Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington. DC 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
Petition to Initiate Rulemaking to Adopt Additional Safeguards for Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act	)	DOCKET FILE COPY ORIGINAL

COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits its reply comments in the above referenced proceeding. USTA is the principal trade association of the exchange carrier industry. Its members provide over 98 percent of the exchange carrier-provided access lines in the United States.

USTA believes the Commission should not grant the petition of the Florida Public Service Commission (PSC) because (1) the Commission's own rules already require the use of a personal identification number (PIN) in order to define the parameters of whether a presubscription or comparable arrangement exists, (2) the principal recommendation proposed by the Florida PSC places the cost and responsibility of such recommendation on the LEC industry, not the entities responsible for the problems and violations, (3) the principal recommendation has not correctly stated the costs associated with billing changes, (4) the principal recommendation has not been shown to correct the abuses or problems that exist, and (5) a proper forum to

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address pay-per-call abuses will exist when the Commission issues a Notice of Proposed Rulemaking to address Unfair Billing Practices as set forth in paragraph (1) of Section 228 (c) of the Telecommunications Act of 1996. Furthermore, the secondary options proposed by the Florida PSC have been demonstrated as unnecessary by information previously provided to the Florida PSC.

The Florida PSC filed a Petition with the FCC because it had received over 800 complaints and inquiries about the pay per call industry in 1995. "Because these complaints have continued despite efforts by the FCC and FTC to address the evasion and abuse of applicable federal requirements, we believe additional safeguards are necessary to protect consumers."[1] The Petition goes on to state that the FCC should require all LECs to offer "...a service that would allow subscribers to block billing to their phone numbers of calls or services for which the interexchange carrier or information provider does not obtain and provide to the LEC an appropriate proprietary card."[2] The Florida PSC goes on to explain that

> Under such an arrangement, no provider (except of course the subscriber's local and interexchange carriers, assessed via direct dialing, including 10xxxx-1) could place any charge on a specific customer's local exchange company bill unless it obtained the Customer's LEC proprietary card number. LECs could amend their billing contracts to ensure that IPs and other providers are notified to obtain the valid LEC number before providing services.[3]

In addition, the Florida PSC proposes that should a proprietary card block option not be feasible,

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[1] Petition to Initiate Rulemaking to Adopt Additional Safeguards by the Florida Public Service Commission, p. 2.

[2] Ib, p. 5.

[3] Ib, p. 6.

the FCC should consider a registration program of all parties that use the LEC billing system or requiring a clause in LEC billing contracts for termination of such contracts upon sufficient showing of continuing abuse of applicable federal and/or state requirements.[4]

USTA believes that the Florida petition requests what the FCC already requires, except in its requirement to place the burden upon the LEC industry. In a letter released June 22, 1994, the FCC writes

> Basically, charges can be assessed for calls to 800 numbers only when a caller enters into a "presubscription or comparable arrangement" with an information provider (IP)....Section 64.1501 (b) of our rules, 47 C. F. R. § 64.1501 (b), defines a presubscription or comparable arrangement in which (1) the service provider clearly and conspicuously informs a consumer of the terms and conditions under which the service is offered, including the rates to be charges and the service provider's name, address, and business telephone number through which additional information may be obtained or a complaint registered; (2) the service provider agrees to notify the consumer of any future rate changes; (3) the consumer agrees to use the service on the terms and conditions disclosed by the service provider; and (4) the service provider requires the use of an identification number (PIN) or other means to prevent unauthorized access to the service by non-subscribers.[5]

Clearly, in order for an IP to properly assess a charge there must exist a presubscription or contractual arrangement that includes the use of a PIN or other means. The FCC goes on to state that IPs who use the procedure of retrieving the Automatic Number Identification (ANI) and then immediately issuing a PIN to a caller are engaged in a practice that "...does not create a

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[4] Ib, pp.8-9.

[5] 9 FCC Rcd No. 13, DA 94-643, p. 2819.

legitimate presubscription or comparable arrangement."[6]

The FCC goes on to state

> Presubscribed information services cannot be properly billed by systems that assess charges to a subscriber to an originating line without confirming that that individual has affirmatively chosen to receive information services through a presubscription arrangement. The *Pay-Per-Call Report and Order* clearly states that when a subscriber disputes charges for allegedly presubscribed information services, the IP bears the burden of demonstrating the existence of a valid presubscription arrangement. 8 FCC Rcd at 6888. Consumers should also be aware that although IPs may seek to collect unpaid charges, common carriers may not disconnect, or interrupt in any way, local or long distance telecommunications services for failure to pay charges for presubscribed information services. See 47 C. F. R. § 64.1507 (b).[7]

USTA believes that the recommendation offered by the Florida PSC would not change the parameters of a presubscription or comparable arrangement with the exception of a major and costly difference in who bears the responsibility of establishing and proving such an arrangement. Florida believes that this responsibility rests with the LEC industry. The relationship between a subscriber who requests information and the entity that provides that information resides appropriately with those two parties. The LEC industry should not be placed in the role of ensuring such arrangements exists, especially since the Commission has already ruled that the responsibility to prove that such a relationship exists rests with the IP. The FCC would be reversing the rule and standard it had established in favor of a recommendation that places correction of real and perceived problems on the industry that has not caused the

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[6] Ib.

[7] Ib, p. 2820.

problems. Such a decision is not justified because it makes healing the ills visited upon customers by unscrupulous IP providers the responsibility of the LEC industry.

The Florida PSC states that "LECs may need to make software changes to their billing systems to expand the fields in EMI message records to allow for recording and including the PIN with all future EMI records."[8] Florida has underestimated the complexity of LECs' billing systems if it believes that software changes may be necessary. Software changes will most definitely be necessary and the costs would, across the industry, run into millions of dollars that would not be significantly offset by reduced levels of telephone calls to LEC business offices and complaint handling. PINs do not flow through LEC billing systems as the Florida PSC proposal outlines.

USTA does not believe a proprietary calling card would solve some of the abuses outlined in the Florida PSC's petition. For example, Florida cites on page 2 of its petition abuses such as billing charges for adult entertainment provided to children and billing charges not accurately described on the bill. If a child has the correct PIN number of his or her parents' proprietary calling card, then that child can place calls to any and all IPs and the calls would. under the Florida proposal, correctly track through the system. Additionally, there is no correlation between using a PIN number to bill a charge and the manner with which that charge will be described on the bill.

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[8] Florida Petition, p. 7.

Finally, the Commission should deny the Florida petition because the Telecommunications Act of 1996 requires the FCC to revise its regulations by August, 1996, to comply with the unfair billing amendments set forth in paragraph (1) of Section 228 (c). USTA believes that suggestions to implement the unfair billing amendments, which would logically be designed to include the means to correct unfair billing practices for information or services provided over toll-free telephone calls, should properly be submitted in response to the Notice of Proposed Rulemaking that the Commission will issue on this matter.

Respectfully submitted,

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