

SWIDLER & BERLIN

CHARTERED
3000 K STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20007-3851
(202) 944-4300

ORIGINAL
COPY

ROBERT G. BERGER
ATTORNEY-AT-LAW

DIRECT DIAL
(202) 944-4235
TELEX: 701131
TELECOPIER: (202) 944-4296

April 19, 1991

VIA FEDERAL EXPRESS

Steve C. Tribble
Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399

Re: Docket No. 910060-TP

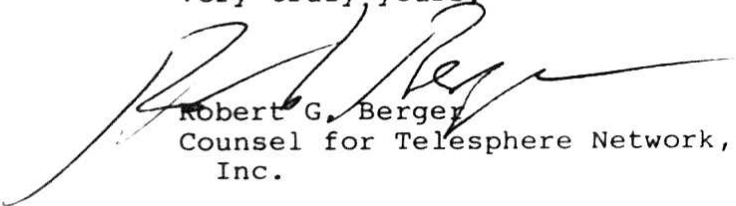
Dear Mr. Tribble:

Enclosed herewith is an original and thirteen (13) copies of Comments of Telesphere Network, Inc. to be filed in the above-referenced docket.

Please date-stamp the extra copy and return it to me in the enclosed self-addressed, stamped envelope.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Very truly yours,



Robert G. Berger
Counsel for Telesphere Network,
Inc.

- ACK
- AFA
- APP
- CAF
- CMU
- CTR

Enclosures
EAG

REG All Parties of Record

- LIN
- OPC
- RCH
- SEC
- WAS
- OTH

RECEIVED & FILED

TRB
FPSC-BUREAU OF RECORDS

03840
REC-RECORDS-TPC

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Attorney
General and the Public Counsel
to adopt rules governing 900
services

)
)
) Docket No. 910060-TP
)
)
)

COMMENTS OF TELESPHERE NETWORK, INC.

Telesphere Network, Inc. ("Telesphere"), by its undersigned counsel, hereby submits its Comments in the above-captioned proceeding.

SUMMARY

The rapid growth in 900 services has reflected, and in part served to stimulate, the explosion of available information services both in Florida and nationwide. Furthermore, the presence of successful 900 service information providers ("IPs") in a jurisdiction is a source both of employment and of taxable revenues. In turn, the billing and collection services provided by local exchange carriers ("LECs") for 900 services is an additional source of funds for the LECs, which reduces the revenue requirement for which ratepayers otherwise are responsible.

Regulatory policy therefore should strive to foster the benefits inherent in 900 services, while at the same time maintaining a sensitivity to legitimate consumer concerns. The most effective means of protecting the consumer, while balancing

DOCUMENT NO. 91-10060-TP
03840 APR 22 1991
FSC-RECORDS/REPORTING

these interests, would focus on requiring that LECs offer customers the option of blocking 900 services at no charge, as this Commission has proposed in Proposed Rule § 25-4.110(9)(c). Optional blocking, in combination with vigorous industry self-regulation and aggressive enforcement by both federal and state authorities of consumer protection laws governing advertising and other trade practices of IPs, will provide appropriate consumer safeguards without stifling the growth of important information services and the broad dissemination of useful information.

Moreover, the Federal Communications Commission ("FCC") has issued a Notice of Proposed Rulemaking ("NPRM") with respect to 900 services in CC Docket No. 91-65, comments on which must be filed by April 24, 1991. (See Exhibit 1.) Among the measures proposed in the Notice are a requirement that free optional blocking of 900 services be made available to consumers. The FCC's contemplated action highlights the need for a uniform national approach. State oversight of 900 information services therefore should serve as a complement to federal efforts by including Commission requirements of optional 900 blocking at no charge, LEC billing information and the like, in addition to enforcement by other state agencies of state consumer protection laws with respect to IP trade practices. Telesphere welcomes the opportunity to work with the Commission toward developing rules pertaining to communications carrier aspects of such oversight.

BACKGROUND AND STATEMENT OF INTEREST

Telesphere is a non-facilities based interexchange carrier ("IXC") which offers, among its other long distance services, specialized "900" transmission services for IPs and other business customers. As one of the nation's largest carriers of 900 services, Telesphere has a direct and vital interest in this Commission's regulation of the information services industry, as well as the development of nationwide policies governing such services.

Telesphere, a long-distance carrier since 1982, introduced its 900 transmission service in 1987 in the Chicago area; currently it offers this service throughout the continental United States on over 1800 lines. Telesphere's 900 services, and the competing services of other IXCs including AT&T, MCI and U S Sprint, are used by IPs to offer an extensive variety of information programming. For example, American Express offers national weather information; Consumer Reports provides current market price information for used cars as well as a trouble index which reflects the likelihood of repair needs; The Wall Street Journal offers stock quotes; Sports Illustrated provides scores of sports events and injury reports; Digital Publications distributes computer programs; and Lotus 1-2-3 provides system support for software purchasers. 900 service also is a valuable tool for businesses to provide critical, time-sensitive information and services to one another, as reported in a recent article in Business Week, attached hereto as Exhibit 2.

Many not-for-profit organizations also have discovered that 900 services are an ideal vehicle for fundraising and educational purposes. For example, the "Prime Time to End Hunger" program, which was endorsed by the White House, was the first national use of a 900 number to generate volunteers and the first cooperative effort among all major IXCs and television networks. Six prime-time television shows, which devoted episodes to underscore the problems of homelessness and hunger, specified a 900 number in public service announcements following each show. For only two dollars, callers were matched by name and address to the nearest volunteer organization, and were informed of various volunteer options.^{1/}

Moreover, 900 programs can be initiated quickly, making them ideal for emergency situations. To raise disaster relief funds for Hurricane Hugo and San Francisco earthquake victims, for example, the American Red Cross established a 900 number which provided news about the events for a charge of \$20.

To assure that its 900 programming serves the interests of consumers, Telesphere requires that its IP customers comply strictly with marketing and advertising guidelines which have been developed in consultation with government and consumer

^{1/} Public television stations have also discovered the value of 900 services as a fundraising tool. For example, many stations utilized 900 services to solicit contributions during the recent Civil War series. Use of 900 provides an alternative to lengthy "pledge week" promotions, which are costly to public television stations, irritating to audiences, and tend to elicit contributions of fewer listeners and viewers.

groups.^{2/} Pursuant to these guidelines, Telesphere prohibits programs with obscene or indecent content from carriage on its 900 network. In addition, Telesphere carefully monitors prospective programming and advertising to assure that (1) all advertising clearly describes the content of the advertised program and states the cost to callers; (2) Group Access Bridge, or "GAB", programming is preceded by a message detailing the program and the costs involved, and is interrupted by a tone at five-minute intervals to remind the caller of the elapsed time; (3) callers to programs with preamble messages are informed of their right to disconnect before billing begins; and (4) no programming is offered for or directed at children younger than age fourteen. Telesphere's customer service department is mandated to resolve satisfactorily consumer complaints. The company's policy is to waive charges for calls dialed inadvertently or mistakenly.^{3/}

Telesphere's contracts with IPs reserve the right to terminate any program which violates these procedures. If a

^{2/} See Telesphere Guidelines, attached hereto as Exhibit 3. When Telesphere first began offering 900 services, for instance, it worked closely with Chicago area consumer groups, members of the Illinois Commerce Commission and members of the Illinois General Assembly. As Telesphere's 900 service has grown, the company has continued to work closely with state regulatory commissions and local consumer advocates across the nation to expand and refine its consumer safeguards.

^{3/} Telesphere also is a charter member of the National Association for Information Services (NAIS), which is developing industry-wide standards to ensure that audiotext information services are offered in a manner consistent with the public interest. Those standards are attached hereto as Exhibit 4.

program is found to be in violation, the IP is warned to remedy the violation immediately or face termination. Telesphere's vigorous self-policing resulted, for example, in the disconnection of fourteen programs between late 1989 and April 1990. Ten were disconnected because the programs generated consumer complaints and the IPs failed to remedy the problems; two were disconnected because the advertising failed to satisfy Telesphere's IP advertising criteria; one was disconnected because of discrepancies between the program and the advertising; and one was disconnected after monitoring indicated that the content of the program contained indecent material in violation of Telesphere's stated policy not to offer such programs. In addition, there have been a number of other cases in which IPs made satisfactory corrections after Telesphere warned them about programming or advertising violations.

Based upon its experience, Telesphere believes that the inherently interstate nature of 900 telecommunications services requires generally consistent state regulations not only to prevent consumer confusion, but also to avoid an undesirable trend toward "forum shopping" by IPs seeking to locate in states with less restrictive regulations. Telesphere's experience over the past three years indicates that truly effective protection for consumers can best be accomplished by regulations which enhance consumer awareness and choice and also provide the option of blocking.

DISCUSSION

1. The Commission Should Ensure Consistency Of Florida's 900 Service Rules With Those Subject To Adoption By The FCC

Prior to 1991, a number of state authorities began to raise the question of whether certain proposed consumer protections with respect to 900 and 900-type services should be considered at the state level, given the perception of FCC inaction in the face of a growing number of highly-publicized consumers complaints. As a result, a number of state public service commissions -- including, e.g., those in Alabama, Louisiana, North Carolina, South Carolina, and Texas -- undertook consideration of proposed rules affecting 900 services.

In January of this year, however, FCC Chairman Sikes advised Congress that he had directed the Common Carrier Bureau to draft a new Notice of Proposed Rulemaking ("NPRM") concerning 900 services. The text of that NPRM was released on March 25, 1991 in CC Docket No. 91-65 (four days after release of this Commission's Memorandum soliciting comments on the Staff's proposed 900 and 976 rules).

In many respects, the proposed FCC rules closely parallel, and are complementary of, the rules proposed in this proceeding.

First, the FCC proposed that, where technically feasible, LECs should be required to offer consumers the option of blocking 900 numbers at no charge. (FCC Proposed Rule § 64.713; compare Florida Proposed Rule § 25-4.110(9)(c).)

Second, the FCC proposed that common carriers be prohibited from discontinuing basic local exchange service for failure to pay interstate 900 charges. (FCC Proposed Rule § 64.714; compare Florida Proposed Rule § 25-4.110(9)(a)(1), (d)(7).)

Third, the FCC proposed requiring that each 900 program be preceded by a preamble which would disclose price and product information, and would inform the caller that billing "will commence only after a specific, identified event following" conclusion of the preamble. (FCC Proposed Rule § 64.711(a)-(c); compare Florida Proposed Rule § 25-4.110(9)(b)(1), (2), (9).) At the same time, the FCC also properly recommended that repeat callers (for example, those who use frequently-called numbers for sports, weather, or financial quote information) should be provided a means to bypass the preamble on succeeding calls. (FCC Proposed Rule § 64.711(e); NPRM at 5.)

Fourth, the FCC proposed that, upon verbal or written request by the consumer, the IXC would be required to provide the consumer with the identity, including the name, address, and customer service telephone number, of the IP. (FCC Proposed Rule § 64.712; compare Florida Proposed Rule § 25-4.110(9)(a)(3)-(5).)

