

BEFORE THE FEDERAL TRADE COMMISSION

IN RE:)
PAY-PER-CALL WORKSHOP.)

FRIDAY, MAY 21, 1999

FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Room 432
Washington, D.C. 20850

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(Appearances continued on next page.)

(Appearances continued.)

P A R T I C I P A N T S

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P R O C E E D I N G S

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MS. HARRINGTON: Let's go on the record. I wanted to begin. Before we start our discussion, which isn't scheduled to begin until nine, I wanted to take these minutes to just sort of check in with all of the participants very briefly, any thoughts from yesterday's session, anything that you would like to say in terms of what you're hoping we can accomplish today, or any questions.

Let's start with -- let's start with, let's see, who are we going to start with? Susan, why don't we start with you? Do you have anything on your mind this morning about --

MS. GRANT: It's a nice day. I would like to be outside.

MS. HARRINGTON: Any comments on yesterday's session, concerns, questions about -- wishes for today?

MS. GRANT: I thought that yesterday's session was really very helpful. We continue to learn from each other every time we meet, although I do hope that we can come to some conclusion about these issues shortly.

There are a number of issues that I'm interested in working with people on between now and whenever a final decision might be made about how to resolve these

questions, including the issue of the database and the notice to consumers.

So I actually won't be around next week, but I'll be back the beginning of June, and if anybody is interested in contacting me, to do so.

MS. HARRINGTON: Great. Jim, how about you? Do you have anything on your mind this morning?

MR. BOLIN: I don't. I'm looking forward to today's session.

MS. HARRINGTON: Albe?

MR. ANGEL: I think Susan hit it well, just that's our orientation as well.

MS. HARRINGTON: Debbie, anything -- any questions or concerns.

MS. HAGAN: No. I just want when this is finished for you to outline for us what the process is going to be on further input. There's been a lot of issues raised, and I'm not sure what direction we're going to be going in.

MS. HARRINGTON: We'll make that clear before we end today.

Anyone else. Peter?

MR. BRENNAN: Thank you. Yesterday we heard pretty extensively about kind of the demise of 900 as we know it, Bell Companies getting out of the business and

the ongoing trend toward lack of liability.

And it seems to be in the agenda today we're talking about some of those things that will I guess replace 900, and our hope is that those services can be made viable for those that have not, who still want access to information services.

MS. HARRINGTON: Anyone else want to comment on anything? Jacque?

MS. MITCHELL: I just want to make sure that we, as clearly as possible, clarify this issue of what is defined as the telephone bill purchase and make sure that that's on the table either today or clearly understood before this is final.

MS. HARRINGTON: Okay. Before we launch into the discussion on express authorization, we have two or three new people, I think, at the table, and so one last little warm up exercise, if we could go around once again to introduce ourselves and tell folks who we were here representing, that would be good.

I'm Eileen Harrington, and I am the associate director for marketing practices here at the Federal Trade Commission, and our group, the division of marketing practices, is responsible for staffing this rulemaking work for the Commission.

Adam, why don't we go your way?

MR. COHN: My name is Adam Cohn. I'm on the staff here at the division of marketing practices, and I'm an attorney working on this matter.

MR. HILE: I'm Allen Hile. I'm assistant director of division market practices.

MR. AWERDICK: I'm John Awerdick with Hall, Dickler, Kent, Friedman & Wood in New York for Promotional Marketing Association, PMA.

MS. HARRINGTON: Welcome.

MS. GRANT: Susan Grant, vice president for public policy at the National Consumers League. I'm director of its National Fraud Information Center.

MR. FARRELL: Mark Farrell, SBC Communications.

MS. SCHALLENBERG-TILLHOF: Helen Schallenberg-Tillhof, Sprint Local over the billing intellectual contracts.

MS. GARCIA: Loretta Garcia. I'm an attorney with Dow, Lohnes & Albertson.

MS. SIMPSON: Adele Simpson, and I'm here representing the International Telemedia Association.

MR. PERMUT: I'm Philip Permut. I'm with Kelley Drye & Warren representing CWVI.

MR. BRENNAN: Peter Brennan from Tele-publishing, and I'm also the cofounder of the Billing Reform Task Force.

MS. HAGAN: Deborah Hagan with the Illinois Attorney General's Office. I share my seat staff with Jill Sanford from the New York Attorney General's Office. We also represent the National Association of Attorneys General telecommunications subcommittee.

MR. PASSAN: And I'm Gary Passan, president of Network Telephone Services and representing Teleservices Industry Association.

MS. MITCHELL: I'm Jacqueline Mitchell, and I'm president of Billing Concepts and Services, president of Coalition to Ensure Responsible Billing, CERB, representing the clearinghouses that provide billing into the local exchange carriers.

