BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C.

**In the Matter of:**
**Pay-Per-Call Review -- Comment**

**FTC File Number R611016**

**COMMENTS OF THE**
**NATIONAL ASSOCIATION OF ATTORNEYS GENERAL**
**TELECOMMUNICATIONS SUBCOMMITTEE OF THE**
**CONSUMER PROTECTION COMMITTEE**

The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General and the Attorneys General of the States of Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii[1], Illinois, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Vermont, Washington, West Virginia, and Wisconsin ("Attorneys General") file these Comments in response to the Federal Trade Commission's ("Commission") request for comments regarding the proposed changes to the Telephone Disclosure and Dispute Resolution Act of 1992 ("the Pay-Per-Call-Rule," "Rule," or "original Rule"), 16 CFR part 308.

The Attorneys General had previously commented on the Commission's 900-Number Rule Review on May 9, 1997. The Commission's proposed changes to the Pay-Per-Call Rule acknowledge several of the areas of concern raised in our previous Comments. To the extent that those Comments are still relevant, we would draw the Commission's attention to them. The Attorneys General strongly support the Commission's proposed changes to the Rule which respond to concerns about continued deceptive practices on the part of segments of the pay-per-call industry. The Attorneys General also endorse the Commission's efforts to deal with deceptive practices related to *cramming* and acknowledge the need for continuing review to ensure that unscrupulous providers do not take advantage of technological changes to evade the Rule.

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1 The State of Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the Attorney General's Office but is statutorily authorized to undertake consumer protection functions, including legal representation of the State. For the sake of simplicity, references to "Attorney General" or "Attorneys General" include the Executive Director of the Office of Consumer Protection of the State of Hawaii.

In the proposed rule, the Commission discussed trends it has seen since last it requested comments: (1) the evasion of the protections provided with the use of the 900 number prefix by using alternate dialing patterns; (2) the development of the new trend of *cramming*; and (3) the increase of the functions which service bureaus provide. The Attorneys General acknowledge and agree with the Commission that the Rule has helped to correct abuses initially seen in the 900 number industry; however, other complaints concerning different types of audiotext services and the methods used to access them continue to be received by the Attorneys General. In the NAAG 1997 Comments, the Attorneys General noted the types of non-900 audiotext complaints received: charges incurred for international numbers, toll-free numbers, collect calls and instant calling cards. Pay-per-call providers have used and continue to use these alternative methods to evade federal consumer protections such as blocking, disclosure requirements and dispute resolution procedures.[2] In the almost two years since the submission of Comments by the Attorneys General, we have continued to receive complaints about audiotext services that are marketed by dialing patterns other than the 900 prefix.

In the last year, many Attorneys General have also been inundated with complaints concerning the newly coined practice of *cramming*, that is, billing consumers for unauthorized charges through their telephone bill. For example, in the State of Illinois, cramming was the fifth largest complaint category for 1998. In 1997, cramming did not even rank among the top ten complaints in Illinois and many other offices of Attorneys General. As a result of the influx of cramming complaints, at least (13) Attorneys General (California, Idaho, Illinois, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Virginia, and Wisconsin) have filed twenty-seven (27) lawsuits and eight (8) Assurances of Voluntary Compliance against providers and sometimes their bill aggregators.[3] Consumers have seen recurring and one- time charges on their telephone bills for things such as voice mail, 800 number service, club memberships and pagers. These services do not result in audiotext or any transmission, yet are billed through the consumer's telephone bill. Many providers of such services claim consumers authorized these services through prize promotion or sweepstake-type direct mail postcards or through Automatic Number Identification ("ANI") and voice capture. Consumers deny they ever authorized these services and have no information about how to utilize the services the providers claimed that they ordered.

The Attorneys General concur with the Commission that service bureaus have expanded the functions they offer to include all levels of service to their vendors: contracting with the LECs for billing, reviewing marketing materials of vendors, handling consumer complaints and making

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[2] Providers were able to evade federal consumer protections because these alternative methods were not blockable and were not covered by the original 900 Number Rule which was limited to the 900 number dialing pattern.

[3] *See*, Chart attached.

credit adjustments. Therefore, the Rule should also take into account the expansion of service bureau functions.

