BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

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COMMENTS OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
TELECOMMUNICATIONS SUBCOMMITTEE

The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General submits these comments in response to the Federal Communication Commission's ("Commission") Order and Notice of Proposed Rule Making (NPRM) in the above matter.

The Attorneys General welcome the Commission's Order to incorporate the requirements of Section 701 of the Telecommunications Act of 1996 ("1996 Act") in rules governing pay-per-call services.[1] By enacting Section 701, Congress intended to stop providers from evading federal laws regarding pay-per-call services and ensure the integrity of the 800 number

[1] Telecommunications Act of 1996; § 701(a)(1), Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. § 151 et seq.).

exchange.

Despite federal and state efforts to control abuses in the information services industry, some providers have continued to find ways to evade regulation and exploit consumers. The use of 800 and international numbers are merely the most recent vehicles used to evade federal protection. We encourage the Commission to institute additional measures to achieve Congress' intent to close regulatory loopholes and stop unlawful, unfair and deceptive practices in the pay-per-call industry.

PAY-PER-CALL PROVIDERS CONTINUE TO ENGAGE IN ABUSIVE AND DECEPTIVE PRACTICES

Since the inception of pay-per-call services, abusive and fraudulent practices have plagued the pay-per-call industry. These tactics have continued in spite of Congressional action, rulemaking efforts by the Commission and the Federal Trade Commission, as well as state and federal enforcement actions. In 1991, the Commission first established pay-per-call rules in an attempt to protect telephone subscribers from abusive practices associated with 900 numbers.[2] However, these abusive and other unlawful practices persisted. In 1992, Congress responded by enacting the Telephone Disclosure and Dispute Resolution Act ("TDDRA") to curb deceptive and unfair practices while fostering

[2] Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65, Report and Order, 6 FCC Rcd 61166 (1991), recon. 8 FCC Rcd 2343 (1993).

the growth of the legitimate pay-per-call industry.[3] Following TDDRA's enactment, the Federal Trade Commission and this Commission formulated rules to implement the TDDRA's protections for consumers.[4]

Unfortunately, TDDRA and related regulations did not adequately protect consumers and complaints about pay-per-call services have not abated. For example, Attorneys General continued to receive complaints about calls initially placed to an 800 number that result in excessive charges for services unordered by subscribers. These charges are often referenced on telephone bills as voice mail, conference calls or a designation other than a pay-per-call service. Furthermore, complaints regarding information services provided through international numbers have continued.

Therefore, the Commission proposed further rules in 1994.[5] While consideration of the proposed rules was pending before the Commission, Congress amended TDDRA.[6] Congress' clear intent is

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[3] 47 U.S.C. §228.

[4] Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, Report and Order, 9 FCC Rcd 2475 (1993); 47 C.F.R. § 64.1501, et seq.; § 308, Trade Reg. Rule pursuant to TDDRA, 16 C.F.R. § 308.1 et seq.

[5] 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).

[6] Section 701 of the 1996 Act

to stop circumvention of the law and stem the tide of complaints about pay-per-call services by protecting consumers from abusive practices.

CONGRESS INTENDED TO ELIMINATE LOOPHOLES USED TO EVADE PAY-PER-CALL PROTECTIONS BY ENACTING SECTION 701 OF THE 1996 Act

In response to continuing problems related to pay-per-call services, Congress set up additional measures to stop abusive practices. In Section 701(a)(1) of the Act, Congress amended TDDRA to provide necessary protection against the use of 800 numbers and tariffed services to connect individuals to pay-for-call services without complying with existing rules. In order to meet its objective, Congress revised TDDRA's restrictions related to charges for pay-per-calls that use 800 numbers and modified the definition of pay-per-call services.[7] Furthermore, the 1996 Act expressly required the Commission to revise existing rules to implement these changes and authorized the Federal Trade Commission to extend the definition of pay-per-call services to other services subject to similar unfair and deceptive practices.[8]

The House Conference Committee Report states that the change was intended to "close a loophole in current law, which permits information providers to evade the restrictions of . . .[TDDRA]

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[7] Section 701(a)(1).

