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

In the Matter of	)	
	)	
Policies and Rules	)	CC Docket No. 91-65
Concerning Interstate 900	)	
Telecommunications Services	)	

Comment of the Staff of
the Bureaus of Economics
and Consumer Protection of the
Federal Trade Commission[1]

July 2, 1991

[1] This comment represents the views of the staff of the Bureaus of Economics and Consumer Protection of the Federal Trade Commission. They are not necessarily the views of the Commission or those of any individual Commissioner. Inquiries regarding this comment should be directed to Timothy Daniel (202-326-3520) of the FTC's Bureau of Economics or Lydia Parnes (202-326-3126) of the FTC's Bureau of Consumer Protection.

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I. Introduction and Summary

The staff of the Federal Trade Commission (FTC) appreciates this opportunity to submit a comment in response to the Federal Communication Commission's (FCC) Notice of Proposed Rulemaking (NPRM) concerning Interstate 900 Telecommunications Services.[2]

We endorse the FCC's efforts to foster informed consumer choices in this relatively new market and to provide appropriate consumer protections. Many 900-number services provide information of value to consumers in a timely and economical manner, and we support the FCC's goal of combatting injurious practices in the 900-number industry without unnecessarily restraining the development of these useful services.

We fully support the FCC's general approach in this area---ensuring that callers have adequate information on the cost and nature of a 900-number call prior to making the call and being charged, and facilitating consumers' efforts to obtain relief when they believe that charges are unwarranted. As noted in the NPRM, the FCC's regulatory authority is limited to common carriers. Thus, this rulemaking is consistent with continued activity by federal, state and local regulatory agencies, such as the FTC, because these agencies will retain responsibility

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[2] See Notice of Proposed Rulemaking In the Matter of Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65, March 25, 1991.

for overseeing the advertising and other marketing practices of information providers.

After a brief discussion of our experience in the 900-number industry, this comment provides a general analysis of the various remedies currently being considered. These remedies include mandatory preambles, optional blocking, and identification of information providers. As mentioned above, we believe that all of these provisions could provide meaningful protection to consumers.

Our comment also provides an analysis of the specific proposals contained in the NPRM. We believe that mandatory preambles could help ensure that consumers are informed about the cost and nature of 900-number calls prior to being charged for them.[3] We suggest, however, that the FCC consider whether low-priced calls might reasonably be exempted from the mandatory preamble requirement. Such an exemption may reduce the costs associated with the mandatory preamble requirement without compromising its central objectives: fostering an informed marketplace and preventing consumer deception. We also suggest that the FCC consider the differences between adult and children's programming when determining how to implement the preamble requirement.

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[3] Mandatory preambles would likely be more amenable to disclosing the call's price and less so for describing the call's content. See the discussion on page 31, <u>infra</u>.

With respect to blocking, we agree with the FCC that blocking can provide consumers effective protection from some unauthorized calls. We suggest that the FCC consider the feasibility of selective blocking, so that consumers can prevent unauthorized calls without sacrificing the benefits of other 900-number services.

We conclude by discussing the protections consumers currently possess in the credit card area by virtue of the Fair Credit Billing Act (FCBA). The payment and billing procedures in credit card markets bear a close resemblance to the payment and billing procedures in the 900-number market. Thus, we suggest that the FCC consider whether certain of the FCBA's protections could feasibly be extended to the 900-number industry, where appropriate.

II. Expertise of the Staff of the Federal Trade Commission

The FTC is an independent law enforcement agency responsible for maintaining competition and safeguarding the interests of consumers.[4] In response to requests by federal, state, and local government bodies, the staff of the FTC often analyzes regulatory or legislative proposals that may affect competition or consumer protection in particular areas of the economy. In the course of this work, as well as in antitrust and consumer

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[4] 15 U.S.C. Sections 41-59.

protection research, nonpublic investigations, and litigation, the staff applies established legal and economic principles to competition and consumer protection issues.

The staff of the FTC has developed considerable expertise in the 900-number area in the course of its enforcement of the FTC Act. In the past year, the Commission has filed four lawsuits in Federal court against firms that allegedly used 900-numbers to deceive consumers. Two of the lawsuits allege that the defendants used 900-numbers deceptively to market information on job openings. In both cases, the information program was alleged to have provided outdated or useless information about available jobs to callers without informing them of the call's cost.[5] The other two lawsuits involve information providers that allegedly used 900-numbers in a deceptive manner to market various credit services.[6] According to the complaints filed in these cases, the defendants offered "gold" or "platinum" credit cards, supposedly similar to those issued by MasterCard, Visa, or American Express, to consumers who called a 900-number. However, these were not general purpose credit cards, but rather

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[5] FTC v. Transworld Courier Service, No. 1:90-CV-1635-JOF (N.D. Ga. filed July 26, 1990); FTC v. Starlink, No. 91-1085 (E.D. Pa. filed Feb. 26, 1991). In Transworld, the court recently approved a settlement requiring the defendants to pay $1 million in consumer redress.

[6] FTC v. Interactive Communications Technology, No. CV-F-91-018 REC (E.D. Cal. filed Jan. 18, 1991); and FTC v. First Capital Financial, No. HAR-90-2007 (D. Md. filed July 25, 1990).

cards that only could be used to purchase items from defendants' catalogs.

Most recently, the Commission issued complaints against three firms alleged to have marketed information programs to children unfairly and deceptively.[7] Among other things, the complaints allege that the companies induced children to call their story lines and incur charges without providing reasonable means for parents to exercise control over the transaction. Two of the three cases have resulted in consent agreements.

The staff continues to engage in a number of nonpublic investigations of possible unfair and deceptive practices involving the use of 900-numbers.

In addition to investigation and litigation activity, the Commission has attempted to educate consumers on ways to protect themselves from 900-number scams. The Commission has published a "Facts for Consumers" pamphlet on 900-numbers and a "Consumer Alert" on Jobs Ads, Job Scams and 900-numbers. The staff also has worked with Southwestern Bell to develop a bill insert on 900-numbers. This pamphlet has been distributed to Southwestern Bell's approximately 9 million customers in Arkansas, Kansas, Missouri, Oklahoma and Texas during February and March of 1991. The Commission will continue these consumer education activities and will explore additional opportunities in the future.

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[7] FTC v. Phone Programs Inc., Docket No. 9247, filed May 8, 1991; FTC v. Teleline, Inc., File No. 892-3229 (consent agreement); and FTC v. Audio Communications, Inc., File No. 892-3231 (consent agreement).

Finally, the staff of the FTC has been coordinating, and will continue to coordinate, its law enforcement and education efforts with other federal and state regulatory authorities. For example, staff participated in a 900 Number Forum in December 1990 hosted by the Texas Attorney General's Office, and in a National Symposium on 900 Numbers in March 1991 sponsored by the National Consumers League and the Telecommunications Research and Action Center.

