Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-65

In the Matter of

Policies and Rules Concerning
Interstate 900 Telecommunications
Services

REPORT AND ORDER

Adopted: September 26, 1991; Released: October 23, 1991

By the Commission:

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I. INTRODUCTION

1. With this *Report and Order*, we amend Parts 64 and 68 of our rules to govern the provision of interstate 900 and "pay-per-call" telephone services and line seizure by automatic dialing devices. This action establishes the rules set forth in Appendix B, which are applicable to interexchange carriers (IXCs) and local exchange carriers (LECs), regarding preamble requirements, disclosure of the information provider's identity, blocking, disconnection, automated collect calls, and generation of dual-tone, multifrequency tones. We also amend Part 68 of the Commission's rules to require that autodialers release the called party's telephone line promptly.

II. BACKGROUND

2. On March 14, 1991, this Commission adopted a Notice of Proposed Rulemaking in CC Docket No. 91-65[1] in response to the large number of consumer complaints that the Commission had received on the issue of 900 services.[2] We proposed rules to protect consumers by requiring that IXCs, as part of their interstate 900 transmission service offerings, require that price and product or service identification be given before a consumer incurs a charge for a 900 call. Additionally, we proposed that each IXC provide the name, address and customer service telephone number of any information provider offering 900 services over its network. We also proposed that LECs offer, at no charge on a one-time basis, the option of blocking all 900 calls from a subscriber's telephone, where technically feasible. Finally, we proposed that a subscriber's basic telephone service should not be disconnected for failure to pay interstate 900 service charges. In response to the *NPRM*, approximately 130 comments and reply comments were filed.[3]

[1] Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65, Notice of Proposed Rulemaking, 6 FCC Rcd 1857 (1991) (hereinafter *NPRM*). A discussion of the development of the 900 services industry and consumer complaints related to 900 services issues is contained in paragraphs 2 to 7 of the *NPRM*.

[2] Since 1988, we have received approximately 4,300 complaints dealing with 900 services. Pay-per-call services are currently the most frequent topic of informal complaints to the Commission.

[3] Comments were due on April 24, 1991 and replies on May 24, 1991. A list of commenting parties, including the abbreviations we use herein, is contained in Appendix A. Late comments or replies were filed by Allied, AL PSC, AIPNY, BBBTN/GA, Manor, Comm SS, Delaware, MA AG, ME PUC, NAAG, NYSDPS, PA PUC, USPS, WI PSC, and the FTC. In the interest of a complete record, the Commission accepts these filings as part of the record in this proceeding.

III. DISCUSSION

3. The majority of the commenters generally agreed with the rules as proposed by the Commission in the *NPRM*. A specific discussion of the proposed rules and the considerations raised by the commenters follows.[4]

A. SECTION 64.711 - PREAMBLE

4. *Introduction.* Section 64.711 of the proposed rules would require that all interstate pay-per-call services begin with an introductory message that would disclose the price, the average cost of the call and a description of the product, information or service to be provided. The *NPRM* requested comments on whether the preamble is necessary for programs that are used for polling, provide information in a non-verbal format or are nominally priced. The proposed rule also would require that the timing of a pay-per-call program begin only after a specific, identified event, such as a signal tone, following the disclosure message. Preambles for all programs "aimed at or likely to be of interest to" children under eighteen would contain a warning that the caller should hang up unless he or she has parental permission. Finally, the rule proposed that the caller be able to bypass the preamble on subsequent calls but that this capability must be disabled if the price for the program has increased since the caller's last call to that program.

1. Section 64.711 - Preamble Requirement

5. *Proposal.* The *NPRM* would require a preamble on all interstate 900 programs that would disclose specific price and product or service information and give the caller an opportunity to hang up before charges begin.

6. *Comments.* Some commenters argue that the First Amendment protections of free speech bar the government from imposing preamble requirements on pay-per-call services.[5] Other commenters reply that pay-per-call services are commercial speech, which is given a much lower level of protection under the First Amendment, and that governments are permitted to enact restrictions on commercial speech in order to achieve legitimate state interests such as the protection of consumers.[6] Many information providers suggest that restrictions on advertising are a superior, and less intrusive, means of protecting consumers.[7] Consumer Action and NAAG, however, counter that advertising disclosures are not a sufficient substitute for a preamble.[8] One state attorney general reported on a recent telephone survey which revealed a very high level of consumer puzzlement over pay-per-call services.[9]

7. *Decision.* We are mandating a simple, brief preamble to inform consumers of essential information which they will need to make an informed purchase decision. In response to commenters' challenges to the constitutionality of the preamble,[10] we observe at the outset that the preamble in no way restricts, prohibits or dictates the content of the provider's subsequent message. Thus, judicial precedent regarding state efforts to prohibit speech, commercial or otherwise, is not controlling.[11] Moreover, the preamble presents only information concerning the terms under which the consumer will enter into the transaction with the information provider, *i.e.*, the name of the entity from whom the consumer will purchase the information or service, a brief description of the information or service to be provided, and the price terms of the transaction. The preamble does not involve political, religious or other speech which is entitled to heightened First Amendment protection. Therefore, judicial precedent regarding government-mandated political or religious speech is not controlling.[12]

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[4] The *NPRM* proposed Section 64.710, 47 C.F.R. § 64.710, which would require that common carriers provide interstate 900 transmission services only under the terms and conditions prescribed in the rules adopted herein. Few commenters address this issue. The comments support our tentative conclusion, which we make final, that the Commission has jurisdiction to undertake the regulatory actions described herein.

[5] *E.g.*, Comments of PPI at 11-23 (Citing Riley v. National Federation of the Blind of N.C., 487 U.S. 781 (1988), and contending that in pay-per-call programming most messages are not solicitations but pure speech, and therefore guaranteed the maximum protection under the First Amendment); Comments of COAC at 5; Comments of AIPNY at 2-5 (violation of information provider's and caller's First Amendment rights and information provider's Fifth Amendment rights; alternative is advertising disclosures); Comments of IIA at 19-22 (acknowledges that degree of protection might vary depending on the nature of the speech but claims that the 900 marketplace "surely" contains programs entitled to a high degree of protection, such as political or religious programs).

[6] Reply Comments of Attorney General Humphrey at 4-6; Reply Comments of USCC at 3-5.

[7] Comments of PPI at 6; Comments of Teleline at 1-2;Comments of Island at 3; Comments of CC/ABC at 2; *but see*, Reply Comments of Attorney General Humphrey at 8-9 (carrier review of advertising could be more expensive for information providers and more difficult for carriers than preamble disclosures); Reply Comments of SW Bell at 2-3 (several of the 900 services have no print or broadcast advertising so end users would get no price information without preamble; reviewing each advertisement is impossible.)

[8] Reply Comments of Consumer Action at 2-3; Comments of NAAG "The 900 Report" at 33 ("additional safeguards, such as preambles, are needed to give point of purchase information and to act as a second level of protection for consumers who respond to advertising that may not comply with the standards and the law.")

[9] Reply Comments of TN AG at 2-5 (Over one-third of the 802 respondents did not know that charges for 900 services depend on the nature of services provided. Only 20.9% knew (correctly) that their basic phone service could not be terminated for 900 service delinquencies. 14.3% did not know what a 900 number was. 5.5% believed that 900 calls, like 800 calls, are free to the calling party. 15.6% believed there was a flat charge for all 900 calls. Of the respondents who had made 900 calls, 48.7% were not satisfied with the price of the call. Over one-third expressed dissatisfaction with the service of the call. Nearly one-third had no idea where to report a problem with a 900 program operator. 42.1% believed that complaints should go to the phone company, 2.1% said complaints should go to the FCC, 10.7% said the PSC, and the other responses were scattered among other state and local agencies. The survey results underscore that consumers are still far down the learning curve when dealing with pay-per-call services).

[10] We note that the constitutionality of the parental permission warning to children, see Section III. A. 6, infra, is unchallenged.

[11] *See, e.g.*, Sable Communications v. FCC, 429 U.S. 115 (1989); Erznozik v. City of Jacksonville,422 U.S. 205 (1975) (cited by PPI).

[12] *See, e.g.*, Wooley v. Maynard, 430 U.S. 705 (1977); Miami

8. The issue here is whether the Commission can require disclosure of factual information concerning the terms of the pay-per-call commercial transaction prior to the commencement of the information provider's message. When the government requires disclosure in the context of commercial speech, which is entitled to lesser protection than other forms of protected speech, the advertiser's First Amendment rights are adequately protected so long as the disclosure requirement is "reasonably related to the State's interest in preventing deception of consumers." *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985). When the government attempts to require disclosure outside the context of commercial speech or where any commercial speech is "inextricably intertwined" with fully protected noncommercial speech (such as charitable solicitations), the disclosure must be narrowly tailored to achieve the state's interest in preventing fraud on consumers. *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988).

9. We believe the preamble requirement we adopt herein is in the nature of commercial speech, and therefore is properly examined under the standard enunciated in *Zauderer*. Commercial speech is speech that "proposes a commercial transaction." *Zauderer*, 471 U.S. at 637 (quoting *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 455-456 (1978)). As noted above, the preamble outlines the terms under which the consumer may purchase the information or service from the provider. This is the type of information one would expect to find in an advertisement soliciting consumers to purchase a product or service.

10. The "narrowly tailored" test used in *Riley* does not apply here. In *Riley*, the state required professional fundraisers to disclose to prospective donors the percentage of charitable contributions collected during the previous twelve months that were actually turned over to charity. In applying a more exacting "narrowly tailored" test, the Court declined to consider the disclosure message separately from the charitable solicitation. Without deciding whether the disclosure message was commercial speech, the Court found that the disclosure was "inextricably intertwined" with the charitable solicitation itself, and therefore examined the speech taken as a whole and the effect of the disclosure on the charitable solicitation. *Riley*, 487 U.S. at 796.[13]

11. Here, in contrast, the preamble is distinct and segregated from the information provider's message. The preamble precedes the message, informs the caller that billing will not commence until after the disclosure, and indicates that the caller may hang up before the provider's message begins without incurring a charge for the call. The preamble does not affect the information provider's basic message, unlike in *Riley*, where disclosing what percentage of charitable donations actually go to charitable causes goes to the heart of the fundraiser's message, *i.e.*, soliciting charitable donations. Under these circumstances, it cannot be said that the preamble is "inextricably intertwined" with the provider's basic message. Consumers should perceive the preamble as a separate message concerning the terms under which the consumer may purchase the information or service, rather than as part of the provider's basic message itself. Thus, we conclude that *Zauderer*, not *Riley*, is the applicable standard by which to judge the constitutionality of the preamble disclosure requirement.

