3060-0519 **January 2017**

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

SUPPORTING STATEMENT

A. Justification

1. The Federal Communications Commission seeks to revise the information collection associated with the Telephone Consumer Protection Act, OMB Control No. 3060-0519.

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.[1] The TCPA added Section 227 to the Communications Act of 1934, as amended, to restrict the use of automatic telephone dialing systems (autodialers), artificial or prerecorded messages, facsimile machines, or other devices to send unsolicited transmissions.[2] Congress amended the TCPA in Section 301 of the Bipartisan Budget Act of 2015[3] and excepted from the Act's consent requirement robocalls "made solely to collect a debt owed to or guaranteed by the United States"[4] and authorizing the Commission to adopt rules to "restrict or limit the number and duration" of any wireless calls "to collect a debt owed to or guaranteed by the United States."[5]

The rules prohibit prerecorded message calls to residential lines absent an emergency or the prior express consent of the called party. Exceptions to this prohibition originally applied 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;[6] or (d) is made by a tax-exempt nonprofit organization.[7] In 2012, the Commission eliminated the established business relationship exemption for calls to a wireless telephone number or prerecorded telemarketing calls a residential line, and the elimination of the exemption became effective at the end of 2013.[8] However, the other exceptions remain in place. In addition to the remaining exceptions, the rules prohibit any call other than a call solely to collect a debt owed to

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

[2] *See* 47 U.S.C. § 227.

[3] Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584 (Budget Act).

[4] Budget Act § 301 (a)(1)(A) (amending 47 U.S.C. § 227(b)(1)(A); *see also id.* § 301(a)(1)(B) (amending 47 U.S.C. § 227(b)(1)(B)).

[5] Budget Act § 301 (a)(2) (amending 47 U.S.C. § 227(b)(2)).

[6] In the *Report and Order* adopted on February 15, 2012, the Commission eliminated the established business relationship exemption beginning twelve (12) months after the publication of the OMB approval of the prior express written consent rule adopted in the same item. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* CG Docket No. 02-278, FCC 12-21 (rel. Feb. 15, 2012), at para. 35.

[7] 47 C.F.R. § 64.1200(a)(2), (c).

[8] The elimination of the established business relationship exemption for calls to a wireless telephone number or prerecorded telemarketing calls to or a residential line was effective on October 16, 2013.

or guaranteed by the United States, absent an emergency or the prior express consent of the called party, using an automatic telephone dialing system or a prerecorded voice when calling any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency), any telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment, or any telephone numbers assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service or any service for which the called party is charged for the call.[9]

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.[10] 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.[11] 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.[12]

There are additional rules for robocalls to wireless numbers where the call is to collect a debt owed to or guaranteed by the federal government of the United States. Federal government callers and contractors making these calls on behalf of the federal government may call the person or persons responsible for paying the debt at one of three phone numbers specified in the rules ((A) the wireless telephone number the debtor provided at the time the debt was incurred, (B) a wireless telephone number subsequently provided by the debtor to the owner of the debt or the owner's contractor, or (C) a wireless telephone number the owner of the debt or its contractor has obtained from an independent source, provided that the number actually is the debtor's telephone number), may call three times during a 30-day period, may call between 8:00 a.m. and 9:00 p.m. local time at the debtor's location, may not call once the debtor requests that robocalls cease, and must transfer the stop-call request to a new servicer if the debt servicer changes. Callers must notify debtors of their right to request that no further robocalls be made to the debtor for the life of the debt. Artificial-voice and prerecorded-voice calls may not exceed 60 seconds, excluding required disclosures and stop-calling instructions. Text messages are limited to 160 characters, including required disclosures, which may be sent in a separate text message. Robocalls may be made (1) once the debt is delinquent and, (2) if the debt is not yet delinquent, then after one of the following events and in the 30 days before one of the following events: the end of a grace, deferment, or forbearance period; expiration of an alternative payment arrangement; or occurrence of a similar time-sensitive event or deadline affecting the amount or timing of payments due.

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

[9] 47 C.F.R. § 64.1200(a)(1).

[10] 47 C.F.R. § 64.1200(d)(5).

[11] 47 C.F.R. § 64.1200(d)(1)-(2).

[12] 47 C.F.R. §§ 64.1200(d)(4), 68.318(d).

established business relationship with the recipient and 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.[13]

***History*:**

On March 11, 2003, the Do-Not-Call Implementation Act (DNCIA)[14] 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.[15]

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.[16] The Commission established a national do-not-call registry for 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 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

[13] 47 C.F.R. 64.1200(a)(3).

