

**Supporting Statement of the Federal Trade Commission  
for the Information Collection Provisions of the  
Trade Regulation Rule Concerning Pay-Per-Call Services  
and Other Telephone-Billed Purchases  
("Pay-Per-Call Rule")**

**16 C.F.R. Part 308**

The Federal Trade Commission ("FTC" or "Commission") has proposed to amend its Pay-Per-Call Rule, 16 C.F.R. Part 308, which implements Titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"), 15 U.S.C. § 5701 *et seq.*, as amended.<sup>1</sup> The Commission submits this Supporting Statement in connection with its request to the Office of Management & Budget ("OMB") for approval of the information collection (i.e., reporting and disclosure) requirements of the Rule.<sup>2</sup>

**Background**

The FTC published its original Rule in final form on August 9, 1993, and it took effect on November 1, 1993. *See* 58 Fed. Reg. 42,364. The Rule implements Titles II and III of the TDDRA, which require the FTC to prescribe regulations governing various aspects of "pay-per-call services"<sup>3</sup> and other "telephone-billed purchases,"<sup>4</sup> in order to curtail unfair and deceptive

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<sup>1</sup>The Rule's current title is the "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," otherwise known as the "900-Number Rule." It is being renamed the "Trade Regulation Rule Concerning Pay-Per-Call Services and Other Telephone-Billed Purchases" and is referred to in this document as the "Pay-Per-Call Rule."

<sup>2</sup>The Commission seeks an extension of approval for the existing requirements and approval of the proposed amendments in advance of their adoption for a period of three years after the expiration of the current OMB clearance number, as discussed *infra*. Should such approval be granted, a subsequent reduction in the burden hours estimate will be filed with OMB in the event there are any amendments that the Commission does not ultimately adopt as final.

<sup>3</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.* The definition is further limited to services that are accessed through use of a 900 telephone number or other prefix or area code, as designated by the Federal Communications Commission ("FCC"). *Id.* The definition does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the

practices engaged in by some pay-per-call businesses and to encourage the growth of the legitimate pay-per-call industry.<sup>5</sup>

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 provided 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. *See* § 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 the call could exceed two dollars. *See* § 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. *See*

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service provider. *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. Furthermore, the Telecommunications Act of 1996 authorizes the FTC to extend its Rule to cover “similar” audio information and entertainment services that are “susceptible to the unfair or deceptive acts or practices that are prohibited by” the Rule, whether or not such services are accessed through a 900 number or other prefix or area code specifically designated by the FCC under the Communications Act definition. *See* Pub. L. No. 104-104, § 701(b), 110 Stat. 56 (Feb. 8, 1996).

<sup>4</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). Pursuant to its authority in the TDDRA to prevent evasion or undermining of the Rule’s disclosure and billing dispute resolution procedures, the Commission proposes to clarify the Rule’s definition of “telephone-billed purchase” to include any non-toll charge for goods or services appearing on the customer’s telephone bill, as explained *infra*.

<sup>5</sup>Title I of the Act 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. §§ 64.1501 *et seq.* (FCC regulations).

§ 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.*

By its terms, the Rule (§ 308.9) requires that the Commission initiate a rulemaking review proceeding to evaluate the Rule's operation no later than four years after its effective date of November 1, 1993. Thus, on March 12, 1997, the Commission published a *Federal Register* notice seeking comment on the overall effectiveness of the Rule and on whether the Commission should extend the definition of "pay-per-call services" to include a broader array of audio information and audio entertainment services provided through the telephone, as authorized by the 1996 Telecommunications Act amendments to the TDDRA. *See* 62 Fed. Reg. 11,749; *supra* note 3.

On October 30, 1998, the Commission published a notice of proposed rulemaking containing amendments designed to ensure that the Rule continues to encourage the growth of the legitimate audiotext industry and curtail those pay-per-call practices that are abusive, unfair or deceptive, that evade the Commission's Rule, or that undermine the rights of consumers provided by TDDRA. *See* 63 Fed. Reg. 58,524. If adopted, the proposed amendments would expand the definition of "pay-per-call" to all dialing patterns. The proposed amendments would also prohibit certain abusive practices that have arisen in connection with billing for audiotext services accessed by dialing 800 or other toll-free numbers. The proposed amendments would include certain "anti-cramming" provisions to prohibit unauthorized charges, many of which are recurring charges, from being "crammed" onto consumers' telephone bills for telephone-billed purchases that cannot be blocked by 900-number blocking. The proposed amendments would clarify and strengthen the Rule's dispute resolution procedures.