12. The preamble requirement at issue here fully satisfies the constitutional standard of reasonableness set forth in *Zauderer*. The record in this proceeding clearly demonstrates the widespread deception and abuse of consumers[14] and children[15] which have occurred in the 900 services or pay-per-call industry. We find, based on the record before us, that pay-per-call services have a significant potential for infringement of, and in fact are infringing, consumers' rights to make informed decisions about telephone calls that are billed at an amount often far greater than the transmission charge with which consumers are more familiar. The preamble is designed to prevent deception and confusion by providing the consumer "purely factual and uncontroversial information about the terms under which [the] services will be available," thereby enabling the consumer to make an informed purchasing decision. See *Zauderer*, 471 U.S. at 651. While we recognize that the preamble requirement does impose some costs on the information providers,[16] we believe that those costs are reasonable when balanced against the consumer confusion due to inadequate information and the widespread and growing abuse of consumers that has been reported in the pay-per-call industry.[17] We find that disclosure requirements in pay-per-call advertising are not as effective as the preamble requirement adopted herein, and thus alone are not reasonable alternatives. Advertising requirements would be difficult to police in the pay-per-call industry, where consumer interest in calling may be generated in many ways, including many types of advertising, and many of these tools, such as telephone solicitation, are transitory. Because such requirements could not be effectively enforced, compliance would be problematic. In contrast, consumers will easily be able to

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Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974); West Virginia State Bd. of Ed. v. Barnette, 319 U.S. 624 (1943)(cited by PPI).

[13] Significantly, the Court found that the compelled disclosure "will almost certainly hamper the legitimate efforts of professional fundraisers to raise money for the charities they represent." *Riley*, 487 U.S. at 799.

[14] Comments of NAAG at "The 900 Report" at iii (consumer fraud "nearly endemic"); Comments of Attorney General Humphrey at 11-12, 16 (900 number deception preys on the weak, disadvantaged, elderly, sick and poor. In Minnesota, the most common complaint is that cost was not disclosed).

[15] Comments of Attorney General Humphrey at 11-12 (part of the targeted population is children, who often lack the sophistication and maturity to understand the cost and nature of pay-per-call services offered through the pervasive media of television and 900 numbers and who are often least resistant to the impulse buying tendencies such promotions invite); Reply Comments of USSC at 4-5 (pay-per-call services targeting an audience of children raise additional constitutional concerns favoring regulation).

[16] *E.g.*, Comments of ACI at 6 (cost of the sample preamble suggested in the *NPRM* is $.12 to $.15 per call).

[17] *NPRM*, 6 FCC Rcd at 1857-58; Comments of Attorney General Humphrey at 1415 (501 complaints about 900 service received since January 1, 1990); Reply Comments of the TPUC at 1 (over 30,000 letters and complaints regarding 976 and 900 services); Comments of Mass. AG at 1 (close to 500 complaints a year about 900 services to Department of Public Utilities); Reply Comments of Iowa UB at 2 (on a monthly basis, the Board received four times the average number of complaints in 1991 compared to 1990); Comments of Ohio PUC at Attachment A (complaints regarding 900 and 900-like services increased from 147 in first quarter of 1990 to 372 in the first quarter of 1991).

document instances where the required preamble was not included in a 900 services call. Accordingly, we conclude that the preamble disclosure requirement we adopt today is "reasonably related" to our valid interest in "preventing deception of consumers" with respect to pay-per-call services. *Zauderer*, 471 U.S. at 651.[18]

2. Section 64.711 - Exceptions to Preamble Requirement

13. *Proposal.* The *NPRM* requested comments on whether some categories of 900 programs should be exempted from the preamble requirement. Specifically, it identified polling services, programs provided in a nonverbal format and programs of nominal cost as possible categories of exemption from the preamble requirement.

14. *Comments.* Commenters generally support some exceptions to the preamble requirement, although a few commenters oppose any exceptions.[19] Most commenters, however, favor excepting either polling or nominally priced programs, or both. The typical justification for excepting polling programs is that they have historically been of low cost and short duration and are not typically the subject of consumer complaints. Consumer Action, however, comments that it has encountered numerous instances of fraudulent polls, contests and other low-cost programs that would take advantage of any exceptions to this rule.[20] AT&T states that calls to its polling services are usually less than nine seconds in duration.[21]

15. The commenters who favor excepting nominally priced programs argue that the preamble requirement will have a very severe adverse impact on them because the cost of the preamble will be the same for low- and high-priced programs but the low-priced programs would have less revenue to offset those costs. The commenters suggest a range of standards for determining what is a "nominally priced" program. The lowest standard suggested is that there be exceptions only for polling programs charging $.50 or less per call with no exception for usage sensitive[22] programs.[23] Other commenters recommend exceptions for programs with flat rate charges of $1.00 or less per call with no exception for usage sensitive calls[24] , or flat rate charges of $2.00 or less per call, with no exception for usage sensitive calls.[25] Most of the industry commenters suggest that preambles not be required for programs that charge less than $5.00 per minute or have a maximum per call charge of $10.00.[26]

16. Relatively few comments were received on nonverbal programming. Most commenters who dealt with the issue recommend that these programs be excepted from the preamble requirement because a preamble is not suitable for such programs and because they are not a current subject of abuse of consumers.[27]

17. AT&T also requests exemption for programs that use "asynchronous technology."[28] AT&T originally estimated that it would cost it more than $6 million and take two years to develop the capability to put preambles on these programs. [29]

18. *Decision.* We conclude that there should be a limited exception from the preamble requirement for nominally priced programs. A preamble would have a disproportionately greater adverse impact on nominally priced programs that would, in our view, outweigh the benefits consumers might realize from the disclosure. The standard that many in the industry suggest, however, for determining what is nominal, $5.00 per minute and $10.00 per call, is excessive even if the $10.00 per call limit applies to usage sensitive calls. The record gives us ample cause for concern that consumers will suffer injury if programs charging up to $10.00 per call are exempted from the preamble requirement.[30] We believe that $2.00 per call represents a reasonable figure that strikes a balance between the need to protect consumers, on the one hand, and the need to avoid imposing disproportionately high disclosure costs on inexpensive flat-rate calls, on the other hand. Therefore, we find that all usage sensitive programs and all programs charging more than $2.00 per call should be required to have preambles. We recognize that information providers may pass the cost of providing preambles along to consumers in their charges for these

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[18] We also conclude that the preamble meets the "narrowly tailored" test set forth in *Riley*. Having determined that disclosure requirements in pay-per-call advertising would be ineffective, our brief, factual preamble disclosure requirement preceding the provider's actual message is narrowly tailored to achieve the valid purpose of enabling consumers to make an informed purchasing decision.

[19] Comments of NAAG at 6-7; Reply Comments of Consumer Action at 1.

[20] Reply Comments of Consumer Action at 2.

[21] Comments of AT&T at 6.

[22] "Usage sensitive" programs are those charged by the minute or some other unit of time so that the total cost of the call is dependent on how long the caller stays on the line.

[23] Comments of Attorney General Humphrey at 28.

[24] *E.g.*, Comments of MPSC at 3; Reply Comments of Consumer Action at 2.

[25] Comments of IIA at 29; Comments of SW Bell at 2 (programs with a flat rate charge of two dollars or less should be exempt from the preamble requirement; low priced flat rate calls would thereby be handled in an efficient manner for both the customer and the network); Comments of the USTA at 5; Comments of Coalition at 5 (surmises that complaints received by Commission have not involved programs for which charge is $2.00 or less per call; unless there have been complaints, there may not be a need for a price disclosure for these programs); Comments of IURC at 3 (would consider "nominal" to be anything less than $1.50 per call).

[26] *E.g.*, Comments of AT&T at 8; Comments of COAC at 7; Comments of PPI at 27.

[27] Comments of DMA at 5 (preambles on services that provide direct access to computer databases would either be ineffective, unduly disruptive or both); Comments of IIA at 28 (cites delivery of printed matter via facsimile, downloading of data or computer software or access to computerized databases as examples of non-verbal services); *but see* Comments of IT at 7-8 (supports preamble on non-verbal programs); Comments of MPSC at 3 (should be no exception to preamble for non-verbal programs unless they are priced less than $1.00 per call.)

[28] Comments of AT&T at 7 ("asynchronous technology" allows numerous callers to listen simultaneously to a sponsor's live or recorded message, which plays continuously. Callers "barge in" to these programs by joining them in progress.)

[29] *Id* . at 7 n. *.

[30] Comments of Attorney General Humphrey at Exhibit 2 (this exhibit contains logs of pay-per-call complaints received by the commenter's office; many concern programs priced below the $5.00 per minute or the $10.00 per call threshold suggested by other commenters); Reply Comments of SW Bell at 2 (many programs which cause the most complaints and result in the highest percentage of adjustments are usage sensitive programs under $5.00 per minute).

services. For nominally priced programs, we believe that the increased cost and inconvenience caused by the preamble would exceed the benefit that consumers would receive through the preamble disclosures.

19. We are persuaded that there should be no specific exemptions from the preamble requirement for any other category of programming. The fact that polling programs have historically been of low cost and short duration provides no assurance that they will continue to be so, and their duration is irrelevant to the question of whether consumers are being adequately protected. To the extent that they continue to be low cost, polling programs will be exempt from the preamble requirement as nominally priced programs. If polling programs exceed the threshold for nominally priced programs, then the arguments for exempting them are outweighed by the need to protect the consumer. The arguments for exempting non-verbal programs from the preamble requirement center around the technical difficulty of providing a preamble and the lack of past consumer abuse or complaints. There is insufficient evidence in the record to indicate that technical difficulties are so great as to warrant an exception from the preamble requirement. The preamble for non-verbal programs would not need to be verbal, but rather could be in a program format compatible with the technology used to deliver the program, although it must convey the necessary information to the caller and allow the caller the opportunity to hang up without being charged. Finally, with respect to asynchronous programs, we find that there is not sufficient information in the record to justify a broad exemption for such programs. Moreover, AT&T, the primary advocate of this exception, has not adequately demonstrated that it is not technically feasible to provide preambles for these programs. There is no evidence in the record that this category of programming will be less susceptible to consumer confusion or other harm to consumers than other types of pay-per-call programs.

3. Section 64.711(a) - Disclosure of Price

20. *Proposal.* The proposed rule would require that the preamble begin with a disclosure message that clearly states the cost of the call, including all per-call charges. For calls billed on a usage sensitive basis, the preamble would have to state all rates, by minute or other unit of time, any minimum charges, and the average cost of the usage sensitive call. The average cost need not be disclosed, however, for a usage sensitive call if the caller has sole control over the length of an interactive call.

21. *Comments.* The commenters support the requirement that the preamble must disclose all flat-rate charges and, for usage sensitive programs, the rate per minute or other unit of time. Most comments on this section focus on the requirement that the preamble disclose "average costs" of usage sensitive calls. Some of the industry commenters state that disclosure of average costs should not be required because it would be difficult to provide this information.[31] Another industry commenter, however, views the requirement as reasonable.[32] Some government commenters assert that the exception allowing some interactive calls not to state the average price would swallow the rule.[33] One commenter argues that the minimum charge disclosure requirement is redundant.[34]

22. *Decision.* Disclosure of all the charges for a pay-per-call program is in the public interest because it is the fundamental mechanism for providing consumers with the information they need to make an informed choice about a pay-percall service, which may be costly. We have considered the arguments of the commenters regarding disclosure of average cost and conclude that, for programs of determinable length, a more meaningful disclosure would be the total price necessary to obtain the full message. The benefits to consumers in the form of full knowledge of the total cost for pay-per-call programs which have a predictable duration will outweigh the minimal difficulties that some information providers may have in implementing this disclosure requirement. Therefore, we change the rule to state that preambles must disclose the total price of the call if there is a determinable length for the program. Moreover, the requirement that the preamble disclose minimum cost is not redundant with requiring the per-unit cost, when a program quotes a per-minute rate but then requires, for example, a ten-minute minimum.[35]

23. We acknowledge the concerns of the government commenters about the absence of average cost information for interactive calls. However, we are persuaded by the comments of industry about the difficulty of calculating a meaningful average cost for interactive calls. Moreover, we conclude that a total cost requirement for such calls would not be appropriate. We are also concerned that an average cost requirement could, itself, be used to deceive consumers. Thus, for programs without a determinable length, such as interactive or asynchronous programs, we will not require disclosure of either total or average costs.