Fifth, the FCC proposed that programs directed at children (tentatively defined as those persons under the age of 18),^{4/}

^{4/} It should be noted that each entity which has addressed the issue of which individuals should be deemed "children" for purposes of a parental permission admonition have selected a different age. The FCC has proposed an "under 18" rule, while also seeking comment on appropriate alternate age limitations.
(continued...)

should be preceded by a preamble which contains the admonition that children must either have their parents' permission or hang up. (FCC Proposed Rule § 64.711(d); compare Florida Proposed Rule §§ 25-4.110(9)(b)(3), (4), (8) and (11).)

Clearly, there no longer can be any question of regulatory inaction at the federal level. The FCC is moving directly to consider rules to govern the provision of 900 services nationally, the content of which generally reflect precisely the same considerations as those proposed by the Staff of this Commission.^{2/} The overwhelming majority of 900 traffic is interstate in nature; intrastate calls are at best ancillary to the interstate traffic. Accordingly, in view of the desirability and practicality of adopting rules which complement the federal regulatory structure, and the need to avoid potentially conflicting state and federal rules, Telesphere submits that any final decision in this proceeding be held in abeyance pending the FCC's resolution in Docket No. 91-65.

^{4/}(...continued)

The Staff in this proceeding has suggested an "under 17" definition. See Proposed Rule § 25-4.110(9)(b)(3), (4), (8). By contrast, Telesphere has defined children as those under the age of fourteen. Based on its significant experience, Telesphere urges adoption of a standard parallel to that enforced by Telesphere, which has proven highly effective in minimizing consumer difficulties.

^{2/} In addition, two bills are currently pending in Congress which would impose nationwide requirements on 900 transmission carriers, LECs, and IPs. H.R. 328, The Telephone Consumer Assistance Act, 102d Cong., 1st Sess. (1991); S.471, The 900 Services Consumer Protection Act of 1991, 102d Cong., 1st Sess. (1991).

2. The Staff's Approach Generally Is Highly Constructive

Generally, the Staff's approach is most constructive, focusing on ensuring that consumers have adequate information to make properly informed decisions. Telesphere strongly supports a regulatory approach predicated on the principal that consumer information and consumer choice is the best guarantor of a responsive marketplace in which abusive practices are minimized.^{§/}

In this same vein, the proposed rules strike a careful balance among protecting the interest of Florida telecommunications consumers and the jurisdictional and Constitutional considerations surrounding the provision of pay-per-call services. For example, Staff properly respects the FCC's exclusive jurisdiction over interstate traffic, limiting

^{§/} Of course, it goes without saying that adherence by individual IPs to federal and state consumer protection laws is also of paramount importance. Promulgation and enforcement of such laws against IP perpetrators of abusive practices is within the purview of other state and federal agencies, however, and the staff appropriately proposes rules governing the provision of telecommunications services underlying the provision of pay-per-call service. Nevertheless, Telesphere urges that the Commission's formulation of telecommunications rules bear in mind that the abusive practices which have generated consumer complaint relate to advertising and other trade practices of IPs and not telecommunications carriers. Therefore, while the Commission's rules should appropriately provide for education of consumers as to the nature of pay-per-call services, and for the option of blocking such services, there must also be complementary state and federal enforcement of consumer protection with respect to abusive practices by IPs. The Commission should not through its regulation of telecommunications carriers, attempt to transfer enforcement responsibilities for IP advertising and trade practices to common carriers. See Section 3(b), supra.

the definition of 900 services subject to the proposed rules specifically to those made "via 900 area code between locations within the State of Florida." (Proposed Rule § 25-4.110(9).) The proposed rules would apply only to intrastate traffic, which properly is within the purview of this Commission, and would not overreach to interstate traffic. Similarly, the proposed rules properly omit reliance on such Constitutionally and jurisdictionally infirm proposals as mandatory universal blocking of 900 services, or the required use of a personal identification number to access 900 services, both of which trench on the rights of citizens to have unfettered access to information. The proposed rules also abjure reliance on artificial rate caps, which invariably penalize the most valuable services available via 900, such as software and technical support programs, without realizing any real reduction in those programs, such as "adult programming," which have been the source of significant consumer complaint.

The Commission and its Staff are to be applauded for its careful draftsmanship, and for its focus on consumer education and information. In particular, Telesphere strongly supports two critical proposals: the requirement of free blocking by LECs at the consumer's option, and the prohibition on disconnection of basic exchange service for non-payment of 900 bills, as discussed below.

a. Local Exchange Companies Should Provide Blocking Of Access To 900 Services To Customers Without A Charge (Proposed Rule § 25-4.110(9)(c))

Telesphere strongly supports LEC blocking of access to 900 services at the customer's option at no charge, in all areas served by central offices capable of such blocking, as this Commission has proposed. As with all methods of communicating information, including the electronic media, newspapers, and magazines, a citizen may or may not choose to take advantage of information available through 900 services at a specific moment. What is important, however, is the ready availability of as wide a variety of information, and information services, as possible to all those who may wish to take advantage of it.

Optional 900 blocking strikes the appropriate balance, providing valued protection to consumers at little or no cost on the one hand, without infringing on First Amendment guarantees, or negatively impacting the growth of the information services marketplace in Florida, on the other. Blocking at the option of the consumer will prevent most problems from occurring in the first place, and clearly will ensure that there will be no recurrence thereafter.

b. Local Exchange Companies And Interexchange Carriers Should Be Prohibited From Denying Or Disconnecting Service For A Customer's Failure To Pay For 900 Charges (Proposed Rule § 25-4.110(a)(1), (d)(7))

LECs should not be allowed to deny or disconnect local service for nonpayment of 900 charges. Rather, non-optional 900 and 900--like service blocking imposed by the LEC for nonpayment

would provide the necessary protection to carriers and IPs, while at the same time not requiring that consumers lose local service which may be their only link, for example, to critical emergency services such as fire and rescue. Such non-optional blocking should be applied in those instances where a consumer has benefitted from a one time forgiveness credit, failed to take advantage of optional blocking, and thereafter refuses to pay his 900 services bill, as is called for in Proposed Rule § 25-4.110(9)(c)(2).

Similarly, Telesphere believes that IXCs should not be allowed to suspend other long distance service for failure to pay 900 charges, for precisely the same reason as Telesphere opposes allowing local service denial or disconnect for nonpayment. In many areas, toll service is the only way for consumers to reach critical services.

3. Certain Modifications To The Proposed Rules Should Be Made To Ensure Balance And Technical Feasibility

Though Telesphere generally supports the rules as proposed, certain modifications should be made to ensure that the rules more properly reflect a balance between consumer needs and an acknowledgement of the appropriate role of common carriers and their technical capabilities. In particular, sections which should be modified include those requiring (1) that carriers not bill for any program, regardless of content or audiences, which does not comply with preamble requirements; (2) that carriers monitor and serve as guarantors of IP compliance with the

proposed rules; (3) that the name of the information provider be printed on each bill; and (4) that consumers not be requested to provide certain information during a call, such as name, address, or charge card and that 900 calls not include those for which products or merchandise are thereafter deliverable. Each suggested modification is discussed below.

a. Local Exchange Carriers Should Not Be Prohibited From Billing For 900 Service Programs Which Are Not Preceded By A Disclosure Message (Proposed Rule §§ 25-4.110(9)(b)(1) and (2))

Telesphere fully agrees that disclosure of price and customer service information, as well as an accurate description of the service offering, must be available to consumers so that informed decisions can be made for the purchase of 900 information services. Such disclosures are important not only to safeguard consumer interests, but also to protect carriers and IPs for business reasons. In the short run, failure to provide sufficient information to consumers increases the amount of uncollectible bills and disputes concerning unauthorized uses of 900 services -- a reality plainly at odds with the interests of both carriers and IPs. Over the longer term, the provision of this basic information contributes to the overall level of consumer education about the many beneficial ways 900 services can assist consumers in receiving information quickly and economically. A high level of consumer understanding and a positive consumer image about the 900 business is critical to the industry's future growth.

Notwithstanding our general agreement with the importance of consumer notification and information, however, Telesphere has serious concerns about imposition of a mandatory oral preamble on all 900 calls. Telesphere does not believe that preambles are appropriate in all cases, and therefore opposes a requirement that would mandate them for all programs. There are clear instances when an introductory message would be inappropriate. For example, many of the business applications offered by Telesphere's IP customers are offered specifically as an alternate means of receiving information such as customer service, software, and the like. Such programs are often used on a repeat basis by callers, and are unlikely to be called by children or others who have not read or heard and understood the charges for the program. Accordingly, either preambles should not be required for such programs or, in the alternative, repeat callers should be provided a means for bypassing the preamble, as proposed FCC Rule § 64.711(e) would permit.

Moreover, internal company standards require that advertising and promotions for all of the programs offered over Telesphere lines (and, indeed, the lines of all other IXCs providing 900 transmission service to IPs) must clearly describe the content of the program and state the full cost. The combination of clear and precise advertising, in conjunction with a policy to waive charges for any inadvertent or mistaken calls, has in Telesphere's experience proven to provide sufficient protection for consumers. It would be intrusive and inefficient

to force regular users of these information programs to listen to an introductory message every time they dial the program.

We reiterate that Telesphere has no objection in principle to preamble requirements in certain instances or for certain types of programs or audiences. In fact, Telesphere already requires IPs to include verbal preambles which inform callers of the cost and content of the program on all Group Access Bridging ("GAB") interactive calls. Our concern is with requiring preambles on all calls. Preambles add cost to all information calls and, in addition, may prove intrusive and annoying to customers. Accordingly, a blanket requirement should not be undertaken absent a careful review by the Commission as to the desirability of such a message with regard to specific types of services. Accordingly, while Telesphere does not categorically oppose requiring preamble disclosures for all 900 services, it questions the realistic impact and value of requiring such disclosure and its monitoring by LECs and IXCs.

Moreover, Telesphere believes the proposed mandatory twenty-second disconnect period will prove unnecessarily long in most cases, leaving consumers frustrated due to unreasonable delay, and will increase costs for providers and consumers alike, since required increase in access time will mean increased network costs. Rather, in those circumstances where preambles may be required, Florida should adopt the approach being considered at the federal level, whereby consumers are informed of the nature of the 900 product and the charges involved, and are told that

billing will attach at the occurrence of a specified event -- such as a beep tone -- thereafter. This is more than ample notification, and will allow the consumer to make informed choices, without unnecessarily delaying initiation of programs.

b. Carriers Should Not Be Required To Serve As Guarantors Of IP Performance (Proposed Rule § 25-4.110((9)(B))

Telesphere also questions the practicality and appropriateness of prohibiting LECs and IXC's from providing billing services to 900 providers which do not comply with the twelve specified requirements. This provision, absent qualification to recognize the proper role of common carriers, in essence would require that LECs and IXC's take on a quasi-governmental regulatory function. Implicit in the proposed requirement is that LECs and IXC's would be required to monitor continuously the ongoing, day-to-day disclosure practices of hundreds, and perhaps thousands, of IP's and may be subject to penalty if they provide billing services to IP's in violation of the requirements, whether or not the carrier reasonably could or should have known that the IP was failing to comply.

