

**Supporting Statement for Information Collection Provisions of  
the Trade Regulation Rule Pursuant to the Telephone Disclosure  
and Dispute Resolution Act of 1992  
("Pay-Per-Call Rule")  
16 C.F.R. Part 308  
OMB Control No.: 3084-0102**

**(1) Necessity for Collecting the Information**

The Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"), 15 U.S.C. § 5701 *et seq.*, as amended, was enacted to curtail unfair and deceptive practices engaged in by some "pay-per-call services"<sup>1</sup> and other "telephone-billed purchases,"<sup>2</sup> and to encourage the growth of the legitimate pay-per-call industry. The TDDRA requires the Federal Trade Commission ("FTC" or "Commission") to prescribe regulations governing various aspects of pay-per-call services and telephone-billed purchases. The Commission's Pay-Per-Call Rule, 16 C.F.R. Part 308, implements Titles II and III of the TDDRA.

- Title II of the TDDRA, 15 U.S.C. §§ 5711-5714, directs the FTC to enact regulations governing advertising by, and other service standards for, the pay-per-call industry. Title II provides, among other things, that disclosures of cost and certain other information must appear in all advertising for pay-per-call programs and in introductory messages ("preambles") at the start of pay-per-call programs.
- Title III, 15 U.S.C. §§ 5721-5724, requires that the FTC promulgate regulations establishing procedures for resolving disputes and correcting billing errors in connection with telephone-billed purchases.

As directed by Title II, the Commission's implementing Rule currently requires that advertisements for pay-per-call services disclose certain material information, including the cost of the call. 16 C.F.R. § 308.3. This material information must also be included in an introductory message (preamble) at the beginning of any pay-per-call program where the cost of

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<sup>1</sup> The TDDRA defines "pay-per-call service" to mean, in relevant part, any service in which any person provides or purports to provide either: (1) audio information or entertainment produced or packaged by such person; (2) access to simultaneous voice conversation services; or (3) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call. *See* 47 U.S.C. § 228(i) (Telecommunications Act of 1934, as amended by the TDDRA). This definition applies only where the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for the call. *Id.* Title II of the TDDRA, which authorizes the disclosure requirements of the Commission's Rule, incorporates this definition by reference. *See* 15 U.S.C. § 5714.

<sup>2</sup> 15 U.S.C. §§ 5711(c), 5721(c). Under the TDDRA, "telephone-billed purchase" refers to a purchase of goods or services (other than telephone toll services) that is "completed solely as a consequence of completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller," and includes all pay-per-call services. 15 U.S.C. § 5724(1).

the call could exceed two dollars. *Id.* § 308.5. The Rule also requires that anyone who calls a pay-per-call service be given the opportunity to hang up at the conclusion of the preamble without incurring any charge for the call. *Id.* In addition, the Rule requires that all preambles to pay-per-call services state that individuals under the age of 18 must have the permission of a parent or guardian to complete the call. *Id.*

Pursuant to Title III, the Rule establishes procedures for resolving billing disputes for telephone-billed purchases, such as pay-per-call services. *Id.* § 308.7. The Rule imposes certain obligations on entities that bill and collect for telephone-billed purchases, such as investigating and responding to billing disputes. *Id.*

In short, the Rule's reporting and disclosure requirements are necessary because they are expressly mandated by the Act. The Rule's one reporting requirement (found under 1a below) for common carriers is necessary for law enforcement purposes. The disclosure requirements (found under 1b below) ensure that consumers are given clear and accurate information about terms and conditions, the opportunity to decline the service, and there is a fair dispute resolution process. In addition, there are protections in place to ensure that underage children are not signed up for services without permission from a parent or guardian [found under 1b(1)-(2) below].

#### **1a. Reporting requirement**

The requirement in current § 308.6, that common carriers grant the Commission, upon written request, access to records regarding their service arrangements with pay-per-call providers ("vendors") and service bureaus continues to be necessary because the TDDRA expressly requires the Commission to adopt such a requirement.<sup>3</sup> *See* 15 U.S.C. § 5711(a)(3). Common carriers are primarily regulated by the FCC and are normally exempt from FTC jurisdiction to the extent they are engaged in common carrier activities. The reporting requirement is essential to the FTC's exercise of its law enforcement authority by making explicit the agency's jurisdiction to obtain information from telephone companies that provide transmission services to pay-per-call providers. The information reported to the FTC is itself necessary and used for law enforcement purposes, *i.e.*, so that the Commission can determine legal compliance with the TDDRA and the Commission's Rule.

