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

In the Matter of	)	
	)	
Policies and Rules	)	
Governing Interstate Pay-Per-Call	)	CC Docket No. 96-146
and Other Information Services Pursuant to	)	
the Telecommunications Act of 1996	)	
	)	
In the Matter of	)	
	)	
Policies and Rules Implementing	)	CC Docket No. 93-22
the Telephone Disclosure and Dispute	)	
Resolution Act	)	

ORDER
AND
NOTICE OF PROPOSED RULE MAKING

Adopted: June 28, 1996 **Released: July 11, 1996**

Comments Due: August 26, 1996
Replies Due: September 16, 1996

By the Commission:

I. INTRODUCTION

1. In this Order and Notice of Proposed Rule Making, we amend Part 64 of the Commission's Rules to conform with the Telecommunications Act of 1996 (1996 Act),[1] which, inter alia, amended Section 228 of the Communications Act of 1934, as amended, (Communications Act) to enact new requirements governing interstate pay-per-call and other information services.[2] As set forth in Appendix A and explained below, we are amending our

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[1] Pub. L. 104-104, Sec. 701, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 228).

[2] Pay-per-call services (also commonly known as "900 services") offer telephone callers a variety of recorded and interactive information and entertainment programs that carry charges greater than, or in addition to, the charge for transmitting the call, and are available through 900 numbers. See 47 U.S.C. § 228(i)(1); 47 C.F.R. § 64.1506; note 72, infra. Within the context of Section 228 of the Communications Act, information services encompass not only pay-per-call services but, also, information and entertainment

pay-per-call regulations to comply with the statutory mandate that our rules reflect the new requirements of Section 228 of the Communications Act.

2. We previously issued a Further Notice of Proposed Rule Making in CC Docket No. 93-22 to propose new rules to correct abuses involving "presubscribed" information services and the use of 800 and other toll free numbers to charge subscribers for information services.[3] Because the requirements of the 1996 Act accomplish the same goals as our TDDRA FNPRM proposals, we are terminating CC Docket No. 93-22. We propose herein rule changes to implement the requirements of the 1996 Act and to prevent abusive and deceptive practices by entities that might seek to circumvent the statutory requirements.

II. BACKGROUND

3. The Commission first adopted regulations governing interstate pay-per-call services in 1991 to address complaints of widespread abuse involving 900 number services.[4] Among other protective measures, the Commission: (1) required that pay-per-call programs begin with a preamble disclosing, inter alia, the cost of the services, and affording the caller an opportunity to hang up before incurring charges;[5] (2) required local exchange carriers (LECs), where technically feasible, to offer telephone subscribers the option of blocking access to 900 numbers;[6] and (3) prohibited common carriers from disconnecting basic telephone service for failure to pay pay-per-call charges.[7]

4. To expand upon this regulatory framework, Congress in 1992 enacted the Telephone Disclosure and Dispute Resolution Act (TDDRA).[8] The statute required both the

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programs available through other dialing sequences.

[3] Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, Order on Reconsideration and Further Notice of Proposed Rule Making, 9 FCC Rcd 6891 (1994) (TDDRA FNPRM).

[4] Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65, Report and Order, 6 FCC Rcd 6166 (1991), recon., 8 FCC Rcd 2343 (1993).

[5] 47 C.F.R. § 64.711, repealed by Policies and Rules Implementing the Telephone and Disclosure and Dispute Resolution Act, Report and Order, CC Docket No. 93-22, 8 FCC Rcd 6885 (1993) (TDDRA Report and Order). Recision of the Commission's preamble rule was predicated upon, and did not take effect until, effectuation of the Federal Trade Commission's (FTC) preamble requirements under 16 C.F.R. § 308.5.. TDDRA Report and Order, 8 FCC Rcd at 6902-03.

[6] 47 C.F.R. § 64.713, amended and renumbered as 47 C.F.R. § 64.1508 by TDDRA Report and Order.

[7] 47 C.F.R. § 64.714, amended and renumbered as 47 C.F.R. § 64.1507 by TDDRA Report and Order.

[8] The Telephone Disclosure and Dispute Resolution Act of 1992, which added Section 228 to the Communications Act, Pub. L. No. 102-556, 106 Stat. 4181 (1992) (codified at 47 U.S.C. § 228).

Commission and the FTC to adopt rules intended to increase consumers' protection from fraudulent and deceptive practices and, also, promote the development of legitimate pay-per-call services. In response to burgeoning consumer complaints, the TDDRA also mandated explicit restrictions on the use of 800, and other toll-free, numbers to provide information services.[9] On July 15, 1993, the Commission adopted a Report and Order amending our pay-per-call regulations consistent with the statutory mandate.[10]

5. Our rules require that all interstate services within the TDDRA's definition of "pay-per-call"[11] be provided through 900 numbers.[12] The TDDRA, however, specifically exempted three categories of services from pay-per-call status and, thus, from the requirement of exclusive 900 number access: "directory 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."[13] These statutory exclusions created incentives for information providers (IPs) to tailor their services to avoid pay-per-call regulation. Moreover, while the TDDRA generally prohibits the use of toll-free numbers to charge callers for information services, such use is permissible when a caller to a toll-free line has a "preexisting agreement" to be charged for conveyance of information or pays for the transaction with a credit or charge card. The Commission implemented the TDDRA's 800-number restrictions in Section 64.1504 of the Rules. Along with the FTC, the Commission defined presubscription in a manner intended to prevent instant "presubscription" of casual callers, who had not received the basic information needed to make informed choices about purchasing information services.[14] The presubscription rules also require use of a personal identification number (PIN) to guard against unauthorized access to presubscribed information services by non-subscribers.[15]

6. Since effectuation of federal TDDRA regulations, large numbers of telephone subscribers have complained about being billed for calls to information services purportedly provided under a presubscription or comparable arrangement, generally available over an 800 number, or pursuant to a tariffed-services arrangement, which may use a variety of dialing

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[9] 47 U.S.C. § 228(c)(7).

[10] TDDRA Report and Order.

[11] 47 U.S.C. § 228(i)(l); see note 72, infra.

[12] 47 C.F.R. § 64.1506.

[13] See TDDRA, Sec. 101 (codified at 47 U.S.C. § 228(i)(2), which is amended by Section 701(b)(2) of the 1996 Act).