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

[15] 16 C.F.R § 310.4(b).

[16] 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.

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.

Thereafter, 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.

Subsequently, 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.

On January 22, 2010, the Commission released a *Notice of Proposed Rule Making*, CG Docket No. 02-278, FCC 10-18, proposing changes to its rules applicable to calls placed using automatic telephone dialing systems or prerecorded or artificial voice messages. The proposed changes were, in part, intended to maximize consistency between FCC and FTC rules. Specifically, the Commission proposed to: (1) require sellers and telemarketers to obtain consumers' prior express written consent to receive autodialed or prerecorded calls even when there is an established business relationship between the caller and the consumer; (2) require that prerecorded telemarketing calls include an automated, interactive mechanism by which a consumer may "opt-out" of receiving future prerecorded messages from a seller or telemarketer; (3) exempt certain federally regulated health care-related calls from the general section 227(b)(1)(B) prohibition on prerecorded telemarketing calls to residential telephone lines; and (4) adopt a "per-calling-campaign" standard for measuring the maximum percentage of live telemarketing sales calls that a telemarketer lawfully may drop or "abandon" as a result of the use of autodialing software or other equipment.[17] The Commission also sought comment on whether harmonizing the FCC and FTC rules would benefit consumers and industry, and the costs of implementing the proposed changes.[18]

On February 15, 2012, the Commission released a *Report and Order* in CG Docket No. 02-278, FCC 12-21, modifying the Commission's rules under the TCPA. Specifically, the Commission:

(1) revised its rules to require prior express written consent for all autodialed or prerecorded telemarketing calls to any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency), any telephone line of any guest

[17] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Notice of Proposed Rulemaking, 25 FCC Rcd 1501, 1502, para. 2. (2010) (*2010 TCPA NPRM*).

[18] *Id*. at 1502-03, 1511, paras. 2, 23.

room or patient room of a hospital, health care facility, elderly home, or similar establishment, or any telephone numbers assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service or any service for which the called party is charged for the call[19] and for all prerecorded telemarketing calls to residential lines, while maintaining flexibility in the form of consent needed for purely informational calls; (2) eliminated the established business relationship exemption for prerecorded telemarketing calls to residential lines;[20] (3) adopted rules applicable to all prerecorded telemarketing calls[21] that allow consumers to opt out of future robocalls during a robocall; and (4) revised its rules to limit permissible abandoned calls on a per-calling campaign basis to discourage intrusive calling campaigns. Finally, the Commission exempted from TCPA requirements prerecorded calls to residential lines made by health care-related entities governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

On August 11, 2016, the Commission released a *Report and Order* in CG Docket No. 02-278, FCC 16-99, adopting rules to implement the TCPA amendments Congress enacted in Section 301 of the Bipartisan Budget Act of 2015. The Commission adopts rules for calls "solely to collect a debt owed to or guaranteed by the United States," and for calls "to collect a debt owed or guaranteed by the United States."

For autodialed and prerecorded calls to wireless numbers and made "solely to collect a debt owed to or guaranteed by the United States," the Commission adopts rules requiring:

(1) that the robocall have as its exclusive subject a debt that, at the time of the call, is owed to or guaranteed by the federal government of the United States and contains no marketing, advertising, or sales information;

(2) that the robocall is made by the owner of the debt or its contractor to the debtor and that the entire content of the call is directly and reasonably related either to: (a) collecting payment of a delinquent account in order to cure such delinquency or entering into an alternative payment arrangement that will cure delinquency or resolve the debt, while the debt is delinquent; or (b) collecting payment of the debt by providing information about changes to the amount or timing of payment following, and in the 30 days prior to, the end of a a grace, deferment, or forbearance

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[19] In 1992, the Commission concluded that cellular carriers need not obtain additional consent from their cellular subscribers prior to initiating autodialed or prerecorded calls for which the cellular subscriber is not charged. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8774, para. 45 (1992) (*1992 TCPA Order*). We do not depart from this conclusion.

[20] The portion of the statute the Commission addressed in the Report and Order restricts certain calls to "any telephone number assigned to ... cellular telephone service" and to "any residential telephone line." 47 U.S.C. §§ 227(b)(1)(A)(iii),(B). For ease of reference and to avoid confusion as to which rules apply to calls directed to a cellular telephone number (wireless) or to a residential telephone line (wireline), we refer to such calls as being placed to a "wireless number" and to a "residential line," respectively. We also note that the existing "established business relationship" (EBR) exemption in this context applies only to prerecorded or artificial voice telemarketing calls to any residential line. 47 U.S.C. § 227(b)(2)(B); 47 C.F.R. § 64.1200(a)(2)(iv).