III. Background

Provision of 900-number services requires at least three and in many instances four distinct parties. First, the information provider (IP) designs, promotes, and sells the information program and determines its price, subject to any restrictions imposed by the telephone companies that transmit the call.[8]

Second, an interexchange (long distance) carrier (IXC) furnishes the 900-number line to the IP (or the service bureau - see below) in addition to providing accounting, billing and collection services for the IP. IXCs, such as AT&T, SPRINT, MCI and Telesphere, provide the telecommunications network that

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[8] For example, the California Public Utilities Commission recently passed regulations limiting the charges that common carriers can bill for 900-number charges to $5 for the first minute, $2 for each additional minute, and $50 per call. See California Public Utilities Commission Decision 91-03-0231, March 13, 1991.

allows IPs to offer 900-number services.[9] The network provided by the IXC can be accessed by callers throughout the United States and permits simultaneous calling to a single 900-number. Under the typical arrangement, an IP is assessed mandatory fixed charges (for items like installation of each phone line), optional fixed charges (for special features like call forwarding) and variable charges based on the length of the calls.

Third, a local exchange carrier (LEC) connects the IXC to local consumers and, through an arrangement with the IXC, provides billing and collection services. Charges for 900-numbers are included in the long-distance portion of consumers' phone bills, which are prepared and distributed by the LECs.

Fourth, in some instances, a service bureau acts as an intermediary between IPs and IXCs. Service bureaus provide a variety of services to IPs, including the ability to record messages (such as addresses) from callers, credit card verification services, accounting services, and professional sound studios. By working through a service bureau, smaller IPs can obtain higher quality services at lower cost than if they contracted directly with the IXC.

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[9] The IXCs typically have their own internal guidelines governing provision of 900 number services. For example, MCI recently instituted a policy that 900-services transmitted over its network would be required to include a preamble informing callers of the nature and cost of the call and providing them a chance to hang up without incurring any charges. This requirement does not extend to polling services. See, InfoText, January 1991, pp. 24-25.

The caller-paid information services industry has grown dramatically in the past few years.[10] The number of IPs has increased from 233 in 1988 to approximately 14,000 currently.[11] Approximately one billion caller-paid calls were made in 1990,[12] at an aggregate cost of approximately $1 billion.[13] Given the characteristics of 900-numbers -- immediacy, ease of use, access to practically every household[14] -- industry experts expect the industry to continue its meteoric growth into the 1990' s. One estimate places industry revenues at $1.7 billion in 1992.[15]

Caller-paid information services can provide consumers with valuable information in a timely and economical manner. These services were initially limited to sports lines, "dial-a-joke", "dial-a-prayer", and weather and time reports. More recently,

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[10] The caller-paid services industry includes interstate 900-services, intrastate 976-services, 540-services, and some 800-services. The FCC's regulatory authority is limited to interstate 900-services.

[11] See Comments of the Information Industry Association, CC Docket No. 91-65, April 24, 1991, pp. 3-4.

[12] See The 900 Report: Findings and Preliminary Recommendations, Issued by the Attorneys General from Florida, Kansas, Missouri, New York, Pennsylvania, Tennessee, Texas, Washington, and Wisconsin, March 1991, page 1.

[13] See "900 Numbers: The Struggle for Respect", Advertising Age, February 18, 1991, page S-1.

[14] Approximately 93.3% of all households had telephone service in November 1990. See Trends in Telephone Service, Industry Analysis division, Common Carrier Bureau, Federal Communications Commission, February 28, 1991, Table 1, page 3.

[15] See "900 Numbers: The Struggle for Respect," Advertising Age, February 18, 1991, page S-1.

however, caller-paid services have expanded into a host of new areas. As a result, a wide variety of businesses now use these services as an innovative means of marketing information and services directly to consumers. Some of the innovative uses of 900-numbers include: up-to-the-minute stock reports; low-cost legal advice; polling applications;[16] charitable contributions;[17] submitting letters to the editor to major periodicals;[18] and access to stockholders' meetings for shareholders who wish to avoid the costs of travel.[19]

In sum, the available data indicate that the 900-number industry has mushroomed in the past several years and this growth appears likely to continue. While a precise picture of the types of 900-numbers currently available is difficult to draw, most 900-numbers are legitimate operations, providing

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[16] For example, television networks have presented viewers with a yes/no question and then directed them to dial one number to record a "yes" vote, and another 900-number to record a "no" vote. Viewers are informed that they will be assessed a nominal charge (usually no more than one dollar) for the call. In these instances, the prerecorded information program can be very short, consisting of no more than "Thank you for calling."

[17] A November 1990 promotion to raise money to provide Christmas toys for children generated 4.7 million calls and grossed almost 19 million dollars. Each call cost $2 per minute and the average call lasted 2 minutes. See Advertising Age, "900 Numbers: The Struggle for Respect," February 18, 1991, page S-4.

[18] Newsweek recently began to allow readers to submit recorded letters to the editor on a 900-service number.

[19] For a discussion of other recent uses of 900-services, see the NPRM (paragraph 4), and Comments of the Information Industry Association, FCC docket No. 91-65, April 24, 1991, (pp. 4-7).

services of value to consumers and businesses alike. Still, unscrupulous IPs can, and have, used this new technology to engage in fraud or deception. Indeed, the NPRM notes that the FCC has received over 2,000 written complaints and inquiries regarding 900-numbers since January 1988.[20]

IV. The Complaint Data

Like the FCC, the FTC has received numerous complaints about 900-numbers from a variety of sources.[21] Our records contain complaints citing more than 500 separate 900-numbers. For purposes of analysis, we selected a random sample of 126 of these numbers.[22]

Two points deserve mention at the outset. First, complaints, by their very nature, provide information only on a subset of those consumers who actually encountered problems. Most consumers with problems choose not to lodge a written complaint with a regulatory authority. Thus, no analysis of consumer complaints, including this one, should be confused for

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[20] NPRM, p. 3, paragraph 5.

[21] The staff of the FCC forwards to the FTC copies of complaints sent to the FCC that, in the view of the staff of the FCC, involve potentially unfair or deceptive practices. In addition to these FCC complaints, our complaint file includes those sent directly by consumers to the FTC. Finally, some complaints are based on phone conversations between FTC staff and disgruntled consumers.

[22] The sample includes 900 numbers that end with the numeral 1, 3, or 5.

an analysis of the universe of problems experienced by consumers.[23] Second, we provide here an analysis of the complaints that have come to the attention of the staff of the FTC. Complaints that have been filed with other agencies - such as state attorneys general - are not included in this analysis.

As mentioned above, we analyzed 126 of the 900-numbers in our complaint files. Table I places each 900-number into mutually exclusive categories. Note that "talk" lines have been further broken down into several categories.

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[23] The FCC rulemaking record contains considerable information on the problems that consumers have experienced with 900-numbers. It does not, however, contain more general information on consumer experiences with and knowledge of the 900-number industry. For example, it is not clear what proportion of consumers are currently aware of the differences between 900-number services and more traditional long distance and 800-service, what proportion of consumers have called a 900-number, the prevalence of repeat purchases, and the proportion of callers who have experienced problems. We suggest that the FCC consider conducting a consumer survey to further its understanding of this industry as it currently exists. Recently, the Tennessee Office of the Attorney General sponsored a survey of 802 randomly selected Tennessee consumers to assess its citizens' awareness of and experiences with the pay-per-call industry. This survey found, for example, that 24.1% of the households contacted had placed a 900-number call and that 33.5% of the respondents did not know who to contact if they experienced problems with 900-number service. We believe that a survey on a national scale could provide useful information. Given the industry's dynamic nature, a baseline could prove useful in assessing the changes that arise over the next several years.