First, it would seem far more appropriate to regulate the intrastate practices of those entities which directly control, and are responsible for, promotional and disclosure practices: the IP's.

Second, constraints placed on LECs and IXC's at a minimum should be qualified by a 'knowledge' component, i.e., that LECs and IXC's not knowingly bill for IP's which are in violation.

Knowledge may be gleaned from a combination of notice from the Commission, consumer complaints, and random monitoring. In addition to the knowledge qualification, it would be far more reasonable to specify that LECs and IXCs must require by contract or tariff, as a condition of providing service, that IPs comply with the disclosure requirements than to mandate that carriers serve as watchdogs.

In sum, through a combination of amending the requirement to § 25-4.110(9)(b) to include a knowledge requirement, and a requirement that carriers specify by contract or tariff that IPs comply with disclosure requirements, this Commission can be assured that carriers will work to ensure that consumers are properly informed, without putting carriers at risk for practices over which they do not possess direct control.^{2/}

c. LECs Should Not Be Required To List The Name Of The IP Or The IXC On The Bill Unless It Is Technically Feasible To Do So (Proposed Rule §§ 25-4.110(9)(a)(4) and (5))

Under the proposed rules, LECs not only would have to segregate charges for 900 calls, but also list both the name of the IXC which had carried each call and that of the IP. There

^{2/} By analogy, such an approach would be similar to that adopted in the federal Telephone Operator Consumer Services Improvement Act of 1990 with respect to operator services providers. Under that Act, IXCs are prohibited from paying compensation to call aggregators which they are aware are engaging in call blocking. 47 U.S.C. § 226(b)(1)(E). In addition, carriers are required to provide by contract or tariff that aggregators comply with specified requirements as to the posting of written notices and unblocking of access via 800 and 950 numbers. 47 U.S.C. § 226(b)(1)(D).

can be no question that such information is of value in dispute resolution and in allowing consumers to make informed choices in the future, particularly when coupled with the toll-free number a customer can call to resolve a dispute.^{8/} The critical problem associated with the proposed requirement is not one of desirability, but rather of the technical ability of LECs to list both^{2/} the IP and/or the IXC. Telesphere is not aware whether any Florida LEC would be precluded from billing 900-type calls as a result of this prohibition, but we are aware that similar practical difficulties have been cited in the context of billing and collection on behalf of IXCs other than AT&T that provide operator services. Therefore, in the current instance, prior to requiring that LECs list both the IXC and the IP on the customer bill, the Commission should determine whether Florida LECs currently have the software capability to print out such information on their bills. Absent such capability, a requirement that intrastate 900 services only be offered where such billing identification is available will effectively preclude the offering of intrastate 900 services. On the one hand, this will have a minimal practical effect, for most 900 calls are interstate in nature, and both the traffic, and billing

^{8/} It should be noted, however, that the toll-free number listed on the bill likely will be that of the LEC, which has contracted to serve as billing and collection agent with authority to resolve disputed charges.

^{2/} Telesphere's name already appears on the bill. Inclusion of the name of the IP will not be of significant additional benefit.

and collection for such traffic, are subject to FCC jurisdiction. On the other hand, any and all IPs providing intrastate service in Florida likely would be motivated to relocate to a different jurisdiction, thereby depriving Florida of a growing source of jobs, and also depriving LECs of revenues derived from providing billing and collection for intrastate services (which revenues in turn help to reduce the revenue requirement otherwise chargeable to general ratepayers).

Accordingly, Telesphere urges that the Commission carefully examine the technical capabilities of LECs in rendering bills for 900 services. A more prudent course might be to adopt that embodied in FCC Proposed Rule § 64.712: requiring that carriers supply, upon oral or written customer request, specified identifying information with respect to the IP.

**d. The Commission Should Delete Prohibitions With Respect To Customers Being Requested To Provide Identifying Information, And The Delivery Of Merchandise Subsequent To The Call Itself
(Proposed Rule § 25-4.110(b)(6), (10)**

The proposed rules would prohibit callers from being requested to give "a name, address, telephone number, credit card number or any database marketing information during the call," and on products or merchandise being delivered subsequent to the call. These proposals appear to be efforts to reduce practices which have been the subject of consumer complaint in the past. While such broad-brush measures may serve to marginally reduce questionable practices, however, such restrictions at the same

time also may have the unintended effect of precluding important, legitimate activities.

For example, the prohibition on requesting "database marketing information" may have the unintended effect of foreclosing a wide array of legitimate political fundraising. Political fundraising, particularly for federal office, increasingly is conducted via 900, subject to the protection of the rules of the Federal Elections Commission ("FEC"). In turn, FEC requirements include the compiling of information other than that basic information available from a phone bill, for example, the occupation of the caller and whether the call is being paid for out of corporate funds, which could not be obtained should the proposed prohibition take effect. The use of 900 numbers increasingly allows widespread participation by small and mid-sized contributors, thereby opening up the democratic process and leaving campaigns less reliant on special interests. Such efforts should not be discouraged or thwarted.

The prohibition on the supplying of merchandise subsequent to the call similarly is flawed. Such a prohibition arguably might be warranted absent a requirement that local exchange service not be disconnected for nonpayment of 900 service bills, for consumers otherwise might risk losing basic exchange service for failure to pay for what in essence is a purchase of merchandise. Under both the Commission's proposed rules and the parallel provision of the FCC's proposed rules, however, such disconnection no longer would be permitted. Furthermore, to the

extent the target of the rules are those purveyors who fail to live up to their promise to supply merchandise, such abusers should be dealt with directly and aggressively through the consumer protection agencies, including the Attorney General's office, which are charged with routing out fraud. The Commission should not attempt such enforcement indirectly through an overly broad public utilities regulation.^{10/}

At the same time, use of 900 numbers to promote merchandise -- for example, such valuable products as software delivered on an expedited basis -- has proven to be a convenient, increasingly accepted method of regularly doing business. If fraud is the target, as it properly should be, then methods should be adopted which are narrowly tailored to address it directly without impinging on the conduct of what are overwhelming legitimate and desired services.

CONCLUSION

For the foregoing reasons, Telesphere strongly urges that any final decision in this proceeding be held in abeyance pending resolution by the FCC of CC Docket No. 91-65. Thereafter, assuming that the rules proposed in this docket remain substantially parallel to those ultimately adopted at the federal

^{10/} To the extent abusive IPs previously may have benefitted by the availability of threatened service disconnection, that device no longer will be available.

level, Telesphere would support adoption of the proposed rules subject to the modifications set forth above.

Respectfully submitted,

A handwritten signature in cursive script that reads "Andrew D. Lipman (cgl)". The signature is written in dark ink and is positioned above the typed name.

Andrew D. Lipman
Jean L. Kiddoo
Robert G. Berger

SWIDLER & BERLIN
3000 K Street, N.W.
Washington, D.C. 20007
(202) 944-4834

Counsel for Telesphere Network,
Inc.

Dated: April 19, 1991

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 1991, copies of the foregoing document have been sent by first-class postage-prepaid mail to the following:

Harris Anthony
Southern Bell Telephone and
Telegraph Company
c/o Marshall Criser, III
150 S. Monroe St., Suite 400
Tallahassee, FL 32301

David Smith
Division of Legal Services
Florida Public Service
Commission
101 Est Gaines Street
Tallahassee, FL 32301

Thomas Parker
GTE Florida Incorporated
P.O. Box 110, MC 7
Tampa, FL 33601

Floyd Self
Messer, Vicker, Caparello,
French, Madsen & Lewis
P.O. Box 1876
Tallahassee, FL 32302

Alan Berg
United Telephone Company
P.O. Box 5000
Altamonte Springs, FL 32716

Joe Gillan
Gillan Associates
P.O. Box 541038
Orlando, FL 32854-1038

Michael Tye
AT&T Communications
Suite 1410
106 Est College Avenue
Tallahassee, FL 32301

Richard Melson
Hopping, Boyd, Green & Sams
P.O. Box 6526
Tallahassee, FL 32314

Dave Erwin
Mason, Erwin, Horton
1311-A Paul Russell
Suite 101
Tallahassee, FL 32301

Lee Willis
227 South Calhoun Street
P.O. Box 391
Tallahassee, FL 32302

Mickey Henry
MCI
400 Perimeter Center Terrace,
N.E., Suite 400
Atlanta, GA 30346

Joseph McGlothlin
Lawson, McWhirter, Grandoff
& Reeves
522 E. Park Ave., Suite 200
Tallahassee, FL 32301

Patrick Wiggins
Wiggins & Villacorta
P.O. Drawer 1657
Tallahassee, FL 32302

Robert A. Butterworth
Department of Legal Affairs
The Capitol
Tallahassee, FL 32399-1050

Jack Shreve
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400


Celia Petrowsky

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

FCC 91-72

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

NOTICE OF PROPOSED RULEMAKING

Adopted: March 14, 1991; Released: March 25, 1991

Comment Date: April 24, 1991

Reply Comment Date: May 24, 1991

By the Commission:

I. INTRODUCTION

1. We initiate this rulemaking proceeding to propose rules governing the provision of interstate 900 "pay-per-call" telephone services. This proceeding is prompted by concerns that current industry structure and practices often do not permit consumers to make informed decisions or to protect themselves adequately against unreasonable practices associated with some 900 services. While recognizing that many 900 service offerings provide valuable services to both consumers and businesses, we believe that unreasonable practices which utilize network capabilities to limit informed consumer choice warrant action on our part.

II. BACKGROUND

2. 900 service generally refers to a telecommunications service which allows the simultaneous calling by a large number of callers to a single "900" prefix telephone number,¹ and where the calling party is charged

¹ We use the term 900 service to refer generally to the pay-per-call service a caller accesses when he or she dials a 900 prefix telephone number. 900 numbers are ten digit numbers usually providing nationwide access. The term 900 service is also used by the interexchange carriers in their tariffs to refer to their underlying basic transmission service offering. For example, AT&T describes its Dial-It 900 Service as "a telecommunication service which permits simultaneous calling by a large number of Callers to a single telephone number utilizing the telecommunications network." AT&T Tariff F.C.C. No. 1, Page 136. MCI Telecommunications Corporation describes its 900 Service as "an inbound, long distance, voice-grade telecommunications

for the call at a rate different from, and often higher than, that charged for an ordinary long distance call. While 900 service has been in existence for over a decade, it has only been within the last several years that competitive interactive services have been offered.²

3. The provision of 900 service typically involves four parties: first, the interexchange carrier (IXC) who provides the tariffed telecommunications transmission service and non-tariffed billing and collection service; second, the information provider (IP) or sponsor who provides an enhanced service as that term is defined in the rules³ and who supplies the information, product or entertainment source, and sets the price to be charged the caller; third, the local exchange carrier (LEC) who, through an arrangement with the IXC, provides billing and collection services; and fourth, the service bureau who takes service from the IXC on behalf of the information provider.⁴

4. Many 900 services provide valuable assistance and information

service that permits callers to place long distance calls to Customer's station in one location from stations in diverse geographical service areas." MCI Tariff F.C.C. No. 1, Page No. 19.14. When referring to the latter service provided by the interexchange carrier, we will use the term 900 transmission service.