### **Information Collection Provisions at Issue**

Pursuant to the Paperwork Reduction Act, the Commission previously submitted the Rule with proposed amendments to OMB, *see* 64 Fed. Reg. 70,031 (Dec. 15, 1999) and obtained its approval of the Rule's existing and proposed "information collection" (i.e., reporting and disclosure) provisions through December 31, 2002. The OMB clearance number is 3084-0102. Because the proposal has not yet been adopted, the Commission is again submitting these information collection requirements, including the proposed revisions of these requirements, for approval until December 31, 2005.

As required by the Paperwork Reduction Act, the Commission's notice of proposed rulemaking contained an analysis of the Rule's current information collection requirements and the proposed revisions, *see* 63 Fed. Reg. at 58,556-57, thus satisfying the Act's requirement for at least a 60-day comment period on the information collection provisions contained in an existing rule before submission to OMB. For discussion purposes, the Rule's information collection requirements have been grouped into "reporting" and "disclosure" requirements. These requirements are summarized below.

*Reporting requirement.* The current Rule contains one reporting requirement subject to the Paperwork Reduction Act, i.e., § 308.6 of the Rule, to be amended and redesignated as § 308.19(a) (access to information). This provision requires that common carriers make available (i.e., report) to the Commission, upon written request, any records and financial information maintained by such carrier relating to non-local telecommunication service arrangements between the carrier and pay-per-call providers.<sup>6</sup> The Commission is proposing to clarify the coverage of this requirement, which will not increase the burden estimate for this requirement. The estimate has nonetheless increased, however, due to industry growth since the original Rule was promulgated, as discussed *infra*.

*Disclosure requirements.* There are four categories of required disclosures that are subject to the Paperwork Reduction Act: (1) advertising disclosures; (2) pay-per-call disclosures; (3) telephone-billed charges in billing statements; (4) dispute resolution procedures in billing statements. As discussed *infra*, the estimated annual burden hours associated with the required disclosures have increased due to industry growth. In addition, certain proposed Rule amendments will result in an increase in this burden estimate by clarifying and expanding certain disclosure requirements. *See* 63 Fed. Reg. at 58,556-57.

(1) *Advertising disclosures.* The Commission has proposed, in §§ 308.3, 308.4 and 308.7 of the Rule, to continue the Rule's requirements for certain disclosures to be made in pay-per-call advertising. *See* 63 Fed. Reg. at 58,543-44. Specifically, § 308.3, as amended, would require certain general disclosures currently mandated by § 308.3(a) of the current Rule. Section 308.4, as amended, would incorporate the current requirements of § 308.3(b) (cost-of-call disclosures), § 308.3(c) (sweepstakes and games-of-chance advertising), § 308.3(d) (representations regarding federal programs), and § 308.3(f) (restrictions on advertising to individuals under 18). Section 308.7, as amended, would incorporate the current requirements of § 308.3(h) (manner of cost-of-call disclosures in advertising).

As discussed *infra*, the Commission is proposing to add two new advertising disclosure requirements. First, § 308.4(a)(1)(iii)(B), as amended, would require, for pay-per-call services billed on a variable time rate basis, that the cost of each portion of the call be disclosed in advertisements for such services. 63 Fed. Reg. at 58,543. Second, when free time is used to market (i.e., advertise) pay-per-call services, § 308.6(b), as amended,<sup>7</sup> would require a signal indicating the end of such free time. 63 Fed. Reg. at 58,544.

(2) *Preamble disclosures.* Section 308.9, as amended, would continue to require the disclosures required under § 308.5(a)-(e) of the current Rule in the introductory message

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<sup>6</sup> This requirement has not been categorized as recordkeeping, since it does not require the maintenance of records to be reported.

<sup>7</sup> This provision is discussed in the notice of proposed rulemaking as § 308.7(b). *See* 63 Fed. Reg. at 58,556.

(“preamble”) of the call. Furthermore, § 308.9(a)(2)(iii)(B) of the Rule, as amended, would newly require a variable time rate disclosure to be made in the call preamble, consistent with the proposed variable time rate disclosure to be made in advertising, as discussed *supra*.

(3) *Disclosures of telephone-billed charges in billing statements.* Section 308.18, as amended, would incorporate the requirements of current § 308.5(j) for separate disclosure and explanation of telephone-billed charges unrelated to local or long-distance service, how customers can obtain information and answers to questions about such charges through a local or toll-free number, etc. As amended, this disclosure requirement, which currently applies to pay-per-call charges, would apply more broadly to charges for all “telephone-billed purchases”—i.e., a term that would be defined in § 308.2(q), as amended, to embrace not only pay-per-call services but also “any other purchase . . . charged to the customer’s telephone bill,” as explained *infra*. See 63 Fed. Reg. at 58,541-42, 58,549-50.