The Attorneys General will discuss each of the relevant amended sections below, but generally support the following proposed changes to the Rule:

***International audiotext services:*** The expansion of the definition of *pay-per-call* to cover all audiotext where there is remuneration to a provider. This would require compliance with advertisement and preamble disclosure requirements of the Rule (exclusive of a de minimis payment or valid presubscription agreement); and the prohibition of toll charges for international audiotext services.

***Audiotext offered via 800, 888, or other toll-free numbers:*** The addition of further requirements for presubscription agreements in order to provide adequate evidence of consumer authorization of charges for toll-free numbers.

***Cramming:*** The requirement that all non-blockable telephone-billed purchases must have the "express authorization" of the party to be billed; and the provision of dispute resolution for all non- toll charges on a consumer's telephone bill, regardless of whether a telephone call is made.

***Required disclosures for billing statements:*** The expansion of billing disclosure requirements to all telephone-billed purchases, including a notice to consumers of their billing error rights with every bill that contains a telephone-billed purchase.

***Dispute resolution procedures:*** The creation of new billing errors to address cramming and blocking failure problems and the creation of a duty to investigate a consumer dispute that "follows" the debt.

***Monthly or recurring charges for pay-per-call service:*** The requirement of a valid presubscription agreement prior to charging for monthly or other recurring charges that result from a telephone call to a pay-per-call service.

***Free time offered on pay-per-call service:*** The requirement (what has previously been interpreted as required) that a signal or tone must sound at the end of any free time and an opportunity for the caller to hang up without a charge.

## I. *Subpart A -- Scope and Definitions*

<u>Section 308.2 Definitions</u>

*(a) Billing entity –*

The Attorneys General support the Commission's expansion of the definition of *billing entity* to mean "any person who transmits a billing statement ***or any other statement of debt*** to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries." As stated by the Commission "the proposed change ensures that where multiple entities (including LECs, vendors, service bureaus, and third- party debt collectors) are involved in collecting a charge for a telephone-billed purchase, each of those entities will be considered a billing entity and therefore must afford a consumer his or her dispute resolution rights under the Rule."

*(b) Billing error –*

The Commission has proposed to expand the definition of *billing error* threefold:

1. a charge incurred pursuant to a presubscription agreement that does not meet the requirements of Section 308.2(j);

2. a charge for a telephone-billed purchase not blockable and not authorized by the customer to be billed; and

3. a charge that is inconsistent with any blocking option chosen by a customer.

The Attorneys General support the expansion of the definition of *billing error*, as this results in increased consumer rights under the dispute resolution process. For our Comments concerning presubscription agreements and authorization of telephone-billed purchases see *infra*.

The Attorneys General support the creation of a billing error for the new unlawful practice of *cramming*: a charge for a telephone-billed purchase not blockable and not expressly authorized by the customer to be billed. The Attorneys General have assumed that the only type of telephone- billed purchases which are blockable by TDDRA blocking are 900 telephone number calls.[4]

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[4] Although the Attorneys General support the expansion of *billing error* to provide remedies for more consumer problems, we are concerned that tying the definition of *billing error* to a technological process (non-blockable services) creates uncertainty and may foster unintended opportunities to evade the Rule, as has been the case with basing pay-per-call requirements on the use of a 900 number prefix. The use of *non-blockable* as part of the definition may be limiting for three reasons: (1) technological changes may increase the types of services which may be blockable, and create other similar services which are not blockable; (2) services may be blockable in one location and not blockable in another location; and (3) keeping consumers abreast of the

(continued...)

The Attorneys General also support defining the failure of a blocking option as a billing error. We have certainly dealt with the frustration of consumers who believed that they had blocked 900 numbers yet the block had somehow failed.

The Commission should consider a review of the billing errors as they are defined to ensure that all possible errors are covered. The Attorneys General envision situations which may not be covered by any of the billing errors listed in the current Rule or the proposed changes to the Rule, for example, an international number that results in audiotext and remuneration to the vendor.

*(g) Pay-per-call service –*

The Attorneys General support the Commission's proposal to extend the definition of *pay-per-call service* to cover all purchases of telephone-based audio information or audio entertainment services, accessed by dialing any number or receipt of any call, where all or a portion of the telephone call results in payment, directly or indirectly, to the person who provides the service. As stated by the Commission, this "change in the Rule brings international audiotext services squarely within the definition of pay-per-call services."