² For a discussion of some early applications of 900 service, see Reports, Carriers and Code Assignments for 800 Service, 900 Service and Carrier Identification Codes, Industry Analysis Division, Federal Communications Commission, October 31, 1990. For a discussion of the past regulatory treatment of AT&T 900 Dial-It Services see AT&T 900 Dial-It Services and Third Party Billing and Collection Services, 4 FCC Rcd 3429 (Com. Car. Bur. 1989) (AT&T 900 Order).

³ 47 C.F.R. § 64.702(a). The Commission first considered the proper regulatory treatment of mass calling services, including 900 services, in the Second Computer Inquiry (Computer II). See In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II) 77 FCC 2d 384 (1980), recon., 84 FCC 2d 50 (1981), aff'd sub nom. Computer and Communications Industry Ass'n v. FCC, 593 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983). It distinguished basic transmission capacity for the movement of information between two points (basic service), from enhanced services which utilize underlying basic service for the provision of various information services, including information storage and retrieval services. Computer II Reconsideration, 34 FCC 2d 50, 53-55. In the Computer II proceeding, the Commission concluded that the provision of enhanced services should not be subject to rate and service provisions of Title II of the Act.

⁴ The service bureau may be affiliated with the IXC. Often the service bureau supplies the equipment to the IP, and by aggregating the traffic of many IPs, offers service to the IP at a rate less than the IP could get directly from the IXC.

to residential and business customers on a timely and economical basis. Currently, consumers and businesses can access a growing variety of 900 services which, in terms of quality of service and price, are responsive to the needs of many U.S. consumers. There are a number of different types of 900 service available today, including live, informational, interactive and polling services. The specific applications are quite varied. A caller may use the service to obtain stock quotations, crossword puzzle clues, travel information or sports scores. The service may be used for charitable or political fundraising. A customer may gain access to remote data bases, bulletin board services, service representatives, chat lines, and adult message services. Some computer software companies provide user support for their software products through a 900 number on a charge-per-minute basis. Similarly, law and consulting firms offer legal advice and consultations via 900 numbers on either a charge-per-minute or flat-fee basis. 900 service programs range from call count services where "votes" are tallied depending on which of more than one 900 number is dialed; to mass announcement services which play the same prerecorded program for all callers; to live services; to sophisticated database access programs whereby a caller can selectively access specific information.

III. CONSUMER COMPLAINTS CONCERNING 900 SERVICES

5. As 900 services have evolved over the past few years to include more service features and service providers, this Commission has witnessed a dramatic increase in the number of related consumer complaints. Since January 1988, we have received over 2,000 written complaints and inquiries regarding interstate 900 services. One of the practices frequently complained about has involved allegations of false or deceptive disclosure about rates and products. In these cases, consumers typically complain that they were either not told what the cost of the call would be or, if they were quoted a rate, that the disclosure was either inadequate or they were charged rates different from those quoted. Many complainants describe first time experiences with 900 services where the charges typically ranged between \$10 to \$50 for a one minute telephone call, far exceeding anything they reasonably expected to pay for the services or merchandise provided. Others have complained that the information provider promised to send specific goods or information, such as job leads or credit card application kits, but failed to deliver as promised.

6. Another category of complaints involves charges for calls the consumer denied having made or where someone -- often children -- made the call from the consumer's telephone without permission. Many consumers have also complained that they were prematurely disconnected from 900 programs but were charged the full amount; or that they had to listen to the program more than once because the information was provided too rapidly or the tape quality was poor. These complainants stated that the inferior technical quality caused them to call back or stay on the line longer with resultant higher bills for the service.

7. Some programs about which consumers have frequently complained

relate to awards or sweepstakes. Often, consumers received either a postcard or other mail solicitation or a telephone solicitation call informing them that they had won or were eligible to win a prize which could be redeemed by calling a 900 number; in some cases the solicitation did not disclose the price of the 900 call. In addition to the complaints filed with this Commission, other Federal and State agencies have received and investigated complaints regarding 900 service practices subject to their jurisdiction. For example, complaints about unfair and deceptive practices by information providers have been investigated by the Federal Trade Commission, who has jurisdiction over such practices. Some of the complaints before us allege such practices. In those instances, we have forwarded the complaints to the appropriate State or Federal agency.

IV. DISCUSSION

8. The widespread consumer dissatisfaction over the rates and practices of many 900 service providers, as evidenced by numerous complaints filed with this Commission and with other Federal and State agencies, indicates that regulation in this area is warranted. Review of those complaints leads us tentatively to conclude that consumers are not getting adequate information regarding the charges associated with a 900 call. We also believe that industry practices have caused consumer confusion regarding who is providing the service associated with the 900 service charge, and to whom consumers should complain about the charges. We believe that the common carriers involved in the provision of interstate 900 transmission service should take steps to ensure that consumers have access to this information so that they can make informed decisions related to these calls. Accordingly, we tentatively propose that IXCs, as part of their interstate 900 transmission service offerings, require that price and product or service identification information be given before a consumer incurs a charge for a 900 call. We also tentatively conclude that LECs, at no charge to consumers, must offer the option of blocking all 900 calls from a subscriber's telephones, where technically feasible. Finally, we conclude that a subscriber's basic telephone service should not be disconnected for failure to pay interstate 900 service charges.

A. Regulation of Basic Transmission Services

9. The Communications Act mandates that all practices for and in connection with interstate and foreign communications services shall be just and reasonable. 47 C.F.R. § 201. A fundamental component of all interstate 900 service is the basic transmission and related service provided by the interexchange carrier. Pursuant to the Act's mandate that all practices in connection with communication services be reasonable, we tentatively conclude that an interexchange carrier's offering of 900 transmission service must include the terms and conditions set forth below. We tentatively find it to be an unreasonable practice in violation of Section 201 for interexchange carriers to offer 900 transmission service by tariff or contract without requiring that callers be given information regarding the charges and nature of the calls associated with the carriers' 900 transmission service offerings and the opportunity to act based on that information; and providing the identity of the information provider.

1. Introductory Disclosure Message or Preamble

10. Many of the complaints before us assert that the caller had insufficient or incorrect information regarding the cost or nature of the call. We conclude that callers should have information sufficient to make an informed decision about whether to incur a charge for a 900 service call.⁵ We believe that information should be provided to the caller in the form of a disclosure message or preamble at the beginning of the call which effectively notifies callers of the cost of the call and provides an accurate description of what the caller will receive. Further, once having received that information, the caller should have the opportunity to hang up without incurring a charge. This ensures that consumers know what charges they will incur and also allows the caller to disconnect without charge for incorrectly dialed numbers, or if they change their minds. Proposed rule Section 64.711 would require common carriers to include as a term and condition of taking 900 transmission service that the information provider's programs begin with such an introductory disclosure message. The rule would also require common carriers to prohibit any billing of charges to a caller until after the preamble has ended and the caller has had the opportunity to hang-up without incurring any charges. We would expect the preamble to contain clear and concise language and be of reasonable quality and duration. We seek comment on the best way to effectuate this expectation and how to enforce this requirement.

11. We recognize that the 900 services industry offers a wide variety of programs, some of which attract repeat callers. We seek comment therefore on whether repeat callers should be allowed to bypass the preamble and under what conditions. For example, when the charge for the call has increased since the caller's last use, should bypass not be allowed. We also invite comment on whether preambles should be required of all service offerings or whether some exceptions should be made, for example, in the case of polling services, when information is provided in a non-verbal format, or when the charge to the caller is nominal.

12. A number of complaints were filed by parents alleging that their children made the call either without permission or without knowledge of an associated charge. In light of the special concerns regarding 900 offerings aimed at or likely to be of interest to children,⁶ we propose that

⁵ A number of consumers have complained about allegedly fraudulent practices by information providers. 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.

⁶ We propose to define children's 900 offerings as those services aimed at or likely to be of interest to children under the age of eighteen. We seek comment on whether another age would be more appropriate and also on what criteria should be used to determine what constitutes 900 offerings aimed at

the preamble for such offerings also include a statement that children must obtain the permission of a parent before placing the call and that if they do not have their parents' permission they must hang up.

13. We are aware that a preamble requirement could result in an increase in the cost to the IP of providing service. For example, billing time would not begin until after the end of the preamble. Additionally, the preamble might result in callers, who might otherwise have stayed on the line and incurred a charge, disconnecting during the disclosure message. On the other hand, the preamble would also probably result in less uncollectible bills for calls and in less customer relations problems. We seek comment on the costs and benefit associated with the use of a preamble, whether there should be exceptions to this requirement and any technical problems that might result from such a requirement.

14. The purpose of the preamble is to provide callers with both the information necessary to make an informed decision and the time necessary to act on that information. While we have not proposed to mandate specific language, we seek comment on whether that is necessary and whether a statement such as the following would provide sufficient information: "Thank you for calling the Sports Line for sports scores. A 50 cent per minute charge will appear on your local phone bill beginning after the tone." We seek comment on these and other related issues.

2. Identity of Information Provider

15. Proposed Section 64.712 would require each interexchange carrier offering basic 900 transmission service to provide, upon verbal or written request, the name, address and customer service telephone number of the information provider (and any other entity to whom the caller might be responsible for paying the 900 service charge). In many cases, the IXC's customer of record is a service bureau which obtains 900 transmission and billing and collection service from IXCs and then markets that capacity to information providers. In such cases, the IXC's customer of record -- the service bureau -- is frequently not the entity with legal responsibility for the program or the ultimate power to adjust the customer's bill. We believe that the provision of the name of the IXC's customer alone, which may only be a service bureau and not the information provider, fails to give the caller an opportunity to confront and seek redress from the entity which is responsible for imposing the charges. This proposed rule would require that the interexchange carrier ascertain who the actual provider of the 900 services program is and provide that information to a customer upon request. We seek comments on the feasibility of this proposal in terms of costs and burdens and whether some less burdensome requirement would be more appropriate.

3. Other Practices

16. There have been complaints that callers to some 900 services

or likely to be of interest to children.

were disconnected before the services were completed or that the audio volume was so low or the instructions given so rapidly that callers had to listen to the 900 services message several times to understand the instructions. Similar complaints allege that the call answering equipment refused to accept properly keyed-in responses. The common result in all these instances is that the caller is kept on the line longer or is forced to call back. In either event, both the charges to the caller and the information provider's revenue are increased by poor quality. The Commission requests comments on the extent to which such practices occur and whether we should require specific terms and conditions directed at such problems.