[21] Throughout the Report and Order, the Commission used the term "prerecorded" message or call to refer to "artificial or prerecorded voice" messages or calls.

period; expiration of an alternative payment arrangement; or occurrence of a similar time-sensitive event or deadline affecting the amount or timing of payments due;

(3) that the robocalls be made to the debtor at one of three phone numbers specified in the rules ((A) the wireless telephone number the debtor provided at the time the debt was incurred, (B) a wireless telephone number subsequently provided by the debtor to the owner of the debt or the owner's contractor, or (C) a wireless telephone number the owner of the debt or its contractor has obtained from an independent source, provided that the number actually is the debtor's telephone number).

For autodialed and prerecorded calls to wireless numbers and made "to collect a debt owed to or guaranteed by the United States," including calls for which consent is not required, the Commission adopts rules requiring:

(1) that federal government callers and contractors making these calls on behalf of the federal government may call the person or persons responsible for paying the debt at one of three phone numbers specified in the rules ((A) the wireless telephone number the debtor provided at the time the debt was incurred, (B) a wireless telephone number subsequently provided by the debtor to the owner of the debt or the owner's contractor, or (C) a wireless telephone number the owner of the debt or its contractor has obtained from an independent source, provided that the number actually is the debtor's telephone number), may call three times during a 30-day period, may call between 8:00 a.m. and 9:00 p.m. local time at the debtor's location, may make no calls after the debtor requests that robocalls cease, and must transfer the stop-call request to a new servicer if the debt servicer changes;

(2) that callers notify debtors of their right to request that no further robocalls be made to the debtor for the life of the debt;

(3) that artificial-voice and prerecorded-voice calls may not exceed 60 seconds, excluding required disclosures and stop-calling instructions; and that text messages are limited to 160 characters, including required disclosures, which may be sent in a separate text message;

(4) that robocalls may be made once the debt is delinquent and, if the debt is not yet delinquent, following and in the 30 days before: the end of a grace, deferment, or forbearance period; expiration of an alternative payment arrangement; or occurrence of a similar time-sensitive event or deadline affecting the amount or timing of payments due;

(5) that telephone calls using an artificial or prerecorded voice must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the debtor to make a stop-calling request prior to terminating the call, including brief explanatory instructions on how to use such mechanism. When a debtor elects to make a stop-calling request using such mechanism, the mechanism must automatically record the request and immediately terminate the call. When a telephone call using an artificial or prerecorded voice leaves a message on an answering machine or a voice mail service, such message must also provide a toll free number that enables the debtor to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the stop-calling request. Text messages containing the disclosure required in the rules must include brief explanatory instructions for sending a stop-calling request by reply text message and provide a toll free number that enables the debtor to call back later to make a stop-calling request.

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

a) 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.

b) 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.

c) 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.

d) 47 C.F.R. § 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.

e) 47 C.F.R. § 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 serve as a defense to any person or entity making telephone solicitations from violations of this section.

f) 47 C.F.R § 64.1200(a)(2) - Pursuant to Section 64.1200(a)(2), no person or entity may initiate, or cause to be initiated, any telephone call that includes or introduces an advertisement or constitutes telemarketing, using an automatic telephone dialing system or an artificial or prerecorded voice, to any of the lines or telephone numbers described in paragraphs (a)(1)(i)-(iii) of this section,[22] other than a call made with the prior express written consent of the called party or the prior express consent of the called party when the call is made by or on behalf of a tax-exempt nonprofit organization, or a call that delivers a “health care” message made by, or on behalf of, a “covered entity” or its “business associate,” as those terms are defined in the HIPAA Privacy Rule, 45 C.F.R. § 160.103.

g) 47 C.F.R. § 64.1200(a)(3) - Pursuant to Section 64.1200(a)(3), no person or entity 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; (i) Is made for emergency purposes; (ii) Is not made for a commercial purpose; (iii) Is made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing; (iv) Is made by or on behalf of a tax-exempt nonprofit organization; or (v) Delivers a “health care” message made by, or on behalf of, a “covered entity” or its “business associate,” as those terms are defined in the HIPAA Privacy Rule, 45 C.F.R. § 160.103.

h) 47 C.F.R. § 64.1200(a)(7) - Pursuant to Section 64.1200(a)(7), no person or entity may abandon more than three percent of all telemarketing calls that are answered live by a person, as measured over a 30-day period for a single calling campaign. If a single calling campaign exceeds a 30-day period, the abandonment rate shall be calculated separately for each successive 30-day period or portion thereof that such calling campaign continues. A call is “abandoned” if it is not connected to a live sales representative within two (2) seconds of the called person's completed greeting.

