FEDERAL TRADE COMMISSION

16 CFR Part 308

900-Number Rule Review; Request For Comment Regarding Possible Modification of Definition of ''Pay-Per-Call Services'' Pursuant to the Telecommunications Act of 1996

AGENCY: Federal Trade Commission.

ACTION: Rule review and request for public comments.

SUMMARY: The Federal Trade Commission (''the Commission'' or ''FTC'') is requesting public comment on the Commission's Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (''the 900-Number Rule''). The 900-Number Rule governs the advertising and operation of pay-per-call services, and establishes billing dispute procedures for such services. The 900-Number Rule requires that the Commission initiate a rulemaking review proceeding to evaluate the Rule's operation no later than four years after its effective date of November 1, 1993. Pursuant to this mandatory rule review requirement, the Commission seeks comment about the overall costs and benefits of the 900-Number Rule and its overall regulatory and economic impact.

In addition, the Telecommunications Act of 1996 [1] granted the Commission authority to expand the scope of the 900-Number Rule by broadening the definition of pay-per-call services. Therefore, the Commission is also seeking public comment on whether it should expand the scope of its 900-Number Rule to ''audio information or audio entertainment'' services provided through dialing patterns other than 900 numbers. These questions are published in a Request for Comment which follows the rule review portion of this notice.

This document invites written comments and sets forth a list of specific questions and issues upon which the Commission particularly desires additional information. This document also contains an invitation to participate in a public workshop-conference, to be held following the close of the comment period, to afford Commission staff and interested parties an opportunity to explore and discuss issues raised during the comment period.

DATES: Written comments will be accepted until May 12, 1997. Notification of interest in participating in the public workshop-conference also must be submitted on or before May 12, 1997. The public workshop-conference will be held on June 19 and 20, 1997, from 9:00 a.m. until 5:00 p.m.

ADDRESSES: Five paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form. Comments should be identified as ''900-Number Rule Review—Comment. FTC File No. R611016.''

Notification of interest in participating in the public workshop-conference should be submitted in writing to Marianne Kastriner Schwanke, Division of Marketing Practices, Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. The public workshop-conference will be held at the Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Marianne Kastriner Schwanke, (202) 326-3165, Adam Cohn, (202) 326–3411, or Carole Danielson, (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically in order to obtain information about the costs and benefits of its rules and guides, as well as their regulatory and economic impact. The information the Commission obtains assists it in identifying rules and guides that warrant modification or rescission. In accord with the Commission's general policy to review periodically all of its rules and guides, when the Commission adopted the 900-Number Rule, it included Section 308.9, which imposes a requirement to undertake a review of the Rule no later than four years after its effective date of November 1, 1993. Therefore, at this time, pursuant to Section 308.9 of the Rule, the Commission is initiating this mandatory rule review, and hereby solicits written public comments concerning the operation of the 900-Number Rule.

Simultaneous with the Rule review, the Commission also is seeking public comment on whether it should expand the scope of its 900-Number Rule to information or entertainment services provided through dialing patterns other than 900 numbers, as authorized by the Telecommunications Act of 1996.

Section A. Background

Telephone Disclosure and Dispute Resolution Act of 1992

Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992 (''TDDRA''), 15 U.S.C. § 5701 *et seq.*, to curtail certain unfair and deceptive practices perpetrated by some pay-per-call businesses, and to encourage the growth of the legitimate pay-per-call industry.[2] Titles II and III of TDDRA required the FTC to prescribe regulations governing pay-per-call services.[3] TDDRA directed the Commission to enact regulations governing the advertising and operation of pay-per-call services. Among other things, TDDRA required that certain disclosures appear in all advertising for pay-per-call programs and in introductory messages (''preambles'') at the start of the pay-per-call programs, prohibited pay-per-call providers from engaging in certain practices (such as directing their services to children under 12 years of age), and required that the FTC's regulations establish procedures for correcting billing errors in connection with pay-per-call services. TDDRA granted the FTC limited jurisdiction over common carriers for purposes of the 900-Number Rule.

900-Number Rule

Pursuant to TDDRA, the FTC adopted its 900-Number Rule, 16 CFR Part 308, on July 26, 1993, and it became effective November 1, 1993.[4] The Rule requires

[1] Pub. L. 104, Sec. 701, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 228).

[2] This statement summarizes Congress' findings regarding the 900-number industry at the time it passed the legislation. For greater detail concerning the problems Congress found to be associated with 900-number services, see 15 U.S.C. § 5701(b).

