

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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Truth-In-Billing )  
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and )  
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Billing Format )

CC Docket No. 98-170

**COMMENTS OF THE  
BILLING REFORM TASK FORCE**

The Billing Reform Task Force ("BRTF"), through its attorneys, hereby submits these comments in response to the above-referenced Notice of Proposed Rulemaking ("NPRM") which was released on September 17, 1998. The BRTF supports the Commission's efforts to promote consumer welfare by improving the clarity of telephone billing formats. These comments propose changes to the FCC's pay-per-call billing disclosure requirements and the adoption of rules and policies that will preserve the ability of vendors to use the telephone bill as a non-discriminatory means to bill for a variety of services in ways that are beneficial to consumers, and that will promote electronic commerce. In this regard, the BRTF urges the Commission to adopt rules that will ensure fair, non-discriminatory access to local exchange carrier ("LEC") billing and collection services.

**I. INTRODUCTION AND STATEMENT OF INTEREST**

The BRTF is a non-profit organization representing the interests of leading service bureaus, information providers, and billing entities that provide 700, 800, 900, and other interactive telephone services. BRTF members process a significant percentage of pay-per-call traffic generated in the

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United States. Many BRTF members are also members of the Internet Alliance (formerly the Interactive Services Association ), and as such, have been active participants in other proceedings initiated by the FCC and the Federal Trade Commission (“FTC”) involving pay-per-call services.

The BRTF was established to work with the FCC, FTC, consumer groups, telephone carriers and other billing entities to implement critically needed billing and collection reforms. Specifically, the BRTF wants to (i) ensure that consumers are fully informed of both their rights and responsibilities associated with telephone-billed purchases including pay-per-call services; (ii) reduce the inordinately high level of chargebacks that currently plague the pay-per-call industry; and (iii) preserve the use of the telephone bill as a non-discriminatory billing mechanism for a wide variety of communications and non-communications services in a way that is beneficial to consumers. These objectives can be achieved through voluntary industry initiatives combined with changes to federal and state pay-per-call rules.

At the industry level, the BRTF has taken a lead role in implementing proactive measures to control fraud and high chargebacks in the pay-per-call industry. One of the BRTF’s key initiatives is to establish an industry-wide database that will provide pay-per-call service providers with critical information concerning billing disputes, write-offs and adjustments reported by LECs and other pay-per-call billing entities on a more timely basis without compromising consumer privacy. In addition, the BRTF is developing uniform standards and procedures to facilitate secondary collection efforts in situations where consumers refuse to pay legitimate pay-per-call charges.

For the reasons discussed below, the BRTF urges the FCC to amend Section 64.1510 of its pay-per-call rules to ensure not only that consumers are fully informed of the “non-deniable” nature of pay-per-call charges (*i.e.*, that local or long distance service cannot be denied to a consumer who

fails to pay for 900 number charges), but also to ensure that consumers are informed of their *obligation* to pay for such charges if it is determined that the charges were legitimately incurred. In addition, the BRTF urges the Commission to adopt rules and policies that will preserve the ability of the telephone bill to be used as a non-discriminatory means to bill for a wide variety of products and services as long as effective dispute resolution procedures are available to consumers who are charged for such products and services. To this end, the Commission should mandate a uniform bill notice like the one submitted by the Interactive Services Association to the FTC. Finally, the BRTF urges the Commission to take a hard look at some unreasonable and overly restrictive billing practices recently adopted by some LECs.

## **II. PROPOSED AMENDMENTS TO THE FCC'S PAY-PER-CALL BILLING DISCLOSURE REQUIREMENTS**

The Commission has asked whether telephone bills should differentiate between “deniable” and “non-deniable” charges because consumers may be confused about the risk of losing local or long distance phone service for failure to pay non-telecommunications related charges.<sup>1</sup> *See* NPRM ¶ 24. Pay-per-call charges, which are non-deniable, are already segregated from other telephone charges pursuant to the requirements of the Telephone Disclosure and Dispute Resolution Act of 1992.<sup>2</sup> Basic phone service cannot be terminated for failure to pay 900-number charges (*i.e.*, telephone service may *not be denied* for non-payment of 900-number charges). The BRTF supports the expansion of this segregation requirement to other “non-deniable” charges because such action

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1. As an ancillary matter, the BRTF requests that the FCC change the terms that it uses to refer to these charges. The very words “non-deniable” imply to consumers that the charges need not be paid. Describing the charges as “non-communications” avoids this confusion.
  2. 15 U.S.C. § 5701 *et. seq.* (1998).

is consistent with the overall goal of ensuring that consumers are fully informed of the nature and amount of all charges on their phone bills.<sup>3</sup> However, it is important that the Commission apply this principle in an equitable and nondiscriminatory manner to *all* charges that appear on a customer's bill, regardless of their source. Thus, if LECs offer consumers "non-deniable" products and services, such products and services should be segregated from basic communications charges in the same manner as pay-per-call charges are currently segregated. Moreover, billing notices should explain the "non-deniable" nature of these charges as current FCC and FTC regulations require for pay-per-call charges.