[8] Section 701-(a)(2) and (b).

by filing tariffs for the provision of information services."[9] The measure was also designed to ensure "that subscribers who call an 800 number . . . shall not be charged for the calls unless the party agrees to be charged under a written presubscription agreement.[10] The Report emphasizes Congressional intent that pay-per-call charges appear on a phone bill only if a customer knowingly ordered such services. The 1996 Act evidences the determination that consumers: be adequately informed of what they are agreeing to purchase; be able to block unwanted services; and, not lose their basic communication services for failure to pay information-services charges.[11]

This recent congressional action is consistent with well established contract and consumer protection principles that buyers are not obligated to pay for unordered goods or services. Even where the recipient has an ongoing commercial relationship with a business, a consumer may reject unordered goods and avoid any obligation to pay.[12]

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[9] H. Conf Rpt. No. 104-458, p. 203, 104th Cong. 2d Sess. (1996).

[10] H. Conf. Rpt No. 104-458, P. 202, 104th Cong., 2d Sess. (1996).

[11] 47 U.S.C. § 228(c)(4), (5)

[12] For example, the Federal Trade Commission negative option rule contains such provisions. See 16 CFR § 425.1 et seq.

UNSCRUPULOUS PROVIDERS WILL SEEK TO EVADE RULES IMPLEMENTING SECTION 701 AMENDMENTS

The history of the pay-per-call industry is marked by a troubling pattern of consumer fraud. Each significant action to reduce fraud in the industry has been met or followed by new or varied forms of abuse on the part of unscrupulous information service providers. When the Commission adopted its pay-per-call rules directed at the use of 900 numbers, abusive providers migrated to 800 numbers and related consumer problems continued.[13] Heightened scrutiny of 800 numbers and enforcement efforts against the most egregious violators forced providers to find new ways to prosper at the expense of unwary and defenseless consumers. In the latest cycle of abuse, providers acting in concert with cooperative carriers and foreign telephone companies provide pay-per-call services from foreign locations at high tarriffed rates.[14]

In view of the evolving history of pay-per-call fraud, the Commission's concern about potential evasion of rules implementing Section 701 of the 1996 Act is well founded (NPRM at

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[13] The Attorneys General previously submitted comments in the Commission's pay-per-call rulemaking docket and most recently encouraged the Commission to strengthen its restrictions on the use of 800 numbers. See Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-2, Order on Reconsideration and Further Notice of Proposed Rulemaking (1994).

[14] The Commission's rules expressly exclude from the definition of pay-per-call service "any service the charge for which is tariffed." See 47 C.F.R. § 64.1501(B).

¶ 13).

THE RULES APPROPRIATELY IMPLEMENT THE 1996 ACT

We support the proposed rule changes formulated by the Commission. The Attorneys General have consistently recommended that presubscription agreements be made with a legally competent individual and documented in writing (NPRM, ¶ 42).[15] The explicit recognition that pay-per-call rules are intended to protect telephone subscribers, as well as callers, is similarly important.

We continue our support for the segregation of presubscription charges from regular telecommunications charges (NPRM, ¶'s 19-21). Without separating these charges, unsuspecting subscribers still may be victimized by fraudulent operators.

We are particularly encouraged by the 1996 Act's modification of the definition of pay-per-call services to remove the exemption for tariffed services (NPRM, ¶ 33). Congress included this provision to stop abuses associated with pay-per-call services using international numbers.

Finally, we strongly support the Commission's tentative conclusion that international pay-per-call services promoted

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[15] Comments and Recommendations of the Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General, In the Matter of Proposed Telephone Disclosure Rule, FTC File No R311001 (April 7, 1993).

domestically are subject to these rules (NPRM, ¶ 48).[16]

RECOMMENDATION TO PREVENT EVASION BY UNSCRUPULOUS PROVIDERS

We welcome the Commission's initiative, but believe that the pattern of consumer abuse requires additional measures. We encourage the Commission to put in to place the following recommendations to prevent unfair, deceptive or abusive practices and continued problems in the information service industry.

1. All carriers should be prohibited from charging for calls to 800 numbers on the basis of ANI. As we have previously stressed, the use of ANI to bill for calls to 800 numbers undermines the written presubscription agreement requirement and enables promoters and carriers to circumvent the requirement. Both the public belief that calls to 800 numbers are toll-free and the capability to switch callers to other access numbers without a subscriber's knowledge or authorization substantiates the need for this prohibition.

This recommendation, if implemented, would not unduly inhibit the growth of legitimate information services. Providers would be able to offer services via a 900 number and include charges in their customers' telephone bills. Providers would also be able to offer information services via an 800 number and

[16] Letter from John B. Muleta, Chief, Enforcement Section, Common Carrier Bureau to Ronald J. Marlowe, 10 FCC Rcd 10945 (1995), Application for Review Pending.

charge for such service by direct or third party billing based on a valid presubscription agreement (i.e. through the use of a credit card or other payment arrangement).

