

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

SUPPORTING STATEMENT

A. Justification

1. Circumstances that make collection necessary:

Background:

In 1992, the Federal Communications Commission (FCC or Commission) adopted rules pursuant to the requirements of the Telephone Consumer Protection Act of 1991 (TCPA), Pub. Law 102-243, Dec. 20, 1991. The TCPA added Section 227 to the Communications Act of 1934, as amended, to restrict certain telemarketing practices and the use of telephone facsimile machines to transmit unsolicited advertisements.¹

The Commission's rules prohibit the use of any telephone facsimile machine, computer, or other device to send an "unsolicited advertisement" to a telephone facsimile machine.

An unsolicited advertisement is defined as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." 47 C.F.R. § 64.1200(a)(3)(i).

On July 3, 2003, the Commission released a *Report and Order* revising many of its facsimile advertising rules under the TCPA:² In the *2003 TCPA Order*, the Commission concluded that the recipient's express permission to send facsimile advertisements must be in writing and include the recipient's signature.

In a subsequent order, the Commission delayed until January 9, 2006, the effective date of:

- (a) 47 C.F.R. § 64.1200(a)(3)(i) of the Commission's rules, which required a person or entity sending a facsimile advertisement to obtain a prior signed, written statement as evidence of a facsimile recipient's permission to receive the advertisement; and
- (b) The rule establishing the duration of an Established Business Relationship (EBR) as applied to the sending of unsolicited facsimile advertisements.³

¹ See 47 U.S.C. § 227. See also *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, issued in CC Docket No. 92-90, FCC 92-443, adopted September 17, 1992, and released October 16, 1992 (*R&O*).

² See *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, FCC 03-153, adopted June 26, 2003 (*2003 TCPA Order*).

³ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, FCC 05-132.

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

Junk Fax Prevention Act of 2005:

On July 9, 2005, the President signed into law the Junk Fax Prevention Act of 2005, Public Law No. 109-21, 119 Stat. 359 (2005). In general, the Junk Fax Prevention Act:

- (a) Codifies an EBR exemption to the prohibition on sending unsolicited facsimile advertisements;
- (b) Provides a definition of an EBR to be used in the context of unsolicited facsimile advertisements;
- (c) Requires the sender of a facsimile advertisement to provide specified notice and contact information on the facsimile that allows recipients to “opt-out” of any future facsimile transmissions from the sender; and
- (d) Specifies the circumstances under which a request to “opt-out” complies with the Act.

Currently Approved Information Collection Requirements for Final Rules

On April 5, 2006, the Commission adopted a *Report and Order and Third Order on Reconsideration, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005, CG Docket Nos. 02-278 and 05-338, FCC 06-42*, which adopted final rules to implement the Junk Fax Prevention Act.⁴

The following is a synopsis of the Commission’s rules on unsolicited facsimile advertisements to implement the Junk Fax Prevention Act:

(a) Opt-out Notice and Do-Not-Fax Requests Recordkeeping:

- (1) The rules require senders of unsolicited facsimile advertisements to include a Notice on the first page of the facsimile that informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender.⁵
- (2) The Notice must be:
 - (a) clear and conspicuous (apparent to a reasonable consumer),
 - (b) separate from the advertising copy or other disclosures, and
 - (c) placed at either the top or bottom of the fax.
- (3) The Notice must include:
 - (a) a domestic contact telephone,

⁴ See *Rules and Regulations Implementing the Telephone Consumer Protection Act and Junk Fax Prevention Act of 2005, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42 (Report and Order)*.

⁵ See Junk Fax Prevention Act, Sec. 2(c).

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

- (b) a domestic facsimile machine number for the recipient to transmit such a request to the sender, and
- (c) a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement.

The cost-free mechanism must include one of the following:

- (a) a toll-free telephone number;
- (b) a toll-free facsimile number;
- (c) a website address; or
- (d) email address.

A local telephone number may be considered a cost-free mechanism so long as the advertisements are sent to local customers for whom a call to that number would not result in long distance or other separate charges.

- (4) The telephone and facsimile numbers and cost-free mechanism must permit an individual or business to make such a request at any time on any day of the week.
- (5) Recipients of fax advertisements must use one of the opt-out methods identified on the sender's facsimile so as not to impair an entity's ability to account for all requests and process them in a timely manner.
- (6) Senders must comply with an opt-out request within the shortest reasonable time of such request, not to exceed 30 days from the date such a request is made.