17. We have also received complaints which appear to involve other unreasonable practices that prevent informed choice. For example, there have been complaints regarding automated collect calls. The calls are often generated by an automatic dialer and after answering and listening to a portion of the message, the called party is told to push a number on a touchtone keypad to receive more information. In a similar scenario, the called party may not even be required to push a number but merely to remain on the line. In both cases the called party allegedly was subsequently charged for a 900 service call, and in at least one case, without any notice that a charge would be incurred. Similarly, we have received information about tone generating devices whereby the audio portion of a childrens television program generates the tones necessary to complete a call to a 900 service program. We seek comment on how widespread these practices are, how they are accomplished technically, and whether it would be in the public interest to restrict or prohibit such practices in interstate communications.

18. Another area of complaints dealing with automatic dialers concerns the phenomenon of "line seizing." Whether or not these calls are soliciting 900 callbacks, some consumers have informed us that calls from automatic dialers sometimes remain on the line long after the consumer has attempted to disconnect the call. Several manufacturers of autodialing equipment have denied line seizing is a matter of concern, claiming that newer equipment disconnects immediately upon receiving a disconnect signal from the called party. Even with older equipment, both telephone companies and equipment manufacturers allege seizing ends within 10 to no more than 25 seconds. Moreover, we understand some states require that autodialers operating within these states disconnect within 30 seconds, suggesting that equipment manufacturers intending to appeal to a national market must meet those requirements. We ask parties to comment on whether, and the extent to which, line seizing is a problem both with regard to 900 services and generally. Parties should discuss the influence of both autodialing and telephone network equipment on any problem of line seizure. We seek comment on the costs and benefits of the Commission mandating disconnect and what the period of time should be. We invite parties to call out attention to specific cases of line seizing so we might determine the facts involved.

B. Regulation of Blocking

19. We propose and seek comment on a requirement that LECs, as part of their interstate access service, offer free blocking of interstate 900 services, where technically feasible, to all subscribers who request it.

Many of the complaints allege that persons without the subscriber's permission made calls to 900 numbers. We believe that subscribers should have the opportunity to block all such calls from their telephones. We seek comment on whether we should specifically require that blocking be made available upon request and at no cost under three circumstances. First, to all subscribers for an initial period of time when the blocking service is first made available. Second, to all new subscribers when they first obtain service. Third, to all subscribers who dispute or question a 900 service charge for the first time. For subscribers other than those who fall within the three categories enumerated above, we tentatively conclude that LECs should be able to impose reasonable one-time charges for interstate 900 blocking service. We also propose that LECs not be permitted to impose a monthly service fee for interstate 900 blocking for any customer. We note that many LECs already offer blocking at no charge.⁷ We invite comment also on whether this free blocking requirement should be restricted to residential customers or extended to business customers. We seek comment on the technical problems and costs which this proposal would impose on affected parties. We also seek comment on how the costs of providing blocking service should be recovered.

C. Disconnection Restrictions

20. We believe that a telephone subscriber's failure to pay an interstate 900 service charge should not threaten his or her ability to have basic telephone service. The Commission has held that it has statutory authority to regulate disconnection of a subscriber's telephone service for nonpayment of charges, and to preempt state regulation of the terms and conditions under which disconnection will be allowed.⁸ The Commission has deferred to the states, however, allowing them to decide whether and under what conditions LECs will be able to disconnect service on behalf of IXCs.⁹ With regard to the payment of interstate 900 service charges, we tentatively conclude that we should impose a uniform national policy prohibiting cut-offs of basic exchange and interexchange service for failure to pay interstate 900 service charges.¹⁰ 900 service charges often include charges for service

⁷ Blocking of 900 services is either planned or currently available in all states served by US West, Bell Atlantic, BellSouth and Ameritech. Also Pacific Bell has made it available in California. It is not free in all these areas, may not be available in all areas served by these companies and may not be available from independent LECs.

⁸ See Public Service Commission of Maryland, 4 FCC Rcd 4000, 4006 (1989), aff'd, 909 F.2d 1510 (1990).

⁹ See Matter of Detariffing of Billing and Collection Services, 102 FCC Rcd 1150 (1986).

¹⁰ The Common Carrier Bureau previously dealt with this question in 1989 in its AT&T 900 Order, and ordered AT&T to take adequate steps to ensure that communications services to callers are not disconnected for failure to pay charges associated with one of its 900 services. AT&T 900 Order 4 FCC Rcd at

other than basic communications service. We believe that access to basic telecommunications services should not be jeopardized by non-payment of charges that are unrelated to transmission services. Proposed Section 64.714 would require that IXCs or LECs not disconnect a subscriber's basic telephone service for failure to pay interstate 900 services charges. We seek comment on this requirement.

D. Scope

21. The requirements proposed here are intended to apply to interstate 900 Services. We seek comment on whether they should also apply to interstate 700, 976, 540 and other similar services.¹¹ We note that 800 services historically have been offered toll free to the caller. This may not always be the case, however. We seek comment, therefore, on whether the proposed requirements should also apply to 800 services in those instances where the call is not free to the caller. As proposed, the requirements apply to the provision of all 900 services. We request comment on whether the proposed rules should apply if the 900 call is offered free to the consumer. Finally, we seek comment on what industry practices are regarding consumer dispute resolutions and whether such practices are adequate or effective in resolving consumer disputes.

VI. PAPERWORK REDUCTION ACT

22. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose new or modified information collection requirements on the public.

VII. REGULATORY FLEXIBILITY ACT INITIAL ANALYSIS

23. Reason for action. The Commission is issuing this Notice of Proposed Rulemaking to protect consumers from unreasonable practices related to interstate 900 service and to ensure consumers have the opportunity to make informed choices in placing interstate 900 services calls.

24. Objectives. The objective of this Notice of Proposed Rulemaking is to initiate a proceeding to prescribe regulations that protect consumers from unfair and unreasonable practices related to their use of interstate 900 services and that ensure that consumers have the opportunity to make informed choices in making such calls.

25. Legal basis. Sections 1, 4(i), 4(j), 201-205, 218, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 218, 303(r).

3433.

¹¹ Interstate (ten digit) pay-per-call numbers may include 700 prefixes. Local (seven digit) pay-per-call numbers include 976 or 540 prefixes.

26. **Description, potential impact, and number of small entities affected.** The proposed rules will require that entities in the 900 services industry provide information that is necessary for consumers to make knowledgeable choices among services. The rules will also help to eliminate certain practices and charges that impair a consumer's ability to make informed choices. Small entities may feel some economic impact due to the proposed requirements.

27. **Reporting, recordkeeping, and other compliance requirements.** The proposed rules require reporting in the form of the disclosure by 900 service providers to interexchange carriers of certain information regarding their identities and their services.

28. **Federal rules which overlap, duplicate, or conflict with the Commission's proposal.** None.

29. **Any significant alternatives minimizing impact on small entities and consistent with stated objectives.** We shall consider any alternatives suggested in comments that are consistent with the public interest obligations imposed by the Communications Act.

30. **Comments are solicited.** We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as responses to this Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. § 601, *et seq.*

VIII. EX PARTE REQUIREMENTS

31. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that ex parte presentations are permitted except during the Sunshine Agenda period. See generally Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f) of the Commission's Rules, 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, ex parte or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203 of the Commission's Rules, 47 C.F.R. § 1.1203.

32. In general, an ex parte presentation is any presentation directed to the merits or outcome of the proceeding made to decisionmaking

personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advanced notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b) of the Commission's Rules, 47 C.F.R. § 1.1202(b). Any person who makes or submits a written ex parte presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labelled or captioned as an ex parte presentation.

33. Any person who is making an oral ex parte presentation presents data or arguments not already reflected in the person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary, with a copy to the Commissioner or staff member involved, which summarizes the data and arguments. The memorandum, as well as any transmittal letter, must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an ex parte presentation. Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206.

34. All relevant and timely comments and reply comments will be considered by this Commission. In reaching our decision, this Commission may take into account information and ideas not contained in the comments, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of this Commission's reliance on such information is noted in the Order.

IX. CONCLUSION AND ORDERING CLAUSES

35. The rules proposed in this NPRM are intended to protect consumers from unfair and unreasonable practices related to their use of interstate 900 services and to ensure that consumers have the opportunity to make informed choices in placing such calls. We expect the proposed rules to help free consumers from charges they did not agree to and from unreasonable practices utilizing network capabilities to limit informed consumer choice. These rules will also help foster a marketplace environment in which 900 service providers compete based on the merits of their services rather than capitalizing on consumer confusion and lack of knowledge. In submitting comments on these proposed rules, interested parties should note that we are particularly interested in evidence regarding the technical and operational complexities of implementing the proposed rules. We are also interested in the economic impact of implementation in terms of costs to or burdens on consumers, interexchange carriers, LECs, service bureaus and information providers.

36. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 218, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(1), 154(j), 201-205, 218, 303(r), that a

NOTICE OF PROPOSED RULEMAKING IS ISSUED, proposing the amendment of 47 C.F.R. Parts 64 as set forth in Appendix B.

37. IT IS FURTHER ORDERED, pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, that all interested parties may file comments on the matters discussed in this NPRM and on the proposed rules contained in Appendix E by April 24, 1991, and reply comments by May 24, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

38. IT IS FURTHER ORDERED that the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

39. IT IS FURTHER ORDERED that the Secretary shall cause a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a) (1981). The Secretary shall also cause a summary of this NPRM to appear in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

**APPENDIX
PROPOSED RULES**

It is proposed that Part 64 of Title 47 of the Code of Federal Regulations be amended as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.

2. New sections 64.710 through 64.714 are added to read as follows:

§ 64.710 Limitations on the Provision of Pay-Per-Call Services

Common carriers may provide interstate 900 transmission service only under the terms and conditions required by §§ 64.711 through 64.714.

§ 64.711 Preamble

(a) Programs must begin with a disclosure message that clearly states the cost of the call. The preamble must disclose all per call charges. 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 length of program because of his ability to select portions of the program by entering responses on a touchtone keypad or other device;

(b) The preamble must accurately describe the information, product or service which the caller will receive for the fee;

(c) 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;

(d) The preamble associated with interstate 900 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; and

(e) A caller may be provided the means 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.

§ 64.712 Identification of Information Providers

The carrier providing interstate 900 transmission service shall provide the name, address and customer service telephone number of any information provider to whom it provides 900 service, either directly or through another entity such as a service bureau, as well as that information for any other entity to whom the caller might be responsible for paying the 900 service charge. The carrier shall provide that information upon verbal or written request.

§ 64.713 Blocking of 900 Service

Local exchange carriers must offer to 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.

§ 64.714 No Disconnection for Failure to Pay 900 Service Charges

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.

