Before the
Federal Communications Commission
Washington, D.C. 20554
FCC 96-289

RECEIVED
AUG 26 1996
FCC MAIL ROOM

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

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE ALLIANCE OF YOUNG FAMILIES
TO ORDER AND NOTICE OF PROPOSED RULE MAKING

The Alliance of Young Families (the "Alliance") is an association of families residing in California, Nevada and Arizona with the common goal of providing the best possible life for raising children in the United States while at the same time desiring to protect the freedoms that the United States Constitution affords its citizenry. These comments of the Alliance are made pursuant to the Federal Communications Commission's ("FCC") adoption of an Order and Notice of Proposed Rule Making ("NPRM") in connection with the FCC's amendment of the regulations that govern certain international pay-per-call telecommunications services. The FCC has invited the public's comments on certain of their proposed rule changes and these comments of the Alliance are made pursuant thereto.

900/976 SERVICES ABUSE

In years leading up to 1992, pay-per-call services in the United States were subject to widespread abuse. During this time, pay-per-call services were usually carried over the (900) telephone prefix nationally or locally through the (976) telephone exchange. Telephone subscribers were threatened with the loss of their telephone service for non-payment of any "pay-per-call" billings. Telephone subscribers could not restrict access to these numbers. Prices and terms were not disclosed. No method of disputing charges was provided. Minors and the mentally disturbed were not protected at all.

By enacting the Telephone Disclosure and Dispute Resolution Act ("TDDRA") in 1992, Congress attempted to better define "pay-per-call" services in order to curb many of the abuses. TDDRA was a direction from Congress to the FCC and the Federal Trade Commission ("FTC") to provide better consumer safeguards and to require clear and conspicuous cost disclosures in preambles in pay-per-call advertising. TDDRA was crafted by United States Congress with the mandate to "protect the public interest and the future development of pay-per-call technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry..."[1]

Following the enactment of TDDRA, many of the adult-oriented pay-per-call services moved their services to the (800) telephone exchanges. The (800) toll-free telephone exchange enabled service providers an acceptable legal avenue to provide pay-per-call communications when these calls were charged by credit cards. The use of credit cards for payment and transmission of indecent communications was defined acceptable in the law known as the Helms Amendment which was passed by Congress in 1989. With credit cards, the service provider deals with the credit card company for payment of the pay-per-call charges and not the telephone subscriber. This process results in the telephone subscriber not being involved in the transaction unless that party is the same party incurring the credit card charge. The credit card user is afforded the standard dispute protections afforded all consumers in credit card transactions. The telephone subscriber is not at risk of loss of their telephone service.

(800) TOLL-FREE ABUSE

TDDRA also attempted to define an "(800) Presubscription" arrangement to provide consumers with certain safeguards for pay-per-call charges that use toll-free or local numbers to initiate these calls. Unlike the credit card example, the less reputable service providers' frequently used the (800) Presubscription rules to avail themselves of the procedure known as Automatic Name Identification ("ANI") to capture the telephone

---

[1] [TDDRA of 1992] DEFINITION OF PAY-PER-CALL SERVICES.-For purposes of this section-

(1) The 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 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;

(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 telephone number or other prefix or area code designated by the [FCC] in accordance with subsection (b)(5).

(2) Such term does not include directory service 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."

subscriber's telephone number for the purpose of billing for these pay-per-call services, almost always without the protections afforded by the TDDRA rules for disclosure and dispute resolution. The billing of the telephone subscribers under the pretext of the (800) Presubscription arrangement instead of billing the actual caller for these services was a large source of complaints to the FCC and to common carriers following TDDRA's enactment by Congress. Many carriers and telephone billing companies ceased billing for 800 Presubscription transactions altogether because of the large number of consumer and telephone subscriber complaints. The 1996 Telecommunications Act attempts to resolve many of the problems in the (800) presubscription area by expanding many of the same protections afforded consumers in the use of (900) numbers and also requiring a written or electronic agreement between the provider and the caller of these services for the validation of the actual caller to the pay-per-call service.

