

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

RM No. 8783

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS OF U S WEST, INC.

I. INTRODUCTION

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U S WEST, Inc. ("U S WEST") herein supports those commenting parties¹ opposing the establishment of a proceeding² specifically initiated pursuant to the Florida Public Service Commission's ("FPSC") Petition to Initiate Rulemaking, filed in December, 1995.³ As those opposing comments make clear, there is no sound

¹ Comments were filed by AT&T Corp. ("AT&T"), BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth"), MCI Telecommunications Corporation ("MCI"), United States Telephone Association ("USTA") and the Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General and the Attorneys General of Arizona, Connecticut, Florida, Illinois, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, West Virginia and Wisconsin ("Attorneys General").

² Oppositions were filed by AT&T, BellSouth, MCI and USTA.

³ Petition to Initiate Rulemaking to Adopt Additional Safeguards by the Florida Public Service Commission, filed Dec. 6, 1995 ("FPSC Petition"). See Public Notice, rel. Apr. 1, 1996.

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reason to establish another proceeding to address pay-per-call matters under the 1992 Telephone Disclosure and Dispute Resolution Act (“TDDRA”).⁴

The Federal Communications Commission’s (“Commission”) existing proceeding to perfect its enforcement of TDDRA,⁵ as well as the recently enacted provisions of the Telecommunications Act of 1996 (“1996 Act”),⁶ render an additional rulemaking in the area of pay-per-call unnecessary.⁷ Furthermore, given the extent to which the Commission’s resources are currently being stretched with respect to rulemakings mandated by the 1996 Act, establishment of a non-mandated proceeding would only divert scarce Commission resources from matters requiring more immediate attention.⁸

Finally, U S WEST agrees with those commentators arguing that the FPSC’s proposal would not be feasible, in any event.⁹ Local exchange carriers (“LEC”) should not be required to invest substantial sums to make feasible a proposal that is not directly targeted to some kind of LEC bad acting.

⁴ 47 CFR §§ 64.1501-1515.

⁵ In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Order on Reconsideration and Further Notice of Proposed Rule Making, 9 FCC Rcd. 6891 (1994) (“Further TDDRA NPRM”).

⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 145-148, Section 701, amending 47 USC 228(c). And see AT&T at 4 n.6; BellSouth at 1-5.

⁷ See USTA at 1-2, 6; BellSouth at 1-5.

⁸ See AT&T at 4.

⁹ See AT&T at 3, 5 n.8; USTA at 5.

II. THE USTA FILING APTLY OUTLINES THE NUMEROUS PROBLEMS ASSOCIATED WITH THE FPSC REQUEST

The USTA articulates well the problems associated with the FPSC Petition. Those problems range from the lack of need for¹⁰ to the lack of effectiveness of¹¹ the FPSC proposal.

As the USTA points out, the practices about which the FPSC complains are Information Provider ("IP") practices. Not only are these practices IP practices, but -- in the words of the Attorneys General -- they are the practices of "unscrupulous operators" who "impose exorbitant charges on consumers' phone bills."¹²

We join the USTA in opposing the notion that the Commission prescribe LEC-based "solutions" for bad IP practices.¹³ As the USTA well states, such an action "is not justified because it makes healing the ills visited upon customers by unscrupulous [IPs] the responsibility of the LEC industry."¹⁴

Neither sound risk management theory nor good public policy support the vicarious liability approach incorporated in the FPSC's proposal. Before liability for actions or conduct is assigned to an entity, or regulators mandate preventative actions be taken by that entity to avoid liability, there should be some logical and causal responsibility associated with that target entity.

¹⁰ See USTA at 1-2, 6. And see BellSouth at 1-5; MCI at 4.

¹¹ See USTA at 1-2. And see BellSouth at 6-7.

¹² Attorneys General at 2.

¹³ See USTA at 3-5. And see Reply Comments of U S WEST, Inc., filed Oct. 31, 1994, at 6-9, Further TDDRA NPRM.

¹⁴ USTA at 5.

The LECs have no such responsibility for IP actions. Thus, it is totally inappropriate to assign them responsibility, directly or indirectly (by requiring that they take certain actions to alleviate the customer/IP “problem”). This is most especially true where neither technology nor current market conditions are aligned with the proposed “solution” to the problem.

For example, the LECs do not currently have the kind of technology or systems necessary to accomplish the FPSC proposal.¹⁵ Creating such supportive technology and systems would require the expenditure of substantial sums of money.¹⁶ But of equal importance, the solution the FPSC requests could well have a competitively adverse effect on the calling-card market¹⁷ -- something the FPSC never even considers.

The appropriate “cost/benefit” analysis for TDDRA violations is to make bad-actor IPs bear the “cost” when they deprive consumers of the statutory and regulatory benefits associated with pay-per-call services. It is not appropriate to shift these enforcement/penalty costs to innocent LECs.

¹⁵ As the USTA mentions, the Personal Identification Numbers (“PIN”) associated with LEC calling cards do not currently pass or flow through LEC billing systems. USTA at 5. And see BellSouth at 6.

¹⁶ To create such a capability would run into the millions of dollars. USTA at 5. Compare BellSouth at 1, 7. U S WEST does not believe that any sound cost/benefit analysis would support such a LEC expenditure.

