HUBERT H. HUMPHREY III
ATTORNEY GENERAL

STATE OF MINNESOTA

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OFFICE OF THE ATTORNEY GENERAL

October 10, 1994

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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act
CC Docket No. 93-22

Dear Mr. Caton:

Enclosed for filing is the original plus nine copies of the Comments on Reconsideration of the Minnesota Office of Attorney General. Also enclosed is an Affidavit of Service.

Respectfully submitted,

Gary R Cunningham

GARY R. CUNNINGHAM
Assistant Attorney General
(612) 296-6504 (Voice)
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Enclosures
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STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Re: In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act
CC Docket No. 93-22

Betty L. Donicht, being first duly sworn, deposes and says that on the 10th day of October 1994, she served the attached Comments on Reconsideration of the Minnesota Office of Attorney General in the above-referenced proceeding by depositing in the Airbourne Express Box in the Bremer Tower, 82 East Seventh Place, at the City of St. Paul, postage prepaid, to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554.

Betty L. Donicht

Subscribed and sworn to before me
this 10 of Oct, 1994

Susan M. Oesterreich
Notary Public

SUSAN M. OESTERREICH
NOTARY PUBLIC-MINNESOTA
DAKOTA COUNTY
MY COMMISSION EXPIRES SEPTEMBER 1, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS ON RECONSIDERATIION of the MINNESOTA OFFICE OF ATTORNEY GENERAL

HUBERT H. HUMPHREY III
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State of Minnesota

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Dated: October 10, 1994

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BEFORE THE
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COMMENTS ON RECONSIDERATION
OF THE MINNESOTA OFFICE OF ATTORNEY GENERAL

INTRODUCTION

In its Order on Reconsideration and Further Notice of Proposed Rulemaking, the Federal Communications Commission (the Commission or FCC) revisited its rules promulgated pursuant to the Telephone Disclosure and Dispute Resolution Act (TDDRA) and announced limited rule modifications. The Minnesota Attorney General (MN-OAG) commends the Commission's continuing efforts to protect the rights of telephone subscribers and consumers of information services and joins the Commission's call to strengthen the regulatory framework for information services in light of the continuing abuses by some providers of these services. Congress has charged the Commission with a critical role in regulating the expanding market for information services provided by telephone. This charge will not be satisfied until sufficient safeguards are in place to protect consumers from the deceptive practices which continue to plague the information services industry.

The Commission has already taken substantial steps toward reducing deceptive practices in the information services industry. Since the adoption of the Commission's revised pay-per-call rules in 1993, Minnesota has seen a significant reduction in the number of complaints regarding 900 services. Unfortunately, we also have seen a corresponding increase in complaints involving other types of services, 800 services in particular, as IPs have migrated to formats considered less restrictive and, thus, more ripe for exploitation. As a result of this

experience, the MN-OAG supports the proposed rule modifications. The MN-OAG also recommends further modifications, including a prohibition on 800 billing appearing on the telephone bill, to try to break the cycle of unauthorized information services charges.[1]

These Comments are comprised of four sections. In Section I, the experience of Minnesota consumers with information services is addressed, concentrating on the post-TDDRA problems. Section II analyzes the abuses discussed in the first section under the TDDRA and existing rules in an effort to show where additional change might be helpful and to identify current violations. Part III analyzes the proposed rule modifications announced in the instant FCC Order. Finally, Part IV presents the Minnesota Office of Attorney General's recommendation.

I. MINNESOTA CONSUMER EXPERIENCE IN THE POST-TDDRA ENVIRONMENT.

A. A Brief History Of Pay-Per-Call Billing Fraud.

Telephone subscribers have been victims of fraudulent pay-per-call billing and collection practices by information service providers and their billing agents since the inception of pay-per- call services in the mid-1980s. Since that time, thousands of telephone subscribers have been billed for unauthorized information service charges on their telephone bills. Further, telephone subscribers have been misinformed and defrauded by information service providers and their billing agents as to their legal responsibility to pay for unauthorized information service charges. Complaints of fraudulent and deceptive billing and collections practices by IPs and their billing agents are well documented by the states, the FCC, and the FTC over the past several years. The Minnesota Attorney General's Office alone has received over a thousand complaints from telephone subscribers about unauthorized information service charges appearing on phone bills as 900, 800, and international calls.

