

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAY 24 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Policies and Rules)
Implementing the Telephone)
Disclosure and Dispute)

CC Docket No. 93-22
RM-7990

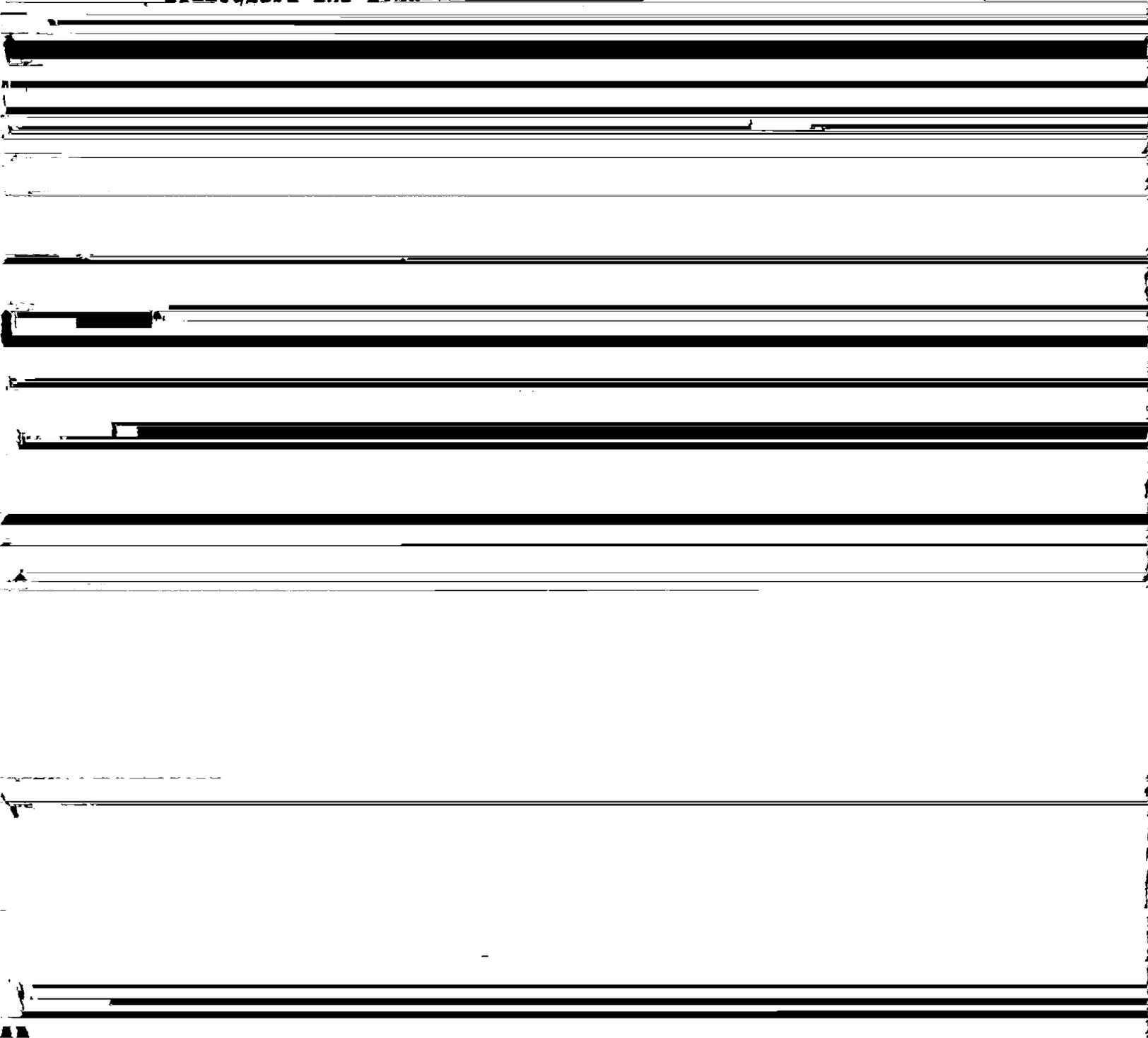


TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.....	ii
I. INTRODUCTION.....	1
II. PARTIES AGREE WITH SPRINT THAT A CLEAR DEFINITION OF "PRESUBSCRIPTION OR COMPARABLE ARRANGEMENT" IS NECESSARY.....	2
III. TARIFF PROVISIONS WHICH PERMIT SWIFT ENFORCEMENT SHOULD BE ENCOURAGED BY THE COMMISSION.....	7
IV. SELECTIVE BLOCKING IS NOT TECHNICALLY FEASIBLE AND SHOULD NOT BE REQUIRED.....	10
V. "RESTRICTED COSTS" SHOULD BE RECOVERED FROM PAY-PER-CALL SERVICE PROVIDERS.....	11
VI. EXPANDED BILL PAGE INFORMATION IS NOT NECESSARY...	12

SUMMARY

Sprint's Comments suggested a more precise definition of the phrase "presubscription or comparable arrangement." Several parties agreed with Sprint's suggestion that a pre-existing business relationship be defined as one which is established between the customer and the provider prior to the initiation of the call to the provider for which a per-call or per-time interval charge is assessed greater than, or in addition to the charge for the initiation of the call. Clearly, calling card customers who call an 800 number and use an authorization code to complete a call are not within the ambit of the pay-per-call rule, so long as they also receive, prior to making the call, all pertinent information, such as name, address and telephone number of the IP, and all rates and services to be provided. Sprint disagrees with suggestions that the Commission should allow presubscription to be established during the course of the call.

Sprint supports rules and policies placing responsibility upon carriers to implement reasonable tariff provisions to terminate subscribers who they "know or reasonably should know" are in violation of the TDDRA or its applicable implementing regulations. Some commentators attempted to inject enforcement issues beyond the scope of TDDRA into the Commission's rules, such as a request to include, as part of the TDDRA implementing rules, a requirement that carriers terminate service for "state law violations." Carriers' tariffs currently include provisions for termination of subscribers who use services for illegal purposes, and if such illegality is found by a court or agency,

