

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

RM No. 8783

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COMMENTS

BellSouth Corporation and BellSouth Telecommunications Inc. (BellSouth") hereby submit their comments on the Petition for Rulemaking filed by the Florida Public Service Commission ("FPSC") in the above referenced proceeding. By its Petition, FPSC asks the Commission to initiate a proceeding to consider adoption of FPSC's proposal of a solution to problems consumers in Florida are continuing to experience with pay per call services.

For the reasons set forth below, BellSouth believes that FPSC's petition largely has been rendered moot by the recent enactment of the Telecommunications Act of 1996, which includes specific provision to address the same types of pay per call abuses that apparently are the target of FPSC's petition. Moreover, in light of the additional protections afforded by the new legislation, FPSC's proposal would appear to offer only marginal benefit while consuming significant developmental and administrative resources. Accordingly, BellSouth urges the Commission to dismiss FPSC's petition.¹

¹ 47 C.F.R. §1.401(e) ("Petitions which are moot may be denied or dismissed without prejudice to the petitioner.").

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I. FPSC'S PETITION HAS LARGELY BEEN RENDERED MOOT BY THE TELECOMMUNICATIONS ACT OF 1996

FPSC filed its petition on December 6, 1995, describing a host of pay per call abuses suffered by Florida consumers and asking the Commission to adopt a specific mechanism to guard against such abuses in the future. From the descriptions in FPSC's petition, it appears that many of the alleged abuses may have been made possible by loopholes in the law as it stood at the time of the petition. Since the filing of the petition, however, Congress passed the Telecommunications Act of 1996, which included provisions specifically designed to close the loopholes that appeared to facilitate the types of abuses of which FPSC complains. Accordingly, FPSC's petition has largely been rendered moot and should be dismissed.

In its petition, FPSC cites a number of different types of pay per call problems that Florida consumers have brought to its attention. Although not each of the types is explained in detail, FPSC's general descriptions and the context in which its proposed solution is discussed suggest that many, if not all, of the problems were attributable to unexpected charges on phone bills incurred for calls supposedly to a toll-free telephone number.

For example, FPSC generally describes how charges may be incurred even though the caller initially dialed a 1-800 number.² FPSC also describes how use of a toll-free number allows the bypass of 900 service blocking on a caller's line.³ Additionally, FPSC notes that a contributing cause is that "IP ads frequently utilize a 'toll free number' to

² FPSC Petition at 3-4.

³ FPSC Petition at 4

encourage use of its service.”⁴ Further, FPSC asserts that its proposed solution, which it describes as “LEC proprietary card block service,” “should significantly reduce the type of abuse related to 1-800 (888) access.”⁵ Finally, FPSC argues that “the FCC must also adopt a strict definition of direct dialed calls, to prevent IPs [(Information Providers)] from billing as direct dialed those calls which actually originate as 1-800 (888) calls.”⁶ Hence, it is clear that FPSC perceives the misuse of toll free numbers to be the principle abuse in need of a remedy.

To that extent, FPSC was absolutely correct in identifying the underlying cause of the problem consumers in Florida have been experiencing. And, under the law as it existed at the time of its petition, FPSC proposed a means of addressing that problem. Of course, FPSC was not alone in recognizing the pervasive abuse of toll free numbers. Congress, too, recognized that its prior attempt to eliminate such abuses had left certain loopholes. Accordingly, Congress included in Section 701 of the Telecommunications Act of 1996 provisions specifically designed to eliminate those opportunities for abuse.⁷

Indeed, Section 701 is entitled “Prevention of Unfair Billing Practices for Information or Services Provided Over Toll-Free Telephone Calls.” The Conference Report accompanying the new legislation summarizes the intent behind the Senate bill upon which Section 701 was based:

Section 406 of the Senate bill amends section 228(c) of the Communications Act to add protection against the use of toll free telephone numbers to connect an individual to a “pay-per-call” service.

⁴ FPSC Petition at 5

⁵ FPSC Petition at 6

⁶ FPSC Petition at 6-7.

⁷ A copy of Section 701 is presented in Appendix A, hereto.

Published reports have indicated that toll free numbers have been used to defeat the blocking of “pay-per-call” numbers by connecting a caller to a “pay-per-call” service after a toll free connection has been made. Households, businesses and other institutions have been billed for “pay-per-call” charges even though blocking techniques were used. This provision is intended to stop that practice.

Section 703 of the Senate bill also amends section 228(c) of the Communications Act to clarify that subscribers who call an 800 number or other toll free numbers shall not be charged for the calls unless the calling party agrees to be charged under a written subscription agreement or other appropriate means.⁸

Thus, Congress has done through subsequent legislation what FPSC hoped to achieve through a rulemaking.