[14] 47 C.F.R. § 64.1501(b), 16 C.F.R. § 308.2(e). See note 54, infra.

[15] Id.

sequences, including 800 and international numbers.[16] Unauthorized presubscription arrangements and tariffed information services operate differently yet leave consumers with common problems: unfettered and uncontrollable access to unwanted information services and unexpected charges for such services.

7. Charges for purportedly presubscribed information services typically have been accessed through use of an "instant" calling card or PIN issued by an information provider during a call to the information service. Despite reliance on a so-called calling card or PIN to meet federal presubscription requirements, these mechanisms often simply have used automatic number identification (ANI) to assess information-service charges to the subscriber to the originating telephone line, regardless of whether that individual ever sought the calling card or PIN, or authorized their use. In fact, in some cases, a "PIN" may have consisted of nothing more than selected digits from the number of the originating telephone line or numbers selected from a recorded menu of available topics.

8. In a 1994 letter ruling, the Common Carrier Bureau emphasized the steps necessary to establish a valid presubscription arrangement and explained, in detail, the inadequacy of using ANI as evidence of a presubscription agreement.[17] In addition, the Commission adopted the TDDRA FNPRM to propose that presubscription agreements be executed in writing and that common carriers be prohibited from billing subscribers for presubscribed information services without first obtaining evidence of the written agreement.[18] The TDDRA FNPRM also proposed to prohibit connection of 800 number callers to any information service that is not provided pursuant to a presubscription or comparable arrangement.[19]

9. Following release of the TDDRA FNPRM and the voluntary discontinuation of billing for 800 number presubscribed information services by several LECs, problems with this activity appear to have decreased. Services seeking to exploit the TDDRA's tariffed services exemption, however, became more prevalent.[20] Several different ways of providing so-called "tariffed" or "international" information services exist although all appear to rely upon collaboration between an IP and either a U.S. or foreign common carrier. IPs who have

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[16] During the period January 1, 1993 through June 1, 1996, the Consumer Protection Branch of the Common Carrier Bureau received over 10,000 written complaints involving information services available over 800 or international numbers.

[17] 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, 9 FCC Rcd 2819 (1994).

[18] TDDRA FNPRM, 9 FCC Rcd at 6896.

[19] Id.

[20] See, e.g., TDDRA FNPRM Comments of Southwestern Bell Telephone Company (SWBT) at 9-14 and attached advertisements.

participated in these arrangements have not charged callers directly for providing an information program; ostensibly, the information has been provided at no charge. However, subscribers are charged for transmission of calls to the information service.[21] IPs then apparently receive a portion of the proceeds collected by either a U.S. or a foreign carrier for transmission or completion of calls. Most often, these programs have involved international dialing sequences, although advertisements frequently have directed callers to an 800 number, which, in turn instructs callers to enter the digits necessary to complete the international call or, in some instances, depress a particular key for immediate connection.

10. In some cases, provision of information programs through a tariffed-service arrangement requires knowing participation by a U.S. common carrier. Such service arrangements depend upon ensuring that calls to a particular information service can be made only through the network of the particular participating carrier. Again, the carrier apparently remits to an IP a portion of the monies collected for payment of its tariffed transmission charges, which typically greatly exceed those applied by virtually all major full-service carriers.[22] In a 1995 advisory ruling,[23] the Common Carrier Bureau cautioned that carriers that participate in such arrangements are not providing communications service in a just and reasonable manner as required by Section 201(b) of the Communications Act.[24]

11. The abuses involving presubscribed information services and tariffed-service schemes, described above, deprive consumers of several important safeguards that both Congress and this Commission have determined are necessary to ensure that consumers are fully informed about the information services they choose to purchase and are able to block access to unwanted services from their telephone lines. The full panoply of protective measures applicable to pay-per-call services under the TDDRA are not available to consumers if IPs structure certain information services to fit, ostensibly, within exemptions to pay-per-call status. Moreover, because these services are not offered through 900 numbers, telephone subscribers are unable to block their access to such services. In addition, because the FTC requires an informative preamble only for pay-per-call services, callers to toll-free and other numbers used for presubscribed or "tariffed" information services may not receive information about the cost of a call or be afforded an opportunity to hang up without incurring charges. Finally, because charges for calls to these information services may be billed as ordinary communications services on a

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[21] This distinction between charging for conveyance of information and completion of a call is probably meaningless for telephone subscribers billed unexpected or inflated charges for transmission of calls to supposedly "free" information services.

[22] See, e.g., TDDRA FNPRM Comments of SWBT at 10 and attached advertisements.

[23] Letter from John B. Muleta, Chief, Enforcement Division, Common Carrier Bureau to Ronald J. Marlowe, 10 FCC Rcd 10945 (1995), application for review pending.

[24] 47 U.S.C. § 201(b).

monthly telephone bill, consumers may face disconnection of local and long-distance telephone service for failure to pay charges.

12. Against the backdrop of abuse, Congress enacted the 1996 Act which, inter alia, amends Section 228(c) of the Communications Act to impose more stringent restrictions on the use of 800 and other toll-free numbers to charge consumers for information services. The 1996 Act also amends Section 228(i)(2) to redefine the term "pay-per-call service" by removing the exemption accorded to any service offered pursuant to tariff.[25] These provisions are detailed, unambiguous, and mandatory.[26] Accordingly, we are amending our regulations to implement the statute virtually verbatim.[27]

13. As noted above, prior to enactment of the 1996 Act, the Commission addressed presubscription and 800 number abuses through proposed rule changes set forth in our TDDRA FNPRM.[28] While the requirement for written presubscription for 800 number information services contained in Section 228(c)(7)(c) repeats the core proposal of our TDDRA FNPRM, the new statute includes various provisions that are somewhat different from those we previously proffered. Because the 1996 Act effectively supersedes the TDDRA FNPRM, we are closing CC Docket No. 93-22, our TDDRA implementation proceeding. The new proceeding initiated here both codifies in our rules the 1996 Act's amendments to Section 228 and examines whether additional requirements might deter entities seeking to circumvent the consumer safeguards incorporated in federal pay-per-call regulations. The record in CC Docket No. 93-22 and the large body of complaints involving pay-per-call or other information services demonstrate the continuing abuse by IPs. Further, in some instances, common carriers apparently collaborate with IPs to design services that evade the current requirements, and leave consumers uninformed about their rights and responsibilities and unable to control use of their telephone lines to reach information services. As regulations governing information services and related enforcement actions have evolved over the past several years, some IPs (and collaborating carriers) have varied

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[25] The 1996 Act also invites the FTC to "extend [the pay-per-call] definition [contained in Section 228(i) of the Communications Act] to other similar services providing audio information or audio entertainment if the [FTC] determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the [FTC's TDDRA] rules. . . ." 1996 Act at § 701(b)(2), which amends § 5714(1) of the TDDRA, 15 U.S.C. § 5701 et seq. Nonetheless, regardless of whether the FTC extends the scope of its pay-per-call regulations, our pay-per-call rules continue to be delineated by the statutory definition of pay-per-call services contained in Section 228(i) of the Communications Act.