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1. The MN-OAG also expressly joins in the comments provided by the Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General.

The history of the information services industry is characterized by a recurring pattern of abuse of unsuspecting consumers, a governmental response to the specific problem, followed by renewed abuse of the unsuspecting consumer using a new or different technology. The earliest abuses and consumer complaints were generated by local 976 number pay-per-call services. Access to 976-prefix calls was available on all customers telephone lines, with or without the telephone subscribers consent or authorization. Telephone subscribers with unauthorized 976 numbers were routinely told that their local service would be disconnected for failure to pay the information service charges. The regulatory response was to order that local 976 blocking be made available and to prohibit the disconnection of local service for failure to pay.

This same scenario was repeated when 900 numbers were introduced, only the problem was even more confusing to the subscriber. As a result of 900 number access, telephone subscribers began receiving bills from companies with which they had no previous contact. Regardless of the subscribers' presubscribed carrier, 900 number access meant access to any and all carriers regardless of the subscribers' intent. Once more, the regulatory response was to make blocking available and to prohibit disconnection. In Minnesota, the Attorney General's Office accomplished these protections in 1989 by means of settlements with all of the local telephone companies in the state. In the Matter of a Petition from the Residential Utilities Division of the Office of the Attorney General for an Investigation into the Restriction of Access to Information Services, Docket No. P-999/CI-89-477. In addition, the Telephone Disclosure and Dispute Resolution Act (TDDRA) and the rules promulgated by the FCC and the FTC required 900 blocking and other important pro-consumer limitations on 900 and other information services.

B. Deceptive Pay-Per-Call Billing Practices Through 800 Numbers.

At about the time legislators and regulators were instituting legal and regulatory restrictions on the uses of 900 numbers for billing pay-per-call services, the information

services industry migrated to 800 number prefixes once more and complaints flooded regulators and legal agencies. The use of 800 numbers for billing information services was especially pernicious since 800 numbers are widely understood to be toll-free.

Information providers have used various methodologies to fraudulently bill telephone subscribers for unauthorized pay-per-call services using 800 numbers and automatic number identification (ANI). These methodologies include "collect call backs," the "800 Calling Card Program,"[2] and "800 Dial Around Service." The underlying fraud of using ANI to bill telephone subscribers for unauthorized pay-per-call services is the same regardless of the method used. It does not insure that the individual who accessed and utilized the information is the telephone subscriber or that that individual was authorized by the telephone subscriber to charge information services to that telephone number.

C. Summary Of Information Services Consumer Complaints In Minnesota Post TDDRA.

Consumers who have contacted the Minnesota Attorney General's Office express confusion and outrage about their vulnerability to unrestricted -- and seemingly unrestrictable -- access to information services. Many of the complainants already had a 900 number block and believed they were protected from receiving charges for unauthorized information service calls. They are frustrated and angry to discover that they are still vulnerable to unauthorized charges and that the process to dispute the information charges is complex, confusing, and requires more time, persistence and assertiveness than they possess. As a result, consumer advocates in several state and private agencies must devote staff time to receiving these complaints and forwarding them to the Attorney General's Office for assistance and investigation.

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2. There are several variations of the "calling card" 800 method. For example, postcards bearing pre-identified PIN were sent blindly to prospective customers. One call to the target number activated the credit card. In the most common scenario, the "credit card" caller simply chose a PIN and ANI provides the billing number.

The magnitude of this problem is unprecedented in consumer protection in the telephone area. In all probability, the many hundreds of telephone subscribers who have complained to our office represent only a small percentage of those affected. Because of some billing methods, many will never know that unauthorized charges appeared on their bills. Others believed themselves obligated because the charges appear on their telephone bills.

1. Consumers remain vulnerable to unauthorized charges.

The source of consumer confusion and outrage is self-evident: 800 numbers, widely understood to be toll-free, are being used to mislead minors and other unwitting consumers into believing that calls to information services are free of charge. Hundreds of sex lines and other similar services which had been associated with 900 numbers migrated to 800 numbers as soon as blocks on 900 number access became available. Now, consumers who want to protect themselves have few options. There are no blocks universally available on 800 numbers and it might not represent sound public policy to implement blocking for all 800 numbers.

