

SUPPORTING STATEMENT

A. Justification

1. In the *1992 TCPA Order*, the Federal Communications Commission (Commission) implemented final rules pursuant to the requirements of the Telephone Consumer Protection Act of 1991 (TCPA), Pub. L. No. 102-243, Dec. 20, 1991.¹ 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, and other methods= to send unsolicited calls and transmissions to consumers.² The Commission recently amended several of the TCPA rules and is therefore seeking OMB approval of a revised information collection. Thus, this statement describes both those rules that have not changed since the last OMB approval, as well as those rules that were amended and thus, result in new information collection requirements.³

On **December 30, 2020**, the Commission released an *Order* in CG Docket No. 02-278, **FCC 20-186**, to implement section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act). In doing so, the Commission amended the TCPA exemptions for artificial or prerecorded voice calls made to residential telephone lines so each satisfies the TRACED Act's requirements to identify who can call, identify who can be called, and limit the number of calls that can be made under the exemptions. Specifically, the Commission adopted limits on the number of calls that can be made under the exemptions for non-commercial calls to a residence, commercial calls to a residence that do not include an advertisement or constitute telemarketing, tax-exempt nonprofit organization calls to a residence, and Health Insurance Portability and Accountability Act (HIPAA)-related calls to a residence. In addition, the Commission required exempted callers to have mechanisms in place to allow consumers to opt out of any future calls.

The following is a synopsis of the rules and requirements associated with the information collections:

- a) 47 CFR § 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,⁴ 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

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 As highlighted below, the amended rules that are associated with the new information collections are 47 CFR §§ 64.1200(a)(3)(ii) through (v), (b)(2) and (b)(3), and (d).

⁴ The lines described in 47 CFR § 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 CFR § 64.1200(a)(1)(i)-(iii).

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“covered entity” or its “business associate,” as those terms are defined in the HIPAA Privacy Rule, 45 CFR § 160.103.

- b) 47 CFR § 64.1200(a)(3) (**REVISED**) - Pursuant to Section 64.1200(a)(3), no person or entity may initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express written consent of the called party, unless the call: (i) Is made for emergency purposes; (ii) Is not made for a commercial purpose and the caller makes no more than three calls within any consecutive 30-day period to the residential line and honors the called party’s request to opt out of future calls; (iii) Is made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing and the caller makes no more than three calls within any consecutive 30-day period to the residential line and honors the called party’s request to opt out of future calls; (iv) Is made by or on behalf of a tax-exempt nonprofit organization and the caller makes no more than three calls within any consecutive 30-day period to the residential line and honors the called party’s request to opt out of future calls; 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 CFR § 160.103, and the caller makes no more than one call per day to each patient’s residential line, up to a maximum of three calls combined per week to each patient’s residential line and honors the called party’s request to opt out of future calls.
- c) 47 CFR § 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:
- (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

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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.

d) 47 CFR § 64.1200(b)(2) and (3) (**REVISED**) - Pursuant to Section 64.1200(b), 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 and messages made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section 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 is made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or 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.

e) 47 CFR § 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.

f) 47 CFR § 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-

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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.
- g) 47 CFR § 64.1200(d) (**REVISED**)- No person or entity shall initiate any artificial or prerecorded-voice telephone call pursuant to an exemption under 47 CFR § 64.1200 (a)(3)(ii) through (v), or any call for telemarketing purposes to a residential telephone subscriber, unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive such calls made by or on behalf of that person or entity. The procedures instituted must include: 1) a written policy for maintaining a do-not-call list; 2) training personnel engaged in making calls in the existence and use of the do-not-call list; 3) recording any request from a residential telephone subscriber and honoring that request within a reasonable time not to exceed 30 days; 4) identifying the caller; 5) maintaining a record of a do-not-call request and honoring that request for five years from the time the request is made..
- h) 47 CFR § 64.1200(f)(5) - The “established business relationship,” for purposes of telephone solicitations means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three (3) months immediately preceding the date of the call, which relationship has not been previously terminated by either party.
- (i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.
 - (ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

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The Commission eliminated the established business relationship exemption for purposes of telemarketing and telephone solicitation, and the elimination of the exemption became effective at the end of 2013.⁵

- i) 47 CFR § 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.
- j) 47 CFR § 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.