Following the enactment of TDDRA, service providers also took advantage of other approaches in pay-per-call that were either vague under the new law or not even addressed and therefore an opportunity to avoid the consumer protections that were in place. Some of these methods were "(800) Redirect", (800) calls billed as (900) calls, "Collect Callback", "Local Collect Callback", and "Instant Calling Cards". All of these methods had one thing in common, the lack of protections to the consumer that had been anticipated by Congress with the enactment of TDDRA. The result of these activities has been and continues to be consumer abuse, the loss or the threat of the loss of telephone services, and minors gaining access to "adult" programming and/or live conversation. The key to the success of the abuses is the difficulty in the telephone subscriber controlling access to the phone services. Further, telephone subscribers are being billed for these entertainment services on pay-per-call without their authorization and our children have free access to these adult services and "dial-a-porn".

TARRIFED SERVICES ABUSE

Now that the 1996 Telecommunications Act has diminished the problems that were previously associated with (800) Presubscription, the unscrupulous pay-per-call service providers are continuing to exploit one additional loophole. This loophole is the result of the "tariffed" services exception to the TDDRA definition of "pay-per-call". Following the enactment of TDDRA, the tariffed services loophole was used by many pay-per-call providers to file sham tariffs with the FCC to sidestep the 1992 rules and eliminate the consumer protections that the Act was designed to make available. The (500), (700) and 10XXX dialing patterns were all adversely tainted by these sham tariffs. The result from this abuse is that subscribers with disputes over calls to domestic or international telephone numbers, find themselves subject to forfeiting their telephone

service because of these calls to dial-a-porn services. This was clearly not the result Congress had intended with the enactment of TDDRA. In the 1996 Act, this "tariffed services" exception has been specifically removed[2] and the FCC in the NPRM appears to be ready to enforce this mandate from Congress.

ABUSE OF INTERNATIONAL AND LOCAL PAY-PER-CALL INFORMATION SERVICES

While Congress and the FCC have attempted to address the many different forms of payment methods that pay-per-call service providers have instituted since both the enactment of TDDRA in 1992, and the Telecommunications Act of 1996, still more payment methods are actively being used and abused today. As the earlier payment methods were shut down by the FCC and the FTC, many of the less reputable service providers have moved to the "International Dial-a-Porn" billing method. The reason this form of payment method is preferred by many service providers is because of the elimination of customer chargebacks to the service provider (i.e., the carrier absorbs the chargebacks and passes these on to consumers as higher prices), that there are no price and term disclosures, that there is no procedure for disputing charges with the information services or dial-a-porn provider, and lastly, that there are no controls in place to stop minors or the mentally handicapped from using the services. Also, the threat of the loss of phone service should the telephone subscriber refuse to pay for these types of pay-per-call services is a powerful incentive to coerce payment.

The typical international dial-a-porn service today requires cooperation between the information provider or service provider setting up such a service and a foreign carrier willing to rebate the information provider for a significant portion of the transport charge for providing the dial-a-porn service. The subscriber of the telephone line making the international call is charged for the transmission of the international call whether or not the subscriber made the call. The information provider then receives a substantial portion of the charges paid by the telephone subscriber basically as a commission or kickback.

As an actual example, Guyana Telephone & Telegraph Co. Ltd. receives U.S. $0.85 per minute from AT&T for these dial-a-porn calls from the United States and then passes back 75% (or $0.64 per minute) of these monies to the Service Provider. The Service Provider then remits up to $0.50 per minute to the information provider. [This particular information is derived directly from the public filings for the period ending December 31, 1995 of a publicly-traded, Delaware corporation known as Atlantic Tele-Network, Inc. (Nasdaq:ATNI), the parent company of Guyana Telephone & Telegraph.] When the $0.64 per minute is multiplied by this company's reported 10,000,000 minutes

[2] See Section 701(2) of the 1996 Telecommunications Act which states "...Section 228(i)(2) (47 U.S.C. section228(i)(2)) is amended by striking "or any service the charge for which is tariffed,""

of "audiotext" calls per month, the result is that its current revenue being earned under this one company's "audiotext" transactions is $6.4 Million per month or $76.8 Million Dollars per year. Multiply this amount by the 30 to 40 other international termination points (with more being developed every day) and hundreds of millions of dollars is being stolen from United States consumers.