The complaints reviewed by our office illustrate that virtually anyone can be vulnerable to the problems that result from unrestricted access to information services: a concerned father is unable to protect his adolescent son from a growing and frightening addiction to porn lines; a school official spends valuable hours of her workday disputing unauthorized calls made on the school's phones to sex or psychic lines; a homeowner is billed hundreds of dollars for calls to porn lines placed by a member of the work crew that remodeled the kitchen; a small business is notified that its credit rating was damaged when unauthorized charges that had been disputed were sent to a collection agency.

2. Misleading bills cause consumer confusion.

Information charges billed through 800 numbers on telephone bills are not clearly distinguishable from legitimate telephone charges on telephone bills. For example, the so called "800 calling card" calls described above are deliberately billed in such a manner so as to

look like traditional telephone charges. Page 2 of Exhibit 1 is an example bill from American Telnet, and illustrates how information services accessed through the 800 ANI-PIN methodology are mis-characterized as telephone charges. As the bill demonstrates, these 800 information service charges were billed using a traditional telephone billing format which makes it appear as though the charges were for long distance calling card calls.

Hundreds of consumers have called our office indicating that they had received similar bills and not a single caller indicated that they had a calling card with the IP listed on the bill. In fact, many callers informed us that they requested proof or verification from the IP that a legitimate calling card existed, and that no IP was ever able to produce such information. When the billing agencies or collection agencies were contacted, they were unable to produce agreements, let alone agreements signed by the telephone subscriber. For example, see Exhibit 1, page 5.

3. Dispute procedures are confusing and complex.

Most telephone subscribers who call our office end up disputing unauthorized information service charges with the local telephone company and the IP. These consumers invariably report that the dispute process is difficult and complex, and that it can take months to get disputed 800 charges removed from local telephone bills.[3]

Local exchange companies bill for information service calls, but when contacted for assistance, inform their customers that they are unable to remove the charges from the local phone bill. The customer is told to call the "customer inquiry" 800 number of the information service provider on the bill to dispute the calls. Frequently, no one answers on these lines or a lengthy hold pattern ensues. Once in touch with a representative, customers are often told wrongfully that their telephone service may be interrupted for failure to pay charges and are likely to be subjected to a lecture about the damage that will occur to their credit records if

---

3. Exhibit 1 illustrates the process an owner of a chain of convenience stores went through to dispute American Telnet calling card charges.

they fail to pay the bill in full.[4] Consumers frequently report that the representatives for the information services or, more likely, the service bureau or carrier, are argumentative and rude and fail to provide basic information about bill dispute procedures.

In many cases, even when a telephone consumer who has been victimized by unauthorized 800 number billings follows the recommended procedures for disputing the charges, the difficulty and confusion persist or even increased. For example, telephone customers who, on the advice of the Minnesota Attorney General's Office, have disputed 800 charges with both the local telephone company and the IP both verbally and in writing still may receive one or more disconnection notices. In addition, complaints show that payments customers have made to their local telephone companies toward the non-disputed portion of their bills are often misallocated and prorated to apply to the total bill -- including the disputed portion. The payment allocation problem may result in repeated disconnection notices over several billing periods because the contractual agreements the local company may have with the IP's requires a 30-day waiting period before the charges may be removed. Thus, even though FCC Rules, § 64.1507, prohibit disconnection of local and long distance services for non-payment of information service charges, the local exchange carriers (LECs) failure to properly allocate payments while the 800 charges are in dispute can indeed result in disconnection of local and long distance telephone services.

Even telephone-savvy consumers are confused by the Disconnection Notices used in these situations. For example, a particularly misleading LEC disconnection notice, attached hereto as Exhibit 3, states in the opening paragraph that the total amount due is $3,284.21 and that payment in full must be mailed immediately to avoid temporary disconnection of local and/or long distance service. The last paragraph of the notice states: "Those services subject to temporary disconnection are shown in BOLD PRINT." The amount owing for local

---

4. Exhibit 2 is an example of correspondence from American Telnet Billing Services in which American Telnet asserts that the telephone subscriber is responsible for all information services charges accessed through their telephone via 1-800 numbers.

service, however, is not listed in bold, yet it is included within the $3,284.21 that the opening paragraph says must be paid in full to avoid disconnection. Most consumers receiving this notice believe that if they do not remit the entire amount owing, their telephone service will be disconnected. Our experienced investigative staff also could not determine the actual amount required to avoid disconnection based on the information in the notice. In addition, the notices reviewed by our office contain no information on payment allocation options.