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.

2. The information collections primarily apply to commercial telemarketers. The national do-not-call registry does 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 required for telemarketing calls that use any automatic telephone dialing system or that use artificial or prerecorded voice messages 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. Consumer consent is also required to exceed the numerical limits placed on telephone calls to residential telephone lines using any artificial or prerecorded voice under the exemptions for such calls in section 64.1200(a)(3)(ii)-(v). The data generated by the information collections will be used to determine 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 callers provided consumers an automated, interactive opt-out means to terminate exposure to prerecorded calls. Lastly, 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.

⁵ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, *Report and Order*, 27 FCC Rcd 1830, 1848 at para. 35. The elimination of the established business relationship exemption was effective on October 16, 2013.

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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 artificial or prerecorded voice message calls made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section and the outset of the prerecorded calls triggered by telemarketing calls that are abandoned and require a consumer's telephone number be immediately added to the seller's do-no-call list if the consumer elects to opt-out, are necessary to ensure that artificial and prerecorded message calls 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 calls and stop receipt of unwanted, prerecorded 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)⁶ 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).

⁶ 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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3. The Commission has determined that most records will continue to be kept electronically. Telemarketers and sellers can 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 for telemarketers have been in effect for several years and, therefore, small businesses have already made the necessary adjustments needed to come into full compliance with those requirements. Moreover, with regard to small businesses complying 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 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 result in minimal new reporting, recordkeeping or other compliance requirements, 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.
6. The information collection is necessary to implement the Telephone Consumer Protection Act, Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, and the Do-Not-Call Implementation Act by providing consumers with options for avoiding unwanted telemarketing calls. Without these information collections for the Commission’s TCPA rules, consumers would likely receive more unwanted telemarketing calls 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.

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7. The collection is not conducted in any manner that is inconsistent with the guidelines in 5 CFR § 1320.5.
8. Pursuant to 5 C.F.R. § 1320.8(d), the Commission published a 60-day notice in the *Federal Register* on April 29, 2021 at 86 FR 22662, 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 its 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.⁷ 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

⁷ As stated in fn. 19, 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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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.

- (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.⁸

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

Revised Information Collection Requirements:

Total Number of Respondents: 169,369 respondents⁹

a. 47 C.F.R. § 64.1200(a)(2) and (a)(3) (REVISED) 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 and artificial and prerecorded informational calls to residential telephone lines that exceed the limits on the number of calls that can be made under the exemptions contained in paragraphs (a)(ii)-(v) of this section 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 15,080 telemarketers, or approximately 7,540 respondents, would be subject to the revised rules. The Commission estimates that no more than one-tenth (10%) of the 150,000 exempted entities making artificial or prerecorded informational calls to residential telephone subscribers will need to exceed the numeric limits on such calls and be required to obtain prior express written consent; approximately 15,000 respondents would be subject to the revised rules.

⁸ *Id.*

⁹ The total number of respondents is as follows: 4,289 common carriers (based upon the 2019 FCC Form 499-A filings), 15,080 telemarketers (the total number of entities registered to access the Do Not Call Registry per the FTC Biennial Report to Congress from 2019), and 150,000 exempted entities making artificial or prerecorded informational calls to residential telephone subscribers.

