

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Truth-in-Billing)	
)	Notice of Proposed Rule Making
and)	CC Docket No. 98-170
)	
Billing Format)	

COMMENTS OF PILGRIM TELEPHONE, INC.

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EXECUTIVE SUMMARY

In the Notice of Proposed Rule Making, the Commission noted that the increased competition fostered by the amendments to the Communications Act of 1934, 47 U.S.C. § 151, *et. seq.*, occasioned by the Telecommunications Act of 1996, generated many new telephone-related services. While the nature of the charges appearing on consumers' telephone bills has changed dramatically, the bills themselves have remained relatively static. The Commission looked to the industry to say what changes were needed in the billing and collection process to accommodate the changing telephone environment.

Pilgrim endorses the Commission's goals and its proposed rules. In these comments, Pilgrim suggests that the Commission look at the consumer bill rendered by the Local Exchange Carrier ("LEC") from both the input and the output and provide guidance for uniform formats and billing processes which will provide equal, non-discriminatory treatment for all telephone service providers.

In order to achieve its goals, however, Pilgrim urges the Commission to assert its jurisdiction over billing and collection as a Title II service. The Commission's assumption of jurisdiction will put regulation of the consumer bill squarely in the Commission's hands.

Pilgrim urges the Commission to adopt an industry-wide solution to the billing and collection problems identified in the NPRM. Pilgrim suggests that the Commission authorize billing clearinghouses, impose “Reg. Z” type restrictions on billing and collection, including consumer protection disclosures, restrictions on delivery of periodic statements, the process of crediting payments and resolution of billing errors.

The implementation of the Pilgrim’s suggestions will result in a billing and collection system that is prepared for the onslaught of competitive providers unleashed by the 1996 Telecommunications Act.

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Pilgrim Telephone, Inc. ("Pilgrim"), by counsel, and pursuant to the captioned Notice of Proposed Rule Making, issued by the Federal Communications Commission ("FCC") on September 17, 1998, hereby submits its comments on the FCC's proposal.

I. Introduction

Pilgrim is an interstate interexchange carrier which provides casual access common carrier services.¹ Pilgrim also provides several information

¹ Pilgrim currently provides presubscribed 1+ services only in the Eastern LATA of Massachusetts.

and enhanced services, and occasionally offers pay-per-call services. Pilgrim renders bills to consumers primarily through its customers' local exchange carrier ("LEC") bill. Pilgrim has tariffs on file with the FCC. Pilgrim has participated extensively in proceedings before the FCC in a wide variety of billing, competitive services and service provisioning rule makings. Pilgrim also has participated in the forae conducted by the Federal Trade Commission ("FTC") enacting rules under the Telephone Disclosure and Dispute Resolution Act, codified at 47 U.S.C. § 228 ("TDDRA"). Pilgrim, like all service providers providing casual access electronic services to the public via the telephone, is dependent upon the essential facility of LEC billing. Pilgrim is directly interested in the issues raised in this proceeding. Pilgrim will be directly impacted by the rules and general practices which will issue from this proceeding.

Pilgrim endorses the FCC's efforts to ensure that consumers are provided with clear and consistent bills that adequately inform the consumer about charges on their bills in a non-discriminatory manner. The FCC should recognize that in order to achieve its stated consumer protection goals it will need to address not only the outputs of the billing and collection system -- the bill page received by the consumer -- but also the inputs to the system -- the data fields and widely varying policies and

regulations of the LECs that provide these essential billing services and issue the bill page to the consumer.

Providers of Competitive Casual Access and Telephone Electronic Service Providers ("CCATES")² find that they are confronted by a technological system and regulations that are not designed for and do not accommodate the new technologies and services being offered to consumers, nor the new competitive landscape. CCATES providers cannot be certain that any particular submission for billing to a LEC will appear in a particular format to the end user. CCATES providers also cannot be certain that restrictions and guidelines are applied by the LEC, in a uniform and non-discriminatory manner.

Not only do CCATES providers have limited control over the appearance of their charges on LEC bill pages, in many instances, they cannot even determine the proper local service provider to whom billing records should be submitted. Once the record is returned to them by the LEC, it may be too late to bill the call record even if the billing entity can be located. Lost billings, and further consumer confusion regarding variations

² CCATES, as used in these comments, refers to all casual access services, such as 10XXX, 1-900, 1-800 and similar platforms and dialing patterns, which are used to provide consumers access to non-basic MTS services over

in the appearance and identity of charges on bills will be exacerbated with the transition to local number portability unless the FCC takes remedial measures now.

In order to protect consumers, the FCC needs to adopt clear, uniform and non-discriminatory policies and guidelines that result in providing all providers of CCATES with equal access to LEC bill pages. This equal access must give all CCATES providers equivalent opportunity to have clear and concise statements provided to consumers, and have similar presentation and description of similar services. To protect competition and marketplace development, the FCC will need to adopt non-discriminatory guidelines, based upon full and open debate, that protect all CCATES providers from unfair and discriminatory billing practices of LECs that, in the end, only harm consumers.