TABLE I
Problems Experienced by Consumers who Complained to the FTC
(based on sample of 126 900-numbers)

Type of complaint	900-Numbers in Category	Pct of Total Nos.
Talk/information lines[24]	38	30%
Unauthorized calls by children	16	13%
General complaints, e.g., denying having made the call	16	13%
Deceptive advertising	6	5%
Concerns about prizes[25]	17	14%
False promises regarding the extension of credit	11	9%
False promises regarding jobs	10	8%
Misleading information about products	1	-
Misleading auction information	1	-
Cannot be determined from complaint or bill	48	38%
Total Number Of 900-Numbers In Sample	126	100%

This review of consumer complaints is consistent with the concerns leading up to the Commission's recent enforcement actions. Three distinct classes of consumer problems have been reflected in these actions: (1) the failure to be provided adequate cost information prior to being charged for the call; (2) the failure to receive the goods or services promised in the solicitation; and (3) being charged for unauthorized calls, such

[24] This category includes general access bridging lines (typically called GAB-lines because they allow a number of callers to participate in a group discussion), recorded information, and one-on-one lines. The types of information programs cited in the complaints include dating lines, sports lines, horoscope lines, trivia lines, and other information lines, such as stories for children.

[25] Some of these information programs were directed primarily to children.

as those made by children.[26] All of these are serious problems, and we will continue to work independently, with the FCC, and with the states to address them. Still, distinguishing among these problems is important because they require different remedial approaches.

It also is noteworthy that it is impossible to determine the nature of the call in 38% of the sample. In many of these cases, the consumers provided copies of their phone bills listing the 900-number calls. These bills identify the 900-number, but provide no information on the nature of the disputed call or the identity of the IP. Some consumers also indicated having difficulty obtaining the identity of the IP from the relevant common carriers. The prevalence of this problem indicates the importance of improving consumers' ability to identify the IPs levying the 900-number charges on their phone bills.

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[26] Evidence on the frequency of consumer problems associated with 900-services can be gleaned from the rate at which consumers seek credits (commonly called "chargebacks") for 900-charges from their LECs. According to Southwestern Bell, approximately 20% of the total amount initially billed for 900-services is later contested. See Comment of Southwestern Bell to the Federal Communications Commission, CC Docket 91-65, April 24, 1991. This figure differs significantly from the percentage of revenues contested for long distance service generally (1% according to Southwestern Bell). Our understanding is that legitimate merchants experience an average chargeback rate for credit card purchases of approximately 1%.

V. A General Analysis of Problems and Possible Remedies

A. Failure to Provide Cost Information

The first general problem -- failure to provide consumers adequate cost information prior to their being charged -- can be readily addressed by pre-purchase disclosures. Depending on the nature of the 900-number program, an adequate cost disclosure may require that the IP state the full length of the call as well as the cost per minute.[27] Disclosures should provide the caller with enough information to determine the cost of obtaining the advertised information prior to being charged. For example, some 900-number programs have a per minute charge, e.g., $2.00 per minute. If the caller must stay on the line for 15 minutes to receive the entire message, the cost to the consumer is $30.00, and this fact should be known prior to purchase. In this regard, preambles can, for example, play an important role in assuring that consumers are adequately informed prior to incurring a charge for a 900-number call.

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[27] One area in which accurate cost disclosures are insufficient to protect consumers from deceptive practices is programming directed to young children. Generally, children cannot be expected to understand, much less act responsibly on, accurate cost disclosures. Thus, in the children's area, it is particularly important that additional protections -- optional blocking of 900 numbers, and/or clearly defined dispute resolution procedures -- be established to supplement accurate cost disclosures. The FTC's recent cases involving children's programming adhere to this approach.

B. Failure to Deliver Goods or Services Promised

Cost disclosures, however, cannot address all the problems associated with some 900-number programs. Indeed, the situations that have attracted much attention recently involve the second problem -- consumers failing to realize or being unable to determine until after completing the call that they did not receive the promised information. For example, in cases recently brought by the FTC, it was alleged that consumers who called the 900-number for employment information often learned, only after having placed the call and incurred the charge, that the promised information was not delivered or was virtually worthless.[28] In other recent cases, it was alleged that consumers were not told of additional charges to purchase the product or service or of significant limitations imposed on the use of the product.[29]

Deterring fraudulent or deceptive practices such as these is particularly difficult because the fraud or deception cannot be discovered until after the call has been made, rendering point-of-sale disclosures virtually useless. The NPRM recognizes this problem as well as the importance of fostering cooperation among

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[28] FTC v. Transworld Courier Service, No. 1:90-CV-1635-JOF (N.D. Ga. filed July 26, 1990) and FTC v. Starlink, No. 91-1085 (E.D. Pa. filed Feb. 26, 1991).

[29] For example, in FTC v. Interactive Communications Technology, No. CV-F-91-018 REC (E.D. Cal. filed Jan. 18, 1991) and FTC v. First Capital Financial, No. HAR-90-2007 (D. Md. filed July 25, 1990) the IP allegedly used 900-numbers to market credit cards without disclosing that the cards can be used only to purchase merchandise from the IPs catalog.

the various relevant regulatory bodies: "We recognize that our actions here will not prevent unscrupulous parties from engaging in fraudulent activities, such as failing to deliver promised goods or services. We will continue to refer those cases to the relevant regulatory bodies, both State and Federal, for appropriate action."[30] We agree that vigorous enforcement of existing laws against consumer frauds and deceptions, including FTC enforcement, will continue to be necessary.

Nevertheless, some protection from fraudulent or deceptive practices can be provided, not only by cost disclosures but also by facilitating consumers' efforts to resolve disputed charges. For example, altering the procedures used to bill and collect charges for 900-number calls may reduce significantly the gains from fraud or deception and therefore its prevalence. The LECs prepare, send, and collect on bills for local and long distance telephone service. The activities of the LECs when they bill and collect for sales of 900-numbers can be characterized as the operation of a new type of payment system. The absence of procedures and protections for billing and collection of 900-number charges stands in stark contrast to the procedures and protections contained in the statutes and regulations that govern payments for products or services purchases with credit cards or

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[30] NPRM, footnote 5.

through electronic fund transfers.[31] While several common carriers have stated that consumers can dispute charges for 900-number calls by calling the business office of the consumer's LEC or the relevant IXC directly, some consumers report that some business offices have been unresponsive to their inquiries about 900-number charges.[32] Moreover, some consumers may be unaware of their rights when they dispute charges on their phone bills or of the type of call associated with the charge listed on the bill.[33] It also is important to note that, depending upon protections afforded by state public utility commissions, statutes, and the voluntary policies of the LECs, in some cases a consumer's basic telephone service (i.e., local and long-distance service) can be interrupted for failing to pay 900-number charges even if the consumer has contested the charges.[34]

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[31] In Section VII of this comment we discuss the protections currently in place in the credit card area, and consider the feasibility of extending these protections to 900-services.