The Attorneys General also concur with the Commission that determining whether there has been a payment to the provider may not be easily accomplished because the details of contractual agreements between providers and foreign telephone companies may not be readily available. The Attorneys General view the rebuttable presumptions set out in the Commission's Proposal as helpful in making the determination of whether payment has been made directly or indirectly to the provider.

The Attorneys General again concur with the Commission in its expansion of the definition of *pay-per-call service* to include "audio entertainment, including simultaneous voice conversation services, where the action of placing a call, receiving a call, or subsequent dialing, touch tone entry, or comparable action of the caller results in a charge to the customer..." This expansion of the definition covers areas in which the Attorneys General have received consumer complaints: (1) group access bridged services wherein a provider connects two or more callers to discuss a certain topic; and (2) services wherein a consumer receives a charge by virtue of receiving a telephone call.[5]

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[4](...continued)
increasing services which can be blocked will be difficult at best.

[5] *People, State of Illinois v. Online Consulting Group, Inc.,* 98-CH-289, Sangamon County
(continued...)

*(i) Personal identification number* and *(j) Presubscription agreement –*

In these two Sections, the Commission has proposed that the provider of presubscription agreements deliver to the person to be billed for the service a PIN, together with a written disclosure of all the material terms and conditions of the agreement. According to the Commission, "in every instance, an actual contractual agreement with the person to be billed for the service must be reached **in advance** of the provision of the service and the person to be billed for the service must have received clear and conspicuous disclosure of the material terms of the contract." The Commission has set out three requirements for a valid PIN: (1) it must be requested by a consumer; (2) it must be provided to no person other than the person to be billed for the service; and (3) it must be delivered to the person to be billed for the service simultaneously with a clear and conspicuous written disclosure of all the material terms and conditions associated with the presubscription agreement, including the service provider's name and address, a business telephone number that the consumer may use to obtain additional information or register a complaint, and the rates of the service.

Generally the Attorneys General support the Commission's effort to address the numerous abuses we have seen in the area of presubscription agreements. Consumers have complained that they call what they believe to be a toll-free number, are given some electronic prompts (what some providers have called a presubscription agreement), are connected simultaneously to audiotext and then charged on their telephone bill for these services. The Commission's proposal for reducing the abuse of toll-free numbers and presubscription agreements envisions that access to audiotext services will not be simultaneous with the call. Rather, the person to be billed will receive the terms and conditions and the PIN in the mail before access to services can occur. The Attorneys General concur that this proposed procedure will help to reduce consumer complaints; however, as we have stated in previous Comments, and still believe, the presubscription agreement should be in the form of a written agreement and signed by the party to be billed. (The 1996 Act itself talks about a "written subscription" agreement.) The Attorneys General advocate this position due to past and continued consumer confusion concerning toll-free numbers.

In turning back to the Commission's proposal, the Attorneys General reiterate that this is a step in the right direction; however, we pose some questions concerning how the proposed presubscription process will work:

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[5](...continued)
Circuit Court, Springfield, Illinois, *see infra*, §308.13. *State of Ohio v. Communication Concepts & Investments, Inc., d/b/a Crown Communications, et al.*, 98CVH10 8407, Court of Common Pleas, Franklin County, Ohio.

> How does the provider confirm on the telephone that the caller is the person to be billed? ( The Commission is clear that ANI in the context of toll-free numbers is not sufficient.)
>
> Is the contract considered final during the telephone call or after the disclosures are mailed?
>
> What if the mailed disclosures do not match the disclosures given on the telephone to the consumer? In this situation can the consumer cancel?
>
> Is the PIN unique for each toll-free number utilized, or can a provider use a PIN assigned to a particular telephone number for a range of types of audiotext service?
>
> How does the Commission envision protecting consumers from providers who might misuse a PIN by adding unauthorized services or not instituting adequate procedures to deal with possible theft of a PIN?

Although this proposed procedure for presubscription agreements would benefit from further discussion, at a minimum, the Attorneys General recommend that the PIN given to the consumer by the provider be unique for each type of service provided in order to reduce unauthorized charging against a telephone number with a PIN and that there be a requirement that the telephone disclosures be tape recorded and stored.

