

***STAFF COMPARISON OF PROPOSED PAY-PER-CALL RULE TO CURRENT
VERSION OF THE PAY-PER-CALL RULE***

NOTE: THIS DOCUMENT HAS BEEN PREPARED BY STAFF OF THE FEDERAL TRADE COMMISSION TO SHOW THE PROPOSED CHANGES TO THE ORIGINAL RULE. THE OFFICIAL VERSION OF THE COMMISSION'S PROPOSED RULE CAN BE FOUND AT THE END OF THE FEDERAL REGISTER NOTICE, WHICH IS ALSO POSTED ON THE FTC WEB SITE.

Text recommended for deletion is indicated with a ~~strikeout~~ line, while text recommended for addition is printed in **bold**. Notes relating to re-organization of the Rule appear **in bold and within brackets []**.

[Code of Federal Regulations]

TITLE 16--COMMERCIAL PRACTICES
CHAPTER I--FEDERAL TRADE COMMISSION

~~PART 308--TRADE REGULATION RULE PURSUANT TO THE TELEPHONE
DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992~~

**Part 308 -- RULE CONCERNING PAY-PER-CALL SERVICES AND OTHER
TELEPHONE-BILLED PURCHASES**

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SUBPART A -- SCOPE AND DEFINITIONS

§ 308.1 Scope of regulations in this part.

This Rule implements titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992, ~~to be codified~~ in relevant part at 15 U.S.C. 5711-14, 5721-24, **as amended by the Telecommunications Act of 1996, Pub. L. 104, § 701, 110 Stat. 56 (1996).**

§ 308.2 Definitions.

[This section combines former section 308.2 and former section 308.7(a). It has been renumbered accordingly. New definitions and any modifications appear in bold.]

(a) *Billing entity* means any person who transmits a billing statement **or any other statement of debt** to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries.

(b) *Billing error* means any of the following:

(1) A reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer who was billed for the purchase or, if made, was not in the amount reflected on such statement.

(2) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(3) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or was not provided to the customer in accordance with the stated terms of the transaction.

(4) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800, **888, 877**, or other toll free telephone number.

(5) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(6) A computation error or similar error of an accounting nature on a billing statement of a telephone-billed purchase.

(7) Failure to transmit a billing statement for a telephone-billed purchase to a customer's last known address if that address was furnished by the customer at least twenty (20) days before the end of the billing cycle for which the statement was required.

(8) A reflection on a billing statement of a telephone-billed purchase ~~that is not~~ identified in a **manner that violates** ~~accordance with~~ the requirements of § ~~308.5(j)~~ **308.18**.

(9) A reflection on a customer's billing statement of a charge incurred pursuant to a purported presubscription agreement that does not meet the requirements of § 308.2(j).

(10) A reflection on a customer's billing statement of a telephone-billed purchase not blockable pursuant to 47 U.S.C. 228(c), that was not expressly authorized by that customer.

(11) A reflection on a billing statement of a charge that is inconsistent with any blocking option chosen by a customer pursuant to 47 U.S.C. 228 (c).

(c) *Bona fide educational service* means any pay-per-call service dedicated to providing information or instruction relating to education, subjects of academic study, or other related areas of school study.

(d) *Commission* means the Federal Trade Commission.

(e) *Customer* means any person who acquires or attempts to acquire goods or services **in through** a telephone-billed purchase, or who receives a billing statement for a telephone-billed purchase. ~~charged to a telephone number assigned to that person by a providing carrier~~

(f) *Pay-per-call purchase* means any attempt to purchase, or any actual purchase of pay-per-call services.

(g) *Pay-per-call service* means:

- (1) Any service covered by the definition of “pay-per-call services” provided in Section 228(i) of the Communications Act of 1934, as amended;¹ or
- (2) Any service that provides, or that is purported to provide, audio information or audio entertainment, including simultaneous voice conversation services, where the action of placing a call, receiving a call, or subsequent dialing, touch-tone entry, or comparable action of the caller results in a charge to a customer, and where all or a portion of such charge results in a payment, directly or indirectly, to the person who provides or purports to provide such information or entertainment services.
- (3) Services meeting the criteria of § 308.2(g)(2) will not be considered pay-per-call services if:
- (i) the provider of the audio information or an audio entertainment service demonstrates that the person from whom payment is being sought has entered into a presubscription agreement, meeting the requirements of § 308.2(j), to be charged for the information or service;
 - (ii) the provider of audio information or audio entertainment services demonstrates that, on average, the payment to the providers of audio information or audio entertainment services will not exceed [\$0.05] per minute or [\$0.50] per call for that particular service; or
 - (iii) the services provided are calls utilizing telecommunications services for the deaf, or are tariffed directory services provided by a common carrier or its affiliate;
- (4) Nothing in this definition shall be construed to permit any conduct or practice otherwise precluded or limited by regulations of the Federal Communications Commission.

¹Section 228(i) of the Communications Act of 1934, as amended by Section 701 of the Telecommunications Act of 1996, states:

- (1) The term pay-per-call services means any service--
- (A) In which any person provides or purports to provide--
 - (i) Audio information or audio entertainment produced or packaged by such person;
 - (ii) Access to simultaneous voice conversation services; or
 - (iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;
 - (B) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and
 - (C) Which is accessed through use of a 900 telephone number or other prefix or area code designated by the [Federal Communications] Commission in accordance with subsection (b)(5) (47 U.S.C. 228(b)(5)).
- (2) Such term does not include **calls utilizing telecommunications devices for the deaf**, or directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, ~~or any service the charge for which is tariffed~~ or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

(h) *Person* means any individual, partnership, corporation, association **or unincorporated association**, government or governmental subdivision or agency, **group**, or other entity.

(i) *Personal identification number* means a number or code unique to the individual, that is not valid unless it (1) is requested by a consumer; (2) is provided exclusively to the consumer who will be billed for services provided pursuant to that presubscription agreement; and (3) has been delivered, in writing, to the consumer who will be billed for the agreement, simultaneously with a clear and conspicuous disclosure of all material terms and conditions of the presubscription agreement, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service.