[26] Under Section 701(a)(2) of the 1996 Act, the Commission is afforded 180 days from enactment to adopt regulations implementing statutory requirements governing information services available over toll-free numbers. Nonetheless, Section 701(a)(3) explicitly provides that those requirements are effective upon enactment.

[27] The rules we adopt herein differ from the statutory language in only a few instances in which we have altered parts of speech or included introductory phrases to conform to the structure of our existing regulations.

[28] 9 FCC Rcd at 6895-96. See para. 2, supra.

the structure and operation of their services and the dialing sequences used in an effort to avoid federal disclosure, blocking, and billing requirements applicable to interstate pay-per-call services.[29] We ask commenters to propose measures that would prevent actions that certain IPs and carriers might take to evade these safeguards and to ensure that consumers are able to make informed decisions about whether to purchase or permit access to information services from their telephone lines.

III. DISCUSSION

14. Congress enacted Section 228 of the Communications Act "to put into effect a system of national regulation and review that will oversee interstate pay-per-call services and to recognize the FCC's authority to prescribe regulations and enforcement procedures and conduct oversight to afford reasonable protection to consumers of pay-per-call services and to assure that violations of Federal law do not occur."[30] The 1996 amendments to Section 228 seek to ensure that protective measures established by the TDDRA are not vitiated by abuses involving use of toll-free numbers and the filing of tariffs for the provision of information services.[31] We first discuss specific requirements of Section 228 of the Communications Act, as amended by the 1996 Act, and our implementing rules adopted herein. We then propose additional rule changes that we believe will diminish possibilities for evasion and abuse, protect consumers, and advance development of information services.

A. Requirements of Amended Section 228

1. "Billing for 800 Calls" -- 47 U.S.C. § 228(c)(7)

15. The TDDRA placed limits on charging callers who place calls to toll-free numbers to reach information services. The 1996 Act amends Section 228(c) of the Communications Act to expand those restrictions. The 1996 Act adds a new prohibition on "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 [to an 800 or any other toll-free number]."[32] This provision has been added verbatim as Section 64.1504(e) of our Rules.

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[29] See, e.g., TDDRA FNPRM Comments of SWBT at 9-12.

[30] 47 U.S.C. § 228(a).

[31] See Jt. Statement of Managers, S. Conf. Rept. No. 104-230, at 202-03, 104th Cong. 2nd Sess. (Joint Explanatory Statement) (The 1996 Act's amendments to Section 228 "protect unsuspecting callers from being charged for 800 calls that they expect to be toll-free . . ." and "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.")

[32] 47 U.S.C. § 228(c)(7)(E).

16. The 1996 Act also modifies Section 228(c)(7)(C) to prohibit charging callers for calls to toll-free numbers for conveyance of information unless "the calling party has a written agreement, including an agreement transmitted through an electronic medium,"[33] or "the calling party is charged for the information. . .[34] by means of a credit, prepaid, debit, charge, or calling card."[35] Moreover, as explained below, the statute further enumerates specific requirements for transactions involving a presubscription agreement or payment by prepaid account, debit, credit, charge, or calling card that are intended to ensure that consumers are fully informed about 800 number information services before they agree to purchase them.[36] We explain below these requirements and our new implementing regulations.

a. "Subscription Agreements for Billing for Information Provided Via Toll-Free Calls" -- 47 U.S.C. § 228(c)(8)

17. **"In General" -- 47 U.S.C. § 228(c)(8)(A).** The 1996 Act enumerates specific requirements that must be followed when information services are charged to callers to an 800 or other toll-free number pursuant to a written presubscription agreement. The agreement must include:

(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.[37]

18. As set forth in Appendix A, Sections 64.1504(c)(1)(i)-(vi) are added to the Commission's Rules to codify, verbatim, the statutory requirements of Sections 228(c)(8)(A)(i)-

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[33] 47 U.S.C. § 228(c)(7)(C)(i).

[34] 47 U.S.C. § 228(c)(7)(C)(ii).

[35] 47 U.S.C. § 228(c)(9)

[36] See Joint Explanatory Statement, S. Rep. No. 104-230 at 202-03.

[37] 47 U.S.C. § 228(c)(8)(A)(i)-(vi).

(vi), which list information that must be included in a presubscription agreement to obtain information services available through a toll-free number.

19. **"Billing Arrangements" -- 47 U.S.C. § 228(c)(8)(B).** The 1996 Act prescribes new requirements for common carriers who bill telephone subscribers for information services that are available through a toll-free number and provided pursuant to a written presubscription agreement. Section 228(c)(8)(B)(i) provides that

> If a subscriber elects . . . to pay by means of a phone bill, (i) the [written presubscription] agreement shall clearly explain that the subscriber will be assessed for calls made to the information service from the subscriber's phone line.[38]

Further, any telephone bill containing such charges must display the toll-free number that was dialed to access the information service and contain a prominent disclaimer stating that local and long distance telephone service may not be disconnected for failure to pay disputed information-service charges.[39]

20. As set forth in Appendix A, Section 64.1504(c)(vi) is added to the Commission's Rules to codify, virtually verbatim, statutory requirements that a presubscription agreement for information services accessed through a toll-free number must clearly explain that a subscriber who chooses to be billed for such services through a telephone bill will be assessed charges for all calls made to the specific information service from the subscriber's phone line.

