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

OCT 11 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

CC Docket No. 93-22

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COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
TO FURTHER NOTICE OF PROPOSED RULEMAKING

The National Telephone Cooperative Association ("NTCA") submits these comments in response to the Further Notice of Proposed Rule Making ("Further Notice") released in this docket on August 31, 1994.

NTCA is a national association of approximately 500 small and rural local exchange carriers ("LECs") providing telecommunications services to interexchange carriers ("IXCs") and subscribers throughout rural America. Most NTCA member LECs provide billing and collection services for IXCs under contract and are affected by the proposed rules addressing the use of 800 numbers for the provision of pay-per-call services and common carrier obligations with respect to billing for those services.

DISCUSSION

In its Further Notice, the Commission tentatively concludes that it should amend three of its rules as follows: (1) Section 64.1504 of the rules would now state explicitly that Information Providers ("IPs") and carriers are prohibited from transferring callers of 800 numbers to any information service, not simply those defined as pay-per-call that are offered on 900 numbers.

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Further Notice ¶ 28. (2) The definition of a presubscription or comparable arrangement in Section 64.1501 (b) would be changed to require that such arrangements be established only with a legally competent individual and executed in writing, unless charges are authorized to a credit or charge card generally accepted for the purchase of consumer goods, entertainment, travel, and lodging.

Further Notice ¶ 29. (3) Section 64.1510 (b) would be amended to prohibit common carriers from billing subscribers for presubscribed information services without evidence of the written agreement. The amendment would also require carriers to address bills assessing presubscribed information services only to the individual who entered into the presubscription agreement. Carriers performing billing services for IPs would be required, without exception, to separate charges for presubscribed information service from charges for telecommunications services. Carriers' bills would also have to display for each information service charge the type of service, the IPs name and business telephone, the number actually called, the amount of the charge, the date and time of the call and in the case of time-sensitive calls, the duration of the call. Further Notice ¶ 29.

The Commission states that its intent in proposing the amendment of Section 64.1504 is to prevent the IPs from transferring callers of 800 numbers to any information service, and to protect subscribers as well as callers of 800 numbers. While this change is welcome, it still does not prevent the use of 800 numbers with pay-per-call services where the party

purchasing the service has a written presubscription agreement or uses a credit card to purchase service.

NTCA is concerned that further abuses of 800 access in connection with pay-per-call services may undermine public confidence in the integrity of the service and create a large demand for blocking 800 access. This result would be contrary to the public interest which places a high value on 800 access service. In view of these concerns, NTCA would prefer that the Commission outlaw IP use of 800 access outright but recognizes that there may be some benefits to the exceptions permitted by the proposed amendments. NTCA also understands that the Commission and the Federal Trade Commission ("FTC") share jurisdiction over this matter and this may limit the Commission's options. Nonetheless, the Commission should consider recommending that Congress provide it sufficient authority to correct abuses that cannot be remedied by regulatory changes alone.

The problem with the proposed change in Section 64.1504 as well as the changes proposed in Sections 64.1501 (b) and 1510 (b) is that the Commission is imposing the burden of compliance on LECs like NTCA's members who provide billing and collection services. The proposals are at the expense of LECs that will be obliged to incur additional costs in connection with billing and collection. The changes also place LECs in an enforcement role. LECs are relegated to an enforcement role on the basis of an incorrect assumption that abuses related to the use of 800

numbers will be cured by requiring carriers to engage in more detailed billing for information services. There is no proof that requiring more detailed billing will cure IP abuses. Nor is there evidence that the problems associated with abuses of 800 access are related to billing LECs' behavior. The problems are directly attributable to IP abuses that involve, among other things, the use of personal identification numbers ("PINs") as a way to instantly establish presubscription and escape the definition of pay-per-call services. LECs that act as billing agents have no intermediary role in these schemes. They should not be penalized for IP behavior that violates legitimately promulgated rules.¹

The Commission is now making it clear that PINs may not be used to establish instant presubscription and that written agreements are required unless credit cards are used. This is a welcome interpretation which will hopefully curb abuses related to PIN number authorizations. However, as stated above, the Commission is placing the burden of enforcement on carriers and this is not welcome. Instead of placing on carriers the burden of enforcing these provisions and curbing abuses, the Commission should seek the necessary congressional authority to place the burden of compliance on IPs as it should be. In addition, NTCA suggests that the Commission should coordinate its efforts with

¹ FTC rules already provide that pre-existing agreements "must be established before the call to the 800 number is placed" See COMPLYING WITH THE 900-NUMBER RULE, A BUSINESS GUIDE PRODUCED BY THE FEDERAL TRADE COMMISSION, (n.d.) explaining 16 C.F.R. Section 308.5(i).

the FTC so as to ensure that IPs assume the obligations and burdens of compliance.

Finally, the burdens of compliance should rest on the IXCs that provide interstate pay-per-call services to IPs rather than their LEC billing agents. For this reason, the Commission should confirm that proposed amendments related to billing detail requirements would fully allow LECs to modify their contractual billing arrangements with IXCs either to discontinue the billing of 800 calls used with pay-per-call services or to charge appropriately for the unique burdens associated with the new rules.

CONCLUSION

For the above mentioned reasons, NTCA recommends that the Commission (1) consider recommending legislation that would prohibit the use of 800 access with pay-per-call services; (2) in the interim, enact rules that place the burden of complying with restrictions on the use of 800 access on IPs and IXCs; and (3) affirmatively state that LECs providing billing and collection services may modify existing contracts with IXCs to discontinue the billing for pay-per-call services that utilize 800 access or charge appropriately for the unique burdens associated with complying with the proposed changes in billing.

Respectfully submitted,

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October 11, 1994

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Further Notice of Proposed Rulemaking of the National Telephone Cooperative Association in CC Docket 93-22 was served on this 11th day of October 1994, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:


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