

“(1) The use of the telephone to market goods and services to the home and other businesses is now pervasive due to the increased use of cost-effective telemarketing techniques.

“(2) Over 30,000 businesses actively telemarket goods and services to business and residential customers.

“(3) More than 300,000 solicitors call more than 18,000,000 Americans every day.

“(4) Total United States sales generated through telemarketing amounted to \$435,000,000,000 in 1990, a more than four-fold increase since 1984.

“(5) Unrestricted telemarketing, however, can be an intrusive invasion of privacy and, when an emergency or medical assistance telephone line is seized, a risk to public safety.

“(6) Many consumers are outraged over the proliferation of intrusive, nuisance calls to their homes from telemarketers.

“(7) Over half the States now have statutes restricting various uses of the telephone for marketing, but telemarketers can evade their prohibitions through interstate operations; therefore, Federal law is needed to control residential telemarketing practices.

“(8) The Constitution does not prohibit restrictions on commercial telemarketing solicitations.

“(9) Individuals’ privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.

“(10) Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.

“(11) Technologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer.

“(12) Banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

“(13) While the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call, the Federal Communications Commission should have the flexibility to design different rules for those types of automated or prerecorded calls that it finds are not considered a nuisance or invasion of privacy, or for noncommercial calls, consistent with the free speech protections embodied in the First Amendment of the Constitution.

“(14) Businesses also have complained to the Congress and the Federal Communications Commission that automated or prerecorded telephone calls are a nuisance, are an invasion of privacy, and interfere with interstate commerce.

“(15) The Federal Communications Commission should consider adopting reasonable restrictions on automated or prerecorded calls to businesses as well as to the home, consistent with the constitutional protections of free speech.”

§ 228. Regulation of carrier offering of pay-per-call services

(a) Purpose

It is the purpose of this section—

(1) to put into effect a system of national regulation and review that will oversee interstate pay-per-call services; and

(2) to recognize the Commission’s authority to prescribe regulations and enforcement pro-

cedures and conduct oversight to afford reasonable protection to consumers of pay-per-call services and to assure that violations of Federal law do not occur.

(b) General authority for regulations

The Commission by regulation shall, within 270 days after October 28, 1992, establish a system for oversight and regulation of pay-per-call services in order to provide for the protection of consumers in accordance with this chapter and other applicable Federal statutes and regulations. The Commission’s final rules shall—

(1) include measures that provide a consumer of pay-per-call services with adequate and clear descriptions of the rights of the caller;

(2) define the obligations of common carriers with respect to the provision of pay-per-call services;

(3) include requirements on such carriers to protect against abusive practices by providers of pay-per-call services;

(4) identify procedures by which common carriers and providers of pay-per-call services may take affirmative steps to protect against nonpayment of legitimate charges; and

(5) require that any service described in subparagraphs (A) and (B) of subsection (i)(1) of this section be offered only through the use of certain telephone number prefixes and area codes.

(c) Common carrier obligations

Within 270 days after October 28, 1992, the Commission shall, by regulation, establish the following requirements for common carriers:

(1) Contractual obligations to comply

Any common carrier assigning to a provider of pay-per-call services a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section shall require by contract or tariff that such provider comply with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.; 5721 et seq.] and the regulations prescribed by the Federal Trade Commission pursuant to those titles.

(2) Information availability

A common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of a pay-per-call service shall make readily available on request to Federal and State agencies and other interested persons—

(A) a list of the telephone numbers for each of the pay-per-call services it carries;

(B) a short description of each such service;

(C) a statement of the total cost or the cost per minute and any other fees for each such service;

(D) a statement of the pay-per-call service’s name, business address, and business telephone; and

(E) such other information as the Commission considers necessary for the enforcement

of this section and other applicable Federal statutes and regulations.

(3) Compliance procedures

A common carrier that by contract or tariff assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of pay-per-call services shall terminate, in accordance with procedures specified in such regulations, the offering of a pay-per-call service of a provider if the carrier knows or reasonably should know that such service is not provided in compliance with title II or III of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.; 5721 et seq.] or the regulations prescribed by the Federal Trade Commission pursuant to such titles.

(4) Subscriber disconnection prohibited

A common carrier shall not disconnect or interrupt a subscriber's local exchange telephone service or long distance telephone service because of nonpayment of charges for any pay-per-call service.