It is within the power and jurisdiction of the FCC to address and resolve not only the specific problems being faced by consumers, but also the problems being faced by CCATES providers. To date, the FCC has abdicated to the FCC its jurisdiction and ability to direct the dialogue of consumer protection in the provision of CCATES. The FTC has only

the telephone. It also refers to all purchases of telephone dialed and billed electronic services, but not products.

limited jurisdiction in this area, and none over common carriers. In addition, the FTC has a different basic function and goals from the FCC. This proceeding presents a unique opportunity for the FCC to assert early and comprehensive jurisdiction and reclaim its authority over the provision of services and bills to consumers in electronic commerce that will ensure clear, consistent bills, and will enhance the rapid development of full and fair competition in the delivery of new services to the public.

II. Background

As recognized by the Federal Communications Commission ("FCC") in its Notice of Proposed Rule Making in the captioned docket, the principal goal of the 1996 amendments³ to the Communications Act of 1934, 47 U.S.C. § 151 *et seq.*, ("Act") is to "provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."⁴ This goal is complementary

³ Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 61 ("1996 Amendments").

⁴ *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Notice of Proposed Rule Making, FCC 98-232, released September 17, 1998, *quoting*

to the overall purpose of the FCC as set forth in Section 151 of the Act, to make available, "without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges...." 47 U.S.C. § 151.

As has been recognized many times before by not only the FCC, but by Congress, change and competition are often accompanied by periods of consumer confusion and frustration -- consumers and their interests can easily become lost in the technological and competitive drive. The FCC needs to exercise its jurisdiction to provide for a smooth transition to increased competition, and to increased absorption of new technologies and services. The FCC has for too long stood aside, waiting for market forces to resolve fundamental issues which can only be decided by a clear articulation of ground rules and market structure. This clear articulation need not result in heavy handed and complex regulatory requirements, it can be resolved by means previously adopted by the FCC in prior rule makings where the FCC has established guidelines and structures for the incorporation of industry

Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996).

and technological changes, tempering the demands of competition and consumer protection.

The FCC has raised, in this NPRM, certain essential characteristics of consumer billing that it is attempting to achieve. These goals include (1) clear bill organization; (2) full and non-misleading descriptions of services and charges; and (3) full and complete disclosure of inquiry information. Any attempt by the FCC to address these three limited issues in isolation of the broader fundamental changes taking place in the communications industry will fail, however, to achieve any goal of the FCC or Congress. The FCC has a unique opportunity to look comprehensively at an important segment of the communications industry and adopt one clear policy that will integrate and resolve a number of FCC objectives.

III. Meeting the Needs of Consumers

A. Consumer Protection and Consumer Choice

The truth about billing is that a comprehensive re-thinking and re-regulation of the local billing system is needed. The FCC will not be able to achieve its stated goals by merely applying a band-aid to today's market problems. The FCC must recognize that consumer protection and consumer choice go hand in hand. Consumers want and need to be able to say "no" to unwanted services and charges, and consumers want and need to be able to

say "yes" to wanted services and charges. The choice should belong to the consumer, not to the dial tone provider.

It is also undeniable that consumers want and need a single bill for all telephone-based communications services, presented in an easy to understand package. It makes no sense to ask consumers to juggle a multiplicity of bills in order to gain access to a diversity of telephone services. Permitting LECs to pick and choose which competitors' services can appear on the local telephone bill has not only led to anti-competitive conduct, it will result in consumers being flooded with bills for CCATES services, to the further confusion and frustration of consumers.

The proliferation of 10-10-XXXX dial-around, 1-800 access (i.e. 1-800-COLLECT, 1-800-TRUEATT and 1-800-CALLATT), NXX, *11 and other casual calling services demonstrate the consumer demand for instant access to a variety of providers, all billed inside the single telephone bill. These services can not exist without an open billing system. These services cannot exist or be provided in a consumer friendly manner without mandatory and uniform bill presentation on the LEC bill.

For most casual calling services, like collect calling, the consumer is not the pre-subscribed customer of the service provider. Unless the service provider takes detailed billing information on each call, many of these calls

would not be billable. Even with detailed information, there is no way to verify the call billing information, as service providers are denied accurate real time billed name and address ("BNA") by the LECs. This situation leaves the service provider exposed to enormous risk of consumer fraud, and consumers exposed to risk of fraudulent charges being made to their bills.

In any event, no practical alternative exists to LEC billing for CCATES. For casual calling services, LEC billing is as much an essential facility as LEC dial tone and access service. The FCC need look no further than its own historical pronouncements and carrier press releases to see that there is no alternative to LEC billing for casual calling services. In January of 1986, almost thirteen (13) years ago, the FCC found that with respect to LEC billing, "[t]he record clearly indicates that significant competition exists and will continue to develop."⁵ The FCC's erroneous finding was based upon its understanding that AT&T would be completely self-reliant for billing and collection "soon." *Id.* at n.50. The FCC concluded that there were no "barriers to entry in the billing and collection market" and that

⁵ *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, Report and Order, 102 FCC 2d 1150, para. 37 (1986) ("Detariffing Order").

detariffing of billing and collection would enhance competition for these services. *Id.* at para 38.

The FCC's determination was naive, and has been roundly disproven. No feasible alternative to LEC billing and collection has been developed, by AT&T or any other party. The LEC bill is a bottleneck monopoly essential facility that cannot be replicated. The LECs refuse to provide 100% reliable real time BNA, which makes billing telephone purchases on other than the LEC bill impossible. AT&T has spent millions of dollars on building a casual access billing factory, with no success.⁶ AT&T has admitted its inability to create such a system more than a decade after the FCC's release of its order.⁷ The fact is that there is no alternative to LEC billing; therefore, the FCC must focus its efforts on creating uniform non-discriminatory guidelines for LEC billing.