21. We also amend Section 64.1510 to implement statutory requirements governing the manner in which charges for information services accessed through an 800 or other toll-free number must be displayed on a subscriber's telephone bill. In particular, we modify Section 64.1510(b) and add Section 64.1510(c) to codify these requirements in our rules. Currently, Section 64.1510(b) lists several practices that common carriers must follow "to the extent possible" when billing telephone subscribers for information services provided under either presubscription arrangements or through collect calls.[40] Thus, current billing standards for presubscribed information services are not absolutely mandatory. The 1996 Act, however, specifies less extensive, yet mandatory, billing procedures for presubscribed information services

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[38] 47 U.S.C. § 228(c)(8)(B)(i).

[39] 47 U.S.C. § 228(c)(8)(B)(ii)-(iii).

[40] Under Section 64.1510(b), billing carriers shall "to the extent possible," separate presubscribed and collect information services charges from those for basic telecommunications services and include a statement indicating that (1) the charges are for non-communications services, (2) neither local nor long-distance services may be disconnected for non-payment although an information provider may employ private entities to seek to collect such charges, and (3) access to information services may be involuntarily blocked for failure to pay legitimate charges.

that have been accessed over a toll-free number.[41] Thus, we amend Section 64.1510(b) to apply solely to information services provided on a collect basis and add Section 64.1510(c) to incorporate, virtually verbatim, the new billing requirements for presubscribed information services accessed through toll-free numbers.

22. **"Use of PINs to Prevent Unauthorized Access" -- 47 U.S.C. § 228(c)(8)(C).** The 1996 Act provides that a presubscription agreement to obtain information services through a toll-free number must include "a unique personal identification number or other subscriber-specific identifier," a requirement that "a subscriber use this number or identifier to obtain access to the information provided," "instructions on its use," and assurance "that services accessed by use of the subscriber's personal identification number or subscriber-specific identifier" will be billed in the manner specified by the subscriber[42] (e.g., "direct remit, debit, prepaid account, phone bill, or credit or calling card"[43]).

23. As set forth in Appendix A, Section 64.1504(c)(vii) is added to the Commission's Rules to codify, virtually verbatim, statutory requirements governing PINs.

24. **"Exceptions" -- 47 U.S.C. § 228(c)(8)(D).** The 1996 Act establishes exceptions to the requirement for written presubscription "for calls utilizing telecommunications devices for the deaf, for directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or for any purchase of goods or of services that are not information services."[44]

25. As set forth in Appendix A, Section 64.1504(f)(1) is added to the Commission's Rules to codify, verbatim, the statutory exceptions to the requirement that presubscription be executed in writing for information services available through a toll-free number.

26. **"Termination of Service" -- 47 U.S.C. § 228(c)(8)(E).** The 1996 Act directs common carriers to investigate promptly complaints that a presubscribed information service accessed through an 800 or other toll-free number has not been provided in accordance with the statutory requirements.[45] Carriers also explicitly are accorded authority to terminate

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[41] In the TDDRA FNRPM, we proposed to require that carriers who bill telephone subscribers for presubscribed information services adhere to the specified billing standards without exception. 9 FCC Rcd at 6896.

[42] 47 U.S. C. § 228(c)(8)(C).

[43] 47 U.S. C. § 228(c)(8)(A)(vi).

[44] 47 U.S.C. § 228(c)(8)(D).

[45] 47 U.S.C. § 228(c)(8)(E).

service to an IP who fails to provide evidence of a written presubscription agreement for disputed charges.[46]

27. As set forth in Appendix A, Section 64.1503(b) is added to the Commission's Rules to codify, virtually verbatim, statutory provisions involving common carriers' investigations of complaints and termination of service.

28. **"Treatment of Remedies" -- 47 U.S.C. § 228(c)(8)(F).** Section 228(c)(8)(F) provides that the remedies specified in Section 228(c) "are in addition to any other remedies that are available under [the Commission's forfeiture authority in] Title V of [the Communications] Act.[47] This provision simply specifies that both the Commission's Title V statutory penal provisions and the remedies contained in Section 228(c), (e.g., termination of service to an information provider) may be invoked against parties who violate Commission rules or orders concerning interstate information services. It is effectively implemented by the statute alone and need not be added to our pay-per-call regulations, which govern the conduct of common carriers who transmit or bill and collect for pay-per-call or other information services.

b. "Charges by Credit, Prepaid, Debit, Charge, or Calling Card in Absence of Agreement" -- 47 U.S.C. § 228(c)(9)

29. The 1996 Act establishes payment by prepaid account, debit, credit, charge, or calling card as alternatives to written presubscription for information services charged to callers to 800 or other toll-free numbers provided that all such calls begin with

> an introductory disclosure message that
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> (A) clearly states that there is a charge for the call;
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> (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 charge must be billed on either a credit, prepaid, debit, charge, or calling card;
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> (D) asks the caller for the card number; clearly states that charges for the call begin at the end of the introductory message; and

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[46] Id.

[47] 47 U.S.C. § 228(c)(8)(F).

(E) clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.[48]

30. As set forth in Appendix A, Section 64.1504(c)(2) is added to the Commission's Rules to codify, verbatim, the statutory provisions governing use of a prepaid account, debit, credit, charge, or calling card to pay for information services that are accessed through an 800 or other toll-free number.

31. **"Bypass of Introductory Disclosure Message" -- 47 U.S.C. § 228(c)(10).** Under the 1996 Act, IPs may install a bypass mechanism so that repeat callers to an information service accessed through an 800 or other toll free number can "avoid listening to the introductory message, provided that the 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."[49]

32. As set forth in Appendix A, Section 64.1504(f)(2) is added to the Commission's Rules to codify, verbatim, statutory provisions governing mechanisms that permit repeat callers to bypass the introductory message required for all information services that are accessed through an 800 or other toll-free number and that bill through a prepaid account, debit, credit, charge, or calling card rather than by means of a presubscription agreement.

2. DEFINITIONS

a. Pay-Per-Call Services -- 47 U.S.C. § 228(i)

33. The 1996 Act redefines the term "pay-per-call services" by eliminating the exemption accorded to any service provided pursuant to tariff under the TDDRA.[50] Congress removed the tariffed services exemption "to close a loophole . . . which permits information providers to evade the restrictions of [S]ection 228 by filing tariffs for the provision of information services."[51]

34. As set forth in Appendix A, Section 64.1501(a) of the Commission's Rules is amended by removing the tariffed services exception.

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[48] 47 U.S.C. § 228(c)(9)(A)-(F).

[49] 47 U.S.C. § 228(c)(10).

[50] 47 U.S.C. § 228(i).