(5) Blocking and presubscription

A common carrier that provides local exchange service shall—

(A) offer telephone subscribers (where technically feasible) the option of blocking access from their telephone number to all, or to certain specific, prefixes or area codes used by pay-per-call services, which option—

- (i) shall be offered at no charge (I) to all subscribers for a period of 60 days after the issuance of the regulations under subsection (b) of this section, and (II) to any subscriber who subscribes to a new telephone number until 60 days after the time the new telephone number is effective; and
- (ii) shall otherwise be offered at a reasonable fee; and

(B) offer telephone subscribers (where the Commission determines it is technically and economically feasible), in combination with the blocking option described under subparagraph (A), the option of presubscribing to or blocking only specific pay-per-call services for a reasonable one-time charge.

The regulations prescribed under subparagraph (A)(i) of this paragraph may permit the costs of such blocking to be recovered by contract or tariff, but such costs may not be recovered from local or long-distance rate-payers. Nothing in this subsection precludes a common carrier from filing its rates and regulations regarding blocking and presubscription in its interstate tariffs.

(6) Verification of charitable status

A common carrier that assigns by contract or tariff a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of pay-per-call services that the carrier knows or reasonably should know is engaged in soliciting charitable contributions shall obtain from such provider proof of the tax exempt status of any person or organization for which contributions are solicited.

(7) Billing for 800 calls

A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll free, in a manner that would result in—

(A) the calling party being assessed, by virtue of completing the call, a charge for the call;

(B) the calling party being connected to a pay-per-call service;

(C) the calling party being charged for information conveyed during the call unless—

(i) the calling party has a written agreement (including an agreement transmitted through electronic medium) that meets the requirements of paragraph (8); or

(ii) the calling party is charged for the information in accordance with paragraph (9);

(D) the calling party being called back collect for the provision of audio information services or simultaneous voice conversation services; or

(E) the calling party being assessed, by virtue of being asked to connect or otherwise transfer to a pay-per-call service, a charge for the call.

(8) Subscription agreements for billing for information provided via toll-free calls

(A) In general

For purposes of paragraph (7)(C)(i), a written subscription does not meet the requirements of this paragraph unless the agreement specifies the material terms and conditions under which the information is offered and includes—

(i) the rate at which charges are assessed for the information;

(ii) the information provider's name;

(iii) the information provider's business address;

(iv) the information provider's regular business telephone number;

(v) the information provider's agreement to notify the subscriber at least one billing cycle in advance of all future changes in the rates charged for the information; and

(vi) the subscriber's choice of payment method, which may be by direct remit, debit, prepaid account, phone bill, or credit or calling card.

(B) Billing arrangements

If a subscriber elects, pursuant to subparagraph (A)(vi), to pay by means of a phone bill—

(i) the agreement shall clearly explain that the subscriber will be assessed for calls made to the information service from the subscriber's phone line;

(ii) the phone bill shall include, in prominent type, the following disclaimer:

"Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services."; and

(iii) the phone bill shall clearly list the 800 number dialed.

(C) Use of PINs to prevent unauthorized use

A written agreement does not meet the requirements of this paragraph unless it—

(i) includes a unique personal identification number or other subscriber-specific identifier and requires a subscriber to use this number or identifier to obtain access to the information provided and includes instructions on its use; and

(ii) assures that any charges for services accessed by use of the subscriber's personal identification number or subscriber-specific identifier be assessed to subscriber's source of payment elected pursuant to subparagraph (A)(vi).

(D) Exceptions

Notwithstanding paragraph (7)(C), a written agreement that meets the requirements of this paragraph is not required—

(i) for calls utilizing telecommunications devices for the deaf;

(ii) for directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate; or

(iii) for any purchase of goods or of services that are not information services.

(E) Termination of service

On receipt by a common carrier of a complaint by any person that an information provider is in violation of the provisions of this section, a carrier shall—

(i) promptly investigate the complaint; and

(ii) if the carrier reasonably determines that the complaint is valid, it may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this section.

(F) Treatment of remedies

The remedies provided in this paragraph are in addition to any other remedies that are available under subchapter V of this chapter.

(9) Charges by credit, prepaid, debit, charge, or calling card in absence of agreement

For purposes of paragraph (7)(C)(ii), a calling party is not charged in accordance with this paragraph unless the calling party is charged by means of a credit, prepaid, debit, charge, or calling card and the information service provider includes in response to each call an introductory disclosure message that—

(A) clearly states that there is a charge for the call;

(B) clearly states the service's total cost per minute and any other fees for the service or for any service to which the caller may be transferred;

(C) explains that the charges must be billed on either a credit, prepaid, debit, charge, or calling card;

(D) asks the caller for the card number;

(E) clearly states that charges for the call begin at the end of the introductory message; and

(F) clearly states that the caller can hang up at or before the end of the introductory

message without incurring any charge whatsoever.