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Annual Number of Responses: 22,540 x 1 record/respondent = **22,540 responses**

Annual Burden Hours: 7,540 telemarketing respondents x 1 hour/maintain record = **7,540 hours.**
15,000 informational callers x 12 hours/maintain record = **180,000 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 \$19.26 per hour to comply with the requirement:

7,540 telemarketing responses x 1 hour/maintain record x \$19.26 = **\$145,220.40**
15,000 informational caller responses x 12 hour/maintain record x \$19.26 = **\$3,466,800.**

b. 47 C.F.R. § 64.1200(a)(3) (REVISED) Recordkeeping requirement in connection with numerical limits on the number of calls that can be made under the exemptions for non-commercial calls to a residence; commercial calls to a residence that do not include an advertisement or constitute telemarketing; tax-exempt nonprofit organization calls to a residence; and HIPAA-related calls to a residence. The Commission estimates that there are approximately 150,000 respondents that make prerecorded message calls under an exemption in paragraphs (a)(3)(ii)-(v) of this section without the consent of the called party. The Commission estimates that 25% of the respondents will maintain records to ensure that the exempted caller does not exceed the limitation on the number of such calls that can be made to a called party within the specified timeframe. Informational callers will have to keep track of the number of calls made every 30 days or 12 times per year.

Annual Number of Respondents: 150,000 respondents x 0.25 (25%) = 37,500 respondents

Annual Number of Responses: 37,500 x 12/year = 450,000 responses

Annual Burden Hours: 450,000 responses x 5 hour/maintain record = 2,250,000 hours_

Annual “In-House” Cost: The Commission assumes that respondents would use “in-house” personnel to ensure compliance with the numerical limitations. The pay of such personnel is comparable to a federal employee GS-4/5. Thus, the Commission estimates respondents’ cost to be about \$19.26 per hour to comply with the requirement:

450,000 responses x 5 hour/maintain record x \$19.26 = **\$43,335,000**

c. 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 15,080 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: 15,080 respondents x 1 record/respondent = **15,080 responses**

Annual Burden Hours: 15,080 responses x 1 hour/maintain record = **15,080 hours**

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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 \$19.26 per hour to comply with the requirement:

15,080 responses x 1 hour/maintain record x \$19.26 = **\$290,440.80**

d. Section 64.1200(b)(2) and (3) (REVISED). Requirement that for all artificial or prerecorded voice telephone messages, during or after the message, callers must 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 and messages made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours. In addition, all artificial or prerecorded voice telephone telemarketing and messages made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section 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 and artificial or prerecorded voice message calls made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section 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 half (50%) of the 15,080 telemarketers, or approximately 7,540, will face initial implementation of this requirement. Similarly, we conclude that not more than half of the 150,000 callers making artificial or prerecorded informational calls to residences will face initial implementation of this requirement, or approximately 75,000 exempted callers. We believe the cost for implementing and maintaining this mechanism will be minimal.

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

Annual Number of Responses: 82,540 x 1 record/respondent = **82,540 responses**

Annual Burden Hours: 82,540 respondents x .25 hour/maintain record = **20,635 hours**

Annual “In-House” Cost: The Commission assumes that respondents would use “in-house” personnel to ensure that consumers’ opt out requests obtained by key press 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 \$19.26 per hour to comply with the requirement:

82,540 responses x .25 hour/maintain record x \$19.26 = **\$397,430.10**

e. 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”¹⁰ such numbers

¹⁰ “Scrubbing” refers to comparing a do-not-call list to a company’s call list and eliminating from the call list the telephone numbers of consumers who have registered a desire not to be called.

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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 15,080 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: 15,080 respondents x 0.90 (90%) = **13,572 respondents**

Annual Number of Responses: 13,572 x 1/list to scrub = **13,572 responses**

Annual Burden Hours: 13,572 respondents x 1/list to scrub x = 1 hour/maintain record = **13,572 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 \$19.26 per hour to comply with the requirement:

13,572 responses x 1 hour/scrub list x \$19.26 per hour = **\$261,396.72**

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

The Commission estimates that approximately 15,080 telemarketers and 150,000 exempted entities making artificial or prerecorded informational calls to residential telephone subscribers will maintain company-specific lists of consumers who do not wish to be contacted. The Commission assumes that respondents will receive approximately 300,000 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: 300,000 do-not-call request/day x 260¹¹ recordkeeping days/year = **78,000,000 responses/year**

Annual Burden Hours: 300,000 do-not-call requests (responses)/day x .004 hours (15 seconds) per x 260 recordkeeping days/year = **312,000 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 \$19.26 per hour to comply with the requirement:

300,000 responses x .004 per hour/request x 260 recordkeeping days/year x \$19.26 per hour = **\$6,009,120**

g. 47 C.F.R. § 64.1200(g)(1) Requirement that 4,289 common carriers (respondents) inform 113,047,000 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.¹² This requirement will be done annually and will require approximately 15 seconds (.004) per request to process.