It is not altogether clear to the Alliance whether international adult entertainment services relying upon the collaboration between an information provider and a foreign carrier are currently subject to the FCC's direct authority. Certainly U.S. domestic carriers must have responsibilities to the U.S. consumer and the FCC. The FCC has previously indicated that these types of arrangements are expressly designed "to evade the consumer safeguards set forth in TDDRA and the Commission's rules." As a reference, see the letter from John B. Muletta, Chief of the Enforcement Division, Common Carrier Bureau of the FCC dated September 1, 1995 in connection with the informal ruling requested in FCC case number DA 95-1905. In his detailed response, Mr. Muletta, on behalf of the FCC, identified that under TDDRA, carriers are required "to offer telephone subscribers the option of blocking access to pay-per-call services and prohibits the disconnection of basic telecommunications services for failure to pay pay-per-call charges." Mr. Muletta expanded on this topic by stating that the FCC "is committed to eliminating abusive practices which deprive consumers of their statutory rights concerning such services...The fact that the consumer does not directly pay the information provider does not exclude the service from the definition of pay-per-call if the payment is simply paid to the information provider by the carrier and then recovered from the consumer through the transport charge." The Alliance of Young Families strongly agrees with Mr. Muletta.

International dial-a-porn services cannot be specifically blocked by telephone subscribers as is the case with pay-per-call services available over the (900) exchange. Presently, if a telephone subscriber desires to block international dial-a-porn from their residence or business, the subscriber must block <u>all</u> international calling not just the international pay-per-call services. Under rules implemented by the FCC following TDDRA, telephone service cannot be disconnected based upon a subscriber's failure to pay pay-per-call billings. However, disconnection is a real threat to a telephone subscriber who disputes international call charges, including the dial-a-porn charges. Further, and most importantly to the Alliance's interests, there is no child-proofing available currently in connection with international dial-a-porn.

International dial-a-porn is also not subject to the detailed pricing disclosures required of pay-per-call services in other dialing patterns. Under the current laws in place, there is no requirement of detailed disclosures as is the case with presubscription arrangements, comparable arrangements or (900) numbers. To expect that a young child is going to investigate the MCI-tariffed rate to the Pacific Island of Niue, or to Sao Tome, or to Moldova, or to Guyana, where many international dial-a-porn calls terminate, and then even know how to determine that the rate is $4.79 per minute is ludicrous. It is not

even clear to the Alliance of Young Families whether any of the abuses in the international-dial-porn area can even be prosecuted by U.S. authorities. Currently, the door is wide open to our children having access to live or recorded obscene messages and not even know that they (or the telephone subscriber) are paying for these calls.

THE FCC MUST ACT TO PROTECT CONSUMERS AND TELEPHONE SUBSCRIBERS

The 1996 Telecommunications Act's attempt to close the international "dial-a-porn" loophole by eliminating the tariff exception in defining what constitutes a "pay-per-call" service is already being challenged by international and domestic carriers and the international dial-a-porn service providers. Carriers are fighting because they benefit financially in having a large volume of call minutes placed through their networks, regardless of the costs and risks to consumers. Further, the carriers do not want to face the costs of new software for their networks to implement consumer protection controls. The dial-a-porn providers are fighting this change because they will be required to transfer their services to (900) or toll-free exchanges where rules and regulations are in place to protect consumers and telephone subscribers. International and "offshore" dial-a-porn operators will fight these changes because the financial return to these service providers must be higher than those similar services currently offered over the (900) or toll-free exchanges and these operators can provide obscene materials without any restrictions, or legal risk. All this is supported because of the current requirement the telephone subscriber currently must pay for these international toll charges or risk their loss of telephone service. The international dial-a-porn operators are obviously bringing in hundreds of millions of dollars annually under this current loophole. This obvious economic benefit to the international dial-a-porn services is why they will fight, or at least attempt to water down the tariffed-services exception mandated by Congress.