The Attorneys General also concur with the Commission in its decision not to expand the credit card form of a presubscription agreement to debit cards or other methods of billing not covered by TILA and FCBA[6]. The Attorneys General have seen enough abuse connected with billing for audiotext through toll-free numbers that we would not recommend any further exception to the prohibition on billing for toll-free numbers. The Attorneys General are also in support of the Commission's addition of the clause that the credit card must be "the sole method used to pay for the charge." As the Commission is aware, the Attorneys General, at the 1997 Workshop held by the Commission, indicated that some providers request a credit card number from a consumer, but still bill the consumer by some other method that is not subject to the dispute resolution protections of TILA and FCBA.

*(n) Service bureau –*

The Commission has proposed three changes to the definition of *service bureau*: (1) the term has been specifically defined to mean the provision of the following services: voice storage,

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[6] Truth-in-Lending Act and the Fair Credit Billing Act, 15 USC 1601, *et seq.*

voice processing, call processing, bill aggregation, call statistics, call revenue arrangements, or pre- packaged pay-per-call investment opportunities; (2) the phrase "among other things" has been deleted; and (3) the definition applies to common carriers unless they do nothing more than provide vendors with access to telephone service.

The Attorneys General support the further definition of a *service bureau* because it gives guidance to us and to the industry. The Attorneys General are concerned however, that, if service bureaus take on some future function that the Commission has not contemplated, deleting the phrase "among other things" may not be prudent.

The Attorneys General support the proposal to include common carriers in the expansion of the definition if they are performing service bureau functions. The Attorneys General have experience with service bureaus that have attempted to obtain common carrier status in order to avoid possible liability for their service bureau actions. This proposal allows the Attorneys General to look to the functions the entity performs for the vendor, not what the entity calls itself.

*(q) Telephone-billed purchase –*

The Attorneys General support the Commission's proposal to expand the definition of *telephone-billed purchase* beyond pay-per-call and call completion to any purchase charged to a consumer's telephone bill. This expansion ensures that consumers can avail themselves of a statutorily mandated dispute resolution process for any non-toll charge appearing on their telephone bill. This also protects consumers who discover unauthorized charges on their telephone bills as the result of an alleged sweepstakes entry form, the subject of state litigation.

*(r) Variable option rate basis* and *(s) Variable time rate basis –*

The Attorneys General support the Commission's efforts to clarify for the benefit of the consumer the actual costs associated with any pay-per-call service. The Attorneys General agree with the Commission that the consumer should benefit from the ability of the industry to keep track of the actual time spent on a call and to bill the consumer accordingly.

*(t) Vendor –*

The Attorneys General support the Commission's determination to simplify the definition of *vendor* to include any person who sells or offers to sell pay-per-call services or goods or services via a telephone-billed purchase.

## II. *Subpart B -- Pay-Per-Call Services*

§308.3 - General Requirements for Advertising Disclosures

The Attorneys General agree that the pay-per-call advertising disclosures must apply to any advertising medium not specifically addressed in the Rule and must be clear and conspicuous and unavoidable. The Attorneys General also support that disclosures made online must appear in close proximity to the disclosures of the telephone number itself and that the consumer must not be required to click through or scroll down to see the disclosures.

§308.4 - Advertising Disclosures

The Attorneys General support that consumers must be informed in the advertising medium if the rates are going to vary during the call.

§308.6 - Misrepresentation of Cost Prohibited

The Attorneys General agree that the cost of the pay-per-call service should not be misrepresented in any manner. Specifically, we support a requirement that a consumer must be alerted by a discernible signal or tone which indicates the end of any "free time" available throughout the course of a pay-per-call service. Consumers should be informed that in order to avoid charges, they should hang up within three seconds of the signal or tone. The proposed clarification would deal directly with the problem the Attorneys General have experienced wherein, for example, a company offers a free psychic reading for a set amount of time, but fails to inform consumers by signal or tone that the free time is up and that continuation of the call will result in a per minute charge.

Consumer complaints also evidence a practice wherein an advertisement offers thirty (30) minutes of free psychic readings, but, in fact, in order to receive the free thirty (30) minutes, the consumer must make ten (10) separate telephone calls. This practice increases the risk that the consumer will not be aware when the free portion of the call ends and may thereby incur significant per-minute charges. The Attorneys General concur with the Commission's statement that the consumer should be left with no doubt as to when he or she must disconnect a call in order to avoid charges.

