

DOCKET FILE COPY ORIGINAL

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

COPY

RECEIVED  
SEP 16 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 )  
)  
In the Matter of )  
)  
Policies and Rules Implementing the )  
Telephone Disclosure and Dispute )  
Resolution Act )

CC Docket No. 96-146

CC Docket No. 93-22

---

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

---

The Alliance of Young Families (the "Alliance") provides the following reply comments to the Federal Communications Commission's ("FCC") adoption of an Order and Notice of Proposed Rule Making ("NPRM") in connection with regulations that govern certain pay-per-call telecommunications services.

**PAY-PER CALL SERVICES BEING PROVIDED AS LONG-DISTANCE OR  
INTERNATIONAL TELEPHONE CALLS**

Section 228(i)(1)(B) of the Communications Act currently provides a limitation in its definition of "pay-per-call" services to those telecommunications services "for which the caller pays a per-call or per-time-interval charge that is greater than or in addition to the charges for transmission of the call". Section 48 of the NPRM further acted upon this area by stating 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." The FCC invited comment on this particular proposed rule in the NPRM, and thereafter received responses from many interested parties.

Some parties commented that the FCC's proposed "any form of remuneration from the carrier" standard modifies the definition of "pay-per-call" services in excess of

the FCC's authority from Congress in this area. See the joint comments of Total Telecommunications Services, Inc., SaMComm, Inc. and Big Sky Teleconferencing, Ltd. Other parties commented that the actual remuneration from a carrier should be irrelevant in the definition of a "pay-per-call" transaction and instead the standard should be based on the average transport charge for a similar call by the major carriers and whether the toll charge to the consumer is nominal. See the comments of the Interactive Services Association. Many commenters also referred to the inclusion under the FCC's proposed new "pay-per-call" definitions of an AT&T program known as Terminating Switch Access Arrangements ("TSAA") wherein AT&T makes payments to companies with direct access based on their call volumes. The subject matter of the FCC's proposed rule making generates a large amount of comments because of the profound effect that some type of needed change will have on the current state of affairs in the pay-per-call industry.

The United States Congress was quite clear in Section 228 of the 1996 Telecommunications Act that it intended to provide consumers with specific protections in connection with pay-per-call telephone services. The protections mandated by Congress included that consumers (i) should be able to block access to unwanted "information" services, (ii) should not be subject to disconnection of telephone service for the subscriber's failure to pay for information services, and (iii) are to be provided full disclosure on the costs and terms of the information services.<sup>1</sup> Section 228(c)(8)(A) identifies expanded requirements to be followed by service providers when information services are charged on calls over toll-free numbers pursuant to a written presubscription agreement.<sup>2</sup> Also, Congress, in the Telephone Disclosure and Dispute Resolution Act of 1992 directed the Federal Trade Commission to prescribe detailed rules to pay-per-call service providers for the clear and conspicuous disclosure of costs of the use of such telephone numbers, both in the advertising and the preambles<sup>3</sup>. The FTC rules specifically provide that the service provider may not charge a caller for the preamble message if the caller hangs up prior to a signal or tone indicating the preamble message has ended and the charges are to commence.<sup>4</sup>

---

<sup>1</sup> Joint Explanatory Statement, s. Rep. No. 104-230 at 202-03

<sup>2</sup> 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 for the information; and
- (vi) the subscriber's choice of payment method, which may be direct remit, debit, prepaid account, phone bill, or credit or calling card.

<sup>3</sup> See Section 201. Federal Trade Regulations of the Telephone Disclosure and Dispute Resolution Act of 1992.

<sup>4</sup> 16 CFR Section 308.5(b)

The intent of Congress is direct and straightforward. Any comments to the FCC in connection with this NPRM that have argued against or have ignored these consumer protections go against Congress's specific directions.

As it currently stands, dial-a-porn providers and other information services are proliferating in non-900 exchange dialing patterns. This is not what Congress intended for these type of programs following the enactment of both the Telephone Disclosure and Dispute Resolution Act of 1992 and the Telecommunications Act of 1996. By placing pay-per-call services over non-sanctioned dialing patterns, the providers avoid the basic consumer protections that Congress intended for all Americans. On Congress's direction, the FCC has outlined in the NPRM new requirements for pay-per-call services offered through toll-free numbers (i.e., the expansion of presubscription agreement definitions). By Congress removing the tariff exception to the definition of pay-per-call, this action empowers the FCC to create rules to provide basic consumer protections on domestic and international long-distance calling services. In connection with this effort, the Alliance supports the spirit of the action intended by the FCC in section 48 of the NPRM and believes it was quite appropriate.

Realistically, however, the Alliance recognizes the persuasion that certain voices in the telecommunications industry have over Congress and the FCC. Further, lawsuits could be brought by affected parties delaying implementation of new pay-per-call rules indefinitely. If commenters (or plaintiffs) succeed in their arguments for the FCC to present alternatives to the proposal set forth in section 48 of the NPRM, then a new expanded definition of "pay-per-call" services may be required to be set forth by Congress and/or the FCC.

It appears that the largest number of complaints regarding pay-per-call services have been generated when charges for these calls are sent to the telephone subscriber who does not have any knowledge of a call, or cannot avail themselves of the protection from such calls by blocking access to long-distance or international calls that are promoted as entertainment services. For calls to non-(900) telephone exchanges or calls to toll call services, the subscriber risks the loss of telephone service in disputing these charges. This is why Congress and the FCC have sought to restrict pay-per-call services to the (900) exchange or to toll-free services using presubscription or alternative comparable methods of payment. The telephone subscriber has protections in place under these exchanges that are not available in other dialing patterns.