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<sup>3</sup> This requirement has not been categorized as record-keeping, since it does not require the maintenance of records to be reported.

## **1b. Disclosure requirements**

(1) *Advertising disclosures.* The TDDRA specifically requires these disclosures. *See* 15 U.S.C. § 5711(a)(1) (requirements for pay-per-call advertising regulations). The advertising disclosure requirements of the Rule (§§ 308.3 and 308.4) are essential in order for consumers to understand the costs associated with the use of a pay-per-call number and any other pay-per-call service to which the caller might be transferred, and to prevent and prohibit certain unfair and deceptive practices in pay-per-call advertisements. The provider shall also ensure that any pay-per-call service directed primarily to individuals under the age of 18 must have the permission of such individual's parent or legal guardian prior to calling such pay-per-call service. *See* 16 C.F.R. § 308.3(f).

(2) *Preamble disclosures.* The TDDRA specifically requires these disclosures. *See* 15 U.S.C. § 5711(a)(2) (pay-per-call service standards, requirements for introductory disclosure message). The preamble disclosure requirements of the Rule (§ 308.5), like the advertising disclosures discussed *supra*, are necessary in order for consumers to be informed of the cost of a call and other pay-per-call service information. This includes a requirement to inform the caller that anyone under the age of 18 must have the permission of a parent or legal guardian in order to complete the call. *See* 16 C.F.R. § 308.5(a)(4).

(3) *Disclosure of telephone-billed charges in billing statements.* The TDDRA expressly mandates the Rule's current requirements for disclosure of telephone-billed charges in billing statements, § 308.5(j). *See* 15 U.S.C. § 5711(a)(2)(H).

(4) *Disclosure of dispute resolution procedures in billing statements.* The TDDRA mandates the requirement in § 308.7(c) of the current Rule that billing statements disclose the dispute resolution procedures that are available to consumers. *See* 15 U.S.C. § 5721(a)(2) (requiring that the Rule afford dispute rights substantially similar to those afforded under the Truth in Lending and Fair Credit Billing Acts).

## **(2) Use of the Information**

### **2a. Reporting requirement**

As noted in 1a, information reported by common carriers to the Commission upon request (§ 308.6) and relating to the provision of non-local telecommunications, is used by the Commission for law enforcement purposes (*i.e.*, determining legal compliance with the Rule).

## **2b. Disclosure requirements**

The various disclosures prescribed by the Rule are used to convey information required by the TDDRA regarding the cost and other terms and conditions of the pay-per-call service in advertisements to consumers and in the preamble to pay-per-call programs, and to inform consumers of their rights and obligation to dispute a charge if they believe a billing error has occurred. Consumers, in turn, use this information to decide whether or not to use the pay-per-call service.

### **(3) Consideration of the Use of Information Technology to Reduce Burden**

The information collection requirements of the Pay-Per-Call Rule do not prohibit affected persons from using any improved information technology to reduce the burden, which is consistent with the Government Paperwork Elimination Act, 44 U.S.C. § 3504. The Rule's reporting requirement is format-neutral and simply requires the production of documents upon request in whatever form they may be maintained, which may include electronic. To the extent the disclosure requirements implicitly or explicitly require that the disclosure be made in the same format as the advertisement, preamble, or other setting to which the disclosure relates, it would be impracticable to permit a service provider to make that disclosure in some alternative electronic format, which would undermine the consumer protection purpose of the disclosure. In any event, many of the disclosures, by their nature, are inherently made in an electronic format (*e.g.*, in the telephone call itself, in television advertising, *etc.*).