(4) *Disclosures of dispute resolution procedures in billing statements.* Proposed § 308.20 (see also proposed § 308.7(c)) would incorporate current § 308.7(b)-(p), which requires, *inter alia*, notice to customers of their billing rights and obligations. See 63 Fed. Reg. at 58,554 (discussing revised and redesignated disclosure requirement in proposed § 308.20(b), currently § 308.7(c)). Other proposed amendments, if adopted: would require that disclosure of the dispute resolution procedures be made with every billing notice (i.e., monthly rather than annually as currently permitted), see proposed § 308.20(m)(1); would require disclosure of all materials terms and conditions of a presubscription agreement, see proposed § 308.2(i) (definition of “personal identification number” or “PIN”); would extend the existing dispute procedure disclosure requirements to billing entities that are attempting to collect a previously forgiven charge, see proposed § 308.20(n)(2) & (c)(3)(i); and would require that the billing entity designated to receive and respond to alleged billing errors affirmatively notify vendors or service bureaus of certain customer information, see proposed § 308.20(n)(4).<sup>8</sup>

## 1. Necessity for Collecting the Information

The Rule’s requirements, including the proposed amendments, are generally mandated by the TDDRA and are necessary to ensure that consumers are informed of the costs of incurring a call to a pay-per-call service, will not be liable for non-toll charges to their telephone bill that they have not expressly authorized, and will have dispute resolution rights with respect to purchases of services and products made through the use of the telephone or telephone bill.

These requirements assist in preventing unfair and deceptive acts and practices in the advertising and operation of pay-per-call services, and in the collection of charges for all

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<sup>8</sup>Citations to §§ “308.18(m)(1),” “(n)(2)” and “(n)(4)” in the Paperwork Reduction Act analysis published in the notice of proposed rulemaking, see 63 Fed. Reg. at 58,557, should be read as §§ “308.20(m)(1),” “(n)(2)” and “(n)(4),” respectively.

telephone-billed purchases, consistent with the stated goals of TDDRA of protecting consumers and promoting the growth of the pay-per-call industry.

**a. Reporting requirement**

The requirement in current § 308.6, to be amended and redesignated as § 308.19(a), 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, since the TDDRA expressly requires the Commission to adopt such a requirement. *See* 15 U.S.C. § 5711(a)(3).<sup>9</sup> 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.<sup>10</sup>

**b. Disclosure requirements**

(1) *Advertising disclosures.* Sections 308.3, 308.4 and 308.7 of the Rule, as amended, would continue to prescribe pay-per-call advertising disclosure standards. These disclosures 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. Moreover, the disclosures are specifically required by the TDDRA. *See* TDDRA § 201(a)(1), 15 U.S.C. § 5711(a)(1) (requirements for pay-per-call advertising regulations).

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<sup>9</sup> *See* 5 C.F.R. § 1320.4(c)(1) (OMB considers any statutorily mandated collection of information to be “necessary”).

<sup>10</sup>The Rule currently tracks verbatim the statutory language, which the amended Rule would clarify to require that common carriers make available the requested information about their service arrangements with pay-per-call vendors and with any service bureaus acting on behalf of such vendors. *See* proposed § 308.19(a). This amendment is necessary in light of actual industry practice, i.e., common carriers often do not know even the identity of pay-per-call vendors leasing certain pay-per-call numbers (“900” or other pay-per-call dialing prefix), because the vendor is leasing the number indirectly through a service bureau and not directly from the common carrier. In any event, as discussed *infra*, this clarifying amendment, if adopted, would not affect the burden estimate associated with the reporting requirement. Furthermore, as explained *infra*, the reporting requirement imposes no separate recordkeeping costs not already incurred by common carriers in the ordinary course of business.

The two additional advertising disclosure requirements being proposed by the Commission are also needed in order to satisfy the statutory mandate and goals of the TDDRA. Proposed § 308.4(a)(1)(iii)(B) would require advertisements to disclose when the billing rate varies with time (i.e., variable time rate basis). This is consistent with the advertising disclosure that is already required by § 308.4(a)(1)(iii) of the Rule when the billing rate varies with the particular options selected by the caller. *See* 63 Fed. Reg. at 58,543. The variable time rate disclosure, like the variable option rate disclosure, is necessary so that consumers can determine, before using an advertised pay-per-call service, how much the call will cost them. *Id.*

The other new advertising disclosure requirement, being proposed in § 308.6(b), i.e., a signal indicating the expiration of free time, is needed to ensure that consumers are left with no doubt as to when they must hang up to avoid being charged for a call. Sections 308.5(a) and (b) of the current Rule already require a signal or tone at the end of the free preamble or after any free time following the preamble. Similarly, § 308.6(b), as amended, would make clear that if any portion of a call is free, regardless when it occurs in the program, the vendor shall provide a clearly discernible signal or tone indicating the end of the free time. 63 Fed. Reg. at 58,543-44.