4. Consumers are angry about the nature of information services.

The vast majority of "information services" offered over 800 numbers to callers are of a sexually explicit nature. Most parents who call our office are appalled by the sexually graphic content of these calls. Many angry parents report that even recorded messages preceding the billing portion of 800 calls contain sexually suggestive language. Parents have also complained about receiving unsolicited pornographic materials in the mail as a result of calls being placed to 800 numbers from their telephone. The father of a 12 year old boy who called an 800 phone sex number has received several pornographic mailings from an entity called Fone Secrets.

Angry parents also report that age restrictions for access to information services are ignored by unscrupulous IPs. Although some preambles state that the caller must be at least 18 years old to access 800 information service programs, age restrictions are generally not observed and the age of the caller is never verified. In some cases, callers are simply asked their age by IP operators. In other cases, callers are instructed to enter their birthdate using the touchtone phone. Underage callers obtain easy access to sexually explicit information service programs.

5. What the future holds.

If anything, information providers are becoming more bold with respect to abuse of the telephone subscribers. The MN-OAG has recently received copies of advertisements which were faxed to local businesses, attached hereto as Exhibit 4. These exhibits clearly show that

some information providers are expressly encouraging unauthorized calls and the resulting charges to vulnerable telephone subscribers through the use of 800 numbers. These ads suggest that the next large influx of complaints may be from businesses targeted specifically. While some businesses may be able to block 800 numbers with premise equipment, many businesses such as hotels are required to provide 800 access.

Minnesota telephone subscribers have also suffered from a rash of unauthorized information service calls accessed through international numbers. Currently, the only remedy for concerned subscribers is a total block of international calling for all carriers. The MN-OAG recognizes that the international problem is beyond the scope of the Commission's proposed rule modifications in this docket.

II. ANALYSIS OF CUSTOMER COMPLAINTS.

The practices by common carriers, service bureaus and information providers described above violate numerous TDDRA provisions and FCC or FTC rules promulgated pursuant to that Act. More seriously, however, the use of the 800-ANI-PIN methodology enabled the practitioners to consciously evade all of the other statutes and rules designed to protect the telephone subscriber in similar circumstances.

A. The ANI-PIN Method Is Not A Legitimate Presubscription Method In Violation of § 64.1504(c).

In § 101 of the TDDRA, 47 U.S.C. 228(c)6(C), the Congress directed common carriers to prohibit the use of 800 numbers for information services unless a preexisting agreement is in place or a credit card is used. § 228(c)6(C) provides in part:

> (6) BILLING for 800 CALLS. A common carrier shall prohibit by tariff or contract the use of any 800 telephone number or other telephone number advertised or widely understood to be toll free, in a manner that would result in . . .
>
> (C) the calling party being charged for information conveyed during the call unless the calling party has a preexisting agreement to be charged for the information or discloses a credit or charge card number during the call; or . . .

In order to implement this section, the FCC promulgated § 64.1504(c) which tracks the requirements of 47 U.S.C. 228(c)6(C).

The notion of a preexisting agreement between the telephone subscriber and the information provider is also at the heart of the TDDRA's definition of "pay-per-call". Pursuant to 47 U.S.C. 228(i)(2) the statutory term "Pay-per-call service" does not include:

> [D]irectory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

This statutory provision was implemented by the FCC in § 64.1501(b). This rule further defines "presubscription or comparable agreement" as follows:

> (1) Presubscription or comparable arrangement means a contractual agreement in which:
> (i) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;
> (ii) The service provider agrees to notify the consumer of any future rate changes;
> (iii) The consumer agrees to utilize the service on the terms and conditions disclosed by the service provider; and . . .

The ANI-PIN method utilized by some information providers in connection with services provided via an 800 number does not constitute a preexisting agreement or presubscription agreements as defined by 47 U.S.C. 228(c)6(C) or (i)(b). The essence of a preexisting agreement or presubscription agreement is that the person ultimately <u>billed</u> for the call is the person who entered into the agreement. Thus, 47 U.S.C. 228(i)(b) requires that "users are assessed charges only after entering into a presubscription agreement . . . ." In contrast, the ANI-PIN method allows the <u>caller</u> to perfect the agreement, not the subscriber against whom the charges will be assessed. Similarly, § 1501(b)1(iii) also requires an agreement on the part of the subscriber to utilize the service according to the terms and conditions disclosed by the IP. When the ANI-PIN method is utilized there is no <u>express</u> agreement by the <u>subscriber</u> to

the terms of the pre-subscription contract. The OAG notes that the FCC also determined that the ANI-PIN method does not result in a legitimate presubscription agreement. Order After Reconsideration at p.8, para.19..