the ruling can be presented to carriers for enforcement. Carriers should only terminate service where a violation of TDDRA or other rules is manifest or where a specific program has been adjudicated to be unlawful. Termination by a carrier is inappropriate where factual or legal issues remain to be decided. Such issues should be left to be resolved by the Courts or regulatory authorities, otherwise carriers will, in effect, become censors. Because termination is appropriate only where all significant factual and legal issues have already been resolved, carriers should be permitted to use their tariff provisions to terminate swiftly any violator of the TDDRA rules. In these circumstances

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
MAY 24 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Policies and Rules) CC Docket No. 93-22
Implementing the Telephone) RM-7990
Disclosure and Dispute)
Resolution Act)
_____)

REPLY COMMENTS OF SPRINT

Sprint Corporation ("Sprint"), on behalf of Sprint Communications Company L.P. and the United and Central Telephone Companies,¹ hereby submits its Reply Comments in the above-captioned proceeding.

I. INTRODUCTION

Sprint filed initial Comments in this matter on April 19, 1993. In its Comments, Sprint advocated a more precise definition of "presubscription or comparable arrangement," encouraged the Commission to allow carriers to use established tariff

¹Carolina Telephone & Telegraph Co., United Telephone - Southeast, Inc., United Telephone Company of the Carolinas, United Telephone Company of South Central Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of Kansas, United Telephone Company of Minnesota, United Telephone Company of Missouri, United Telephone Company of Texas, Inc., United Telephone Company of the West, United Telephone Company of Florida, The United Telephone Company of Pennsylvania, United Telephone Company of New Jersey, Inc., United Telephone Company of the Northwest, United Telephone Company of Ohio, United Telephone Company of Indiana, Inc., Central Telephone Company, Central Telephone Company of Florida, Central Telephone Company of Illinois, Central Telephone Company of Virginia, and Central Telephone Company of Texas.

termination provisions, and agreed that, with the exception of interstate intraLATA calls (which should be offered through the 976 code), all interstate pay-per-call services should be offered through the 900 service access code. Sprint also opposed assignment of different codes for different "categories" of pay-per-call services.