(2) *Preamble disclosures.* The preamble disclosure requirements of the Rule (§ 308.9), 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. Moreover, these preamble disclosures are expressly required by the TDDRA itself. *See* TDDRA § 201(a)(2), 15 U.S.C. § 5711(a)(2) (pay-per-call service standards, requirements for introductory disclosure message). The proposed requirement for a variable time rate disclosure in the preamble (§ 308.9(a)(2)(iii)(B)), like the proposed variable time rate disclosure in pay-per-call advertising discussed *supra* (§ 308.4(a)(1)(iii)(B)), is necessary to provide consumers with essential cost and pay-per-call service information, as required by the TDDRA.

(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), which the Commission has proposed to redesignate and incorporate into § 308.18 of the amended Rule. *See* TDDRA § 201(a)(2)(H), 15 U.S.C. § 5711(a)(2)(H). The proposed amendment of these requirements to cover not only pay-per-call services, but also any other "telephone-billed purchases"—a term defined in § 308.2(q), as amended, to include any purchase charged to the consumer's bill—is intended to address the growing problem of unauthorized charges from being "crammed" on a customer's bill as a result of filling out a sweepstakes entry form or some action other than placing a telephone call. *See* 63 Fed. Reg. at 58,541-42. This amendment would ensure that a consumer who has an unauthorized charge on such a bill, regardless whether it arose from a telephone call, would be able to contest the charge through the Rule's dispute resolution procedures.<sup>11</sup> Thus, the amendment implements the statutory directive that the Commission's Rule contain provisions to prevent unfair or deceptive

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<sup>11</sup>*See* 16 C.F.R. § 308.7, to be redesignated as § 308.20 (dispute resolution procedures).

acts or practices that evade its disclosure rules or dispute resolution procedures or that otherwise undermine the rights provided to customers under those rules.<sup>12</sup>

(4) *Disclosure of dispute resolution procedures in billing statements.* The TDDRA mandates the requirement in § 308.7(c) of the current Rule, to be redesignated as § 308.20, that billing statements disclose the dispute resolution procedures that are available to consumers. *See* TDDRA § 301(a)(2).<sup>13</sup>

The proposed amendment to § 308.20(m)(1), requiring that these disclosures be included with each billing statement (e.g., monthly), rather than an annual disclosure as currently permitted, is necessary to ensure that consumers receive timely notice of their dispute rights and obligations. *See* 63 Fed. Reg. at 58,553-54.

In proposed § 308.2(i), the definition of “personal identification number” (“PIN”), which is used by callers to facilitate billing and access to pay-per-call services under a presubscription agreement, would require affirmative disclosure of all material terms and conditions of such an agreement, and is needed to help ensure that consumers receive such information before they use an audiotext service and begin to accrue charges. 63 Fed. Reg. at 58,536-37.

The proposal that § 308.20(n)(2), as amended, extend the disclosure requirement to billing entities when attempting to collect a previously forgiven charge will prevent consumers from being subject to secondary collection efforts without having received a prior explanation of proof that the charges are valid. *See* 63 Fed. Reg. at 58,552 (citing recent cases in which the Commission has addressed this issue).

The proposal that § 308.20(n)(4), as amended, require billing entities (usually local exchange carriers) to affirmatively notify the pay-per-call vendor or service bureau of an unpaid charge, the amount, and information sufficient to identify the relevant customer’s account, is necessary so that vendors and service bureaus are not denied the opportunity to initiate their own collection efforts before the billing entity charges back the debt to the vendor or service bureau as uncollectible, a situation that can and does arise under the current Rule. *See* 63 Fed. Reg. at 58,553.

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<sup>12</sup>*See* 15 U.S.C. § 5711(a)(4), 5721(a)(1).

<sup>13</sup>*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); *cf.* 12 C.F.R. § 226.9(a) (notice of Truth in Lending billing rights under Fed. Reserve Sys. Regulation Z).



## **2. Purpose and Use of the Information**

### **a. Reporting requirement**

As noted earlier, information reported to the Commission upon its request under proposed 308.19(a), currently § 308.6, by common carriers relating to their provision of non-local telecommunications to pay-per-call vendors and service bureaus will be used for law enforcement purposes (i.e., determining legal compliance with the Rule).

### **b. 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, including the charges they must pay if they use the service, and how and whether to exercise their billing dispute rights.