(j) (1) *Presubscription agreement* ~~*Presubscription or comparable arrangement*~~ means a contractual agreement to purchase goods or services, including audio information or audio entertainment services, in which:

(i) The service provider clearly and conspicuously discloses to the consumer **who will be billed for the service**, all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;

(ii) The service provider agrees to notify the consumer **who will be billed for the service** of any future rate changes;

(iii) The consumer **who will be billed for the service** agrees to utilize the service on the terms and conditions disclosed by the service provider; and

(iv) The service provider requires the use of **an a valid personal** identification number ~~or other means~~ to prevent unauthorized access to the service by nonsubscribers. **charges by persons other than the person who will be billed for the service.**

(2) Disclosure of a credit card or charge card number, along with authorization to bill that number, made during the course of a call to **purchase goods or services, including audio information or audio entertainment services**, ~~a pay-per-call service~~ shall constitute a presubscription **agreement** ~~or comparable arrangement~~ if the credit or charge card is subject to the dispute resolution requirements of the Fair Credit Billing Act and the Truth in Lending Act, as amended, **and if the credit or charge card is the sole method used to pay for the charge.** ~~No other action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating a presubscription or comparable arrangement.~~

(k) *Program-length commercial* means any commercial or other advertisement fifteen (15) minutes in length or longer or intended to fill a television or radio broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer.

(l) *Providing carrier* means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint or inquiry.

(m) *Reasonably understandable volume* means at an audible level that renders the message intelligible to the receiving audience, and, in any event, at least the same audible level as that principally used in the advertisement or the pay-per-call service.

(n) *Service bureau* means **(1) any person, including a common carrier, who provides one or more of the following services to vendors: voice storage, voice processing, call processing, billing aggregation, call statistics (call and minute counts), call revenue arrangements (including revenue-sharing arrangements with common carriers), or pre-packaged pay-per-call investment opportunities; or (2) any person, other than a common carrier, who provides, among other things, access to telephone service and voice storage to pay-per-call service providers vendors of pay-per-call services.**

(o) *Slow and deliberate manner* means at a rate that renders the message intelligible to the receiving audience, and, in any event, at a cadence or rate no faster than that principally used in the advertisement or the pay-per-call service.

(p) *Sweepstakes*, including games of chance, means a game or promotional mechanism that involves the elements of a prize and chance and does not require consideration.

(q) *Telephone-billed purchase* means any **pay-per-call purchase or any** purchase that is **either charged to a customer's telephone bill, or that is** completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include:

(1) A purchase ~~by a caller pursuant to a preexisting agreement with a vendor~~ **presubscription agreement that meets the requirements of § 308.2(j);**

(2) Local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines by rule--

(i) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(ii) Is subject to billing dispute resolution procedures required by Federal or state statute or regulation; or

(3) The purchase of goods or services that is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(r) *Variable option rate basis* refers to the rate structure of a pay-per-call service where the rate billed to the customer depends on the specific options chosen by the caller during the call.

(s) *Variable time rate basis* refers to the rate structure of a pay-per-call service where the rate billed to the customer changes during the call due to passage of time or due to other factors unrelated to specific options chosen by the caller.

(t) *Vendor* means any person who sells or offers to sell a pay-per-call service **or who sells or offers to sell goods or services via a telephone-billed purchase**. A person who provides only transmission services or **only** billing and collection services shall not be considered a **vendor**. [This definition combines the definitions of “**provider of pay-per-call services**”, former section 308.2(g) and “**vendor**”, former section 308.7(a)(7)]

SUBPART B -- PAY-PER-CALL SERVICES

§ 308.3308.3 Advertising of pay-per-call services: General requirements for advertising Disclosures

~~—(a) General requirements.~~ The following requirements apply to disclosures required in advertisements under §§ 308.3(b)-(d), and (f) **§308.4**:

~~(1)(a)~~ (a) The disclosures shall be made in the same language as that principally used in the advertisement.

~~(2)(b)~~ (b) Television, video, and print disclosures shall be of a color or shade that readily contrasts with the background of the advertisement.

~~(3)(c)~~ (c) In print advertisements, disclosures shall be parallel with the base of the advertisement.

~~(4)(d)~~ (d) Audio disclosures, whether in television or radio, shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

~~(5)(e)~~ (e) Nothing contrary to, inconsistent with, or in mitigation of, the required disclosures shall be used in any advertisement in any medium; nor shall any audio, video, or print technique be used that is likely to detract significantly from the communication of the disclosures.

~~(6)(f)~~ (f) In any program-length commercial, required disclosures shall be made at least three (3) times (unless more frequent disclosure is otherwise required) near the beginning, middle, and end of the commercial.

(g) In any advertising medium not specifically addressed in this Rule, all advertising disclosures must be clear and conspicuous and not avoidable by consumers acting reasonably.

§ 308.4 Advertising disclosures

~~—(b)(a) Cost of the call.~~ (1) The ~~provider of pay-per-call services~~ **vendor** shall clearly and conspicuously disclose the cost of the call, in Arabic numerals, in any advertisement for the pay-per-call service, as follows:

(i) If there is a flat fee for the call, the advertisement shall state the total cost of the call.

(ii) If the call is billed on a time-sensitive basis, the advertisement shall state the cost per minute and any minimum charges. If the length of the program can be determined in advance, the advertisement shall also state the maximum charge that could be incurred if the caller listens to the complete program.

(iii)(A) If the call is billed on a variable **option** rate basis, the advertisement shall state, in accordance with §§ ~~308.3(b)(1)(i) and (ii)~~ **308.4(a)(i) and (ii)**, the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller;

(B) If the call is billed on a variable time rate basis, the advertisement shall state, in accordance with §§ 308.4(a)(1)(i) and (ii), the cost of each different portion of the call;

(iv) The advertisement shall disclose any other fees that will be charged for the service.

(v) if the caller may be transferred to another pay-per-call service, the advertisement shall disclose the cost of the other call, in accordance with §§ ~~308.3(b)(1)(i), (ii), (iii), and (iv)~~ **308.4(a)(i), (ii), (iii), and (iv)**.

(2) For purposes of § ~~308.3(b)~~ **308.4(a)**, disclosures shall be made “clearly and conspicuously” as set forth in § ~~308.3(a)~~ **308.3** and as follows:

(i) In a television or videotape advertisement, the video disclosure shall appear adjacent to each video presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the video disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent. In addition, the video disclosure shall appear on the screen for the duration of the presentation of the pay-per-call number. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in (A) an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or (B) an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number. In an advertisement in which the pay-per-call number is presented only in the audio portion, the cost of the call shall be delivered immediately following the first and last delivery of the pay-per-call number, except that in a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(ii) In a print advertisement, the disclosure shall be placed adjacent to each presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent.