[3] Title I of TDDRA directed the Federal Communications Commission (FCC) to adopt regulations defining the obligations of common carriers with respect to the provision of pay-per-call services. The FCC published its Notice of Proposed Rulemaking and Notice of Inquiry at 58 FR 14,371 (March 17, 1993). The FCC's Rules are at 47 CFR 64.228.

[4] The Statement of Basis and Purpose and Final Rule was published at 58 FR 42364 (August 9, 1993).

that advertisements for 900 numbers contain certain disclosures, including information about the cost of the call. This information must also be included in an introductory message (preamble) at the beginning of any 900-number program where the cost of the call could exceed two dollars. The Rule requires that anyone who calls a 900-number service must be given the opportunity to hang up, at the conclusion of the preamble, without incurring any charge for the call. In addition, the Rule requires that all preambles to 900-number services state that individuals under the age of 18 must have the permission of a parent or guardian to complete the call.

The 900-Number Rule also establishes procedures for resolving billing disputes for 900-number calls. 16 CFR 308.7. The Rule imposes certain obligations on entities that bill and collect for 900-number services, such as investigating reports by consumers of ''billing errors,'' a defined term in the Rule.[5]

Initiation of Rule Review

Section 308.9 of the 900-Number Rule, 16 CFR 308.9, requires that the Commission initiate a rulemaking review proceeding to evaluate the Rule's operation no later than four years after its effective date of November 1, 1993. Although the Rule review is not required until November 1997, the Commission has determined that it would be more efficient to conduct the evaluation at this time in conjunction with its issuance of a Request for Comment regarding the possible expanded definition of ''pay-per-call services'' as provided by the Telecommunications Act of 1996.

Telecommunications Act of 1996 Authority to Expand the Definition of Pay-Per-Call Services

On February 8, 1996, the President signed into law the Telecommunications Act of 1996 to provide a regulatory framework for telecommunications and information technologies and services. Section 701(b) of the Telecommunications Act provides that:

Section 204 of [TDDRA] (15 U.S.C. § 5714(1))[6] is amended to read as follows:

''(1) The term 'pay-per-call services' has the meaning provided in section 228(i) of the Communications Act of 1934,[7] except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of Section 228(i)(1) of such Act, extend such definition to other similar services providing audio information or audio entertainment if the [Federal Trade] Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a) [of TDDRA].'' (Emphasis supplied.)

Thus, Section 701(b) of the Telecommunications Act authorizes the FTC, for purposes of its 900-Number Rule, to extend the definition of the term ''pay-per-call services''—and, in effect, the scope of coverage of the Rule—without regard to whether a caller to the service in question ''pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call,'' and without regard to whether a call to such service is ''accessed through use of a 900 telephone number or other prefix or area code designated by the FCC'' under 47 U.S.C.§ 228(b)(5) if the FTC determines that such services ''are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a)'' of TDDRA.

Therefore, at this time the Commission is publishing a Request for Comment to determine whether audiotext services[8] that fall outside the definition of ''pay-per-call'' in the original rule are susceptible to the same unfair and deceptive practices that prompted passage of TDDRA. In other words, the Commission seeks to determine whether the definition of ''pay-per-call services'' should be extended to other services similar to those presently covered by the Rule and, if so, what such an expanded definition should be.

Section 701 of the Telecommunications Act also modified some additional provisions in Section 228 of title 47, mandating that the Federal Communications Commission amend its regulations regarding pay-per-call services. The FCC took action to implement this statutory mandate in July 1996.[9] In that proceeding, the FCC also proposed certain other modifications to its rules not expressly mandated by statute to help reduce fraudulent practices in the pay-per-call industry. The Federal Trade Commission thus seeks to determine whether its rules should be changed to take account of these recent changes and proposed changes in FCC rules regarding pay-per-call services. As noted above, the Request for Comment follows the rule review portion of this notice.

Section B. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments concerning the Commission's 900-Number Rule. The Commission invites written comments to assist it in ascertaining the facts necessary to reach a determination as to the costs and benefits of the Rule and its overall regulatory and economic impact, and on whether to engage in a rulemaking to amend the 900-Number Rule. Written comments must be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W. Washington, DC 20580, on or before May 12, 1997. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. § 552) and Commission Rules of Practice, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[5] Other protections were established by the Federal Communications Commission (FCC) in their rules set out at 47 CFR 64.228. Under those rules, a consumer's telephone service cannot be disconnected for failure to pay charges for a 900 number call, and 900 number blocking must be made available to consumers who do not wish to have access to 900 number service from their telephone lines.