The Canadian Radio-television and Telecommunications Commission ("CRTC") has independently determined that billing and collection is an essential component of equal access and full competition in Canada. In a

⁶ *AT&T Communications Revisions to Tariff F.C.C. Nos. 1, 2, 11, 13 and 14, CC Docket No. 87-611, Memorandum Opinion and Order, 5 FCC Rcd 5693 (1990).*

⁷ Newspaper articles supporting this statement will be filed with Pilgrim's Reply Comments..

recent letter, the CTRC stated that "when determining equal access, the Commission stated that non-discriminatory access to local exchange facilities and related services and information extends to ancillary local facilities and services such as B&C [billing and collection] services."⁸ The CRTC found that "equal access must include B&C services in order to give customers the ability to complete all types of calls with at least the same ease and efficiency that users enjoy at present, regardless of the service provider which originates, routes an/or terminates the call."⁹

Even if there were a means for service providers to bill consumers for casual calls in a separate envelope, consumers do not want and will not accept a different bill from every provider they happen to use during a given month. Consumer choice would be rendered empty and meaningless if the dial tone provider is given the authority to choose for the consumer which

⁸ *Commission Decision Regarding CRTC Interconnection Steering Committee Dispute on Billing and Collection Service Requirements*, PN 96-28, August 6, 1998.

⁹ *Id.* at 2. The CRTC assigns issues related to fraud, operational and technological issues to a CISC B&C Task Force to resolve. As discussed below, Pilgrim believes that an independent database firm will be required to deal with the industry difficulties that will result from the proliferation of CLECs and number portability. Issues such as fraud, non-discrimination, operational and technological issues can be address, pursuant to FCC guidelines, by the independent database party, in conjunction with an *open* industry forum, formulated and conducted in a manner consistent with the Federal Advisory Committee Act, xx U.S.C. xx ("FACA").

services they can charge to their phones and which services they cannot charge to their phones. The LECs themselves realize this, regularly advertising the superior position that LEC billing conveys on a service provider.¹⁰

Consumers want and need billing on one unified LEC bill for all telephone casual calling and electronic commerce services. The FCC must address this need in its reform of the basic guidelines for the billing of services. Consumers should be the decision-makers about their communications services, not the dial tone provider. Consumers should have adequate blocking options and billing rights, applied uniformly to LEC-offered services and to all other providers. Consumers should have the freedom to choose their service providers on a pre-subscription basis or on a call-by-call basis. Dial-tone providers should not be permitted to interfere with that choice by blocking billing for selected services or providers. Abuses by providers, such as slamming and cramming, should be addressed by enforcement activities, not by deputizing the LECs to police their competitors.

¹⁰ Advertisements from various LEC, touting the superiority of this billing product will be provided with Pilgrim's Reply Comments.

It would make no sense to allow Citibank to decide where its Visa card customers may shop and where they may not shop. Citibank understands that when it issues a Visa card, that card may be used at any participating merchant. It would make no sense to allow AT&T Universal Card to decide that their Visa card may be used to buy a dress but cannot be used to buy Sprint's long distance. Why would we apply any less a standard to the LECs in the context of telephone-dialed communications services?

B. Industry Problems; Billing in a Time of Portability

Moreover, as number portability progresses and CLEC competition begins to capture meaningful residential market shares, the integrity of the national communications system is threatened if there is not a uniform policy on carrier-to-carrier billing. Such vital services as collect calling will surely fail if large proportions of calls attempted cannot be billed.

A common problem faced by the industry is the identification of the ultimate consumer to be billed for any particular call. Due to the unavailability of real time, reliable BNA, and clear consumer preference, the service provider is faced with submitting call records to the LEC of record for the NPA-NXX of the billed number. All too often, the service provider is provided with a return message that the billed number, or ANI, is not provisioned by the LEC, and therefore, cannot be billed. Not only

does this demonstrate further the need for billing by the LEC or other local service provider, it demonstrates the need for an independent database of number assignments and billing authorities to prevent the collapse of the new national competitive telecommunications network. The FCC should address uniform guidelines now, because of the fundamental consumer confusion that will ensue from permitting the current system to proceed without guidance and ground rules.

C. Consumer Privacy

While considering the rules and guidelines necessary to protect the interest of consumers, the FCC should also take into account issues of consumer privacy. Consumers have the right to determine what information is published about them and their preferences. Consumers should have the right to determine whether the telephone number from which they place a collect call should be disclosed on the called party's bill.¹¹ Consumers should also have the right to decide whether the exact nature of a particular service they have purchased be made explicit on a bill.¹² The FCC should

¹¹ This feature is an essential element of Pilgrim's SafeCall™ product. SafeCall™ can be a life saver for the battered spouse or other party seeking to maintain the privacy of their location, or encouraging runaways to call home.

¹² Consider, for instance, the concerns of a person that may want access to a gay chat line, but not want to advertise that fact to other members of the

strive to enact policies and guidelines that protect these important policy concerns.

