

Section 64.201, Regulations Concerning Indecent Communications by Telephone

SUPPORTING STATEMENT

A. Justification

1. Under Section 223 of the Communications Act of 1934, as amended, telephone companies are required, to the extent technically feasible, to prohibit access to indecent communications from the telephone of a subscriber who has not previously requested access. Moreover, fines and penalties are imposed on those who knowingly use the telephone to make obscene or indecent communications for commercial purposes. The fines and penalties are applicable to those who use the telephone, or permit their telephone to be used, for obscene communications to any person and to those who use the telephone for indecent communications to persons under 18 years of age or to adults without their consent. Section 223 requires telephone companies, to the extent technically feasible, to prohibit access to indecent communications from the telephone of a subscribers who has not previously requested access.

The Commission adopted 47 CFR Section 64.201, which establishes defenses to prosecution for the provision of indecent communications under section 223 of the Communications Act of 1934, including that the defendant restricts access to the prohibited communications only to persons 18 years of age or older by taking one of several actions to restrict such access.

The information collection requirements consist of:

- (1) a requirement that subscribers to adult message services make a request in writing to the common carrier to allow access to the indecent messages;
- (2) a requirement that adult message service providers notify their common carriers in writing of the nature of their programming; and
- (3) a requirement that a provider of adult message services requests that their common carrier identify the adult message service as such in bills to its subscribers.

The Commission is requesting an extension of this information collection in order to receive the full three year OMB approval/clearance.

The statutory authority for the information collection requirements is found at Section 223 of the Communications Act of 1934, [47 U.S.C. 223] Obscene or Harassing Telephone Calls in the District of Columbia or in Interstate or Foreign Communications, , as amended by the Appropriations Act of 1990, Public Law No. 101-166, Sections 521, 103 Stat. 1192 (November 21, 1998).

2. The information collection requirements under 47 CFR § 64.201(a) provides an affirmative defense to prosecution for those firms that provide indecent communications under Section 223(b)(2) of the Communications Act of 1934, as amended. The information requirements are imposed on carriers, adult message service providers, and customers who solicit their services to ensure that minors are denied

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access to materials deemed indecent. If the information collections were not imposed, the Commission would not be able to carry out its responsibilities as mandated in Section 223 of the Act. The regulations protect minors from access to indecent communications in the least burdensome manner.

This information collection does contain personally identifiable information on individuals (PII).

(a) The FCC maintains an information system, including both paper files and electronic data, which is covered by a system of records notice (SORN), FCC/CGB-1, "Informal Complaints and Inquiries."¹ The SORN covers the collection, purposes(s), storage, safeguards, and disposal of the PII that individuals (respondents) may submit to the Commission.

(b) The FCC has completed a Privacy Impact Assessment covering the information system covered by this SORN, which may be reviewed at:
http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

(c) The FCC last published this SORN on October 11, 2001 (66 FR 51955).

(d) The FCC intends to update its inventory of SORNs, including FCC/CGB-1, "Informal Complaints and Inquiries," and to publish a Notice in the *Federal Register* as required by OMB regulations and the Privacy Act, 5 U.S.C. 552a(e).

3. The Commission does not believe that the use of the information technology can reduce burdens in this instance because the means to verify the customer's age and legal authorization to receive these services do not lend themselves readily to automation.
4. The information collection requirements are not duplicative of any currently existing federal regulatory obligation.
5. This information collection will not have a significant economic impact on a substantial number of small entities/businesses.
6. The Commission does not specify the frequency of the collections. However, the information collection is necessary in an effort to prohibit access to indecent communications from the telephone of a subscriber who has not requested such access.
7. The collection is not conducted in any manner that is inconsistent with the guidelines in 5 CFR §1320.6.
8. Pursuant to 5 CFR § 1320.8(d), the Commission published a notice in the *Federal Register* on August 8, 2007 (72 FR 44531). No comments were received.
9. The commission does not anticipate providing any payment or gift to respondents.

¹ FCC/CGB-1, "Informal Complaints and Inquiries," SORN was formerly titled FCC/CIB-1, "Informal Complaints and Inquiries," SORN. The Commission changed the title of this SORN to reflect the change in the name of the bureau that maintains this SORN, *i.e.* from Consumer Information Bureau to Consumer and Governmental Affairs Bureau.

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10. Confidentiality is an issue to the extent that individuals' and households' information is contained in the Commission's operations support for complaint analysis and resolution (OSCAR) and consumer information management system (CIMS) databases, which is covered under the Commission's system of records notice (SORN), FCC/CGB-1, "Consumer Inquiries and Complaints Division."

(a) The Commission is requesting that individuals (consumers/respondents) submit their names, addresses, and telephone numbers, which are necessary for the Commission's staff to process the complaints. A privacy statement is included on all FCC forms accessed through our Internet web site.