It may be better for all concerned if the focus of the commenters was directed by the FCC toward better defining what constitutes "pay-per-call" and "information services". The Alliance suggests that the FCC draft proposed rules to review how a service is promoted by the service provider to the caller in order to determine whether the program is an information or pay-per-call service. It is obvious to the Alliance that a program such as AT&T's TSSA service should not be considered "pay-per-call." Equally obvious is that most of the international and long-distance dial-a-porn services that are being advertised throughout the United States are promoted as "pay-per-call" services. In

connection with this, it is the position of the Alliance that (i) if a telephone service is promoted by the service provider for the purpose of dissemination of information or entertainment to the caller, (ii) in order for the service provider to receive remuneration based upon the telephone call being made, then the service should be classified as a “pay-per-call” service and be subject to all of the basic consumer protections mandated by Congress. If the service does not afford all of the basic consumer protections, then the FCC should require the carrier, following notice and reasonable investigation, to have the duty and responsibility to terminate service for such telephone numbers until in compliance. If the carriers fail to investigate or terminate, then such carriers should be subject to penalties and be obligated to fully refund all monies collected from consumers.

Alternatively, the Alliance re-proposes the “*de minimis*” standard to the remuneration that can be paid by a domestic or foreign carrier to a service provider promoting its per-per-call service as an international or long-distance call (see the initial comments to the NPRM of the Alliance). If the carrier desires to make payments to service providers to generate call volumes, then the Alliance proposes that the monies allowed to be paid should be subject to a very low or “*de minimis*” ceiling. This requirement by itself would drive most international and long-distance dial-a-porn providers to other dialing patterns because of the substantial revenue that they are receiving currently without providing the basic consumer protections mandated by Congress. The large payments to service providers is evidence in itself that these rates are inflated and that a substantial premium currently exists.

The issue is really quite straightforward. Some “information” or “entertainment” providers are avoiding the pay-per-call consumer protections Congress intended for the American public. These providers have moved from dialing plan to dialing plan in order to avoid providing the basic consumer protections required by Congress. There is no reason to expect these same providers to discontinue this behavior in the future unless the FCC directly addresses the issue. The FCC should bring these elements into line under the rules that Congress defined in the Telephone Disclosure and Dispute Resolution Act of 1992 and the Telecommunications Act of 1996.

#### INSTANT CALLING CARDS

The Alliance also desires to go on record in its reply comments on the issuance of instant calling cards that would be used for the charging of pay-per-call services. The 1996 Telecommunications Act modified Section 228(c) so to prohibit “pay-per-call” services over toll-free numbers unless the calling party had a written agreement with the service provider or the calling party is charged for the information by means of credit, prepaid, debit, charge, or calling card. The Alliance is concerned that under this new ruling, abuses will be suffered by consumers when service providers issue “instant” calling cards to callers without proper validation of the true party to be charged.

As many complaints to the FCC and many state consumer protection departments attest, the use of Automatic Number Identification or ANI is inadequate evidence that a

caller and a service provider have entered into a valid presubscription agreement. Toll-free numbers are not able to be blocked by telephone subscribers. Many callers have used toll-free numbers to obtain "pay-per-call" information services without the authorization of the telephone subscriber. Nonetheless, the telephone subscriber receives the charge from the service provider when ANI is used to validate a call. All of the many complaints received are probably the reason the requirements for a presubscription agreement have been expanded by Congress in the 1996 Telecommunications Act.<sup>5</sup>

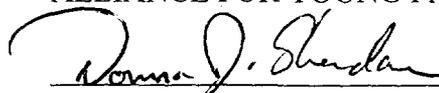
However, as one loophole is closed, another one may be opening to service providers by the 1996 Act. In 1992, the Telephone Disclosure and Dispute Resolution Act ("TDDRA") allowed only two (2) types of payment methods to be used for pay-per-call services provided over toll-free numbers. The payment methods permitted under TDDRA were credit cards or charge cards subject to the dispute resolution procedures of the Truth in Lending Act and Fair Credit Act.<sup>6</sup> However, in the 1996 Act, the number of alternative payment methods have been increased and the requirement that the payment methods be subject to the Truth and Lending and Fair Credit Acts has been deleted. The alternatives to the presubscription agreement now allow for the payment of calls on toll-free exchanges by "credit, prepaid, debit, charge, or calling card" in the absence of a written presubscription agreement.

It may be expected that in order to use toll-free exchanges and to avoid the basic consumer protections that Congress intended for pay-per-call services, some service providers will issue "instant" calling cards to callers based solely on the ANI obtained at the time of the call. If this occurs, it will return the FCC back to 1992 with complaints from subscribers for unauthorized use of their telephone to access pay-per-call services.

What is needed is solid customer validation before a calling card can be allowed to be issued for this purpose. ANI should not be used exclusively to obtain caller validation by the service provider. The service provider should not be allowed to issue a calling card "on the spot". Instead, a reasonable validation period of ten (10) days should be required by the FCC to give the service provider the time to know that they are dealing with the right customer and the accurate party who will be responsible for the charges.

Very truly yours,

ALLIANCE FOR YOUNG FAMILIES



Donna J. Sheridan

516 Keystone Avenue, #517

Reno, NV 89503

SUBMITTED: September 13, 1996

---

<sup>5</sup> 47 U.S.C. Section 228 (c)(8)(A)

<sup>6</sup> Section 64.1501(b)(2)