If violations of the pay-per-call rules occur, the service offerings of violators should be swiftly terminated. However, Sprint explained that it will be difficult for carriers to know

one which is established between the customer and the provider prior to the initiation of a call to the provider for which a per-call or per-time interval charge is assessed greater than, or in addition to, the charge for the transmission of the call. Sprint also specified that prior to the initiation of such call, the provider must identify its name and address, must furnish a telephone number which the customer may use to obtain additional information or register a complaint, must inform the customer of the rates for service, and must promise to notify the customer of future rate changes. To eliminate any possible doubt on this point, Sprint urged that no action taken by the consumer during the course of the call should be construed as creating a presubscription or comparable arrangement.²

Several parties agreed that presubscription arrangements should be made by subscribers prior to the initiation of a call,

²Sprint proposed the following definition of "presubscription or comparable arrangement" both in its Comments and in its FTC Comments:

Presubscription or comparable arrangement means a preexisting business relationship which is established between the customer and the provider prior to the initiation of a call to the provider for which a per-call or per-time-interval charge is assessed greater than, or in addition to, the charge for the transmission of the call. Prior to the initiation of such call, the provider must identify its name and address, must furnish a telephone number which the customer may use to obtain additional information or to register a complaint, must inform the customer of the rates for service, and must promise to notify the customer of future rate changes. No action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating a presubscription or comparable arrangement.

and that such arrangements should provide callers with complete information about prices, terms and conditions of a program (see, e.g. Comments of National Association for Information Services ("NAIS") at 3-5, MCI at 1-2, AT&T at 3). Significantly, NAIS, a trade organization representing "a wide range of U.S. and international companies engaged in the interactive telemedia industry" (see NAIS Comments at 1--such companies also are called "information providers" or "IPs") agreed that presubscription arrangements should encompass only those agreements made prior to the initiation of a call. According to NAIS, the relevant inquiry should be whether the information provider can show that consumers were informed of, and agreed to, all material terms and conditions associated with a presubscribed service at the time of presubscription (NAIS Comments at 3-4).

Clearly, "calling card" customers who receive a card and an authorization code prior to making a call are not within the ambit of the pay-per-call rules so long as they also receive, prior to making a call, all pertinent information, such as the name, address and telephone number of the IP and all rates and services to be provided.³

³AT&T encouraged the the Commission to "clarify" its proposed rules to "expressly state that it does not apply to the 800 numbers established by interstate carriers to provide operator (e.g. calling card) services" because, in AT&T's view, "such calls do not involve pay-per-call programs, but instead are part of the provision of services to subscribers at tariffed rates" (AT&T Comments at 8-9, fn. 11). Sprint agrees that such clarification would be useful.

However, the Commission should make clear that the "calling card" agreement cannot be reached during the course of a call to access an information service. For example, the Comments of Association of Information Providers of New York, Info Access, Inc. and American Telnet ("American Telnet Comments") argue that "if a caller has a pre-existing agreement to be billed for 800 calls, even if that agreement was made during a pay-per-call conversation prior to the effective date of the law, such agreements should be honored" (at 6).

Sprint disagrees with the suggestion that the Commission should permit "presubscription" to be established during the course of a pay-per-call interaction. A presubscription arrangement must be established in advance to guard consumers against the sort of fraud and abuse the TDDRA was enacted to prevent. To permit "presubscription" during the call itself would create the

associated with the caller's ANI to establish the "calling card" account. The difficulty with this practice is that callers need not specifically supply or even be aware that such information has been obtained and used by the information provider as a part of the IP's efforts to "privately bill" such callers. This practice also resulted in some "calling cards" being issued to persons whose telephone was used without their knowledge to initiate calls. Many complaints have been received from consumers who have received such unsolicited "calling cards."