[51] Joint Explanatory Statement, S. Rep. No. 104-230 at 203.

b. Calling Card -- 47 U.S.C. § 228(c)(11)

35. After recognizing payment by "calling card" as an acceptable means of obtaining information services available through a toll-free number, the 1996 Act defines a calling card as "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."[52]

36. As set forth in Appendix A, Section 64.1501(c) is added to the Commission's Rules to codify, verbatim, the statutory definition of "calling card."

c. Presubscription or Comparable Arrangement -- 47 C.F.R. § 1501(b).

37. Neither the TDDRA nor the 1996 Act defines the term "presubscription or comparable arrangement," which Section 228(i)(2) establishes as an exemption to pay-per-call status.[53] In implementing the TDDRA, however, the Commission and the FTC adopted identical definitions intended to guard against uncontrolled access to information services and to ensure that consumers receive information necessary to make informed choices about whether to subscribe to such services.[54] The 1996 Act does not directly mandate modification of the presubscription definition contained in Section 64.1501(b) of our Rules. Certain aspects of this

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[52] 47 U.S.C. § 228(c)(11).

[53] 47 U.S.C. § 228(i)(2).

[54] A presubscription or comparable arrangement is defined as

> [A] contractual agreement in which:
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> (1) 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; (2) The service provider agrees to notify the consumer of any future rate changes;
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> (3) The consumer agrees to use the service on the terms and conditions disclosed by the service provider;
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> (4) The service provider requires the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers; and
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> (5) Provided, however, that disclosure of a credit or charge card number, along with authorization to bill that number, made during the course of a call to an information service shall constitute a presubscription or comparable arrangement if the credit or charge card is subject to the dispute resolution procedures of the Truth in Lending Act and Fair Credit Billing Act, as amended, 15 U.S.C. 1601 et seq. No other action taken by a consumer during the course of a call to an information service, for which charges are assessed, can create a presubscription or comparable arrangement.

47 C.F.R. § 64.1501(b); see also 16 C.F.R. § 308.2(e).

definition, however, are inconsistent with statutory requirements governing presubscription to information services available through 800 or other toll-free numbers. For example, our presubscription definition permits oral execution of a presubscription agreement so long as charges are not assessed for any call executing the agreement. Further, the definition does not recognize payment by a debit card or prepaid account as an acceptable alternative to the conventional presubscription agreement. Although the definition encompasses payment by a credit or charge card, under the Commission's Rules, the card must be subject to the dispute resolution procedures of the Truth in Lending Act and Fair Credit Billing Act.

38. As set forth in Appendix A, Section 64.1501(b)(6) is added to the Commission's presubscription definition to specify that presubscription arrangements to obtain information services provided by means of an 800 or other toll-free number must conform to the requirements of Section 64.1504(c). This amendment incorporates into our general presubscription definition statutory requirements that govern 800-number presubscription.

B. Notice of Proposed Rule Making

39. Through amendments to Section 228 of the Communications Act, the 1996 Act addresses abusive practices that have threatened public confidence in toll-free numbers and left telephone subscribers vulnerable to unexpected charges for calls to information services, subject to disconnection of local and long-distance telephone service for failure to pay such charges, and unable to block access to unwanted services. In apparent efforts to avoid consumer safeguards applicable to 900 number services, IPs have offered their services through collect calls, purported presubscription arrangements, and tariffed-service systems that have been available on 500, 700, 800, international and domestic POTS ("plain old telephone service") numbers. IPs evidently move their services from one arrangement and dialing sequence to another in response to new protective regulations, rulings, or enforcement actions, sometimes with the apparent encouragement of carriers who pay commissions to IPs in exchange for the increased traffic generated by information-service calls.[55]

40. The provisions of Section 228 of the Communications Act attest to Congress' determination that consumers should be: (1) provided basic information regarding the price and other material terms and conditions applicable to interstate information services before agreeing to purchase them; (2) able to block access to unwanted services; and (3) protected from disconnection of basic communications services for failure to pay information-services charges.[56] The revisions to Section 228 enacted by the 1996 Act are intended to ensure that consumers are not deprived of these protections by information services available through toll-free dialing sequences or tariffed-service systems.[57]

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[55] See, e.g., TDDRA FNPRM Comments of SWBT at 10-12 and attached advertisements.

[56] See 47 U.S.C. § 228(c)(4), (5).

[57] See Joint Explanatory Statement, S. Rep. No. 104-230 at 202-03.

41. It is our belief that in analyzing the effect of the new statutory requirements, we must look not only to the practices that are now prohibited but also to the likely responses of IPs and common carriers who might seek to evade the statute. Our consideration of possible evasions is influenced by awareness of past evasions that have resulted in widespread deception and abuse. We believe that we should act now to discourage future abuse.[58] Accordingly, as set forth in Appendix B and explained below we propose certain very limited modifications to Sections 64.1501(b), 64.1504, and 64.1510 of our Rules, which contain our presubscription definition, toll-free number limitations, and billing requirements. We also seek comment on whether additional regulations are necessary to protect consumers from certain practices by common carriers involved in transmitting interstate information services that could be interpreted as not being just and reasonable under Section 201(b) of the Act.

1. "Definitions - Presubscription or Comparable Arrangement" -- 47 C.F.R. § 64.1501(b)

42. While the 1996 Act requires written subscription to information services available through toll-free numbers, written agreements are not explicitly required for information services that might be offered through other telephone numbers. Although virtually all complaints involving purportedly presubscribed information services have involved programs available through 800 numbers, we are concerned that, without a uniform requirement for written presubscription, the same "instant presubscription" abuses experienced by 800-number callers under oral presubscription might emerge on other dialing sequences.[59] Accordingly, we propose to revise the presubscription definition to include a requirement that all presubscription arrangements (not just those involving toll-free service) be executed in writing[60] or, alternatively, through payment by direct remittance, prepaid account, or debit, credit, charge, or calling card regardless of the telephone number used to access the relevant information service. We are also proposing to require explicitly that presubscription agreements must be executed by a legally

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[58] The need to preserve regulatory flexibility to combat new and unforeseen abuses was specifically recognized in connection with enactment of the TDDRA. The Senate Commerce Committee, reporting on a pay-per-call bill preceding the TDDRA, noted that "[t]he Committee intends that the FCC and FTC have adequate flexibility in defining the scope of regulations to respond to new technologies and new applications which this legislation may not have anticipated, but which the agencies may determine need regulatory safeguards in order to protect consumers or [which they may determine] do not need regulatory safeguards." S. Rep. No. 102-190 at 12.