(iii) In a radio advertisement, the disclosure shall be made at least once, and shall be delivered immediately following the first delivery of the pay-per-call number. In a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(b) (e) Sweepstakes; games of chance. (1) The ~~vendor~~ ~~provider of pay-per-call services~~ that advertises a prize or award, or a service or product, at no cost or for a reduced cost, to be awarded to the winner of any sweepstakes, including games of chance, shall clearly and conspicuously disclose in the advertisement the odds of being able to receive the prize, award, service, or product at no cost or reduced cost. If the odds are not calculable in advance, the advertisement shall disclose the factors used in calculating the odds. Either the advertisement or the preamble required by § ~~308.5(a)~~ **308.9** for such service shall clearly and conspicuously disclose that no call to the pay-per-call service is required to participate, and shall also disclose the existence of a free alternative method of entry, and either instructions on how to enter, or a local or toll-free telephone number or address to which ~~customers~~ ~~consumers~~ may call or write for information on how to enter the sweepstakes. Any description or characterization of the prize, award, service, or product that is being offered at no cost or reduced cost shall be truthful and accurate.

(2) For purposes of § ~~308.3(e)~~ **308.4(b)** disclosures shall be made “clearly and conspicuously” as set forth in § ~~308.3(a)~~ **308.3** and as follows:

(i) In a television or videotape advertisement, the disclosures may be made in either the audio or video portion of the advertisement. If the disclosures are made in the video portion, they shall appear on the screen in sufficient size and for sufficient time to allow ~~customers~~ ~~consumers~~ to read and comprehend the disclosures.

(ii) In a print advertisement, the disclosures shall appear in a sufficient size and prominence and such location to be readily noticeable, readable, and comprehensible.

(c) (d) Federal programs. (1) The ~~provider of pay-per-call services~~ ~~vendor~~ that advertises a pay-per-call service that is not operated or expressly authorized by a Federal agency, but that provides information on a Federal program, shall clearly and conspicuously disclose in the advertisement that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency. Advertisements providing information on a Federal program shall include, but not be limited to, advertisements that contain a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal government connection, approval, or endorsement.

(2) For purposes of § ~~308.3(d)~~ **308.4(c)**, disclosures shall be made “clearly and conspicuously” as set forth in § ~~308.3(a)~~ **308.3** and as follows:

(i) In a television or videotape advertisement, the disclosure may be made in either the audio or video portion of the advertisement. If the disclosure is made in the video portion, it shall appear on the screen in sufficient size and for sufficient time to allow ~~customers~~ ~~consumers~~ to read and comprehend the disclosure. The disclosure shall begin within the first fifteen (15) seconds of the advertisement.

(ii) In a print advertisement, the disclosure shall appear in a sufficient size and prominence and such location to be readily noticeable, readable, and comprehensible. The disclosure shall appear in the top one-third of the advertisement.

(iii) In a radio advertisement, the disclosure shall begin within the first fifteen (15) seconds of the advertisement.

[MOVED former section 308.3(e) to new 308.5]

~~(d)(f)~~ *Advertising to individuals under the age of 18.* (1) The ~~vendor~~ ~~provider of pay-per-call services~~ shall ensure that any pay-per-call advertisement directed primarily to individuals under the age of 18 shall contain a clear and conspicuous disclosure that all individuals under the age of 18 must have the permission of such individual's parent or legal guardian prior to calling such pay-per-call service.

(2) For purposes of § ~~308.3(f)~~ **308.4(d)**, disclosures shall be made “clearly and conspicuously” as set forth in § ~~308.3(a)~~ **308.3** and as follows:

(i) In a television or videotape advertisement, each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number. The video disclosure shall appear on the screen for sufficient time to allow ~~customers~~ ~~consumers~~ to read and comprehend the disclosure. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in (A) an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or (B) an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number.

(ii) In a print advertisement, each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number.

(3) For the purposes of this regulation, advertisements directed primarily to individuals under 18 shall include any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of individuals under 18, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of individuals under 18.

(4) For the purposes of this regulation, if competent and reliable audience composition or readership data ~~does~~ **do** not demonstrate that more than 50% of the audience or readership is composed of individuals under 18, then the Commission shall consider the following criteria in determining whether an advertisement is directed primarily to individuals under 18:

(i) Whether the advertisement appears in publications directed primarily to individuals under 18, including, but not limited to, books, magazines, and comic books;

(ii) Whether the advertisement appears during or immediately adjacent to television programs directed primarily to individuals under 18, including, but not limited to, mid-afternoon weekday television shows;

(iii) Whether the advertisement is broadcast on radio stations that are directed primarily to individuals under 18;

(iv) Whether the advertisement appears on a cable or broadcast television station directed primarily to individuals under 18;

(v) Whether the advertisement appears on the same videotape as a commercially-prepared videotape directed primarily to individuals under 18, or preceding a movie directed primarily to individuals under 18 shown in a movie theater; and

(vi) Whether the advertisement, regardless of when or where it appears, is directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

§ 308.5 Advertising to children prohibited

~~(e) Prohibition on advertising to children.~~ (a) The **vendor** provider of pay-per-call services shall not direct advertisements for such pay-per-call services to children under the age of 12, unless the service is a bona fide educational service.

(b) For the purposes of this regulation, advertisements directed to children under 12 shall include any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of children under 12, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of children under 12.

(c) For the purposes of this regulation, if competent and reliable audience composition or readership data ~~does~~ **do** not demonstrate that more than 50% of the audience or readership is composed of children under 12, then the Commission shall consider the following criteria in determining whether an advertisement is directed to children under 12:

(1) Whether the advertisement appears in a publication directed to children under 12, including, but not limited to, books, magazines, and comic books;

(2) Whether the advertisement appears during or immediately adjacent to television programs directed to children under 12, including, but not limited to, children's programming as defined by the Federal Communications Commission, animated programs, and after-school programs;

(3) Whether the advertisement appears on a television station or channel directed to children under 12;

(4) Whether the advertisement is broadcast during or immediately adjacent to radio programs directed to children under 12, or broadcast on a radio station directed to children under 12;

(5) Whether the advertisement appears on the same video as a commercially-prepared video directed to children under 12, or preceding a movie directed to children under 12 shown in a movie theater;

(6) Whether the advertisement or promotion appears on product packaging directed to children under 12; and

(7) Whether the advertisement, regardless of when or where it appears, is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

§ 308.6 Misrepresentation of cost prohibited

(a) *Deceptive representation of cost.* It is a deceptive act or practice, and a violation of this Rule for any vendor to misrepresent the cost of a pay-per-call service.

(b) Signal indicating end of free time. If any portion of a telephone call to a pay-per-call service is offered as free, the vendor shall provide a clearly discernible signal or tone indicating the end of the free time, and shall inform the caller that to avoid charges, the call must be terminated within three (3) seconds of such signal or tone.