IV. Source of Problem

Before the FCC can resolve the problems that it has identified, it must understand the source of the problems, and define the scope of the solution. As identified by the participants in the public forum, the primary source of the problems are three-fold. First, the system used to bill for services on the telephone bill is an antiquated and rigid system, that is applied neither uniformly, nor often consistently with the underlying guidelines that are supposed to be followed.

A. Technological Constraints

Parties seeking to bill on a LEC bill must format their traffic pursuant to BellCore Exchange Message Interface ("EMI") Guidelines.¹³ These guidelines provide basic instructions for submitting bill records to the LECs for billing, and show, in a rigid format, the proper population of bill fields to be followed. As an example of the challenge faced by third parties

household or group house where they might live. Such a consumer should be able to choose to have the call description be more generic, to protect their very private choice of communications.

¹³*Exchange Message Interface Industry Support Interface, Special Report, BellCore, SR-320, Issue 14, May 1997.*

attempting to bill on a LEC bill page, we have attached the EMI Records instructions for several related records -- 01-01-01 (Message Telephone Service Charge); 01-01-01 (Non-dial Conference Bridge); 01-01-08 (Dialed Conference Bridge charge); 01-01-09 (Billable Conference Bridge Charge); 01-01-16 (Information Provider Service Charge); and 01-01-17 (Voice Message Charge).

It is apparent that the EMI system is a rigid system that was designed for a limited field of possibilities. The type and amount of data that can be submitted is narrowly defined, and does not allow for lengthy or varied full and complete disclosures. As an example, it appears that the name or description of the service in 01-01-16 records is limited to description in positions 135 to 146. This limited field does not permit complete or full disclosure of a service. Not only are the fields and descriptions limited, the LECs do not uniformly apply the EMI Guidelines.

B. Uniform Application Constraints

Not only are the LECs permitted flexibility in the application of the guidelines, they regularly employ different interpretations and applications to similar services to the further confusion of consumers. The LECs do a very good job of providing clear bill presentation for their own enhanced

services, but they do a very poor job when presenting charges for their billing and collections customers.

Typically, LEC's clearly itemize all of their own enhanced charges, such as non-recurring fees, monthly fees, voice mail charges, and per-use service charges. Services with a per-call or per-minute charge are often clearly itemized, and displayed with call detail, or with a usage count and charge. These include directory assistance, call completion, voice dialing, automatic busy callback services, call return services, call trace services, per-use caller ID services, per-use three-way-calling services, and the like.

In contrast, LECs do not offer their billing and collections customers the same clear bill presentation. Instead, the LECs often refuse to bill similar services for other carriers, or, when they do permit billing, in some instances they require the carrier to use inappropriate billing formats for the class of service offered, such a 1-900 formats. These billing formats tend to create customer confusion.

As an example, one LEC bills its own voice mail service clearly labeled in English as voice mail, and allows itself to bill for the service when dialed by abbreviated dialing codes. For its billing and collections customers, this same LEC requires that its competitors' voice mail or similar

services be billed using a 1-900 bill format, and further requires that the consumer dial a 1-900 number to use the competitors voice mail service.

The anti-consumer and anti-competitive effects of these of LEC policies go hand in hand. An inappropriate dialing format and a confusing billing format, imposed on the competitor by the LEC, hamper the consumers' choice and greatly increase the chance that a consumer who did choose the competitor will end up confused and will end up making a complaint call to the provider.

Had the consumer chosen the LEC-provided voice mail service, no similar dialing or billing restrictions are imposed, the bill format clearly explains the service, and the bill conveniently omits to mention that the LEC voice mail service is non-deniable - that is, that the consumer may elect to not pay the bill and need not fear losing his dial tone.

Naturally, the LECs voice mail bill format results in much lower complaint rates, refund rates, and non-payments rates. The service is explained, and the billing rights notices are omitted entirely, or printed on the bill in such a way that the consumer is unaware that the same non-payment rights apply to the LEC offered enhanced services as apply to the competitor enhanced services.

C. Regulatory Constraints

Not only does the technology present a bar to the FCC realizing its objectives, but the current regulations also present a barrier. The FCC has denied itself the jurisdiction to address billing and collection issues, and has not undertaken the adoption of the comprehensive restructuring that will be necessary to ensure non-discriminatory access to essential functions.

In 1986, the FCC detariffed billing and collections services, finding that billing and collection are not Title II services, but are only Title I services. The FCC found that billing and collection was a Title II function as between a LEC and its end user customer for the billing of basic MTS services. The FCC also found that the provision of billing and collection to third parties billing services on the LEC bill were not Title II services.

As the communications industry has become more competitive, and as technology has provided for an increased variety of services, the LEC bill has become, as recognized by Ms. Eileen Harrington of the FTC, the instrument of electronic commerce. Ms. Harrington recently observed that the telephone is the "instrument of electronic commerce." If the telephone is the instrument of "electronic commerce" then the telephone bill is the unified instrument of making payment for electronic commerce. There is no reason why, and it would be contrary to the express goals of Congress, to

require consumers to juggle a multiplicity of bills in order to enjoy the diversity of services and service providers available now, and likely to be available in the future.

All services provided over the telephone rely on a common carrier component to send and receive messages and services to the end user. When an end user is billed for a service, even an enhanced or information service, the end user is billed for a blend of common carrier and non-common carrier functions. The LEC bill to the consumer is no less an essential facility to the provision of the common carrier component of a service than it is to the collection of reimbursement for the provision of LEC services.