[6] ''The term 'pay-per-call services' has the meaning provided in section 228 of Title 47.'' 15 U.S.C. § 5714(1).

[7] Section 228(i)(1) of the Communications Act of 1934, 47 U.S.C. § 228(i)(1) provides that:

The term 'pay-per-call services' means any service—

(A) in which any person provides or purports to provide—

(i) audio information or audio entertainment produced or packaged by such person;

(ii) access to simultaneous voice conversation service; or

(iii) any service, including the provision of a product, the charges for which are assessed on the basis of completion of the call;

(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) which is accessed through use of a 900 telephone number or other prefix or area code designated by the [Federal Communications] Commission in accordance with subsection (b)(5) [47 U.S.C.§ 228(b)(5)].''

[8] The term ''audiotext services'' describes audio information and entertainment services offered through any dialing pattern, including services accessed via 900-number, as well as international and other non-900-number, dialing patterns. In this notice, where the Commission seeks comment on the effect of the 900-Number Rule on the industry, we use the phrase ''900-number services'' to describe those services currently covered by the Rule. Where we ask questions regarding the larger universe of information and entertainment services offered through the telephone, we use the term ''audiotext services.''

[9] Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996, Order and Notice of Proposed Rulemaking, CC Docket No. 96–146, 11 FCC Rcd 14,738 (1996) (''FCC Pay-Per-Call Order and Notice'').

Section C. Public Workshop-Conference

The FTC staff will conduct a public workshop-conference to discuss the written comments received in response to the Federal Register notice. The purpose of the workshop-conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised in the notice and in the comments, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus among participants or between participants and Commission staff with respect to any issue raised in the comments. Commission staff will consider the views and suggestions made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning what action, if any, to take in regard to amending the 900-Number Rule.

Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the issues raised in the notice. These parties will participate in an open discussion of the issues, including asking and answering questions based on their respective comments. In addition, the workshop will be open to the general public. The discussion will be transcribed and the transcription placed on the public record.

To the extent possible, Commission staff will select parties to represent the following interests: advertisers, third-party billing and collection services, pay-per-call information providers, service bureaus, local exchange carriers, long distance carriers, consumer groups, federal and state law enforcement and regulatory authorities; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties who represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment during the 60-day comment period.

2. During the 60-day comment period the party notifies Commission staff of its interest in participating in the workshop.

3. The party's participation would promote a balance of interests being represented at the workshop-conference.

4. The party's participation would promote the consideration and discussion of a variety of issues raised in this notice.

5. The party has expertise in activities affected by the issues raised in this notice.

6. The number of parties selected will not be so large as to inhibit effective discussion among them.

The workshop-conference will be held on June 19 and 20, 1997. Prior to the workshop-conference, parties selected will be provided with copies of the comments from all participants received in response to this notice.

Section D. Regulatory Flexibility Act

The Regulatory Flexibility Act provides for an initial and final regulatory analysis of the potential impact on small businesses of Rules proposed by federal agencies. (5 U.S.C. §§ 603, 604) The Commission conducted such an analysis when the 900-Number Rule was promulgated in 1993. In publishing the proposed regulations, the Commission certified, subject to public comment, that the proposed regulations would not have a significant economic impact on a substantial number of small entities and, therefore, that the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), requiring the initial regulatory analysis, did not apply.[10] The Commission noted that any economic costs imposed on small entities were, in many instances, specifically imposed by statute. Where they were not, efforts had been made to minimize any unforeseen burdens on small entities by making the proposed rule's requirements flexible. The public comments and information received by the Commission did not alter that conclusion.[11]

No analysis is required in connection with this document because no new rule or amendments are being proposed. Nonetheless, the Commission wishes to ensure that no substantial economic impact is being overlooked that would warrant an initial and final regulatory flexibility analysis. Therefore, this review of the 900-Number Rule also requests public comment regarding the effect of the Rule on the costs to, profitability and competitiveness of, and employment in small entities. The Commission will revisit this issue in connection with any Notice of Proposed Rulemaking that may result from this request for comments.