## **3. Consideration to Use Improved 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. The 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. Thus, the reporting provision is consistent with the mandate in the Government Paperwork Elimination Act, Pub. L. No. 105-277 (“GPEA”), for agencies to provide electronic options to their information collection requirements. 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 within the meaning of GPEA 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.), which is entirely consistent with GPEA.

## **4. Efforts to Identify Duplication/Availability of Similar Information**

The disclosure and reporting requirements of the proposed Pay-Per-Call Rule do not duplicate other information collection requirements by the Commission. 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 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 and other pay-per-call services. Thus, the requirements of the Commission's Pay-Per-Call Rule do not duplicate any other information collection requirements 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. The proposed changes further the goal of ensuring adequate disclosures to those who use and are billed for pay-per-call services.

## **5. Efforts to Minimize Burden on Small Businesses**

The Commission places a very high priority upon minimizing the total compliance burden upon affected entities. 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, the Commission has eschewed any mandatory recordkeeping provisions. In addition, as discussed *infra*, staff has taken into account the public comments on its proposed Rule amendments and is considering whether to recommend deleting one of the Commission's proposed amendments to avoid any unnecessary increase in the current annual burden associated with disclosing certain dispute resolution rights to customers.

Finally, we note that the Commission has determined that the Rule, as amended, will not have a significant economic impact on a substantial number of small entities. *See* 63 Fed. Reg. at 58,557 (certification of no effect under the Regulatory Flexibility Act). Nonetheless, in order to ensure that there was no significant impact on small businesses, the Commission's notice containing its proposed amendments included a request for public comment on the effect of the proposed amendments on costs, profitability, competitiveness, and employment on small entities. No comments responsive to those questions were received.

## **6. Consequences of Conducting Collection Less Frequently**

### **a. 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 Federal Trade Commission. 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.

### **a. 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 and reporting requirements in the Pay-Per-Call Rule are consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

## **8. Consultation Outside the Agency**

The Commission has consulted with parties outside the agency in promulgating the original Rule and in connection with the currently proposed amendments to the Rule. In drafting the original Rule, the Commission's staff received comments from and in some cases met with numerous members of the pay-per-call industry, including vendors, associations, telephone companies, and consumer organizations. Although not required to do so by the TDDRA, the Commission also conducted a public workshop at which representatives of affected interests and law enforcement officials participated in a discussion of the Rule's requirements. *See* 58 Fed. Reg. 13,370 (March 10, 1993) (announcing public workshop in notice of proposed rulemaking). Among the issues discussed during the workshop were the advertising and preamble disclosure requirements, the manner in which information should be provided on billing statements, and the obligations of billing entities in connection with resolving billing disputes. The Commission used this information to help it balance the need for consumers to receive certain information prior to calling and in connection with billing for pay-per-call services, with the burden such requirements would place on affected entities, within the confines of the statutory requirements.

Likewise, in publishing its currently proposed amendments, the Commission specifically requested public comment on the Rule, including the reporting and disclosure provisions subject to the Paperwork Reduction Act, as outlined earlier. A copy of the FTC's *Federal Register* notice containing the proposed amendments to the Rule, as required by 5 C.F.R. 1320.8(d), is

attached. 63 Fed. Reg. 58,524 (Oct. 30, 1998). As with the original rulemaking, Commission staff hosted a public workshop, this time to discuss issues raised by the comments on the proposed Rule amendments. *See* 63 Fed. Reg. at 58,524 (announcing workshop). During this forum, there was opportunity to speak on various issues. In issuing its proposed amendments, the Commission again has attempted to balance the need for consumers to receive certain material information with the burdens the requirements might place on affected entities.

Although all public comments and discussion were generally directed to the compliance obligations of the Rule, the comments did not provide significant information, if any, on the Commission's specific burden hour or cost calculations regarding the Rule's information collection requirements, despite the Commission's affirmative request for comment on these provisions. One commenter, U.S. West, stated that the annual cost of shifting from disclosing dispute resolution procedures annually to disclosing such information every billing cycle would increase from \$53,000 to of \$819,000. A copy of this comment is on the FTC Web site at: [www.ftc.gov/bcp/adcon/900rule/comments2/uswest.htm](http://www.ftc.gov/bcp/adcon/900rule/comments2/uswest.htm). This comment and others generally objecting to the proposal are being considered in determining whether to withdraw this proposed amendment and thereby minimize the compliance burden of this disclosure requirement.

## **9. Payment or 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 (proposed § 308.19(a), currently § 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 and 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* FTC Act §§ 21(b) & (f), 15 U.S.C. §§ 57b-2(b) & (f). These confidentiality provisions are set forth in the FTC Act and in the Commission's Rules of Practice. *See, e.g.*, 16 C.F.R. § 4.10(a) (records not required to be made public).