4. Section 64.711(b) - Description of Information, Product or Service

24. *Proposal.* The proposed rule would require that the preamble describe the information, product or service that the caller will receive if he or she continues the call.

25. *Comments.* Many commenters express concern that this rule would require such detailed disclosures that it would have a seriously adverse impact on the cost of the preamble and on the marketability of the programs.[36] Other commenters stress the importance of the program-content disclosures or acknowledge that they are reasonable.[37] The FTC comments that determining whether a preamble includes an "accurate description" of the pro-

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[31] Comments of NYCOM at 4; Reply Comments of AT&T at 3 n. *; Comments of Pac Tel at 2-3.

[32] *See* Comments of IT at 5.

[33] Comments of Rep. Gordon at 4; Comments of Attorney General Humphrey at 25-27.

[34] Comments of Pac Tel at 2-3 ("seems redundant" as long as per-call or per-minute charges are clearly stated).

[35] *See, e.g.*, Comments of Attorney General Humphrey at 26-27; Comments of NASUCA at 8-9; Comments of VA AG at 3.

[36] Comments of Allied at 5; Comments of IT at 10; Comments of PMAA at 1; Comments of Teleline at 5; Comments of United at 3.

[37] *E.g.*, Comments of NASUCA at 10; Comments of Conn. AG at 6; Comments of Nycom at 4.

gram may not be a clear-cut task.[38] The FTC cautions against requiring too detailed a disclosure of program content in the preamble and notes that a case-by-case review of programs by the agency having jurisdiction over program content, the FTC, may have certain advantages over an industry-wide rule. The FTC recommends that this provision be interpreted to require disclosure of only a brief description of the program content. The FTC notes that under this approach, information providers that provide false or misleading information to consumers in advertising, preambles or information programs would be subject to investigation by the relevant regulatory authorities, including the FTC. Finally, commenters suggest that we require that the preamble also include the name of the information provider.[39]

26. *Decision*. We are persuaded by the cautionary comments of the FTC that requiring a detailed disclosure of program content could unnecessarily complicate the preamble and that other state and federal agencies have more effective ways of addressing this issue than this Commission does. Therefore, we will interpret this rule to require only a general description such as "sports scores" or "stock quotes" rather than a detailed description of all possible information, products or services that the consumer could receive by calling this number. We understand that there are commenters who would prefer more detailed disclosure in the preamble of all possible information, products or services as an additional means of protecting the consumer. Nevertheless, we find the comments of the FTC, the federal agency with expertise in dealing with deceptive practices, to be very persuasive when it argues that a preamble requiring complete content disclosure would be of questionable effectiveness and difficult to apply and that there are other, more effective ways to deal with this issue. Further, we require that the preamble disclose the name of the information provider. This requirement will provide important additional information to the consumer with little or no additional burden on the IXCs or information providers.

5. Section 64.711(c) - Commencement of Charges

27. *Proposal*. The *NPRM* proposed that the preamble must inform the caller that billing will commence only after a specific identified event, such as a signal tone, following the disclosure message.

28. *Comments*. The commenters raise several concerns with this section. First, IXCs comment that their networks do not have the capability to generate a signal tone or that the billing systems are set up to time calls as soon as they receive answer supervision[40] at the start of the call.)[41] MCI comments that the proposed rule would require each 900 services call to have two starts for billing purposes, one for the preamble and one for the message, and that this system will be costly and difficult to implement. Information providers also advocate that billing for the call revert back to its beginning when the caller remains on the line after the preamble.[42] One LEC states that it does not have the technical capability to know whether the preamble is included in the billed time and that LECs should not be responsible for ensuring that billing is correct.[43]

29. Second, many commenters note that the proposed rule does not require any minimum period of time between the end of the verbal preamble warning and the beginning of billing. The suggestions for remedying this deficiency include: (a) requiring a minimum time period between the end of the message and the beginning of billing, such as ten seconds,[44] or five seconds[45] of silence; and (b) requiring that information providers "provide a reasonable opportunity for the caller to disconnect before that event."[46]

30. *Decision*. We find that carriers should not be allowed to bill callers for the preamble portion of a pay-per-call service. We recognize that this requirement will create some initial difficulties for carriers who may now include that time in the charges, but find it to be consistent with consumer expectations and essential to prevent abusive use of the preamble requirement. The alternative suggested by the commenters, charging callers for the entire duration of the call if they stay on the line after the preamble, is seriously flawed because it could impose very high charges on callers for the preamble time, the length of which is not controlled by the consumer. Another alternative might be to allow carriers to bill callers for the preamble time at tariffed communications rates. However, we reject this approach because it would result in a very complex rate structure that would be very difficult for callers to understand and carriers to bill. As many commenters indicate, information providers will necessarily pass the cost of complying with the preamble requirement on to consumers as a cost of doing business.[47] Information providers obviously will seek to recover their costs of doing business, and we expect them to do so, but we reaffirm that billing for usage sensitive calls may only begin after the preamble ends.

31. We are also persuaded that a caller should have a reasonable opportunity to disconnect after the preamble message has ended but before billing begins. Rather than specify a minimum time period, we believe that the better course is to adopt the language recommended by NAAG which states that the program "must provide a reasonable opportunity for the caller to disconnect before" the signal tone or other identified event required by the rule.

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[38] Comments of the FTC at 31-32.

[39] Comments of Conn. AG at 8 (advocates disclosing name, address and telephone number of information provider in preamble); Comments of Attorney General Humphrey at 29 (should state information provider's name); Reply Comments of DMA at 2,4 (advocates disclosing sponsor's name and nature of service); Comments of Nixon at 3-7 (disclosure of name would help prevent trademark infringement by telemarketers).

[40] "Answer supervision" is the term used by telephone companies to describe the signal that the called station (or other CPE) emits to tell the telephone companies' billing equipment that a call has been answered and that billing should commence. *See* Petition for Adoption of New Section 68.314(h) of the Commission's Rules, Notice of Proposed Rule Making, CC Docket No. 89-114, 4 FCC Rcd 4577, 4585 n. 3 (1989).

[41] Comments of AT&T at 4; Comments of MCI at 3; Reply Comments of AT&T at 5 n. *.

[42] Comments of ACI at 8; Comments of IIA at 25; Comments of NAIS at 9.

[43] Comments of SW Bell at 2.

[44] Comments of NAAG at 7-8.

[45] Comments of NASUCA at 10; Comments of AT&T at 5; Reply Comments of AT&T at 5 n. *.

[46] Comments of NAAG at 10.

[47] *E.g.*, Comments of ACI at 3 (cost of the sample preamble suggested in the *NPRM* is $.12 to $.15 per call).

6. Section 64.711(d) - Parental Permission Warning to Children

32. *Proposal.* The *NPRM* proposed that the preamble on 900 interstate 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.

33. *Comments.* The record shows that calls by children to 900 programs are a common cause of complaints by consumers.[48] The proposed standard for preambles on children's programming, however, provoked considerable comment. First, information providers and carriers indicate that the standard, programs "aimed at or likely to be of interest to" children, is very broad.[49] Comptel argues that if this standard is adopted, it would recommend that its member carriers should be allowed to file tariffs requiring the children's preamble warning on all programs because the proposed test is so broad that the only way to ensure that a carrier meets its obligations under the rule is to require the warning on all programming.[50] On the other hand, some government agencies and consumer groups support the proposal or advocate stronger action.[51]

34. Second, many industry commenters argue that the age standard is too high and should be reduced; twelve or younger was the most commonly suggested standard.[52] Again, government agencies and consumer groups express contrary views, arguing that we should retain or strengthen the proposed limit of "under the age of eighteen."[53] One commenter argues that verbal warnings to children are largely ineffective and states that an outright ban on programs aimed at children under eighteen is a preferable solution.[54]

35. *Decision.* Although the industry commenters raise some valid points about the difficulty of applying the test proposed in the *NPRM*, we must strike a balance between adverse effects on the industry and achieving adequate protection for children and their parents. We are persuaded by the comments of the government and industry commenters that effective protection of children requires that the preamble warning be applied to all programs "aimed at or likely to be of interest to" children. The "marketed to" test proposed by some commenters does not, in our judgment, adequately protect children because it leaves the information provider with too much discretion to determine when the warning for children should apply. For example, programs providing sports scores or information about celebrities might be "of interest to" teenagers and thus frequently accessed by them but an information provider could argue that they are not "marketed to" teenagers. Further, the age limit of "twelve or younger," which some commenters suggest, would leave many abuses undeterred[55] and we are persuaded that the age limit should remain at less than eighteen.[56] We do not agree with the National Consumer's League that programs aimed at children under eighteen should be banned, however. Our adopted rule, combined with other provisions such as the requirement for voluntary blocking, should strengthen parental ability to control and deal with improper use of 900 services by minors.

7. Section 64.711(e) - Bypass of Preamble by Repeat Callers

36. *Proposal.* The *NPRM* proposed that callers be given the opportunity 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 the bypass capability.

37. *Comments.* Commenters predominantly support the concept of a bypass mechanism for the preamble.[57] A significant minority of the commenters, however, opposes the bypass mechanism.[58] Most of the comments on this issue center on the question of how the bypass mechanism would be disabled whenever the price of a 900 services program increased. Many commenters state that the rule proposed in the *NPRM*, that the bypass mechanism be disabled if the price has increased "since the caller's last use" of the 900 program, is not practical because it is not possible for many programs to determine whether a caller has called a program before or whether a particular call is his or her first call after a price increase.[59] In the alternative, commenters suggest that the Commission require that the bypass mechanism be disabled for a fixed period of time after a price increase.[60]

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[48] *See* Comments of Attorney General Humphrey at 8; Comments of FTC at 12-13, 33-37; Comments of NASUCA at 11; Comments of NCL at 6-8; Reply Comments of USCC at 4-5.

[49] *E.g.*, Comments of ANPA at 4.

[50] Comments of Comptel at 8.

[51] *E.g.*, Reply Comments of Consumer Action at 5 (advocates per-minute and per-call price caps as well as specific language in advertisements and preambles); Comments of Attorney General Humphrey at 31-32 (preamble warning for children should be applied in every program because of the difficulty in deciding which programs meet the standard); Comments of NAAG at 8 (children's programs have such a high potential for unfairness to parents and children that identification access code system is only fair way to offer them).

[52] *E.g.*, Comments of ANPA at 4-5 (should lower age limit); Comments of AT&T at 5 n. * (advocates age 12, relying on Children's Advertising Review Unit's suggested standard); Comments of IT at 9 (suggests age 12; says FCC uses that age in other proceedings).

[53] Reply Comments of Consumer Action at 5 (supports *NPRM* standard); Comments of NAAG at 8 (supports *NPRM* standard).

