

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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| In the Matter of   | ) |                      |
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| Policies and Rules Governing Interstate Pay-Per-<br>Call and Other Information Services, and Toll-Free<br>Number Usage | ) | CG Docket No. 04-244 |
|  | ) |                      |
| Truth-in-Billing and Billing Format  | ) | CC Docket No. 98-170 |
|  | ) |                      |
| Application for Review of Advisory Ruling<br>Regarding Directly Dialed Calls to International<br>Information Services  | ) | ENF-95-20            |
|  | ) |                      |

**REPLY COMMENTS OF VERIZON<sup>1</sup>**

NASUCA and the Iowa Utilities Board confirm Verizon's experience that "modem hijacking" is a serious and growing problem for consumers. The steps they propose to protect consumers, however, could fail to reach the operators of the scams and instead could penalize long distance carriers such as Verizon that find themselves caught in the middle in these scams.

In these reply comments, Verizon also responds to suggestions by some commenters that the Commission should require local exchange carriers to bill for 900 services. Such a requirement would run counter to nearly two decades of Commission precedent.

Finally, Verizon agrees with Metro One that "directory services" is a generic term that already encompasses basic directory assistance services as well as enhanced

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<sup>1</sup> The Verizon telephone companies and long distance companies ("Verizon") are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A to these Comments.

directory assistance services, whether provided via voice telephony, data transmission, the Internet, or other communication facilities. No revision or narrowing of the term is called for.

1. Modem hijacking is a serious and growing problem. The comments from NASUCA and the Iowa Utilities Board confirm Verizon's experience that modem hijacking is a serious and growing problem for consumers. *See* NASUCA Comments at 13 ("Modem hijacking has grown to epidemic proportions in the United States, Canada and Ireland"); Iowa Utilities Board Comments at 2 (modem hijacking is beginning to be seen in Iowa on a more regular basis). Both commenters argue that the Commission should take prompt action to curtail the practice. NASUCA at 14; Iowa at 2. Their suggested remedies, however, may not reach the perpetrators of modem hijacking scams and instead could have the effect of penalizing long distance carriers caught in the middle.

As Verizon explained in its comments, the type of modem hijacking that Verizon and its customers have been experiencing is somewhat different from that described in the NPRM. Typically, a customer using dial-up access to the Internet clicks "I Accept" or "Yes" in a pop-up box, which triggers the downloading of software. The software reconfigures the modem to dial international calls. The calls are dialed automatically and at random times without the customer's knowledge. The international calls generated by the modem are carried over the customer's presubscribed long distance carrier (such as Verizon Long Distance) to places such as Tuvalu, Cook Islands, and Sao Tome. Verizon Long Distance may carry the calls itself, or may resell the services of another U.S. international carrier, but in either case, Verizon Long Distance cannot distinguish on its

network whether a given call is intentionally dialed by an end user or is dialed by downloaded software associated with the scam. *See* Verizon Comments at 2-3.

NASUCA suggests that the Commission should revoke carriers' 214 certification if they engage in modem hijacking. Additionally, NASUCA argues that modem hijacking, as described by the NPRM, is "tantamount to slamming on a call-by-call basis," and suggests that identical penalties and remedies assessed for slamming apply for modem hijacking. NASUCA at 14. As Verizon explained in its comments, in a scam such as the one experienced by Verizon and its customers, legitimate U.S. international carriers are caught in the middle – they simply carry the calls originated on their customers' presubscribed lines and cannot tell whether any given call is dialed by an end user or initiated by downloaded software. In either case, however, these carriers incur the cost of carrying the call, including the international settlement rates charged by the foreign terminating carrier that is teaming with the scam operator. Clearly it would not be appropriate to revoke the U.S. international carrier's 214 authority in such situations. If, however, the foreign carrier participating in the scam has a 214 certificate, revocation may be appropriate as one aspect of the solution.

Similarly, penalties for slamming would not be appropriate in the type of modem hijacking experienced by Verizon and its customers. As explained above, in Verizon's experience, calls generated by the downloaded software are carried by the customer's presubscribed long distance carrier. This means that there is no slamming, and as Verizon has explained, the presubscribed carrier cannot tell whether any given call is dialed by an end user or initiated by downloaded software. In these circumstances, it would not be appropriate to penalize the long distance carrier. In circumstances where

the downloaded software causes the modem to dial calls using a “10-10” prefix, however, the Commission could consider imposing penalties similar to those assessed for slamming on the scam operators and on the “10-10” carrier *if* that carrier has knowingly teamed with the scam operator.