§308.7 - Other Advertising Restrictions

The Commission has added facsimile machines, beepers, and pagers to the list of services that, if used to solicit calls to a pay-per-call service, the solicitation must contain all of the relevant pay-per-call disclosures. First, in many states, unsolicited facsimiles are prohibited, regardless of any disclosures that may be made. Second, the Attorneys General recommend that the advertisement of pay-per-call services via beepers or pagers be prohibited for the following reasons:

> pay-per-call advertising disclosures cannot be made in a meaningful or understandable manner due to the size of most pagers and beepers; and

many people carry beepers and pagers for personal communication and emergency reasons that could be jeopardized or interfered with if pay-per-call advertising were permitted.

The State of Illinois sued an individual doing business as Talk Net and Starbuck for paging consumers in Cook County with a 976 number which, when returned, provided information of an adult nature. Consumers were charged $4.95 on their telephone bills when they called the number regardless of the actual length of the call.[7]

§308.9 - Preamble Message

The Attorneys General agree that if the call is billed on a variable rate basis the consumer should be informed accordingly in the Preamble Message and elsewhere.

§308.10 - Deceptive Billing Practices

The Attorneys General agree with the Commission in §308.10(b) that consumers should be accurately billed for the time they actually use on a pay-per-call. If technology now permits billing in fractions of minutes, the Attorneys General agree that consumers should be billed accordingly.

§308.12 - Prohibition Concerning Toll Charges

As stated above, the Attorneys General commend the Commission for its firm position that concealing a pay-per-call charge within a telephone toll charge is a practice that is inherently deceptive and should be prohibited by TDDRA. Over the last few years, the Attorneys General have received numerous complaints from consumers who were unaware that they would be charged anything other than the long distance rate for the call they were making.[8]

§308.13 - Prohibitions Concerning Toll-free Numbers

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7 *People, State of Illinois v. Anthony Tellerino, a/k/a Tony Ruffino, Talknet, Inc., and Starbuck, Inc.*, 96-CH-8034, Cook County, Illinois.

8 *State of Wisconsin v. Top Communications, Inc.*, No. 95-CV-200, Cir. Ct., filed 1-10-97. Wisconsin charged the defendant with violations of state deceptive practice laws by placing fictitious employment advertisements in the classified sections of newspapers. The advertisements listed an 806 telephone number to call for information on local clerical employment at high hourly rates. Persons who called received a pre-recorded message and, several weeks later, a charge of $20.00 on their telephone bills. During the two years of operations, the defendant reported over $7.8 million from commissions paid on calls to the 806 numbers from victims throughout the country.

The Commission proposes that the prohibition against charges via an 800 number or number understood to be toll-free be applied also to all incoming calls for which there is a charge, regardless of whether the call is characterized as a collect call. The Rule currently prohibits call-backs via collect calls. Due to the experience of the Attorneys General with this type of prohibited practice, the Attorneys General would agree with the Commission's clarification that any call, whether a collect call or a call-back, is prohibited. Some Attorneys General have received complaints and at least two states have filed complaints concerning a toll- free number that resulted in a call-back which did not constitute a true collect call.[9]

<u>§308.14 - Monthly or Other Recurring Charges</u>

The Attorneys General agree with the Commission's clarification that presubscription agreements are required whenever a consumer receives a monthly or recurring charge as a result of calling a pay-per-call service.

<u>§308.16 - Service Bureau Liability</u>

The Attorneys General agree that the Commission should expand service bureau liability regardless of the service it provides to any rule-violating vendor, if the service bureau knew or should have known of the violation. Previously, service bureau liability attached only when the service provided by the bureau was that of a call processing facility. With the proposed changes, the Commission has expanded the list of services that a service bureau may offer for which it will consequently subject itself to liability to include billing aggregation, call revenue arrangements, calculation of call statistics, and provision of turn key packages. At least four Attorneys General[10]

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9 *People, State of Illinois v. Online Consulting, supra.* Consumers were being billed nearly four dollars per minute for collect calls. In fact, the calls were not true collect calls, because no operator was on the line seeking the recipient's acceptance of a call for which the recipient would be billed. Instead, many consumers had called a 1-800 telephone number in response to an advertisement for a free dating service. As a result of having called this 1-800 telephone number, the consumers received calls from several purported potential dates. Consumers did not know that they were being billed nearly four dollars a minute for these calls, which technically do not fit within the category of collect calls, but clearly should be prohibited. *See also,* Footnote 5, *supra*, for reference to a suit filed by the State of Ohio.