[54] Comments of NCL at 2, 6-8.

[55] Reply Comments of Consumer Action at 5 (access to pay-per-call services is not analogous to other purchases which teenagers typically make because of the amounts potentially involved and the ability to incur charges on the parents' telephone without prior permission); Comments of NAAG at 8.

[56] Comments of Consumer Action at 5-6 (it is only at the age of eighteen that a person can contract for services and then be held legally liable for 900 calls made without permission); Comments of Attorney General Humphrey at 32 (since 900 service is not telephone service, parents are not legally responsible for unauthorized calls made by their minor children).

[57] *E.g.*, Comments of ANPA at 5; Comments of AT&T at 6 n. **; Comments of IUCC at 7; Comments of DMA at 4; Comments of MCI at 4; Comments of NASUCA at 12; Comments of Cal. CA at 4.

[58] *E.g.*, Comments of NCL at 8-9; Comments of VA AG at 6; Comments of Conn. AG at 9; Comments of NAAG at 8 (bypass unworkable and likely to be abused); Comments of Allied at 2 (opposes bypass; caller needs to know cost each and every time).

[59] *E.g.*, Comments of NASUCA at 12.

[60] Comments of IT at 7 (disable for 48 hours); Comments of MCI at 3-4 (30 days); Comments of NAAG at 11 (30 days);

38. *Decision.* The Commission adopts the proposed bypass rule but modifies it as commenters suggest: the bypass mechanism must be disabled for thirty days after a program increases its price. This rule will allow repeat subscribers to a 900 service, at their option, to avoid listening to informational material that they have heard at least once before and simply do not want to hear again. However, the instructions on how to use the bypass mechanism, if a bypass mechanism is provided, must be at the end of the preamble or the end of the program. Our approval of a bypass mechanism is intended to allow repeat callers to avoid the delay and inconvenience of listening to information that they have already heard. Accordingly, it should not be used to allow first-time callers to avoid hearing the material that we have found to be of value in deterring abuses

B. SECTION 64.712 - IDENTIFICATION OF INFORMATION PROVIDERS

39. *Proposal.* The *NRPM* would require the carrier providing interstate 900 transmission service to 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 proposed rule further requires that the carrier shall provide that information upon verbal or written request.

40. *Comments.* The comments on this issue heavily favor the proposed rule.[61] Some commenters, however, either criticize the proposed rule[62] or suggest significant modifications that would dilute the disclosure requirement. Specifically, Telesphere argues that carriers should be allowed to provide "other information that will best address the consumer's inquiry" and should be able to do so in writing.[63] MCI argues that the duty of the IXC should stop at its customer, which may be the service bureau, and notes that information providers frequently sell their receivables to another entity to whom the consumer may then be responsible for paying the 900 service charge.[64] MCI argues that it cannot track the current ownership of receivables for hundreds or thousands of information providers and give consumers that information. The IIA, however, "strongly supports" this proposed rule and agrees that the focus should be on "whatever party is legally responsible" - to consumers and regulators - for the content of the 900 service and the fulfillment of any commitments made by the program.[65]

41. Several government commenters argue that the requirement should be modified to strengthen it. Specifically, they suggest that we require that the information be provided free,[66] and in a timely manner.[67] NCL advocates that the IXCs cooperate to set up a national 900 number registry that consumers could reach through a toll-free number.[68] Other commenters suggest that each IXC offering pay-per-call services be required to set up a toll-free number to handle these inquiries.[69] The USPS notes that under the rules proposed in the *NPRM*, the consumer will not know which IXC offers a particular program until the bill arrives.[70] The USPS proposes that the name of the IXC be added to the preamble to give callers the opportunity to deal with problems at the time the call is made, rather than requiring them to wait for the bill from their common carrier.

42. *Decision.* We adopt the proposed rule requiring IXCs to provide the identifying information. This requirement is crucial to our efforts to ensure that consumers have full knowledge of the programs that they are accessing. The burdens on the industry are very minor in comparison to the benefit to consumers. We reject the suggestions that we allow the carriers to provide consumers with identifying information only about service bureaus or entities other than the information providers. MCI and Telesphere argue that this will lead to improved customer service because entities other than the information provider may be better able to answer customer queries about account balances, adjustment policies, and other matters. Although this may be true, these commenters ignore that the existing structure of the industry has afforded "a built-in shield between the unscrupulous marketers and the public."[71] We recognize that, in some individual cases, the information provider will not have the personnel or the accounting records to answer consumer inquiries or to handle complaints. Nevertheless, we believe that it is far more important to allow individual consumers, consumer groups, and law enforcement agencies to identify information providers. Correct identification of the information provider assists consumers who may want to make complaints to the information provider or institute civil or criminal proceedings against it. Requiring that information providers be accessible to consumers imposes no more of a burden on them than any other business faces in dealing with customers. There is nothing in our ruling which prevents the carrier from providing additional information, such as the name and telephone number of a service bureau that is answering customer inquiries for the information provider. We emphasize, however, that carriers must, upon request, pro-

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Comments of NASUCA at 12 (one month); Comments of Teleline at 4 ("a reasonable time"); Comments of Telesphere at 11 (one week).

[61] *E.g.*, Comments of AT&T at 8 n. *; Comments of COAC at 8; Comments of Coalition at 6 (information provider identification requirement went into effect in California in 1985 and does not seem to have provided any difficulties for either carriers or information providers).

[62] *E.g.*, Comments of NAIS at 10-11 (supports consumer's right to know identity of information provider but questions utility of the requirement).

[63] Comments of Telesphere at 14-16.

[64] Comments of MCI at 4-5.

[65] Comments of IIA at 31.

[66] Comments of MO OPC at 4; Comments of Cal. CA at 5 (providing a 900 number for an information provider's customer service number is not compliance).

[67] Comments of NASUCA at 13.

[68] Comments of NCL at 10-11.

[69] Reply Comments of AT&T at 9 (there is broad support among commenters for a toll-free number to provide this information).

[70] Comments of USPS at 2.

[71] Comments of NAAG," The 900 Report" at 8; *see also* Comments of the BBBNY at 1 (strongly supports this requirement; monitoring and law enforcement will improve significantly if information provider names and addresses are made available).

vide identifying information about information providers to consumers or other entities, including state or federal agencies, that request the information.[72]

43. We agree that the proposed rule would be enhanced by specifying that the information must be provided at no charge and within a reasonable time. The intent of this rule is to provide consumers with the information they need to seek redress effectively from information providers. Charging a fee for that information or delaying a response could reduce or eliminate the value of the information. Therefore, we order that the information specified in Section 64.712 be provided at no charge to the requester, and that it be provided in a reasonable time, not exceeding three days. It is our expectation that this information shall, in all but exceptional cases, be provided with no delay.

C. SECTION 64.713 - BLOCKING OF 900 SERVICE

1. Technical Feasibility of Blocking

44. *Proposal.* The *NPRM* provided that LECs must offer to their subscribers, where technically feasible, an option to block all interstate 900 services.

45. *Comments.* The comments are overwhelmingly in favor of our proposal to require LECs to block interstate 900 services upon the subscriber's request.[73] There is significant comment, however, about what the phrase "technically feasible" means and how it should be applied.[74] In general, the comments state that older electromechanical switches are incapable of blocking calls to the 900 exchange on an individual subscriber basis and that software changes or generic updates will be necessary in some stored program control switches to accomplish that blocking.[75] USTA recommends that we define blocking of 900 services to be "technically feasible" when it "can be achieved without significant new capital investment, and where any expense incurred is modest and would not affect a carrier's established network planning and deployment processes."[76] Some information providers see the availability of voluntary blocking as a way to ensure that only the consumers who want information services have access to them.[77] The IXCs and LECs generally see voluntary blocking as a way of reducing complaints and consumer dissatisfaction.[78]

46. *Decision.* We adopt a rule requiring that LECs offer to subscribers the option to block all services on the 900 exchange where technically feasible. The record demonstrates overwhelming support for blocking as a means of giving consumers a measure of control over their exposure, and the exposure of children especially, to information services and the unexpected charges that can be incurred through the improper use of the services. In defining "technically feasible", we balance both technical and economic considerations with a view toward providing blocking capability to consumers without imposing undue economic burdens on LECs. This rule will impose an obligation on LECs to provide subscribers, both residential and commercial, with the option to request blocking of 900 service where the existing switch will accommodate it. We are not requiring that LECs accelerate their purchases of new equipment. Rather, the LEC must, when existing equipment is capable of providing blocking for 900 services, provide blocking. Also, we clarify that, in light of the technical difficulties which LECs would encounter in blocking non-900 pay-per-call services, we are only requiring the LECs to provide blocking for pay-per-call services on the 900 exchange.

2. Blocking of 900 Services for Residential Subscribers

47. *Proposal.* The proposed rule requires that blocking shall be free on a one-time basis for all residential subscribers. The *NPRM*, however, invited comment on whether free blocking should only be available to subscribers who are in one of three categories: (1) subscribers for an initial period of time when the blocking service is first made available; (2) new subscribers when they first obtain service; and (3) subscribers who dispute or question a 900 service charge for the first time.

48. *Comments.* First, the comments generally favor free blocking for residential subscribers during an initial introductory period and when they first obtain service.[79] There were many favorable comments on also making

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[72] We clarify that the rule is not intended to require that the carrier keep track of the ownership of an information provider's accounts receivable and provide identifying information about the current owner. *See* Comments of MCI at 4-5. While the Commission recognizes that factoring of receivables is a common practice in the 900 industry, the record shows that it is typically done on a recourse basis so that ownership of unpaid receivables would typically return to the information provider. In any event, the intent of the rule is to make the information provider accessible to the public and to public agencies. Requiring the carrier to disclose identifying information about "any other entity to whom the caller might be responsible for paying the 900 service charge" was not meant to require the carriers to track and disclose identifying information about entities acting as factors of 900 services accounts receivable. Rather, that requirement was to allow the consumer and his or her representatives to identify and contact the entity legally responsible for a 900 services program, even if the information provider had a unique organizational structure or actively tried to conceal its identity. However, in response to the commenters' suggestion, we delete that language from the final rule.

[73] *E.g.*, Comments of AIPNY at 10 (free customer-initiated blocking adopted in New York in April 1988; 250,000 customers have blocked 900, substantially reducing complaints); Comments of Conn. AG at 10 (decrease in state complaints occurred after blocking was instituted).

[74] Comments of TCI at 2 (LECs could add blocking capability for $40 per line in areas where it currently is not technically feasible); Comments of USTA at 7-8 (defines "technically feasible" to include cost considerations).

[75] Reply Comments of Ameritech at 4.

[76] Comments of USTA at 8; *see also* Reply Comments of Centel at 5 (agrees with USTA).

[77] Comments of Teleline at 6.

[78] Comments of Centel at 8; Comments of MCI at 5; Comments of Telesphere at 17.