The Iowa Utilities Board suggests that the Commission’s rules “be amended to include blocks on unauthorized calls made by modems.” Iowa Comments at 2. Again, Verizon is not able to tell whether a given call was dialed intentionally by the end user or by downloaded software. It is not clear, therefore, how Verizon would be able to block unauthorized calls made by modems. Verizon agrees with NASUCA and the Iowa Utilities Board that the Commission should take prompt action to address the problem of modem hijacking. The Commission’s efforts, however, must be directed at the perpetrators of the scam, not at the long distance carriers like Verizon that are caught in the middle.

In its comments, Verizon explained a number of steps the Commission should take that would target the actual perpetrators of the modem hijacking scams and lead to real benefits for consumers. *See* Verizon Comments at 5-7. For example, the Commission should work with the FTC, other U.S. government agencies, and in cooperation with foreign regulators, as appropriate, to prosecute and shut down scam operators and take action against the carriers that conspire with them or otherwise knowingly accept these arrangements.

In addition, the Commission should allow U.S. international carriers to withhold payment of settlement rates to foreign carriers in countries with a high incidence of fraud, pending Commission review of international charges due to alleged scams. This review

could be conducted in response to consumer or carrier complaints or on the Commission's own motion. To the extent these foreign carriers also have been "duped" by the fraud perpetrators, they should be allowed an opportunity to work with affected U.S. carriers to investigate and address the scam. U.S. international carriers should be permitted to withhold payment of international settlement rates at least until the terminating foreign carrier has identified all of the numbers associated with the scam.<sup>2</sup> If foreign carriers are not willing to cooperate with their U.S. counterparts, U.S. international carriers should be permitted to withhold the international settlement payments until the matter is reviewed by the Commission.

The Commission also should make clear that the requirement in section 63.19 of the Commission's rules, 47 C.F.R. § 63.19, to provide 60 days' prior notice before discontinuing, reducing or impairing service does not apply in the situation where a U.S. international carrier has evidence of fraud and needs to discontinue, reduce, or impair service to certain numbers, ranges of numbers, or destinations in order to prevent fraudulent calls from being made. As Verizon explained in its comments, Verizon Long Distance has a fraud control group that monitors long distance usage around the clock and looks for unusual usage patterns. Verizon also participates in industry-wide groups

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<sup>2</sup> The Commission also should revise its instructions on filing complaints concerning modem hijacking. Currently, the Commission's website advises consumers filing complaints to include the name of their long distance provider on their complaint. But, as described above, Verizon Long Distance carries these calls because the customer is presubscribed to Verizon Long Distance. Verizon Long Distance is not able to distinguish between calls dialed by end users and those generated by the scam software, yet it incurs the cost of carrying the calls, which includes the charges of the foreign carrier that participates in the scam. The Commission should take the steps described above to target the information services providers and foreign carriers partnering with them that perpetrate this fraud.

that share information on scams. If Verizon learns through these or other methods that particular foreign telephone numbers or ranges of numbers are associated with a scam, it will block calls to those numbers. *See Verizon Comments at 4-5.*

Finally, the Commission should make available an expedited complaint process for use by U.S. international carriers that seek Commission intervention regarding specific cases of harm to U.S. consumers caused by modem hijacking. For example, the procedure set forth in section 64.1002(d) of the Commission's rules, 47 C.F.R. § 64.1002(d), is designed for swift Commission action pursuant to an expedited schedule of ten days for comments or oppositions and seven days for replies. The Commission could clarify that this expedited complaint process for anticompetitive accounting rates can be used to address these types of fraud, or adopt a similar procedure specifically for the purpose of addressing fraudulent conduct by foreign carriers.

The measures Verizon suggested are designed to protect consumers and to reach the actual modem hijacking scam operators. They are, therefore, in the public interest and should be adopted.

