

express permission be obtained in writing by companies before sending faxed advertisements to its customers. Finally, the Order establishes an exemption to permit calls by a marketer to friends, family members and acquaintances.

57. In addition, the Commission released on August 18, 2003, an Order on Reconsideration delaying the effective date of the written consent requirement for fax advertising until January 1, 2005.²² The delay was intended to give parties additional time to obtain the recipients' written permission, and to allow the Commission the opportunity to review the petitions for reconsideration filed on this issue.

58. On March 19, 2004, the Commission released an NPRM and FNPRM seeking comment on two issues relating to the TCPA.²³ Specifically, the Commission sought comment on whether to adopt a limited safe harbor period during which a telemarketer will not be liable for violating the rule prohibiting autodialed and prerecorded message calls to wireless numbers for calls made to numbers that have been recently ported from wireline to wireless service. On August 25, 2004, the Commission adopted an Order which: 1) created a limited safe harbor period from the TCPA's prohibition on calls to wireless numbers.²⁴ Persons will not be liable for placing autodialed and prerecorded message calls where such calls are made to a wireless number ported from wireline service within the previous 15 days, provided the number is not already on the national do-not-call registry or the caller's company-specific do-not-call list. A limited safe harbor will provide a reasonable opportunity for persons to identify numbers that have been ported from wireline service.

59. The Order also amends the existing national do-not-call registry safe harbor provision to require telemarketers to access the registry and scrub their call lists of those numbers on the registry every 31 days. The rule change will become effective on January 1, 2005. This amendment will benefit consumer privacy interests by reducing from three months to 31 days the maximum period within which telemarketers must update their database of numbers registered on the national do-not-call list in order to qualify for the safe harbor protections. We also believe this action is consistent with the intent of Congress, which directed the FTC in the Consolidated Appropriations Act of 2004 to amend its corresponding safe harbor rule in a similar manner. Absent action to amend our safe harbor rule, many telemarketers would face inconsistent standards since the FTC's jurisdiction extends only to certain entities while our jurisdiction extends to all telemarketers.

²² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order on Reconsideration, 18 FCC Rcd 16972 (2003).

²³ *Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 04-53, CG Docket No. 02-278, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 19 FCC Rcd 5056 (2004).

²⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order, FCC 04-204 (rel. September 21, 2004).

60. On October 1, 2004, the Commission released an Order extending for a period of six months the effective date of the written consent requirement for sending unsolicited facsimile advertisements.²⁵ The Commission believes that the public interest will best be served by delaying the effective date of the written consent requirement to allow either Congress to act on pending legislation or the Commission to address the petitions for reconsideration filed on these issues.

Comments

61. No comments received.

Recommendation

62. The staff does not recommend changes to Part 64, Subpart L as part of the Biennial Review. Part 64, Subpart L is intended to protect subscriber privacy and public safety without unnecessarily restricting legitimate telephone marketing and sales. Moreover, because these rules are not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that the rules remain necessary in the public interest and recommend that repeal or modification is not warranted.

²⁵ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order, FCC 04-233 (rel. October 1, 2004).

Part 64, Subpart O – Interstate Pay-Per-Call and Other Information Services

Description

63. Part 64, Subpart O implements section 228 of the Communications Act of 1934, as amended.²⁶ Subpart O concerns pay-per-call and certain other information services. Subpart O requires common carriers that assign telephone numbers to providers of interstate pay-per-call services to require that the provider comply with these rules as well as certain other laws and regulations. Subpart O restricts the provision of pay-per-call services over 800 and “toll free” numbers and bars the provision of interstate pay-per-call services on a collect basis. Subpart O provides for 900 service access code assignment to pay-per-call services. It requires local exchange carriers to offer subscribers the option of blocking access to 900 numbers from their telephones. Subpart O establishes conditions for common carrier provision of billing and collection for pay-per-call services and bars the disconnection or interruption of local exchange or long-distance service for the non-payment of charges for interstate pay-per-call and certain information services.