   (i) Whenever a live sales representative is not available to speak with the person answering the call, within two (2) seconds after the called person's completed greeting, the telemarketer or the seller must provide:

[22] The lines described in 47 C.F.R. § 64.1200(a)(1)(i)-(iii) are the following: any emergency telephone line (including any “911” line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency); any telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or any telephone numbers assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service or any service for which the called party is charged for the call. 47 C.F.R. § 64.1200(a)(1)(i)-(iii).

(A) A prerecorded identification and opt-out message that is limited to disclosing that the call was for "telemarketing purposes" and states the name of the business, entity, or individual on whose behalf the call was placed, and a telephone number for such business, entity, or individual that permits the called person to make a do-not-call request during regular business hours for the duration of the telemarketing campaign; provided, that, such telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges, and

(B) An automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make a do-not-call request prior to terminating the call, including brief explanatory instructions on how to use such mechanism. When the called person elects to opt-out using such mechanism, the mechanism must automatically record the called person's number to the seller's do-not-call list and immediately terminate the call.

(ii) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line or to any of the lines or telephone numbers described in paragraphs (a)(1)(i)-(iii) of this section after the subscriber to such line has granted prior express written consent for the call to be made shall not be considered an abandoned call if the message begins within two (2) seconds of the called person's completed greeting.

(iii) The seller or telemarketer must maintain records establishing compliance with paragraph (a)(7) of this section.

(iv) Calls made by or on behalf of tax-exempt nonprofit organizations are not covered by paragraph (a)(7) of this section.

i) 47 C.F.R. § 64.1200(b)(3) - Pursuant to Section 64.1200(b)(3), all artificial or prerecorded voice telephone messages shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated;

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign; and

(3) In every case where the artificial or prerecorded voice telephone message includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line or any of the lines or telephone numbers described in paragraphs (a)(1)(i)-(iii), provide an automated, interactive voice- and/or key press-activated opt-out

mechanism for the called person to make a do-not-call request, including brief explanatory instructions on how to use such mechanism, within two (2) seconds of providing the identification information required in paragraph (b)(1) of this section. When the called person elects to opt out using such mechanism, the mechanism, must automatically record the called person's number to the seller's do-not-call list and immediately terminate the call. When the artificial or prerecorded voice telephone message is left on an answering machine or a voice mail service, such message must also provide a toll free number that enables the called person to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the called person's number to the seller's do-not-call list.

New Information Collection Requirements Which Requires OMB Review and Approval:

The Commission adopted the following rules, which now contain new information collection requirements:

j) 47 C.F.R. § 64.1200(j)(3) – A debtor may request to receive no further calls made using an autodialer or a prerecorded or artificial voice where the purpose of the call is to collect a debt owed to or guaranteed by the federal government of the United States. That stop-call request is valid for the life of the debt. Callers, therefore, should record a stop-call request so that it is honored if the debt is transferred from one debt servicer to another.

k) 47 C.F.R. § 64.1200(j)(4) – When a call is made using a prerecorded or artificial voice, and the purpose of the call is to collect a debt owed to or guaranteed by the federal government of the United States, the call must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the debtor to make a stop-calling request prior to terminating the call, including brief explanatory instructions on how to use such mechanism. When a debtor elects to make a stop-calling request using such mechanism, the mechanism must automatically record the request and immediately terminate the call. When a telephone call using an artificial or prerecorded voice leaves a message on an answering machine or a voice mail service, such message must also provide a toll free number that enables the debtor to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the stop-calling request. Text messages containing the disclosure required in a separate section of the Commission's rules must include brief explanatory instructions for sending a stop-calling request by reply text message and provide a toll free number that enables the debtor to call back later to make a stop-calling request.

The statutory authority for the 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, and the Bipartisan Budget Act of 2015, Pub. L. 114-74, 129 Stat. 584.