MR. KRAMER: I'm Jeff Kramer with AARP.

MR. GOODMAN: John Goodman, Bell Atlantic.

MR. TANZI: Toni Tanzi, director of communications at Brown University representing ACUTA.

MR. ANGEL: Albert Angel, general counsel of ICM Limited, cofounder of the Billing Reform Task Force, representing 900 service providers, billing entities and information providers.

MR. BOLIN: Jim Bolin. I'm an attorney for AT&T.

MS. MILLER: Cindy Miller. I'm with the Florida Public Service Commission, and I have Rick Moses and

Diane Caldwell here also.

MR. HERTZENDORF: I'm Mark Hertzendorf, and I'm with the Bureau of Economics.

MS. DANIELSON: Carole Danielson, investigator, division of marketing practices.

MS. SCHWANKE: I'm Marianne Schwanke, staff attorney in the division of marketing practices.

MS. HARRINGTON: Okay. Well, we have saved for today two of the hardest -- I would say the hardest issues -- actually three of the hardest issues that we have set out in this rulemaking, and this morning we're going to begin with a discussion of the issue of express authorization.

This afternoon we're going to move to defining pay-per-call services, and last but certainly not least we'll be talking about international audiotext services, and I just remind, especially our friends who are here from the International Audiotext Industry that the last shall be first so the Bible tells us, so we had to organize this agenda in some way, and the fact that that issue is last on the agenda certainly doesn't mean that it's one that is not getting a lot of consideration here.

So let's begin on the issue of express authorization, and I'll remind you of what I said

yesterday, and that is that we really need this discussion to focus on the issues that we've set forth in the agenda.

We appreciated very much everyone's comments on this issue. Once again we don't want people to go over and restate their comments, but we want lively discussion and particularly conversation and dialogue with one another among the participants around the table on these issues.

Also I want to remind you one more time that if you want to be recognized, there are little yellow post-its near your name tents. If you're out of them they're more here at the middle of the table. If you want to be recognized, put a little yellow post-it on your name tent, and for court reporter's benefit, would you please identify yourself and who you are representing.

And is there anything else up here, you guys, on a housekeeping front? Okay, let's go.

The first question is, Should any person other than the person responsible for paying the bill be permitted to provide express authorization to bind the person who is to be billed, and if so, who might that be.

Related questions: Should the answer to this

question depend on who will receive the benefit of the telephone-billed purchase, or should the answer depend on something else?

Jacque?

MS. MITCHELL: I would just like to state for the record that the only organization that truly knows who the responsible or authorized party is the LEC because it's in their control that they understand who has signed up for the service, if you will, and who's responsible for the bill.

As Jim described yesterday, he's the responsible party on his bill, even though he has other adult parties in his house that might use that service.

MS. HARRINGTON: John?

MR. AWERDICK: My wife is the responsible party on my party because 25 years ago I moved into her apartment. She didn't move into mine, probably typical of a lot of people. I suggest this standard ought to be anyone in the household in the family who's over 18 is probably the responsible party and qualified to make a purchase.

MS. HARRINGTON: Susan?

MS. GRANT: My concern is that what we're talking about here is telephone-billed purchases, and it's the person who's responsible for the bill who will

have to deal with the arguments over any services that they feel were not authorized and that they don't want to pay for.

I do understand the comments that have been made about it being -- the need for making it easy for people to do basic things like change their telephone service. I recently changed our phone service that was in my husband's name with a different name, and it was actually scary how easy it was to do.

I think if you do that you have to leave yourself open to the potential that the person in whose name the bill is is going to object conceivably down the road when the first bill comes showing a change of service or a new service.

We are talking about a special category though of telephone-billed purchases. We're not talking about basic local or long distance service, and so I think it's even more appropriate to make sure that it is the person who is going to be billed that has authorized the service.

I know we'll be talking more about how to do that, but at least I think we need to figure out a way to do that.

MS. HARRINGTON: Thank you. Tony?

MR. TANZI: Good morning. Toni Tanzi from

ACUTA. Understanding that we're focused on residential services, I need to remind you that in the college or university or business organization or hospital or government environment, you might have five or six thousand users behind a PBX or a similar number using Centrex services.

It becomes critical that the person responsible for paying the bill, i.e., the business organization or entity, be the only people permitted to authorize charges. Otherwise there would be total chaos, no ability to figure out who made what purchases and absolutely no logic in dealing with service providers over contested bills.

One last comment. The issue of husband, wife or spouse or significant other, we live in a world where unrelated people are forced to share a domicile for up to nine months, and we need to take that also into consideration. They turn over quickly.