10 Ohio, *State of Ohio v. Telcom Operator Services, Inc., d/b/a USP&C Operator Service, et al.*, 98-CVH-10 8409, Court of Common Pleas, Franklin County, Ohio; *State of Ohio v. Communications Concepts & Investments Inc., d/b/a Crown Communications, Crown Communications Two, Inc., Network Access Inc., Telephone Billing Services, Inc.,* and *Global*
(continued...)

have sued service bureaus for their direct and indirect actions in facilitating the processing of unauthorized charges on consumers' telephone bills.

## III. *Subpart C -- Pay-Per-Call Services and other Telephone Billed Purchases*

§308.17 -- Express Authorization Required

The Commission has proposed that any telephone-billed purchase, other than a pay-per-call purchase that is blockable, requires the express authorization of the person to be billed. The Attorneys General support the Commission's requirement that the express authorization of the person to be billed must be obtained before charges can be assessed to the customer. (It is our understanding that blocking as used in this rule-making is limited to TDDRA blocking capabilities of a LEC only and is limited to 900 number calls. The Attorneys General understand that the rule-making does not apply to any blocking ability that a billing aggregator may or may not have.)

The Commission in its proposal gives three examples of express authorization:

> [1] a tape recording of the person to be billed for the service being informed of the material terms of the agreement and then agreeing to make the purchase on those terms and pay the charge, would constitute evidence of express authorization. Similarly, [2] an agreement containing a non-deceptive statement of material terms and conditions and signed by the person to be billed for the service, would be evidence of express authorization. [3] If a valid PIN (as that term is defined by the proposed Rule), were used by the caller, after hearing all the material terms of the agreement, that would

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[10](...continued)
*Collections, Inc.*, 98-CVH-10 8407, Court of Common Pleas, Franklin County, Ohio; *State of Ohio v. RRV Enterprises, Inc., d/b/a Consumer Access, All American Telephone, Inc.,* and *Hold Billing Services, Ltd., d/b/a HBS Billing Systems,* 98-CVH-10 8408, Court of Common Pleas, Franklin County, Ohio; Illinois, *People, State of Illinois v. BLJ Communications and International Telemedia Associates, Inc.*, 98-CH-113, Sangamon County, Illinois; *People, State of Illinois v. RCP Communications and International Telemedia Associates, Inc.,* 98- CH-112, Sangamon County, Illinois; *People, State of Illinois v. Coral Communications and International Telemedia Associates, Inc.*, 98-CH-03526, Cook County, Illinois; Wisconsin, *State of Wisconsin v. USP&C, Inc.*, 98CV2319, Milwaukee County Circuit Court; and New Jersey, *People, State of New Jersey and New Jersey Board of Public Utilities v. Coral Communications, Inc. and International Telemedia Associates, Inc.,* C-121-98, Hudson County, New Jersey.

> also constitute evidence of express authorization. (Footnote omitted.)

The Attorneys General suggest that due to the high level of *cramming* complaints, the Commission should consider formalizing the process of authorization and adding a verification component. The Commission should look to the experience of the Federal Communications Commission (hereinafter "FCC") in its promulgation of rules for the switching of telephone service. The FCC is currently implementing its second set of amendments to its Rule and has requested comments on further proposed changes. Each change has served to make more certain the authorization procedures for switching a telephone service. Consumers deserve the same certainty in the arena of telephone-billed purchases. The experience of the Attorneys General with *slamming* demonstrates that unless the "authorization" process is clearly defined, the Commission will find its general standard will be evaded by certain segments of the industry.

<u>Tape-Recording of Express Oral Authorization:</u>

The Attorneys General would agree with the Commission that a tape recording of the initial solicitation may constitute an express authorization, but only if it records the entire conversation and evidences clear and understandable disclosures of the material terms and conditions of the offer and in addition captures the agreement to these terms by the person to be billed for the service. The Commission should specify that one of the material terms and conditions that must be disclosed, as evidenced on the taped verification, is that the consumer will be billed for the goods or services through his or her telephone bill.