2. The information collections primarily apply to commercial telemarketers, although the new information collections apply to debt collectors, to debt servicers, and to the federal government

to the extent that the callers are making calls to collect debts owed to or guaranteed by the federal government of the United States. 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. Prior express written consent is only required for telemarketing calls that use any automatic telephone dialing system or that use artificial or prerecorded voice to wireless numbers, to any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center or fire protection or law enforcement agency, or to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment and for telemarketing calls using artificial or prerecorded voice to residential lines. Automated, interactive opt-out provisions apply to telemarketing calls and to calls to collect a debt owed to or guaranteed by the federal government of the United States. The abandoned call measurement rule applies only to telemarketing calls. The data generated by the information collections will be used to determine telemarketers' and debt collectors' compliance with the TCPA. Among other things, the data will show whether telemarketers are securing prior express written consent before placing autodialed or prerecorded telemarketing calls to wireless numbers and whether telemarketers are securing prior express written consent before placing prerecorded telemarketing calls to residential lines. Additionally, the data will show whether telemarketers provided consumers an automated, interactive opt-out means to terminate exposure to prerecorded telemarketing calls. The data generated by the information collections will be used to determine whether telemarketers limited the number of abandoned calls to three percent (3%) of their telemarketing calls within a single calling campaign for a thirty (30) day period. The data will also show whether debt collectors and debt servicers provided opportunities for debtors to request that future robocalls cease, and whether those requests were honored.

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 information collections, which require written consent to transmit autodialed or prerecorded commercial solicitations, are necessary to ensure that autodialed or prerecorded commercial solicitations are received only by those individuals or entities that wish to receive them. In addition, the automated, interactive opt-out mechanism, which must be made available at the outset of the prerecorded telemarketing calls and the outset of the prerecorded calls triggered by telemarketing calls that are abandoned and requires a consumer's telephone number be immediately added to the seller's do-no-call list if the consumer elects to opt-out of the telemarketing campaign, are necessary to ensure that prerecorded commercial solicitations are received only by those individuals or entities that wish to receive them. In sum, the automated, interactive opt-out mechanism is necessary for consumers to revoke consent if they previously agreed to receive prerecorded telemarketing calls and stop receipt of unwanted, prerecorded telemarketing calls to which they never consented. Finally, additional information collections, which require telemarketers to limit their abandoned calls to three percent (3%) of their telemarketing calls within a single calling campaign for a thirty (30) day period, are necessary to ensure that telemarketers do not exceed the percentage of abandoned calls allowed. These information collections are necessary for the enforcement of the TCPA.

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, Inquiries, and Requests for Dispute Assistance." 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)[23] 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, Inquiries, and Requests for Dispute Assistance", in the *Federal Register* on August 15, 2014 (79 FR 48152), which became effective on September 24, 2014.

(d) A system of records for the do-not-call registry was created by the Federal Trade Commission under the Privacy Act. The FTC originally published a notice in the *Federal Register* describing the system (68 FR 37494, June 24, 2003). The FTC updated its system of records for the do-not-call registry in 2009. (74 FR 17863, April 17, 2009).

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 addition, information collection requirements associated with written consent agreements can be obtained pursuant to any method allowed under the E-SIGN Act (*e.g.*, email, website form, or telephone keypress) 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. The FCC rules, with some exceptions, are generally consistent with the FTCs Telemarketing Sales Rule but they are not duplicative.

5. Although this information collection may appear to have a significant economic impact on small businesses to the extent that the Commission's written consent requirement may continue to entail additional recordkeeping requirements for covered entities that would be required to obtain and keep records of consumers' written consent to receive autodialed or prerecorded message calls, this impact is mitigated for the following reasons. The Commission's written consent, opt-out mechanism, and abandoned call rule requirements have been in effect for over a year and, accordingly, we anticipate that small businesses have already made the necessary adjustments needed to come into full compliance with those requirements. Moreover, with regard to small businesses just coming into compliance with the requirements, because a seller or telemarketer placing an autodialed or prerecorded telemarketing call to a wireless number or a prerecorded call to a residential line was already required to provide "clear and convincing evidence" under the

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

Commission's prior requirements that it received prior express consent from the called party, whether consent had been obtained orally or in writing, covered entities already were required to maintain records to demonstrate compliance with the prior existing express consent requirement. Currently, in place of keeping records of "clear and convincing evidence", the Commission's rule requires covered entities to maintain records of consumers' express written agreement to receive such calls. And, because these agreements may be obtained pursuant to the E-SIGN Act, we anticipate minimal additional recordkeeping should be necessary.