Section E. Paperwork Reduction Act

In the 1993 Notice of Proposed Rulemaking on the 900-Number Rule, the Commission solicited comments on the need for and scope of possible record keeping requirements in provisions governing Commission access to information and billing and collection for pay-per-call services.[12] Those requirements, had they been adopted, would have constituted ''collections of information'' as defined under the Paperwork Reduction Act, 44 U.S.C. 3501–3520. See 44 U.S.C. 3502 and 5 CFR 1320.7. However, the Commission determined not to include such requirements in its final Rule.[13] Accordingly, the requirements of the Paperwork Reduction Act were not applicable to the final Rule. Similarly, the requirements are not applicable to this document because no collections of information are required. The Commission will revisit this issue in connection with the publication of any subsequent Notice of Proposed Rulemaking that might result from this request for comments.

Section F. Questions and Issues for Comment Pursuant to Regulatory Review of the Rule

The Commission is seeking comment on various aspects of the 900-Number Rule, in conjunction with its Rule review. Without limiting the scope of issues it is seeking comment on, the Commission is particularly interested in receiving comments on the questions that follow. Where commenters advocate changes to the Rule, please be specific in describing suggested changes. With respect to suggested changes to the Rule, please describe any potential costs and benefits such changes might have on industry and consumers. The Commission would also be interested in commenters providing any data that exist on issues raised in the questions.

I. General Issues for Comment

1. Is there a continuing need for the 900-Number Rule?

(a) Since the Rule was issued, have changes in technology, industry structure, or economic conditions affected the need for or effectiveness of the Rule?

(b) Does the Rule include provisions that are unnecessary?

(c) What are the aggregate costs and benefits of the Rule?

(d) Have the costs or benefits of the Rule dissipated over time?

(e) Does the Rule contain provisions that have imposed costs not outweighed by benefits?

2. What effect, if any, has the Rule had on consumers?

[10] 58 FR 13379.

[11] 58 FR 42399.

[12] 58 FR 13384.

[13] 58 FR 42399.

(a) What economic or other costs has the Rule imposed on consumers?

(b) What benefits has the Rule provided to consumers?

(c) What changes, if any, should be made to the Rule to increase the benefits to consumers?

(d) How would these changes affect the compliance costs the Rule imposes on industry?

3. What impact, if any, has the Rule had on firms that must comply with it?

(a) What economic or other costs has the Rule imposed on industry or individual firms?

(b) What benefits has the Rule provided to the industry or to individual firms?

(c) What changes, if any, should be made to the Rule to minimize any burden or cost imposed on industry or individual firms?

(d) How would the changes affect the benefits provided by the Rule to consumers or industry?

4. How has the Rule affected small business entities with respect to costs, profitability, competitiveness, and employment? What would be the economic impact on small businesses if the Rule is left unchanged?

5. Are there regulatory alternatives that might reduce any adverse economic effect of the 900-Number Rule, yet comply with the mandate of TDDRA to curtail certain unfair and deceptive practices by some 900-number providers, yet encourage the growth of the legitimate 900-number industry?

6. Are there additional advertising, operating, or other standards for the audiotext industry not included in the Rule that might now be desirable or necessary to prevent deception or other abuses, or to prevent evasion of the Rule's requirements and prohibitions?

7. The FCC and FTC share regulatory authority over the audiotext industry.

(a) Are there any unnecessary regulatory burdens created by overlapping jurisdiction? What can be done to ease these burdens?

(b) Are there gaps where neither agency has addressed a particular abuse? For example, does such a regulatory gap exist where a entity claims status as a ''common carrier'' for purposes of FTC regulation, but claims that its actions are not those of a common carrier for purposes of FCC regulation?

(c) Does the Rule overlap or conflict with other federal, state, or local government laws or regulations?

8. How does Section 701 of the Telecommunications Act of 1996 concerning the FCC's regulation of the pay-per-call industry, or the FCC's recently adopted and proposed regulatory changes [14] under that section, affect the FTC's Rule, if at all? How should the FTC's Rule be amended to harmonize with these changes and proposed changes in the FCC regulatory approach?

9. What categories of audiotext services (*e.g.*, sports, psychic, chat, adult) are provided through 900 numbers?

(a) What percentage does each type constitute of all audiotext services accessed through 900 numbers?

(b) How much gross sales revenue has each category generated in each year since 1993?

(c) Have the gross sales revenues and/or profits of information providers using 900 numbers changed since the Rule was promulgated? What impact, if any, has the 900-Number Rule had on the level of gross sales revenues and/or profits?

II. Definitions

10. Are the definitions set forth in section 308.2 of the Rule effective for the purpose of curbing unfair and deceptive practices targeted by the Rule?

(a) If not, how have the definitions been inadequate?

(b) Are there additional definitions that should be added to the Rule? Explain.