Finally, the ANI-PIN method illegally permits a charge to be levied during the course of a call in absence of a presubscription agreement. Section 64.1502(b)(2) explicitly state that the use of a credit or charge card is the only permissible means of establishing a valid presubscription during the course of a call to an information service and that "no other action" can create such an agreement. The 800-ANI-PIN methodology cannot conceivably be considered the type of credit or charge transaction contemplated by this provision. The presubscription requirements are clearly intended to exclude methods of automatically subscribing callers without affirmative acts of consent by the person being billed.

The illegitimate use of the ANI-PIN method was well known to common carriers, both[5] providers of 800 numbers and local exchange companies providing billing for 800 number services. For example, AT&T's tariff policy with respect to the provision of 800, is enumerated in a gloss on a tariff issued March 9, 1994, attached hereto as Exhibit 5. In that policy statement, AT&T states:

> Over the past few months, we've seen growing problems with 800 fraud in which toll-free calls are turned into 900-like pay-per-calls.
>
> Using third-party billers, a caller's ANI is captured and used to establish a billing record; a PIN is generated on the spot and assigned to the caller for future use. Future calls, made from any phone, are charged to the original phone number. Problems arise because increasingly callers have no intention of paying for the calls, or they are unauthorized or unable to enter into contractual arrangements. It is nearly impossible to trace these perpetrators, leaving firms, institutions and households at risk with large and growing pay-per-call bills.
>
> . . . .
>
> AT&T's efforts aim to eliminate billing fraud from being perpetrated on unsuspecting consumers. Based on last year's FCC/FTC action, AT&T believes these practices to be highly illegal, and in violation of AT&T's tariffs.

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5. At this time, it is not yet clear how information providers began utilizing the ANI-PIN method in connection with 800 service. Further investigation is necessary to determine whether common carriers had any role in the widespread use of this technology by information providers.

Since AT&T was keenly aware of this "fraud" associated with PIN-ANI, there is no reason to believe that other providers of 800 numbers were not aware of the practice as well. In addition, as soon as the Minnesota Attorney General's Office was aware of the fraudulent use of the ANI-PIN method in order to circumvent requirements of the TDDRA, the Attorney General's Office notified LECs that the method did not meet the statutory and rule definitions of a subscription agreement. Despite this notice, billing for these services continued. We are unaware that LECs' billing for 800 numbers utilizing the ANI-PIN methodologies took any remedial steps to protect their customers from fraudulent charges.

The most serious aspect of the use of the ANI-PIN method is its wholesale evasion of statutes and rules designed to inform and protect the interest of telephone subscribers. Since the history of information services was characterized by the victimization of vulnerable and unsuspecting telephone subscribers, Congress and the FCC initiated protection for the subscriber by means of the TDDRA and regulations. The findings prefacing the TDDRA clearly reflect this concern. Section I(b) reads in part as follows:

> (4) The lack of nationally uniform regulatory guidelines has led to confusion for callers, subscribers, industry participants, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices that abuse the rights of consumers.
>
> (5) Some interstate pay-per-call businesses have engaged in practices which are misleading to the consumer, harmful to the public interest, or contrary to accepted standards of business practices and thus cause harm to the many reputable businesses that are serving the public.
>
> (7) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.

Driven by these concerns, Congress concluded that the methodologies for information services should be strictly limited. Thus, Congress and the FCC determined that pay-per-call services billed to the subscribers' phone bill should be accessed via a 900 number. 47 U.S.C. 228(b) and § 64.1506. Conforming to that limitation, Congress and the FCC established a scheme of disclosure requirements for pay-per-call services. However, since the ANI-PIN number

method utilized the 800 access rather than 900 access, pay-per-call rules simply did not apply. From the perspective of the subscriber, however, the ANI-PIN number produced an access method indistinguishable to the 900 number. Yet protections similar to those imposed on 900 numbers were absent. For example, while LECs are required to offer 900 blocking to customers, 800 number blocking is not available and may be contrary to sound public policy.