(b) Established Business Relationship (EBR) Recordkeeping:

- (1) In addition, the Junk Fax Prevention Act provides that the sender, *e.g.*, a person, business, or a nonprofit/institution, is prohibited from faxing an unsolicited advertisement to a facsimile machine unless the sender has an "established business relationship" with the recipient.
- (2) The Commission amended its rules to comply with the Junk Fax Prevention Act regarding the express recognition of an EBR exemption.
- (3) The Commission did not limit the duration of the EBR for fax advertising.
- (4) There is no ongoing reporting requirement associated with these rules.
 - (a) If, however, a complaint is filed involving the existence of an EBR, the facsimile sender bears the burden of proof as to the validity of an EBR, or the possibility that it was formed prior to July 9, 2005.

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

(b) The rules do not require that any specific records be kept by fax senders. Instead, they may use records kept in the usual course of business showing an EBR, such as purchase agreements, sales slips, applications, and inquiry records.

(c) Facsimile Number Recordkeeping:

- (1) The Junk Fax Prevention Act provides that an EBR alone does not entitle a sender to fax an advertisement to an individual or business. The fax number must also be provided “voluntarily” by the recipient.
- (2) The Commission’s rules provide that if a sender relies on an EBR for permission to fax an advertisement, the sender must have obtained the number of the telephone facsimile machine through the voluntary communication of such number, within the context of such EBR or through a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number.
- (3) It is permissible for the sender to obtain the number directly from the recipient (*e.g.*, through the recipient’s letterhead, business cards, application, membership renewal form).
- (4) It is permissible for the sender to obtain the number from the recipient’s *own* directory, advertisement, or internet site, unless the recipient has noted on such materials that it does not accept unsolicited advertisements at the facsimile number in question.
- (5) On the other hand, if the sender obtains the number from sources of information compiled by third parties—*e.g.*, membership directories, internet databases—the sender must take reasonable steps to verify that the recipient consented to have the number listed, such as calling or emailing the recipient.
- (6) If a valid EBR existed prior to July 9, 2005, there is a presumption that the sender had the facsimile number prior to that date as well.
- (7) There is no ongoing reporting requirement associated with these rules. If, however, a complaint is filed involving how the facsimile number was obtained, the sender bears the burden of proof that the number was voluntarily provided by the recipient.

(d) Express Invitation or Permission Recordkeeping:

- (1) In the absence of an EBR, the sender must obtain the prior express invitation or permission from the consumer before sending the facsimile advertisement.
- (2) When a consumer has made an opt-out request of the sender, the sender must demonstrate that the consumer subsequently gave his express permission to receive faxes.
- (3) Such express invitation or permission may be provided orally or in writing, including electronic methods.

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

- (4) Again, while there is no ongoing recordkeeping or reporting requirement associated with this proposed rule, if a complaint is filed, the facsimile sender must be prepared to provide clear and convincing evidence of the existence of such permission.

The Commission is requesting OMB approval for a three year extension of this information collection. The authorizing statutes for this information collection are: Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991); Junk Fax Prevention Act, Pub. L. No. 109-21, 119 Stat. 359 (2005).

2. The information collections primarily apply to commercial advertisers. However, the unsolicited facsimile advertising rules apply to all entities—including tax-exempt nonprofit organizations—that send “unsolicited (facsimile) advertisements.”

The data generated by the information collections will be used:

- (a) by facsimile advertisers to comply with the rules (when they must remove such numbers from their databases); and
- (b) by the Commission to determine facsimile advertisers’ compliance with the TCPA and Junk Fax Prevention Act.

The information is necessary for both purposes. This information will not be disclosed to third parties. Among other things, the data will show:

- (a) which companies are “scrubbing”⁶ their individual databases of facsimile numbers associated with individuals and businesses that have “opted-out” of future facsimile messages, and thus,
- (b) which companies are not in compliance with the rules.

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

- (a) As required by OMB Memorandum M-03-22 (September 26, 2003), the FCC completed a Privacy Impact Assessment (PIA)⁷ on June 28, 2007, that gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the PII covered by these information collection requirements. The PIA may be viewed at http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

- (b) Furthermore, as required by the Privacy Act, 5 U.S.C. § 552a, the FCC also published a system of records notice (SORN), FCC/CGB-1, “Informal Complaints, Inquiries, and Requests for Dispute Assistance”, in the *Federal Register* on August 15, 2014 (79 FR 48152), which became effective on September 24, 2014.

