



[Billing Code: 6750-01-S]

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC is seeking public comments on its proposal to extend through May 31, 2015, the current PRA clearance for information collection requirements contained in the Pay-Per-Call Rule (Rule). That clearance expires on May 31, 2012 (OMB Control No. 3084-0102).

DATES: Comments must be submitted on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write "Pay-Per-Call Rule: FTC File No. R611016" on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/pperulepra>, by following the instructions on the web-based form. If you want to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Gary Ivens, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2330.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. § 3502(3), 5 CFR § 1320.3(c). Because more than nine entities will be affected by the Commission's requests, the Commission plans to seek OMB clearance under the PRA. As required, the Commission is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the information collection requirements pertaining to the Commission's Pay-Per-Call Rule, 16 CFR Part 308 (OMB Control Number 3084-0102). 44 U.S.C. § 3506(c)(2)(A).

The FTC is again seeking a 3-year clearance for the Rule as was done in 2009.¹

¹ On October 30, 1998, the Commission published a Notice of Proposed Rulemaking (“NPRM”), 63 FR 58524, to amend its Pay-Per-Call Rule, 16 CFR Part 308. The Rule, which implements Titles II and III of the Telephone Disclosure and Dispute Resolution Act (“TDDRA”), 15 U.S.C. 5711-14, 5721-24, requires the disclosure of cost and other information regarding pay-per-call services and establishes dispute resolution procedures for telephone-billed purchases (*i.e.*, charges for pay-per-call services or other charges appearing on a telephone bill other than telecommunications charges). As was explained in the NPRM, the Rule contains certain reporting and disclosure requirements that are subject to OMB review under the PRA, 44 U.S.C. 3501-3521. Accordingly, the FTC submitted the Rule, with proposed amendments, to OMB (*see* 64 FR 70031, Dec. 15, 1999) for its approval, which was granted until December 31, 2002 (OMB control number 3084-0102). Thereafter, the FTC

Request for Comments

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [insert date 60 days after date of publication in the FEDERAL REGISTER]. Write "Pay-Per-Call Rule: FTC File No. R611016" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

obtained renewed clearance from OMB covering both the existing Rule and the proposed changes up through April 30, 2009.

The clearance that expires on May 31, 2012, did not include PRA approval relating to the proposed changes to the Rule. The proposed changes have not been adopted, and any final decision about them is too uncertain to merit inclusion in this request for clearance renewal. The Commission will seek PRA clearance separately for any proposed rule amendments if that becomes necessary at a future date.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublishcommentworks.com/ftc/ppcrulepra>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

If you file your comment on paper, write “Pay-Per-Call Rule: FTC File No. R611016” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 60 days after date of publication in the FEDERAL REGISTER]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Brief description of the need for and proposed use of the information

The existing reporting and disclosure requirements are mandated by the TDDRA to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are told about the costs of using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and how to deal with disputes about telephone-billed purchases.

Likely respondents and their estimated number:

Respondents are telecommunications common carriers (subject to the reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities. Staff estimates that there are 7 common carriers,² approximately 13,800 vendors,³ and approximately 1,560 possible billing entities.⁴ The FTC seeks public comment or data on these estimates and those stated below.

Estimated annual reporting and disclosure burden: 2,379,796 hours; \$130,263,530 in associated labor costs⁵

² This estimate is based on the North American Numbering Plan Association Report, “900-NXX Codes,” <http://www.nanpa.com/nas/public/form900MasterReport.do?method=display900MasterReport> (updated as of 2011), and excluding Canadian entities and one carrier that withdrew from carrying 900 number service. See Federal Communications Commission, “Section 63.71 Application of Sprint Communications Company L.P. for Authority to Discontinue Domestic Telecommunications Services,” Order, WC Docket No. 08-116, DA 08-2557 (Wireline Competition Bureau Nov. 24, 2008) (“FCC Sprint Order”).

³ The number of vendors is difficult to estimate as there is no ready source of such statistics. FTC staff has reduced a 2006 estimate of the number of vendors (approximately 15,000) by 8 percent, reflecting a corresponding decrease in the allocation of 900 numbers. One carrier which withdrew from carrying 900-number services stated that between 2004 and 2007 claimed that it saw a 41.5 percent decrease in vendor use of such numbers. See FCC Sprint Order. However, erring conservatively, FTC staff instead is applying an 8 percent reduction in the number of vendors, tied to a comparison of the number of 900-NXX codes allocated per vendor, as reported annually by the North American Numbering Plan Administration (NANPA). In 2004, it was 133; in 2010, it fell to 123.

⁴ The Federal Communications Commission report on telephone statistics indicated that at the end of 2010 there were approximately 1,560 local telephone companies (local exchange carriers). See Local Telephone Competition: Status as of December 31, 2010 (released 10/11) (tables 3 and 4), available at <http://www.fcc.gov/wcb/iatd/comp.html>.