The Comments of Prodigy Service Company urged the Commission to "retain flexibility" to permit presubscription or other comparable arrangement by "on-line interaction in the course of a single call" (at 4). As a general matter, Sprint encourages the Commission to adopt rules which will require the presubscription arrangement to be established prior to, and not during, the course of the call. It may be that the facts and policy objectives for data services are different than for voice services. It may also be the case that Prodigy and other companies offering data services can design procedures to allow "casual use" of their networks in a way that effectively informs consumers and creates no potential for consumer abuse. Sprint is not aware of any specific instances of data services abuse comparable to the voice services experience.

The Commission may want to permit waiver requests for data services if a company's waiver request demonstrates how its procedures can be tailored to constitute a "comparable arrangement" to presubscription, based on the specific procedures proposed to be employed. At present, Prodigy has not provided

any specifics about how it would propose to establish a presubscribed account on a casual basis. It stated that it is "simply impossible at this time to predict all the forms these comparable arrangements might take" (Prodigy Comments at 4). Sprint agrees, but this uncertainty can be addressed through the waiver process on a case-by-case basis.

III. TARIFF PROVISIONS WHICH PERMIT SWIFT ENFORCEMENT SHOULD BE ENCOURAGED BY THE COMMISSION.

Sprint agrees with commentators who supported implementation of rules and policies that would place responsibility upon carriers, through their own reasonable tariff provisions, to terminate subscribers who they "know or reasonably should know" are in violation of TDDRA or applicable implementing regulations (see, e.g., Comments of AT&T at 4, Comments of MCI at 4 & 6). Certainly carriers should make every reasonable effort to comply with TDDRA by enforcing their tariff provisions, and act in accordance with their tariffs to terminate quickly non-compliant IPs.

However, as Sprint stated in its Comments, receipt of a complaint is the primary method of ascertaining violations, and it is important that the Commission recognize that carriers' enforcement efforts are dependent upon a clear "know or have reason to know" standard (see Sprint Comments at 7). Any other standard would be burdensome and fraught with legal risk both for the Commission and carriers. Without some reasonable basis to know that a violation is suspected, common carriers are placed in the untenable position of attempting to honor their common carrier obligations to carry traffic upon reasonable request on a

non-discriminatory basis (as Sections 201 and 202 of the Communications Act require), while also attempting to avoid imposition of penalties related to TDDRA enforcement issues.

Some commentors (see, e.g., Comments of the Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General ("State A.G. Comments"), and the Comments of Consumer Action) attempted to inject enforcement issues beyond the scope of TDDRA into the Commission's rules. For example, the State AG Comments request that "non-compliance with state laws, regulations and rules" be included in proposed Section 64.1502 as additional grounds for termination of a pay-per-call service (State A.G. Comments at 9). This suggestion is beyond the scope of TDDRA implementation and does not give carriers specific enough guidance about when termination of customers is required. Certainly nothing in the proposed rules prohibits state law enforcement officials (or any other party) from bringing alleged violations to a carrier's attention for investigation. Such an alert to carriers would be

an enforcement role -- such as terminating service for violators where such violation is apparent. Sprint agrees with the majority of the commenting parties that carriers are not empowered (nor should they be) to make judgments on legal or factual issues where such issues are unresolved. Such decisions must be made by the appropriate regulatory agencies and the courts.

Sprint also encourages the Commission to adopt rules which will require carriers to place in their tariffs requirements which will ensure swift termination of service to IPs who do not comply with both FTC and FCC TDDRA rules. Specifically mandated language for such tariffs is not necessary. There is no need for the Commission to prescribe particular language because the Commission has already adequately made clear what it expects of subject carriers.