11. The current definition of ''service bureau'' states that the term includes any person other than a common carrier.

(a) Is it appropriate to exclude common carriers, regardless of activities, from the definition?

(b) Should entities engaging in service bureau functions be covered by the Rule, even if they also engage in ''common carrier'' functions at other times?

12. Has the Rule's definition of ''presubscription agreement'' affected the market for 900-number services? If so, in what way?

(a) Who uses presubscription agreements, and for what purpose?

(b) What opportunities for unfair and deceptive practices exist under the current definition of ''presubscription agreement''?

(c) How might the definition be changed to diminish or eliminate these opportunities?

(d) Should the definition of ''presubscription agreement'' be modified to harmonize with changes in FCC rules made pursuant to the Telecommunications Act of 1996, or to harmonize with proposed changes made by the FCC to the definition of ''presubscription agreement''? [15]

(e) Would any changes in the definition of ''presubscription agreement'' be appropriate in light of Section 701 of the Telecommunications Act of 1996? For example, should the Rule require that a presubscription agreement be in writing?

III. Advertising

13. Are the advertising disclosure provisions in the Rule adequate for regulating advertising on the Internet or on commercial online services?

(a) Should the Rule be more precise regarding the definition of ''clear and conspicuous'' in the context of advertising on the Internet or on commercial online services?

(b) Are there other forms of advertising in other media for which the Rule should provide specific advertising disclosure requirements? Explain.

14. Does the Rule provide adequately for disclosing the cost to consumers prior to making a call to a 900-number service?

(a) Do the current size requirements ensure that the cost disclosure is ''clear and conspicuous''?

(b) Are there other more effective means for ensuring that the advertisements provide adequate cost disclosures to consumers?

15. Are the required disclosures for 900-number services that advertise sweepstakes sufficient to ensure that consumers are informed of all material information necessary to dispel deception? Have there been abuses associated with sweepstakes advertised and offered through the use of a 900 number that make it necessary to require additional protections for consumers who respond to such sweepstakes offers?

16. Is the requirement governing ''telephone solicitations'' in section 308.3(h) clear, meaningful, and effective?

(a) Is there additional information that such a solicitation should include to ensure that consumers have sufficient information prior to calling a 900-number service advertised in this manner?

(b) Is the Rule clear that it applies to messages left on telephone answering machines or telephone numbers left on pagers?

(c) What about audio and non-audio messages received on computers? Should these or other message delivery systems be explicitly included within this provision?

[14] FCC Pay-Per-Call Order and Notice, see supra note 9.

[15] FCC Pay-Per-Call Order and Notice, see supra note 9.

(d) Should ''telephone message'' as used within section 308.3(h) be defined and if so, how?

IV. Operation & Standards

17. In the Statement of Basis and Purpose describing the Rule,[16] the Commission recognized that at the time the Rule was promulgated, time-sensitive billing involved in 900-number services was ''accomplished in one-minute increments, and that any portion of a minute will be billed as full time.''

(a) Has the technology for calculating usage time for billing purposes changed since the implementation of the Rule? If so, how?

(b) Is it possible using current technology to stop the assessment of time-based charges immediately upon disconnection by the caller, and therefore, bill consumers for fractions of minutes?

18. How have technological changes affected the way information providers can and do set their rates?

(a) Is it now technologically possible to suspend charges during a program, to provide a period (or periods) of programming free to the caller? Explain.

(b) Is it now technologically possible to alter the rate at which a caller is charged during a program, to provide a period (or periods) of programming charged to the caller at reduced rates or at higher rates than other portions of the call? Explain.

(c) Is it now technologically possible to have a free introductory message longer than 18 seconds, which was the standard at the time the Rule was adopted? Explain.

19. How has the requirement of a preamble affected the 900 number industry?

(a) Have preambles conferred benefits on consumers who make 900-number calls?

(b) How might the preamble requirements be changed to make the preambles more useful or informative to the consumer? What costs would likely arise from such changes?

(c) How might the preamble requirements be changed to make compliance easier for information providers? Would such changes diminish benefits to consumers and if so, how?

20. Are preambles effective in reducing unauthorized use of 900-number services by minors or others? How is this properly measured?

(a) How might preamble requirements be changed to be made more effective in addressing the problem of unauthorized calls?

(b) What further actions might be taken by industry or by the FTC to reduce unauthorized calls to 900 number and other audiotext services?