(10) Bypass of introductory disclosure message

The requirements of paragraph (9) shall not apply to calls from repeat callers using a bypass mechanism to avoid listening to the introductory message: *Provided*, That information providers shall disable such a bypass mechanism after the institution of any price increase and for a period of time determined to be sufficient by the Federal Trade Commission to give callers adequate and sufficient notice of a price increase.

(11) "Calling card" defined

As used in this subsection, the term "calling card" means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates.

(d) Billing and collection practices

The regulations required by this section shall require that any common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of a pay-per-call service and that offers billing and collection services to such provider—

(1) ensure that a subscriber is not billed—

(A) for pay-per-call services that such carrier knows or reasonably should know was provided in violation of the regulations issued pursuant to title II of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.]; or

(B) under such other circumstances as the Commission determines necessary in order to protect subscribers from abusive practices;

(2) establish a local or a toll-free telephone number to answer questions and provide information on subscribers' rights and obligations with regard to their use of pay-per-call services and to provide to callers the name and mailing address of any provider of pay-per-call services offered by the common carrier;

(3) within 60 days after the issuance of final regulations pursuant to subsection (b) of this section, provide, either directly or through contract with any local exchange carrier that provides billing or collection services to the common carrier, to all of such common carrier's telephone subscribers, to all new subscribers, and to all subscribers requesting service at a new location, a disclosure statement that sets forth all rights and obligations of the subscriber and the carrier with respect to the use and payment for pay-per-call services, including the right of a subscriber not to be billed and the applicable blocking option; and

(4) in any billing to telephone subscribers that includes charges for any pay-per-call service—

(A) display any charges for pay-per-call services in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges;

(B) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call; and

(C) identify the toll-free number established pursuant to paragraph (2).

(e) Liability

(1) Common carriers not liable for transmission or billing

No common carrier shall be liable for a criminal or civil sanction or penalty solely because the carrier provided transmission or billing and collection for a pay-per-call service unless the carrier knew or reasonably should have known that such service was provided in violation of a provision of, or regulation prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.; 5721 et seq.] or any other Federal law. This paragraph shall not prevent the Commission from imposing a sanction or penalty on a common carrier for a violation by that carrier of a regulation prescribed under this section.

(2) Civil liability

No cause of action may be brought in any court or administrative agency against any common carrier or any of its affiliates on account of any act of the carrier or affiliate to terminate any pay-per-call service in order to comply with the regulations prescribed under this section, title II or III of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.; 5721 et seq.], or any other Federal law unless the complainant demonstrates that the carrier or affiliate did not act in good faith.

(f) Special provisions

(1) Consumer refund requirements

The regulations required by subsection (d) of this section shall establish procedures, consistent with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.; 5721 et seq.], to ensure that carriers and other parties providing billing and collection services with respect to pay-per-call services provide appropriate refunds to subscribers who have been billed for pay-per-call services pursuant to programs that have been found to have violated this section or such regulations, any provision of, or regulations prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act, or any other Federal law.

(2) Recovery of costs

The regulations prescribed by the Commission under this section shall permit a common carrier to recover its cost of complying with such regulations from providers of pay-per-call services, but shall not permit such costs to be recovered from local or long distance rate-payers.

(3) Recommendations on data pay-per-call

The Commission, within one year after October 28, 1992, shall submit to the Congress the Commission's recommendations with respect

to the extension of regulations under this section to persons that provide, for a per-call charge, data services that are not pay-per-call services.

(g) Effect on other law

(1) No preemption of election law

Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, and local election statutes and regulations.

(2) Consumer protection laws

Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with any Federal, State, or local statute or regulation relating to consumer protection or unfair trade.

(3) Gambling laws

Nothing in this section shall preclude any State from enforcing its statutes and regulations with regard to lotteries, wagering, betting, and other gambling activities.

(4) State authority

Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures govern intrastate services and do not significantly impede the enforcement of this section or other Federal statutes.

(5) Enforcement of existing regulations

Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to October 28, 1992, in fulfilling the requirements of this section to the extent that such regulations are consistent with the provisions of this section.

(h) Effect on dial-a-porn prohibitions

Nothing in this section shall affect the provisions of section 223 of this title.

(i) "Pay-per-call services" defined

For purposes of this section—

(1) 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 services; or

(iii) any service, including the provision of a product, the charges for which are assessed on the basis of the 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 Commission in accordance with subsection (b)(5) of this section.

(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service for which users are assessed charges only after entering into a pre-subscription or comparable arrangement with the provider of such service.