In addition to the foregoing problems that appear to be based primarily on improper use of toll free services, FPSC also cited problems that appear to be the result of unreasonable rates in tariffs filed by information providers. To combat this abuse, FPSC argues that “[a]t a minimum, the FCC should address this form of abuse by [pay-per-call] providers through review of tariffs on file at the FCC [since] it appears that not all tariffs on file reflect reasonable rates”⁹

Here, too, Congress has addressed FPSC’s concerns. As the Conference Report explains:

The conferees agreed to close a loophole in current law, which permits information providers to evade the restrictions of section 228 by filing tariffs for the provision of information services. Many information providers have taken advantage of this exemption by filing tariffs . . . and charging customers high prices for the services. . . . Section 701(b) of the conference agreement closes that loophole.¹⁰

⁸ H.R. Conf. Rep. No. 458, 104th Cong. 2d Sess. 202 (1996) (“Conference Report”).

⁹ FPSC Petition at 9.

¹⁰ Conference Report at 203.

As the foregoing discussion makes clear, Congress has largely accomplished thorough legislation what FPSC hoped to accomplish through a rulemaking. Accordingly, FPSC's petition has been rendered moot and should be dismissed.

II. FPSC'S PROPOSAL SHOULD NOT BE ADOPTED IN ANY EVENT

Section 701(a)(2) of the Telecommunications Act of 1996 requires the Commission to revise its regulations consistent with the provisions of the Act pertaining to unfair billing practices and misuse of toll free numbers. The Commission should not, however, use the FPSC petition as the vehicle for promulgating those revisions.

As a preliminary principle, FPSC's proposal was not presented as a means of implementing the new provisions of the Communications Act. Indeed, the FPSC petition was filed several months before the statutory requirements were adopted. Accordingly, although the new legislation and FPSC's proposals were designed to combat the same apparent abuses, FPSC's proposal should not be used as the foundation for the Commission's obligation to adopt rules pursuant to the Act because the proposal was not formulated in the context of the new statute.

Additionally, FPSC's proposal would not be worthwhile. First, the very behavior FPSC seeks to constrain through its "proprietary card blocking service" has been expressly forbidden under the Telecommunications Act. Thus, the need for FPSC's proposed solution is no longer as compelling as FPSC thought it was. Rather than

forming the basis for a rulemaking proceeding, FPSC's proposal should be dismissed for further consideration of its desirability in light of the new legislation.¹¹

Second, FPSC's proposal appears actually to increase opportunities for fraud. For example, FPSC's proposed solution depends on the transmittal of the caller's calling card number, including the four digit PIN code, to an IP, who would then return that information to the LEC for appropriate billing. Normally, however, a caller's PIN is not retained with the calling card number after Line Information Database (LIDB) verification has been performed at the time of call set-up. FPSC's proposal, however, appears to contemplate delivery of this very proprietary information to classes of service providers who already are alleged to engage in unscrupulous behavior, including fraud. This increased exposure to fraud could easily offset any gains predicted to be won by FPSC's proposal.

Nor would FPSC's proposal necessarily be effective. Nothing in FPSC's proposal suggests a means to ensure that an IP, having received ANI with a call originally placed to an 1-800 or 1-888 number, would not simply use that ANI as the "bill to" number in the EMI record in lieu of the calling card number with PIN. Under these circumstances, IP records of charges for calls placed through a toll free number would be indistinguishable from records for direct dialed calls. Unfortunately, this phenomenon already exists today, and occurrences may not be detected until bills are rendered and a complaint has arisen.

¹¹ FPSC will have the opportunity to re-address its proposal in the context of the rulemaking initiated by the Commission under the Act. FPSC's proposal should not, however, form the basis of the Commission's rule proposals.

Nonetheless, it makes little sense to expend the resources to implement a system that is subject to the same deficiencies.

In short, FPSC's proposal appears to offer only marginal, if any, benefit. Meanwhile, significant developmental and administrative costs would be incurred for implementation or modification of systems necessary to support such a solution. For example, LECs', IXC's', IP's', service bureaus', and billing clearinghouses' message processing/billing systems, the national EMI record format, and switch vendor automatic message accounting (AMA) recordings would need to be modified to accommodate PINs. In light of the marginal benefits, it is unlikely that these costs would be outweighed by savings of the type suggested by FPSC. Accordingly, FPSC's proposal should not form the basis of Commission rules implementing Section 701 of the Telecommunications Act.

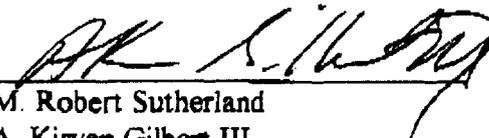
CONCLUSION

Passage of the Telecommunications Act of 1996 has rendered FPSC's petition for rulemaking moot. Accordingly, it should be dismissed.

Respectfully submitted,

**BELLSOUTH CORPORATION and
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APPENDIX A

Sec. 701. PREVENTION OF UNFAIR BILLING PRACTICES FOR INFORMATION OR SERVICES PROVIDED OVER TOLL-FREE TELEPHONE CALLS.