Similarly, many disclosure rules implementing the TDDRA requirements are limited to pay-per-call services. For example, § 201(a)(1) of the TDDRA provides:

> (a) In General.
>
> (1) ADVERTISING REGULATIONS. The Commission shall prescribe rules in accordance with this subsection to prohibit unfair and deceptive acts and practices in any advertisement for pay-per-call services. Such rules shall require that the person offering such pay-per-call services . . .

Since the ANI-PIN originated services were provided via an 800 number, such services are not definitionally pay-per-call services pursuant to § 47 U.S.C. 228(i)(b). As a result, most of the rules promulgated by the FTC and the FCC were ignored by information providers utilizing 800 numbers in conjunction with the ANI-PIN method. Unfortunately, the result was a repeat of the telephone subscribers' initial experience of unauthorized 900 number calls.

In many ways, however, the telephone subscribers' experience with unauthorized 800 calls was even more negative than the earlier 900-related problems. First, as described above, the services provided in the latest round of fraud were, in general, explicit sexual discourse. Complaints to the Minnesota Attorney General's Office described, described in Part I above, show that these services were provided to children against the wishes of their parents. There were instances where information providers followed up their information services with sexually explicit magazines to the subscriber's house.

Second, the use of the 800 number by pay-per-call promoters has frustrated telephone subscribers' expectations with respect to their vulnerability to unauthorized pay-per-call services. Many complainants to our office employed the 900 blocking service to prevent unauthorized information services charges and to protect their children from unwanted sexual

content. By subscribing to the blocking service, these responsible telephone customers had unmistakably manifested their intention to refuse consent to pay-per-call services. By the simple technological expedient of the 800 prefix, the unscrupulous information service promoter ignored the clear desires of the telephone subscriber and simply evaded consumer protection measures required by the rules. In addition, no notice was given to telephone subscribers that their 900 number block would be ineffective against a new onslaught of pay-per-call services.

Finally, the use of an 800 number by information providers is especially pernicious because people have the expectation that 800 prefix calls are free. Prior to their use by information providers, all calls to an 800 number were free to the person who placed the call. Both consumers and businesses alike have relied upon this established practice. It is indeed unfortunate that with the promulgation of rules to eliminate fraudulent pay-per-call services related to 900 numbers, deceptive purveyors of such services have evaded these rules by using 800 numbers.

III. PROPOSED RULE MODIFICATIONS.

In its Order on Reconsideration, the Commission demonstrated its commitment to consumer protection by rejecting petitioners' attempts to weaken the existing rules and by proposing amendments to strengthen the FCC's rules.[6] We are greatly encouraged by the Commission's actions and by its condemnation of continuing abuses within the information services industry. The MN-OAG is hopeful that the FCC's further scrutiny has signaled to the industry that such revolving-door abuses no longer will be tolerated.

As an advocate for consumers of telecommunications services in the State of Minnesota, the Minnesota Attorney General endorses the Commission's proposed rules to provide further consumer protections. The Commission has proposed constructive changes addressing the

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6. Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket No. 93-22 (1994).

pervasive problem of deceptive billing practices for information services. As described above and highlighted by the FCC, the problem is especially evident with respect to services offered through 800 numbers and purportedly provided under presubscription agreements. The myriad abuses in billing for 800 information services unequivocally indicate the need for stricter authorization and disclosure requirements. Consumers must be fully informed about the charges for information services -- both before they are incurred and when they are presented for payment. The Commission's proposed rules will advance this objective.

B. Amendments To The 800 Restrictions.

First, the Commission proposes to amend § 64.1504, regarding restrictions on the use of 800 numbers, to state explicitly that the restrictions cover both callers to 800 numbers and subscribers to the originating lines. The Commission also proposes to amend part (b) of this section to prohibit callers from being connected through an 800 number to any other information service that is not provided pursuant to a valid presubscription agreement. As analyzed above, the provision of § 64.1504 are sufficiently clear to show that the ANI-PIN scheme violates the presubscription agreement requirements. However, the proposed amendments add language that close perceived loopholes which some IPs may rely upon in the future to evade presubscription requirements. We support this clarification of the restrictions on the use of 800 numbers as a means of reducing the ability of IPs to charge for 800 information services without authorization from the person being charged.