### **(4) Efforts to Identify Duplication**

The disclosure and reporting requirements of the Rule do not duplicate other information collection requirements by the Commission, or, to its knowledge, the requirements of other federal or state government agencies. To promote consistency in enforcement and compliance with respect to the pay-per-call industry, and to minimize the industry's compliance burden, the Commission and the FCC<sup>4</sup> initially adopted similar prohibitions and definitions concerning pay-per-call services in their respective Pay-Per-Call Rules. The Commission's Rule governs the advertising, marketing and billing practices of the vendors, service bureaus, billing entities, and, to a limited extent, the common carriers who lease 900 numbers and other numbers to vendors of pay-per-call services. In contrast, the FCC's rule defines the obligations of common carriers with respect to the provision of 900-number services. Thus, the requirements of the Commission's Pay-Per-Call Rule do not duplicate any other information collection requirements

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<sup>4</sup> Title I of the TDDRA directs the FCC to adopt regulations defining the obligations of common carriers in connection with providing tariffed common carrier services to providers of pay-per-call services. *See* 47 U.S.C. § 228; 47 C.F.R. § 64 Subpart O.

by the FCC, but rather complement those requirements and ensure that the two agencies charged with regulation of this industry impose compatible standards.

There is no other information readily and routinely available from other sources that would provide the information that the Pay-Per-Call Rule requires to be disclosed to the public or provided to the Commission. In fact, this is what prompted Congress to enact the TDDRA, which mandated promulgation of the Pay-Per-Call Rule.

**(5) Efforts to Minimize Burden on Small Businesses or other Small Entities**

The Commission has designed the Rule to minimize the compliance burden of these requirements as much as possible. In virtually every instance, the disclosures required by the Rule repeat exactly or follow closely the language of the requirements as set forth in the TDDRA. Thus, the Rule consistently prescribes “performance” standards rather than “design” standards (*i.e.*, specific compliance methods) that might potentially be more burdensome for regulated entities to satisfy. Similarly, as directed by the statute, the Commission patterned the billing dispute provisions of the Rule on the statutory requirements of the Truth in Lending Act and Fair Credit Billing Act without substantial change. Furthermore, while the Rule does require some reporting and disclosure, there are no mandatory recordkeeping provisions.

Staff has previously determined that the Rule does not have a significant economic impact on a substantial number of small entities. *See* 58 Fed. Reg. 42364, 42399 (certification of no effect under the Regulatory Flexibility Act). As noted below in our response to Specification #8, the Commission recently published estimates for burden costs and hours for public comment in compliance with the Paperwork Reduction Act (“PRA”) in August of 2021, and received no comment. 86 Fed. Reg. 46,254 (Aug. 18, 2021).

**(6) Consequences of Conducting the Collection Less Frequently**

**6a. Reporting requirement**

As noted earlier, the Rule’s sole reporting requirement requires common carriers to provide financial information about vendors and service bureaus, upon request, to the FTC. These records are kept in the normal course of business and there is no requirement that the information be provided on a regular basis. To the extent this information must be made available to the Commission only upon request, the failure of the Commission to obtain this information would hamper the agency’s ability to determine whether a regulated entity is in compliance with the Rule and thus jeopardize enforcement efforts.

**6b. Disclosure requirements**

The disclosures required by the Rule provide consumers with the information necessary to make informed purchasing decisions. The TDDRA mandates these disclosures. To do less than this would violate the TDDRA and frustrate the Congressional intent underlying the statute.

**(7) Circumstances Requiring Collection Inconsistent with Guidelines**

The information collection requirements in the Pay-Per-Call Rule are consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d).

**(8) Consultation Outside the Agency**

The Commission again sought public comment on PRA aspects of the Rule, as required by 5 C.F.R. § 1320.8(d). 86 Fed. Reg. 46,254 (Aug. 18, 2021). No germane comments were received. The FTC is providing another opportunity for public comment on its request for extension of the clearance for the Rule by publishing another Federal Register notice, contemporaneous with this submission.

**(9) Payment and Gifts to Respondents**

Not applicable.

**(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature**

Information covered by the sole reporting requirement of the Rule (§ 308.6) is normally collected by the Commission for law enforcement purposes. In such cases, it would be subject to the confidentiality provisions of sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2, as applicable. Section 6(f), which tracks Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. Section 21 of the FTC Act protects information submitted pursuant to compulsory process or voluntarily in lieu thereof in a Commission investigation. *See* 15 U.S.C. §§ 57b-2(b) & (f). These confidentiality provisions are also set forth in the Commission's Rules of Practice. *E.g.*, 16 C.F.R. § 4.10(a) (records not required to be made public).

