



6712-01

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0411; FRS 16945]

Information Collection Being Reviewed by the Federal Communications Commission under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you

should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to Nicole.Ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418-2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0411.

Title: Procedures for Formal Complaints.

Form Number: FCC Form 485.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions, federal government, and state, local, or tribal governments.

Number of Respondents and Responses: 5 respondents; 13 responses.

Estimated Time per Response: 1 - 68 hours.

Frequency of Response: Recordkeeping requirement, on-occasion reporting requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 154(j), 206, 207, 208, 209, 301, 303, 304, 309, 316, 332, and 1302.

Total Annual Burden: 366 hours.

Total Annual Cost: \$ 97,175.

Nature and Extent of Confidentiality: 47 CFR 1.731 provides for confidential treatment of materials disclosed or exchanged during the course of formal complaint proceedings when the disclosing party has identified the materials as proprietary or confidential. In the rare case in which a producing party believes

that section 1.731 will not provide adequate protection for its assorted confidential material, it may request either that the opposing party consent to greater protection, or that the staff supervising the proceeding order greater protection.

Privacy Act Impact Assessment: Yes. The information collection requirements may affect individuals or households. As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and OMB regulations, M-03-22 (September 22, 2003), the FCC has completed both a system of records, FCC/EB-5, “Enforcement Bureau Activity Tracking System,” and a Privacy Impact Assessment (PIA), to cover the collection, maintenance, use, and disposal of all personally identifiable information (PII) that may be submitted as part of a formal complaint filed against a common carrier:

(a) The system of records notice (SORN), FCC/EB-5, “Enforcement Bureau Activity Tracking System (EBATS),” was published in the *Federal Register* on December 14, 2010 (75 FR 77872) and became effective on January 24, 2011. It is posted on the FCC’s Privacy Act webpage at:

<http://www.fcc.gov/omd/privacyact/records-systems.html>.

(b) The initial Privacy Impact Assessment (PIA) was completed on May 22, 2009. Subsequent related approvals include: (1) FCC/EB-5, “EBATS,” on January 24, 2011: and, (2) September 21, 2017 was updated.

Needs and Uses: Sections 206-209 of the Communications Act of 1934, as amended (the “Act”), provide the statutory framework for adjudicating formal complaints against common carriers. To resolve complaints between providers regarding compliance with data roaming obligations, Commission Rule 20.12(e) adopts by reference the procedures already in place for resolving Section 208 formal complaints against common carriers, except that the remedy of damages, is not available for complaints against commercial mobile data service providers.

Section 208(a) authorizes complaints by any person “complaining of anything done or omitted to be done by any common carrier” subject to the provisions of the Act.

Section 208(a) states that if a carrier does not satisfy a complaint or there appears to be any reasonable

ground for investigating the complaint, the Commission shall “investigate the matters complained of in such manner and by such means as it shall deem proper.” Certain categories of complaints are subject to a statutory deadline for resolution. *See, e.g.*, 47 U.S.C. § 208(b)(1) (imposing a five-month deadline for complaints challenging the “lawfulness of a charge, classification, regulation, or practice”); 47 U.S.C. § 271 (d)(6) (imposing a 90-day deadline for complaints alleging that a Bell Operating Company has ceased to meet conditions imposed in connection with approval to provide in-region interLATA services).

Formal complaint proceedings before the Commission are similar to civil litigation in federal district court. In fact, under section 207 of the Act, a party claiming to be damaged by a common carrier may file its complaint with the Commission or in any district court of the United States, “but such person shall not have the right to pursue both such remedies” (47 U.S.C. 207). The Commission has promulgated rules (Formal Complaint Rules) to govern its formal complaint proceedings that are similar in many respects to the Federal Rules of Civil Procedure. *See* 47 CFR 1.720-1.736. These rules require the submission of information from the parties necessary to create a record on which the Commission can decide complex legal and factual issues. As described in section 1.720 of the rules, the Commission resolves formal complaint proceedings on a written record consisting of a complaint, answer or response, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments.

This collection of information includes the process for electronically submitting a formal complaint against a common carrier. The Commission uses this information to determine the sufficiency of complaints and to resolve the merits of disputes between the parties. The Commission bases its orders in formal complaint proceedings upon evidence and argument produced by the parties in accordance with the Formal Complaint Rules. If the information were not collected, the Commission would not be able to resolve common carrier-related complaint proceedings, as required by section 208 of the Act.

In addition, the Commission has adopted most of this formal complaint process to govern data roaming complaints. Specifically, the Commission has extended, as applicable, the procedural rules in the Commission's Part I, Subpart E rules, 47 CFR 1.716-1.718, 1.720, 1.721, and 1.723-1.735, to disputes arising out of the data roaming rule contained in 47 CFR 20.12(e). Therefore, in addition to being necessary to resolve common carrier-related complaint proceedings, this collection of information is also necessary to resolve data roaming-related complaint proceedings.

Federal Communications Commission.

Marlene Dortch,

Secretary,

Office of the Secretary.

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