[79] *E.g.*, Comments of Ameritech at 2 (has offered to all their subscribers the ability to block, without charge, calls to 900 numbers for almost three years; already satisfies the *NPRM* categories except that it charges the second time that a consumer requests blocking); Comments of MPSC at 6 (supports our proposals for blocking, the three exceptions, the one-time charge and no monthly fee); Comments of NYSDPS at 6,7 (free blocking should be offered unconditionally and on request at any time; no evidence at state level that residential customers have taken advantage of the free system by making repeated requests for blocking).

free blocking available when a subscriber first disputes or questions a 900 service charge, but this category also stimulated the most negative comments.[80] In addition, there was a significant amount of general criticism of the *NPRM*'s proposal to restrict free blocking to specific categories of customers. Rep. Gordon and Consumer Action both advocate that blocking be available at no charge in perpetuity.[81] Several commenters state that because the information providers, IXCs and LECs added the capability to make 900 service calls via the telephone network, and blocking merely restores consumers to the situation that they were in before 900 service was added to the network, subscribers should not have to pay to return to the status quo ante.[82] The Wisconsin PSC states that it has been their experience that minor children or other persons may impersonate the subscriber and request that a block be removed. It argues that blocking will be a less effective consumer protection measure unless we require safeguards against unauthorized removal of 900 blocking.[83]

49. *Decision.* We are persuaded that it is in the public interest to require free blocking on a one-time basis for residential subscribers. Most states have required some form of free blocking of 900 services and the rule we adopt today will merely make uniform the standard that most states have found to be in the public interest when considering the matter. We are persuaded that the better rule is to require that each residential subscriber be offered one opportunity to block 900 services upon request and at no charge. The LEC should, however, be able to charge residential subscribers a reasonable one-time fee for each subsequent request to unblock or re-block after he or she has been given one free block.[84] Residential subscribers obtaining service at a new location, however, should be able to have free blocking of 900 services, even if they have previously exercised their one free option to block those services elsewhere.[85] We hereby adopt Wisconsin's suggestion that requests to remove 900 blocking must be in writing.

3. Blocking for Commercial Subscribers

50. *Proposal.* The *NPRM* also requested comment on whether blocking should be available at no charge to commercial, as well as residential, subscribers.

51. *Comments.* Comments are mixed on this issue.[86] Pac line in California[87] and a small hotel in Maryland encloses a quotation from a LEC showing one-time charges of over $600, plus continuing monthly charges, for blocking of 900 services.[88] Generally, LECs advocate that commercial subscribers be charged for blocking.[89] NYNEX provides three reasons for imposing blocking charges on business customers: (1) businesses have an interest in blocking 900 to keep their employees from running up charges, and there is no reason for other ratepayers to subsidize them; (2) businesses are able to pass those costs on to customers; and (3) businesses may have the alternative of blocking 900 calls through their customer premises equipment.[90]

52. *Decision.* Many businesses have the ability in their equipment to block 900 services. A blocking fee will encourage them to use that capability and avoid imposing costs on the LECs. We are not persuaded that the costs of blocking should be shifted away from businesses. We thus conclude that LECs should be able to recover some of the costs of blocking by imposing reasonable one-time charges on commercial subscribers. Therefore, we will limit our requirement of one-time free blocking to residential subscribers. We require carriers to offer the service to commercial subscribers but will not dictate charges, except to require that the charges be one-time and reasonable.

4. Technical Problems of Blocking

53. *Proposal.* The *NPRM* also sought comment on the technical problems that the providers of 900 services might encounter in blocking such calls.

54. *Comments.* Comments about technical problems associated with blocking center primarily around proposals by the information providers that the LECs should be required to offer individual subscribers the capability of blocking 900 services on a number-specific, program-by-

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[80] *E.g.*, Comments of Bell Atlantic at 2 (free blocking should not be provided during first dispute because consumers have already had opportunity to get blocking; costs should not be incurred to give them a second chance); Comments of Cin. Bell at 2 (administratively difficult to tell whether it is first time a subscriber has disputed charges); Comments of Conn. AG at 11 (problem with blocking is that it is not requested until there is a dispute); Comments of IT at 13 (opposes allowing subscribers who dispute or question a 900 service charge for the first time to have free blocking; they have missed their chance); Comments of USTA at 7-8 (ill-advised; should stick to the general rule that the customer is responsible for calls made from his telephone).

[81] Reply Comments of Consumer Action at 4; Comments of Rep. Gordon at 5.

[82] Comments of Attorney General Humphrey at 35-36; Comments of NYCDT at 8-9.

[83] Comments of WI PSC at 4.

[84] Our "one free block" requirement is a limited exception to our policy that the subscriber who causes a cost should bear responsibility for payment thereof.

[85] In situations in which the *NPRM* would permit the LECs to charge for blocking, we tentatively concluded that the LECs should be able to charge a reasonable one-time fee for blocking interstate 900 services but not be able to impose a monthly service fee for such blocking. The comments on this issue supported our tentative proposal that no monthly fees should be allowed for blocking. *E.g.*, Comments of MPSC at 6. Therefore, we adopt the proposal in the *NPRM* that, to the extent that LECs can charge fees for blocking, they may charge a reasonable, one-time fee and may not charge any subscriber monthly fees for blocking.

[86] Comments of NYCDT at 4 (has spent over $1,000,000 on blocking of 900 services); Comments of Coalition at 8 (extend free blocking to commercial subscribers); Comments of GTE at 3 (should apply to residential and business subscribers); Comments of Pac Tel at 4 (gives costs it charges businesses for blocking); Comments of Bell Atlantic at 2 (should not be free to commercial); Comments of Conn. AG at 10-11 (Conn. offers free blocking for three-month initial period for all business customers; after July 1, 1990, a $57 one-time fee); Comments of Attorney General Humphrey at 34 (should be free to commercial subscribers; currently available in Minnesota free of charge on a one-time basis whenever requested).

[87] Comments of Pac Tel at 4.

[88] Comments of Manor at 2.

[89] *E.g.*, Comments of Bell Atlantic at 2; Comments of NYNEX at 4-5; Comments of PacTel at 4.

[90] Comments of NYNEX at 4-5.

program basis.[91] The LECs oppose these proposals, arguing that such a requirement is not economically or technically feasible.[92]

55. *Decision.* The commenters have convinced us that the practical difficulties and economic burden of effectively blocking a dynamic and constantly changing list of 900 services information programs outweigh any benefit that this capability would offer to consumers. Moreover, it is not clear that there is considerable demand from consumers for number-specific blocking of 900 services. Further, we are averse, under these circumstances, to imposing requirements on technologies that are neither installed nor fully developed and are wary of foreclosing other, perhaps more beneficial, applications for the resources required to provide number-specific blocking. Therefore, we conclude that it would not be in the public interest to order LECs to offer number-specific blocking of 900 services at this time.

5. Recovery of Costs of "Free" Blocking

56. The *NPRM* invited comment on how the costs of providing blocking service should be recovered.

57. *Comments.* Commenters suggest a variety of approaches for recovering the costs of blocking.[93] Cincinnati Bell states that the costs of implementing any service must either be recovered in a discrete rate element or otherwise such costs will go into the rate base and be recovered from all subscribers. It states that, in this instance, the costs would be allocated as intrastate because the blocking is done on the local side of the switch.[94] Other suggestions for dealing with the costs of "free" blocking range from imposing a surcharge on 900 access,[95] imposing other charges on the IXCs and information providers,[96] referring the separations implications of blocking to the Federal-State Joint Board in Docket No. 80-286 while adopting Part 69 rules to recover the interstate access costs,[97] or adding a new Part 32 account to implement the recovery of the proper expenses.[98]

58. *Decision.* We will not alter the manner in which the LECs recover the costs incurred in blocking 900 calls at this time. The record indicates that where blocking is available, LECs recover those costs from IXCs,[99] or from subscribers who do pay a blocking fee, or from ratepayers generally.[100] Accordingly, certain costs incurred in providing the one-time free (to the subscriber) blocking required herein will be recovered through state-mandated procedures.[101] We decline to require that blocking costs be recovered solely through an interstate access tariff charge. First, as noted, there is no evidence that the costs of blocking are significant and many states have ordered or allowed one-time free blocking. Thus, our efforts to alter the cost recovery of this service would disrupt existing state procedures that, based on this record, apparently work satisfactorily. Also, the record shows that the costs incurred in blocking are recorded in Accounts 6623 - Customer Service Expense and 6210 - Central Office Switching Expense.[102] A portion of those costs are assigned to the interstate jurisdiction by our Part 36 Rules and are now spread among the access elements,[103] and other costs are assigned to the intrastate jurisdiction. This allocation properly reflects that blocking affects both interstate and intrastate pay-per-call services. The record does not justify making any Part 36 changes that would be required if we were to change the current methodology for recovering blocking costs. Finally, we observe that recovery of all costs of the free blocking of 900 services for residential subscribers at the federal level, with cost recovery of other blocking pursuant to state procedures, would inject undue complexity into the LECs' accounting for these costs.[104]

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[91] Comments of ANPA at 6; Comments of Amrigon at 12; Comments of DMA at 13; Comments of KAOS at 7.

[92] Comments of USTA at 7-8 (technical constraints require blocking all 900 programs or none); Reply Comments of Ameritech at 4 (number specific blocking is not technically feasible in electromechanical or analog stored program control switches; could be accomplished with digital stored program control switches, but only with complex and extensive screening tables).

[93] Comments of BellSouth at 2 n. 2 (charges fee to residential subscribers for 900 blocking in three of the nine states it serves: Florida, $10 onetime; Georgia, $5 one-time, and South Carolina, $5 one-time); Reply Comments of BellSouth at 2-3 (should recover costs through reasonable one-time charges on end-users).

[94] Comments of Cin. Bell at 3.

[95] Comments of Bell Atlantic at 2-3.

[96] Comments of GTE at 3.

[97] Comments of ME PUC at 2; *see also* Comments of NTCA at 2-3.

[98] Comments of MCI at 5-6; *but see* Reply Comments of GTE at 6 (opposes MCI's request to modify the Uniform System Of Accounts (USOA) as expensive and unnecessary; says that the USOA is flexible enough to accommodate new services and special costs without requiring USOA modification).

[99] Comments of Attorney General Humphrey, Attachment 1, at 2, Letter from R.C. Fuehr to Dennis Alhers (February 8, 1990) ("|c|osts for making 900 blocking available will be assigned... to the Local Switching element of the Minnesota Access Service Tariff.... We... believe that there should be little, if any, effect on the general ratepayer caused by handling the costs in this way.")

[100] Comments of Cal. PUC at 4-5; Comments of IURC at 5-6; Comments of Ohio PUC at 5; Comments of PA PUC at 2, 7-8; Comments of SW Bell at 5; Comments of WI PSC at 3-4.

[101] There is no record evidence that the costs of one-time blocking are significant, or that our requirement mandates any change in the price caps of current carriers under that regulatory program. Thus, we do not need to consider such costs to be exogenous. Moreover, since blocking already is widespread, those expenses are already reflected in the productivity factor used in the LEC's Price Cap Index formula. Also, we note that a recent NARUC survey showed that free one-time blocking is already in effect in thirty-one states. National Association of Regulatory Utility Commissioners, A NARUC Overview of Dial-It 976 and Dial-It 900, at 99 (April 24, 1991).

[102] Letter from Fred K. Konrad, Director-Federal Relations for Ameritech, to Donna R. Searcy, Secretary of the Federal Communications Commission (August 13, 1991).