C. Written Presubscription Agreements.

The Commission also proposes to require that all presubscription agreements be executed in writing by a legally competent individual to be charged, except where charges are billed to a general-use credit or charge card. We believe that this requirement may be the single most important change to the rules proposed by the Commission. The Minnesota Attorney General strongly supports this significant advance forward in the Commission's efforts to create an effective and enforceable regulatory system.

Because the TDDRA expressly exempts information services provided under presubscription agreements from many of the statute's restrictions on information services, the parameters for these agreements must be strictly defined.[7]

The Commission recognized that the concept of presubscription broadly circumscribed the scope of its regulations in carefully defining the term "presubscription or comparable arrangement" in its revised pay-per-call rules,[8] but it did not require presubscription agreements to be documented. It is now apparent, that such a requirement is necessary. The proposed amendment will add this requirement to the definition of "presubscription or comparable arrangement" in § 64.1501.

In the absence of a writing requirement, IPs have freely disregarded the explicit criteria set forth for presubscription agreements while utilizing the 800 access code to avoid the pay-per-call rules. They have induced minors and other vulnerable individuals unable to execute contracts to use their services without the express consent of the subscribers to the originating lines and they have devised schemes which purport to establish prescription agreements, but that, in fact, directly contravene the explicit terms for presubscription agreements.

As the Commission held in its recent Order, such methodologies do not establish valid presubscription agreements, thereby confirming that many IPs are presently operating in violation of federal law.[9] By failing to establish legitimate presubscription agreements, IPs employing these methodologies are violating the TDDRA's prohibition against the use of 800 numbers without presubscription agreements. These past and ongoing violations are, indeed, subject to sanctions and everyone involved, IP and carrier alike, should be ordered to cease such practices immediately.[10] A requirement of a written presubscription, along with other

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7. 47 U.S.C. § 228 et seq.

8. § 64.1501 (b)(1)(i) - (iv).

9. Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket No. 93-22 (1994).

10. See 47 U.S.C. § 503(b).

protections, may prevent similar abuses in the future. A writing requirement will formalize the system for presubscription, giving substance to this important concept and emphasizing the contractual nature of such agreements. It will force IPs to seek explicit authorization for charges and preclude them from disingenuously claiming that subscribers have authorized charges where valid contractual arrangements have not been established. This is illegal under current rules.

A writing requirement also will improve the ability of the common carrier to monitor compliance with presubscription requirements. Without documentation, there was no effective way to ensure that IPs were disclosing the information required to establish a valid presubscription. Written agreements will provide tangible verification that IPs have received informed consent for charges from the individuals to be billed. Improved enforceability is certain to result in greater compliance with presubscription requirements.

D. Common Carrier Obligations.

Finally, the Commission proposes to impose additional obligations on common carriers that perform billing and collection services for IPs. An amendment to § 64.1510(b) would prohibit carriers from billing subscribers for presubscribed information services without evidence that presubscription agreements have been established with the subscribers. In addition, carriers would be expressly required to address bills assessing presubscribed information services charges only to the individual who entered into the presubscription agreement. Finally, the Commission proposes to revise § 64.1510 to make the billing separation and notification requirements for pay-per-call services mandatory for presubscribed information services as well.[11] Because we believe that carriers must become more actively

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11. This section requires carriers to include in any billing to telephone subscribers that includes charges for interstate pay-per-call services a statement that: (A) Such charges are for non-communications services; (B) Neither local nor long distance services can be disconnected for non-payment although an information provider may employ private entities to seek to collect such charges; (C) Access to pay-per-call services may be involuntarily block for failure to pay legitimate charges; (ii) (D) Access to pay-per-call services may be involuntarily blocked for failure to pay legitimate charges; (ii) Display any charges for pay-per-call services in a part of the bill that is identified as not being related to local and long distance telephone charges; (iii) Specify, for each pay-per-call

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engaged in preventing abuses by IPs and their agents, we support these additional amendments to the Commission's rules.

Common carriers play a central role in the information services industry. Obviously, independent IPs could not exist without the assistance and cooperation of carriers. Carriers supply the lines, assign the telephone numbers, and control the technologies used by information service providers. They are the gatekeepers that give IPs easy access to private homes, institutions, and businesses. As billing and collection agents, they play an even more active role, interfacing with consumers who turn to them for advice and information about the charges for information services appearing on their telephone bills. Given their significant role, carriers must be held accountable for irresponsible conduct on their part and they must also bear responsibility for policing the practices of IPs.