## **12. "Hour" Burden**

The Commission's Paperwork Reduction Act analysis in the notice of proposed rulemaking provided estimates of the annual hour burden that would be imposed by the Rule's information collection (i.e., reporting and disclosure) requirements, as amended. *See* 63 Fed. Reg. at 58,556-57. The Commission's revised estimates since the publication of that notice, and any other clarifications, including the relevant costs of the estimated hour burdens, are set forth below.

**a. Reporting requirement**

As noted earlier, 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. *See* proposed § 308.19(a); current § 308.6. Staff believe that the resulting burden on this segment of the industry will be minimal, since OMB’s definition of “burden” for Paperwork Reduction Act purposes excludes any business effort that would be expended regardless of a regulatory requirement. 5 C.F.R. § 1320.3(b)(2). Since this reporting requirement permits staff to seek only information that is already maintained by the carriers, the only burden associated with the requirement would be the time an entity expends to compile and provide the information to the Commission.

In obtaining approval for this reporting requirement in the original Rule, the Commission estimated that approximately 25 common carriers routinely maintain certain business records and would make them available to the Commission under the Rule, at an average annual burden of 5 hours per common carrier, for a total reporting burden of 125 hours. In its 1999 submission, based on a 12 percent estimated growth of the industry since 1995 (when that burden was calculated), the Commission estimated that the burden would increase to 140 hours, or an estimated annual cost of \$9100, based on \$65/hour of attorney time to respond to the reporting requirement. In this submission to OMB, the Commission has increased the burden hour estimate again, by 5% for industry growth, to 147 hours, with an estimated annual cost of \$11,025, based on \$75/hour of attorney time. As explained earlier, the Commission is not proposing to change the reporting requirement in a manner that would otherwise affect the compliance burden of the original Rule.

**b. Disclosure requirements**

**(1) Advertising disclosures**

The Commission previously estimated that the general (i.e., cost) disclosures required by the Rule in pay-per-call advertising apply to approximately 20,000 vendors, who must make additional disclosures if the advertisement is directed to individuals under 18 (50 percent of the ads) or relates to pay-per-call services for sweepstakes or information on federal programs (30 percent of the ads). The Commission has estimated that each disclosure mandated by the Rule, whether cost or otherwise, requires approximately one hour of compliance time. Based on three advertisements per vendor, or a total of 60,000 ads, 80 percent of which would require a disclosure in addition to the cost disclosure, the Commission has estimated that approximately 110,000 burden hours are needed for vendors to comply with these requirements. In its 1999 submission, the Commission, based on 12% estimated growth of the industry, calculated the

current burden to be 123,200 hours,<sup>14</sup> at a rate of \$38.50/hour (based on 40% @ \$65/hour for professional (attorney) services, 50% @ \$15/hour for skilled clerical workers, and 10% @ \$50/hour for management), or an estimated annual cost of \$4,743,200. In this submission, the Commission has added 5% to the burden hour estimate, or 129,360 hours, for an estimated annual cost of \$5,821,200, using a revised blended wage rate of \$45/hour (i.e., attorney rate increased to \$75, skilled clerical worker rate increased to \$20, other wage rates not changed).

The proposed amendment, in § 308.4(a)(1)(iii)(B), to require that advertisements for pay-per-call services billed on a variable time rate basis contain a disclosure of the cost of each portion of the call, assumed, in the Commission's 1999 submission, that 20 percent of the 67,200 (adjusted from 60,000 for 12 percent growth) pay-per-call services will be required to make the new disclosure. The Commission estimated that the additional burden associated with this requirement would be 13,340 hours, assuming one hour for each disclosure, at a \$38.50/hour rate, for a total annual cost of \$517,440. In this submission, the Commission has increased the estimate of 67,200 pay-per-call services covered by this requirement by 5% to 70,560, resulting in a revised annual hour burden of 14,112 hours, or \$635,040 estimated annual cost, using the revised \$45/hour wage rate.

The proposed amendment in § 308.6(b)<sup>15</sup> for an additional new disclosure (i.e., a signal indicating the end of free time typically used to market pay-per-call services) assumed that 25 percent of the 67,200 pay-per-call services will be required to include the new signal, in the Commission's 1999 submission. The additional burden associated with this proposed change was calculated to be 16,800 hours, again assuming one new burden hour for each disclosure. Based on the \$38.50/hour rate estimated earlier, the estimated annual cost was \$646,800. In this submission, adding 5% to the number of estimated pay-per-call services affected, the revised annual hour burden for this requirement is 17,640 hours, or \$793,800 estimated annual cost, using the \$45/hour revised wage rate discussed earlier.