[103] *Id.*

[104] We deny MCI's request that the Commission create a new account in the USOA to record the costs of blocking 900 calls. MCI does not show that the variety of tasks required to perform the blocking function can be discretely identified so as to be isolated and recorded in a single account. For example, the service order may be taken as part of the subscriber's initial order for overall service, which may encompass a number of other functions performed by the business office staff.

6. Involuntary Blocking by Common Carriers

59. *Proposal.* An issue that was not addressed specifically in the *NPRM*, but which many commenters raise, is whether carriers and information providers should be allowed to block subscribers, without their consent, from receiving 900 services because of their previous failure to pay for those services.

60. *Comments.* Certain commenters argue that involuntary blocking of 900 services should be available if the subscriber repeatedly makes 900 telephone calls and refuses to pay for them.[105] There is some disagreement among the commenters about what guidelines would limit the right to block a subscriber's 900 service involuntarily.[106] As an alternative, one information provider states that it is developing a database that would allow the information provider to screen incoming calls and reject those from telephones with a previous history of non-payment for its programs.[107] Other concerns are that involuntary blocking of 900 services could result in the denial of a subscriber's access to tariffed 900 services provided by AT&T and that the involuntary blocking issue could be beyond the scope of this proceeding.[108]

61. *Decision.* We are not taking any action at the federal level regarding such involuntary blocking at this time. We note that some states have procedures in place to place involuntary blocks on consumers who fail to pay for such services. No case has been made that these state statutes or regulations undercut any federal policy.

D. SECTION 64.714 - RESTRICTIONS ON DISCONNECTION OF BASIC COMMUNICATIONS SERVICE

62. *Proposal.* A rule proposed in the *NPRM* would prohibit common carriers from disconnecting or ordering the disconnection of a residential or commercial telephone subscriber's "basic communications service" because of that subscriber's failure to pay interstate 900 service charges. The *NPRM* clarifies that "basic communications service" includes both basic exchange service and interexchange services.

63. *Comments.* Many LECs, IXCs and information providers support our proposal.[109] Government and consumer agencies overwhelmingly support it.[110] USTA files negative comments, stating that this rule would force its members to change their billing systems and cannot be implemented under current billing systems.[111]

64. *Decision.* The record overwhelmingly supports the adoption of the rule as proposed in the *NPRM*, and we adopt that rule, subject to the modifications made pursuant to paragraph 82, *infra*. We note the comments of USTA about the difficulty that some LECs may have in implementing this requirement but conclude that the public interest in protecting basic service for subscribers outweighs that concern. We also note that restrictions on disconnection for failure to pay for 900 services are already required by the Commission for AT&T and have been imposed by many states.[112]

E. OTHER ISSUES

1. Terms and Conditions Regarding Quality

65. *Proposal.* The *NPRM* requested comments on whether information providers were deliberately providing poor quality programming to keep callers on the line longer or stimulate additional calls, thereby raising their revenues. The *NPRM* noted that consumers have complained about being disconnected from a 900 service before the call was completed, or having to listen to an audio program with low volume or in which the instructions were given very rapidly. These practices make the consumer call again or stay on the line longer, in either case incurring further charges. The *NPRM* requested comments on whether such practices occur and the extent to which the Commission should impose requirements directed at preventing such problems.

66. *Comments.* The commenters generally provide little specific evidence that such practices are widespread, although they frequently comment that such practices are reprehensible and should be prohibited.[113]

67. *Decision.* Because the practices under consideration here are very diverse and because there is no significant record indicating that poor quality programs are other than sporadic, we will not adopt a separate, specific rule on quality for pay-per-call services. But we do believe that the record supports modifying proposed §64.711 to re-

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[105] *E.g.*, Comments of Bell Atlantic at 3 (should allow blocking by LECs of customer who repeatedly refuses to pay after blocking made available); Reply Comments of Consumer Action at 4 (conditionally supports the concept that carriers be able to block customer's access to some or all 900 programs for customers who repeatedly fail to remit for such services; blocking should only be permitted if the information provider can prove customer abuse); Comments of IIA at 35 (information providers should be able to block when there is a "persistent pattern of abuse" of the 900 services).

[106] Comments of AIPNY at 10 (LECs automatically block 900 in New York after two write-offs); Comments of Centel at 6-7 (LECs should be allowed to block 900 for consumers who repeatedly fail to pay charges; standards could be that blocking would be imposed after charge is thoroughly investigated or after third such dispute); Reply Comments of Consumer Action at 4 (should only be permitted if the information provider can prove customer abuse).

[107] Comments of IT at Attachment A.

[108] AT&T also argues that since some of its 900 services are provided on a tariffed basis, pursuant to the Bureau's order in AT&T 900 Dial-It Services and Third Party Billing and Collections Services, 4 FCC Rcd 3429 (Com.Car.Bur. 1989) (*AT&T 900 Dial-It Order*), the involuntary blocking of 900 services would result in the effective disconnection of that customer from AT&T's tariffed 900 services. AT&T objects to deciding this issue herein because it is outside the scope of the proceeding. Reply Comments of AT&T at 13.

[109] *E.g.*, Comments of AT&T at 9 (would substantially codify Commission's order in *AT&T 900 Dial-It Order* and is in accord with longstanding AT&T policies and procedures); Comments of PPI at 6, 10 (should impose a national uniform policy prohibiting the disconnection of basic services for failure to remit pay-per-call charges); Comments of Pac Tel at 4 (does not object to disconnection rule; it is consistent with company's current policy).

[110] *E.g.*, Comments of Conn. AG at 19; Comments of NASUCA at 17 (supports no-disconnect rule).

[111] Comments of USTA at 8.

[112] *AT&T 900 Dial-It Order*, *supra*, n. 105; Comments of Cal. PUC at 5.

[113] Comments of SW Bell at 4 (should require information providers to ensure quality of recording); Comments of IIA at 32 (if practices are deliberate, they are unfair and unscrupulous); Comments of NAAG at 14 (based on complaints they receive, poor quality practices do occur).

quire that the preambles are "clearly understandable and audible." This requirement will eliminate preambles that are too fast or have low or poor audio quality, thereby ensuring that the consumer will have a reasonable opportunity to understand the nature of the program and make an informed decision about it. Quality problems that affect the content of or charges for the program may be dealt with by the FTC or state agencies with jurisdiction over deceptive practices.

2. Automated Collect Calls

68. *Proposal.* The *NPRM* also requested comments on the practice of placing automated calls to consumers and then billing them for a 900 services charge. The *NPRM* described two variations of this technique, each of which required some action or lack of action on the part of the consumer to indicate acceptance of the call.

69. *Comments.* NASUCA describes a situation in Colorado during which thousands of consumers were telephoned and, unless they pushed 0 on a touchtone phone to reject the call, were charged approximately $3.85 each. The comments state that many subscribers were charged when their answering machines answered the call or when persons just hung up their telephones without pushing 0.[114] Other consumers in Maine were charged for automated collect calls.[115] Numerous other parties, including many information providers, comment on the practice of automated collect calls and the comments are largely in support of imposing restrictions on this practice.[116]

70. *Decision.* The Commission is persuaded that a rule banning certain pay-per-call automated collect calls should be adopted. The rule will prohibit common carriers from providing transmission services for pay-per-call programs which initiate calls to consumers unless the party who is called has to take action that affirmatively demonstrates a desire to accept the collect call. Without such a rule, this practice has great potential for harm to consumers who may be charged unknowingly for an unwanted telephone call that they did not initiate.

3. Line Seizing

71. *Proposal.* The *NPRM* requested comments on the phenomenon of "line seizing" by autodialers, *i. e.*, calls from automated dialers that may remain on the line long after the consumer has attempted to disconnect the call. We stated that several manufacturers of autodialers had denied that this was a problem, claiming that newer equipment disconnects immediately upon receiving a disconnect signal from the called party. The *NPRM* noted that equipment manufacturers and telephone companies allege that line seizing ends within 10 to 25 seconds after the called party hangs up.

72. *Comments.* The comments are divided on the issue of whether line seizing is a problem. NACAA and the Michigan PSC, among others, contend that it is a problem.[117] On the other hand, some commenters advocate caution in dealing with the issue of line seizure.[118] In addition, the DMA argues that autodialers are used for many purposes other than soliciting for 900 services and that this issue should be considered in a separate proceeding because it is not primarily related to 900 services.[119] The DMA argues that the line seizure problem raised in the *NPRM* is confined to one type of autodialer technology, equipment that uses recorded messages in telemarketing solicitations. Technical publications indicate that regardless of the technical characteristics of the autodialer equipment, the network will disconnect within 11 seconds for most electronic switches and within 37 seconds for most electromechanical switches still in use in the network.[120]

73. *Decision.* The comments persuade us that there is a problem with line seizure by autodialers in some situations, specifically with autodialers that deliver recorded messages and are used for outbound telemarketing. Various states have already enacted restrictions of their own.[121] We have determined that this Commission should adopt a rule applicable nationwide requiring prompt disconnection of such calls. However, we will not require a set amount of time because the ability of the network to

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[114] Comments of NASUCA at 24.

[115] Comments of the ME PUC at 2 and Appendix B.

[116] *E.g.*, Comments of COAC at 9 (supports rules banning; appropriate preventative equipment may solve the problems); Comments of Talisman at 3 (should be prohibited); Comments of United at 7 (would not oppose regulation); Comments of SW Bell at 5 (ban unless customer can refuse to take the telephone call); Comments of Conn. AG at 16 (approves of regulation on automated collect calls); Comments of PPI at 9 (should be prohibited).

[117] *E.g.*, Comments of NACAA at 7 (line seizing is a problem, says its member agencies have reported problems; worst are when fire stations, police stations and hospitals lose access to their telephone lines because of line seizure); Comments of MPSC at 5 (one-third of complaints about autodialers allege line-seizing); *see also* Comments of Attorney General Humphrey at 18, (hospital in Minneapolis had lines tied up); Comments of IURC at 5 (problem of line seizing occurs primarily in older, mechanical central offices that are configured to allow calling party hold; in central offices with newer analog and digital technologies, the called party's central office equipment disconnects the call after receiving the called party disconnect signal; the disconnection is accomplished regardless of whether or not the autodialer disengages); Comments of PPI at 9 (ban line seizing); Comments of Conn. AG at 17 (several complaints have been received in Connecticut); Reply Comments of TPUC at 4 (should adopt rule on line seizure); Reply Comments of IA UB at 8 (should adopt rule requiring equipment to prevent line seizure). *But see* Comments of PA PUC at 7 (line seizing not a problem in Pennsylvania so far).

[118] *E.g.*, Comments of COAC at 9 (not aware that line seizing is a problem; supports rule but argues against broad-gauged approach which may do more harm than good).

[119] Comments of DMA at 14-15 (also asserts that the *NPRM* mischaracterizes nature of the problem by implying that it applies to all autodialers when it really only arises with autodialers that use a prerecorded message for outbound telemarketing); *see also* Comments of IIA at 33 (do not ban line seizure in this proceeding because it is not related to 900 services; have a separate proceeding if necessary).

[120] Network Planning Central Services Organization, Notes on the BOC Intra-Lata Networks at 26, Table D (1983); Bellcore, Lata Switching System Generic Requirements at 6.3-15 (July 1987) (procurement standard for Bell operating companies requires switching equipment to disconnect 10 to 12 seconds after the called party hangs up). The relevant portions of these documents have been included in the record herein.