Note: The complaint form used by consumers to file junk fax complaints is addressed in a separate information collection, OMB control number 3060-0874. However, because consumers

⁶ “Scrubbing” refers to comparing a company’s fax list to a do-not-fax list and eliminating from the fax list the facsimile numbers of consumers who have requested that no future fax messages be sent.

⁷ The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

occasionally submit complaints to the Commission using other means (*e.g.*, emails, faxes to staff), we provide a description of the PIA here.

3. The Commission contemplates that most respondents, *e.g.*, businesses and non-profits/institutions that send facsimile documents will maintain their records electronically.

(a) Many advertisers and sellers will electronically scrub numbers from their fax databases;

(b) Other advertisers that maintain smaller fax lists will simply remove numbers manually from such lists.

4. The final rules implementing the Junk Fax Prevention Act are set forth in the *Report and Order* (FCC 06-42) and were clarified in the *Order on Reconsideration* (FCC 08-239). The information collection requirements are not duplicative of any existing federal regulatory obligation.

5. The Commission recognizes that the annual burden that rests on small entities that engage in facsimile advertising has decreased as entities have become more accustomed to and compliant with the Commission's rules over the past three years. In addition, the Commission believes this collection of information does not contain any new or modified information collection burden concerns for small businesses.

The Commission will continue to consider ways to minimize the impact on small businesses.

6. Without these information collection requirements, the privacy interests of individual and business consumers who do not want to receive advertisements on their facsimile machines by allowing them to opt-out of messages from particular senders will not be protected.

The Junk Fax Prevention Act: (1) codifies an EBR exemption to the prohibition on sending unsolicited facsimile advertisements; and (2) requires the sender of a facsimile advertisement to provide specified notice and contact information on the facsimile that allows recipients to "opt-out" of any future facsimile transmissions from the sender. The Commission's rules are consistent with these statutory provisions. In addition, the rules benefit entities that must send advertisements to their established customers in the routine course of business.

7. The information collection is not conducted in any manner that is inconsistent with the guidelines in 5 C.F.R. § 1320.5.
8. The Commission published a Notice in the *Federal Register* pursuant to 5 C.F.R. 1320.8(d) seeking comment from the public on the information collection requirements contained in this supporting statement. See 81 FR 7099, February 10, 2016. One comment was received.⁸ The ARTBA supports the Commission's Order on Reconsideration insofar as it clarifies the Junk Fax Prevention Act.⁹ The ARTBA favors further clarification and modernization of the Junk Fax Prevention Act as necessary to reduce unwanted fax communications and reduce the litigation associated therewith.¹⁰

9. The Commission does not anticipate providing any payment or gift to any respondents.

⁸ American Road & Transportation Builders Association, Comments (ARTBA).

⁹ *Id.* at 2.

¹⁰ *Id.*

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

10. Assurances of confidentiality are being provided to the respondents. The PIA¹¹ 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 of a sensitive nature for respondents.

12. The number of complaints the Commission receives on average annually regarding junk faxes has decreased from approximately 17,000 complaints to approximately 10,000 complaints. The adjustment to the burden hours associated with this collection is described in detail below.

Estimates of the hour burden for the collection of information for which we seek an extension are as follows:

(a) Hour burden for opt-out notice and do-not-fax compliance (6,049,655 responses)

(1) The number of annual hours of recordkeeping associated with the opt-out notice requirement will vary significantly, based on:

- (i) whether the recordkeeper is a small or large business,
- (ii) whether the records are kept on paper or electronically,
- (iii) the relative efficiency of the recordkeeping method selected; and
- (iv) the number of opt-out requests received by the recordkeeper.

(2) The U.S. Chamber of Commerce and Small Business Administration suggest that virtually every business in the United States could be subject to the facsimile advertising rules.

(3) The Commission estimates that approximately 5 million businesses will be required to comply with the opt-out notice requirement and to remove numbers from their fax lists when they receive opt-out requests.