[59] The Common Carrier Bureau has already received complaints involving the use of 500 numbers to provide information services. See, e.g., letter from Ronald R. Conners, Bell Communications Research, to Kathleen M. H. Wallman, formerly Chief, Common Carrier Bureau and Scott Blake Harris, formerly Chief, International Bureau (Nov. 6, 1995).

[60] We previously proposed such a requirement in our TDDRA FNPRM, 9 FCC Rcd at 6896, although we have modified the presubscription definition proposed in that Notice to reflect the new requirements of the 1996 Act.

competent adult.[61] In addition, to prevent deceptive use of presubscription agreements tied to contests or other promotions, we are proposing that the presubscription document be separate or easily severable from any promotions or inducements. The 1996 Act recognizes the validity of electronically transmitted presubscription agreements[62] and we have incorporated this provision in the proposed presubscription definition. We ask commenters, however, to consider whether safeguards should be required to ensure that these agreements are valid commercial instruments and that electronic execution does not encourage the abuses that arose from oral execution of presubscription contracts.

43. Finally, we are proposing to add to our presubscription definition a requirement that a consumer must use a pre-existing credit, charge, or calling cards to obtain information services and that an actual card must have been delivered to the party to be billed prior to assessment of any charges. Additionally, such cards could not operate to assess charges through ANI. We have made these proposals to prevent use of "instant" credit, charge, or calling cards that might be issued by an IP during the course of a call to an information service without confirming that the caller is, in fact, the party to be billed.

2. "Restrictions on the Use of Toll-Free Numbers" -- 47 C.F.R. § 64.1504

44. The limitations on the use of toll-free numbers to provide information services contained in Section 228(c)(7) are framed to apply to "the calling party."[63] Thus, the statute explicitly protects *callers* to toll-free numbers from six prohibited transactions, including connection to a pay-per-call service and assessment of information-service charges absent a written agreement or payment by prepaid account, debit, credit, charge, or calling card. We propose to modify Section 64.1504 to ensure that subscribers whose telephone lines may be used to place calls to toll-free numbers likewise are not assessed charges for calls to information services provided by means specifically described in the statutory prohibitions. Thus, we propose to amend Section 64.1504(c), (d), and (e) to state explicitly that the protections afforded to "the calling party" also apply to "the subscriber to the originating line."[64] This amendment should ensure that a telephone subscriber will not be billed for information services obtained by another individual who uses the subscriber's line to place calls to numbers widely understood to be toll-free.

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[61] This requirement was set forth in the TDDRA Report and Order but was not incorporated into our Rules. 8 FCC Rcd at 6888 n.26.

[62] 47 U.S.C. § 228(c)(7)(C)(i).

[63] 47 U.S.C. § 228(c)(7).

[64] See TDDRA FNPRM, 9 FCC Rcd at 6896.

45. Restoration of public confidence in toll-free calling was a priority for this Commission in adopting the TDDRA FNPRM[65] and for Congress in amending Section 228 of the Communications Act.[66] That goal remains crucial in this new proceeding. We ask parties to comment on the potential effectiveness of these provisions in combating deception and fraud that have been associated with 800 number information services and invite comment as to whether any other actions might be warranted to forestall future abuse involving toll-free numbers. In particular, we ask parties to address our tentative conclusion that a carrier's billing of calls dialed to an 800 or other toll-free number on the basis of ANI is a violation of Section 228(c)(7)(A) of the Communications Act[67] unless the call involves use of telecommunications devices for the deaf. Usually, calls to carriers' toll-free-access numbers are delivered only if a calling card is used or the call is collect. We have received complaints that some carriers bill calls to their toll-free-access numbers to the originating line instead of to the customer's calling card account.[68] This encourages toll fraud -- especially from aggregator phones and phones that have been blocked from long distance direct dialing -- because the subscriber who is charged and the individual making the call are not always the same. With the exception of calls using telecommunications devices for the deaf, reliance on ANI to bill any type of call to a toll-free number -- even a carrier's toll-free-access code -- does not appear to satisfy a common carrier's statutory obligation to provide communications service in a just and reasonable manner.[69] We seek comment on this tentative conclusion. We encourage parties to address whether it is appropriate to revisit issues involving use of ANI to bill callers to toll-free numbers now, and, if so, what would be the most effective regulatory response.

3. "Billing and Collection of Pay-Per-Call and Similar Service Charges" -- 47 C.F.R. § 64.1510

46. We propose one minor modification to Section 64.1510(c) to implement the 1996 Act's billing requirements virtually verbatim. As set forth in Appendix B, we propose

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[65] TDDRA FNPRM, 9 FCC Rcd at 6895.

[66] See Joint Explanatory Statement, S. Rep. No. 104-230 at 202-03.

[67] This provision prohibits use of toll-free numbers "in a manner that would result in the calling party being assessed, by virtue of completing the call, a charge for the call." 47 U.S.C. § 228(c)(7)(A).

[68] See Transglobal Telecommunications Co. v. E-tel, Inc., E-95-14.

[69] In 1992, prior to enactment of TDDRA's limitations on the use of 800 numbers to charge consumers for information services, the National Association of Attorneys General filed a Petition for Modification and Clarification of the Commission's pay-per-call rules. The Petition was treated as a petition for rule making (RM-7990), which was later incorporated with our implementation of the TDDRA. Because we believed that the statutory prohibitions and presubscription standards reflected in Section 64.1504 and 64.1501(b) would effectively preclude reliance on ANI to bill callers for 800 number information services, we found it unnecessary, at that time, to adopt a rule expressly prohibiting that practice. TDDRA Report and Order, 6 FCC Rcd at 6891 n.50

to add language to state explicitly that charges for presubscribed information services accessed through a toll-free number must be displayed separately from those for local and long-distance telephone service. We proposed such a requirement in the TDDRA FNPRM,[70] and continue to believe that such separate identification of charges for normally toll-free calls is essential to eliminating consumer confusion about such charges. We seek comment on the costs to carriers for separate billing. In addition, although we have not proposed a rule change at this time, we request commenters' views as to whether current or predicted conditions warrant adoption of a rule covering carrier billing of presubscribed information services that are not available through toll-free numbers.