IV. SELECTIVE BLOCKING IS NOT TECHNICALLY FEASIBLE AND SHOULD NOT BE REQUIRED.

The Commission sought comment on whether it is technically feasible for LECs to currently provide selective call blocking, which would provide subscribers the option of blocking access to pay-per-call services provided through selected NPA codes or office codes assigned for pay-per call services. Sprint's Comments opposed selective call blocking, as did almost all other commenting parties. There was widespread agreement that the technology to deploy selective call blocking is currently unavailable and, therefore, should not be required (see, e.g., GTE's Comments at 7-8, Comments of BellSouth Telecommunications at 4, Comments of Pacific Bell at 5, and Comments of Southwestern Bell Telephone Company at 3).

The Commission also sought comment on whether a dual federal/state tariffing procedure for blocking was workable. Some commentators argued that the matter should be left to state tariffs. (See, e.g., Comments of the New York State Department of Public Service at 2, Comments of Southern New England Telephone Company at 6, Comments of the South Carolina Telephone Coalition at 4-7.) However, given the inability of the LECs to distinguish between interstate and intrastate 900 calls -- an inability that no commenting party disputes -- Sprint still believes it would be more efficient to have one national rule governing blocking.

V. "RESTRICTED COSTS" SHOULD BE RECOVERED FROM PAY-PER-CALL SERVICE PROVIDERS.

In the NPRM, the Commission defined TDDRA compliance-related

providers is through a surcharge on 900 access that the IXCs can pass on to the pay-per-call service providers.

Sprint believes this method is superior to the BellSouth suggestion that such costs be recovered through billing and collection charges. (Comments of BellSouth Telecommunications, Inc. at 10, Consumer Action at p. 6; see, also, Comments of the Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General at 12-14.) While all pay-per-call services use 900 access, not all pay-per-call services use LEC-provided billing and collections services. Accordingly, the use of billing and collection charges as a recovery mechanism would not properly recover "restricted costs" from all pay-per-call providers.

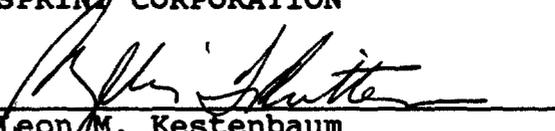
VI. EXPANDED BILL PAGE INFORMATION IS NOT NECESSARY.

Consumer Action argued that detailed information should be placed at the bottom of each 900 bill page explaining how a subscriber can dispute charges, obtain refunds and blocking, or reach various regulatory agencies (CA Comments at 6-7). As Sprint noted in its Comments, such additional requirements are not necessary and can only be achieved through onerous and costly modifications to existing billing systems (at 17). Sprint maintains that the TDDRA's requirement that call detail information on each pay-per-call transaction and that a toll free number to call for additional information be placed on the bill provide sufficient consumer protection. Thus, in the absence of any factual basis on the record substantiating the merits of expanded

bill page information, Sprint urges the Commission to reject requests for such expansion.

Respectfully submitted,

SPRINT CORPORATION



Leon M. Kestenbaum
Phyllis A. Whitten
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036
(202) 857-1030

Phyllis A. Whitten

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Comments" of Sprint Corporation were sent via first-class mail, postage-prepaid, on this the 4th day of May, 1993, to the below-listed parties:

William W. Burrington
Executive Director and General
Counsel
The National Association for
Information Services
Suite 600
1250 Connecticut Ave., N.W.
Washington, D.C. 20036-2603

Peter Arth, Jr.
Edward W. O'Neill
Timothy E. Treacy
Attorneys for the People of the
State of California and the
Public Utilities Commission of
the State of California
505 Van Ness Avenue
San Francisco, CA 94102

Francine J. Berry
R. Steven Davis
Peter H. Jacoby
Attorneys for American Telephone
and Telegraph Company
295 North Maple Avenue
Room 3244J1
Basking Ridge, NJ 07920

John W. Hunter
McNair & Sanford, P.A.
1155 Fifteenth Street, N.W.
Washington, D.C. 20005
Attorney for South Carolina
Telephone Coalition