21. Section 308.5(a)(3) requires that the preamble state ''that charges for the call begin, and that to avoid charges the call must be terminated, three seconds after a clearly discernible signal or tone.'' If an information provider were to provide, for example, the first two minutes of an audiotext call free, what should the preamble disclose to inform callers when charges for the call begin?

(a) In the example above, should the information provider be required to inform the caller, through a tone or other signal, when the free time has expired?

(b) In the example above, at what point(s), if any, during the call should the disclosures be made? At what point(s), if any, during the call should a signal or tone occur?

(c) In the example above, would a single signal following the preamble but immediately preceding the free time provide sufficient information to enable consumers to avoid all or most charges from remaining on the line after close of the free time?

22. Section 308.5(a)(2)(iii) requires that ''if the call is billed on a variable rate basis, the preamble shall state * * * the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller.'' Should this provision be construed to cover situations where pay-per-call services charge different rates for different time periods within a single call (e.g., no charge for the first two minutes after the end of the preamble, $3.00 per minute for the third through the eighth minutes, and $1 per minute for every minute thereafter)?

(a) Assume for purposes of questions 22(a) and (b) that calls to such services described above are ''calls billed on a variable rate basis'' covered by Section 308.5(a)(2)(iii). Should that Section be modified to require something other than preamble disclosures of ''the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller?'

(b) For example, in the scenario described above, should Section 308.5(a)(2)(iii) explicitly require a clearly discernible signal or tone to mark the end of the free two-minute period? Should it explicitly require a clearly discernible signal or tone to mark the end of the six-minute period during which charges are $3.00 per minute?

23. What percentage of 900-number services fall into the category of ''nominal cost calls'' as described in section 308.5(c) of the Rule?

(a) Do the data suggest that $2.00 is an appropriate threshold for designation of ''nominal cost calls'' for which no preamble is necessary? If not, what ''nominal cost'' threshold do the data support?

(b) Should the ''nominal cost'' figure be adjusted for inflation? Explain.

24. What percentage of callers to 900-number services hang up the telephone before the charges begin and how is this ascertained?

(a) Of these, what percentage are first time callers?

(b) Does this percentage correlate to the cost of the call? To the nature of the service?

25. What impact, if any, has the 900-Number Rule had on the number of complaints about, or requests for credits or refunds for, calls to 900-number services that allegedly were not authorized by the subscriber of the telephone line from which the calls were placed?

(a) Has the percentage of such complaints or requests increased, decreased, or remained the same since the Rule went into effect?

(b) What percentage of all requests for credits or refunds of charges for 900-number services involve calls allegedly unauthorized by the telephone subscriber?

(c) What percentage of these requests are due to allegedly unauthorized calls placed by minors?

26. What, if any, procedures are used by industry to ensure that calls to audiotext services are authorized by the subscriber of the telephone line from which the calls are placed?

(a) What, if any, procedures are used by industry to minimize or eliminate unauthorized calls placed by minors to audiotext services?

(b) How effective have these procedures been in reducing the number of complaints or the number of requests for credits or refunds regarding allegedly unauthorized calls to audiotext services?

27. What percentage of telephone subscribers have chosen to block access to 900 numbers from their telephone lines?

(a) Of those choosing to block access to 900 numbers, what percentage choose to do so when initiating phone service?

(b) What percentage do so after phone service has been initiated?

(c) Of the latter, what percentage have done so after complaining about charges to audiotext services?

(d) What percentage of consumers who complain about charges for

[16] 58 FR 42387 (August 1993).

audiotext services choose to block 900 numbers?

(e) To what extent, if any, has blocking been effective in reducing complaints involving 900-number services?

(f) What, if any, are the costs to consumers or industry of receiving or providing 900 number blocking services?

V. Billing and Collection

28. What services are provided to the audiotext industry by billing entities other than the telephone companies (or ''alternative billing entities'')?

(a) Do the types of services vary for different types of audiotext services? Explain.

(b) What percentage of audiotext services are billed through billing entities other than the telephone companies? Explain.

(c) Have the types or number of these alternative billing entities changed since the Rule went into effect in 1993? What impact, if any, has the Rule had on the nature of these billing entities?

(d) What are the terms and conditions of the arrangements between the alternative billing entities and other players in the audiotext industry?

(e) What is the role of a ''billing aggregator''? What services does a billing aggregator provide to members of the audiotext industry?

29. Does the definition of ''billing error'' in section 308.7 of the Rule adequately reflect the range of billing errors occurring in the 900-number marketplace? If not, how might the definition be changed?