[121] *See* Reply Comments of TPUC at 4 (state law requires autodialer to disconnect not later than ten seconds after the called person hangs up; bill pending in legislature would extend that to thirty seconds); Comments of NYSDPS at 5 (New York law requires that automatic dialers must disconnect from tele-

disconnect calls after the called party hangs up differs according to the type of equipment. We are not requiring network upgrades to ensure compliance with this rule. Rather, autodialers which deliver a recorded message must use current capabilities to disconnect as promptly as is possible.

4. Dispute Resolution

74. *Proposal.* The *NPRM* requested comments on what industry practices govern consumer dispute resolution and whether such practices are adequate or effective in resolving consumer disputes.

75. *Comments.* Industry commenters generally argue that their existing policies are adequate and that Commission action is not necessary.[122] Government and consumer commenters generally advocate the adoption of specific refund requirements or complaint handling procedures.[123]

76. *Decision.* We are not preempting state policies or rules concerning dispute resolution in this order. Moreover, we find that, in light of the other actions we have taken to inform and protect consumers, the adoption of detailed federal dispute resolution procedures is unnecessary at the present time. The prohibition on disconnection of basic communications service will require information providers or carriers to pursue the collection of disputed 900 service charges, to the extent that they choose to do so, as private commercial disputes for which rules already exist. We find that the other rules adopted herein provide adequate protection to consumers to ensure that the abuses of the 900 services are deterred. Accordingly, we decline to mandate dispute resolution procedures. To the extent that state procedures do not thwart or impede the federal policies that we adopt herein, parties will also have those means to resolve 900 service disputes.

5. Dual-Tone, Multi-Frequency Tones

77. *Proposal.* The *NPRM* requested information on the practice of using a television program to generate the tones necessary to complete a call to a 900 service program. The *NPRM* asked how widespread the practice is, how it is accomplished technically and whether it would be in the public interest to prohibit or restrict such practices in interstate commerce.[124]

78. *Comments.* There are very few comments on this issue, and those parties who comment support a ban on the practice.[125] There is no record that this is a current practice, but the commenters almost universally state that there is no justification for it and that a ban would not harm legitimate businesses.

79. *Decision.* We find that this practice has significant potential, if unchecked, to harm consumers, especially children too young to understand the concept that placing a call can involve a charge. Obviously, such a practice is aimed at the very youngest members of a family, those who are unable to write down and use a eleven-digit dialing sequence. Therefore, we prohibit carriers from providing transmission service to any pay-per-call program that employs tones generated in advertising to complete a call to the pay-per-call program.

F. SCOPE OF REGULATIONS

80. *Proposal.* The *NPRM* requested comments on whether these rules should extend beyond interstate 900 services to apply to other exchanges, such as 700, 976 or 540, on which interstate pay-per-call services are offered.

81. *Comments.* The comments overwhelmingly support the position that our rules should apply to all interstate pay-percall services, regardless of which exchange they are offered on. Some commenters object to the extension of jurisdiction over specific exchanges, such as 976, on the ground that interstate traffic is blocked from reaching those numbers.[126] Other commenters raise concerns about the impact of applying these rules to other exchanges, such as 700, 800, 976 or 540;[127] the IXCs are concerned about the implications for other, non-pay-per-call services that they offer on, for example, the 700 exchange.[128] The LECs also express concern about the difficulty that they would have in blocking or applying the disconnection rules to pay-per-call services offered over 700 or some other exchange.

82. *Decision.* We agree that these rules should be modified to provide that these restrictions apply to all interstate pay-per-call services. Therefore, we are adding Section 64.709, 47 C.F.R. § 64.709, to define the term "pay-percall" services. The definition is intended to include all interstate information services offered on a transactional basis, except as otherwise noted herein. Under the rule, calls will be considered "complet[ed]" when charges are assessed, not when the entire information program has been provided. Presubscribed services, such as legal research services or other databases, are not required to comply with these rules because the consumer had an adequate opportunity to obtain information about the costs and benefits of the service at the time of presubscription. Collect information calls, to the extent they are permitted by these rules, are included in the definition of "pay-per-call" services. When a consumer takes affirmative action clearly indicating that it accepts such charges for such a collect call, the consumer's action changes him or her from the called party to the calling party for the purposes of this rule.

83. We are changing all but one of the rules to apply to interstate pay-per-call, rather than just 900, services. Section 64.713 will be unchanged and continue to require that the LECs only be responsible for blocking interstate

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phone line upon termination of the call by either party); Comments of Attorney General Humphrey at 18 (Minnesota has statute requiring disconnection within ten seconds).

[122] *E.g.*, Comments of DMA at 4, 9-10; Comments of MCI at 7.

[123] *E.g.*, Comments of MPUC at 9; Comments of NASUCA at 22-23; Comments of Rep. Gordon at 6.

[124] *NPRM*, 6 FCC Rcd at 1859.

[125] Comments of COAC at 9; Comments of PPI at 9; Comments of NASUCA at 11.

[126] Comments of United at 8-9.

[127] Comments of MPSC at 9 (would like to see 800 prefix remain free to caller; but if it is used for pay-per-call, should be covered by the rules); Comments of Ameritech at 2-3 (uses 540 NXX to provide local exchange service); Comments of SW Bell at 5-8 (opposed to including other prefixes).

[128] Reply Comments of AT&T at 13-15; Comments of MCI at 2, n. 1.

900 calls because the LECs would encounter serious difficulties in blocking pay-per-call services on other exchanges. The fact that the rules are only applicable to interstate services should eliminate concerns about 976, 540 and other local services to the extent that they either do not carry pay-per-call services or do not allow interstate traffic to access them. Further, because the rules are limited to pay-per-call services, business services not offered on a pay-per-call basis will not be required to have a preamble. The 900 service is designed to accommodate interstate pay-per-call services; other exchanges are less suitable for such services.[129] Many commenters mention that unless the rules apply to all pay-per-call services, there will be a tendency for services to migrate away from the 900 exchange in search of more lenient regulatory treatment. In adopting the modified rule, we are eliminating the opportunity for pay-per-call services to avoid regulation by moving to other exchanges. The 900 exchange has all the attributes necessary for the provision of information services to the public, and the record shows no valid technical or legal reason why the public would be better served by allowing interstate pay-per-call services to be free of regulation simply because they are on an exchange other than 900.

G. STATE REGULATION OF 900 SERVICES

84. The record in this proceeding demonstrates that there is both interstate and intrastate 900 services traffic. California has authorized a 900 service intended to originate and terminate within its boundaries.[130] The record further shows that the switches of the LECs are not capable of differentiating between interstate and intrastate 900 traffic.[131] Commenters agree that most 900 calls are interstate.[132]

85. State legislatures and public utilities commissions have taken many actions designed to protect their citizens against abusive and deceptive practices by marketers which are potentially applicable to pay-per-call service.[133] Some of the state requirements, however, are inconsistent with each other and with the federal requirements adopted in this *Report and Order*.[134] However, interstate and intrastate pay-per-call 900 services must both use the same facilities and a single, nationwide number. With present technology, carriers are unable to jurisdictionally identify and apply different state and federal preamble requirements. The record establishes that neither the local exchange carriers,[135] interexchange carriers,[136] nor information providers[137] will know whether the call is intrastate and thus within the state's jurisdiction.

86. In view of the foregoing characteristics of 900 pay-per-call services, we conclude that we must preempt stateimposed preamble requirements.[138] State efforts to impose preamble requirements on interstate pay-per-call service must be preempted to the extent that they would stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[139] The objective of Congress involved in the present proceeding is our Title I obligation to "make available... a rapid, efficient, Nation-wide... communications service...."[140] We believe that state requirements that additional or different material be presented in the preambles for a pay-per-call service will present such an obstacle to our Title I responsibilities because the state required pre-

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[129] For example, 976 exchanges are designed to offer intrastate pay-per-call services and, because LECs and IXCs have typically not worked out arrangements to bill for interstate calls, IXCs frequently block interstate access to 976 and other local pay-per-call exchanges. *See* Comments of Coalition at 7. 700 exchanges can be used for any purpose designated by the carrier but, unlike the 900 exchange, a caller can generally only access 700 services offered by his or her own IXC or by dialing a 10XXX access code. Therefore, 700 exchanges lack the ability to conveniently and universally market an information service. Reply Comments of NAIS at 8-9; Comments of Attorney General Humphrey, Attachment I, at 2, Letter dated February 8, 1990 from R.C. Fuehr, Vice President of U.S. West Communications, to Dennis Ahlers, Assistant Attorney General of Minnesota (Allnet is only carrier offering pay-per-call on the 700 exchange, and it provides blocking).

[130] Comments of Cal. PUC at 1-2.

[131] Comments of BellSouth at 1; Comments of Centel at 6 (any rule adopted for blocking of 900 services will necessarily affect the provision of both interstate and intrastate 900 services, because the LECs' central office switches are unable to distinguish between the two); Comments of Pac Tel at 4 (the local exchange carrier does not have the information needed to determine the destination of a 900 service call, it cannot distinguish between interstate 900 calls and intrastate 900 calls); Comments of GTE at 4 (once a call is extended to the IXC, the LEC has no knowledge of whether its termination point is intrastate or interstate and no way to block the call based on the point of termination).

[132] *E.g.*, Reply Comments of Telesphere at 5.

[133] *E.g.*, Comments of Cal. PUC at 1-6; Comments of VA AG at Attachment 1.

[134] Comments of IURC at 3 (has established an exception to the preamble requirement for intrastate calls costing $1.50 or less); Comments of Cal. PUC at 3 (requires preamble to disclose the date the information was recorded); Comments of VA AG at Attachment 1 (Virginia law requires preambles containing information provider address and requires billing from the time of the initial connection if the caller stays on the line after the delayed timing period).

[135] *See* n. 131, *supra*.

[136] Reply Comments of Telesphere at 4 (technically impossible to separate intrastate from interstate calling); Comments of Cal. PUC, Attachment at 106 (in a proceeding considering separation of interlata and intralata 900 traffic, evidence showed that IXCs cannot tell the location of the call origination, only that it has been received at their point of presence).

[137] Comments of Telesphere at 27 (most IPs and service bureaus are technically unable to segregate the few intrastate 900 calls from the many interstate 900 calls today on a real time basis); Comments of Audio Communications, Inc. at 20 (would be extremely difficult, both practically and technically, to separate intrastate and interstate 900 calls).

[138] Accordingly, we disagree with NARUC's request that we not preempt any state actions that impose greater restrictions on 900 services than do our rules. Comments of NARUC at 5, 10. However, to the extent that there are 900 or other pay-per-call services which may be accessed only on an intrastate basis, state regulation would appear not to be inappropriate.

[139] *See* Operator Services Providers of America, Petition for Expedited Declaratory Ruling, 6 FCC Rcd. 4475, 4478 (1991) (*OSP Order*) *citing* City of New York v. FCC, 486 U.S. 57 (1988) *et al.* The circumstances under which we may preempt state authority over intrastate communications are set forth in Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986).