William B. Barfield
Richard M. Sbaratta
Helen A. Shockey
BellSouth Telecommunications, Inc.
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, GA 30367-6000

Edwin N. Lavergne
Rodney L. Joyce
Jay S. Newman
Ginsburg, Feldman & Bress Chartered
Suite 800
1250 Connecticut Ave., N.W.
Washington, D.C. 20036-2603

Joel R. Dichter
Jane B. Jacobs
Seham, Klein & Zelman
485 Madison Avenue
New York, NY 10022
Attorneys for Association of
Information Providers of New
York, Info Access, Inc. and
American Telnet, Inc.

Ken McEldowney
Executive Director
Consumer Action
116 New Montgomery Street
Suite 233
San Francisco, CA 94105

Martin T. McCue
Anna Lim
United States Telephone Association
900 19th Street, N.W.
Suite 800
Washington, D.C. 20006-2105

National Association of Consumer
Agency Administrators
1010 Vermont Avenue, N.W.
Suite 514
Washington, D.C. 20005

Steven J. Metalitz
Angela Burnett

Robert J. Butler
Wiley, Rein & Fielding
1776 W. Street, N.W.

Michael F. Easley
Attorney General
The State of North Carolina
P.O. Box 629
Raleigh, NC 27602

Charles W. Burson
Attorney General
State of Tennessee
450 James Robertson Parkway
Nashville, TN 37243-0485

James E. Taylor
Richard C. Hartgrove
John Paul Walters, Jr.
Southwestern Bell Telephone
Company
One Bell Center, Room 3520
St. Louis, MO 63101

Rochelle D. Jones
Director-Regulatory
The Southern New England
Telephone Company
227 Church Street
New Haven, CT 06510

John F. Sturm
Senior Vice President
Government, Legal and Public
Policy
Newspaper Association of America
529 14th Street, N.W.
Suite 440
Washington, D.C. 20045-1402

William J. Cowan
General Counsel
New York State Department of
Public Service
Three Empire State Plaza
Albany, NY 12223

Albert H. Kramer
Robert F. Aldrich
Douglas E. Rosenfelt
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Penthouse Suite
Washington, D.C. 20005-3919
Attorneys for the American
Public Communications Council

Jeffrey L. Amestoy
Attorney General
State of Vermont
Pavilion Office Building
Montpelier, VT 05602

Robert A. "Bob" Butterworth
Attorney General
State of Florida
Room 1601, The Capitol
Tallahassee, FL 32399-1050

William D. Baskett III
John K. Rose
Counsel for Cincinnati Bell
Telephone Company
Frost & Jacobs
2500 PNC Center
201 E. Fifth Street
Cincinnati, OH 45202

John M. Goodman
Edward D. Young, III
Bell Atlantic Telephone Companies
1710 H Street, N.W.
Washington, D.C. 20006

Paul Rodgers
Charles D. Gray
James Bradford Ramsay
National Association of Regulatory
Utility Commissioners
1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

Michael S. Pabian
Attorney for the Ameritech
Operating Companies
Room 4H76
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Lee A. Marc
Summit Telecommunications Corp.
1640 South Sepulveda Blvd.
Suite 207
Los Angeles, CA 90025

Glenn B. Manishin
Charon J. Harris
Blumenfeld & Cohen
1615 M Street, N.W.
Suite 700
Washington, D.C. 20036
Attorneys for Amalgamated MegaCorp

Peter J. Brennan
Director of Development
Tele-Publishing, Inc.
126 Brookline Avenue
Boston, MA 02215

Walter Steimel, Jr.
Fish & Richardson
601 13th Street, N.W.
5th Floor North
Washington, D.C. 20005
Attorney for Pilgrim Telephone,
Inc.

International Transcription
Service
1919 M Street, N.W., #246
Washington, D.C. 20554



Ruth Goddard

May 4, 1993