[32] See, e.g., statement of Mr. John Gresham at the 900 Number Forum, Dallas, Texas (December 17, 1990). This problem also has been cited in some of the consumer complaints that have reached the FTC.

[33] Our investigations have revealed that 900-number charges commonly are listed in the long distance portion of consumers' phone bills with little, if any, information that would help a consumer identify either the nature of the call or the IP.

[34] In 1989, seven states allowed LECs to disconnect a consumer's basic telephone service for failure to pay caller-paid charges, such as 900-calls and 976-calls. See, NARUC Report on State Regulation of Pay-per-call Service, September 22, 1989, page 3. Our understanding is that the LEC and the IXC charge the IP for all calls transmitted over their lines, making (continued...)

We believe that the current proposal to prohibit the disconnection of basic service as a result of a subscriber's failure to pay 900-number charges (which would prevent consumers from losing basic service due to disputes concerning 900-number charges) would provide effective relief from this potential problem, assuming subscribers are aware of the prohibition.

C. Unauthorized Calls

When the third type of problem occurs -- unauthorized calls (such as those made by minors) -- blocking remedies may provide important consumer protections. Many LECs can block a particular local phone number's access to 900-numbers, that is, deny access to any 900-number. While this remedy does not address the issue of payment for charges incurred prior to the imposition of blocking, it provides one means to protect against subsequent recurrences. Consumers would have significant additional protection if optional blocking were accompanied by improved procedures for learning the identity of the IP from the relevant common carriers. The FCC also might wish to consider

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[34](...continued)
no distinction between calls for which the charges have been paid and those for which the charges have been disputed. The common carriers can effectively implement this policy because they act as billing and collection agents for the IPs.

supplementing optional blocking with a one-time forgiveness of unauthorized charges in some instances.[35]

VI. Discussion of the Proposed Rule

A. Mandatory preamble

Section 64.711 of the proposed rule would permit common carriers to provide interstate 900 transmission only if all 900-number calls begin with an introductory message, or preamble, disclosing the cost of the call, the nature of the call, and inform callers that "billing will commence only after a specific, identified event following the disclosure message such as a signal tone."[36] For 900-numbers "aimed at or likely to be of interest to children under the age of eighteen" the proposed rule would additionally require the preamble to "contain a statement that the caller should hang up unless he or she has parental permission."[37] Finally, the proposed rule would permit an IP to allow a repeat caller to "bypass the preamble on

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[35] Recently, the Commission issued proposed consent agreements with two IPs that marketed information programs to children. See note 7, supra. These consent agreements provide for a one-time forgiveness of charges for unauthorized calls made by children; the accompanying complaints allege that the IPs unfairly induced children to call their 900-number programs without providing a reasonable means for the persons responsible for paying for the charges to exercise control over the transactions.

[36] Section 64.711(a),(b),&(c).

[37] Section 64.711(d).

subsequent calls, unless the charge for those calls has increased since the caller's last use, provided that the caller is in sole control of that capability."[38]

Before discussing the specific proposals in Section 64.711, we briefly discuss the general benefits and costs of a mandatory preamble.

1. General discussion of a mandatory preamble requirement

We agree with the FCC that healthy competition in the 900-number industry as well as appropriate consumer protections require that consumers be adequately informed about the nature and cost of 900-numbers prior to being charged for them. We believe that preambles can provide important information to callers, and that the benefits of requiring a preamble for 900-number calls (at least those above a certain cost threshold) are likely to be significant.[39] Thus, we support a preamble

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[38] Section 64.711(e).

[39] The magnitude of these benefits is uncertain due to the limited information available on the effects of mandatory preambles. One state, California, has imposed a mandatory preamble requirement for caller-paid calls. In July 1989 the California Public Utility Commission approved Pacific Bell's requested tariff for transmitting intrastate 976 and 900 service. (976-calls are intraLATA calls; 900-calls are interLATA.) One of the conditions of this approval was that all information programs be preceded by a preamble stating the nature and cost of the call, and providing the caller the opportunity to hang up without incurring any charges. According to Pacific Bell, the proportion of 976-calls requiring adjustments declined from 10.2% in December 1988 (prior to the preamble requirement) to 9.8% in December 1989 and to 8.0% in December 1990. See Statement of Jim Herold, Director - California 900/976 Services, Pacific Bell, Before the Subcommittee on Telecommunications and Finance of the (continued...)

requirement of some sort in the rule. Mandatory preambles, of course, also impose costs.[40] We believe that there may be instances (e.g., repeat calls and low-cost calls) where the costs from required preambles may exceed their benefits, which could justify exempting certain calls from the mandatory preamble requirement.[41]

A preamble provides information to callers. The value of this information to callers depends, in part, on the degree to which they are accurately informed prior to placing the call. Some advertisements for 900-numbers fail to disclose adequately, or at all, the cost or the nature of the call. In other instances, callers may place a call without having seen an

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[39](...continued)
Energy and Commerce Committee, U.S. House of Representatives, February 28, 1991. It is unclear what proportion of the 2.2 percentage point decline in chargebacks to attribute to the mandatory preamble requirement because a number of additional safeguards were implemented at the same time and because callers were becoming increasingly acquainted with 976-services during this period. Also noteworthy is Pacific Bell's report that the proportion of callers in December 1990 who terminated their calls during the preamble was 6.5% for recorded programs and 12.7% for live programs.

[40] The magnitude of these costs also is uncertain. Costs include those required to transmit a preamble in every information program and the time that callers must spend listening to preambles that provide no new information (e.g., instances in which the call is a repeat purchase or in which the caller already understands the nature and cost of the call from advertising disclosures or other sources.)

[41] This conclusion, of course, assumes that adequate price information is available through other sources, e.g., advertising, and that consumers are able to make informed purchase decisions. Further, the FTC would retain the authority to act on a case-by-case basis against IPs who fail to disclose adequately the cost of 900-number calls.

advertisement, for example, if they learn of the number from another person or find the number in a local telephone directory. In these cases, some callers may expect that the= call is free (i.e., is equivalent to more familiar toll-free 800-service calls) or, more frequently, that the call involves a cost commensurate with long distance service generally.[42] If in fact these beliefs are mistaken, a preamble that clearly discloses the cost of the call and offers callers the opportunity to hang up without incurring charges would potentially provide a significant benefit to consumers.

Preambles may also help reduce the prevalence of "chargebacks", that is, requests by consumers for credits for unauthorized 900-number calls or for instances in which goods or services promised by the IP are not provided. As noted earlier, significantly more 900-number calls are disputed than are typical for long distance service or credit card purchases. Preambles that disclose the nature and cost of the call could reduce this proportion.[43] Requests for chargebacks, however, would likely be

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[42] In a recent survey of 802 consumers conducted by the Tennessee Attorney General's Office, 5.5% of the respondents indicated that they thought that 900-calls were free of charge (i.e., equivalent to 800-services) and 14.3% indicated that they did not know what the charge for 900-calls would be. See, Press Release, State of Tennessee Office of the Attorney General, April 15, 1991.