30. Is there any evidence suggesting that some (adult) consumers are refusing to pay for audiotext calls or 900-number calls which they purchased after hearing a preamble containing the disclosure of material information currently required by the Rule?

(a) If such a problem exists, to what extent is it affected by the dispute resolution provisions of the 900-Number Rule?

(b) If such a problem exists, to what extent is it affected by the billing notice requirements set forth in section 308.7(n)?

(c) What steps, if any, could the Commission take to reduce the incidence of this practice without weakening protections afforded consumers by TDDRA and the 900-Number Rule?

31. Distinguished from billing for unauthorized calls, the problem of ''phantom billing'' occurs when a telephone subscriber is billed for an audiotext call that the subscriber asserts was never placed from the subscriber's telephone.

(a) How does phantom billing occur?

(b) What procedures and safeguards currently exist or should exist to ensure that telephone subscribers are billed only for calls which were actually placed from that subscriber's phone?

(c) How does a billing entity determine that billing tapes or other records of calls are genuine?

(d) What percentage of consumers who complain about ''phantom billing'' of audiotext services choose to block access to 900 numbers?

32. Section 308.7(i) places restrictions on the extent to which adverse credit information can be reported to any person.

(a) How, if at all, has this restriction affected the creation of a shared database of ''problem callers'' for the purposes of blocking such persons from 900 or other audiotext transactions?

(b) Would such a database be useful to industry?

(c) Does allowing such a shared database adversely affect consumers? If so, how?

33. How is ''chargeback'' defined by the industry?

(a) Does the term include the situation where a consumer has refused to pay for an audiotext service? Does it include the situation where a consumer pays and then requests a refund?

(b) Are there data on chargeback rates for the 900-number industry? For the audiotext industry as a whole? Do the data represent chargeback rates for all types of ''pay-per-call services'' or only for services provided through 900 numbers?

(c) How do the chargeback rates for the pay-per-call industry compare with other collection and payment systems, such as the credit card collection and payment system?

(d) What are the current and projected future trends regarding chargeback rates for the pay-per-call industry?

34. Do chargeback rates vary according to the category of audiotext service?

(a) Do the providers of some types of services experience a greater chargeback rate than other types of services? Are there data demonstrating these differences?

(b) If certain kinds of audiotext services correlate with higher chargeback rates, what is the explanation for the correlation?

(c) Are there data to show whether services that attract callers of certain age groups (e.g., minors) are more likely than others to result in chargebacks?

(d) How do chargeback rates for non-900 audiotext services compare to rates for 900 number services?

(e) How do chargeback rates for nominally priced calls (i.e., those exempted from the preamble requirement) compare to the chargeback rates for other calls?

35. Do chargeback rates vary according to the payment method?

(a) Do services that utilize a credit card billing system rather than an Automatic Number Identification (''ANI'') billing system experience fewer chargebacks?

(b) What about services provided according to oral presubscription agreements?

(c) What about those services provided according to written presubscription agreements?

36. Has the advent of third party billers affected the chargeback rates in the audiotext industry? If so, how?

(a) Is there any correlation between the type of billing entity (e.g., a local exchange carrier or a third party biller) and the rate of chargebacks? If so, why?

(b) Are chargeback rates affected by the amount of time a billing entity gives to a consumer to complain about a bill? To what extent to different billing entities follow the Rule's time limits on initiation of billing review?

Section G. Request for Comment

As discussed above, the Telecommunications Act of 1996 gives the Commission the authority to conduct a rulemaking on the issue of whether to ''extend'' the definition of ''pay-per-call services'' to cover other services not currently covered by the 900-Number Rule. Thus, the Commission currently seeks comment on whether any expansion should be made, and if so, how such an expansion should be implemented. Commenters should pay particular attention to the fact that the Commission's authority is to extend the 900-Number Rule to cover services which are ''susceptible to the unfair and deceptive trade practices that are prohibited by [TDDRA].'' Thus, commenters should not limit themselves to discussing services which are currently associated with unfair and deceptive practices; rather commenters should discuss the broader topic of services which are susceptible to becoming havens for unfair and deceptive practices addressed by TDDRA. Commenters should attempt to address the questions listed below:

1. Are there ''audio information or audio entertainment'' (''audiotext'') services which are not currently covered by the definition of ''pay-per-call service,'' but which are susceptible to the same unfair and deceptive trade practices prohibited by the current Rule?

(a) If so, should the Rule be amended to cover these services?