Purpose

64. Part 64, Subpart O is intended to both promote the legitimate development of pay-per-call services and protect consumers from the fraudulent or unscrupulous provision of pay-per-call services.

Analysis

Status of Competition

65. Competitive developments have not affected the need for this rule because these are consumer protection rules, whose purposes are unaffected by competition. While competition might lead to development of some changes that might benefit consumers, these rules are intended to protect consumers from misleading, unclear, and even fraudulent conduct.

Recent Efforts

66. In July, the Commission released a *Notice of Proposed Rulemaking* on its interstate pay-per-call rules, seeking comment on possible modifications to address circumvention of the rules.

²⁶ 47 U.S.C. § 228. Section 228 codifies the Telephone Disclosure and Dispute Resolution Act, Public Law 102-556, 106 Stat. 4181, approved Oct. 28, 1992.

Comments

67. No comments received.

Recommendation

68. The staff does not recommend changes to Subpart O as part of the current Biennial Review. Part 64, Subpart O is intended to both promote the legitimate development of pay-per-call services and protect consumers from the fraudulent or unscrupulous provision of pay-per-call services. The staff believes these regulatory objectives continue to be valid. We accordingly do not find that the rules are “no longer necessary in the public interest as a result of meaningful economic competition between providers of telecommunications services.” The staff recommends that repeal or modification is not warranted. Staff notes that there is an open proceeding addressing ways to prevent circumvention of our existing Subpart O rules.²⁷

²⁷ *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996; Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-free Number Usage; Truth-in-Billing and Billing Format*; CC Docket Nos. 96-146 and 98-170, CG Docket No. 04-244, Notice of Proposed Rulemaking, FCC 04-162 (rel. July 16, 2004).

Part 64, Subpart P – Calling Party Telephone Number; Privacy**Description**

69. The requirements in Part 64, Subpart P are based on the Commission's authority under sections 1, 4, 201-205, and 218 of the Communications Act of 1934, as amended.²⁸ Subpart P covers Calling Party Number (CPN) services, including "Caller ID," which depend on capabilities that use out-of-band signaling techniques such as "Signaling System Seven (SS7)." Subpart P provides that common carriers using SS7 must, subject to certain exceptions, transmit the CPN associated with interstate calls to interconnecting carriers without additional charge. Originating carriers using SS7 must recognize *67 as a caller's request for privacy when dialed as the first three digits of an interstate call. Carriers providing line blocking services are required to recognize *82 as a caller's request that privacy not be provided and that the CPN be passed on an interstate call. Subpart P requires carriers to notify customers of their *67 and * 82 capabilities and restricts the use of telephone subscriber information.

Purpose

70. The purpose of Part 64, Subpart P is to protect subscriber privacy while fostering the development of new and innovative services.

Analysis**Status of Competition**

71. Competition in local service markets has continued to increase since the 2000. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 16 percent of local service revenues for the year 2003, up from 10 percent in 2001. Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service over cable has increased to over three million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen. There is greater competition for high volume customers than for low volume customers.

²⁸ 47 U.S.C. §§ 151, 154, 201-205, 218.

Recent Efforts

72. In July of 2003, the Commission revised its rules under the Telephone Consumer Protection Act (TCPA) to address changes in the telemarketing marketplace. Among other things, the Commission adopted new rules at 64.1601(e) to require telemarketers to transmit caller identification (caller ID) information and, when available, by the telemarketer's carrier, the name of the telemarketer. In addition, telemarketers are prohibited from blocking the transmission of caller ID information. The Commission determined that caller ID allows consumers to screen out unwanted calls and to identify companies that they wish to ask not to call again.

Comments

73. No comments received.

Recommendation

74. The staff does not recommend any changes as part of the Biennial Review. The purpose of Part 64, Subpart P is to protect subscriber privacy while fostering the development of new and innovative services. The staff believes these regulatory objectives continue to be valid because with increasing competition, consumers are likely to continue to receive significant numbers of telemarketing calls. Therefore, we cannot find these rules are "no longer necessary in the public interest as a result of meaningful economic competition." We accordingly conclude that the rules remain necessary in the public interest and recommend that repeal or modification is not warranted.