**(12) Estimated Annual Hour and Labor Cost Burden**

**Estimated annual reporting and disclosure burden:** 1,029,570 hours; \$50,456,136 in associated labor costs.

The burden hour estimate for each reporting and disclosure requirement has been multiplied by a “blended” wage rate (expressed in dollars per hour), based on the particular skill mix needed to carry out that requirement, to determine its total annual cost. The blended rate calculations are based on the following skill categories and average wage rates and/or labor costs: \$123/hour for professional (attorney) services; \$20/hour for skilled clerical workers; \$46/hour for computer programmers; and \$60/hour for management time. These figures are averages, based primarily on the most currently available Bureau of Labor Statistics (“BLS”) cost figures posted online.<sup>5</sup> FTC staff calculated labor costs by applying appropriate hourly cost figures to the burden hours discussed further below.

*(1) Reporting burden (applies to common carriers):*

The Rule provides that common carriers must make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements between the carrier and any vendor or service bureau (other than for the provision of local exchange service). See 16 CFR 308.6. Staff believes that the resulting burden on this segment of the industry will be minimal, since OMB’s definition of “burden” for PRA purposes excludes any business effort that would be expended regardless of a regulatory requirement. 5 CFR 1320.3(b)(2). Because this reporting requirement permits staff to seek information limited to that which is already maintained by the carriers, the only burden would be the time an entity expends to compile and provide the information to the Commission. Because the Commission has seldom needed to rely on this requirement, staff estimates the annual time for reporting at 3 hours per entity.

In obtaining OMB clearance for this reporting requirement in 2015, staff estimated a total reporting burden of 18 hours. For 2021, staff is maintaining the total burden estimate of 18 hours, based on an average estimate of 3 hours expended by 6 common carriers. Using a \$56/hour blended wage rate (assuming for all labor calculations herein, \$46/hour for computer programmers, \$123/hour for attorneys, \$20/hour for skilled clerical workers, and \$60/hour for managers), the FTC now estimates an annual cost of \$1,008.

*(2) Disclosure burden:*

*(a) Advertising (applies to vendors).* FTC staff estimates that the annual burden on the industry for the Rule’s advertising disclosure requirements is 21,240 hours. The estimate reflects the burden on approximately 5,900 vendors who must make cost disclosures for all pay-per-call services and additional disclosures if the advertisement is (a) directed to individuals under 18 or (b) for certain pay-per-call services. Because of continued industry changes and the fact that the

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<sup>5</sup> The attorney estimates were based on data found at [www.salary.com](http://www.salary.com).

Commission has seldom needed to rely on this requirement, staff is retaining the estimated percentage of advertising both directed to individuals under 18 and relating to certain other pay-per-call services to 20 percent of overall pay-per-call services. FTC staff estimates that each disclosure mandated by the Rule requires approximately one hour of compliance time. The total estimated annual cost of these burden hours is \$1,040,760, applying a blended wage rate of \$49/hour.

*(b) The Rule's preamble disclosure (applies to every pay-per-call service).* To comply with the Act, the Pay-Per-Call Rule also requires that every pay-per-call service be preceded by a free preamble and that four different disclosures be made in each preamble. Additionally, preambles to sweepstakes pay-per-call services and services that offer information on federal programs must provide additional disclosures. Each preamble need only be prepared one time, unless the cost or other information is changed. There is no additional burden on the vendor to make the disclosures for each telephone call, because the preambles are taped and play automatically when a caller dials the pay-per-call number.

Staff believes that the industry has had at least a 12 percent reduction in size since 2015 (when there were an estimated 20,580 pay-per-call services). Accordingly, staff now estimates that there are no more than 18,110 advertised pay-per-call services.

As with advertising disclosures, preambles for certain pay-per-call services require additional preamble disclosures. Consistent with the estimates of advertised pay-per-call services discussed above, staff estimates that an additional 20 percent of all such pay-per-call services (3,622) relating to certain types of pay-per-call services would require such additional disclosures. Staff estimates that it would require no more than one hour to draft each type of disclosure because the disclosures applicable to the preamble closely approximate in content and volume the advertising disclosures discussed above. Accordingly, staff estimates a total of 21,732 burden hours (18,110 + 3,622) to comply with these requirements. At one hour each, cumulative labor cost associated with these disclosures is \$1,064,868, using a blended wage rate of \$49/hour (i.e., the same blended rate used for advertising disclosures).