(i) The Commission estimates that 3.4 million business, nonprofits, and consumers receive faxes [from the 5 million companies that send them] and that 10 percent of those 3.4 million will make do-not-fax-requests of those 5 million companies.

(ii) The Commission expects that the number of do-not-fax requests received on a daily basis decreases over time as consumers' fax numbers are removed from databases.

¹¹ The complaint form used by consumers to file junk fax complaints is addressed in a separate information collection, OMB control number 3060-0874. However, because consumers occasionally submit complaints to the Commission using other means (*e.g.*, emails, faxes to staff), we provide information on the PIA here. The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

- (4) Based on the following calculations, the Commission estimates that the requirement to place opt-out notices on unsolicited facsimile advertisements requires on average 6 minutes (.1 hours) per respondent. The Commission believes that respondents will include this requirement as a regular part of their operating procedures so that it will become a routine business practice.
- (5) In addition, the rules require 15 seconds (0.0042 hours) per do-not-fax request to “scrub” databases of certain fax numbers.
- (6) This process will be done “on occasion,” and the Commission assumes that most recordkeeping is kept in computer form, using advanced information technology to perform this routine requirement, which minimizes the burden to maintain and update this information.

(7) The Commission estimates that:

- (a) The approximately 5 million businesses and non-profits (respondents) have developed standardized, automatic procedures requiring approximately 6 minutes on average to include “opt-out” notices on their faxes sent to consumers (other businesses, non-profits, and individuals):

5,000,000 respondents x .1hours/respondent to include “opt-out”/“do not fax” notices on fax advertisements = **500,000 hours**

- (b) Approximately 99% of these 5 million businesses and non-profits (respondents) use “in-house” personnel whose pay is comparable to a federal employee at the GS 1/Step 5 grade level, to handle all aspects of this process, including creating these “opt-out” notices on fax advertisements and adding the notice addendum to the fax transmissions. The “in house” staff is paid an estimated wage of \$12.43/hour:

500,000 hours/“opt-out” notice requirements x 0.99/“in house” staff x \$12.43/hour **\$6,152,850**
“in house” costs

- (c) Approximately 10% of 3.4 million businesses, non-profits, and consumers will spend approximately 6 minutes (.1 hours) to send their “do not fax” requests to these businesses and non-profits for the 5 fax transmissions they receive on average each day:

340,000 consumers x .1hrs/“do-not-fax” request = 34,000 hours/“do not fax” requests

34,000 hours/ “do-not-fax” requests x 5 fax transmissions/day = **170,000 hours**

- (d) These 5 million businesses and non-profits (respondents) will then spend approximately 3 minutes (.05 hours) per month managing the receipt of these “do-not-fax” requests, which includes recordkeeping and scrubbing their fax transmission lists to comply with the rules.

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

5,000,000 respondents x .05 hours/recordkeeping/month = **250,000 hours/month**

250,000 hours x 12/year = **3,000,000 hours/year**

- (e) Approximately 99% of the 5 million respondents use “in house” staff whose pay is comparable to a federal employee at the GS 1/Step 5 grade level, to perform the recordkeeping and scrubbing of fax transmission lists. The “in house” staff is paid an estimated wage of \$12.43:

3,000,000 hrs x 0.99/“in house” staff x \$12.43/hour = **\$36,917,100 “in house” costs**

Annual Number of Responses: 6,049,655

Annual Burden Hours: 3,670,000 hours

Annual “In House” Costs: \$43,069,950

- (b) Requirement that companies against which complaints may be filed must provide records that are kept in the usual course of business evidencing the established business relationship with the recipient (4,250 responses):**

- (1) The Commission believes that of the 10,000 consumers’ fax complaints filed with the Commission on average annually, approximately 25% will involve the issue of an EBR requiring 30 minutes (.50 hours) to prepare a response for the Commission.

10,000 consumer complaints x 25% filing complaints/annum = **2,500 complaints**

2,500 businesses x .50 hours/EBR documentation request = **1,250 hours**

- (2) This process will be done only when a complaint is filed with the Commission, *e.g.*, “on occasion.”

- (3) The Commission assumes that 99% of the businesses and non-profits that fax (respondents) will use “in-house” personnel whose pay is comparable to a federal employee at the GS 1/Step 5 grade level, to retrieve and provide such records at a wage of \$12.43 per hour.