V. FCC and FTC Jurisdiction in Common Carrier Billing for Common Carrier and Enhanced Services

As stated above, the FCC has abdicated its jurisdiction over billing and collections matter, but can easily reclaim this authority. The FTC, on the other hand, has no or limited authority over these issues. The FTC has recently recognized these limitation both in the public statements of Eileen Harrington, and in public releases. Under Section 5 of the FTC Act, 5 U.S.C. ss 45, the FTC is authorized to prevent businesses from using unfair methods of competition in or affecting commerce and unfair or deceptive

acts or practices in or affecting commerce. 15 U.S.C. ss 45(a)(2). the reach of the FTC's authority, however, does not extend to several specifically enumerated industries, specifically including common carriers. *Id.* While the TDDRA created a limited exception to this jurisdictional prohibition by giving the FTC authority to regulate communications common carriers for purposes of the subchapter notwithstanding Section 45(a)(2). 15 U.S.C. ss 2511(c). The grant is limited to the authority to proscribe rules and regulations concerning advertising and price disclosures applicable to those common carriers providing pay-per-call services. 15 U.S.C. ss 5711(a)(1). The grant is also limited to advertising, disclosures made during a pay per call and access to records of carriers providing pay per call services. Due to the very strict definition of pay per call services, the statute still denies the FTC jurisdiction over any services which may overlap with those of interest in this proceeding, except as provided over 900 numbers, and only then primarily to advertising and disclosure practices.

It is incumbent upon the FCC to re-assert limited Title II jurisdiction on billing and collection in order to protect consumers and engender a fully competitive market. Only by reasserting jurisdiction can the FCC fulfill its stated consumer protection goals in this and related proceedings. None of the original bases for detariffing billing and collection have held true. The

LECs have not acted in a reasonable manner in the provision of BNA.

Assertion of some jurisdiction will permit the adoption and application of the uniform guidelines that will be necessary to ensure clear and consistent bills to consumers, and a fair and level playing field among all competitors.

VII. Industry Wide Solution

A. Overview

Any industry wide solution that effectively addresses and resolves the consumer protection goals enunciated by the FCC must focus on several underlying fundamentals. The FCC must address a technological and regulatory system that is out of sync with the current marketplace. The FCC must focus on three principal problems in order to effectuate a solution in this proceeding, as follows:

(1) The old billing and collection technology does not permit the flexibility and disclosures that the FCC seeks, and cannot be adapted either to the new competitive technologies, service providers and technologies, nor the quickly evolving marketplace.

(2) The anti-competitive choices made by the LECs in the operation of their billing systems is to blame for much of the consumer confusion.

(3) The outdated regulations and policies of the FCC are contributing to the current situation in which consumers are presented with bills that are difficult to decipher, and in which consumer choices in access to services and providers, as well as blocking decisions, are not honored.

B. Billing Clearinghouses; Databases

The 1996 amendments to the Act established a “pro-competitive, de-regulatory national policy framework,” that is “intended to promote competition and reduce regulation to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”¹⁴ Section 251 of the Act requires that all incumbent local exchange carriers open their networks to competitors. As the competitive service providers move into the marketplace, services provided by the competitive carriers must be billed in a clear, concise and understandable manner.

In considering the administration of the databases relative to number portability, “[a]lmost all parties, incumbent LECs and new entrants,

¹⁴ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rule Making, 11 FCC Rcd 8352, 8354 (1996), citing S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 1 (1996).

support[ed] administration of the database(s) by a neutral third party.”¹⁵ In setting up the databases to be utilized for number portability, the Commission agreed, “it is in the public interest for the number portability databases to be administered by one or more neutral third parties.”¹⁶ The Commission noted that

“[n]eutral third party administration of the databases containing carrier routing information will facilitate entry into the communications marketplace by making numbering resources available to new service providers on an efficient basis. It will also facilitate the ability of local service providers to transfer new customers by ensuring open and efficient access for purposes of updating customer records. ... [T]he ability to transfer customers from one carrier to another, which includes access to the data necessary to perform that transfer, is important to entities that wish to compete in the local telecommunications market. Neutral third party administration of the carrier routing information also ensures the equal treatment of all carriers and avoids any appearance of impropriety or anti-competitive conduct.”¹⁷

The dangers inherent in allowing incumbent carriers to control the database for number portability purposes are present when incumbent carriers dictate the manner in which bill data is submitted to the local carrier serving the consumer. Particularly in light of the increased number of local

¹⁵ *Telephone Number Portability*, 11 FCC Rcd 8399, record citations omitted.

¹⁶ *Telephone Number Portability*, 11 FCC Rcd 8400.

¹⁷ *Telephone Number Portability*, 11 FCC Rcd 8400, citations omitted.

carriers, the Commission must take this opportunity to establish a neutral third party to administer the format for billing records which are submitted to carriers for processing and inclusion on the end user's telephone bill.

Pilgrim's experience with incumbent carriers confirms the validity of the Commission's concerns about anti-competitive behavior.

By designating a neutral third party to administer bill processing, the Commission will have a mechanism in place for the resolution of billing dislocations caused by the recent phenomenon of number portability. The neutral third party billing administrator will establish a bill submission format and will have the means to transmit the billing information to each carrier, incumbent or competitor, in a single format which all may understand and use.