¹¹ The 260 recordkeeping days per year are in terms of “business days” not “calendar days.”

¹² The number of subscribers is the total number of retail voice telephone service connections from the most recent Voice Telephone Services Report.

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Annual Number of Responses: 4,289 respondents x 26,357¹³ notifications to subscriber/common carrier provider = **113,045,173 responses**

Annual Burden Hours: 4,289 respondents x 26,357 notifications to subscribers/common carrier provider x .004 per hour/notification = **452,181 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 \$19.26 per hour to comply with the requirement:

4,289 respondents x 26,357 notifications to subscribers/common carrier provider x .004 hours/notification/provider x \$19.26 per hour = **\$8,709,000.13**

h. 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 all telemarketers have been notified of the do-not-call requirements by common carriers at this time, and therefore does not estimate an ongoing burden.

Cumulative Totals for Revised Information Collection Requirements:

Total Number of Respondents: 169,369

Total Number of Responses:

78,000,000 + 113,045,173 + 13,572 + 22,540 + 450,000 + 15,080 + 82,540 = **191,628,905 responses**

Total Annual Burden Hours:

312,000 + 452,181 + 13,572 + 7,540 + 180,000 + 2,250,000 + 15,080 + 20,635 = **3,251,008 hours**

Total Annual “In-House” Costs:

\$6,009,120 + \$8,709,000.13 + \$261,396.72 + \$145,220.40 + \$3,466,800 + \$43,335,000 + \$290,440.80 + \$397,430.10 = **\$62,614,408.20**

13. The Commission has estimated that there are approximately 15,080 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

¹³ The number of responses is the number of subscribers divided by the number of common carriers.

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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:

1,508 telemarketers (10% of 15,080) x \$900/year = **\$1,357,200**

(c) Total annualized cost requested: **\$1,357,200**

14. The national do-not-call list is administered by the FTC, which selected Leidos 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. With this submission, the Commission has program changes to this collection to reflect new burdens associated with numerical limits and opt-out mechanisms imposed on calls made under the exemptions for non-commercial calls to a residence; commercial calls to a residence that do not include an advertisement or constitute telemarketing; tax-exempt nonprofit organization calls to a residence; and HIPAA-related calls to a residence as required by section 8 of the TRACED Act. Beyond those program changes, the Commission used data from recent FCC Form 499-A filings and the recent FTC’s Biennial Report to Congress to reexamine and reevaluate the data in this supporting statement. The total number of telemarketers has been reduced and the total number of common carriers has been increased based on this data. Taken together, these changes create significant increases in the number of respondents, responses, annual burden hours, and annual total cost. Therefore, the Commission has the following program changes:

The annual number of respondents has increased by **146,866**, from 22,503 to **169,369** annual number of respondents; the annual number of responses has increased by **51,441,992**, from **140,186,983** to **191,628,905** annual number of responses; the annual burden hours has increased by **2,644,170**, from **606,838** to **3,251,008** annual burden hours; and the total annualized cost has decreased by **\$293,400**, from **\$1,650,600** to **\$1,357,200**.

16. There are no plans to publish the result of the collection of information.¹⁴ Publishing of recordkeeping data maintained by telemarketers and other callers to whom these rules apply is not mandated by the TCPA or required by Commission’s rules.

¹⁴ 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.

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

18. The Commission initially published a 60-day notice as a request for an extension of an existing collection. We clarify that this is a revised information collection because some of the rules that were part of the existing collection were amended in December 2020 and thus, altered the burden hours associated with just those particular rules. The 60-day notice accurately identified the increased burden hours.

B. Collections of Information Employing Statistical Methods.

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