They usually disavow all knowledge of everything except what's on the menu at today's twelve o'clock feeding, and it is extremely difficult to deal with young people 17, 18 years old who are beginning to get a real test of reality, the real world having left their families.

MS. HARRINGTON: Mark, question?

MR. HERTZENDORF: A quick follow up question for Tony. What percentage of the billing that you contest is ultimately adjusted in your favor?

MR. TANZI: A significant portion, Mark. It's not unusual for most, if not all, of the bill to be adjusted because most of the charges have absolutely nothing to do with University business, and they're usually made by students who do so with the understanding that they're going to be the ultimately billed party.

They don't understand the regulations because it's usually base on ANI numbering and we're the responsibility party for the telephone line service.

MS. HARRINGTON: Jim?

MR. BOLIN: Jim Bolin, AT&T. I would just like to say while I'm sensitive to the problem Tony raises, I would like to reiterate a point that I made in part yesterday which is that colleges and Universities and other aggregators are in most respects special cases, and I don't know that it makes sense to make a general rule based on a special case.

It may be that a database solution along the lines of what we discussed yesterday that might help take care of many of the problems of aggregators. Toni mentioned that we live in a world where adults are

forced to share a domicile. That's probably true for college students, but there are very many folks in the world that by choice or by economic necessity are living with multiple roommates in the same dwelling.

The rule that says only the person whose name is on the bill can authorize these services means that if you don't happen to be the name on the telephone bill, you're not going to be able to access voice mail, stock quote services, sports scores, chat lines, whatever may interest you.

It means you're not going to be able to sign up for your Internet account over on an 800 line if you need to do that. You need to keep in mind that telephone-billed purchases proposed by this rule is extremely broad, and that unless we -- unless the Commission really wants a rule that makes it impossible for consumers to access these kind of services unless they happen to be the name on the phone bill, even if they're adults, even if they routinely place long distance calls that appear on the same phone bill.

I know up until about five years ago I generally had roommates that I wasn't related to. We all made long distance phone calls on a bill that happened to me in my roommate's name. At the end of the month we split it up.

If we couldn't figure out who a particular call belonged to after much argument we eventually managed to work that out, but you're going to make arrangements like that impossible, and it seems to me that's going to particularly impact folks who don't have the economic wherewithal to own their own homes or to live by themselves.

MR. TANZI: Can I respond to that?

MS. HARRINGTON: Yes.

MR. TANZI: The world has changed. The issue of non related or related people living in the same household, having shared responsibility for long distance calls is a simple, mechanical issue that we've overcome a long time ago.

The point of colleges and universities being categorized as a special class really doesn't take into consideration the remedies that we have in place for this problem. We do not discourage students from seeking and installing their own private telephone lines. We encourage it so that they make take advantage of the goods and services that we're discussing today.

Our concern is with those purchases being made to telephone lines that the University is responsible for. We clearly articulate in the housing rules, we post on our web site and we discuss options that

students and others have for communication services.

Lastly, we need to be considerate of the fact that we don't want to be in the arbitration of dispute resolution business. Yet we are forced just like all of us to do a lot of legwork, management overhead, administrative hearing, debt chasing in order to reconcile bills that we have no business getting in the first place.

So a lot of the issues that you mentioned, Jim, have been overcome. We do have options and remedies that we publicly ask people to take. We encourage the LECs to participate in those solutions, and we're not stopping trade. We're not trying to be obstructionists. We're just trying to bring order to a chaotic situation.

MS. HARRINGTON: Question from Marianne.

MS. SCHWANKE: I would like to ask the also LECs what their practice is, and they do sign people up for new telephone services. I believe that when you sign up for a credit card, you're asked whether or not you want anyone else to be authorized to use the credit card.

Do the LECs have a similar practice with regard to who might be authorized to charge services to a telephone bill? Is there ever a case where more than one person is named on the phone bill?

MS. HARRINGTON: Let's go to John who had his post-it up anyway. Will you try to answer that?

MR. GOODMAN: I'll try to answer that one. I'm not aware that it is standard practice at least in Bell Atlantic to ask that kind of question, but I will check, and if I'm wrong I will add that to the record.

MS. HARRINGTON: Mark, before you go on with what you wanted to say, I see Mark has his post-it up too. Mark before you go on with whatever else you want to say, can you answer that question as a LEC, please.

MR. FARRELL: I probably need to check, but generally there are tariffs that are filed with the state commissions, and those tariffs provide that it is -- there will be a person on the account in the household, and anyone in that household that uses the phone, that person is responsible for those charges, and if you have an overnight guest that uses the phone, you're also responsible for those charges.

And it generally follows state law just like I'm responsible for my wife's VISA bill.