In addition, there is a serious problem with the existing billing disclosures applicable to segregated pay-per-call charges that should be rectified by the Commission. The problem is that existing pay-per-call disclosures actually mislead telephone subscribers by suggesting that a "non-deniable" charge is a "non-enforceable" charge. That is, because a subscriber's phone service will not be cut-off for failure to pay "non-deniable" charges, the subscriber is led to believe that he or she is not legally liable for the charges. These concerns were brought to the attention of the FTC by the Interactive Services Association in comments filed last year, and by Congressman Bart Gordon, one of the principal authors of the TDDRA.<sup>4</sup> These misleading disclosures are the cause, at least in part, of the nearly \$200 million per year that 900-number service providers are losing in

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3. If a telephone subscriber's failure to pay a particular charge could result in the termination of phone service, then the customer should be so informed. By the same token, if the failure to pay a charge would *not* result in the termination of phone service, there is no reason to hide this fact from the subscriber.
  4. See 900 Number Rule Review and Request for Comment, Comments of the Interactive Services Association, FTC File No. R611016, filed May 12, 1997 ("ISA Comments"); Letter from Congressman Bart Gordon to FTC Chairman Robert Pitofsky (February 18, 1997).

billed, but unpaid, telephone charges.<sup>5</sup> Bill advisories, in their present form, almost constitute an invitation for consumers to charge back legitimate charges.

To rectify this problem, the BRTF urges the FCC to amend its pay-per-call rules to ensure that once a telephone subscriber is informed of the difference between “deniable” and “non-deniable” charges, the subscriber is *also* informed of the adverse consequences that may result from the failure to pay legitimate, albeit “non-deniable,” charges. Consumers should not be led to believe (as they are now) that they may be insulated from adverse credit consequences, simply because certain charges are classified as “non-deniable” for purposes of access to local and long-distance communications services.

The specific rule change proposed by the BRTF is to amend 47 C.F.R. Section 64.1510(a) to read as follows:

64.1510 Billing and Collection of pay-per-call and similar service charges.

(a) Any common carrier assigning a telephone number to a provider of interstate pay-per-call services and offering billing and collection services to such provider shall:

\* \* \* \* \*

(2) In any billing to telephone subscribers that includes charges for any interstate pay-per-call service:

(i) Include a statement indicating that:

(A) Such charges are for non-communications services;

(B) Neither local nor long distances [sic] services can be disconnected for non-payment **of these charges** ~~although an information provider may employ private entities to seek to collect such charges;~~

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5. See ISA Comments at 5; *id.*, Exhibit B, at 2.

~~(C) 900 number blocking is available on request; and~~ **if it is determined, after a reasonable investigation, that these charges were not in error, the service provider (or other parties acting on behalf of the service provider) has the right to pursue collection of the charges, and may report your failure to pay under the Consumer Credit Reporting Act;**

~~(D) Access to pay-per-call services may be involuntarily blocked for failure to pay legitimate charges;~~ **900 number blocking is available on request; and**

**(E) Access to pay-per-call services may be involuntarily blocked for failure to pay legitimate charges;**

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### **III. USE OF THE PHONE BILL AS A BILLING MECHANISM FOR NON COMMUNICATIONS-RELATED PRODUCTS AND SERVICES**

The Commission has asked whether and to what extent consumers should be protected against inaccurate and unfair billing practices for telephone-related purchases. *See* NPRM ¶ 8. The BRTF urges the Commission to preserve the ability of vendors to use the telephone bill as a non-discriminatory means to charge consumers for a wide variety of products and services.

The telephone bill is an important option for pay-per-call service providers and other vendors because there may be cost advantages or other benefits to using the phone bill as opposed to other billing mechanisms. Moreover, telephone billing can provide a convenient means for consumers who do not have credit cards or other forms of credit to obtain a wide variety of products and services through an already familiar billing mechanism.

In addition, efforts to limit the telephone bill to charges that are “related” to basic telecommunications services would be difficult to administer. Such a restriction would force the Commission to determine in countless cases whether a given service qualifies as “related” to telephone service. Would computer software qualify as “related” ? What if the software was used

for Internet telephony? What about monthly charges for Internet or cable television service? Future decisions such as these would likely become even more difficult.

The BRTF believes that the Commission should permit the telephone bill to be used as a means of billing for a broad spectrum of products and services *as long as* an effective dispute resolution procedure is in place to protect consumers. With respect to tariffed telecommunications services, telephone subscribers are generally liable for all charges made from their phones. *See, e.g., AT&T v. Community Health Group*, 931 F. Supp. 719, 723 (S.D. Cal. 1995) (“[A] customer is liable for all long-distance calls made from its on-premises PBX, regardless of whether such calls were authorized or fraudulent.”); *Chartways Technologies, Inc. v. AT&T Communications*, 6 FCC Rcd 2952, ¶ 13 n.20 (1991) (“The record . . . indicates that AT&T’s policy [of holding the customer liable for unauthorized calls made from the customer’s telephone system] has been consistently upheld by the courts and state commissions.”) (citations omitted), *review denied*, 8 FCC Rcd 5601 (1993).