## **(2) Preamble disclosures**

To comply with the Act, the proposed 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 must contain information on the free method of entry if that information is not contained in the corresponding advertisement. Services not operated by the federal government but which offer information on federal programs must disclose that they are not authorized, endorsed, or approved by any federal agency. Each preamble need only be prepared one time, unless the cost or other information is changed, and there is no additional burden on the vendor to make the disclosures

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<sup>14</sup>Due to a typographical error, this estimate erroneously appeared in the notice of proposed rulemaking as "123,000" hours.

<sup>15</sup> The PRA discussion in the NPRM erroneously refers to this provision as "308.7(b)." See 63 Fed. Reg. at 58,556.

for each telephone call, since the preambles are taped and play automatically when a caller dials the pay-per-call number.

In adopting the original Rule, the Commission had estimated that approximately 60,000 pay-per-call services are required to make disclosures in the preamble to the pay-per-call service, at an average burden of 10 hours for each preamble, resulting in a total burden estimate of 600,000 hours. In its 1999 submission, based on the estimated 12% growth of the industry, the Commission calculated the estimated annual burden to be 672,000 hours. At a rate of \$38.50/hour (based on 40% @ \$65/hour for professional (attorney) services, 50% @ \$15/hour for skilled clerical workers, and 10% @ \$50/hour for management), the estimated total annual cost was \$25,872,000. In this submission, the Commission estimates 70,560 pay-per-call services (i.e., 5% above previous estimate), 705,600 annual burden hours, and \$31,752,000 estimated annual cost, based on the revised \$45/hour blended wage rate.

The proposed amendment to § 308.9(a)(2)(iii)(B), requiring that preambles disclose the cost of each portion of a telephone call to a pay-per-call service billed on a variable time rate basis, previously assumed that 30 percent of the 67,200 pay-per-call services would be required to make the new disclosure in the preamble, and that the burden associated with this new disclosure would be 20,160 hours, if each disclosure requires one additional hour. At the rate of \$38.50 estimated earlier, the estimated annual cost for this proposed disclosure was \$776,160. The relevant estimates in this submission, reflecting a 5% increase for industry growth, are now 21,168 burden hours annually or \$952,560 estimated annual cost, based on the \$45/blended wage rate.

### **(3) Disclosure of telephone-billed charges in billing statements**

The Commission's Rule also 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. 16 C.F.R. § 308.5(j), to be redesignated § 308.18, as amended. 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, the Commission estimated that the burden to comply would be minimal. At most, the only burden on the vendor may be to conduct spot checks of telephone bills to ensure that the charges are displayed in the manner required by the Rule. Staff originally estimated that only 10 percent of the 20,000 vendors would monitor billing statements in this manner and that it would take 12 hours each year to conduct such checks, for a total of 24,000 burden hours. Based on the estimated 12% growth of the industry, the Commission calculated the new burden to be 26,880 hours in its 1999 submission. At an estimated rate of \$45.50/hour (50% @ \$65/hour for professional (attorney) services, 20% @ \$15/hour for skilled clerical workers, 20% @ \$25/hour for computer programming, and 10% @ \$50/hour for management), the estimated total annual cost was \$1,223,040. In this submission, the Commission has increased the estimated burden by 5% for industry growth to 28,224 hours or \$1,453,536 estimated annual cost, using a \$51.50/hour blended wage rate (i.e., attorney hourly rate increased to \$75, skilled clerical workers to \$20, other wage rates not changed).

#### **(4) Disclosure of dispute resolution procedures in billing statements**

The Commission's Rule currently imposes certain disclosure requirements relating to billing and dispute resolution. See 16 C.F.R. § 308.7(c), to be redesignated § 308.20. In particular, the current Rule requires billing entities to notify pay-per-call service customers in writing of their rights and obligations with respect to pay-per-call service charges. The FTC had previously estimated that it would take 7,000 hours for billing entities to provide such notice to customers, based on approximately 1,400 billing entities spending 5 hours to review, revise, and provide the disclosures on an annual basis. Based on the estimated growth of the industry, the Commission's 1999 submission estimated the burden to be 7,840 hours, which would not otherwise change under the proposed amendment of this requirement.<sup>16</sup> Assuming a rate of \$32.50 for each hour of compliance (40% @ \$25/hour for computer programming, 20% @ \$65/hour for professional (attorney) services, 30% @ \$15/hour for skilled clerical workers, and 10% @ \$50/hour for management), the estimated total annual cost was \$254,800. The Commission, in the present submission, after adding a 5% increase for industry growth, is estimated 8,232 annual burden hours and \$296,352 estimated annual cost, under a revised blended wage rate of \$36 (i.e., attorney services are \$75/hour, skilled clerical \$20/hour, other rates not changed).