§ 308.7 Other advertising restrictions

~~(g)~~ **(a) Electronic tones in advertisements.** The ~~vendor provider of pay-per-call services~~ is prohibited from using advertisements that emit electronic tones that can automatically dial a pay-per-call service.

~~(h)~~ **(b) Telephone solicitations.** The ~~provider of pay-per-call services~~ **vendor** shall ensure that any telephone message **conveyed during an inbound or outbound call** that solicits ~~calls a person to place a call to the~~ a pay-per-call service discloses the cost of the call in a slow and deliberate manner and in a reasonably understandable volume, in accordance with §§ ~~308.3(b)(1)(i)-(v)~~ **308.4(a)(1)(i)-(v)**.

(c) Solicitations via facsimile machine. The vendor shall ensure that any facsimile message that solicits calls to a pay-per-call service contains all the relevant disclosures required by this Rule, and that such disclosures are provided in the manner required for print advertisements in §§ 308.3 and 308.4(a)(2)(ii).

(d) Solicitations via beeper, pager, or similar device. The vendor shall ensure that any beeper or pager message that solicits calls to a pay-per-call service contains all the relevant disclosures required by this Rule, and that such disclosures are provided in the manner required for print advertisements in §§ 308.3 and 308.4(a)(2)(ii).

~~(i)~~ **(e) Referral to toll-free telephone numbers.** The ~~vendor provider of pay-per-call services~~ is prohibited from referring in advertisements to an 800, **888, or 877** telephone number, or any other telephone number advertised as or widely understood to be toll-free, if that number **is used in a manner that** violates the prohibition concerning toll-free numbers set forth in § ~~308.5(i)~~ **308.13**.

(f) Nothing in this Section shall be construed to permit any conduct or practice otherwise precluded or limited by regulations of the Federal Communications Commission.

~~§ 308.4~~**308.8** Special rule for infrequent publications.

(a) The ~~vendor provider of any pay-per-call service~~ that advertises a pay-per-call service in a publication that meets the requirements set forth in § ~~308.4~~**308.8**(c) may include in such advertisement, in lieu of the cost disclosures required by § ~~308.3(b)~~ **308.4(a)**, a clear and conspicuous disclosure that a call to the advertised pay-per-call service may result in a substantial charge.

(b) The ~~vendor provider of any pay-per-call service~~ that places an alphabetical listing in a publication that meets the requirements set forth in § ~~308.4~~**308.8**(c) is not required to make any of the disclosures required by §§ ~~308.3 (b), (c), (d) and (f)~~ **308.4(a)-(d)** in the alphabetical listing,

provided that such listing does not contain any information except the name, address, and telephone number of the **vendor pay-per-call provider**.

(c) The publication referred to in § ~~308.4~~**308.8**(a) and (b) must be:

- (1) Widely distributed;
- (2) Printed annually or less frequently; and
- (3) One that has an established policy of not publishing specific prices in advertisements.

§ ~~308.5~~ Pay-per-call service standards.

§ **308.9** Preamble message

(a) ~~Preamble message. The provider of pay-per-call services~~ **The vendor** shall include, in each pay-per-call message, an introductory disclosure message (“preamble”) in the same language as that principally used in the pay-per-call message, that clearly, in a slow and deliberate manner and in a reasonably understandable volume:

(1) Identifies the name of the **vendor provider of the pay-per-call service** and describes the service being provided;

(2) Specifies the cost of the service as follows:

(i) If there is a flat fee for the call, the preamble shall state the total cost of the call;

(ii) If the call is billed on a time-sensitive basis, the preamble shall state the cost per minute and any minimum charges; if the length of the program can be determined in advance, the preamble shall also state the maximum charge that could be incurred if the caller listens to the complete program;

(iii)(A) If the call is billed on a variable **option** rate basis, the preamble shall state, in accordance with §§ ~~308.5(a)(2)(i) and (ii)~~ **308.9(a)(2)(i) and (ii)**, the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller;

(B) If the call is billed on a variable time rate basis, the preamble shall state, in accordance with §§ 308.9(a)(2)(i) and (ii), the cost of each different portion of the call;

(iv) Any other fees that will be charged for the service shall be disclosed, as well as fees for any other pay-per-call service to which the caller may be transferred;

(3) Informs the caller that charges for the call begin, and that to avoid charges the call must be terminated, three (3) seconds after a clearly discernible signal or tone indicating the end of the preamble;

(4) Informs the caller that anyone under the age of 18 must have the permission of a parent or legal guardian in order to complete the call; and

(5) Informs the caller, in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, or that uses a trade or brand name or any other term that reasonably could be interpreted or construed as implying any Federal government connection, approval, or endorsement, that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency.

(b) *No charge to caller for preamble message.* The ~~vendor provider of pay-per-call services~~ is prohibited from charging a caller any amount whatsoever for such a service if the caller hangs up at any time prior to three (3) seconds after the signal or tone indicating the end of the preamble described in § ~~308.5(a)~~ **308.9(a)**. However, the three-second delay, and the message concerning such delay described in § ~~308.5(a)(3)~~ **308.9(a)(3)**, is not required if the ~~provider of pay-per-call services~~ **vendor** offers the caller an affirmative means (such as pressing a key on a telephone keypad) of indicating a decision to incur the charges.

(c) *Nominal cost calls.* The preamble described in § ~~308.5(a)~~ **308.9(a)** is not required when the entire cost of the pay-per-call service, whether billed as a flat rate or on a time sensitive basis, is ~~\$2.00~~ **three (3) dollars** or less.

(d) *Data service calls.* The preamble described in § ~~308.5(a)~~ **308.9(a)** is not required when the entire call consists of the non-verbal transmission of information.

(e) *Bypass mechanism.* The ~~provider of pay-per-call services~~ **vendor** that offers to frequent callers or regular ~~customers~~ **subscribers** to such services the option of activating a bypass mechanism to avoid listening to the preamble during subsequent calls shall not be deemed to be in violation of § ~~308.5(a)~~ **308.9(a)**, provided that any such bypass mechanism shall be disabled for a period of no less than thirty (30) days immediately after the institution of an increase in the price for the service or a change in the nature of the service offered.