MS. HARRINGTON: I understand, but what is the practice when people sign up? The question is: Do you ask the subscriber or tell the subscriber any of this or ask the subscriber whether they want to authorize other users to make phone bill purchases on that account?

MR. FARRELL: Well, the examples, as a local telephone company we sell caller ID, call waiting, so those services are available to everybody in the house. We make ask who -- what's your name, get that information, who else is in the household, et cetera, but do we require express authorization in the house to use caller ID, et cetera? No.

MS. HARRINGTON: Let me go back to John, Bell Atlantic, my LEC. If my teenage son called Bell Atlantic and ordered an enhanced service, what would happen?

MR. GOODMAN: I suspect we would try to determine in that household if -- by we have things in how the record -- we ask you if you are the one named on the account, grandmother's maiden name or other things, that you have some connection with the household, and I suspect that this person sounded like the right person and asked the questions right, we would sign him or her up.

MS. HARRINGTON: Now, what else did you want to say, John?

MR. GOODMAN: To follow up on some of Tony's observations. I understand that there is a problem there, and there's a problem for colleges and Universities and hospitals and I suspect any number of

other places where there are transient populations, but there are a lot more customers who are normal run-of-the-mill residential consumers, and I would hate to see a rule that was geared to the real problem that the universities have that did not give people like John and Susan and others who want to be able to make a change and to bill something to make a telephone-billed purchase, but can't do it because of the phone -- the phone account is in the name of their spouse or their brother or their friend.

MS. HARRINGTON: Mark?

MR. FARRELL: The only other point I was going to make is that the FCC has released its Truth-in-Billing order, and they have a definition of subscriber in that order that addresses who's authorized to order services that may help address this question, and I would ask that in looking at this issue, that the -- whatever comes out, the rules are consistent with each other.

MS. HARRINGTON: Adam has a question, but I do too so I am going to ask mine first. Do you think that there should be a difference between the way that tariffed and non tariffed services are dealt with? The FCC Truth-in-Billing order covers tariffed services I believe, that is the definition of subscriber insofar as

it identifies who's authorized to order services.

That deals with tariffed services, and it really goes back to the question I was just asking John about whether my 15 year old or anyone else for that matter can call and order enhanced services to be billed to my account.

Do you think that there's a difference? Should there be a difference between authorization for tariffed services and authorization for anything else that's not tariffed? Mark?

MR. FARRELL: I'm thinking.

MS. HARRINGTON: Okay. Or anyone else? Albe?

MR. ANGEL: In response to your specific question, the bright line of demarcation between tariffed and untariffed is to ensure that there's a basic level of services that's delivered to each household that will never be interrupted for reasons having to do with ordinary commercial interests.

So I think that the distinction is one that invokes jurisdiction by the state PUCs, and it is probably something for us to remain mindful of, and the other thing I wanted to add is just that I don't know this firsthand, but I've read about it, that one has the ability to instruct a local exchange carrier that they should accept no change of instructions with regard to

the subscription from any other person than the designated individual.

And it's kind of a lock-in situation, and I think that goes to express authorization with regard to the basic types of services. I don't know whether it extends to enhanced services that might be bought on a casual basis.

MS. SCHWANKE: Do you know, is that a universal practice among LECs or does it vary from LEC to LEC?

MR. ANGEL: I'm sorry, I don't know.

MS. SCHWANKE: Do you know if that's Bell Atlantic's practice?

MR. GOODMAN: Well, there is a practice that a lot of LECs have that's called a PIC freeze, or PIC -- in the old days for presubscribed Internet carriers and now it's presubscribed carrier, and as far as I know all major LECs, I can't speak for all 1,200 LECs in the country, but all the major ones do permit a customer to say, Don't change my carrier unless you hear from me. Don't take an order from MCI to change me away from AT&T.

MS. SCHWANKE: But that's different from saying, Don't permit anyone to order enhanced services on my account.

MR. GOODMAN: That is correct.

MS. SCHWANKE: Do you know if Bell Atlantic -- -- do you know Bell Atlantic's practice with regard to that issue?

MR. GOODMAN: We are in the process of giving consumers an option not to -- to tell us not to bill them for certain kinds of charges. That's not in place as of yet. We hope to get it in place comparatively soon, but when that is in effect, that will cause us not to bill charges that we get from other providers if the customer asks us not to.

MS. HARRINGTON: A follow up question. Let's say Bell Atlantic's policy for new option service to give consumers the option to prevent billing from third parties is for billing for enhanced and non tariffed services for third parties, would it be that sort of -- would it be any third-party?

MR. GOODMAN: Getting back to your question earlier, tariffed and non tariffed to me is not a good distinction. A service that is tariffed today might be untariffed tomorrow. It may be tariffed in New York but not in New Jersey.