¹⁷ See MCI at 3.

III. A COMMISSION RULEMAKING DIRECTED TO STATUTORY IMPLEMENTATION, RATHER THAN THE FPSC PETITION, IS THE APPROPRIATE VEHICLE TO ADDRESS CONTINUING PAY-PER-CALL REGULATION

U S WEST agrees with AT&T and BellSouth that the Commission should not use the FPSC Petition as the foundation for a Commission rulemaking to implement the recent statutory provisions pertaining to pay-per-call.¹⁸ The FPSC Petition was not crafted within the context of the federal statutory provisions which should be interpreted and implemented on their own.¹⁹

Furthermore, while the Attorneys General “support” the FPSC Petition as well as its requested relief, the filing of the Attorneys General makes clear the recently-passed 1996 Act addresses the subject matter of the FPSC Petition and may well “provide an effective and efficient means to address FPSC’s proposal that [LECs] offer subscribers optional pay-per-call billing blocks.”²⁰

While the FPSC proposal might be one the Commission may include in its inquiry on the implementation of Section 701(a)(1) of the 1996 Act, it should not craft the rulemaking with the FPSC proposal as its foundation. As the Comments to the FPSC Petition make clear, the FPSC proposal is directed to the wrong

¹⁸ See AT&T at 4 and n.6; BellSouth at 5.

¹⁹ The expectation would be that a Commission rulemaking would specifically focus on the language of the statute, including the crafting of the language describing the “offense.” Penalties for violation of the statute and any concomitant Commission rules should be directed to the “offender.”

²⁰ See Attorneys General at 4.

parties, would be expensive to implement, and would provide -- at best -- but a marginal consumer benefit.²¹

IV. ENFORCEMENT, NOT ADDITIONAL REGULATION, IS THE ANSWER TO CONTINUING PAY-PER-CALL ABUSES

U S WEST agrees with MCI that enforcement, not additional regulation, is the key to correcting the remaining marginal abuses in the pay-per-call industry. As both MCI and USTA observe, the complained-of IP practices are already unlawful.²² And, as MCI points out, those abuses can clearly be attributed to a certain identifiable number of IPs.²³

Where bad-actor behavior can clearly be ascribed to a certain set of actors (e.g., the “unscrupulous actors” mentioned by the Attorneys General),²⁴ the establishment of industry-wide rules, particularly where those rules impact “innocent actors,” is inappropriate.²⁵ In such a situation, enforcement is the right -- and only effective -- answer.²⁶

²¹ BellSouth at 7.

²² USTA at 3 (citing to Letter from Gregory A. Weiss, Acting Chief, Enforcement Division, Common Carrier Bureau, to Randal R. Collett, Executive Vice President, Association of College and University Telecommunications Administrators, dated June 15, 1994, rel. June 22, 1994, 9 FCC Rcd. 2819. See also MCI at 2 (citing to Sep. 1, 1995 letter from John B. Muleta to Ronald J. Marlowe).

²³ MCI at 3.

²⁴ Attorneys General at 2. Compare Reply Comments of U S WEST, Inc. at 4, Further TDDRA NPRM (noting the continuing reference to “‘abusive’ or ‘unscrupulous’ behavior” of certain IPs).

²⁵ See Reply Comments of U S WEST, Inc. at 2, 4-6, Further TDDRA NPRM.

²⁶ Compare, e.g., In the Matter of Home Owners Long Distance, Inc., Apparent Liability for Forfeiture, Notice of Apparent Liability for Forfeiture, 11 FCC Rcd.

V. CONCLUSION

There is no legal or market need to pursue the FPSC proposal. The 1996 Act addresses much of the substance of the FPSC Petition. Unlike the FPSC solution, the 1996 Act benefits from the fact that it focuses on the wrongdoer in describing the prohibited "offenses."

Under both current TDDRA interpretation and recently-enacted amendments, much of what the FPSC complains about is already unlawful. Those violating the law should be pursued. Enforcement is the only effective weapon to address continuing unscrupulous IP behavior. Targeting the LECs is not a logical, legally appropriate, or sound policy approach to correcting unlawful or unethical IP conduct.

Respectfully submitted,

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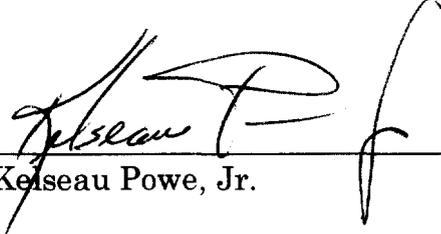
May 16, 1996

Its Attorney

1808 (1996); In the Matter of MCI Telecommunications Corporation, Apparent Liability for Forfeiture, Notice of Apparent Liability for Forfeiture, 11 FCC Rcd. 1821 (1996); In the Matter of AT&T Corporation, Apparent Liability for Forfeiture, Notice of Apparent Liability for Forfeiture, 11 FCC Rcd. 1885 (1996); In the Matter of Target Telecom, Inc., Apparent Liability for Forfeiture, Notice of Apparent Liability for Forfeiture, 11 FCC Rcd. 1811 (1996).

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 16th day of May, 1996, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


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