(June 19, 1934, ch. 652, title II, §228, as added Pub. L. 102-556, title I, §101, Oct. 28, 1992, 106 Stat. 4182; amended Pub. L. 103-414, title III, §303(a)(13), (14), Oct. 25, 1994, 108 Stat. 4294; Pub. L. 104-104, title VII, §701(a)(1), (b)(2), Feb. 8, 1996, 110 Stat. 145, 148.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

The Telephone Disclosure and Dispute Resolution Act, referred to in subsections. (c)(1), (3), (d)(1)(A), (e), and (f)(1), is Pub. L. 102-556, Oct. 28, 1992, 106 Stat. 4181. Titles II and III of the Act are classified generally to subchapters I (§5711 et seq.) and II (§5721 et seq.), respectively, of chapter 83 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 5701(a) of Title 15 and Tables.

AMENDMENTS

1996—Subsec. (c)(7)(C). Pub. L. 104-104, §701(a)(1)(A), added subpar. (C) and struck out former subpar. (C) which read as follows: "the calling party being charged for information conveyed during the call unless the calling party has a preexisting agreement to be charged for the information or discloses a credit or charge card number during the call; or".

Subsec. (c)(7)(E). Pub. L. 104-104, §701(a)(1)(B), added subpar. (E).

Subsec. (c)(8) to (11). Pub. L. 104-104, §701(a)(1)(C), added pars. (8) to (11).

Subsec. (i)(2). Pub. L. 104-104, §701(b)(2), struck out "or any service the charge for which is tariffed," after "local exchange carrier or its affiliate,".

1994—Subsec. (c)(2) to (7). Pub. L. 103-414, §303(a)(13), redesignated par. (2), relating to compliance procedures, as (3) and pars. (3) to (6) as (4) to (7), respectively.

Subsec. (c)(7)(D). Pub. L. 103-414, §303(a)(14), which directed substitution of "conversation" for "conservation" in par. (6)(D), was executed by making the substitution in par. (7)(D) to reflect the probable intent of Congress and the redesignation of par. (6) as (7) by Pub. L. 103-414, §303(a)(13). See above.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 701(a)(3) of Pub. L. 104-104 provided that: "The amendments made by paragraph (1) [amending this section] shall take effect on the date of enactment of this Act [Feb. 8, 1996]."

REGULATIONS

Section 701(a)(2) of Pub. L. 104-104 provided that: "The Federal Communications Commission shall revise its regulations to comply with the amendment made by paragraph (1) [amending this section] not later than 180 days after the date of enactment of this Act [Feb. 8, 1996]."

§ 229. Communications Assistance for Law Enforcement Act compliance

(a) In general

The Commission shall prescribe such rules as are necessary to implement the requirements of

the Communications Assistance for Law Enforcement Act [47 U.S.C. 1001 et seq.].

(b) Systems security and integrity

The rules prescribed pursuant to subsection (a) of this section shall include rules to implement section 105 of the Communications Assistance for Law Enforcement Act [47 U.S.C. 1004] that require common carriers—

(1) to establish appropriate policies and procedures for the supervision and control of its officers and employees—

(A) to require appropriate authorization to activate interception of communications or access to call-identifying information; and

(B) to prevent any such interception or access without such authorization;

(2) to maintain secure and accurate records of any interception or access with or without such authorization; and

(3) to submit to the Commission the policies and procedures adopted to comply with the requirements established under paragraphs (1) and (2).

(c) Commission review of compliance

The Commission shall review the policies and procedures submitted under subsection (b)(3) of this section and shall order a common carrier to modify any such policy or procedure that the Commission determines does not comply with Commission regulations. The Commission shall conduct such investigations as may be necessary to insure compliance by common carriers with the requirements of the regulations prescribed under this section.

(d) Penalties

For purposes of this chapter, a violation by an officer or employee of any policy or procedure adopted by a common carrier pursuant to subsection (b) of this section, or of a rule prescribed by the Commission pursuant to subsection (a) of this section, shall be considered to be a violation by the carrier of a rule prescribed by the Commission pursuant to this chapter.

(e) Cost recovery for Communications Assistance for Law Enforcement Act compliance

(1) Petitions authorized

A common carrier may petition the Commission to adjust charges, practices, classifications, and regulations to recover costs expended for making modifications to equipment, facilities, or services pursuant to the requirements of section 103 of the Communications Assistance for Law Enforcement Act [47 U.S.C. 1002].

(2) Commission authority

The Commission may grant, with or without modification, a petition under paragraph (1) if the Commission determines that such costs are reasonable and that permitting recovery is consistent with the public interest. The Commission may, consistent with maintaining just and reasonable charges, practices, classifications, and regulations in connection with the provision of interstate or foreign communication by wire or radio by a common carrier, allow carriers to adjust such charges, practices, classifications, and regulations in order to carry out the purposes of this chapter.