In some places certain carriers have to file tariffs for a type of services while the other carriers doesn't have to file tariffs, so I think that is a bad distinction, and also hopefully in the future as there's

more competition and more deregulation, nothing will be tariffed, so --

MS. HARRINGTON: Well, my question is: Will Bell Atlantic offer its consumers the option of preventing billing by third parties for services that Bell Atlantic itself sells and bills for on its own bill?

MR. GOODMAN: Yes.

MS. HARRINGTON: Adam, you had a question.

MR. COHN: Yes. I did have a question, but before I ask it, I just wanted to -- about the question of what records the LECs keep, I would just like to note Bell Atlantic's comment does say that -- it says for millions of account records that do not contain the names of others authorized to charge services, so just that as a point of clarification.

MR. GOODMAN: The question I thought I was being asked is, Do we ask that in the normal course, and I believe we don't.

MR. COHN: As far as the question goes, Eileen asked earlier whether tariff or non tariffed service should be treated differently, and I wanted to take that one step further, and I wanted to ask whether a telephone purchase made over the telephone should be treated differently as far as from a purchase made

elsewhere in the real world?

MR. GOODMAN: Is that to me?

MR. COHN: Sure.

MS. HARRINGTON: Let's try John, and then we're going to go to Peter, Guy and Jacque -- Gary. How could I possibly call you Guy? I'm sorry.

MR. PASSAN: Because I'm a guy.

MR. GOODMAN: I guess when I answer the question, I start with the statute. I start with TDDRA, and TDDRA talks about telephone-billed purchases, and TDDRA defines them so I think that any rules that the FTC writes having to do with dispute resolution has to stick to the statute, has to stick to the definition in the statute of a telephone-billed purchase and cannot and should not go beyond that.

So, yes, I think under the statute there has to be a difference between what is the statutory definition and what is outside.

MS. HARRINGTON: Peter?

MR. BRENNAN: Peter Brennan from TPI. In apropos the discussion a few moments ago, Bell Atlantic offers a billing block option that prevents billing, but service providers don't typically know about that until after the service has been provided, so it's -- they find themselves in a position of having provided a

service that Bell Atlantic doesn't bill a consumer for.

So there's a gap there that needs to be closed so that valuable services aren't provided without a way to collect from them.

MS. HARRINGTON: That was Gary, now known as Guy's, point. His post-it just went down. Jacque?

MS. MITCHELL: I would like to clarify for the record this discussion about blocking. Across the LECs in the United States there is an initiative being put forward to clearly define blocking as it relates to 4250, application 4250 being miscellaneous charge records for additional type services.

There's been a tremendous amount of confusion across the end user base in the United States as it relates to the distinction between PIC freeze and blocking. They're are an inordinate number of Americans that believe that the PIC freeze stops all the billing to their account unless they approve it.

I personally have received a number of calls from end users who have complained about the fact that they have advised their LEC that they do not want to be billed by anyone other than their PIC, their carrier, misunderstanding therefore that other charges ask be placed there that have nothing to do with their long distance service.

So it creates confusion in their mind as to what they actually accomplished. The blocking scenario that John just talked about, and Bell Atlantic will be the first to implement this, I think Ameritech is in the process of implenting it also, and they're starting from a blank sheet of paper.

We understand that they're not aggressively selling this product, but if the end user decides and advises them that they want 4250 or any third-party blocked -- actually it's 4250 application, miscellaneous charges. If they want those services not to appear on their bill, they will create a record that says that they should not be. They will advice the clearinghouses who will then advice the vendor base.

The dilemma with that is -- and the way I understand it personally from the information we've received from Bell Atlantic is that it will not be applied against their own records, their own services to your question that you asked.

So I'm confused about that and would need additional clarification, but we certainly understand that there is an opportunity for an end user to be crammed by those kinds of services.

The other point I would like to make is that John indicated that clearing it's defined as to what the

telephone-billed purchase is, and in the clearinghouse environment, we see 800 service and calling card to be a basic kind of service that relates to interexchange carrier services, not an enhanced kind of service, a traditional kind of service.

And we know that that's carved out and is part of this rule, so I don't want to be redundant, but I would really like to see that clarified.

Thank you.

MS. HARRINGTON: Tony?

MR. TANZI: Thank you. Point of I guess two comments. Does Bell Atlantic offer, do you know, line by line trunk by trunk blocking as it goes with the PIC freezes right now?

MR. GOODMAN: On this billing block I've been talking about?

MR. TANZI: Yes.

MR. GOODMAN: I believe it is at the line level, but I will check with my experts.