4. Redefinition of Pay-Per-Call to Remove the Tariffed Services Exemption

47. In repealing the tariffed services exemption to pay-per-call status, Congress specifically sought to end service arrangements in which telephone subscribers are charged high prices for transmission of calls to ostensibly free information services.[71] We are concerned, however, that some entities may seek to continue these arrangements despite Congress' clear intention that they be ended. Under Section 228 of the Communications Act, imposition of a per-call or per-time-interval charge in excess of the charge assessed for transmitting a call is a requirement for pay-per-call status.[72] Carriers who have invoked the tariffed services exemption in an effort to shelter arrangements whereby information services are provided at tariffed rates might likewise still claim that their services do not meet the criteria for pay-per-call status because callers purportedly are not charged for conveyance of information but only for transmission of calls. While there may be some truly free information services that callers might

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[70] 9 FCC Rcd at 6896.

[71] See Joint Explanatory Statement, S. Rep. No. 104-230 at 202.

[72] Section 228(i)(l) provides that

> [t]he term 'pay-per-call services' means any service --
> (A) in which any person provides or purports to provide --
> (i) audio information or audio entertainment produced or packaged by such person;
> (ii) access to simultaneous voice conversation service; or
> (iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;
> (B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and
> (C) which is accessed through use of a 900 number or any other prefix or area code designated by the Commission. . . .

47 U.S.C. § 228(i)(1).

wish to access through a toll call,[73] we believe that we must take steps to ensure that the protective purposes underlying Congress' decision to remove the tariffed services exemption are fully realized. Congress specifically recognized that the consumer protections enacted by the TDDRA are eviscerated when information providers are able to charge consumers tariffed rates for the provision of information services.[74] Such services are misleadingly characterized as ordinary long distance telecommunications and are billed to telephone subscribers as "deniable," meaning that failure to pay charges may jeopardize local and long distance telephone service.

48. Pursuant to Section 4(i) of the Communications Act,[75] we tentatively conclude that when a common carrier charges a telephone subscriber for a call to an interstate information service, any form of remuneration from that carrier to an entity providing or advertising the service, or any reciprocal arrangement between such entities, constitutes per se evidence that the charge levied actually exceeds the charge for transmission. Accordingly, interstate services provided through such arrangements would fit within the pay-per-call definition and, thus, be required to be offered exclusively through 900 numbers. We invite comment on this tentative conclusion and, also, as to whether, in any event, such conduct by a common carrier is just and reasonable.

IV. PROCEDURAL ISSUES

A. Administrative Procedure Act Requirements

49. Because the rule changes set forth in Appendix A and adopted herein simply conform the Commission's Rules to the statute, we find for good cause that compliance with the notice and comment provisions of the Administrative Procedure Act is unnecessary. See 5 U.S.C. § 553(b)(B). Moreover, to the extent that the provisions of the 1996 Act mirror proposals set forth in the TDDRA FNPRM, notice and comment requirements have been satisfied.

B. Ex Parte Presentations

50. This is a non-restricted notice-and-comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they

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[73] Commenters responding the TDDRA FNPRM have cited, for example, local time or weather, movie theater information, product information, or airline flight information. See Comments of InfoAccess, Inc. at 4; Reply Comments of Pilgrim Telephone, Inc. at 5-6, 8.

[74] See Joint Explanatory Statement, S. Rep. No. 104-230 at 202. ("This [tariffed services] exemption has proven to be a problem because consumers have none of the protections that were enacted as part of the Telephone Disclosure and Dispute Resolution Act (P.L. 102-556).")

[75] 47 U.S.C. § 154(i).

are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

C. Initial Regulatory Flexibility Analysis

51. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 601, et seq, the Commission's Initial Regulatory Flexibility Analysis with respect to this Notice of Proposed Rule Making is as follows:

52. Reason for action. The Commission is issuing this Notice of Proposed Rule Making to afford consumers greater protection from deceptive practices associated with the provision of interstate information services.

53. Objectives. The objective of this Notice of Proposed Rule Making is to provide an opportunity for public comment and to provide a record for a Commission decision on the issue stated above.

54. Legal Basis. Sections 1, 4(i), 4(j), and 228 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 228.

55. Description, potential impact, and number of small entities affected. As set forth above, the Commission is proposing to amend pay-per-call rules to prevent circumvention of new federal standards that were enacted in the 1996 Act to govern interstate information services. Specifically, the Commission is proposing to require that (1) all presubscription arrangements to purchase interstate information services (not just those involving toll-free service) be executed in writing or, alternatively, through payment by direct remittance, prepaid account, or debit, credit, or calling card; (2) limitations on the use of toll-free numbers to provide information services apply to both "the calling party" and "the subscriber to the originating line;" and (3) charges for presubscribed information services accessed through a toll-free number must be displayed separately on a telephone bill from charges for local and long-distance telephone service. The Commission is seeking public comment on the proposed rule changes and asking whether additional measures are necessary to ensure that the protective purposes of the 1996 Act are realized and consumers are protected from deceptive practices associated with the provision of some interstate information services.

56. The proposed rule changes set forth in Appendix B and any other changes that might occur as a result of this proceeding could affect both common carriers and IPs that qualify as small business entities under Section 601(3) of the Regulatory Flexibility Act,[76] Section 3 of the Small Business Act,[77] and standards promulgated by the Small Business Administration at 13

[76] 5 U.S.C. § 601(3).

[77] 15 U.S.C. § 632(a).

C.F.R. § 121.201. The proposed rules would impose constraints on common carriers that bill telephone subscribers for interstate information services offered pursuant to presubscription arrangements. Filings with the Commission indicate that there are 1,347 LECs who might be affected by the proposal to require separation of "toll-free" presubscribed information service charges from local and long-distance telephone charges.[78] The proposed separation requirement is not likely to have a significant economic impact on any carrier that bills telephone subscribers for information services provided through toll-free numbers by means of a telephone bill, since those carriers are already required by statute to list the toll-free number actually dialed and include a disclaimer informing the subscriber that "common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services."[79] We invite parties to comment on this tentative conclusion. In addition, parties opposing the separate billing requirement should identify other measures that would ensure telephone subscribers are able to identify easily the type of charges contained on a telephone bill.