In its Order After Reconsideration, the Commission recognized that carriers have fallen short in their responsibilities to their subscribers when billing for information services.[12] The volume of complaints regarding unauthorized charges indicates that carriers have taken a passive approach to their duty under § 64.1510(b) to prevent unauthorized calls from being billed to customer accounts. Under § 64.1510(b) carriers are required to insure that they do not bill for services that they know or "reasonably should know" were provided in violation of federal law. Despite this requirement, carriers continue to bill for unauthorized charges. Given the continuing problems with unauthorized charges, carriers must be held to a higher standard of care in their billing practices. Although evidence such as the AT&T tariff policy statement discussed earlier suggest that carriers are well aware that they are billing for

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Footnote 11 Cont.

charge made, the type of service, the amount of the charge, and the date, time, and, for calls billed on a time-sensitive basis, the duration of the call; and (iv) Identify the local or toll-free number established in accordance with § 64.1509(b)(1). Carriers billing for presubscribed services are asked to satisfy these requirements only "to the extent possible." § 64.1510(b).

12. Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket No. 93-22 (1994).

unauthorized charges, the current standard may provide an incentive for carriers to remain ignorant of illegal actions on the part of the IPs for whom they provide billing and collection services and, not incidentally, for which they are well compensated.

The Commission's proposed rule change will require carriers to actively determine whether IPs are complying with regulations governing information services, the presubscription requirements in particular. Under the proposed rule, carriers will have an affirmative obligation to verify the existence of presubscription agreements before billing customers for presubscribed services. Since the Commission is also proposing that the agreements be in writing, carriers can use the written agreements to verify that presubscribed billing is appropriate. Our complaints also demonstrate that LECs have been regularly billing for unauthorized charges. Although the current rules ask carriers to insure that they do not bill for services that they know or "reasonably should know" were provided in violation of federal law, they do not have an affirmative obligation to verify that the charges are legitimate.[13] This standard may give carriers who receive revenue from IPs for billing and collection services the incentive to remain ignorant of illegalities. Carriers must be held to a higher standard. The Commission's proposed rule to require carriers who act as billing agents to verify the existence of presubscription agreements provides a reasonable standard, particularly in conjunction with the Commission's proposed requirement that presubscription agreements be in writing. With written agreements, carriers cannot claim that they have no means of verifying compliance.

Carriers have also failed to fulfill their responsibilities under § 64.1510(a)(2)(ii), which requires billing carriers to accurately identify the charges assessed for information services. As described in Part I, LEC bills brought to the attention of our office show that charges for information services have been intermingled with charges for ordinary local and long distance charges under an ordinary geographic area code number or other misleading number different

13. See § 64.1510(b).

from the number actually dialed. When information services are billed in this manner, consumers cannot clearly distinguish information service charges from traditional phone service charges and thus may unintentionally pay for unauthorized charges that were not authorized. Confusing and misleading language also contribute to consumer confusion about the charges, such as misidentifying calls as credit card or calling card calls.

In light of the problems with improper billing for purportedly prescribed services, the Minnesota Attorney General endorses the Commission's proposal to apply the same billing protections for pay-per-call services to prescribed services. We agree that telephone subscribers who are billed for information services should enjoy certain basic protections, regardless of the means by which those services are provided. At a minimum, they must be able to recognize information service charges as related to non-communications services and they must be clearly informed of their rights and responsibilities with respect to these charges. Uniform requirements for different types of information services should not impose unreasonable burdens on carriers.

While the FTC and FCC regulations for information services ideally would prevent fraud from occurring at the first instance, as long as scam operators can still reach consumers and phone bills are used for billing, consumers must be given the tools they need to protect themselves. These tools include complete and accurate information about the charges for these services any time they appear on their telephone bills. Finally, we believe that these requirements should be instituted as soon as possible to promptly alleviate consumer confusion, and thus, we also endorse the Commission's proposed 30-day implementation period.

IV. RECOMMENDATION.

A. Prohibition Of 800 Information Service Billing On The Telephone Bill.

While the Minnesota Attorney General supports the above-mentioned rule revisions promulgated by the Commission, we also believe that more stringent, forward-looking prohibitions are required. Therefore, the Minnesota Attorney General joins with other