1,250 hrs/EBR documentation requests x 0.99/“in house” staff x \$12.43/hr = **\$15,382.13**

Annual Number of Responses: 2,500

Annual Burden Hours: 1,250 hours

Annual “In House” Cost: \$15,382.13

- (c) Requirement that companies against which complaints may be filed must provide records evidencing that the facsimile number was voluntarily provided by the recipient (1,000 responses):**

- (1) The Commission believes that of the 10,000 consumers’ fax complaints filed with the Commission, approximately 10% will involve the issue of how the fax number was obtained requiring 30 minutes (.50 hours) to prepare a submission to the Commission.

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

10,000 consumer complaints x 10% filing complaints/annum = **1,000 complaints**

1,000 businesses x .50 hours/EBR documentation request = **500 hours**

- (2) This process will be done only when a complaint is filed with the Commission, *e.g.*, “on occasion.”
- (3) The Commission assumes that 99% of the businesses and non-profits that fax (respondents) will use “in-house” personnel whose pay is comparable to a federal employee at the GS 1/Step 5 grade level, to retrieve and provide such records at a wage of \$12.43 per hour.

500 hrs/fax number documentation requests x 0.99/“in house” staff x \$12.43/hr =
\$6,152.85

Annual Number of Responses: 1,000
Annual Hourly Burdens: 500 hours
Annual In House” Cost: \$6,152.85

(d) Requirement that fax senders bear the burden of demonstrating that a fax recipient provided his or her express permission to receive a fax advertisement because there was no established business relationship (EBR) between the sender and recipient (1,000 responses)

- (1) The Commission believes approximately 10% of fax senders will need to provide records demonstrating that the recipient provided his/her express permission to receive fax advertisements.
- (2) The Commission estimates that 1,000 business and non-profit respondents, against whom complaints may be filed and who are then required to provide documentation attesting that they had the recipient’s express permission, will spend 30 minutes (.50 hours) to produce the express permission documentation, *etc.*:

1,000 business & non-profit respondents x .50 hr/documentation request = **500 hours**

- (3) This process will be done only when the Commission requires such documentation, *i.e.*, “on occasion.”
- (4) The Commission estimates that the businesses and non-profits (respondents) will use “in-house” personnel whose pay is comparable to a federal employee at the GS 1/Step 5 grade level, to retrieve records that provide evidence that consumers had given express permission to be sent faxes. These respondents will pay a wage of \$12.43 per hour for this research:

500 hours/express permission documentation requests x \$12.43/hour = **\$6,215.00**

Annual Number of Responses: 1,000
Annual Hourly Burdens: 500 hours
Annual “In House” Costs: \$6,215.00

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

Junk Fax Requirements	Number of Respondents	Number of Responses	Per Hour Burden	Total Hour Burden	99% of Respondents With "In House" Costs w/30% overhead
(a) Hour burden for "opt-out" notice and do-not-fax compliance:					
Businesses and non-profits sending faxes to other businesses, non-profits, and consumers	5,000,000		.1	500,000	\$6,152,850
Other businesses, non-profits, and consumers making "opt out"/ "do not fax" requests (10% of 3,400,000)	340,000		.1	170,000	N/A
Businesses and non-profits managing the receipt of the "do not fax" requests, e.g., recordkeeping and scrubbing their fax transmission lists	5,000,000		.05	3,000,000	\$36,917,100
TOTALS	5,340,000	6,049,655		3,670,000	\$43,069,950
(b) Requirement that companies against which complaints may be filed provide records kept in the usual course of business evidencing the established business relationship with the recipient:					
25% of 10,000 businesses and non-profits required to provide EBR documentation as proof when subject to consumer and other businesses and non-profit junk fax complaints	2,500	2,500	.50	1,250	\$15,382.13
TOTALS	2,500	2,500		1,250	\$15,382.13
(c) Requirement that companies against which complaints may be filed provide records that recipient voluntarily provided fax number (1,700 responses):					
10% of 10,000 businesses and non-profits required to provide documentation that fax number was voluntarily provided by recipient when subject to consumer and other businesses and non-profit junk fax complaints	1,000	1,000	.50	500	\$6,152.85
TOTALS	1,000	1,000		500	\$6,152.85
(d) Requirement that fax senders bear the burden of demonstrating that a fax recipient provided his or her express permission to receive a fax advertisement (850 responses):					
10% of 10,000 Businesses and non-profits that FCC requires to provide documentation of EBR and/or "expressed permission" from consumers and other businesses to establish their compliance with junk fax rules	1,000	1,000	.50	500	\$6,215.00
TOTALS	1,000	1,000		500	\$6,215.00
CUMULATIVE TOTALS	5,340,000	6,054,155		3,672,250	\$43,097,699.98

13. The Commission has estimated that there are approximately 5 million entities (5,000,000) that may be affected by these rules.