[43] See note 39, supra.

less frequent, perhaps significantly so, for information programs that rely on repeat callers.[44]

In addition to providing callers with information pertinent to the call at hand, preambles could provide more general educational benefits as well. The recent emergence of 900-number services raises the possibility that a significant number of consumers are not aware that 900-numbers are paid by the caller (in comparison with 800-services) or priced differently from typical long-distance service.[45] First-time callers would learn from the preamble that 900-numbers represent a differently priced class of service. Armed with this knowledge, consumers might be better prepared when they see, view, or hear subsequent advertisements for 900-number services. Of course, other approaches (e.g., advertising, education efforts, and experience)

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[44] Some information programs (e.g., legal consultation and sports results) have a high percentage of repeat callers and, as a result, experience a "chargeback" rate of less than 1%. See, Comments of the National Association for Information Services, FCC Docket No. 91-65, April 24, 1991, page 8.

[45] As noted above, some information on the current level of consumer awareness of the costs of 900-services is contained in the recent survey conducted for the Tennessee Attorney General's Office, supra note 42. If the dynamic growth experienced by the industry in the past few years continues, consumer awareness of the pricing of 900-services, and how it differs from other telephone services, would likely change over the next few years. We suggest that the FCC consider conducting a consumer survey in several years to assess the changes in consumers' awareness of the pricing of 900-services as the industry matures. This information could be used in reassessing the need for certain provisions of the rule, particularly if a comparable baseline survey were conducted now. See note 23, supra.

also would teach consumers about the nature of 900-number services.

Preambles do not provide new information to callers in every instance. Some callers will be informed about the nature and cost of the call before placing it. This information could be based on prior experience (i.e., the caller has called the particular 900-number in the recent past) or clear and conspicuous advertising disclosures. Thus, the magnitude of the benefits from mandatory preambles will depend, in part, on the proportion of repeat callers and the adequacy of advertising disclosures.[46]

It is possible to estimate the benefits enjoyed by consumers who would be able to avoid undesired charges by terminating their calls during the preamble. Suppose that 10% of all calls

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[46] In many market contexts, sellers have sufficient private incentives to provide prospective consumers with adequate pre-purchase information on a variety of dimensions, including cost. These private incentives are strongest when the seller relies on repeat purchases from consumers and on establishing a favorable reputation. Where these incentives are strong, government intervention to mandate the provision of information is usually unnecessary. This suggests that mandating information is more justified when sellers do not rely on repeat purchases and have little incentive to establish solid reputations. The character of the complaints received over the past several years, and the evidence on the proportion of callers seeking chargebacks, suggest that repeat calls and solid reputations do not characterize at least some parts of the 900-services industry. Still, some IPs, e.g., those with low-priced calls, would appear likely to rely on repeat callers and to benefit from establishing solid reputations.

would be terminated during the preamble,[47] and suppose further that the average price of terminated calls (had they been completed) equals the industry average. Taken together, these assumptions imply that the savings in undesired charges could approximate 10% of industry revenues or $100 million.[48] Estimated savings would be even higher if the average cost of terminated calls exceed the industry average.

Additional savings could arise if some of these terminated calls would have resulted in chargebacks, had they been completed. Reducing the frequency of chargebacks reduces the resources allocated by the IPs and common carriers to handling and resolving disputed charges, and also saves consumers the time and effort needed to challenge such charges. As mentioned earlier, chargebacks have been reported in some areas to be as high as 20% of industry revenues. Applying this percentage to the national market, chargebacks would be approximated by $200 million. Thus, although it is impossible at this time to determine what proportion of these chargebacks might have been prevented by a mandatory preamble requirement, or what the costs

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[47] Pacific Bell reported that in December 1990 the proportion of terminated calls was 6.5% for recorded programs and 12.7% for live programs. See Pacific Bell testimony, note 39, supra.

[48] This calculation assumes that all terminations occur because callers obtain new information in the preamble that leads them to conclude that listening to the information program is not worth its cost. The estimate of benefits would be lower if some callers hang up because the preamble delays the start of the information program.

of chargebacks actually are, the savings from reducing the level of chargebacks could be significant.[49]

The benefits of preambles come at a cost. Most obvious is the cost of devoting the initial portion of the call to disclose the required information and provide callers the opportunity to hang up and avoid all charges. Some information on the magnitude of this cost is available. AT&T currently offers IPs the option of including an 18 second preamble at the outset of their information programs. AT&T does not monitor the content of the programs that include this option. Rather, in its contract with the IP (or service bureau), AT&T agrees not to bill any callers who terminate the call prior to the 18 second cutoff. For this service, AT&T currently charges the IP $0.18 per terminated call.[50] According to one service bureau, preamble charges can be on the order of $0.12 to $0.15 per terminated call.[51]

While the per call cost of a preamble may appear fairly modest, they would represent a significant proportion of revenues for low-priced calls. The available figures suggest that the average price of 900-number calls may be approximately one dollar. In addition, the aggregate cost of including a preamble

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[49] See the discussion in note 39, supra.

[50] See Comments of the American Telephone and Telegraph Company, FCC Docket No. 91-65, April 24, 1991, page 4.

[51] See Comments of Audio Communications, Inc., FCC Docket No. 91-65, April 24, 1991, page 6.

in every 900-number call would be significant. One commonly cited estimate of the number of 900-number calls made in 1990 is 1 billion.[52] Our understanding is that the cost of the preamble depends on whether the call is terminated. As noted, the cost for terminated calls may range from $0.12 to $0.18. For calls that are completed, the preamble charges would depend on the rate for the first minute of a completed call. Our understanding is that IXCs charge IPs approximately $0.30 for the first minute of a completed call. Assuming an average preamble length of 18 seconds, this suggests that the cost of preambles for completed calls is approximately $0.09 (18/60 times $0.30). Supposing again that 10% of calls would be terminated during the preamble, the total annual costs of the preamble requirement would be approximated by $93-$99 million.[53]

Another cost of preambles is the value of the time that callers must spend listening to something that, in many instances (e.g., repeat calls), provides no new information. The magnitude of these costs depends on (1) the proportion of the approximately one billion callers who would learn nothing new from the preamble, (2) the length of the preamble, and (3) the value of the callers' time.

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[52] See The 900 Report, supra note 12, page 1.

[53] [($0.12)*(0.10)+($0.09)*(0.90)]*1 billion = $93 million
[($0.18)*(0.10)+($0.09)*(0.90)]*1 billion = $99 million

These costs could fall over time due to productivity gains in billing and collection services.

The FCC may potentially reduce the costs associated with preambles by permitting certain exemptions to the requirement. For example, the FCC may wish to consider exempting from the preamble requirement calls with a maximum charge of less than a specified nominal amount, e.g., one dollar, assuming of course that callers have access to adequate prepurchase information and that only one call is required to receive the advertised information.[54] Such an exemption would appear technically

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[54] Some states are considering or have adopted preamble exemptions for intrastate 976-number calls with nominal rates. For example, the Iowa Senate recently passed a bill requiring preambles but exempting calls with total charges of one dollar or less. See, NAAG Consumer Protection Report, April 1991, page 20.