§ 308.10 Deceptive billing practices

~~(f) *Billing limitations.* The provider of pay-per-call services is prohibited from billing consumers in excess of the amount described in the preamble for those services and from billing for any services provided in violation of any section of this rule.~~

(a) *Deceptive billing for pay-per-call services in violation of the Rule.* [Modified version of what was formerly 308.5(f), above] It is a deceptive act or practice and a violation of this Rule for any vendor to collect or attempt to collect, directly or indirectly:

(1) Charges for pay-per-call services in excess of the amount described in the preamble for such pay-per-call services; or

(2) Charges for pay-per-call services that are provided in violation of this Rule.

~~(g) *Stopping the assessment of time-based charges.* The provider of pay-per-call services shall~~

(b) *Deceptive billing for time-based charges after disconnection by the caller.* It is a deceptive act or practice and a violation of this Rule for the vendor to fail to stop the assessment of time-based charges immediately upon disconnection by the caller.

§ 308.11 Prohibition on services to children

~~(h) *Prohibition on services to children.* The vendor provider of pay-per-call services shall not direct pay-per-call such services to children under the age of 12, unless such service is a bona~~

vide educational service. The Commission shall consider the following criteria in determining whether a pay-per-call service is directed to children under 12:

~~(a) (1) Whether the pay-per-call service is advertised in the manner set forth in §§ 308.3(e)(2) and (3) 308.5(b) and (c); and~~

~~(b) (2) Whether the pay-per-call service, regardless of when or where it is advertised, is directed to children under 12, in light of its subject matter, content, language, featured personality, characters, tone, message, or the like.~~

§ 308.12 Prohibition concerning toll charges

The vendor shall not offer a pay-per call service that would result in any customer being assessed a charge for any local exchange telephone service or interexchange telephone service or any service that the Federal Communications Commission determines by rule--

(a) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(b) Is subject to billing dispute resolution procedures required by Federal or state statute or regulation.

§ 308.13 Prohibitions concerning toll-free numbers

~~(i) *Prohibition concerning toll-free numbers.* Any person is prohibited from using an 800, **888**, or **877** number, or any other telephone number advertised as or widely understood to be toll-free in a manner that would result in:~~

~~(a) (1) ~~The calling party~~ Any customer being assessed, by virtue of a caller completing the call, a charge for the call;~~

~~(b) (2) ~~The calling party~~ The caller being connected to an access number for, or otherwise transferred to, a pay-per-call service;~~

~~(c) (3) ~~The calling party~~ Any customer being charged for information or entertainment conveyed during the call, unless the calling party that person has entered into a presubscription agreement, meeting the requirements of § 308.2(j), or comparable arrangement to be charged for the information or entertainment; or~~

~~(d) (4) ~~The calling party~~ Any person being called-back collect charged for a call back for the provision of audio or data information services, entertainment services, simultaneous voice conversation services, or products.~~

§ 308.14 Monthly or other recurring charges

The vendor is prohibited from providing a pay-per-call service that results in a monthly or other recurring charge, unless the vendor and the person to be billed for the service have entered into a presubscription agreement, meeting the requirements of § 308.2(j), that authorizes monthly or other recurring charges for that service.

§ 308.15 Refunds to customers

~~(k) Refunds to consumers.~~ The provider of pay-per-call services **The vendor** shall be liable for refunds or credits to **customers consumers** who have been billed for pay-per-call services, and who have paid the charges for such services, pursuant to pay-per-call **services programs** that have been found to have violated any provision of this ~~rule~~ **Rule** or any other Federal rule or law.

§ 308.16 Service bureau liability

~~(l) Service bureau liability.~~ A service bureau shall be liable for violations of the ~~Rule~~ **Rule** by **any vendor of** pay-per-call services using its call processing facilities **or other services** where ~~the service bureau~~ **it** knew or should have known of the violation.

SUBPART C -- PAY-PER-CALL SERVICES AND OTHER TELEPHONE-BILLED PURCHASES

§ 308.17 Express authorization required

Any telephone-billed purchase, other than a pay-per-call purchase that is blockable pursuant to 47 U.S.C. 228(c), requires the express authorization of the person to be billed for the purchase. It is a deceptive act or practice and a violation of this Rule for any vendor, service bureau, or billing entity to collect or attempt to collect, directly or indirectly, payment for such a telephone-billed purchase where the vendor, service bureau, or billing entity knew or should have known that the charge was not expressly authorized by the person from whom payment is being sought.

§ 308.18 Disclosure requirements for billing statements

~~(j) Disclosure requirements for billing statements.~~ The ~~vendor~~ provider of pay-per-call services shall ensure that any billing statement for ~~such provider's~~ **its** charges shall:

(a) ~~(1)~~ Display any charges for ~~pay-per-call services~~ **telephone-billed purchases** in a portion of the ~~customer's~~ **consumer's** bill that is identified as not being related to local and long distance telephone charges;

(b) ~~(2)~~ For each **telephone-billed purchase** charge so displayed, **identify** ~~specify~~ the type of service **or product and** the amount of the charge;

(c) **For each pay-per-call purchase charge so displayed, accurately specify the telephone number dialed by the caller, as well as** ~~and~~ the date, time, and, for calls billed on a time-sensitive basis, the duration of the call; and

(d) ~~(3)~~ Display the local or toll-free telephone number where **customers consumers** can **readily** obtain answers to their questions and information on their rights and obligations with regard to their ~~use of~~ **telephone-billed purchases** ~~pay-per-call services~~, and can obtain the name and mailing address of the ~~vendor~~ provider of pay-per-call services.

§ ~~308.6~~**308.19** Access to information.

Any common carrier that provides telecommunication services to any ~~provider of pay-per-call services~~ **vendor or service bureau** shall make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any ~~provider of pay-per-call services~~ **vendor or service bureau**.

§ ~~308.7~~**308.20** ~~Dispute resolution procedures~~ **Dispute resolution procedures** ~~Billing and collection for pay-per-call services.~~

[Former 308.7(a) moved to new section 308.2 and modified]

(a) *Definitions.* For the purposes of this section, the following definitions shall apply:

- (1) ~~Billing entity~~ means any person who transmits a billing statement to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries.
- (2) ~~Billing error~~ means any of the following:
 - (i) A reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer who was billed for the purchase or, if made, was not in the amount reflected on such statement.
 - (ii) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.
 - (iii) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.
 - (iv) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.
 - (v) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.
 - (vi) A computation error or similar error of an accounting nature on a billing statement of a telephone-billed purchase.
 - (vii) Failure to transmit a billing statement for a telephone-billed purchase to a customer's last known address if that address was furnished by the customer at least twenty days before the end of the billing cycle for which the statement was required.
 - (viii) A reflection on a billing statement of a telephone-billed purchase that is not identified in accordance with the requirements of § 308.5(j).
- (3) ~~Customer~~ means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase, or who receives a billing statement for a telephone-billed purchase charged to a telephone number assigned to that person by a providing carrier.
- (4) ~~Preexisting agreement~~ means a “presubscription or comparable arrangement,” as that term is defined in § 308.2(e).
- (5) ~~Providing carrier~~ means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint or inquiry.