For these reasons, the Commission's written consent requirement, as a practical matter, should continue to result in minimal new reporting, recordkeeping or other compliance requirements for sellers and telemarketers, including small entities. With respect to the automated, interactive opt-out mechanism, while some economic impact may continue to be experienced by small businesses, we believe the impact also should continue to be minimal. Finally, we consider the economic impact on small businesses of the information collection associated with how the abandoned call rate is measured. We continue to believe small businesses will not experience any economic impact from the information collection associated with how the abandoned call rate is measured. Notwithstanding the change in how abandoned calls are measured, we continue to believe the burden associated with the information collection will remain the same – a telemarketer must maintain records demonstrating compliance with the Commission's abandoned call rule. We note that many small business entities covered by these requirements already have been required to comply with virtually identical FTC requirements; therefore, additional costs of compliance with the FCC rules should be minimal. With respect to the new recording requirements and automated, interactive opt-out mechanism for federal debt collection calls, we understand that some cost will be involved. The Commission has attempted to minimize the burden on these entities by aligning the rules as much as possible with existing reporting requirements, such as those for telemarketing calls, so that that the new requirements do not necessitate new procedures, equipment, or training.

6. The information collection is necessary to implement the Telephone Consumer Protection Act and the Do-Not-Call Implementation Act by providing consumers with options for avoiding unwanted telemarketing and federal debt collection robocalls. Without these information collections for the Commission's TCPA rules, consumers would likely receive more unwanted telemarketing and debt collection robocalls and would have fewer options for avoiding such calls as required under the TCPA. This information collection 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. § 1320.5.

8. Pursuant to 5 CFR 1320.8(d), the Commission published a notice in the *Federal Register* on November 3, 2016 (*see* 81 FR 76586), seeking comments from the public on the information collection requirements contained in this supporting statement. The Commission did not receive any comments in response to the 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 Consumer Help

Center (CHC), which is covered under the Commission's SORN, FCC/CGB-1, "Informal Complaints, Inquiries, and Requests for Dispute Assistance."

(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 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.[24] The PIA may be viewed at: http://www.fcc.gov/omd/privacyact/Privacy Impact_Assessment.html.

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

A system of records for the do-not-call registry was created by the Federal Trade Commission under the Privacy Act. The FTC originally published a notice in the *Federal Register* describing the system (68 FR 37494, June 24, 2003). The FTC updated its system of records for the do-not-call registry in 2009. (74 FR 17863, April 17, 2009).

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 Commission's information collections as described above would not impact or modify any of the confidentiality procedures detailed above.

11. The information collection requirements do not raise any questions or issues of a sensitive nature.

[24] As stated in fn. 23, the Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

(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, Inquiries, and Requests for Dispute Assistance," 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.[25]

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

Existing Information Collection Requirements:

Total Number of Respondents: 36,548 respondents[26]

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

The Commission estimates that approximately 30,501 telemarketers (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[27] 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. Thus, the Commission estimates respondents cost to be about $17.61 per hour to comply with the requirement:

[25] *Id*.

[26] The total number of respondents is as follows: 4,447 common carriers (based upon recent FCC Form 499-A filings), 30,501 telemarketers (as obtained from the most recent FTC Biennial Report to Congress) and 1,600 federal debt collection callers (The Commission estimates that approximately half of the 3,361 "collection agencies" reported in the 2012 census data will be involved in making calls to a wireless number to collect a debt owed to or guaranteed by the United States.).

[27] The 260 recordkeeping days per year are in terms of "business days" not "calendar days".

133,000 responses x $.004 per hour/request x 260 recordkeeping days/year x $17.61 per hour = **$2,435,815.20**

2. 47 C.F.R. § 64.1200(g)(1) Requirement that 4,447 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: 4,447 respondents x 25,343 notifications to subscriber/common carrier provider = **112,700,321 responses**

Annual Burden Hours: 4,447 respondents x 25,343 notifications to subscribers/common carrier provider x .004 per hour/notification = **450,801 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. Thus, the Commission estimates respondents' cost to be about $17.61 per hour to comply with the requirement:

4,447 respondents x 25,343 notifications to subscribers/common carrier provider x .004 hours/notification/provider x $17.61 per hour = **$7,938,610.61**

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 27,451 telemarketers (90 percent of 30,501) have been informed of the do-not-call requirements by common carriers since adoption of this rule. In addition, the Commission assumes that 222 common carriers (5% of 4,447 common carriers) will provide a one-time notification to 222 telemarketers.[28] This requirement will be done on occasion and will require approximately 15 seconds (.004) to comply.