Another alternative is to design a multi-level exemption scheme, e.g., an exemption for calls that cost less than one rate per minute, as well as those with a maximum rate of less than a second amount. For example, Virginia waives its mandatory preamble requirement for calls billed at rates of less than $2 per minute and calls billed at flat rates of $5 or less; all calls aimed at children must include a preamble regardless of cost. See Comments of the Honorable Mary Sue Terry, Attorney General, Commonwealth of Virginia, to the Federal Communications Commission, CC Docket No. 91-65, April 24, 1991, page 9. We have some questions about the feasibility of such a multi-level approach. First, it may be more difficult for the IXCs to monitor a multi-level exemption requirement. Second, and more important, many of the complaints in our files cited per call and/or per minute charges in the $5-$10 range.

A final alternative is an exemption for those types of calls which typically have not been the subject of complaints, under a theory that an ideal regulation addresses practices that injure consumers without imposing costs on practices that do not injure them. Some of the evidence suggests that unscrupulous IPs have used certain types of information programs (e.g., credit and jobs lines) to deceive callers but not other types of programs (e.g., sports and weather lines.) While we have not considered fully the feasibility of triggering the preamble requirement based on the content of the calls, such an approach could raise several serious concerns including potential enforcement complexities and possible questions of legal authority.

feasible, although we are not fully aware of its costs.[55] Such an exemption also would prevent preamble-related costs from attaching to several classes of calls that have not been the source of consumer complaints, including balloting services, weather and time services, and stock reports. Of course, if exempted IPs were to engage in fraudulent, deceptive, or unfair practices (such as pricing the calls below the threshold but requiring callers to make repeated calls to obtain advertised information), they would be subject to investigation and possible prosecution by the relevant authorities. We also recommend that all programs directed primarily toward children, regardless of cost or content, be required to include an appropriate preamble, as further discussed below.

In sum, our preliminary calculations suggest that both the costs and benefits of preambles could be significant. We suggest that the FCC consider these costs and benefits, and others that may be pertinent to its analysis, when determining whether to implement a preamble requirement. In particular, we suggest that the FCC give consideration to a limited exemption, which potentially could lower total preamble costs without appreciably limiting the benefits to be gained thereby.

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[55] As noted above, AT&T already provides IPs with the option to include a preamble. IPs that select this option agree that callers who terminate prior to the completion of the preamble will not be charged.

2. Specific provisions in the proposed rule

Section 64.711(a) specifies that, "If the call is billed on a usage sensitive basis, the preamble must state all rates, by minute or other unit of time, any minimum charges and the average cost for calls to that program unless the average length of the program cannot be determined, as in the case where the caller is in sole control of the program. . ." We suggest that the FCC clarify the definition of instances "where the caller is in sole control of the program," as this appears to be central to determining when the IP need not disclose the average cost of calls made to the information program. We agree with the FCC that certain calls of indeterminate length - for example, 900-numbers which permit callers to recite letters to the editor - could be safely exempted from the requirement that the preamble disclose the average cost of calls to that program. That callers are in "sole control" of the call is indisputable in such instances. We would be concerned, however, if this exemption were extended to information programs that disclose the per minute charge, provide callers some options based on punching numbers on their telephone keypads (and by so doing arguably satisfy the "sole control" requirement), but then require the caller to stay on the line for an extended period of time and incur significant charges in order to receive the promised information. Finally, we suggest that, even in instances where disclosing average cost is deemed necessary, the FCC consider exempting calls with an average cost less than a

particular de minimis threshold. In these instances, requiring the disclosure of up-front charges, if any, and per minute charges could be sufficient.

Section 64.711(b) states that "the preamble must accurately describe the information, product, or service which the caller will receive for the fee." While we believe that a mandatory preamble can be an efficient means to ensure that callers have accurate price information, we are less certain that a mandatory preamble can be an efficient means to ensure that they have accurate information about the call's content. Determining whether the preamble contains accurate price information would appear to be relatively clearcut. By contrast, determining whether the preamble included an "accurate description" of the call may not be. We would be concerned, for example, if this requirement were interpreted to require the preamble to a sports line to disclose precisely which sports were included to permit a caller in search of results from a nontraditional sport (e.g., college lacrosse) to avoid incurring the cost of the call. Determining whether a preamble "accurately describes" the upcoming information program would likely require an examination of the IP's promotional practices (e.g., its advertising) as well as the information program itself. This suggests that case-by-case investigation by enforcement authorities with jurisdiction over advertising, e.g., the FTC, of the adequacy of preambles in describing a program's content may have certain

advantages over industry-wide rules.[56] We recommend, therefore, that this provision be interpreted to require IPs to disclose only a brief description of the information program. Of course, IPs that provide false or misleading information to consumers in preambles, advertising, or information programs would be subject to investigation by the relevant regulatory agencies, such as the FTC.

Section 64.711(c) states that "the preamble must inform the caller that billing will commence only after a specific, identified event following the disclosure message such as a signal tone." The objective of this requirement is to ensure that callers understand that they will not be charged for the call unless they stay on the line after the identified event. We are concerned that, given the limited time available to process the information and react to it, consumers would not be adequately informed of their rights if the preamble simply stated, "Charges will commence in the next five seconds." If so, adequate notice may require a more explicit statement such as, "You will not be charged for this call if you hang up in five seconds." To better ensure that the preamble accomplish its desired ends at least cost, we suggest that the FCC consider

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[56] We would note that an IP that attempted to differentiate its product by including the results from (or focusing exclusively on) nontraditional sports would have an incentive to advertise that fact to prospective callers regardless of the regulatory structure.

conducting consumer copy tests to determine how consumers interpret such disclosures.

Section 64.711(d) concerns preambles for children's programming. It would require that "the preamble associated with offerings aimed at or likely to be of interest to children under the age of eighteen must contain a statement that the caller should hang up unless he or she has parental permission." We would recommend some modification of this provision, in recognition of the developmental skills of younger children, and in order to clarify the intended scope of the rule.

First, a strong case can be made that all children's programming, regardless of cost, should contain a preamble adequate to ensure that all callers are instructed to obtain a parent's permission prior to completing the call. In light of this, we suggest that the FCC consider requiring that preambles to children's programming be required to be in "age appropriate language." For example, in the two recent consent agreements concerning programming to children twelve or under recently announced by the FTC, the following preamble is required: "This telephone call costs money. If you do not have your mom or dad's permission, hang up now and there will be no charge for this call." If age appropriate language were not required, IPs could abide by the letter of the regulation by providing the information in language suitable for adults but not for children. We further suggest that the FCC consider making the

option to bypass the preamble unavailable for children's programming.

Second, along these same lines, we suggest that the FCC consider tailoring its preamble provisions to differentiate between younger children who may have little ability to understand the cost of the transaction as opposed to older children who probably do understand. Younger children may not fully understand transaction costs, particularly costs that change with time. A detailed cost disclosure may provide little or no benefit to these children. It may thus be sufficient to advise such younger children that the call "costs money" and that they should hang up unless they have a parent's permission.[57] By contrast, it might be sensible to provide more detailed cost information to older children who appear more likely to understand the magnitude of the charges.