~~—(6) Telephone-billed purchase means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include:~~

~~—(i) A purchase by a caller pursuant to a preexisting agreement with a vendor;~~

~~—(ii) Local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines by rule=~~

~~—(A) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and~~

~~—(B) Is subject to billing dispute resolution procedures required by Federal or state statute or regulation; or~~

~~—(iii) The purchase of goods or services that is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.~~

~~—(7) Vendor means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.~~

~~(b)~~ **(a) Initiation of billing review. To be guaranteed the protections provided under § 308.20, a** A customer **shall** ~~may~~ initiate a billing review with respect to a telephone-billed purchase by providing the billing entity with notice of a billing error no later than sixty (60) days after the billing entity transmitted the first billing statement that contains ~~a~~ **the disputed** charge ~~for such telephone-billed purchase~~. If the billing error is the reflection on a billing statement of a telephone-billed purchase not provided to the customer in accordance with the stated terms of the transaction, the 60-day period shall begin to run from the date the goods or services are delivered or, if not delivered, should have been delivered, if such date is later than the date the billing statement was transmitted. **The customer's** ~~A~~ billing error notice shall:

(1) Set forth or otherwise enable the billing entity to identify the customer's name and the telephone number to which the charge was billed;

(2) Indicate the customer's belief that the statement contains ~~a billing an~~ error, and the ~~type~~ date and amount of such ~~error~~; and

(3) Set forth the reasons for the customer's belief, to the extent possible, that the statement contains ~~a billing an~~ error.

~~(c)~~ **(b) Disclosure of method of providing notice; presumption if oral notice is permitted.** A billing entity shall clearly and conspicuously² disclose on each billing statement or on other material accompanying the billing statement:

(1) The ~~the~~ method (oral or written) by which the customer may provide ~~notice to initiate review of a billing error~~ **notice** in the manner set forth in § 308.7~~(b)~~ **308.20(a)**. ~~If oral notice is permitted, any customer who orally communicates an allegation of a billing error to a billing entity~~

²The standard for “clear and conspicuous” as used in this Section shall be the standard enunciated by the Board of Governors of the Federal Reserve System in its Official Staff Commentary on Regulation Z, which requires simply that the disclosures be in a reasonably understandable form. See 12 CFR part 226, Supplement I, Comment 226.5(a)(1)-1.

shall be presumed to have properly initiated a billing review in accordance with the requirements of §308.7(b);³

- (2) **The name of the billing entity designated to receive and respond to billing errors;**
- (3) **If written notice is required, the mailing address to which notice should be sent;**
- (4) **If oral notice is permitted, a local or toll-free telephone number that is readily available for customers to submit a billing error notice. The billing entity and the vendor may, by agreement, select a single telephone number to satisfy the requirements of this Section as well as § 308.18(d).**

~~(d)~~(c) *Response to customer notice.* A billing entity that receives notice of a billing error as described in §308.7(b) **308.20(a)** shall:

(1) Send a written acknowledgment to the customer including a statement that any disputed amount need not be paid pending investigation of the billing error. This shall be done no later than forty (40) days after receiving the notice, unless the action required by § 308.7(d)(2) **308.20(c)(2)** is taken within such 40-day period; and

(2)(i) Correct ~~the~~ **any** billing error and credit the customer's account for any disputed amount and any related charges, and notify the customer of the correction. The billing entity also shall disclose to the customer that collection efforts may occur despite the credit, and shall provide the names, mailing addresses, and business telephone numbers of the vendor, **service bureau**, and providing carrier, as applicable, that are ~~the subject of involved in~~ the telephone-billed purchase, or provide the customer with a local or toll-free telephone number that the customer may call to **readily** obtain this information directly. However, the billing entity is not required to make the disclosure concerning collection efforts if the vendor, its agent, or the providing carrier, as applicable, will not collect or attempt to collect the disputed charge; or

(ii) ~~Transmit an explanation to the customer, after conducting~~ **Conduct** a reasonable investigation (including, where appropriate, contacting the **customer**, vendor, **service bureau**, or providing carrier), **after which it shall transmit a written explanation to the customer**, setting forth the reasons why it has determined that no billing error occurred ~~or that a different billing error occurred from that asserted~~, make any appropriate adjustments to the customer's account, and, if the customer so requests, provide a written explanation and copies of documentary evidence of the customer's indebtedness. **The reasonable investigation and written explanation shall, in every case, address each potential billing error, and shall address with particularity the relevant facts asserted by the customer.**⁴

³ **If oral notice is permitted, any customer who orally communicates an allegation of a billing error to a billing entity shall be presumed to have properly initiated a billing review in accordance with the requirements of 308.20(a). [Moved from text]**

⁴ ~~If a customer submits a billing error notice alleging either the nondelivery of goods or services or that information appearing on a billing statement has been reported incorrectly to the billing entity, the billing entity shall not deny the assertion unless it conducts a reasonable~~

(continued...)

[note: This footnote was moved from an earlier part of the paragraph.]

(3) The action required by ~~§308.7(d)(2)~~ **308.20(c)(2)** shall be taken no later than **sixty (60) days** ~~two complete billing cycles of the billing entity (in no event later than ninety (90) days)~~ after receiving the notice of the billing error and before taking any action to collect the disputed amount, or any part thereof. After complying with ~~§308.20(c)(2)~~~~308.7(d)(2)~~, **if the billing entity has determined that any disputed amount is in error, or has for other reasons determined not to sustain the disputed charge**, the billing entity shall:

(i) ~~If it is determined that any disputed amount is in error,~~ **Within thirty (30) days of such determination**, promptly notify the appropriate providing carrier, or vendor, or service bureau as applicable, of its disposition of the customer's billing error and the reasons therefor, **and provide sufficient information for the appropriate entity to identify the customer account at issue**; and

(ii) Promptly notify the customer in writing of the time when payment is due of any portion of the disputed amount determined not to be in error, ~~which time shall be the longer of ten (10) days or the number of days the customer is ordinarily allowed (whether by custom, contract or state law) to pay undisputed amounts,~~ and that failure to pay such amount may be reported to a credit reporting agency or subject the customer to a collection action, if that in fact may happen. **The billing entity shall allow the longer of ten (10) days or the number of days the customer is ordinarily allowed (whether by custom, contract, or state law) to pay undisputed amounts.**

~~(e)~~**(d)** *Withdrawal of billing error notice.* A billing entity need not comply with the requirements of ~~§ 308.7(d)~~ **308.20(c)** if the customer has, after giving notice of a billing error and before the expiration of the time limits specified therein, agreed that the billing statement was correct or agreed to withdraw voluntarily the billing error notice.

