of 1934, including that the defendant restricts access to the prohibited communications only to persons 18 years of age or older by taking one of several actions to restrict such access.

The information collection requirements consist of:

- (1) a requirement that subscribers to adult message services make a request in writing to the common carrier to allow access to the indecent messages;
- (2) a requirement that adult message service providers notify their common carriers in writing of the nature of their programming; and
- (3) a requirement that a provider of adult message services requests that their common carrier identify the adult message service as such in bills to its subscribers.

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

The statutory authority for the information collection requirements is found at Section 223 of the Communications Act of 1934, [47 U.S.C. 223] Obscene or Harassing Telephone Calls in the District of Columbia or in Interstate or Foreign Communications, , as amended by the Appropriations Act of 1990, Public Law No. 101-166, Sections 521, 103 Stat. 1192 (November 21, 1998).

2. The information collection requirements under 47 CFR § 64.201(a) provides an affirmative defense to prosecution for those firms that provide indecent communications under Section 223(b)(2) of the Communications Act of 1934, as amended. The information requirements are imposed on carriers, adult message service providers, and customers who solicit their services to ensure that minors are denied access to materials deemed indecent. If the information collections were not imposed, the Commission would not be able to carry out its responsibilities as mandated in Section

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223 of the Act. The regulations protect minors from access to indecent communications in the least burdensome manner.

This information collection does contain personally identifiable information on individuals (PII).

As required by OMB Memorandum M-03-22 (September 26, 2003), the FCC completed a Privacy Impact Assessment (PIA)<sup>1</sup> on June 28, 2007, that gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the PII covered by these information collection requirements. 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)

Furthermore, as required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB-1 “Informal Complaints, Inquiries, and Request for Dispute Assistance”, in the *Federal Register* on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014.

3. The Commission does not believe that the use of the information technology can reduce burdens in this instance because the means to verify the customer’s age and legal authorization to receive these services do not lend themselves readily to automation.
4. The information collection requirements are not duplicative of any currently existing federal regulatory obligation.
5. This information collection will not have a significant economic impact on a substantial number of small entities/businesses.
6. The Commission does not specify the frequency of the collections. However, the information collection is necessary in an effort to prohibit access to indecent communications from the telephone of a subscriber who has not requested such access.
7. The collection is not conducted in any manner that is inconsistent with the guidelines in 5 CFR §1320.
8. Pursuant to 5 CFR § 1320.8(d), the Commission published a notice in the *Federal Register* on April 12, 2016, published at 81 FR 21547, seeking public comment on the information collection requirements contained in this supporting statement. No comments were received from the public.
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).

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<sup>1</sup> The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

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11. This information collection does not raise any questions or issues of a sensitive nature for respondents.
12. Estimates of the hour burden for the collection of information are as follows:

**(a) Subscriber request for access to adult message services**

The Commission estimates that there will be approximately 10,000 customers (respondents) annually who will contact an adult message service. This process will be done “on occasion” and will require approximately 10 minutes (.166 hours) to complete this subscription service.

**Annual Number of Respondents: 10,000 customers**

**Annual Number of Responses: 10,000 subscriptions (1 subscription per customer)**

**Annual Burden Hours:**

10,000 customers x 1 subscription x .166 hours/subscription/customer = **1,660 hours**

**Annual “In-house Cost”:** There is no “in-house cost” to the customer.

**(b) Notification to carriers of the nature of adult message services:**

The Commission estimates that approximately 100 adult messaging service providers (respondents) will notify the common carriers of the 10,000 subscriptions (100 subscriptions each). This notification process occurs when a customer subscribes to adult messaging services and will require approximately 10 minutes (.166 hours).

**Annual Number of Respondents: 100 adult messaging services**

**Annual Number of Responses: 10,000 notifications (100 notifications per adult messaging service)<sup>2</sup>**

**Annual Burden Hours:**

100 respondents x 100 subscription notifications x .166 hours/notification = **1,660 hours**

**Annual “In-house Cost”:** The Commission assumes that respondents use “in house” personnel whose pay is comparable to a senior level federal employee (GS-13/5), thus, the Commission estimates respondents’ cost to be about \$50.04 per hour to comply with the requirements:

100 respondents x 100 subscription notifications x .166 hours/notification x \$50.04 = **\$83,066.40**

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<sup>2</sup> Subsection (a) asserts that there are 10,000 subscriptions annually –the number of notifications that the carriers have to provide. 10,000 subscriptions divided by 100 service messaging service providers equals 100 responses per respondent.

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**(c) Request to carriers that billing information reflects the type of service provided:**

The Commission estimates that approximately 100 adult messaging service providers (respondents) will notify the common carriers of the type of services they are providing their customers, which the common carriers will then include in the billing information on each customer's bills.

**Annual Number of Respondents: 100 adult messaging service providers**

**Annual Number of Responses: 10,000 notifications (100 notifications per service provider)<sup>3</sup>**

**Annual Burden Hours:**

100 respondents x 100 notification each x 0.166 hours/notification/respondent = **1,660 hours**

**Annual "In-house Cost":** The Commission assumes that respondents use "in house" personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5), thus, the Commission estimates respondents' cost to be about \$50.04 per hour to comply with the requirements:

100 respondents x 100 service provider notifications x .166 hours/notification x \$50.04/hr = **\$83,066.40**

**Total Number of Respondents:** 10,000 + 100 + 100 = **10,200**

**Total Number of Responses:**

10,000 subscriptions + 10,000 notifications + 10,000 notifications = **30,000**

**Total Annual Burden Hours:** 1,660 hours + 1,660 hours + 1,660 hours = **4,980 hours**

**Total Annual "In House" Costs:** \$83,066.40 + \$83,066.40 = **\$166,132.80**

13. The following represents the Commission's estimate of the annual cost burden to respondents resulting from the collections of information. The Commission believes that both adult messaging service providers and common carriers will use in-house customer service representatives, and accounting and billing staff to solicit customers and to process billing and notification procedures. Thus:

(a) Total annualized capital/startup costs: **None**

(b) Total annual cost (O&M): **None**

(c) Total annualized cost requested: **None**

14. Estimates of annualized cost to the Federal Government are as follows: **None**

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<sup>3</sup> See fn. 2.

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The information requirements will not generate costs to the Federal government as the information will not be submitted to the agency or routinely reviewed by the agency.

15. The Commission inadvertently miscalculated the total number of responses for the “*notification to carriers of the nature of adult message services*” and for the “*request to carriers that billing information reflects the type of service provided*” information collection requirements, and therefore, makes the following adjustments to reflect the correct total number of responses and the total annual burden hours:

(a) The total number of responses has increased by **+19,800** responses, from 10,200 responses to 30,000 responses; and

(b) The total annual burden hours has increased by **+3,287** annual hours, from 1,693 annual hours to 4,980 annual burden hours.

There are no program changes to this information collection.

16. There are no plans to publish the result of this collection of information.
17. The Commission is not seeking approval not to display the expiration date for OMB approval of the information collection because the collection does not include a form number.
18. There are no exceptions to the Certification Statement.

**B. Collections of Information Employing Statistical Method**

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