900 NUMBERS ARE BEING BORN AGAIN

Legitimate business wants to elbow aside the frivolous and sleazy

Move over, 976-BABE. Make way for 900-INFOLAW—the number of Tele-Lawyer Inc. In high-tech offices in Huntington Beach, Calif., Tele-Lawyer's eight attorneys sit wearing operator-style headsets and dispense advice on divorce, bankruptcy, and other legal matters to consumers and businesspeople who phone in. The \$3-a-minute charge is added to customers' regular phone bills, making collection a breeze. Business is booming—and not just from callers who can't afford conventional legal help. Tele-Lawyer President Michael A. Cane claims that one high-ranking executive phones in several times a week, because it's easier than using his company's legal department.

Sex, entertainment, sports, and gab lines still dominate the 900 numbers. But businesses ranging from software publishers to credit-reporting agencies to colleges are suddenly waking up to the potential of pay-per-call phone service. Converting in some cases from toll-free 800 lines, they're using 900 numbers to sell information, customer support services, and occasionally product samples or coupons. Local phone companies handle the billing, and the list of callers provides the marketer with a good target for follow-up sales. American Telephone & Telegraph Co. says that 40% of the lines on its MultiQuest 900 service are now business-to-consumer or business-to-business, up from 7% as recently as January. "This is going to revolutionize business: how services are delivered and how products are bought and sold," says Cane.

It may, however, be a gradual revolution. Businesses are coming up with new ways to use 900 lines every week, and

phone companies are eager to help them. But pay-per-call's sleazy image has inspired efforts by regulators and phone companies to protect the public from rip-off artists and pornography. In the process, legitimate operators of 900 numbers are being hobbled. For example, limits on the price per minute of a call—intended to keep consumers from racking up enormous bills—discourage com-



PROCTER & GAMBLE CO. EMPLOYEES USE 900 LINES TO HANDLE TECHNICAL QUERIES

panies from offering expensive information services over the phone. And businesses that block calls to 900 numbers and 976 exchanges to keep employees from calling to check on their lottery tickets can't get business services such as dial-up credit reports either. As many as 60% of large companies block their employees' access to 900 numbers, estimates one information provider.

That gives pause to businesses that want to market their wares via pay-per-call. "When I hear there's another Senate hearing, I think: 'Gosh, I hope they don't make things tougher than it already is for the good guys,'" says Dick Schwartz, president of Crossroads Com-

Schwartz plans to launch a 900 line for high school students on Oct. 1 that will feature recruitment spots by more than 300 colleges, and he's hoping services such as his will eventually overshadow the phony, the frivolous, and the colorful. "The next five years, the product will make or break this business."

TAKING OFF. It's a young business whose direction nobody predicted. AT&T first offered 900 service in 1980, but could only count now many times a number was called. Two such lines were used to determine a winner in the Carter-Reagan TV debates. The business started to take off in 1987, when Telephone Communications Inc. launched a long-distance carrier, launched a national 900 service that for the first time permitted interaction by callers, either with a live operator or with a computerized voice-playback system. AT&T, U.S. Sprint Communications, and MCI Communications introduced interactive services last year.

Early business use of interactive 900 numbers included such consumer-product companies: Procter & Gamble and Anheuser-Busch. These marketers found people willing to pay from 25¢ to \$2.50 for a 900 call, either to enter a sweepstakes or to select a discount coupon by return mail, or both. The payoff for the marketer was a database of serious prospects, not casual callers who would dial an 800 number but wouldn't pay for a call. Publishers soon entered the fray. *Wall Street Journal*

offers stock quotes for 75¢ a minute. *Sports Illustrated* sells scores and strategy reports for 79¢ a minute. *The York Times* will give out crossword hints for 50¢ a minute, and *Consumer Reports* will tell you the value of a specific year and model used car for \$1 a minute. First-minute charges for services are usually a bit higher.

In the past year, 900 has also emerged as a tool for businesses to sell information and services to one another. In June, WTC Information Systems Co. of Novato, Calif., started selling TRW Business Credit Reports on company calls billed as a 900 call. The reports ar-

by mail, facsimile, or overnight express. New York insurance agents can get computerized voice reports on the state motor-vehicle records of applicants, and Lotus 1-2-3 spreadsheet users can have a software technician solve problems by phone for \$2 a minute.

Businesses find it an efficient system. With the meter running, callers to 900 numbers tend to get right to the point.

"There's no talk of the weather or baseball scores," says Edward P. Tenney, general manager for service at machine-tool builder Pratt & Whitney Co. in West Hartford, Conn., which has engineers on the line to help customers with technical queries.

'SOLE MISSION.' A recent twist is the combination of 900 calling and facsimile machines, as in MTC's faxed credit reports. Using faxes, information providers can distribute complex data that could not reasonably be transmitted verbally. Callers to Traf Fax Inc. in Marina

del Rey, Calif., can get maps of Los Angeles traffic jams every 10 minutes.

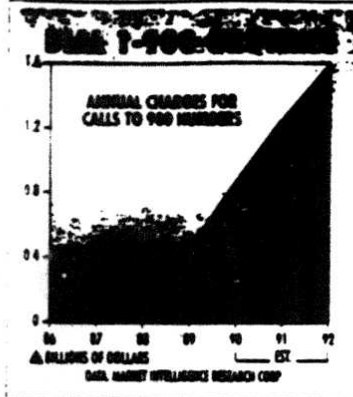
Phone companies are working overtime to help businesses figure out how to use 900 numbers in marketing and service. "My organization's sole mission is to get this in the hands of business," says Andrea C. West, national marketing manager for AT&T's MultiQuest. No wonder. On every 900 call it handles, AT&T charges 30¢ for the first minute and 25¢ for each additional minute. If it also acts as an agent to straighten out billing and collection problems, it tacks an additional 10% onto the retail price of the call.

Before phone companies really cash in on business-oriented 900 service, however, they may have to clean up pay-per-call's seamy side. While their reputation is not as soiled as those of local 976 lines, long-distance 900 numbers are a potential bonanza for pornographers and

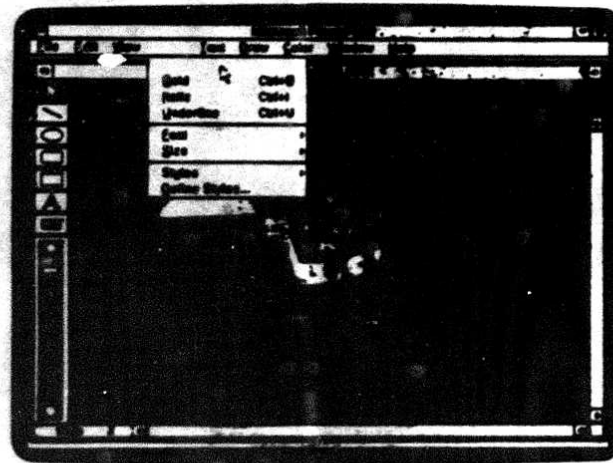
con artists. One 900 line promised guaranteed immediate issue credit cards for a \$49.95 call. Those who dialed in didn't get a credit card, but were told to send an additional \$30 processing fee to get an "IHS card" allowing them to shop only from the International Home Shopper catalog.

Regulators and phone companies are trying to curb such abuses. But so far nobody has come up with a way to weed out just the undesirable services. Rather than attempting to censor offenders—and risk First Amendment problems—some jurisdictions impose harsh restrictions on all pay-per-call services. In an effort to protect consumers in its service area, for example, U.S. West Inc. won't bill for 900 lines that collect money for charities, conduct live chat lines, or arrange for delivery of information via fax. The company is considered the toughest of the seven regional Bells.

Similarly, California's Public Utilities Commission, fearing that state residents could be victimized by overcharges, ruled that services offering intrastate 900 numbers could charge no more than \$1 a minute after the first minute. That helped parents of teen-agers avoid get-



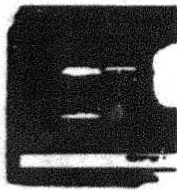
It's time you took presenta



Introducing Microsoft PowerPoint for Windows.



What you see on-screen is what you get.



With our new Microsoft PowerPoint® for Windows™ software, you can create powerful presentations on your PC. And you can do it single-handedly.

Because our program operates under the Windows version 3.0 environment, you'll see exactly what your output will look like while you're working on it.

PowerPoint is also very simple to use.

Customers outside the 50 United States, call (800) 541-2882, Dept. M08. In Canada, call (416) 673-7538. Outside the U.S. and Canada, call (203) 882-8882. © Copyright 1990 Microsoft Corporation. All rights reserved.

guards for didn't send to get shop Shop- es are to far weed vices. or of- ment npose il ser- amers U. S. that it live ry of s con- egion- tilities dents rges. astate than That i get-

ting thousand-dollar phone bills from 900 gab lines. But the regulation backfired. Some of the biggest victims of the policy have been legitimate information services that can't break even at such a low rate. Since state commissions have no authority over interstate calls, Tele-Lawyer got around the ban by routing 900 calls through a service in Reno, Nev. The dollar-a-minute ceiling "doesn't keep out adult [porn lines]. It doesn't keep out gab. It keeps out business," complains Tele-Lawyer's Cane

HIGH STAKES. With confusing and conflicting regulations across the country, businesses are finding it difficult to put together national 900-number marketing plans. Equipment makers are losing out, too: "We've had a little bit of trouble selling to additional service bureaus because everybody's studying the regulatory environment," says Brian A. Schoenthaler, director of public and investor relations

JUST A PHONE CALL AWAY

A sampling of 900-number business services

Name/Number	Content	Cost
LIFEQUOTE INSURANCE SHOPPING SYSTEM 1-900-246-LIFE	Quotes on life insurance products	95¢ a minute
CONSUMER REPORTS USED CAR PRICE SERVICE 1-900-258-2886	Gives regional resale price for any '82 to '89 vehicle	\$1.50 a minute
CAMPUS SEARCHLINE 1-900-420-1212	Three-minute recruitment recordings from more than 300 colleges	\$2.50
PC YELLOW PAGES 1-900-860-9210	Business addresses by Zip code	\$2 first minute; \$1 each additional minute
TRW BUSINESS CREDIT REPORT 1-900-234-4TRW	TRW credit reports on more than 10 million businesses	\$28 per report
JOURNALPHONE 1-900-JOURNAL	Stock quotes and other market data; news and sports	85¢ first minute; 75¢ each additional minute