Only the ANIs billed by each party would be transmitted into the database. The database provider would compile the bill pages for all casual and information services and transmits them to the LEC. The LEC would be required to bill for all services. All funds would be remitted to the database service provider for fund distribution on a pro-rata basis.

C. Billed Name and Address; Subscriber Identity

Much of the FCC's commentary and the dialogue in recent consumer protection forums has focused on the issue of the whether the "subscriber"

has authorized billing on the LEC bill for a service. What the dialogue has not addressed to date is the inability for anyone, except for the LEC, to reliably know the identity of the subscriber. LECs do not make, pursuant to FCC direction, BNA available on a real time basis. BNA, even when available, is usually not the same quality as what the LECs provide themselves, and often does not contain unlisted numbers, which may account for up to 30% of all BNA.

The FCC has determined that BNA is a common carrier service.¹⁸ The FCC also has determined that BNA is essential to validation services, and that as it is derived from the LEC's provision of local exchange service, is information uniquely in the possession of the LECs.¹⁹ In its second order on reconsideration, however, the FCC also bowed to LEC demands that the LECs need not provide BNA on a real time basis, but could provide it in bulk.²⁰

¹⁸ *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd 4478 (1993).

¹⁹ *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 3528 (1992).

²⁰ *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Petitions for Waiver of*

As a result, no LECs provide real time BNA. In an era of highly competitive real time electronic service provision, the failure of the FCC to require real time BNA provisioning is inexcusable. Without real time BNA, it is impossible for CCATES to verify subscriber information, detect fraud, whether on themselves or on consumers, or to make reasonable decisions whether to provide any service or complete any call. The FCC should rectify this situation in the present proceeding.

Even so, the provision of real time BNA is not the final word on subscriber liability for calls. The FCC, in a long line of cases, has held that subscribers are liable for calls made from their telephone, as only the subscriber has control over the telephone instrument.²¹ The rules associated with the assignment of responsibility for payment for the purchase of services over the telephone should be consistent with the *Chartways Technologies* line of cases.

Furthermore, the name on a telephone account tells one very little about the responsibility within the household for making payments on or

Rules Adopted in the BNA Order, CC Docket No. 91-115, Second Order on Reconsideration, 8 FCC Rcd 8798 (1993).

²¹*Chartways Tech., Inc. v. AT&T*, 6 FCC Rcd 2952 (CCB 1991), aff'd 8 FCC 5601 (1993). We have provided an analysis of those cases as an attachment hereto.

decisions about an account. Responsibility for payment may be impacted by state law, or by other legal arrangements. Furthermore, the party with ultimate responsibility may have provided implicit or explicit authority to all persons in the household to make telephone billed purchases chargeable to the telephone.

As a result, Pilgrim seriously challenges the definition of "subscriber" as a meaningful term under the law. In any event, it is clear that 100% reliable real time BNA must be required by the LECs, either directly or through a centralized database, before any pronouncements can be made regarding the proper billing of a "subscriber" or "authorized" person by a casual access billing party.

Pilgrim suggests that the subscriber be responsible for blocking options and subscription choices, such as for monthly fees or PIC changes. Real time BNA should be available to all service providers and carriers to help verify the identity and authenticity of the individual seeking to make a change to these parameters. No end user would be denied complete access to casual called services, except to the extent that an authorized person on the account has put into place a 900 number "enhanced services" block. As discussed below, making all blocking choices available to all service providers would help ensure that consumers' choices were honored.

D. 900 LIDB Blocking Data Availability

One of the principal concerns of the FCC is whether consumers are afforded the opportunity to indicate whether they want to have access to casual access and competitive enhanced and common carrier services, and whether they want to not be billed on the LEC bill for those services. This issue is similarly easy to address, but only one LEC appears to make any effort to address it.

All consumers are provided, by regulation, with the opportunity to designate whether they do not want access to information services. This block is commonly referred to as a 900 number block. Pilgrim believes that the meaning of the 900 number block should be expanded to provide the consumer with more choice to opt in or out of having non-basic MTS and CCATES services provided to its home, and billed to its telephone bill. The expanded block would empower consumers in their telephone bill, but it would have to be equally applicable to all alternative services, regardless of dialing pattern and regardless of the providing party, in order to be meaningful.

The LECs take this information and load it into their switches in such a manner as to ensure that only the LEC, and not competitive or third party, can know of or honor the request. The TDDRA provides numerous

alternatives to 900 dialing for the provision of information services. In addition, many information and enhanced services need not be accessed over 900 numbers. The LECs' use of the 900 number blocking frustrates consumer clear indication of choice, and makes the honoring of that choice by third parties impossible. It is Pilgrim's experience that of all of the LECs, only Pacific makes this 900 number blocking information available on a per call basis.

In order to ensure that consumers are permitted to make choices regarding the access to and billing for services other than basic MTS, billed to the telephone bill, the FCC should order all LECs to make the 900 line block request available in line information database ("LIDB"), accessible to all carriers and service providers. The FCC should also require all carriers and service providers to access and honor the LIDB 900 number block for *all* non-basic MTS calls. The LIDB check requirement must include the non-MTS offerings of the LECs themselves, in order to avoid discriminatory and anti-competitive treatment.