(b) If so, how should the Rule be changed?

(c) How would these changes affect consumers and businesses?

(d) What characteristics of an audiotext service make it susceptible to the unfair and deceptive trade practices prohibited by the current Rule?

2. How can a definition of ''pay-per-call service'' be crafted so that audiotext services which are susceptible to unfair and deceptive trade practices are covered by the Rule, but any services that are not susceptible to these practices are not swept into the Rule?

3. Should the Rule be extended to cover any audiotext transaction where an information provider or service bureau receives a portion of the fees paid by a caller? Explain.

4. Should the definition of ''pay-per-call service'' be extended to encompass international audiotext transactions where the information provider or service bureau receives a portion of the fees paid by the caller? Explain. If so, are there other modifications to the Rule that would be necessitated by such a change?

5. Are there technological differences between 900-number and non-900-number audiotext services that would make it difficult to implement the Rule in its current form with respect to non-900-number audiotext services? Explain.

(a) For example, could free preambles (as required by section 308.5) be provided at the beginning of non-900-number audiotext messages billed through arrangements with international long distance carriers? How could accurate cost disclosures as required by the Rule be made for these services?

(b) Must any changes be made to the Rule to accommodate these differences?

(c) How would these suggested changes affect audiotext services utilizing 900 numbers?

6. In a Notice and Order [17], the Federal Communications Commission (FCC) stated that ''regardless of whether the FTC extends the scope of its pay-per-call regulations [pursuant to § 701(b)(2) of the Telecommunications Act of 1996], our pay-per-call rules continue to be delineated by the statutory definition of pay-per-call services contained in Section 228(i) of the Communications Act.'' Thus, if the FTC extends the definition of ''pay-per-call services'' pursuant to its authority under the Telecommunications Act of 1996, then the two agencies would be regulating the audiotext services industry using two different definitions of ''pay-per-call services.''

(a) What impact, if any, would this result have on the audiotext industry?

(b) What could be done to reduce any potential complications or conflicts? Explain.

7. In light of the FCC's implementation of the Telecommunications Act of 1996 as it relates to the audiotext industry, are there additional changes the FTC should consider making to its own 900-Number Rule?

8. Are there any audiotext services currently being provided over the Internet or commercial online services? If not, is it likely that these services will be available over the Internet or commercial online services in the near future? If yes, how do these services work?

(a) Are there audiotext services provided over the Internet that are susceptible to the same unfair and deceptive practices prohibited by the current Rule? If so, should these services be encompassed within an expanded definition of ''pay-per-call services''?

(b) What elements would a definition have to include to encompass such services?

(c) What are the costs and benefits to including online services within the scope of the 900-Number Rule?

(d) If such audiotext services provided over the Internet or commercial online services were included within an expanded definition of this term, what, if any, changes to the Rule's provisions would be necessary in order for the Rule appropriately and effectively to prevent unfair or deceptive practices in the advertising, sale, and operation of such services?

(e) How would preamble and other Rule requirements be met for audiotext numbers which are used to connect a caller's computer to the Internet or to commercial online services?

9. What steps can a consumer take to prevent his or her telephone line from being used for unauthorized non-900-number transactions such as international audiotext transactions?

(a) Is call blocking of international audiotext calls possible without requiring the consumer to block access to all international numbers?

(b) If not, what, if any, technology is under development that would permit selective blocking of particular numbers, area codes or international country codes?

10. What steps can a consumer take to obtain a credit or refund if he or she believes that there has been a billing error or an unauthorized use of his or her telephone for a non-900-number audiotext transaction? What happens if, for whatever reason, a consumer refuses to pay for a non-900-number audiotext call?

11. What was the gross sales revenue generated in the non-900-number audiotext industry for each year since the promulgation of the Rule in 1993?

(a) What explains the emergence and growth of non-900-number audiotext services?

(b) What, if any, benefits do audiotext services accessed through dialing patterns other than ''900'' confer on consumers or industry?

(c) How has the 900-number industry been affected by audiotext services that are not currently covered by FTC or FCC regulations? Explain.

12. What categories of audiotext services (e.g., sports, psychic, chat, adult) are provided through non-900 audiotext numbers?

(a) What percentage does each type constitute of all pay-per-call information services accessed through dialing patterns other than ''900''?

(b) What was the gross sales revenue for each category in each year since 1993?

By direction of the Commission.

Donald S. Clark,

Secretary.

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[17] FCC Pay-Per-Call Order and Notice, see supra note 9.