[140] 47 U.S.C. Section 151.

amble material would either have to be provided on both intra- and interstate calls, or carriers and information providers would have to develop and install technical means to identify inter- and intrastate traffic and apply different preambles. If the state preamble requirements were imposed on all calls, that action would impose a greater burden and would result in a different balance of interests than the federal requirements would impose. If different preambles could be applied to pay-per-call service that can be accessed on both an intrastate and interstate basis, the state requirements would result in wasteful and inefficient duplication of resources. The preamble requirement adopted herein is meant to establish a nationwide standard for educating consumers about the nature of the call being placed, and conflicting or additional state requirements would cause undue confusion and expense to all parties. In the present case, the same network and customer premises equipment processes both interstate and intrastate pay-per-call services. We believe that this preemption must encompass state-imposed preamble requirements purportedly limited to intrastate 900 services because, in the absence of the LECs', IXCs' or information providers' ability to identify intrastate 900 calls, effectuation of the state preamble requirement would necessarily require application of the state requirements to interstate 900 service.[141] Therefore, we conclude that such state requirements would thwart or impede the federal policy and the balance that we have struck herein. *See California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); *NARUC v. FCC*, 880 F.2d 422 (D.C. Cir. 1989).

87. There are blocking and disconnection practices in which the states have a legitimate interest, and which now appear not to impinge upon our jurisdiction to regulate interstate communications. We do not foreclose such regulation, and do not preempt any such requirement at this time, because it appears that the state activity does not create a conflict with the policies we establish herein.[142]

IV. FINAL REGULATORY FLEXIBILITY ANALYSIS

88. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

89. **Need and purpose of this action.** This *Report and Order* adopts regulations to protect consumers against unfair and deceptive practices which have occurred in the pay-per-call industry and to provide them with the information they need to make an informed purchase decision about these services.

90. **Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis.** No comments were submitted in response to the Initial Regulatory Flexibility Analysis.

91. **Significant alternatives considered and rejected.** The initiating documents in this proceeding offered many proposals. The commenters supported the basic thrust of this proceeding but many suggested alternatives to the Commission's proposals. The Commission considered all of the alternatives presented in the proceeding and considered all of the timely filed comments directed to the various issues that were raised. After carefully weighing all aspects of the issues and comments in this proceeding, the Commission has taken the most reasonable course of action to protect consumers against unfair and deceptive practices in the pay-per-call industry and provide consumers with the information they need to make informed purchase decisions about these services.

V. CONCLUSION

92. With this *Report and Order*, we adopt rules that will facilitate consumer choice by requiring disclosure, in a clearly understandable and audible preamble, of the name of the information provider, the price, and a brief description of the product, service or information offered. The rules also require that the caller be given an opportunity to hang up, after obtaining that information, without being charged for the call. We provide for the exemption of nominally priced programs and allow bypass of the preamble for repeat callers. We also require a special warning on programs aimed at or likely to be of interest to children under the age of eighteen. The rules require the IXCs to provide the name, address and customer service telephone number of the information providers to whom they provide transmission service. The rules require the LECs to provide blocking of 900 calls for all subscribers, and free onetime blocking for 900 services for residential subscribers. We also prohibit carriers from disconnecting basic telecommunications services for failure to remit pay-per-call service charges. Finally, the rules also impose limits on automated collect calls, line seizure by autodialers, and the use of dual-tone, multifrequency tones in advertising for pay-percall programs.

VI. ORDERING CLAUSES

93. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, and 403 that Parts 64 and 68 of the Commission's Rules ARE AMENDED as set forth in Appendix B below.

94. IT IS FURTHER ORDERED that this *Report and Order* will be effective thirty (30) days after publication of a summary thereof in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[141] This preemption does not apply to pay-per-call services that might be offered now or in the future in a state that are purely jurisdictionally intrastate. In addition, this preemption does not apply to locally offered pay-per-call services to which interstate access is blocked.

[142] We note that several parties have raised the issue of whether a state may block *all* 900 call from an exchange if the exchange is not capable of blocking such calls on an individual subscriber basis. *See e.g.*, Reply Comments of COAC at 6-7. We will address those concerns in a separate proceeding, because the record herein does not contain sufficient information to decide whether we must preempt such state action.

APPENDIX
LIST OF COMMENTERS

1. Abraham Publishing Group, Inc. Abraham
2. Alabama Public Service Commission AL PSC
3. Allied Marketing Allied
4. American Association of Advertising Agencies AAAA
5. Ameritech Operating Companies Ameritech
6. American Newspaper Publishers Association ANPA
7. American Telephone and Telegraph Company AT&T
8. Amrigon Enterprises Incorporated Amrigon
9. Association of Information Providers of New York AIPNY
10. Audio Communications, Inc. ACIA
11. Bell Atlantic Telephone Companies Bell Atlantic
12. BellSouth Telephone Companies BellSouth
13. Better Business Bureau of Metropolitan New York BBBNY
14. Better Business Bureau of Tennessee and Georgia BBBTN/GA
15. California Department of Consumer Affairs Cal. CA
16. California Public Utilities Commission Cal. PUC
17. Capital Cities/ABC, Inc. CC/ABC
18. Central Telephone Company Centel
19. Consumer Action CA
20. Council on Audio Communications, Inc. CAC
21. Covington, Michael Covington
22. Direct Marketing Association DMAJ
23. Cincinnati Bell Telephone Company Cin. Bell
24. Herman, Christopher Herman
25. Competitive Telecommunications Association Comptel
26. Connecticut Attorney General Conn. AG
27. Delaware State Legislature Delaware
28. Fairfax County, Virginia Fairfax
29. Federal Trade Commission FTC
30. Representative Bart Gordon of Tennessee 77 Rep. Gordon
31. GTE Service Corporation AGTE
32. Hubert H. Humphrey III. Minnesota Attorney General Attorney General Humphrey
33. Indiana Office of Utility Consumer Counselor IUCC
34. Indiana Public Utility Regulatory Commission IURC
35. Infoman Infoman
36. Information Industry Association IIA
37. Information Providers' Coalition for Defense of the First Amendment Coalition
38. Interactive Telemedia IT
39. International Shoppers Spree ISS
40. Iowa Utilities Board IA UB
41. Island Broadcasting Co. Island
42. KAOS Communications, Inc. KAOS
43. MCI Telecommunications Corporation MCI
44. Maine Public Utilities Commission ME PUC
45. Manor Inn of Bethesda Manor
46. Massachusetts Attorney General Mass. AG
47. Michigan Public Service Commission Staff MPSC
48. Missouri Office of the Public Counsel MO OPC
49. Montana Public Service Commission MT PSC
50. Music Access, Inc. Music
51. National Association of Attorneys General NAAG
52. National Association of Consumer Agency Administrators NACAA
53. National Association for Information Services NAIS
54. National Association of Regulatory Utility Commissioners NARUC
55. National Association of State Utility Consumer Advocates NASUCA
56. National Consumers League NCL
57. National Consumer's League, Report of the National Symposium on 900 Numbers NCL Report
58. National Telecommunications and Information Administration NTIA
59. National Telephone Cooperative Association NTCA
60. New York City Department of Telecommunications NYCDT
61. New York State Department of Public Service NYSDPS
62. Nixon, Hargrave, Devans and Doyle Nixon
63. Nycom Information Services, Inc. Nycom
64. NYNEX NYNEX
65. Ohio Public Utilities Commission Ohio PUC
66. Organization for the Protection and Advancement of Small Telephone Companies OPASTCO
67. Pacific Bell and Nevada Bell Pac Tel
68. Pennsylvania Public Utility Commission PA PUC
69. Promotion Marketing Association PMA
70. Phone Programs, Inc. PPI
71. Rochester Telephone Corporation RTC
72. Commissioner of Social Security Comm SS

73. Southwestern Bell Telephone Company	SW Bell
74. Talisman Communications Corp.	Talisman
75. Tel Control, Inc.	TCI
76. Teleline, Inc.	Teleline
77. Telesphere Communications, Inc.	Telesphere
78. Tennessee Attorney General	TN AG
79. Texas Public Utility Commission	TPUC
80. United States Catholic Conference	USCC
81. United States Postal Service	USPS
82. United States Telephone Association	USTA
83. United Telecommunications, Inc.	United
84. Mary Sue Terry, Attorney General for Virginia	VA AG
85. Wisconsin Public Service Commission	WI PSC

APPENDIX B

Part 64 of Title 47 of the Code of Federal Regulations is 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, 226, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, unless otherwise noted.

2. New sections 64.709 through 64.716 are added to read as follows:

§ 64.709 Definition of Pay-Per-Call Services.

"Pay-per-call" services are telecommunications services which permit simultaneous calling by a large number of callers to a single telephone number and for which the calling party is assessed, by virtue of completing the call, a charge that is not dependent on the existence of a presubscription relationship and 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.

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

Common carriers may provide interstate transmission, under either contract or tariff, for pay-per-call services only under the terms and conditions required by §§ 64.711 through 64.716.

§ 64.711 Preamble.

(a) Programs must begin with a clearly understandable and audible preamble that 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 total cost for calls to that program if the duration of the program can be determined. No preamble is required for programs with a flat-rate charge of $2.00 or less.

(b) The preamble must state the name of the information provider and accurately describe the information, product or service that 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, and must provide a reasonable opportunity for the caller to disconnect before that event;

(d) The preamble associated with interstate pay-per-call 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, provided that the caller is in sole control of that capability, except that any bypass device shall be disabled for a period of thirty days following the effective date of a price increase for the pay-per-call service. Instructions on how to bypass must either be at the end of the preamble or the end of the program.

§ 64.712 Identification of Information Providers.

The carrier providing interstate transmission for pay-per-call services shall provide to consumers upon request the name, address and customer service telephone number of any information provider to whom the carrier provides such transmission service, either directly or through another entity such as a service bureau. The carrier shall provide that information at no charge and within a reasonable time 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 interstate 900 services. Blocking is to be offered at no charge on a one-time basis to all residential telephone subscribers. For blocking requests not within the one-time option and for commercial subscribers, the local exchange carrier may charge a reasonable one-time fee for each such blocking request. Requests by subscribers to remove 900 services blocking must be in writing.

§ 64.714 No Disconnection for Failure to Remit Pay-Per-Call 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 pay-per-call service charges.

§ 64.715 Automated Collect Telephone Calls.

No common carrier shall provide transmission services for pay-per-call services originated by an information provider and charged to the consumer,

unless the called party has taken affirmative action clearly indicating that it accepts the charges for the collect pay-per-call service.

§ 64.716 Generation of Signalling Tones.

No carrier shall provide transmission services for any pay-per-call service which employs broadcast advertising which generates the audible tones necessary to complete a call to a pay-per-call service.

3. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 226, 313, 314, 403, 404, 410, 602, 48 Stat., as amended, 1066, 1070, 1087, 1094, 1098, 1102, 47 U.S.C. 154, 201, 202, 203, 204, 205, 208, 215, 218, 226, 313, 314, 403, 404, 410, 602, unless otherwise noted.

4. Section 68.318 is amended by adding subsection (c)(2) as follows:

§ 68.318(c)(2) Line Seizure by Automatic Dialing Devices.

Automatic dialing devices which deliver a recorded message to the called party must release the called party's telephone line promptly but in no event longer than current industry standards.