E. Interim Measures

1. Precedent; When Guidelines Are Used

Pilgrim recommends that, pending adoption of formal rules in this proceeding, the Commission adopt interim guidelines. Interim guidelines

are the appropriate remedy to anti-competitive situations which have arisen in an industry because of the growth of competition.²² In the *Guidelines*

Order, the Commission said:

The extensive record compiled in response to these petitions provided a sufficient basis for us to make certain determinations on both the general question of whether any interim NTS plans should be permitted and specific questions concerning the characteristics of plans we would find acceptable and those we would not. Having made these determinations, we think it is a responsible regulatory approach to inform the LECs and the rest of the industry about them. To do otherwise could lead LECs to design and file, and other parties to respond to, revised plans that incorporate certain flaws that, through issuance of guidelines, could have been avoided.

See Guidelines Order, 61 Rad. Reg. 2d (P & F) 1610, at paras. 139-144.

The Commission also determined in the *Guidelines Order* that the threat that an unexpectedly prolonged transition plan might present to the public interest dictated adoption of guidelines. The Commission noted the broad subject of the costs imposed on the telecommunications network by

²² See also, *Private Line Rate Structure and Volume Discount Practices*, CC Docket No. 79-246, Report and Order, 97 FCC 2d 923 (1984); *Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans*, CC Docket No. 84-1235, Memorandum Opinion and Order, FCC 85-540, Mimeo No. 35880 (1985) ("the policies addressed in this Order will allow dominant carriers needed pricing flexibility....[and strike] a reasonable balance between the dominant carriers' need to respond in an increasingly competitive environment and the need to protect competition and ultimately consumers from predatory or anticompetitive behavior...") *Id.* at para. 99.

an uneconomic system of recovering the common line revenue requirement as additional impetus for adopting guidelines. *Guidelines Order*, at n59.

The instant situation is analogous to that presented in the *Guidelines Order*. Pilgrim has demonstrated that, given control of the bill page, the incumbent LECs have engaged in discrimination among carriers by refusing to bill for services for independent, competitive carriers, when the incumbent LECs bill for identically-provided services provided by the billing LEC. This discrimination is only one of the negative manifestations of the current method billing and collection.

Many of the consumer concerns which gave rise to the instant proceeding can be resolved by enacting the rules Pilgrim proposed in these Comments. Uniform format of submission of billing data and uniform bill presentation throughout the United States will provide certainty to competitive service providers and understandable bills to consumers. The public interest benefits to be recognized through adoption of the rules proposed herein should not be delayed. Just as in the *Guidelines Order*, adoption of guidelines pending implementation of rules in this proceeding is consistent with the Commission's mandate to act in the public interest and Section 552 of the Administrative Procedures Act, 5 U.S.C. § 552.

2. Adoption of Reg Z Guidelines

In the NPRM, and at the Truth-in-Billing forum, the Agencies have discussed the FTC's leadership in Reg Z. The FTC, which has limited or no jurisdiction over common carriers or common carrier services, has provided for general billing guidelines in the form of Regulation Z.

In developing rules or guidelines to protect consumers by providing accurate, complete, and timely statements for telephone services, the FCC is not entering uncharted waters. Fellow federal agencies have developed regulations requiring disclosure and dispute resolution procedures for a number of consumer transactions. An excellent example of a regulation requiring such disclosure and dispute resolution is Regulation Z (“Reg. Z”). Issued by the Board of Governors of the Federal Reserve System, Reg. Z, 15 CFR §§ 226.1-226.33, implements the Federal Truth In Lending Act, 15 U.S.C. 1601 *et seq.* Reg. Z is designed to protect consumers by promoting the informed use of credit. The regulation insures that consumers are given accurate and detailed information on the cost of credit as well as other rights. Armed with such information, the consumer is then free to decide whether or not to apply for or use credit. Below is a brief discussion of four major requirements of Reg. Z: disclosure, statements identifying transactions, crediting payments, and dispute resolution. Similar provisions

in regulations by the FCC would serve to protect consumers by providing them the information that they need to make informed choices regarding telephone services.

a. Overview of Reg. Z

In general, Reg. Z applies to each individual or business that offers or extends credit when four conditions are met: (1) the credit is offered or extended to consumers; (2) the offering or extension of credit is done regularly; (3) the credit is subject to a finance charge or is payable by a written agreement in more than 4 installments; and (4) the credit is primarily for personal, family, or household purposes. If these conditions are met, the individual or business must comply with Reg. Z by making disclosures, providing periodic statements that clearly and accurately identify each transaction, crediting payments promptly, and resolving billing errors according to certain procedures.

b. Disclosures

Reg. Z requires that certain disclosures be made on or with the solicitation or application to open a credit or charge card account.²³ These disclosures include: annual percentage rate, fees for issuance or availability, maximum finance charge, transaction charge, grace period,

balance computation method, statement of charge card payments, cash advance fee, late payment fee, over the limit fee. If the application or solicitation occurs orally, these disclosures may be made orally.²⁴

In addition to the disclosures that are required with or on the solicitation or application, Reg. Z requires that certain disclosures be made prior to the consumer entering into the first credit transaction.²⁵ These disclosures include an explanation of under what circumstances a finance charge will be imposed and how the charge will be computed, other charges that may be imposed, and a statement of billing rights outlining the rights and responsibilities of the consumer and creditor.

c. Periodic Statements

Reg. Z requires that the consumer be provided with periodic statements at the end of each billing cycle whenever the consumer has a debit or credit balance of at least \$1.00.²⁶ These statements must be mailed so that the consumer has at least fourteen days to pay the amount due and

²³ 12 C.F.R. § 226.5a

²⁴ 12 C.F.R. § 226.5(d)

²⁵ 12 C.F.R. § 226.6

²⁶ 12 C.F.R. § 226.7

avoid a late fee. If the fourteen day requirement is not met, a late fee may not be imposed on the consumer.