(b) In addition, respondents are made aware of the fact that their complaint information may be released to law enforcement officials and other parties as mandated by law (*i.e.* court-ordered subpoenas). The PII covered by this system of records notice is used by Commission personnel to handle and to process informal complaints from individuals and groups. The Commission will not share this information with other federal agencies except under the routine uses listed in the SORN.

The PIA that the FCC completed on June 28, 2007 gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the PII, as required by OMB regulations and the Privacy Act, 5 U.S.C. 552a. The PIA may be viewed at:

http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

11. This information collection does not raise any questions or issues of a sensitive nature for respondents.

(a) Additionally, consumers are cautioned not to provide personal information such as social security numbers, credit card numbers, *etc.*

(b) As noted earlier, the Commission does require consumers (respondents) to provide their names, addresses, and telephone numbers so that Commission staff may process these complaints more expeditiously and if the Commission needs to contact the complainant for any additional information to resolve the complaint.

(c) In instances where consumers provide PII, the FCC has a SORN, FCC/CGB-1, "Informal Complaints and Inquiries," to cover the collection, use, storage, and destruction of the PII. A full explanation of the privacy safeguards may be found in the Privacy Impact Assessment that the FCC completed on June 28, 2007 and that may be viewed at: http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

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

(a) Subscriber request for access to adult message services

The Commission estimates that there will be approximately 10,000 customers (respondents) annually who will contact an adult message service. This process will be done “on occasion” and will require approximately 10 minutes (0.16 hours) to complete this subscription service.

Annual Number of Respondents: 10,000 customers

Annual Number of Responses: 10,000 subscriptions

Annual Burden Hours:

10,000 customers x 1 subscription each x 0.16 hours/subscription/customer = **1,600 hours**

Annual “In-house Cost”: There is no “in-house cost” to the customer.

(b) Notification to carriers of the nature of adult message services:

The Commission estimates that approximately 100 adult messaging services (respondents) will notify the common carriers of the subscriptions. This notification process occurs when a customer subscribes to adult messaging services and will require approximately 10 minutes (0.16 hours).

Annual Number of Respondents: 100 adult messaging services

Annual Number of Responses: 100 notifications

Annual Burden Hours:

100 respondents x 1 notification each x 0.16 hours/notification/respondent = **16 hrs**

Annual “In-house Cost”: The Commission assumes that respondents use “in house” personnel whose pay is comparable to a senior level federal employee (GS-13/5, plus 30% overhead), thus, the Commission estimates respondents’ cost to be about \$56.06 per hour to comply with the requirements:

100 respondents x 1 notification each x 0.16 hours/notification/respondent x \$56.06 = **\$896.96**

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(c) Request to carriers that billing information reflects the type of service provided:

The Commission estimates that approximately 100 adult messaging service providers (respondents) will notify the common carriers of the type of services they are providing their customers, which the common carriers will then include in the billing information on each customer’s bills.

Annual Number of Respondents: 100 adult messaging service providers

Annual Number of Responses: 100 notifications

Annual Burden Hours:

100 respondents x 1 notification each x 0.16 hours/notification/respondent = **16 hrs**

Annual “In-house Cost”: The Commission assumes that respondents use “in house” personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead), thus, the Commission estimates respondents’ cost to be about \$56.06 per hour to comply with the requirements:

100 respondents x 1 notification each x 0.16 hours/notification x \$56.06/hr = **\$896.96**

Total Number of Respondents: 10,000 + 100 + 100 = **10,200**

Total Number of Responses:

10,000 subscriptions + 100 notifications + 100 notifications = **10,200**

Total Annual Burden Hours: 1,600 hours + 16 hours + 16 hours = **1,632 hours**

Total Annual “In House” Costs: \$896.96 + \$896.96 = **\$1,793.92**

13. The following represents the Commission’s estimate of the annual cost burden to respondents resulting from the collections of information. The Commission believes that both adult messaging service providers and common carriers will use in-house customer service representatives, and accounting and billing staff to solicit customers and to process billing and notification procedures. Thus:

(a) Total annualized capital/startup costs: **None**

(b) Total annual cost (O&M): **None**

(c) Total annualized cost requested: **None**

14. Estimates of annualized cost to the Federal Government are as follows: **None**

The information requirements will not generate costs to the Federal government as the information will not be submitted to the agency or routinely reviewed by the agency.

15. There are no program changes to this information collection.

16. There are no plans to publish the result of this collection of information.

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17. The Commission is not seeking approval not to display the expiration date for OMB approval of the information collection because the collection does not include a form number.
18. There are no exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

B. Collections of Information Employing Statistical Method

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