Part 64, Subpart Y – Truth-In-Billing Requirement for Common Carriers

Description

75. The Commission adopted the rules in Subpart Y pursuant to its authority under sections 201(b) and 258 of the Communications Act of 1934, as amended.²⁹ Subpart Y contains binding truth-in-billing guidelines that apply to carriers selling telecommunications services.³⁰ Subpart Y requires carriers to provide customers with necessary information about their services and charges. Specifically, Subpart Y requires carriers to separate charges on the bill by provider, to describe clearly the services involved, to display clearly the name of the service provider in association with its charges, to display a toll-free number (or, in certain cases, an email or website address) for consumer inquiries, to identify those charges for which failure to pay will not result in disconnection of the customer's basic local service, and to highlight new service providers.

Purpose

76. Part 64, Subpart Y is designed to make telephone bills easier for consumers to understand, so that customers can make informed choices among carriers and services. Subpart Y is also intended to make it easier for consumers to identify and report fraud, such as slamming (unauthorized change to consumer's telecommunications carrier) and cramming (placement of unauthorized, misleading, or deceptive charges on a consumer's telephone bill).

Analysis

Status of Competition

77. Competitive developments have not affected the need for this rule because these are consumer protection rules, whose purposes are unaffected by competition. While competition might lead to development of some changes that might benefit consumers, these rules are intended to protect consumers from misleading, unclear, and even fraudulent conduct. CMRS was exempted because we had very few complaints in the record regarding CMRS at the time the rule was adopted.

Recent Efforts

²⁹ 47 U.S.C. §§ 201(b), 258.

³⁰ The Commission exempted CMRS carriers and other providers of mobile service from compliance with certain truth-in-billing requirements, including the requirements to highlight new providers, to provide descriptions of services rendered, and to identify charges for which failure to pay will not result in disconnection of the customer's basic, local service. *See* CC Docket No. 98-170, 14 FCC Rcd 7492 (1999).

78. No recent efforts.

Comments

79. No comments received.

Recommendation

80. The staff does not recommend any changes as part of the Biennial Review. The rules in Part 64, Subpart Y are intended to make telephone bills easier for consumers to understand, so that customers can make informed choices among carriers and services. The rules also are intended to make it easier for consumers to identify and report fraud, such as slamming (unauthorized change to consumer's telecommunications carrier) and cramming (placement of unauthorized, misleading, or deceptive charges on a consumer's telephone bill). The staff believes these regulatory objectives continue to be valid since these are consumer protection rules, whose purposes are unaffected by competition. Therefore, we cannot find these rules are "no longer necessary in the public interest as a result of meaningful economic competition." The staff recommends that repeal or modification is not warranted. Staff notes that there is an open proceeding associated with Subpart Y,³¹ and more recently a petition for declaratory ruling or rulemaking aimed at these rules.³²

³¹ *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 7492 (1999).

³² *Truth in Billing and Billing Format, National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in Billing*; CC Docket No. 98-170 and CG Docket No. 04-208, Public Notice, 69 Fed. Reg. 113 (2004).