The periodic statement must contain the amount and date of the transaction, and a brief identification of the property or services purchased. Additionally, if the creditor is not the seller of the service, the statement must contain the name of the seller and the city, state, or foreign country where the transaction took place.²⁷ In addition to identifying the transaction, with each periodic statement Pilgrim should provide the “Billing Rights Statement” which outlines the rights and responsibilities of the consumer and the creditor.²⁸

d. Crediting Payments

A payment to the consumer's account must be credited as of the date of receipt. Where a consumer's account has a credit balance in excess of \$1.00²⁹ That amount must be credited to the consumer's account and

²⁷ 12 C.F.R. §§ 226.8 (a)(1)-(3).

²⁸ 12 C.F.R. § 226.9 (a)(2). As an alternative, the creditor can “mail or deliver a billing rights statement at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement for any one billing cycle.”

²⁹ 12 C.F.R. § 226.11.

refunded within seven business days from receipt of a written request from the consumer.

e. Billing Error Resolution

Reg. Z list seven types of billing errors and provides that a consumer has sixty days after receiving the periodic statement containing the alleged billing error to notify the creditor of the alleged error.³⁰ Once a creditor receives such notification, the creditor must respond to the consumer within thirty days. Reg. Z further provides that the consumer may withhold the amount in dispute until the matter is resolved, and sets out procedures for resolving the dispute.

Reg. Z defines the following billing errors: (1) extending credit to someone other than the card holder or someone authorized by the card holder, (2) failing to properly identify a transaction on the periodic statement, (3) charging for property or services not accepted by the consumer or not delivered by the seller, (4) failing to properly credit a payment or issue a credit, (5) accounting or computational error, (6)

³⁰ 12 C.F.R. § 226.13

requesting additional clarification or documentation, and (7) failing to mail or deliver a periodic statement.³¹

When such a billing error occurs and the consumer notifies the creditor in writing within sixty days of receiving the statement containing the error,³² the creditor within thirty days must acknowledge receipt of the consumer's letter³³ and within ninety days, must correct the error or send the consumer a letter explaining why the creditor believes the bill was correct.³⁴ Once the consumer provides notice of a billing error, the creditor can not try to collect the amount in question until the investigation is completed and it is determined that the consumer owes the amount in question and can not make or threaten to make an adverse credit report.³⁵ If the creditor determines that it has made a mistake, the creditor must notify the consumer of that mistake and the correct amount the consumer owes.³⁶

³¹ 12 C.F.R. § 226.13 (a).

³² 12 C.F.R. § 226.13 (b).

³³ 12 C.F.R. § 226.13 (c)(1).

³⁴ 12 C.F.R. § 226.13 (c)(2).

³⁵ 12 C.F.R. § 226.13 (d)(1)-(2).

³⁶ 12 C.F.R. § 226.13 (e).

If the creditor determines that it did not make a mistake, it must provide the consumer an explanation of the charge and the date payment is due.³⁷ If the consumer refuses to pay, the creditor may report the amount as delinquent.³⁸ Within ten days, if the consumer notifies the creditor that he or she will not pay and the creditor reports the amount as delinquent it must also report that the consumer disputes the amount and must tell the consumer to whom it has reported that the amount is delinquent.³⁹

The FCC is empowered to adopt similar guidelines that could be applicable to all parties billing on the uniform LEC bill page. The FCC, under Title II, could invoke guidelines that would not only provide superior consumer protection, but also provide for non-discriminatory and uniform access to the essential facility of billing and collection to the industry. Pilgrim is still receiving more specific proposals and will address those in its Reply Comments.

³⁷ 12 C.F.R. § 226.13 (f)(1), (g)(1).

³⁸ 12 C.F.R. § 226.13 (g)(3).

³⁹ 12 C.F.R. § 226.13 (g)(4).

VII. Conclusion

In conclusion, Pilgrim endorses the actions of the FCC in this docket, and the need for clear and consistent bills for services to consumers.

Pilgrim does not believe, however, that the FCC will be able to achieve its goals and provide consumers the protection they need without examining more fundamental problems facing the industry because of technological and competitive changes. Pilgrim urges the FCC to reassert Title II jurisdiction over billing and collection services. The FCC should also take this opportunity to resolve current and future industry dynamics causing consumer confusion, such as that caused by the proliferation of CLECs and number portability.

The FCC should adopt guidelines for consistent, standard and descriptive terms for both the outputs (bills) and inputs to the billing process. In order to ensure uniformity and discourage discriminatory and anticompetitive conduct, all billing and collection records should be handled through an independent party database manager, with all funds being administratively being handled by the manager to ensure cost efficiency to the billing LECs and service providers. Pilgrim will address further details of the guidelines and recommended structure in its reply comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Walter Steimel, Jr.", written over a horizontal line.

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