<u>Written Agreement of Express Authorization:</u>

The Attorneys General urge the Commission to specify in the Rule the form of the written authorization. It has been the experience of the Attorneys General in the area of "slamming" that the Letter of Agency, "LOA," has been misused by some carriers, who combine promotional information along with the authorization terms. Many times, consumers believed they were entering a sweepstakes, when, in fact, they had authorized a switch in their long distance service. Due to this misuse, the FCC subsequently changed its rules to require that the LOA be separate from promotional materials in order that consumers would clearly understand and authorize the switch of their telephone service. The same principles should apply to the authorization form for telephone-billed purchases. In addition, the Attorneys General would urge the Commission to specify the disclosures and authorization language on the LOA, including clear and conspicuous disclosures to the consumer that the purchase will be billed through their telephone bill. (The FCC requires specific language for authorizations of switches on LOAs.)

<u>Verification of Telemarketing Authorization:</u>

As with the FCC Rule, oral authorizations during a telephone solicitation should be verified. The Attorneys General advocate that the verifier should be: (1) an independent entity;

(2) not paid on commission; and (3) located at a separate facility. The verification process should consist of a true check for consumer assent by: (1) a prohibition against the presence of the telemarketer on the line with the verifier; and (2) evidence that the verifier has disclosed all the material terms and conditions of the contract and verified the consumer's consent.[11]

Liability:

This section of the Rule prevents vendors, service bureaus, or billing entities from attempting to collect if they knew or should have known the charge was not expressly authorized. The Attorneys General suggest the Commission delete the word "vendor" from this section, as we believe it was an oversight. Of course vendors would be held directly liable for collecting for unauthorized charges without regard to a "knew or should have known standard."

§308.18 -- Disclosure Requirements for Billing Statements

In order for a consumer to clearly understand his or her rights to dispute charges placed on the telephone bill, the consumer must have those rights disclosed on the telephone bill. The Commission accurately notes that TDDRA mandates the consideration of TILA and FCBA dispute resolution process when determining the dispute resolution rights of consumers who

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[11] Due to the level of complaint activity concerning cramming, the Illinois Legislature passed a law requiring that all alleged authorizations for enhanced services (other than pay-per- call) must be verified by one of two methods. The first method requires a written notification mailed to the subscriber no later than ten (10) business days after the subscriber was solicited to purchase the enhanced services. The letter must be on a separate document sent for the sole purpose of describing the enhanced services purchased by the subscriber, must be printed in 10 point type, and must contain clear and plain language that confirms the details of the enhanced services authorized by the subscriber and shall provide the subscriber with a toll- free number to call should the subscriber wish to cancel the service. In lieu of a written verification, the second method allows for third party verification. This method requires that verification shall be obtained by an independent third party that: 1) operates from a facility physically separate from the vendor; 2) is not directly or indirectly managed, controlled, directed or owned, wholly or in part by the vendor; and 3) does not derive commissions or compensation based upon the number of sales of enhanced services confirmed and shall retain records of the confirmation of sales for twenty-four (24) months. The third party verifier must state to the subscriber and shall obtain that person's acknowledgment to the following disclosures: the consumer's name, address, and telephone numbers of all telephone lines affected by the enhanced service, the names of the vendor(s), the fact that a monthly recurring fee may be charged, and these requirements must be completed no later than three (3) days after the initiation of the enhanced service having been made.

receive charges on their telephone bills. To that end, the Commission requires the disclosure on the billing statement, in a separate part of the consumer's bill, of any charges not related to local or long distance telephone charges, identification of the type of service or product, specification of the telephone number dialed, and display of the local or toll-free number where customers can obtain information regarding their telephone-billed purchases, including the name and address of the vendor.

However, under TILA when the creditor and the seller are not the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor must disclose on the periodic statement the amount and date of the transaction; the **seller's name;** and the city, and state or foreign country where the transaction took place. [Regulation Z, §226.8(3)]

The Commission does not require the display of the vendor's name on the telephone bill. The Attorneys General strongly encourage the Commission to require the disclosure of the vendor's name on the telephone bill. Consumers who are billed on the telephone bill have a right to know who billed them for an alleged service, just as consumers who are billed on their credit card have a right under TILA to know the identity of the alleged seller.