Third, we also suggest that the FCC reconsider its definition of children's programming. Section 64.711(d) currently defines it as "offerings aimed at or likely to be of interest to children . . ." (emphasis added). We believe that this definition is overbroad; many adult programs will be "of interest" to children. We suggest that the FCC consider amending the definition of children's programming to "offerings promoted or sold primarily to children . . ." We further

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[57] We realize that parents who place calls for their children would not learn from such a general disclosure the extent of the charges they are incurring.

suggest that the FCC consider providing additional guidance in this area, in order to clarify the intended application of the rule. For example, the two FTC consent agreements specify the circumstances under which a service will be considered to be directed to children aged twelve or under, i.e., when it is sold or promoted:

(a) in advertisements appearing in publications primarily directed to children including, but not limited to, children's magazines and comic books;
(b) in advertisements during or adjacent to television or radio programs primarily directed to children including, but not limited to, children's animated programs, children's game shows, and children's after school specials;
(c) in advertisements appearing on product packaging primarily directed to children including, but not limited to, children's cereals, toys and beverages; or
(d) in any advertisement, regardless of when or where it appears, that is primarily directed to children in light of its subject matter, visual content, language, characters, tone, message, or the like.

Fourth and finally, we believe it is important to emphasize that the problems encountered with children's programming have typically involved unauthorized charges, sometimes of significant amounts. This problem may not be addressed adequately by preambles alone. Accordingly, consideration should be given to supplementing preambles with an after-the-fact remedy, such as a one-time forgiveness of unauthorized charges.[58]

Section 64.711(e) provides that common carriers can permit IPs to incorporate a "bypass" mechanism to allow repeat callers

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[58] Below, we discuss some additional possible provisions concerning information on phone bills that would make it easier for parents to learn the identity of the IP that is requesting payment.

"to bypass the preamble on subsequent calls, unless the charge for those calls has increased since the caller's last use, provided that the caller is in sole control of that capability." We believe that permitting repeat callers to nonchildren's programming to bypass the preamble warrants serious consideration. Given the prevalence of repeat callers to some information programs,[59] an effective bypass mechanism could generate substantial savings. The current proposal stipulates that the bypass mechanism would have to be disabled if prices increased since "the caller's last use." Implementing this proposal would require that the IP identify the originating number, discern whether that number had placed a call previously, and, if so, whether prices had increased since that time. Several of the commenters contend that current technology cannot satisfy these requirements, and suggest as an alternative that the option to bypass the preamble be disabled for a period of time following a price increase.[60] We recommend that this lower cost alternative be given serious consideration. One commenter, however, indicated that available technology may come close to being able to accommodate the proposed rule as currently

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[59] See note 43, supra.

[60] See, e.g., Comments of Audio Communications, Inc.., supra note 51, page 12, and Comments of MCI Telecommunications Corporation, FCC Docket 91-65, April 24, 1991, page 4.

drafted.[61] We are not aware of the costs of this technology, or the costs of modifying it to be consistent with the proposed rule. We suggest that the FCC consider these costs prior to passing a rule that would compel the adoption of a technology more complex than what appears to be the current industry norm.

B. Other provisions

Section 64.712 would require that the IXCs, upon written or oral request, "provide the name, address and customer service telephone number of any IP to whom it provides 900 service, either directly or through another entity such as a service bureau, . . ." Many of the consumers who complained about 900-number charges stated that they encountered great difficulty in learning the identity of the charging IP from either their local phone company or the relevant IXC. This difficulty was also prevalent in our sample of consumer complaints; neither the nature of the call nor the identity of the IP could be discerned for 38% of the 900-numbers included in the sample. Consumers with disputed charges need to know the identity of the IP in order to try to resolve their disputes. We support, therefore,

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[61] Interactive Telemedia, Inc. (ITM), claims that its technology would be capable of identifying the originating phone number, which would be required to implement the FCC's proposal in its current form. ITM claims that its system could, after identifying the originating number, route the call to the most pertinent preamble or bypass it altogether. See Comments of Interactive Telemedia, Inc., FCC Docket No. 91-65, April 24, 1991. This capability would, however, run afoul of the current proposal's requirement that the caller be in sole control of the capability to bypass the preamble.

the FCC's proposal to require that the IXC provide the name and address of the IP to consumers who ask for this information.

We also suggest that the FCC consider requiring the IXCs to provide some information to the LEC regarding the type of call affiliated with a particular 900-number. The LEC, which acts as a collection agent for the IXC, could then pass this information on to consumers on their monthly bills. Our understanding is that the IXC currently provides the LEC a "descriptor" of up to ten characters for each 900-number. In preparing the monthly phone bills it sends to its subscribers, the LEC prints this descriptor adjacent to the 900-number on the bill. In many cases, this descriptor provides no additional information to callers.[62] It might be feasible, therefore, to require the IXCs to provide the LECs with descriptors that provide some information to callers. Phone bills could then identify teenage GAB lines with a particular descriptor (e.g., TEEN CALL), young children's calls with another descriptor (e.g., CHILD CALL), etc. Such a requirement could assist consumers in their efforts to determine the basis for the charges on their phone bills, at little additional cost to the common carriers.

Section 64.713 would require LECs to "offer their subscribers, where technically feasible, an option to block all interstate 900 services. Blocking is to be offered at no charge on a one-time basis to all telephone subscribers." We believe

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[62] For example, the descriptor may simply identify the IXC, a fact which is readily apparent elsewhere on the bill.

that blocking can be helpful in deterring certain consumer problems, particularly in instances of unauthorized 900-number calls such as those made by minors. Several LECs currently offer optional blocking.[63] With respect to this proposal, we believe that the FCC should explore the feasibility of selected blocking, that is, blocking certain 900-numbers (e.g., children's and teen's programming) but not others. Although blocking can be an effective means of preventing consumer injury from certain 900-number scams, total blocking would block many useful or desirable services such as weather reports, sports reports, and opinion polls. If certain classes of calls can be identified with a particular prefix and if selective blocking is feasible, then it may be possible for consumers to prevent unauthorized calls without forgoing the benefits of 900-number services altogether.[64]

Section 64.714 states that "no common carrier shall disconnect, or order the disconnection of, a telephone subscriber's basic communications service as a result of that subscriber's failure to pay interstate 900 service charges." If a proposal of this sort is to be adopted, we have two suggested

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[63] According to a report by the National Association of Regulated Utility Commissioners, in 1989 thirty-six states permitted LECs to offer their subscribers optional blocking of intrastate 976-services. See NARUC Report on State Regulation of Pay-Per-Call (976) Service, September 22, 1989, page 3.