Annual Number of Responses: 222 respondents (common carriers) will send x 1 notification (to 222 telemarketers) = **222 responses/year**

Annual Burden Hours: 222 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. Thus, the Commission estimates respondents' cost to be about $17.61 per hour to comply with the requirement:

222 responses x .004 per hour/response x $17.61 per hour = **$15.64**

[28] There is an estimated 3,050 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 222 telemarketers will be notified per year of the do-not-call requirements by common carriers.

4. None.

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"[29] 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 30,501 telemarketers (respondents) in the United States. The Commission believes that 90 percent will access the National 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: 30,501 respondents x 0.90 (90%) = **27,451 respondents**

Annual Number of Responses: 27,451 x 1/list to scrub = **27,451 responses**

Annual Burden Hours: 27,451 respondents x 1/list to scrub x = 1 hour/maintain record = **27,451 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. Thus, the Commission estimates respondents' cost to be about $17.61 per hour to comply with the requirement:

27,451 responses x 1 hour/scrub list x $17.61 per hour = **$483,412.11**

6. 47 C.F.R. § 64.1200(a)(2) and (a)(3) Requirement that prior express consent to receive autodialed or prerecorded telemarketing messages to wireless numbers be obtained in writing. Requirement that prior express consent to receive prerecorded telemarketing messages to residential lines be obtained in writing.

The Commission estimates that the requirement would account for 1 hour of recordkeeping burden per year per respondent to obtain and keep the records required by the rule (including the one-time modifications of existing databases). The Commission estimates that no more than half (50%) of the 30,501 telemarketers, or approximately 15,251 respondents, would be subject to the revised rules.

Annual Number of Responses: 15,251 x 1 record/respondent = **15,251 responses**

Annual Burden Hours: 15,251 respondents x 1 hour/maintain record = **15,251 hours**

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. Thus, the Commission estimates respondents' cost to be about $17.61 per hour to comply with the requirement:

15,251 responses x 1 hour/maintain record x $17.61 = **$268,570.11**

[29] "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.

7. 47 C.F.R. § 64.1200(a)(7) Requirement that telemarketers (respondents) maintain records demonstrating their compliance with the call abandonment rules.

The Commission estimates that 30,501 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: 30,501 respondents x 1 record/respondent = **30,501 responses**

Annual Burden Hours: 30,501 responses x 1 hour/maintain record = **30,501 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. Thus, the Commission estimates respondents' cost to be about $17.61 per hour to comply with the requirement:

30,501 responses x 1 hour/maintain record x $17.61 = **$537,122.61**

8. Section 64.1200(b)(3) Requirement that all artificial or prerecorded voice telephone telemarketing messages shall include an automated, interactive opt-out mechanism, such as a keypress or voice-activated system, for consumers to employ in order to stop receiving telemarketing messages.

The Commission rule requires that telemarketers offer an automated, interactive opt-out mechanism. Many of the covered entities already provide an automated, interactive opt out mechanism as required by the Federal Trade Commission's Telemarketing Sales Rules. Therefore, we estimate that not more than one half of telemarketers, 15,251, will face initial implementation of this requirement. We believe the cost for implementing and maintaining this mechanism will be minimal.

Additionally, we estimate that telemarketers must demonstrate their compliance with this requirement "on occasion" and will account for 15 minutes of recordkeeping burden per telemarketer.

Annual Number of Responses: 15,251 x 1 record/respondent = **15,251 responses**

Annual Burden Hours: 15,251 respondents x .25 hour/maintain record = **3,813 hours**

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. Thus, the Commission estimates respondents' cost to be about $17.61 per hour to comply with the requirement:

15,251 responses x .25 hour/maintain record x $17.61 = **$67,142.53**

New Information Collection Requirements

9. Section 64.1200(j)(3) Requirement that, for calls to collect a debt owed to or guaranteed by the federal government of the United States, the caller record and retain record of the debtor's request to receive no further robocalls regarding the debt.

Previously, non-agent contractors of the federal government were required to obtain consent to make calls to wireless numbers; the Commission understands that all federal government callers and agents of the federal government making calls to wireless numbers on its behalf made autodialed calls only with the consent of the called party. The Commission assumes, therefore, that federal debt collection callers have systems and procedures already in place to record consent, that the current way of doing business will be sufficient for tracking requests to stop calling, and that this new rule will impose no new costs. The need to inform subsequent collectors or servicers of the stop-call request, however, might be new for some callers and could impose small initial costs to modify systems, train personnel, and establish procedures.