⁵ Non-labor (e.g., capital/other start-up) costs are generally subsumed in activities otherwise undertaken in the ordinary course of business (e.g., business records from which only existing information must be reported to the Commission, pay-per-call advertisements or audiotext to which cost or other disclosures are added, etc.). To the extent that entities incur operating or maintenance expenses, or purchase outside services to satisfy the Rule’s requirements, staff believe those expenses are also included in (or, if contracted out, would be comparable to) the annual burden hour and cost estimates provided below (where such costs are labor-related), or are otherwise included in the ordinary cost of doing business (regarding non-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: \$250/hour for professional (attorney) services; \$17/hour for skilled clerical workers; \$35/hour for computer programmers; and \$50/hour for management time. These figures are averages, based on the most currently available Bureau of Labor Statistics (“BLS”) cost figures posted online.⁶ 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

⁶ <http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf> (National Compensation Survey: Occupational Earnings in the United States, US Department of Labor, BLS, released May 2011, Bulletin 2753, Table 3 (“Full-time civilian workers,” mean and median hourly wages). Notwithstanding the referenced BLS data, estimated attorney costs are based on what staff believes may more closely reflect hourly attorney costs associated with Commission information collection activities under the Rule.

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 2009, staff estimated a total reporting burden of 39 hours, with an annual cost of \$2,925. Staff is now decreasing the total burden estimate to 21 hours, based on an average estimate of 3 hours expended by 7 common carriers. Using a \$76/hour blended wage rate (assuming for all labor calculations herein, \$35/hour for computer programmers, \$250/hour for attorneys, \$17/hour for skilled clerical workers, and \$50/hour for managers),⁷ the FTC now estimates an annual cost of \$1600.

(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 49,680 hours. The estimate reflects the burden on approximately 13,800 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.⁸ Because of continued industry changes and the fact that the Commission has seldom needed to rely

⁷ This blended wage rate is based upon an estimate of 30 percent for computer programming, 20 percent for attorney services, 30 percent for skilled clerical workers, and 20 percent for managerial time.

⁸ Based on an assumed three advertisements per vendor, or a total of 41,400 ads (for 13,800 vendors, as explained in note 4), plus an estimated total 20 percent of which would require such additional disclosures, or 8,280 advertisements. Staff estimates that it would require no more than one hour to draft each type of disclosure. Accordingly, at an estimated one hour each, vendors would require cumulatively 49,680 burden hours to comply with these requirements.

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 \$3,477,600 applying a blended wage rate of \$70/hour.⁹

(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.

As noted above (see footnote 4), staff now believes that the industry has had at least an 8 percent reduction in size since 2004 (when there were an estimated 45,864 pay-per-call services). Accordingly, staff now estimates that there are no more than 42,195 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-

⁹ The blended rate is based upon 20 percent for attorney services, 60 percent for skilled clerical workers, and 20 percent for management time.

per-call services discussed above, staff estimates that an additional 20 percent of all such pay-per-call services (8,440) relating to certain types of pay-per-call services would require such additional disclosures.¹⁰ Staff now 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 50,635 burden hours (42,195 + 8,440) to comply with these requirements. At one hour each, cumulative labor cost associated with these disclosures is \$3,544,450, using a blended wage rate of \$70/hour (i.e., similar to the 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 2009 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 (1,380),

¹⁰ See note 10.

this results in a total of 16,560 burden hours. The total annual cost would be at most \$1,043,280, using a blended rate of \$63/hour.¹¹

(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 being used for these disclosures is \$53.50/hour.¹² 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 7,800 burden hours (based on 1,560 possible billing entities each requiring 5 hours each), or a total cost of \$421,200.

(e) *Further disclosures related to consumers reporting a billing error* (applies to billing entities).

As in the 2009 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 46,981,200 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 4 percent¹³ (to 45,101,950 calls) to reflect recent changes in the amount of pay-per-call services and their billing. Assuming the

¹¹ The blended rate is 15 percent for attorney services, 40 percent for skilled clerical workers, 25 percent for computer programming, and 20 percent for management time.

¹² The blended rate is 40 percent for computer programming, 10 percent for attorney services, 30 percent for skilled clerical workers, and 20 percent for management time.

¹³ Four percent is determined by an approximate halving of the above-noted 8 percent reduction staff has applied to its prior estimate of the number of vendors (see note 4). As in past clearance requests for this Rule, it is halved on the assumption that pay-per-call services do not account for any more than half of all telephone-billed purchases.

same apportionment (5 percent) of overall calls to pay-per-call services, this amounts to 2,255,100 hours, cumulatively. Applying the \$54/hour blended wage rate, the estimated annual cost is \$121,775,400 annually.

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General Counsel.

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