- (i) The potential cost to businesses of complying with the facsimile advertising rules may depend on whether they hire a third party to "scrub" their fax lists.
- (ii) The Commission anticipates that approximately 99% of the businesses and non-profits that fax (respondents) will perform these recordkeeping and scrubbing functions themselves given the prevalence of "turn key" information software technology for such business purposes, while approximately 1% of the respondents, e.g., largest companies, will hire outside consultants to perform these recordkeeping and scrubbing functions.

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

- (iii) Smaller businesses should be able to “scrub” their lists themselves if they have sufficient staff to dedicate to this task.
- (iv) The Commission also believes that such fax senders vary in size and in the number of faxes they send.
- (v) The Commission estimates that the opt-out notice and the requirement that fax senders honor a do-not-fax request within a reasonable period of time, not to exceed 30 days, will result in costs of approximately **\$441.54** per year to hire outside consultants to “scrub” from their fax lists those numbers for consumers who make do-not-fax requests. We estimate that 1% of those respondents that send faxes will hire outside consultants to complete this task.

Thus, the following represents the Commission’s estimate of the annual cost burden to respondents or recordkeepers resulting from all the foregoing collections of information.

(a) Total annualized capital/start-up costs: \$0

(b) Total annual costs (maintenance and operation), calculated as follows:

5,000,000 business and non-profit respondents x 0.01/hiring consultants = 50,000 businesses and non-profit respondents sending faxes

50,000 respondents x .05 hours/recordkeeping/month = **2,500 hours/month**

2,500 hours x 12/year = **30,000 hours/year**

On average, technology consultants earn \$30.92 per hour

30,000 hrs x \$30.92/hour = **\$927,600**

(c) Total annualized cost requested: **\$928,041.54 (rounded \$928,042)**

14. The FCC will process complaints and conduct enforcement efforts using Commission staff.

- (a) The Commission will use paraprofessional staff at the GS-12/5 (\$42.08/hour) level to process the complaint data sent to the Commission. The Commission estimates the time to process each complaint to be approximately 30 minutes (.50 hours); and
- (b) The Commission will use professional staff at the GS-14/5 (\$59.13/hour) level to conduct enforcement efforts. The Commission estimates the time associated investigating each complaint to be on average 3 hours.

The processing of both the consumer complaints and enforcement investigations are already part of the Commission’s duty; therefore, administration of the complaint processes for both FCC paraprofessional and professional employees assume no additional activity from Commission staff.

On average, the Commission receives 10,000 complaints annually, thus:

3060-1088

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42

10,000 complaints x .50 hours processing at \$42.08 hourly = \$ 210,400.00

10,000 complaints x 3 hours investigating at \$59.13 hourly = \$1,773,900.00

Total Cost to Federal Government: \$1,984,300.00

15. Because the number of complaints filed with the Commission claiming junk fax violations decreased, this information collection is revised slightly from the previous collection:

The Commission notes the following changes:

- (a) The total number of responses annually has decreased by **-3,150**, from 6,057,305 responses to 6,054,155 responses as a result of a revised estimate of the number of complaints filed annually with the Commission;
- (b) The total annual burden hours have decreased by **-1,575** hours, from 3,673,825 hours to 3,672,250 hours for the existing approved information collection requirements;
- (c) The total annual cost burden has decreased by **-9,294,958**, from \$10,223,000 to \$928,042.

There are no program changes to this collection.

16. There are no plans to publish the result of the collection of information.
- (a) Publishing recordkeeping data maintained by fax senders is not mandated by the TCPA or required by the Commission's rules.
 - (b) Upon receipt of a complaint by a fax recipient, it may be necessary for a fax sender to produce a fax number list or other information evidencing an EBR or express permission from the recipient.
17. The Commission does not intend to seek approval not to display the expiration date for OMB approval of this information.
18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods.

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