(a) Prevention of Unfair Billing Practices.--

(1) In general.-- Section 228(c) (47 U.S.C. 228(c)) is amended--

(A) by striking out subparagraph (C) of paragraph (7) and inserting in lieu thereof the following:

"(C) the calling party being charged for information conveyed during the call unless--

"(i) the calling party has a written agreement (including an agreement transmitted through electronic medium) that meets the requirements of paragraph (8); or

"(ii) the calling party is charged for the information in accordance with paragraph (9); or";

(B)(i) by striking "or" at the end of subparagraph (C) of such paragraph;

(ii) by striking the period at the end of subparagraph (D) of such paragraph and inserting a semicolon and "or"; and

(iii) by adding at the end thereof the following:

"(E) the calling party being assessed, by virtue of being asked to connect or otherwise transfer to a pay-per-call service, a charge for the call."; and

(C) by adding at the end the following new paragraphs:

"(8) Subscription agreements for billing for information provided via toll-free calls.----

"(A) In general.--For purposes of paragraph (7)(C)(i), a written subscription does not meet the requirements of this paragraph unless the agreement specifies the material terms and conditions under which the information is offered and includes--

"(i) the rate at which charges are assessed for the information;

"(ii) the information provider's name;

"(iii) the information provider's business address;

"(iv) the information provider's regular business telephone number;

"(v) the information provider's agreement to notify the subscriber at least one billing cycle in advance of all future changes in the rates charged for the information; and

"(vi) the subscriber's choice of payment method, which may be by direct remit, debit, prepaid account, phone bill, or credit or calling card.

"(B) Billing arrangements.--If a subscriber elects, pursuant to subparagraph (A)(vi), to pay by means of a phone bill--

"(i) the agreement shall clearly explain that the subscriber will be assessed for calls made to the information service from the subscriber's phone line;

"(ii) the phone bill shall include, in prominent type, the following disclaimer:

'Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services.'; and

"(iii) the phone bill shall clearly list the 800 number dialed.

"(C) Use of PINs to prevent unauthorized use.--A written agreement does not meet the requirements of this paragraph unless it--

"(i) includes a unique personal identification number or other subscriber-specific identifier and requires a subscriber to use this number or identifier to obtain access to the information provided and includes instructions on its use; and

"(ii) assures that any charges for services accessed by use of the subscriber's personal identification number or subscriber-specific identifier be assessed to subscriber's source of payment elected pursuant to subparagraph (A)(vi).

"(D) Exceptions.--Notwithstanding paragraph (7)(C), a written agreement that meets the requirements of this paragraph is not required--

"(i) for calls utilizing telecommunications devices for the deaf;

"(ii) for directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate; or

"(iii) for any purchase of goods or of services that are not information services.

"(E) Termination of service.--On receipt by a common carrier of a complaint by any person that an information provider is in violation of the provisions of this section, a carrier shall--

"(i) promptly investigate the complaint; and

"(ii) if the carrier reasonably determines that the complaint is valid, it may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this section.

"(F) Treatment of remedies.--The remedies provided in this paragraph are in addition to any other remedies that are available under title V of this Act.

"(9) Charges by credit, prepaid, debit, charge, or calling card in absence of agreement.-- For purposes of paragraph (7)(C)(ii), a calling party is not charged in accordance with this paragraph unless the calling party is charged by means of a credit, prepaid, debit, charge, or calling card and the information service provider includes in response to each call an introductory disclosure message that--

"(A) clearly states that there is a charge for the call;

"(B) clearly states the service's total cost per minute and any other fees for the service or for any service to which the caller may be transferred;

"(C) explains that the charges must be billed on either a credit, prepaid, debit, charge, or calling card;

"(D) asks the caller for the card number;

"(E) clearly states that charges for the call begin at the end of the introductory message; and

"(F) clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

"(10) Bypass of introductory disclosure message.-- The requirements of paragraph (9) shall not apply to calls from repeat callers using a bypass mechanism to avoid listening to the introductory message: Provided, That information providers shall disable such a bypass mechanism after the institution of any price increase and for a period of time determined to be sufficient by the Federal Trade Commission to give callers adequate and sufficient notice of a price increase.

"(11) Definition of calling card.-- As used in this subsection, the term 'calling card' means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates."

(2) Regulations.-- The Federal Communications Commission shall revise its regulations to comply with the amendment made by paragraph (1) not later than 180 days after the date of enactment of this Act.

(3) Effective date.-- The amendments made by paragraph (1) shall take effect on the date of enactment of this Act.

(b) Clarification of "Pay-Per-Call Services" --

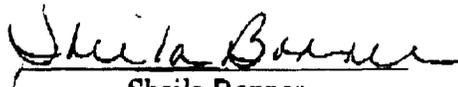
(1) Telephone disclosure and dispute resolution act.-- Section 204(1) of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5714(1)) is amended to read as follows:

"(1) The term 'pay-per-call services' has the meaning provided in section 228(i) of the Communications Act of 1934, except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of section 228(i)(1) of such Act, extend such definition to other similar services providing audio information or audio entertainment if the Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a)."

(2) Communications act.-- Section 228(i)(2) (47 U.S.C. 228(i)(2)) is amended by striking "or any service the charge for which is tariffed,".

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of May, 1996 served all parties to this action with a copy of the foregoing COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the party listed below.


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