

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Policies and Rules)
Concerning Operator Service)
Providers and Call Aggregators)
_____)

CC Docket No. 94-158

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**REPLY COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

The American Public Communications Council ("APCC") submits the following reply to comments on the Commission's Notice of Proposed Rulemaking ("Notice") in this proceeding, FCC 94-352, released February 8, 1995. APCC's reply comments address the Commission's proposed rule changes regarding collect call branding and emergency calls, and its notice of inquiry regarding the time limit for updating consumer information posted on public telephones.

I. COLLECT CALL BRANDING

Most parties support the Commission's proposal to require that, on collect calls, the operator service provider ("OSP") identify itself to the party answering the call as well as to the caller before charges are incurred. Most of the parties supporting the Commission's proposal discuss only this specific change in the "branding" requirement of Section 64.703(a)(1) and (2) of the rules. Most do not discuss the other substantive changes in the

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Commission's rules that could result from the Commission's proposed amendment to the definition of "consumer," which is applicable throughout the Commission's rules implementing the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA").

As APCC explained, the narrowly targeted proposal that the Commission apparently intends, and that most parties support,¹ can be implemented most straightforwardly by directly amending Sections 64.703(a)(1) and (2) of the Commission's rules. This approach is preferable because it avoids unnecessary, unpredictable and potentially undesirable effects on other provisions of the TOCSIA rules.

MCI opposes the Commission's amendment because it contends that the definition of "consumer" in the operator services statute and the Commission's rules already encompasses the called party -- and only the called party -- in the case of collect calls. As stated in APCC's comments, the text of the statute will not bear this interpretation of "consumer." The statute defines "consumer" as "a person initiating any interstate telephone call using a provider of operator services." 47 U.S.C. § 226(a)(4). Parties that answer collect calls do not "initiate" such calls within the

¹ Only one party affirmatively urges the Commission to adopt a more far-reaching amendment to its rules. The Attorney General of the State of Michigan urges the Commission to also require OSPs to provide called parties with the disclosure message proposed by the National Association of Attorneys General ("NAAG") in its recent petition to the FCC. Michigan Attorney General at 2. Whatever the merits of this proposal, it is the subject of a separate proceeding and is more appropriately considered in that proceeding.

ordinary meaning of the term. It is the caller who dials the numbers and decides which carrier to use. The called party merely accepts or rejects the call. Clearly, the caller, not the called party, is the person "initiating" the call for purposes of the statutory definition of "consumer."

In any event, it is not necessary for the Commission to interpret the statutory definition of "consumer" in order to accomplish its purpose. The Commission may, pursuant to its general Title II authority, adopt a specific amendment of its "call branding" rule, as suggested by APCC (APCC at 3),² without addressing the definition of "consumer" at all. 47 U.S.C. § 201(b). Proceeding in this fashion will allow the Commission to accomplish its objective without resorting to doubtful and unnecessary statutory interpretations and without unnecessarily altering other provisions of its rules.

² In order to eliminate any potential controversy over the meaning of "consumer," the Commission could amend its rules to address specifically each party to which a call must be branded. For example:

- (a) Each provider of operator services shall:
 - (1) Identify itself, audibly and distinctly, to the caller, and on collect calls, to the caller and the party answering the call, at the beginning of each telephone call and before any party incurs any charge for the call;
 - (2) Permit the caller, and on collect calls, the caller and the party answering the call, to terminate the call at no charge before the call is connected;

* * *

II. EMERGENCY CALLS

The parties generally support the Commission's proposal to amend its rule on emergency calls to ensure that aggregators allow emergency calls to be routed to the appropriate answering point without interfering or attempting to collect any charge. However, the Telecommunications Division of the State of Georgia Department of Administrative Services ("Georgia") agrees with APCC that the obligations imposed on aggregators should not exceed the degree of control that aggregators can or do reasonably exercise over the routing of such calls. Georgia at 1-2.

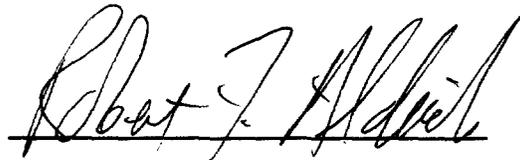
Aggregators should be required to allow 911 calls without charge, and to route these calls into the network directly and without delay. However, they should not be held responsible for what happens to 911 calls after the calls enter the public network.

III. TIME LIMIT FOR UPDATING CONSUMER INFORMATION

Regarding the time limit for updating consumer information, the recommendations of the parties vary from 7 days (Georgia at 4, Michigan Attorney General at 5) to 45 days (Southwestern Bell at 5). Other recommendations are 15 days (AT&T) and 30 days (GTE at 5, Public Utility Commission of Texas at 4, Sprint at 5). Several parties agree with APCC that, in setting a time limit, the Commission should allow for updating in the course of regularly scheduled payphone maintenance in order not to unduly burden aggregators. CompTel at 4; GTE at 5; Southwestern Bell at 5;

Sprint at 5. APCC believes that a time limit less than 45 days reasonably can be set, provided that aggregators are able to avoid liability by showing that their telephones have been regularly updated in accordance with a maintenance schedule.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert F. Aldrich", written over a horizontal line.

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