Part 68 – Connection of Terminal Equipment to the Telephone Network

Description

81. Part 68 was established in 1974 as the result of a court decision ruling that the Bell Operating Companies could not bar direct connection of customer premises equipment (CPE) to the public switched telephone network (PSTN), so long as the CPE would not cause harm to the PSTN.³³ Part 68 also implements the Hearing Aid Compatibility Act of 1988 (HAC Act).³⁴ The HAC Act requires that, unless exempt, all essential telephones and all telephones manufactured in or imported into the United States after August 16, 1989 must “provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.”³⁵ The statute also directs the Commission to assess periodically the appropriateness of continuing the exemptions. In addition, among its many provisions, Part 68 also includes certain requirements for terminal equipment which implement the Telephone Consumer Protection Act of 1991 (the TCPA).³⁶ Congress enacted the TCPA in an effort to address telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and a risk to public safety. The TCPA imposes, among other things, certain restrictions on the use of automatic dialing machines and the use of telephone facsimile machines to send unsolicited advertisements. These include a requirement that addresses line seizure by automatic telephone dialing systems and a requirement that all fax transmissions include source labeling (47 C.F.R. §§ 68.318(c) and 68.318(d), respectively). The scope of this discussion is limited to Part 68 as it applies to telephone compatibility with hearing aids, line seizure by automatic telephone dialing systems, and the requirement that all fax transmissions include source labeling.³⁷

Purpose

82. The purpose of Part 68 is, in part, to provide for uniform standards for the compatibility of hearing aids and telephones to ensure that persons with hearing aids have reasonable access to the telephone network. The purpose of sections 68.318(c)

³³ *Hush-A-Phone v. United States*, 238 F.2d 266 (D.C. Cir. 1956).

³⁴ 47 U.S.C. § 610.

³⁵ Public mobile service phones are currently exempt from the hearing aid compatibility requirements of the HAC Act. See 47 U.S.C. § 610(b)(2)(A)(i) and (ii). The Commission’s rules broadly define public mobile services as “radio services in which common carriers are authorized to offer and provide mobile and related fixed radio telecommunication services for hire to the public.” See 47 C.F.R. § 22.99.

³⁶ Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

³⁷ The Wireline Competition Bureau oversees Part 68 as it applies to the connection of CPE to the PSTN. A discussion of Part 68 as it applies to such matters is contained in the Wireline Competition Bureau’s Biennial Regulatory Review 2004 Staff Report.

and 68.318(d) is to implement the specific mandates of the TCPA which, as noted above, were intended to address telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and a risk to public safety.

Analysis

Status of Competition

83. Not relevant with regard to Part 68 as it applies to hearing aid compatibility. The rules implement the HAC Act and are intended to ensure that persons with hearing aids have reasonable access to the telephone network by providing uniform standards for the compatibility of hearing aids and telephones. Accordingly, the realization of these benefits is not determined by economic competition.

84. Not relevant with regard to sections 68.318(c) and 68.318(d).³⁸ The staff notes that since the adoption of the rules, telemarketing practices have changed significantly. New technologies have emerged that allow telemarketers to better target potential customers and make it more cost effective to market using telephones and facsimile machines.

Recent Efforts

85. In July of 2003, the Commission revised its rules under the Telephone Consumer Protection Act (TCPA) to address changes in the telemarketing marketplace. Among other things, the Commission amended the rule at 68.318(d) to address certain activities by facsimile broadcasters. The rules require that if a facsimile broadcaster demonstrates a high degree of involvement in the sender's facsimile messages, such as supplying the numbers to which a message is sent, that broadcaster's name, under which it is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be identified on the facsimile along with the sender's name.

Comments

86. No comments received.

Recommendation

87. The staff does not recommend changes to Part 68 as it applies to hearing aid compatibility as part of the Biennial Review. The purpose of Part 68 is, in part, to provide for uniform standards for the compatibility of hearing aids and telephones to ensure that persons with hearing aids have reasonable access to the telephone network which the rules continue to do. Moreover, because Part 68 as it applies to hearing aid

³⁸ See discussion of Part 64, Subpart L *supra*.

compatibility is not competition-related, we cannot find that Part 68 is no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that Part 68 as it applies to hearing aid compatibility is necessary in the public interest and recommend that repeal or modification is not warranted.

88. The staff does not recommend changes to Part 68, sections 68.318(c) and 68.318(d) as part of the Biennial Review. Sections 68.318(c) and 68.318(d) implement the specific mandates of the TCPA which, as noted above, were intended to address telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and a risk to public safety. Moreover, because these rules are not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that these rules remain necessary in the public interest and recommend that repeal or modification is not warranted.