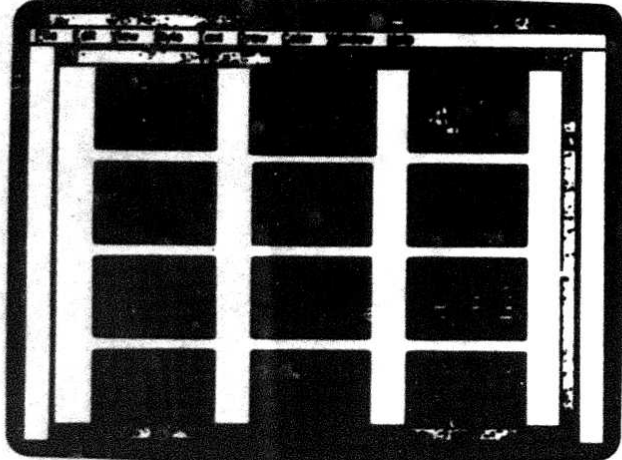
DATA: EN

for Brite Voice Systems Inc. in Wichita, which sells voice-response equipment, often to service bureaus that handle 900-number lines for other companies. With so much money at stake, no one wants to let regulation strangle 900 lines. For now, phone companies are evolving their rules as they go. AT&T, for example, doesn't allow companies to use

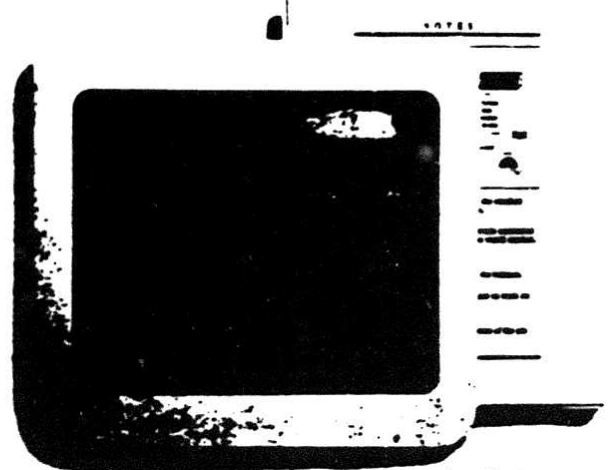
incredible 2 million subscribers in its first nine months. Presumably, those glossy giveaways will make 2 million soap opera buffs more loyal to ABC's offerings. Results like that are why 900 lines are getting a ringing endorsement from business.
By Larry Armstrong in Los Angeles and Peter Coy in New York

The 400-page magazine for "media analysis" when ABC Television Network wanted to see its *Episodes* magazine, which reports on TV-age celebrities, featured that the bimonthly subscription was free—just set the price of the issue at \$3, to cover postage and handling. Operators told callers a little about the magazine to comply with an AT&T rule that information must be transmitted during a "TV" call. AT&T, in fact, feared that we were offering information on daytime dramas, says Publisher Amy Dorn Kopelein. The effort was worth it: *Episodes* racked up an

Presentations into your own hands.



View and work with entire presentations at once.



Create everything from overheads to handouts.

because it offers text, drawing and charting in a unique "presentation management" format. Putting everything right at your fingertips. It can even utilize files that have been created on PowerPoint for the Mac. So before

you give your next presentation, give new PowerPoint a try. And give yourself a hand.

Microsoft
Making it all make sense

© 1990 Microsoft Corporation. PowerPoint and the Microsoft logo are registered trademarks and Windows and Making it all make sense are trademarks of Microsoft Corporation. Mac is a registered trademark of Apple Computer, Inc.

TELESPHERE

INFORMATION SERVICES 900

SERVICE POLICY

Revised July 1, 1990

1 of 2

GENERAL

Telesphere reserves the right to refuse service to Information Providers ("IPs") for programs that are deemed detrimental to the public image of Telesphere. Judgement of detrimental programs is in the sole discretion of Telesphere.

Telesphere will not provide network access to Information Providers for programs that are sexually explicit. Telesphere will comply with Section 223(b), as amended, of the Communications Act by prohibiting transmission of obscene communication for commercial purpose in violation of the statute. Information Providers are obligated to comply with FCC rules with regard to obscene and/or indecent communications.

Telesphere will restrict network access to Information Providers for programs directed toward children under 14 years of age. Children's programming which is free to callers, or incurs only nominal charges, will be accepted provided that programs are not detrimental to the public interest in the judgement of Telesphere.

IPs will comply with FCC regulations, tariff requirements and agreements of Bell Operating Companies ("BOCs"), independent telephone companies, and contractual agreements between telephone companies and Telesphere. When such tariffs or agreements specify certain requirements, Information Providers shall comply with BOC tariffs as appropriate.

Except as expressly set out in Telesphere's policies to the contrary Information Providers do not have ownership or proprietary rights to the Telesphere 900 program number assigned or to calls or revenue associated with the number. Further, neither the 900 program number nor the benefits and liabilities associated with the program number can be transferred by the Information Provider without the express written consent of Telesphere.

ADVERTISING

Information Providers are required to clearly and conspicuously identify the charges for 900 calls in all advertising and/or promotion of services. Telesphere may refuse network access to Information Providers for program advertising that is deemed detrimental to the public image of Telesphere. Judgement of detrimental program advertising is the sole discretion of Telesphere.

SERVICE POLICY

Revised July 1, 1990

2 of 2

PREAMBLE

All calls to programs utilizing preambles (optional) are billable when the call durations exceed 18 seconds. Calls which terminate under 18 seconds will not be billed to the end-user.

Preambles for GAB Services are mandatory and must inform the telephone caller of the cost of the service, the type or content of the service, and the opportunity to disconnect without charge.

ADDITIONAL TERMS

End-user charges will be rounded to the next full minute for billing purposes. IPs are responsible for determining applicable end-user charges and for notifying Telesphere of those charges.

Telesphere usage charges to IPs for National 900SM and Dynamic 900SM are measured in six (6) second increments from the time each call is received at the serving Telesphere switch until call disconnect. Telesphere usage charges for DataCap 900SM are measured in whole minute increments.

IPs are required to provide monitors on a 24 hour basis for GAB programs.

If your program offers a good or service beyond the content of the call, certain billing restrictions may apply. Please contact your Telesphere representative for details.

IP is solely responsible for the content and quality of his/her programs and indemnifies and holds Telesphere harmless from all claims arising from, or relating to, IP's programs. IP and Telesphere are independent contractors and not agents of each other. No agency or fiduciary relationship is here expressed or implied.

Telesphere specifically disclaims any and all liability relating to, or associated with network failure, inability to bill or complete calls through local networks, and/or equipment failure.

In no event shall Telesphere be liable to IPs for any indirect, special, incidental, consequential or punitive damages of any kind, including lost profits (whether or not Telesphere has been advised of the possibility of such loss or damage), by reason of any act or omission in its performance of the services described hereunder. Telesphere shall have no liability for delays or damages due to: fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, acts or omissions of any common carrier or its agent (including the LECs) or other causes beyond Telesphere's control whether or not similar to the foregoing. In all cases, except for bodily injury, Telesphere's liability shall be limited to proven direct damages not to exceed \$100,000.

The Information Provider, by use of Telesphere 900 Services, and by its subscription thereof, hereby consents to these provisions.

Prices and conditions subject to change.

Code of Responsibility of the National Association for Information Services

Information Provider (IP) members of the National Association for Information Services recognize an obligation to their customers to provide quality services on reasonable terms. In so doing, they will adhere to the following requirements.

1. All charges for pay-per-call services will be clearly and conspicuously identified in all advertising and other promotional materials.
2. The name of the information provider or sponsor shall appear in all display or broadcast advertising and promotional materials.
3. Advertisements and promotional materials shall not be misleading, deceptive or unfair.
4. Programming shall not contain false, misleading or untimely information and shall provide value proportionate to its price.
5. Obscene programming and programming containing explicit or implicit descriptions of sexual conduct, the purpose of which is to arouse, will not be provided.
6. Programming which entices or condones unlawful conduct or acts of violence will not be provided.
7. Advertising for children's pay-per-call services shall clearly indicate, in language understandable to children, that parent's or guardian's permission must be obtained before calls are placed. Pay-per-call programming which is directed to children shall not include the enticement of a gift or premium.
8. Fundraising activities will include a statement identifying the fundraiser, the name of the charity or political candidate and the purpose for which the funds are being raised.
9. All pay-per-call programming, including games, contests and sweepstakes, shall comply with all applicable federal and state laws and regulations.
10. Consumer inquiries and complaints will be resolved in a reasonable and timely manner.

NAIS CODE OF RESPONSIBILITY and COMPLIANCE GUIDELINES

The following includes a restatement of the NAIS Code of Responsibility, requirements to which Information Provider (IP) members of NAIS must adhere. The discussion which follows each Code requirement is intended to clarify those requirements and to set forth guidelines for their implementation.

- 1. All charges for pay-per-call services will be clearly and conspicuously identified in all advertising and other promotional materials.**

The NAIS Code of Responsibility provisions on advertising apply to all print and broadcast advertising as well as all promotional materials for pay-per-call services whether purchased, developed or produced by the information provider or its agent.

Advertising of price shall include the price per call for flat-rated services and the price per minute for services priced on a usage basis. Where a first minute/additional minute differential exists, the price for the first minute shall be stated first, followed by the price for additional minutes. No averaging of pricing shall be permitted.

Because of the wide variety of programming available and the variability of individual consumer usage, NAIS does not require advertising to estimate the average time necessary to complete any particular 900 call. Instead, information providers should be guided by the principle of service pricing which is proportionate to the value provided, and such value should be provided as expeditiously as possible.

For video broadcast advertising, voice-over announcement and printed display of pricing is required. Voice-over announcement must be provided at least once during the advertisement. The printed display of price should appear whenever the 900 number appears on screen.

For PRINTED materials, the price should appear in type which is at least ten percent (10%) of the size of the largest type used in the printed piece but no less than 10 point type except where the entire advertisement appears in smaller than 10 point type. For BILLBOARD advertising sized 10' x 22', the price should appear in type which is at least 6 1/2 inches in height; for billboard advertising sized 14' x 48', the price should appear in type which is at least 7 1/2 inches in height. For BROADCAST advertising, the price should appear in type which is at least twenty-five percent (25%) of the size of the 900 telephone number but no less than one-tenth of the vertical field of the screen.

- 2. The name of the information provider or sponsor shall appear in all display or broadcast advertising and promotional materials.**

The consumer has a right to know the identity of some party responsible for the 900 service being offered. Thus, advertising and promotional materials must include the name of either the information provider or the sponsor of the program, enabling the consumer to make reference to that party in any inquiry or complaint.

Classified (non-display) advertising is exempted from this requirement because it is priced on a per line basis and the requirement of an additional line could make the cost of the advertisement uneconomic.

- 3. Advertisements and promotional materials shall not be misleading, deceptive or unfair.**

This prohibition extends to misleading, deceptive or unfair practices, whether verbal or visual.

Advertisements and promotional materials must contain an accurate description of the subject matter of the 900 program being offered. Advertisements and promotional materials should allow consumers to know what a particular 900 call will provide, and the same must be provided.

900 services which use "bait and switch" tactics are unacceptable. The necessity of making additional call(s) in order to obtain the value originally advertised is prohibited. The necessity of making additional call(s) and their price(s) must be disclosed where such calls are required to obtain the additional product(s) or service(s) being advertised or promoted in the first call.