Law enforcement has a legitimate need to be able to identify businesses that may be violating consumer protection laws. Furthermore, given the volume of complaints that law enforcement agencies receive, they should not be required to engage in protracted investigation in order to identify the potential violator.

In addition, the Coalition to Ensure Responsible Billing, a group made up of billing aggregators, in its *Anti-Cramming Consumer Protection Standards of Practice,* included, among other requirements, the statement that a consumer's bill should include a clear identification of the service provider in addition to clear identification of the billing entity. In their *Anti- Cramming Best Practices Guidelines,* Local Exchange Carriers suggested that a consumer's bill should include the identification of each service provider.

The Attorneys General agree with industry and the Commission that consumers should have only one number to call in order to obtain information. The Attorneys General recognize that in all probability the number consumers will be given is that of the billing entity, not a wholly disinterested party.

<u>§308.20 -- Dispute Resolution</u>

As the Attorneys General understand it, the proposed pay-per-call dispute resolution procedure will now be applied to all telephone-billed purchases, including those that do not result from a telephone call. The Attorneys General support the Commission's requirement that a consumer be notified of his or her right to dispute any portion of the charges on a billing statement. We also support the Commission's requirement that if a charge has been disputed and forgiven and another billing entity attempts to collect on that charge, that the new billing entity is also required to conduct an investigation pursuant to the dispute resolution process. However, the Attorneys General continue to be concerned about certain aspects of the dispute resolution process.

Our first area of concern is the fact that the billing entity is not required to acknowledge receipt of the notice of billing error unless it is not going to either issue a credit or conduct an investigation within forty (40) days. It has been the experience of the Attorneys General that many times a consumer will call to dispute a charge and will be told that the disputed charge will be credited or otherwise resolved. However, many times the same disputed charge will appear as a debt and new charges may also be added onto the next billing statement. The consumer again must contact the billing entity often being connected to a totally different individual from the one who received the first complaint and who stated that a refund would be made. Many consumers report that this second individual often claims that he or she has no record of the first call from the consumer wherein the consumer disputed the original charge. This process frequently continues for several months with the consumer sometimes simply giving up and paying the disputed amount.

The Attorneys General suggest that this problem could be minimized by requiring the billing entity which first receives the customer's notice of billing error to immediately issue a written acknowledgment of receipt of the notice of billing error. Acknowledgment of the consumer's notice of billing error would accomplish the goal of providing the consumer notice that his or her complaint has been received and it will provide documentary evidence of the complaint.

A second area of concern is that, under the proposed Rule, if a billing entity decides to credit an account that has been disputed, the entity has no duty to inform the consumer of the manner in which the alleged debt was incurred. It is fundamentally unfair that a billing entity can charge a consumer's telephone bill, be confronted with the charge, and then simply give the money back without any requirement that they show proof of the alleged debt. This process would allow potentially criminal activity, such as forgery, to continue unthwarted and undocumented.

A third area of concern is the Commission's proposal that a billing entity and a vendor **may** use the same telephone number to meet the requirements of §308.18(d) and §308.20(b)(4). The Attorneys General urge the Commission to require the use of only one telephone number so that consumers have only one number to call in order to obtain information and to provide notice of a billing error.

A fourth area of concern pertains to footnote 4 to §308.20(c)(2)(ii), in which the Commission states that there exists a rebuttable presumption that goods or services were actually transmitted or delivered to the extent that a vendor, service bureau, or providing carrier produces documents prepared or maintained in the ordinary course of business showing the date on, and the place to, which the goods or services were transmitted or delivered. If a billing entity relies on this presumption in responding to a billing error notice it shall provide the customer with the opportunity to rebut this presumption with a declaration signed under penalty of perjury. The Commission should expressly require the billing entity, in Footnote 4, to inform the consumer of his or her right to make this declaration. Without a notification requirement to the consumer, the consumer may not know that there is an opportunity to rebut the presumption with a declaration.

## CONCLUSION

In view of the past and current problems, as well as the potential for continued fraud and abuse, unauthorized charges, and consumer confusion, we commend the Commission's efforts to implement safeguards designed to protect consumers against these practices.

Respectfully submitted,

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