

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)
)
Policies and Rules)
Governing Interstate Pay-Per-Call)
and Other Information Services Pursuant to)
the Telecommunications Act of 1996)
)
In the Matter of)
)
Policies and Rules Implementing)
the Telephone Disclosure and Dispute)
Resolution Act)

CC Docket No. 96-146

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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CC Docket No. 93-22

To: The Commission

COMMENTS OF THE UNIVERSITY OF MISSOURI-COLUMBIA

The University of Missouri-Columbia ("the University") hereby files its Comments on the Commission's Notice of Proposed Rule Making ("NPRM"), CC Docket No. 96-146, released July 11, 1996, in the above-captioned proceeding. As discussed below, the University strongly supports the Commission's proactive approach to ending the deceptive and abusive practices of some information service providers ("IPs"). Accordingly, the University supports all of the Commission proposals in this Rule Making, including the requirement for written presubscription agreements and the prohibition on using automatic numbering identification ("ANI") to bill for toll-free calls.

I. BACKGROUND

The University has experienced firsthand the deceptive practices of IPs during the past two years. Specifically, in early 1995, an IP billed the University for numerous unauthorized

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calls made pursuant to an invalid presubscription agreement. When two individuals using false identifications -- "Jonathan St. Louis" and "Jonathan Columbia" -- called from a University-subscribed telephone to set up a calling card account, the IP authenticated the callers solely by reading the ANI of the originating telephone line. The company made no effort to ascertain that these individuals were subscribers to this line and legally capable of entering into such a contractual agreement. As a result, instead of billing these two individuals for their subsequent calls, the IP, through the local exchange carrier, billed the University. Despite the illegitimacy of this presubscription agreement, the IP continued to seek payment from the University for almost a year.

Last October, the University submitted to the Commission an ex parte letter which described this experience and expressed support for certain proposals in the Commission's Further Notice of Proposed Rule Making on various pay-per-call and presubscription issues. While the IP has since credited the University for these calls, the Commission has decided to treat this letter as an informal complaint, and this proceeding is ongoing.

Clearly, however, the rule changes mandated by the Telecommunications Act of 1996 ("the Act") are more critical to industry reform than the imposition of sanctions in any given case. The relevant provisions of the Act, which amend Section 228(c) of the Communications Act of 1934, were implemented by the Order accompanying the NPRM. These new rules should prevent others from suffering through the kinds of problems experienced by the University. First, the rules establish more stringent requirements for the formation of a valid presubscription agreement. Most fundamentally, any such agreement between a caller and an IP must now be in writing, indicating the information provider's name, address, and telephone number, and the rate of charge for its service. The agreement must indicate the subscriber's method of payment, and

also must establish a unique personal identification number or other subscriber-specific identifier whose use is required to access the provider's information service. In addition, the Commission's new rules also require common carriers to promptly investigate unlawful IP conduct. Where a carrier reasonably concludes that the complaint is legitimate, it may terminate the provider's service unless the provider supplies the carrier with evidence of a valid written agreement. Without any written subscription agreement, an IP's collection efforts would be patently invalid.

II. Discussion

The University believes that the Commission's proposal to further tighten its regulatory framework represents another significant step toward ending the deceptive and abusive practices of some IPs. First, the Commission proposes to apply the requirement that a presubscription agreement be executed in writing to information services available through all dialing sequences, not just to those available through toll-free numbers.^{1/} While the University's problems specifically involved services accessed through toll-free numbers, the University shares the Commission's concern that the "instant presubscription" abuses resulting from toll-free calls might also emerge on other dialing sequences. The University believes that this provision can help provide consumers with the comprehensive protection that they deserve, and therefore supports its adoption in this proceeding.

The University supported the Commission's previous proposal that presubscription agreements must be executed by a legally competent adult, and the University continues to favor

^{1/} The requirement that a presubscription agreement be in writing does not apply, of course, where during the course of a call to an information service there is disclosure of a credit, prepaid account, debit, charge, or calling card number, along with authorization to bill that number. 47 C.F.R. § 64.1501(b)(5).

this position. All telephone subscribers, particularly large institutions like the University, which are responsible for thousands of lines, must be assured that calls are not illegally billed to these lines. The Commission's proposal will help to prevent such abuse.

The Commission also seeks comment on the dangers of the Congress' acceptance of the validity of electronically transmitted presubscription agreements. While the University recognizes and encourages the growing utility of the Internet and computer networks, the University does believe that at this early stage fraud over these networks is a concern, particularly in the computer-rich university environment. The University believes that additional safeguards should be implemented in order to protect against new abuses. For example, the Commission could require that in order for a presubscription agreement to be valid, a subscriber's written certification must follow that agreement.

The University also supports several Commission proposals concerning presubscription agreements formed through a caller's use of a credit, charge, or calling card. The Commission proposes that such cards must be pre-existing, and that an actual card must have previously been delivered to the billed party prior to the assessment of any charges. Just as importantly, these cards could not operate to assess charges through ANI. Given its recent experience, the University does fear that unscrupulous IPs might issue "instant" credit, charge, or calling cards to callers without confirming that they are authorized representatives of the billed party, with the result being that subscribers like the University get billed for unauthorized calls. While new Section 64.1501(b)(5) does require that the caller disclose his or her authorization to bill a number, the University believes that these additional provisions are necessary to ensure that innocent subscribers remain protected from such conduct.

The University also strongly favors the Commission's proposal that protections explicitly

accorded the “calling party” in Section 64.1504(c), (d), and (e) be extended to “the subscriber to the originating line” as well. While it is clear that the Commission’s new rules prohibit IPs from charging a subscriber or anyone else for toll-free number calls made pursuant to an unauthorized, invalid presubscription agreement, the University believes that the Commission must take all reasonable measures to prevent circumvention of its regulatory framework. By adding the proposed language, the Commission will ensure that subscribers will not be billed for toll-free number services obtained by unauthorized individuals using subscribers’ lines.

Finally, the University agrees wholeheartedly with the Commission’s conclusion that a carrier’s billing of calls to an 800 or other toll-free number on the basis of ANI violates Section 228(c)(7)(A) of the Communications Act, with the exception of telecommunications services for the deaf, and is also inconsistent with a carrier’s statutory obligation to provide communications service in a just and reasonable manner. Reliance on ANI either to bill a call to a toll-free number or to establish a presubscription agreement for such calls will almost certainly lead to toll fraud. Adoption of the proposed rules will likely have a deterrent effect on the future conduct of unscrupulous carriers and IPs, and should be formally adopted. In addition, while the University is hopeful that the Commission’s new rules and proposals will end the fraudulent use of ANI, the University would welcome a further proceeding which more specifically addresses the use of ANI in the industry.

III. Conclusion

The University applauds the efforts of Congress and the Commission to protect the public from the deceptive and abusive practices of unscrupulous IPs and carriers. Accordingly, the University urges the Commission to implement the various safeguards described in its NPRM.

Respectfully submitted,

THE UNIVERSITY OF MISSOURI-
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Dated August 26, 1996

CERTIFICATE OF SERVICE

I, Margie Sutton Chew, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the following "**COMMENTS OF THE UNIVERSITY OF MISSOURI-COLUMBIA**" were sent this 26th day of August, 1996, by hand-delivery to the following:

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