In order to ensure that adequate presubscription agreements are in place before an 800 number may be used for information services, the Commission should consider adopting additional measures to protect against unauthorized billings. Because of the public belief that 800 calls are toll-free, these additional safeguards are needed to make certain that only persons who agree in advance to pay for services are actually billed for calls to an 800 number.

2. A proposed 800 number exception should be restricted. The Commission should narrow the exception to the written presubscription agreement requirement regarding "[a]ny purchase of goods or services that are not information services". [18] That provision is cause for concern because it leaves the door open for more of the unfair, deceptive and abusive practices which have plagued the pay-per-call industry. The Commission should restrict the application of this exception to transactions which do not involve charges being billed to a telephone subscribers phone bill.

If the exception in § 64.1504(f)(1)(iii) is not restricted, the Attorneys General anticipate that information providers will use it to circumvent Congress' intent to close the loopholes in

[18] 47 CFR § 64.1504(f)(1)(iii)

existing law. Without changing their current practices, information providers could forward some type of goods or services to the calling party or subscriber in response to a phone call. The provider would then claim that the charge appearing on a telephone subscriber's bill was for the goods or services received and not for the call itself. Legitimate businesses wishing to offer goods and services by way of an 800 number would not be impacted by restricting this exception. Any such goods or services could be ordered through the use of a 800 number and billed directly to the individual ordering the same by way of a credit card or other type of payment arrangement.

As proposed, § 64.1504(f)(1)(iii) is further complicated by the fact that the term "information services" is not defined in the proposed rule. We recommend that "information services" be defined as synonymous with "pay-per-call" services or in a manner that is consistent with Congress' intent to close loopholes that allow information providers to evade the restrictions of TDDRA.

3. Written presubscription agreements should be signed by the party to be billed. The Attorneys General have received numerous complaints from consumers who were billed for pay-per-call services that were contracted by and provided to third parties. Telephone subscribers who are billed for telecommunication services should not be billed for pay-per-call services provided to a caller who agreed to accept responsibility for payment of such services. Without adding this requirement

scam operators are likely to find a way to "document in writing" an agreement which is unknown to the party being billed.

4. Presubscription agreements should be mailed to the party to be billed. Although the Act and Commission's rule imply that consumers would receive a copy of a presubscription agreement, the rules should expressly obligate pay-per-call providers to send a copy to the party to be billed.

5. Common carriers should provide telephone subscribers with the opportunity to elect to block all pay-per-call services. Clearly Congress intended that telephone subscribers should be given the right to block access from their telephones to "certain specific, prefixes or area codes" used to offer pay-per-call services without cost.[19] While this blocking option was mandated in the 1996 Act, the proposed rules relative to billing and collection do not explicitly provide for such an option.

To the extent possible, carriers should provide telephone subscribers with the ability to block all of these unwanted services. The Commission should amend its proposed rule to incorporate language providing for such a universal "pay-per-call" blocking option without charge to the customer. In the alternative, the Commission should at least require that carriers provide telephone subscribers with the ability to block all

[19] 47 U.S.C. §228(c)(5)(A)(i).

charges for such services from appearing on their phone bills.

6. Carriers should be prohibited from listing a destination number in a telephone bill in place of the number dialed by the consumer. There is no apparent legitimate basis to designate a number, which is not actually dialed, as the destination number in a telephone subscriber's bill. Destination numbers, which were not dialed should not be allowed to be included in a telephone bill in place of the number actually dialed.

CONCLUSION

In view of past problems and the potential for continued deception, unauthorized charges and consumer confusion, we urge the Commission to implement the additional safeguards which we recommend. It is especially important that carriers be prohibited from using ANI + 0 charges or calls to 800 numbers to circumvent rules governing pay-per-call charges. Without this prohibition, unscrupulous operators may continue to bilk telephone subscribers for unauthorized information services accessed by 800 numbers.

Likewise, the Commission must act definitively to stop unlawful practices by international pay-per-call providers that exploit domestic subscribers. If effective measures are not adopted unlawful, unfair, deceptive and abusive practices will continue to compromise the growth of the legitimate information

service industry, damage to the integrity of toll-free 800 number exchange and undermine the policies of federal and state laws intended to stop these practices.

Dated this 23rd day of August, 1996.

RICHARD BLUMENTHAL
ATTORNEY GENERAL
STATE OF CONNECTICUT
CHAIRMAN