The Commission estimates that approximately 1,600 federal debt collection callers (respondents) will maintain records of debtors who do not wish to be contacted. The Commission assumes that respondents will receive approximately 250 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: 250 stop-call request/day x 260[30] recordkeeping days/year = **65,000 responses/year**

Annual Burden Hours: 250 stop-call requests (responses)/day x .004 hours (15 seconds) per x 260 recordkeeping days/year = **260 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. Thus, the Commission estimates respondents cost to be about $17.61 per hour to comply with the requirement:

250 responses x $.004 per hour/request x 260 recordkeeping days/year x $17.61 per hour = **$4,578.60**

10. Section 64.1200(j)(4) Requirement that all prerecorded- or artificial-voice calls made to collect a debt owed to or guaranteed by the federal government of the United States shall include an automated, interactive opt-out mechanism, such as a keypress or voice-activated system, for debtors to employ in order to stop receiving robocalls regarding the debt. Requirement that all text messages made to collect a debt owed to or guaranteed by the federal government of the United States shall include instructions for sending a stop-calling request by reply text and provide a toll-free phone number at which to make such request.

The Commission has added a rule to require that callers making calls to collect the debt offer an automated, interactive opt-out mechanism for calls and, for texts, include opt-out instructions that include a toll-free phone number at which to make a stop-call request. These procedures are required for telemarketing calls or are standard procedure for marketing text messages. We estimate, therefore, that while there will be implementation costs, the costs of training personnel and maintaining these mechanisms will be minimal. In this proceeding, none of the commenters

[30] The 260 recordkeeping days per year are in terms of "business days" not "calendar days".

presented any cost estimates or argued that the cost to provide an automated, interactive opt-out mechanism imposed significant costs. Therefore, we estimate that not more than one half of federal debt collection callers, 800, will face initial implementation of this requirement. Based on this information, we estimate that the cost for implementing and maintaining the mechanism is *de minimis*.

Additionally, we estimate that federal debt collection callers must demonstrate their compliance with this requirement "on occasion" and will account for 15 minutes of recordkeeping burden per caller.

Annual Number of Responses: 800 x 1 record/respondent = **800 responses**

Annual Burden Hours: 800 respondents x .25 hour/maintain record = **200 hours**

Annual "In-House" Cost: The Commission assumes that respondents would use "in-house" personnel to ensure that debtors' stop-call requests are obtained and recorded. The pay of such personnel is comparable to a federal employee GS-4/5. Thus, the Commission estimates respondents' cost to be about $17.61 per hour to comply with the requirement:

800 responses x .25 hour/maintain record x $17.61 = **$3,522**

<u>Cumulative Totals for Information Collection Requirements</u>:

Total Number of Respondents: 36,548

Total Number of Responses:

34,580,000 + 112,700,321 + 222 + 27,451 + 15,251 +30,501 +15,251 + 65,000 + 800 = 147,434,797 **responses**

Total Annual Burden Hours:

138,320 + 450,801 + 1 + 27,451 +15,251 + 30,501 + 3,813 + 260 +200 = **666,598 hours**

Total Annual "In-House" Costs:

$2,435,815.20 + $7,938,610.61 + $15.64 + $483,412.11 + $268,570.11 + $537,122.61 + $67,142.53 + 4,578.60 + 3,522 = **$11,738,789.41**

13. The Commission has estimated that there are approximately 30,501 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:

3,050 telemarketers (10% of 30,501) x $900/year = **$2,745,000**.

(c) Total annualized cost requested: **$2,745,000**

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.

15. On August 11, 2016, the Commission released a *Report and Order* in CG Docket No. 02-278, FCC 16-99, adopting rules implementing the TCPA amendments Congress enacted in Section 301 of the Bipartisan Budget Act of 2015. Therefore, the Commission reports the following program changes: the number of respondents has increased by **+1,600**, from **34,948** to **36,548** respondents, the number of annual responses has increased by **+65,800**, from **147,368,997** to **147,434,797** responses, and the total annual burden hours has increased by **+460**, from **666,138** to **666,598** annual burden hours.

16. There are no plans to publish the result of the collection of information.[31] Publishing of recordkeeping data maintained by telemarketers is not mandated by the TCPA or required by Commission's rules.

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.

[31] 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 is not made available to the public.