With respect to 900-number calls, the FTC has proposed a similar standard of liability. Federal Trade Commission, Pay-Per-Call Rule, Notice of Proposed Rulemaking, FTC File No. R611016, at 65 (1998) (*hereinafter* “FTC Notice”) (“[I]n most cases, the Commission believes that a vendor is justified in assuming that a call from a consumer’s telephone to a 900-number (and ensuing charges for the service) have been authorized by that consumer, since the consumer could have easily blocked the call and avoided the charges.”); *see id.* at 23 (“Generally, where 900-number blocking would have been effective to enable a consumer to avoid an unauthorized charge, the Commission believes it would be an undue burden on billing entities to require them to determine if such charges were, in fact, authorized.”). Indeed, unlike disputes concerning tariffed

telecommunications services, in disputes concerning 900-number charges, the consumer is entitled to *additional* rights that parallel those applicable to consumers who use credit cards. *See id.* at 40 (“TDDRA directed the Commission to promulgate rules with requirements ‘substantially similar to the requirements imposed, with respect to the resolution of credit disputes, under the Truth In Lending and Fair Credit Billing Acts.’”).

To the extent that some telephone-billed transactions may not be adequately covered by appropriate dispute resolution procedures, the FTC wisely has *not* proposed to prohibit a broad range of telecommunications-related purchases. Indeed, notwithstanding the flood of recent complaints about cramming and slamming, the FTC has recognized that the telephone bill can be used as an “innovative purchasing mechanism.” *See id.* at 21. The FTC has proposed expanding its definition of the term “telephone-billed purchase” to ensure that the proposed Rule will prohibit precisely those types of pay-per-call services that would not be covered by the dispute resolution protections guaranteed by Title III of TDDRA. *See id.* at 63. Specifically, the FTC has proposed that in order to sustain a charge in situations where blocking is not available, the provider of a non-telecommunications product or service must show tangible evidence that the person being billed for the purchase actually consented to the charge. *See id.* at 21. The BRTF urges the FCC to adopt rules and policies in this proceeding that will complement the FTC’s dispute resolution proposals and preserve the telephone bill as a viable alternative billing mechanism, or allow the FTC to take the lead in setting the applicable regulations.

#### **IV. UNREASONABLE AND OVERLY RESTRICTIVE BILLING PRACTICES BY SOME LECS**

In addition to the concerns expressed above, the BRTF is extremely concerned about the recent proliferation of unreasonable, onerous, and overly restrictive billing practices of some LECS. The BRTF recently convened an industry meeting to discuss specific instances of such practices encountered by individual members. Almost every BRTF member had either suffered, or soon expected to suffer, from these practices.

Industry complaints included the following examples of unreasonable LEC practices: unilateral, non-negotiable changes to billing contracts; termination of billing and collection services based on receipt of an unreasonably low incidence of consumer complaints;<sup>6</sup> imposition of high financial penalties for investigating individual instances of unauthorized charges; adoption of unreasonably high reserve and withhold requirements, some of which create barriers to entry; imposition of indefinite moratoria on the provision of certain types of billing and collection services; and refusal to bill for certain types of pay-per-call content; and refusal to bill for pay-per-call services entirely.

Allowing such LEC practices to continue unabated will ultimately result in the destruction of the pay-per-call industry and third-party billing generally. In its Non-Accounting Safeguards order, the FCC ruled that “there are certain administrative services, such as billing and collection” that LECS must provide to unaffiliated entities on a non-discriminatory basis. *See* 47 U.S. C. §

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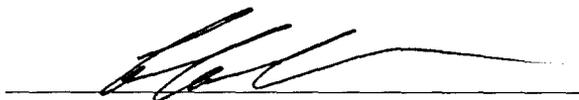
6. *See also* Pilgrim Request for Expedited Action on MCI Rulemaking Petition, at 4 n.7, RM 9108 (September 24, 1998) where GTE refused to provide billing and collection service to Pilgrim based on 7 complaints made against Pilgrim in January and February, 1998. During that time, GTE billed over 26,000 charges for Pilgrim.

272(c)(1) (1998); Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd 14,738, ¶ 217 (1996). The BRTF urges the Commission to enforce strictly its prior decision that “a [LEC] must provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms and conditions.” *Id.* ¶ 202. In situations where non-accounting safeguards do not apply, the Commission should “fill in the gap” with a requirement that LECs provide nondiscriminatory access to billing and collection services on reasonable terms. Based on the information revealed at the BRTF meeting, an exercise of the FCC’s ancillary jurisdiction and enforcement powers may also be required. *See* Detariffing of Billing and Collection Services, 1 FCC Rcd 445 (FCC 86-472, 1986).

Respectfully submitted,

THE BILLING REFORM TASK FORCE

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