If the program is not available 24 hours per day, the time of availability should be included. Advertising time of day availability is not required where time of availability is disclosed at the outset of the 900 call and no charge is made for calls disconnected after such disclosure.

- 4. Programming shall not contain false, misleading or untimely information and shall provide value proportionate to its price.**

Information provided via 900 service must not be false or misleading. It must be timely; i.e., the information provided must not be rendered useless to the consumer by the fact that it is out-of-date. Examples of information for which timeliness is of particular importance include news, sports reports, weather forecasts and stock quotes.

In general the price of any 900 call must be reasonably related to service rendered. Cross-promotions, the practice of using one 900 service to promote or reference a separate service (whether the additional service is reached by a 900, 800 or regular toll call) are permitted in compliance with advertising requirements of Section 3 above. Value reasonably expected by the consumer must, however, be delivered in the first 900 call. Cross-promotions to additional services must include the disclosure of charges to be incurred as a result of the additional call.

- 5. Obscene programming and programming containing explicit or implicit descriptions of sexual conduct, the purpose of which is to arouse, will not be provided.**

The provision of programming which is obscene in nature is inconsistent with the goals and purposes of NAIS and is thus prohibited.

Simulation or description of sexual acts or activity with the purpose of arousing the caller is not permitted. However, programming which is presented in a clinical manner for the purpose of rendering advice or providing objective information is acceptable. Use of sexually explicit terminology is not the sole factor for determining whether specific programming is acceptable. Context and presentation are also to be considered.

- 6. Programming which entices or condones unlawful conduct or acts of violence will not be provided.**

Programming which promotes any activity which is either illegal or violent in nature is inappropriate for pay-per-call services and is thus prohibited.

Programming should not encourage or incite any person to commit a criminal offense nor should it encourage or incite callers to use harmful substances or to engage in dangerous practices.

- 7. Advertising for children's pay-per-call services shall clearly indicate, in language understandable to children, that parent's or guardian's permission must be obtained before calls are placed. Pay-per-call programming which is directed to children shall not include the enticement of a gift or premium.**

Children's pay-per-call services are considered to be those directed to persons 12 years of age or less, consistent with the standards of the Federal Trade Commission and the Federal Communications Commission.

It is essential that advertising for these services advise children to OBTAIN, not just request, the permission of their parent or guardian before making a 900 call.

Because young children are likely not to understand the relationship between time and incremental charges, flat rate pricing for children's pay-per-call services is recommended. In applying the principle of value of service pricing to children's services, IPs should carefully consider the limited buying power of the child and the cost of other impulse items the child might reasonably ask his or her parents to purchase. Reflecting these considerations, NAIS may question the reasonableness of any charge over \$5.00 per call.

If feasible, NAIS supports a limit on the number of calls which could be accepted and charged to an individual calling number for these services.

No pay-per-call program should request a child to provide his or her name, address or other identifying information.

NAIS believes that the standards promulgated by the Children's Advertising Review Unit (CARU) of the National Advertising Division, Council of Better Business Bureaus, Inc., covering 900/976 telemarketing to children (copy attached), reflect the appropriate standards for pay-per-call advertising.

- 8. Fundraising activities will include a statement identifying the fundraiser, the name of the charity or political candidate and the general purpose for which the funds are being raised.**

In identifying their purpose, fundraising activities utilizing pay-per-call services should specify that funds are being solicited for a particular charitable or political organization, identifying that organization. No mention of a specific charity nor any mention of a charitable contribution being made from proceeds of a 900 service shall be included in any advertising of the 900 service unless there is a written agreement between the IP and the charity or an affidavit from the charity that funds are being raised on its behalf.

Political fundraising must comply with all Federal Election Commission and applicable state requirements, and charitable fundraising must comply with any and all applicable state or federal rules or regulations governing such activities.

- 9. All pay-per-call programming, including games, contests and sweepstakes, shall comply with all applicable federal and state laws and regulations.**

This requirement extends to ALL pay-per-call programming. It is incumbent upon the programmer to abide by whatever obligations are imposed by the appropriate authorities.

- 10. Consumer inquiries and complaints will be resolved in a reasonable and timely manner.**

Appropriate handling of all consumer inquiries and complaints is required of IPs, whether such inquiries or complaints are received directly or by referral from a Local Exchange Carrier (LEC), Interexchange Carrier (IXC) or Service Bureau. Due consideration should be given to the customer's perspective in any dispute, and the IP should use its best efforts to reach a settlement satisfactory to the consumer.

Adjustments for inadvertent, mistaken or unauthorized use should be handled by the carriers on an individual case basis, taking into account whether the request for adjustment is a first-time request or one in a regular series of repeated requests.

Enforcement of the NAIS Code of Responsibility

Handling of Complaints

A potential violation arises when NAIS receives a written complaint about an information provider (IP) member from either industry sources or participants, consumer activists or consumers, or regulatory agencies. Written complaints will be forwarded to the NAIS member with copies to the appropriate interexchange carrier (IXC) (if the IXC is an NAIS member) and to the NAIS Ethics Committee. Complaints about non-member IPs will be forwarded to the appropriate IXC, if the carrier can be identified from the information received, and will recommend that the complainant contact the appropriate regulatory agency.

Member Response to Complaints

The IP member is required to answer the complaint in writing within 30 days, directing its response to the Ethics Committee. The response must either admit or deny a violation of the NAIS Code and explain the respondent's answer. If an alleged violation has already been corrected, the respondent should provide evidence of such corrective action.

Ethics Committee Review

Within 15 days of receiving an IP response, the Ethics Committee shall review the matter and either

- (1) accept the IP's response, so advise the complaining party, and consider the matter closed; OR
- (2) advise the IP that a violation of the Code appears to exist and schedule an informal hearing, affording the IP an opportunity to appear and defend its position. This informal hearing shall be scheduled within 30 days.

After considering the matter in an informal hearing, the Ethics Committee may either

- (1) accept the IP's response, so advise the complaining party, and consider the matter closed; OR
- (2) advise the IP to take corrective action to remedy the Code violation. Proof of corrective action must be submitted to the Ethics Committee within 30 days of the informal hearing. If the IP refuses to take corrective action as recommended by the Ethics Committee, the committee may recommend to the NAIS Board of Directors that the IP's membership be rescinded.

Board of Directors Review

The Board of Directors shall act on any Ethics Committee recommendation to rescind membership at its next regularly scheduled meeting.

The responding IP has the right to request a hearing on the matter before the Board of Directors and must do so in writing within 10 days of being notified of the Ethics Committee's determination. The hearing shall be conducted at the next regularly scheduled meeting of the Board or at a special meeting called specifically to consider the matter, but in either event the Board shall consider the matter within 30 days of the Ethics Committee's action.

If the Board determines that no violation of the Code has occurred, it shall so advise the complaining party and consider the matter closed.

If the Board determines that a violation of the Code has occurred, it may either

- (1) immediately rescind the IP's membership in NAIS; OR
- (2) rescind the IP's membership in NAIS, but delay the effective date of such rescission to allow for appropriate corrective action to be taken; OR
- (3) officially censure the IP member for Code violations which have already been remedied.

The above actions by the Board are the sole and exclusive remedies to be administered by NAIS for violations of this Code.



National Advertising Division
Council of Better Business Bureaus, Inc.

845 THIRD AVENUE, NEW YORK, NY 10022 (212) 754-1358

© 1989 CBBB

Vol. 19 No. 1 — Pages 1-4

February 20, 1989

PUBLIC REPORT OF NATIONAL ADVERTISER PARTICIPATION IN THE
NAD/NARB SELF-REGULATORY PROCESS ESTABLISHED BY BUSINESS

NAD Case Report 2/20/89 Page 5

CHILDREN'S ADVERTISING REVIEW UNIT
PROPOSED SELF-REGULATORY GUIDELINES

1. Since very young children are the most likely to be confused by the intangible product a "phone program" represents, telemarketing advertising should not be directed toward children who do not fully understand the relationship between a telephone call and a purchase. Under no circumstances should youngsters who are too young to dial the telephone themselves, be instructed or encouraged to hold the telephone receiver near their television set for "automatic" tone dialing by a signal transmitted over the T.V.

There should be a cap on the charges for each call advertised as a "phone program", regardless of the length of the call. This ceiling on the amount which can be charged per call is extremely important, since we know that young children do not understand the relationship between time and incremental charges.

3. Each juvenile phone program commercial should contain a written "super" and clearly stated "voice-over", in language that children understand, outlining exactly what the product and cost will be. For example, "This call will cost \$2.00 for a 2-minute recorded story". And, instead of "Ask your parent's permission," the audio language should be simplified and state rather than ask that, "Your mom or dad must say it's okay before you call".
4. Advertisements for phone programs for children should be sufficiently long, perhaps a minimum of 30 seconds, to ensure that complete information can be clearly re-inforced. This would include verbal as well as visual presentations.
5. Words like "now" and "only" should not be used to create a sense of urgency or exclusiveness for the child audience. In the same spirit, wording such as "children can call" should be utilized, rather than the imperative "call now".
6. Advertisements for phone programs should inform the child caller that he/she will hear a story "about" a particular subject or character, *not* "speak to" or interact with the Easter Bunny, Tooth Fairy, or any other mythical or real character.

7. Visuals in advertisements for phone programs should not include cartoon characters, celebrities or other individuals whose voices are heard on these programs, actually holding a telephone, standing in a telephone booth or talking on a telephone. Regardless of audio disclaimers, scenes such as these imply to the young caller that the character called will actually be there to speak with.
8. In creating a realistic sense of the product to be purchased, advertisements for telemarketing services to children should not include overglamorized visuals and sound effects. Currently much of the advertising is more elaborately produced than the product.
9. Commercials for phone programs for children should include a warning to dial carefully, thereby reminding youngsters that they may not hear the intended recording *but* will still have to pay for the call, even if it is dialed incorrectly.
10. Commercials for phone programs targeting children should contain a scene depicting a child listening to a phone program seated next to a supervising adult. This visual, which would be explained in the audio "voice-over", and support the necessary parental permission, should be at least five seconds in length and be placed in the final scene of the commercial.
11. The use of premiums and other direct marketing promotions, especially toys, and character licenses associated with toy products are inappropriate during an advertisement for a children's phone program. The confusion lies in the fact that the young consumer may infer that the premium will also come as a direct result of the phone call.
12. The telemarketing message or story for youngsters must be the entire length stated in the commercial. Any other commercial references, tie-ins, etc., must come *after* the advertised 2-minute product.
13. In juvenile phone programs, there should be no embedded requests to dial an additional number or vote on a topic by calling another 900/976 number. Other promotional messages, references to the availability of related merchandise or film and TV programs should be identified as advertising and be placed after, as well as separated from, the complete 2-minute story.
14. Phone programs for children should consist of totally self-contained story lines or completed audio products. These programs should contain no "cliff hangers" or references to other books, products for sale or additional telephone programs needed to achieve story-end.