MR. TANZI: And the second comment is on the research. It's again of a special class of service statement. I need to remind you that 60 million, 60 million business line users like colleges and universities are in this category, and it seems to me that that warrants some consideration, and that right

now at the LEC level there's two categories of tariff services, business and residence.

So it seems to me that many of the precedents have already been set for consideration of a special class of service. I'll give you an example.

In the long distance world, we have business rates and we have residential rates, and we combine the two and provide those services to faculty staff and to students.

The other option -- I'm sorry, the other issue that seems to come up is there might be a misconception that we're trying to restrict choice to the people that we serve, and that absolutely is not the case.

Again I need to remind you that we PIC the long distance vendor for most of the faculty staff and students, and we PIC the basic service provider, but we provide no barriers to people doing their own thing, if you will, going out and seeking their own services and to take advantage of all of the goods and services that we're talking about, and we do implore methods to avoid the issues of people sharing the residential facilities.

I just want to go on the record as saying that. We may require consideration of a special class of service, but these things are already in place. There's already precedent in the forum, and we have to look at

the big picture.

We're talking about a user base that transcends anything that is considered an average household or small business, and we would like consideration on those bases.

MS. HARRINGTON: Before I called on Albe, let me put a question out again, and that is who should be authorized to provide express authorization? We've heard AT&T say anyone in the household or anyone who is over 18 who's in the household.

Is that, Jim, your position?

MR. BOLIN: I think definitely any adult as a matter of state law, and someone can correct me if they have a different understanding, but my understanding is the age of consent varies by state, but the children can bind their parents after the age of 12, 13, 14 in those states.

MS. HARRINGTON: We're particularly interested in knowing whether the participants agree with that proposition or think that there should be some other distinction drawn and also the question about whether the answer to the question should depend upon the kind of service that's being sold or the identity of the person who would receive the benefit.

Debbie, you're next.

I am sorry, I know I said I was going to call on you, but I'm really going to call on Debbie. I'm just really testing everyone's alertness.

MS. HAGAN: When we looked at this, this is difficult, we tried to look at it as a typical transaction, and that would be okay. First you need authority to purchase and consent to purchase, an authorization to purchase, and of course state law would all come into effect as to whether the individual attempting to make a purchase in any environment in any billing method has the ability to do so.

Then we tried to say, Okay, this is no different than any other purchase, do you have the authority to utilize this billing method, and, yes, I think from a state perspective, it is clear the line subscriber has the authority to use this billing method.

However, I think that we're going to have to look to a changing environment here for the telephone companies who have never had to deal with particularly the problem of additional services.

The case law supports someone's in your house, they're utilizing your phone, but the environment is changing now. This is a purchase of different types of goods and services, and I think we need to move to a paragon where there's clear that there's consent to use

this billing method, just like in any other transaction, and there are different ways to infer that, and state law does impact that.

MS. HARRINGTON: Okay. All that Starbuck's coffee is starting to kick in. A lot of you want to talk. Now we'll go to Albe.

MR. ANGEL: In response to your specific question, the Billing Reform Task Force would support the view that the presubscribed party or anyone who is an adult in the household, however adult is defined in state law, would be the appropriate general rule.

The point I would like to make is that in addressing the issue of express authorization, the flip side of express authorization is express decline, and the bill block notion that's been addressed here is novel.

While blocking has been put into place primarily from the standpoint of access, there are a variety of casual billing mechanisms that are meant to go around the presubscribed carriers, and a lot of them are advertised on television as 10 XXX, one plus dialing.

Now, where you're selling enhanced service on a sporadic, maybe even a one-time basis, it's even a further subset, but what alarms me is that the Bell Operating Companies, the independent telephone

companies, might be instituting bill blocks, and they might be doing it in such a fashion as to completely blockade all such services.

And they're doing it in a vacuum without potential regulation from either federal or state authorities in a manner that consumers are completely limited in their options in the future, so to the extent this might be the forum to reach out to the local exchange carriers and say, Before you institute bill blocks, make sure that you've subjected it to the rigors of a public policy debate because I know in the context of my home, there are a variety of services that I would consent to and a variety that I would not, and I would want to have the ability as a consumer to opt in as I accept each individual marketing pitch that has been established.

And then each vendor could moderate the risk on their own terms, but then the LECs would have to be in a position where they institute a bill block and have opt in elections by a consumer on an ongoing basis.

So I think bill blocks are a very dangerous thing if they're instituted unilaterally without input from affected parties.

MS. HARRINGTON: John from PMA.

MR. AWERDICK: I would like to address your

question, Eileen, and Adams's at the same time. Adam asked if this bill should be different than the rest of the contracting world out there, and I think it's worth thinking about the reasonable expectation to a consumer who is used to placing a phone call and putting a credit card charge on to a catalog without any particular thought of who in the household is on the phone bill.