~~(f)~~**(e)** *Limitation on responsibility for billing error.* After complying with the provisions of ~~§308.7(d)~~ **308.20(c)**, a billing entity has no further responsibility under that Section if the customer continues to make substantially the same allegation with respect to a billing error.

⁴(...continued)

~~investigation and determines that the goods or services were actually delivered as agreed or that the information was correct.~~ There shall be a rebuttable presumption that goods or services were actually **transmitted or** delivered to the extent that a vendor, **service bureau**, or providing carrier produces documents prepared and maintained in the ordinary course of business showing the date on, and the place to, which the goods or services were transmitted or delivered. **If a billing entity relies on this presumption in responding to a billing error notice, it shall provide the customer with the opportunity to rebut this presumption with a declaration signed under penalty of perjury. The billing entity shall not require this declaration to be notarized. In enforcing violations of this Rule, the Commission may rebut this presumption with evidence indicating that, in numerous instances, the goods or services were not actually transmitted or delivered.**

~~(g)~~**(f)** *Customer's right to withhold disputed amount; limitation on collection action.* Once the customer has submitted notice of a billing error to a billing entity, the customer need not pay, and ~~the~~ **no** billing entity, providing carrier, **service bureau**, or vendor may ~~not~~ try to collect, any portion of any required payment that the customer reasonably believes is related to the disputed amount until the billing entity receiving the notice has complied with the requirements of ~~§308.7(d)~~ **308.20(c)** and **until the customer has received the written explanation and documentary evidence setting forth that no billing error has occurred, pursuant to § 308.20(c)(2)(ii) or § 308.20(n)(2).** The billing entity, providing carrier, **service bureau**, or vendor are not prohibited from taking any action to collect any undisputed portion of the bill, or from reflecting a disputed amount and related charges on a billing statement, provided that the billing statement clearly states that payment of any disputed amount or related charges is not required pending the billing entity's compliance with ~~§ 308.7(d)~~ **308.20(c).**

~~(h)~~**(g)** *Prohibition on charges for initiating billing review.* A billing entity, providing carrier, **service bureau**, or vendor may not impose on the customer any charge related to the billing review, including charges for documentation or investigation.

~~(i)~~**(h)** *Restrictions on credit reporting--(1) Adverse credit reports prohibited.* Once the customer has submitted notice of a billing error to a billing entity, a billing entity, providing carrier, **service bureau**, vendor, or other agent may not report or threaten directly or indirectly to report adverse information to any person because of the customer's withholding payment of the disputed amount or related charges, until the billing entity has met the requirements of ~~§308.7(d)~~ **308.20(c)** and allowed the customer as many days thereafter to make payment **of any amount determined not to be in error**, as prescribed by ~~§ 308.7(d)(3)(ii)~~ **308.20(c)(3)(ii).**

(2) *Reports on continuing disputes.* If a billing entity receives further notice from a customer within the time allowed for payment under ~~§ 308.7(i)(1)~~ **308.20(h)(1)** that any portion of the billing error is still in dispute, a billing entity, providing carrier, vendor, or other agent may not report to any person that the customer's account is delinquent because of the customer's failure to pay that disputed amount unless the billing entity, providing carrier, vendor, or other agent also reports that the amount is in dispute and notifies the customer in writing of the name and address of each person to whom the vendor, billing entity, providing carrier, or other agent has reported the account as delinquent.

(3) *Reporting of dispute resolutions required.* A billing entity, providing carrier, vendor, or other agent shall report in writing any subsequent resolution of any matter reported pursuant to ~~§ 308.7(i)(2)~~ **308.20(h)(2)** to all persons to whom such matter was initially reported.

~~(j)~~**(i)** *Forfeiture of right to collect disputed amount.* Any billing entity, providing carrier, vendor, or other agent who fails to comply with the requirements of §§ ~~308.7(c), (d), (g), (h), or (i)~~ **308.20(b), (c), (f), (g), or (h)** forfeits any right to collect from the customer the amount indicated by the customer, under ~~§ 308.7(b)(2)~~ **308.20(a)(2)**, to be in error, and any late charges or other related charges thereon, up to fifty (50) dollars per transaction. **Nothing in this Section shall be construed to limit the liability of any billing entity, providing carrier, or other**

agent with respect to: (1) providing full refunds or credits for charges that are in error; (2) civil penalties for violations of § 308.20; or (3) liability for violations of any other provision of this Rule.

~~(k)~~**(j)** *Prompt notification of returns and crediting of refunds.* When a vendor other than the billing entity accepts the return of property or forgives a debt for services in connection with a telephone-billed purchase, the vendor shall, within seven (7) business days from accepting the return or forgiving the debt, either:

(1) Mail or deliver a cash refund directly to the customer's address, and notify the appropriate billing entity that the customer has been given a refund; or

(2) Transmit a credit statement to the billing entity through the vendor's normal channels for billing telephone-billed purchases. The billing entity shall, within seven (7) business days after receiving a credit statement, credit the customer's account with the amount of the refund.

~~(l)~~**(k)** *Right of customer to assert claims or defenses.* Any billing entity or providing carrier who seeks to collect charges from a customer for a telephone-billed purchase that is the subject of a dispute between the customer and the vendor shall be subject to all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute that the customer could assert against the vendor, if the customer has made a good faith attempt to resolve the dispute with the vendor or providing carrier (other than the billing entity). The billing entity or providing carrier shall not be liable under this paragraph for any amount greater than the amount billed to the customer for the purchase (including any related charges).

~~(m)~~**(l)** *Retaliatory actions prohibited.* A billing entity, providing carrier, vendor, or other agent may not accelerate any part of the customer's indebtedness or restrict or terminate the customer's access to pay-per-call services solely because the customer has exercised in good faith rights provided by this Section.