[64] If selected blocking is more costly than simply blocking all 900-number calls, the FCC may wish to consider allowing local exchange carriers to charge subscribers for selective blocking.

modifications. First, we suggest that the LECs be required to notify its subscribers of this fact, and of the specific steps they need to take to resolve disputes, on a periodic basis. Because 900-number charges are contained on the local telephone bill, we believe that the LECs are likely to be the most efficient provider of this important information.[65] Second, we suggest that the FCC consider permitting the LECs to block 900-numbers to subscribers who abuse this provision, that is, those who develop a history of incurring 900-number charges and then disputing them unreasonably. Just as consumers need protection from the unscrupulous actions of fraudulent 900-number firms, so should the IPs be protected from consumers who abuse their access to 900-number services.[66]

VII. A Discussion of the Fair Credit Billing Act's Protections

Paragraph 21 of the NPRM requests comment "on what industry practices are regarding consumer dispute resolutions and whether such practices are adequate or effective in resolving consumer

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[65] Consumers should also be informed that they are liable for legitimate 900-service charges even though basic phone service cannot be terminated for failure to pay them. Thus, this provision should in no way prevent IPs from engaging in efforts to collect from callers who fail to pay justified charges, and from reporting delinquencies to credit reporting agencies.

[66] We understand that this suggestion could be difficult to implement because a consumer who is blocked for failure to pay charges carried by one IXC would be unable to place calls with other IXCs.

disputes." In this section we discuss the protections that currently exist for consumers who wish to dispute credit card charges.

The absence of dispute resolution protections in the collection of 900-number charges stands in stark contrast to the self-help remedies available for credit card transactions. The Fair Credit Billing Act ("FCBA") provides a means by which consumers can dispute charges on their credit card bills.[67] The FCBA provides that a credit card holder who wishes to dispute a charge must send the credit card issuer a written notice setting forth the dispute. If the issuer receives the notice within 60 days of sending the statement, it must acknowledge receipt within 30 days and investigate and explain the outcome of the investigation within 90 days. If the credit card issuer cannot verify the charges within that time, the charges must be removed.

By all accounts, the FCBA has been a help to consumers. The FCBA has armed consumers with a self-help remedy that has led to the resolution of thousands of credit card disputes with credit card issuers (for billing errors) and merchants (for errors and quality disputes). Many victims of telemarketing scams, not to mention those having routine disputes with honest merchants, have utilized these procedures.

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[67] 15 U.S.C. Sections 1666 et seq., enacted October 28, 1974.

In the 900-number industry there are no corresponding self-help remedies. Consumers who do not receive what they have been promised from their 900-number calls may feel obligated to pay all items on their monthly phone bill, including the offending charges, out of a concern that failure to pay will result in their phone service being disconnected. In some instances, this concern may be justified, even while the consumer is contesting the charges. Of course, this concern would no longer exist if the FCC decides to prohibit common carriers from disconnecting basic service for failure to pay a disputed 900-number charge.

If other remedies do not address this situation, the FCC may wish to consider whether or not provisions that resemble those currently provided credit card consumers under the FCBA would be feasible and cost-effective if applied to the 900-number industry. Some dispute resolution procedures could be beneficial in the 900-number context to protect against telemarketers who have switched from credit cards to using 900-number lines.

The following are some examples of FCBA-type provisions that could be considered in the context of interstate 900-numbers. While we have attempted to limit these examples to those consistent with the FCC's regulatory authority, we have not researched fully the regulatory feasibility of these examples.[68] We also have not conducted a cost-benefit analysis to determine

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[68] Additional legislation would appear necessary if the FCC were to specify the rights and obligations of non-common carriers, i.e., callers and IPs.

whether the costs imposed on the 900-number industry as a whole by such provisions would outweigh the benefits to consumers. Depending on the protections afforded consumers by the FCC's rulemaking, the provision of some or all of these dispute settlement procedures could become less necessary.

- **Notification of Dispute Rights:** The FCBA requires that consumers be provided a written notice of their billing rights on a regular basis. Likewise, when new phone accounts are opened and at specified intervals thereafter, phone bills could contain an insert explaining telephone billing rights to the consumer.
- **Identification of the Information Provider:** As discussed earlier, phone bills could be required to identify the nature of the call and, in addition, the city and state of the relevant IP. In addition, phone companies could be required to provide address and non-900 telephone numbers for IPs upon a consumer's request.
- **Phone Company Obligations:** If the FCBA time periods were applied, the letter claiming a telephone billing error or other dispute would have to be acknowledged by the phone company in writing within 30 days after it is received, unless the problem is resolved within that period. In any case, within two billing cycles (but not more than 90 days), the phone company would determine whether it was going to adjust the bill and remove the disputed charges or explain to the consumer why the bill will not be adjusted.

- **Pending Resolution of the Dispute:** Drawing from consumers' rights under the FCBA, the consumer could withhold payment of the amount in dispute until the dispute is resolved. While the dispute settlement procedure was ongoing, the phone company could not take any legal or other action to collect the amount in dispute.
- **Removal of the Disputed Charges:** In FCBA disputes, charges are removed from consumers' credit card bills unless the credit card issuer chooses to investigate the dispute and verifies the validity of the charges. Applying this approach to the 900-number context, if a consumer complained about the goods or services provided by calling a 900-number, the phone company would remove the charge unless it conducted an investigation and confirmed that the goods and services were provided as promised.[69]
- **Phone Company's Failure to Follow Procedures:** The FCBA imposes a penalty on credit card issuers who fail to follow its procedures. Along these same lines, if the phone company fails to follow the dispute settlement procedures, it could be prevented from collecting the amount in dispute, up to $50, even if the bill turns out to be correct.

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[69] Removal of 900-charges from the phone bill would not necessarily affect consumers' contractual obligations to the information provider operating the 900 number. The information provider could still take legal action against the consumer to collect the debt and the consumer would still be free to defend on the grounds that the goods or services provided were not as promised. The collection and billing process would simply be removed from the telephone billing context.

We hope these examples based on the FCBA provide useful guidance to the FCC in its consideration of dispute resolution procedures suitable to the 900-number context.

VIII. Conclusion

The FCC's proposed regulations would: (1) help ensure that consumers receive additional information prior to being charged for 900-number calls; (2) permit consumers to prevent unauthorized calls to 900-numbers by blocking access to them; and (3) make it easier for consumers to obtain relief when they believe the charges on their phone bills are unwarranted. The staff of the FTC fully supports the FCC's efforts to improve the provision of information to consumers by 900-number service providers.

We believe that a key component of the proposed regulations -- a mandatory preamble at the beginning of the information program that discloses the cost of the call and provides callers the opportunity to hang up without being charged -- could provide meaningful protections. Notwithstanding these obvious benefits, mandatory preambles may also impose significant costs on IPs and callers. We therefore suggest that the FCC consider whether nominally-priced calls could feasibly be exempted from the preamble requirement. In addition, we suggest that the FCC take special care in crafting the regulations as they pertain to children's programming.

We also believe that the other two components of the proposed regulations -- allowing consumers to block access to 900-numbers and requiring that common carriers provide consumers the names and addresses of IPs -- could provide meaningful benefits to consumers. With respect to blocking, we suggest that the FCC explore the feasibility and costs of blocking certain types of 900-number services (e.g., children's programming) but not others. We also suggest that the FCC consider whether any of the protections provided credit card users under the Fair Credit Billing Act could be extended cost-effectively to the 900-number area.