For those cases where consumers report a billing error, the Commission had separately estimated that the compliance burden associated with the existing dispute resolution disclosure requirements of the Rule is, on average, about one hour per each billing error, and that approximately 5 percent of the estimated 50,000,000 calls made to pay-per-call services each year would involve such a billing error, for a total burden of 2,500,000 hours. Based on the 12% estimated growth of the industry, the Commission's 1999 submission calculated the burden to be 2,800,000 hours. At the rate of \$32.50 per compliance hour estimated earlier, the estimated annual cost was \$91,000,000. In this submission, the Commission has increased its estimate for industry growth upwards by 5%, so the estimated annual hour burden is 2,940,000 hours, and the estimated annual cost is \$105,840,000, based on the revised \$36/hour blended wage rate discussed earlier.

Sections 308.2(i) and (j) of the Rule, which the Commission proposes to amend to require certain disclosures to customers regarding their personal identification numbers used for billing purposes and the material terms and conditions governing the use of such numbers, assumed that 50,000 different audiotext services are provided via toll-free numbers and will be required to comply with these proposed new disclosure requirements. The Commission's 1999 submission estimated that the additional burden would be 50,000 hours, based on one burden hour per service. At the rate of \$32.50/hour estimated earlier, the estimated annual cost was \$1,625,000. In this submission, the Commission, after adding 5% for industry growth, has

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<sup>16</sup>If adopted, the proposed amendment to § 308.18(m)(1) would make this requirement mandatory with each billing notice, rather than annually. As discussed earlier, the Commission is considering whether to withdraw this proposal in light of public comments.



estimated an annual hour burden of 52,500 hours and estimated annual cost of \$1,890,000, using the \$36/hour revised wage rate.

The Commission has proposed to expand the disclosure requirements that apply to billing entities in the resolution of billing disputes by amending § 308.18(n)(2) (notice to customer when attempting to collect a charge that was forgiven by another billing entity) and § 308.18(n)(4) (notice to vendor or service bureau of certain customer information by the billing entity designated to receive and respond to alleged billing errors). Assuming that 5 percent of the 56,000,000 calls (adjusted for 12% growth) require billing entities to respond to billing errors, the Commission previously estimated that the burden associated with these two new disclosure requirements would be 1,400,000 hours, based on an additional half-hour of compliance time total required for both disclosures. At the rate of \$32.50/hour, the estimated annual cost was \$45,500,000. With an additional estimated 5% industry growth, the Commission's present submission estimates that the annual hour burden has grown to 1,470,000 hours, at an estimated annual cost of \$52,920,000, based on a \$36/hour wage rate.

**c. Total annual "hour" burden**

Based on the above figures, the total PRA hour burden for the existing Rule's information collection requirements is approximately 5,386,983, or rounded to 5,387,000 for purposes of OMB's inventory, a difference of 256,540 burden hours from the current inventory figure of 5,130,460. The current estimate comprises 125 hours for reporting requirements, with the remainder attributable to disclosure requirements.

**13. Other "Cost" Burden**

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*.

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

No comments were received that provided specific information regarding capital or start-up costs. 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.).

**b. 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**

The Commission believes that enforcement of the information collection and reporting requirements of the Pay-Per-Call Rule will be closely tied to overall enforcement of the Rule because one of the Rule's primary purposes is to ensure that consumers are adequately informed about cost and other material information regarding pay-per-call services, and that consumers have adequate dispute rights for all telephone-billed purchases, including pay-per-call services. Therefore, the Commission estimates that the cost of implementing and enforcing these requirements will be approximately equal to the overall cost of enforcing the Pay-Per-Call Rule. This estimate is based on the assumption that about four attorney/investigator work-years will be expended in enforcement of the Rule, at an approximate cost of \$100,000 per work year for a total of \$400,000. In addition, staff estimated that travel costs or other associated expenses would be approximately \$10,000. Therefore, the approximate total cost to the Commission would be \$410,000. Clerical and other support services are included in these estimates.

#### **15. Program Changes or Adjustments to “Hour” or “Cost” Burden**

The basis for any changes or adjustments to the “hour” burden (Form 83-I, item 13) has been set forth in item 12 *supra*. There is no change or adjustment to the “cost” burden (Form 83-I, item 14), as set forth in item 13 *supra*.

#### **16. Statistical Use of Information**

This question applies to “collections of information whose results will be published” and is not applicable. There are no plans to publish, for statistical use, any information required by the Rule.

#### **17. Request to Withhold Display of OMB Control Number Expiration Date**

Not applicable.

#### **18. Exceptions, if any, to Certification (OMB Form 83-I, Item 19)**

Not applicable.