57. While the Commission's Rules directly apply to common carriers that transmit and bill subscribers for interstate information services, IPs actually providing the information services may be indirectly affected. For example, IPs that have used toll-free numbers and oral presubscription arrangements to provide information services will be affected by the proposed limitations involving use of toll-free numbers and mandatory written presubscription. These IPs may experience adverse economic impact in that they will have to change the manner in which they provide information services to secure common carrier billing or to ensure compliance with the tariffs under which they obtain toll-free service. The Commission has only limited and unverifiable information to predict either the total number of affected IPs or the percentage of affected IPs that qualify as small entities. IPs are not subject to federal licensing or reporting requirements and the staff has been able to obtain from industry sources only an informal estimate that the total number of IPs currently operating is probably somewhere between 10,000 and 20,000. Even assuming that this rough estimate is correct, we cannot, with certainty, (1) identify what portion of all IPs might be providing service in a manner that would subject them to the proposed regulations governing toll-free numbers and presubscription arrangements, or (2) predict what portion of all IPs are small businesses. We invite parties commenting on this initial regulatory flexibility analysis to provide information as to the number of small businesses that would be affected by our proposed regulations and identify alternatives that would reduce the burden on these entities while still ensuring that consumers are neither "presubscribed" to any information service without their informed and explicit consent nor charged for calls that they believe are toll-free. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth findings in the Final Regulatory Flexibility Analysis.

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[78] See FCC Industry Analysis Div., Carrier Locator: Interstate Service Providers, Table 1 (rel. Dec. 18, 1995) (reporting number of LECs filing Telecommunications Relay Services Fund Worksheet).

[79] 47 U.S.C. § 228(c)(8)(B)(ii)-(iii). See para. 19, supra.

58. Reporting, recordkeeping, and other compliance requirements. The proposed rules would impose disclosure requirements upon common carriers that bill telephone subscribers for presubscribed information services and, indirectly, upon IPs that provide such services. Common carriers would be required, on telephone bills, to display charges for presubscribed information services separately from local and long distance telephone charges. Under the proposed definition of a presubscription or comparable arrangement, IPs that wish to offer presubscribed information services would be required to execute all presubscription agreements in writing and include in each agreement specific information regarding the terms and conditions under which the service is to be provided.

59. Federal rules that may duplicate, overlap or conflict with the proposed rules. As required by the TDDRA, FTC regulations prescribe federal standards governing IPs and all entities, including common carriers, that bill and collect for interstate information services.[80]

60. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. The Commission has considered proposing no rule changes beyond those specifically required by the 1996 Act, but concluded that further action is demanded by the likelihood of attempts to evade the new statutory requirements. Therefore, as discussed above, we are proposing very limited rule changes which, given the history of widespread deception and abuse, we believe are minimally intrusive steps necessary to discourage possible evasion of the new federal pay-per-call standards contained in Section 228 of the Communications Act.[81] We are inviting public comment as to whether the proposals will be effective deterrents or whether other requirements should be adopted. We shall consider any alternatives suggested in comments that are consistent with the statutory objectives of Section 228 of the Communications Act and will afford telephone subscribers effective protection from abusive practices involving provision of interstate information services.

61. Comments are solicited. Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rule Making but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making to the Chief Counsel for Advocacy of the Small Business Administration in Accordance with Section 603(a) of the Regulatory Flexibility Act.

D. Initial Paperwork Reduction Act of 1995 Analysis

62. This Order and Notice of Proposed Rule Making contains either a proposed or modified information collection. As part of our continuing effort to reduce paperwork

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[80] 16 C.F.R. § 308.1 et seq.

[81] See paras. 39-48, supra.

burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this item, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on the Notice of Proposed Rule Making. OMB comments are due 60 days from the date of publication of the Order and Notice of Proposed Rule Making in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

E. Comment Filing Procedures

63. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before August 26, 1996, and reply comments on or before September 16, 1996. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

64. Parties are asked to submit comments and reply comments on diskette. Such diskette submission are in addition to the formal filing requirements addressed above. Parties submitting diskettes should submit them to Mary Romano of the Common Carrier Bureau, 2025 M Street, N.W., Room 6120, Washington, D.C. 20554. Such submissions should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

65. Written comments by the public on the proposed and/or modified information collections are due at the same time as other comments on this Notice of Proposed Rule Making. Written comments by OMB on the proposed and/or modified information collections must be submitted on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain_t@al.eop.gov.

V. CONCLUSION

66. In this Order and Notice of Proposed Rule Making, we amend our regulations to implement the Section 701 of the Telecommunications Act of 1996 and propose additional minor modifications to maximize consumers' protection from confusing or deceptive practices related to the provision of interstate information services and guard against future abuse. Commenters are encouraged to address the proposed rules set forth in Appendix B and explained above. We urge parties to assess carefully whether the rules will effectively correct and deter abuse, and to offer alternative suggestions, including specific rule language.

VI. ORDERING CLAUSES

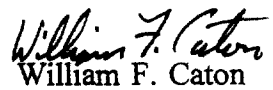
67. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), and 228 of the Communications Act, 47 U.S.C. §§ 152, 154(i), 154(j), and 228, that 47 C.F.R. Part 64 IS AMENDED as set forth in Appendix A, below, effective 150 days from publication of the text of the designated rules in the Federal Register.

68. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 4(j), and 228 of the Communications Act, 47 U.S.C. §§ 152, 154(i), 154(j), and 228, that a Notice of Proposed Rule Making is hereby ADOPTED, proposing amendment of 47 C.F.R. Part 64 as set forth in the Appendix B.

69. IT IS FURTHER ORDERED that CC Docket No. 93-22 is hereby terminated.

70. IT IS FURTHER ORDERED that the Secretary shall send a copy of this Notice of Proposed Rule Making including the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act.

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton
Acting Secretary

APPENDIX A

RULES AMENDED

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228 unless otherwise noted.

2. The heading of Subpart O of Part 64 is revised to read as follows:

Subpart O--Interstate Pay-Per-Call and Other Information Services

3. Section 64.1501 is revised to read as follows:

For purposes of this subpart the following definitions shall apply:

(a) Pay-per-call service means any service:

(1) In which any person provides or purports to provide:

(i) Audio information or audio entertainment produced or packaged by such person;

(ii) Access to simultaneous voice conversation services; or

(iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(2) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(3) Which is accessed through use of a 900 number;

(4) Provided, however, such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

(b) Presubscription or comparable arrangement means a contractual agreement in which

(1) 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