~~(n)~~ *Notice of billing error rights*—~~(1) Annual statement.~~ (i) A billing entity shall mail or deliver to each customer, with the first billing statement for a telephone-billed purchase mailed or delivered after the effective date of these regulations, a statement of the customer's billing rights with respect to telephone-billed purchases. Thereafter the billing entity shall mail or deliver the billing rights statement at least once per calendar year to each customer to whom it has mailed or delivered a billing statement for a telephone-billed purchase during the previous twelve months. The billing rights statement shall disclose that the rights and obligations of the customer and the billing entity, set forth therein, are provided under the federal Telephone Disclosure and Dispute Resolution Act. The statement shall describe the procedure that the customer must follow to notify the billing entity of a billing error and the steps that the billing entity must take in response to the customer's notice. If the customer is permitted to provide oral notice of a billing error, the statement shall disclose that a customer who orally communicates an allegation of a billing error is presumed to have provided sufficient notice to initiate a billing review. The statement shall also disclose the customer's right to withhold payment of any disputed amount, and that any action to collect any disputed amount will be suspended, pending

completion of the billing review. The statement shall further disclose the customer's rights and obligations if the billing entity determines that no billing error occurred, including what action the billing entity may take if the customer continues to withhold payment of the disputed amount. Additionally, the statement shall inform the customer of the billing entity's obligation to forfeit any disputed amount (up to \$50 per transaction) if the billing entity fails to follow the billing and collection procedures prescribed by § 308.7 of this rule.

~~—(ii) A billing entity that is a common carrier may comply with § 308.7(n)(1)(i) by, within 60 days after the effective date of these regulations, mailing or delivering the billing rights statement to all of its customers and, thereafter, mailing or delivering the billing rights statement at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, to all of its customers.~~

~~(2) Alternative summary statement. As an alternative to § 308.7(n)(1), a billing entity may mail or deliver, on or with each billing statement, a statement that~~

~~(n)(m) **Notice of billing error rights-- (1) Billing Notice.** With each billing statement that contains charges for a telephone-billed purchase, a billing entity shall include a statement that sets forth the procedure that a customer must follow to notify the billing entity of a billing error. The statement shall also disclose (i) the customer's right to withhold payment of any disputed amount, and ; (ii) that any action to collect any disputed amount will be suspended, pending completion of the billing review; and (iii) that, to be guaranteed the protections provided under the Dispute Resolution Procedures of the Federal Trade Commission's Rule Concerning Pay-Per-Call Services and Other Telephone-Billed Purchases, a customer must initiate a billing review no later than sixty (60) days after the billing entity transmitted the first billing statement that contains a charge for such telephone billed purchase.~~

~~(3) (2) **General disclosure requirements.** (i) The disclosures required by § 308.7(n)(1) shall be made clearly and conspicuously on a separate statement that the customer may keep. (i) The disclosures required by § 308.7(n)(2) **308.20(m)(1)** shall be made clearly and conspicuously and may be made on a separate statement or on the customer's billing statement. If any of the disclosures are provided on the back of the billing statement, the billing entity shall include a reference to those disclosures on the front of the statement.~~

~~(ii) At the billing entity's option, additional information or explanations may be supplied with the disclosures required by § 308.7(n) **308.20(m)**, but none shall be stated, utilized, or placed so as to mislead or confuse the customer or contradict, obscure, or detract attention from the information required to be disclosed. The disclosures required by §308.7(n) **308.20(m)** shall appear separately and above any other disclosures **except those required under 47 C.F.R 64.1510(a)(2)(i).**~~

~~(o)(n) **Multiple billing entities. (1)** If a telephone-billed purchase involves more than one billing entity, only one set of disclosures need **by be** given, and the billing entities shall agree among themselves which billing entity must comply with the requirements that this regulation imposes on any or all of them **receive and respond to billing error notices.**~~

(2) If any billing entity has forgiven a disputed charge for a telephone-billed purchase, no other billing entity may attempt to collect such charge without first conducting the reasonable investigation and providing the customer with the written explanation and documentary evidence as specified by § 308.20(c)(2)(ii). The billing entity designated to receive and respond to billing errors shall remain the only billing entity responsible for complying with the terms of § 308.7(d).

(3) If a billing entity other than the one designated to receive and respond to billing errors receives notice of a billing error as described in § 308.7(b) 308.20(a), that billing entity shall either:

(1) (i) Promptly transmit to the customer the name, mailing address, and business telephone number of the billing entity designated to receive and respond to billing errors; or

(2) (ii) transmit the billing error notice within fifteen (15) days to the billing entity designated to receive and respond to billing errors. The time requirements in § 308.7(d) 308.20(c) shall not begin to run until the billing entity designated to receive and respond to billing errors receives notice of the billing error, either from the customer or from the billing entity to whom the customer transmitted the notice.

(4) If a customer fails to pay for a telephone-billed purchase and fails to initiate a billing review within the sixty (60) days provided under § 308.20(a), the billing entity that transmitted the first billing statement containing the unpaid charge shall, no later no later than one hundred and twenty (120) days after such statement was transmitted, provide the vendor or service bureau with:

(i) notice of the failure to pay;

(ii) the amount of the unpaid charge; and

(iii) sufficient information to identify the customer's account.

~~(p)~~**(o) Multiple customers.** If there is more than one customer involved in a telephone-billed purchase, the disclosures may be made to any customer who is primarily liable on the account.

(p) Deceptive statements to billing entities by vendors, service bureaus, and providing carriers. It is a deceptive act or practice and a violation of this Rule for any vendor, service bureau, or providing carrier to provide false or misleading information to a billing entity conducting an investigation of a telephone-billed purchase charge under § 308.20(c) or § 308.20(n).

SUBPART D -- GENERAL PROVISIONS

§ ~~308.8~~**308.21** Severability.

The provisions of this ~~rule~~ **Rule** are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§ 308.22 Actions by States

(a) As provided by 15 U.S.C. § 5712, whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice which violates any section of this Rule relating to the provision of pay-per-call services, other than § 308.20, the State may bring a civil action on behalf of its residents in an appropriate district court to enjoin such pattern or practice, to enforce compliance with this Rule (except for § 308.20), or to obtain such further and other relief as the court may deem appropriate.

(b) Any attorney general or other officer of a State authorized by the State to bring an action under this Rule shall serve written notice on the Commission, if feasible, prior to its initiating such action. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State shall serve the Commission with the required notice immediately upon instituting its action.

(c) Nothing contained in this Section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(d) Nothing contained in this Section shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) Whenever the Commission has instituted a civil action for violation of any provision of this Rule, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any provision as alleged in the Commission's complaint.

§ 308.9 Rulemaking Review

~~—No later than four years after the effective date of this Rule, the Commission shall initiate a rulemaking review proceeding to evaluate the operation of the rule.~~