2. The Commission should not require LECs to bill for 900 services. In 1986, the Commission deregulated billing and collection services, finding that the market for billing and collection was competitive, and that billing and collection were not communications services under Title II of the Act. *Detariffing of Billing and Collection Services*, Report and Order, 102 F.C.C.2d 1150 ¶¶ 32-34, 37 (1986). Pilgrim now asks the Commission to upset nearly two decades of practice, and require LECs (including ILECs, CLECs, and VoIP providers, among others) to bill for 900 services. Pilgrim Comments at 4-5. The Commission should decline Pilgrim's suggestion.

Billing and collection services for 900 based services are provided today by Verizon under contract with a number of billing aggregators. These contracts contain terms and conditions that provide for consumer protections. For example, Verizon's contracts include provisions that it will not bill for charges for material deemed objectionable by Verizon. Verizon has put this requirement in the contract because many consumers have reacted negatively to this type of service. In addition, Verizon's contracts require the billing aggregator to list an "800" toll-free number for the consumer to call if there is a dispute regarding the charges. If the customer cannot resolve his concern with the billing aggregator, Verizon will remove those charges from the bill.

In its billing and collection contracts, Verizon also maintains the right to protect its image and reputation. Verizon makes contracts available to information service providers that do not market "objectionable material," and Verizon retains the right to refuse billing for any charge for material deemed objectionable by Verizon. Examples of such material include material that explicitly or implicitly refers to sexual conduct; material that contains indecent, obscene, or profane language; material that alludes to bigotry, racism, sexism, or other forms of discrimination; and material that is deceptive, misleading, or that may take unfair advantage of the elderly, minors or the general public. Verizon, therefore, has taken steps to protect consumers. A requirement to bill for 900 services would undermine those efforts and abrogate Verizon's right to maintain its own reputation. The Commission should not adopt Pilgrim's suggestion.

3. There is no need for further definition of the "directory services" that are exempt from certain pay-per-call requirements. In establishing an exemption from the pay-per-call rules in section 228, Congress did not use the term "directory assistance" but

instead chose the broader term “directory services.” Verizon agrees with Metro One that the term “directory services,” as used in Section 228 of the Act, is a generic term that already encompasses basic directory assistance services, as well as enhanced directory assistance services, whether provided via voice telephony, data transmission, the Internet, or other communication facilities. *See* Metro One at 4. For example, both reverse directory assistance and category search services provide callers elements of information that are typically contained in print or electronic telephone directories. Similarly, services that provide customers information that they request about specific restaurants, travel routes, and scheduled events are directory services because such information may also be accessed using print or on-line directories. Additionally, services that provide or complement specialized or personal directory information based on individual or corporate preferences are directory services. “Directory services”, as the term denotes, provide consumers information that they would reasonably expect to obtain if they were to consult a general or specialized directory of persons, businesses, places or events.

There is no need to impose additional rules on these directory services. As Metro One notes, these services have not generated the abuses that led Congress to enact, and then strengthen, section 228. *See* Metro One at 6. Nor is there any need to extend regulation to any carrier services provided over 411. Services provided using 411 requires a pre-established business relationship between the customer and the providing carrier, and 411 call transactions cannot occur independent of or in isolation from subscription to a carrier’s service. The caller therefore knows the identity of the service provider and where to direct billing or service issues, and these relationships are often subject to regulation or tariff relating to billing and/or provisioning.

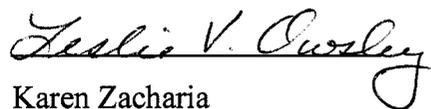
Directory services today are provided in a competitive market that effectively regulates these offerings. Consumers have numerous options including phone books, directory assistance offerings from multiple wireline and wireless carriers, Internet-based searchable directories, and directory-type services from a growing number of VoIP providers. Narrowly defining the term “directory services” could stifle the competition and innovation that has led to the wide availability and increasing usefulness of these services, thereby frustrating customer expectations.

### CONCLUSION

Modem hijacking is a serious and growing problem. The Commission should take prompt action to protect consumers from these fraudulent schemes and to enable legitimate U.S. international carriers to combat these scams. The Commission should not require local exchange carriers to bill for 900 service providers. Finally, there is no need to revise or narrow the definition of “directory services” that are exempt from the pay-per-call rules.

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November 29, 2004

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers and long distance companies affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Hawaii Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.

Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance,  
NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions,  
Verizon Select Services Inc.