My reasonable expectation is when I pick up the phone I'm going to be able to conduct a transaction over the phone, and if we try to limit that ability simply to the specific billing party, I think we're putting consumers at a disadvantage.

People's expectations is that any adult can pick up the phone and can conduct business, and that would be the case for any member of the household who is an adult.

MS. HARRINGTON: Follow up question from Adam.

MR. COHN: I would just like to differ with your impression, with your description of that situation. In the situation you described, the authorization is the use of the credit card, not the use of the telephone, and the person who uses the credit card can give the credit card or give authorization ion the credit card to whomever they choose.

And what we're talking about here is the

authorization by the user using the phone, not the user using the credit card.

MR. AWERDICK: That's true, and the interesting point is you have the ability to authorize -- except for this Bell Atlantic situation, to authorize various speaker to speaker charging the party right now through the telephone.

But the nearest analogy is the credit card analogy where typically spouses are both on the card, and taking that analogy to what do people reasonably expect, it's that everybody in the family, everybody in the household will be using the various devices that were available, and if you're not going to have your 18 year old son have your credit card, but again if they're, off in college you may well.

MS. HARRINGTON: Jacque?

MS. MITCHELL: I have two questions or two comments. One just to clarify on the Bell Atlantic position and their blocking on their own product, we have a record that we would likes to submit for the record if necessary to justify that they are not going to block their own product, only the long distance.

But to get to your specific question, and I would like to respond to Albe's comment about limited options. The critical competitive position that this

allows the LEC to be in is that as they implement blocking across the board. The end user will then be confronted with an entire endless opportunity to purchase a product from the LEC that is comparable to all of our service providers' products.

So given that they will no longer -- they will say that they do not want the product there, then they will not -- they can buy it from the LEC, so it puts the LEC in an interesting competitive position to be able to stop other providers from providing the service but allow them to bill that product.

To answer the question about the authorized party, there is an expectation that without knowing exactly who the express party is on the bill because we don't have access to that information, there is an assumption that our vendors use that when they ask the question which we require them to ask, Are you over the age of 18, and we'll assume for my discussion that that's the average age that the states require, and are you the authorized party.

Now, if it sounds like a three year old, obviously that doesn't meet the requirement, but that is the expectation that we set up to say, Are you the authorized party, because absent knowing exactly who it is, we can't determine that.

So we think it's -- we think it should be where we have a demonstrable reason to believe that that is the party.

MS. HARRINGTON: Question from Mark.

MR. HERTZENDORF: It appears that one of the issues that we're discussing here is the LECs and vendors are concerned that the rule is going to alter the way that they do business by limiting authorization for new service or enhanced service to a line subscriber, and what I'm interested in knowing is how difficult would it be to change to a new regime where consumers understand that they can only change service or order enhanced service if they are on the bill?

What I'm trying to get at, is this really a temporary problem raised by the vendor and the LECs or is this a permanent problem? In other words, over time won't consumers understand that they can order these new services unless they're listed on the bill, and over time won't more people simply be listed on the bill as -- on the LEC bill and understand that you have to have the whole family or whatever or all the adults?

MS. HARRINGTON: Mark from SBC has his post-it up. Mark, would you take a crack at that question, please?

MR. FARRELL: Sure. Let me start off with

saying that we agree with AT&T that anyone in the household of legal age should be able to order services, and to address Mark's question, I think it is a permanent switch. It's only the name that's on the account that would inconvenience the consumer.

An example that I would use, let's say my name is on the account, and my wife wants caller ID service. She calls the telephone company up and says, I would like caller ID service. The service rep says, oops, sorry, your name is not on the account, I'm sorry, you can't order it. She says, Well, it's my husband. So then she'll either call me and say, Order caller ID service, and I'm pretty slow about everything so we would never get it, so I think it's really a consumer convenience question, and that's how it should be looked at.

In terms of business, I would like to address the gentleman from ACUTA, SBC's policy is that we do ask for an authorized person for telephone services so that we're supposed to check. If someone calls in and orders new service, we're supposed to check for those people.

It's really an officer or a desk type person, and then last I would like to address this billing option. There seems to be some -- there's a suggestion that it's a sinister intent on the LECs to do this, and

I would like to address that that is not correct.

The LECs are very concerned with the RBOCs about cramming, and we're trying to address that problem. Our consumers are telling us that third parties are submitting charges that aren't authorized on our bill, and that's why we're looking at developing a building block.

And in terms of how that bill block looks, the RBOCs want to make sure that they have all the options they have, so I think we're going to listen to what our customer wants in developing the bill block, and back to Mark, I think that would be a big change.