*(c) Telephone-billed charges in billing statements (applies to vendors; applies to common carriers if acting as billing entity).* Section 308.5(j) of the Rule, 16 CFR 308.5(j), requires that vendors ensure that certain disclosures appear on each billing statement that contains a charge for a call to a pay-per-call service. Because these disclosures appear on telephone bills already generated by the local telephone companies, and because the carriers are already subject to nearly identical requirements pursuant to the FCC's rules, FTC staff estimated that the burden to comply would be minimal. At most, the burden on the vendor would be limited to spot checking telephone bills to ensure that the charges are displayed in the manner required by the Rule.



As it had in the 2015 PRA submission, FTC staff estimates that only 10 percent of vendors would monitor billing statements in this manner and that it would take 12 hours per year to conduct such checks. Using the total estimated number of vendors (5,900), this results in a total of 7,080 burden hours. The total annual cost would be at most \$354,000, using a blended rate of \$50/hour.

(d) *Dispute resolution procedures in billing statements (applies to billing entities).* This disclosure requirement is set forth in 16 CFR 308.7(c). The blended rate used for these disclosures is \$49/hour. FTC staff previously estimated that the billing entities would spend approximately 5 hours each to review, revise, and provide the disclosures on an annual basis. The estimated hour burden for the annual notice component of this requirement is 11,500 burden hours (based on 2,300 possible billing entities each requiring 5 hours), or a total cost of \$563,500.

(e) *Further disclosures related to consumers reporting a billing error (applies to billing entities).* As in the 2015 PRA submission for this Rule, FTC staff estimates that the incremental disclosure obligations related to consumers reporting a billing error under section 308.7(d) requires, on average, about one hour per each billing error. Previously, staff projected that approximately 5 percent of an estimated 22,001,000 calls made to pay-per-call services each year involves such a billing error. The staff is now reducing its prior estimate of the number of those calls by approximately 12 percent (to 19,360,880 calls) to reflect recent changes in the amount of pay-per-call services and their billing. Assuming the same apportionment (5 percent) of overall calls to pay-per-call services, this amounts to 968,000 hours, cumulatively. Applying the \$49/hour blended wage rate, the estimated annual cost is \$47,432,000.

### **(13) Estimated Annual Capital and/or Other Non-labor Related Costs**

Pursuant to OMB instructions, this item excludes the cost of burden hours already identified in item 12 *supra* and cost to the government identified in item 14 *infra*.

#### **13a. Total capital and start-up costs**

No comments were received that provided specific information regarding capital or start-up costs relating to compliance with the current Rule. As explained earlier, compliance costs consist mainly of labor expenses incurred in meeting the reporting and disclosure requirements, and are generally expected to utilize existing equipment, facilities, functions or capabilities associated with the ordinary course of business (*e.g.*, advertising, billing, *etc.*).

#### **13b. Total operation and maintenance and purchase of services component**

Not applicable. If services necessary for compliance are purchased from outside the business rather than performed in-house, these costs would be substantially similar to the labor

costs estimated earlier. Likewise, the Rule does not appear to impose special operation and maintenance costs that would be apart from those normally incurred in the ordinary course of business.

**(14) Estimated Cost to the Federal Government**

Enforcing the information collection and reporting requirement of the Pay-Per-Call Rule will require approximately 1/4 (one quarter) of an attorney/investigator work year at an annualized approximate cost of \$100,000 per year. Thus, the approximate total cost to the Commission in connection with enforcing and monitoring Rule compliance will be \$25,000. Clerical and other support services are included in these estimates.

**(15) Program Changes or Adjustments**

The FTC estimates a decrease from the previous annual burden estimate of 1,165,428 hours (2015) down to 1,029,570 hours (2021). This decrease is due to an adjustment stemming from the ongoing changes in the pay-per-call industry as noted in our answer to specification 12.

**(16) Statistical Use of Information/Publication of Results**

There are no plans to publish information associated with the proposed requirements for statistical use.

**(17) Display of Expiration Date for OMB Approval**

Not applicable.

**(18) Exceptions to the “Certification of Paperwork Reduction Act Submissions”**

Not applicable.