It is our understanding that reputable trade groups such as the Interactive Services Association ("ISA") are already preparing comments to the FCC to propose the exception of the "pay-per-call" definitions when carriers make payments to "information services" to generate call volume to the carrier. Instead of the proposed rule outlined in the NPRM, the ISA has indicated it will alternatively propose to the FCC to make the determining factor of what constitutes a pay-per-call service whether the cost of the call exceeds, by more than a "*de minimis*" amount, the highest content-neutral charge from any of the major carriers. The ISA does not want the definition of what constitutes international pay-per-call to be based on whether money is paid to an information provider by the carrier, because that is precisely how the information provider generates its money in "international dial-a-porn". These comments are forthcoming from the ISA because the ISA membership is currently "stacked" with many of the service providers and international service bureaus that benefit today from international dial-a-porn.

The ISA's anticipated comments to the NPRM create a possible solution for this problem area. If the FCC is leaning toward accepting the ISA's proposed "*de minimis*" standard to the cost of the call, then why not extend the "*de minimis* standard" to the remuneration that can be paid by a domestic or foreign carrier to an information provider in the same situation. If the carrier desires to make payments to service providers to generate call volumes, the monies paid for this should be subject to a low maximum, such as a $0.05 per minute or 5% maximum rebate. The international dial-a-porn providers are currently used to receiving a much larger percentage of the charge of the call as a rebate from the carrier and if the monies allowed to be paid to service providers are kept low, then this will drive the international dial-a-porn providers into the dialing patterns that provide consumers with better safeguards and are protected by the FCC and the FTC. The difficulty with this proposal is that the foreign carrier is remitting the "commission" to the service provider and/or the information provider and it is unclear what influence the FCC may have on these commissions. The Alliance believes the FCC to have control over domestic carriers and therefore the FCC can legally "force" adjustments in the settlement rates to countries that abuse the international calling patterns. Alternatively, or additionally, when the "*de minimis*" standard is not met, the FCC will then have to require the domestic carrier to terminate access to international numbers that they determine are carrying international information services (i.e., International Dial-A-Porn) without the risk of lawsuits, and on a timely basis.

RECOMMENDATIONS

Without the FCC directly exerting control over international dial-a-porn at this time, it's inaction will simply become the latest problem loophole for the FCC to deal with in the pay-per-call field in the future. As pornographic service providers first abused 900/976, and then abused 800 Presubscription, and then abused "tariffed" services following TDDRA's enactment to avoid the intended consumer safeguards of (900) numbers, the same providers are now moving in large numbers into the International Dial-A-Porn area because of the high collection rates they can receive stimulating calls to countries and islands the average person has ever heard of before, and most importantly, because consumers will not be protected as they are now under the (900) and (800) telephone exchanges. If the FCC does not actively enforce Congress's direction under the 1996 Telecommunications Act now, carriers will continue to bill International Dial-A-Porn calls directly on the telephone subscriber's bill whether or not the telephone subscriber made the call. Telephone subscribers will continue to be at risk of losing their phone service based upon their failure to pay international dial-a-porn charges and subscribers will be unable to protect themselves and their children with effective blocking options. There will be no price disclosure requirements in international dial-a-porn; no protections for minors from obscene materials; and no protections against credit and collections abuse.

In November, 1995, Mr. Muletta, on behalf of the FCC indentified that "pay-per-call" programs could not lawfully be tariffed as common carrier services. Unfortunately, it has not been documented to the Alliance that the FCC has ever subsequently enforced these prohibitions against either carriers or information providers. What is now needed is vigorous enforcement of these rules by the FCC. The United States consumer should be entitled to the safeguards that the United States Congress intended.

Very truly yours,

ALLIANCE FOR YOUNG FAMILIES

Donna J. Sheridan
516 Keystone Avenue, #517
Reno, NV 89503