MS. HARRINGTON: Follow up question from Adam.

MR. COHN: Yes. I would just like to ask about: One of the proposals in the proposed rulemaking was that express authorization could be given by the use of a PIN. Why don't the LECs just issue the PINs to the persons to be billed? That would be easy, just put that in the billing statement, and anyone authorized to use it could just hand them the PIN, hand them a copy of the bill.

It seems to me that would be a very easy step to solve that issue of express authorization.

MS. HARRINGTON: We're going to turn to John who has his post-it up for the first crack at that, and,

Mark, we'll come back to you for an answer as well, if that's all right.

MR. GOODMAN: I would like to answer the two questions together because I think they are related. We have 40 million access lines, I'm not sure how many individual consumers. It would be a huge change in thinking for people to understand that they have to put their -- have to give their spouse's name to the phone company in order to order things and charge things.

It is not easy to change people's mind set in this way. I'm with Bell Atlantic. There are people I come in contact with, educated people who think Bell Atlantic is still part of AT&T, and that is 15 years after the break up.

People are not going to all of a sudden -- if it takes them that long to realize that we are two different companies or eight different companies, they are never going to get their minds around this, and they're never going to want to use PINs I think, and everything that we have learned in talking to our consumers has told us that they don't want to use PINs. They have too many numbers as it is.

They don't want to go from a seven digit phone number to a ten digit phone number, let alone a four digit or eight digit PIN on top of that. They don't

want that.

MS. HARRINGTON: John, does Bell Atlantic have plans to include electrical or cable or other services coming in to the home on its billing platform?

MR. GOODMAN: I am not aware of anything in the power industry. Our consumers tell us that they like getting a single bill. That in part is why a number of long distance companies bill on our bill because their consumers, who are also our consumers, find that to be a convenience, so instead of writing a check to Bell Atlantic and a check to AT&T or a check to MCI or a check to Sprint whom you dialed around to get to, they write one check, and they like that.

They also would like I think to write one check to Bell Atlantic or Bell Atlantic Local and intraLATA, and interLATA toll and Internet and wireless and everything else that Bell Atlantic offers them.

I think our consumers would mind that kind of change if they got a number of separate bills in from Bell Atlantic for services that they get from Bell Atlantic.

MS. HARRINGTON: Why wouldn't consumers also want the convenience of including on their Bell Atlantic bill, if they chose to do so, their clothing purchases and their --

MR. GOODMAN: They might --

MS. HARRINGTON: And their groceries?

MR. GOODMAN: That's not the business -- we have a variety of reasons. One is to get to the service that we provide, the range of services that Bell Atlantic provides to Bell Atlantic consumers I think -- I can't think of any reason why a provider of multiple services must be required to send multiple bills, and -- go ahead.

MS. HARRINGTON: Yes. On the question of opinions and consumer's mind sets and the difficulty of changing those, how long did Bell Atlantic allow for the transition from seven to ten digit dialing let's say in Maryland? I live there, and we switched a few years ago, and there's a requirement that in this local dialing area you have to use ten digits instead of seven. How long was the ramp up for that?

MR. GOODMAN: There was an education program, and then there was a period of optional dialing. You dialed either seven or ten.

MS. HARRINGTON: Right, how long is that.

MR. GOODMAN: I think probably six to nine months.

MS. HARRINGTON: It looks like Jim knows.

MR. BOLIN: I'm 90 percent sure it was six

months.

MR. GOODMAN: And at the end of that period, if a customer dialed wrong, the customer heard a recording that said, Dial the area code, so there was kind of an on the spot education, and --

MS. HARRINGTON: What about PINs, why couldn't Bell Atlantic do an education campaign and have a six month ramp up and then when people tried to access services but didn't have the PIN get a recording that says, Oops, no PIN, no service? Isn't it a similar kind of proposition here?

MR. GOODMAN: Could we?

MS. HARRINGTON: But in terms of moving this consumer mind set wouldn't that be a similar proposition?

MR. GOODMAN: Probably. Can I make a couple observations?

MS. HARRINGTON: Sure.

MR. GOODMAN: People have said a few things about billing block, and I would like to clarify and correct something I said in response to Tony. Our billing block will be on -- is not going to be on a line level but will be on an account level, and I would guess that large end user like Brown might well have more than one account, a student line account or a faculty line

account, but it is -- it is not done to the individual line.

The other observation I think is that our billing block would stop dialing around, a customer who dials 10 XXX to get to a different carrier, that our block would stop the blocking of that. It will not. The only thing that is subject to this block is the miscellaneous charge that --

MS. MITCHELL: 4250.

MR. GOODMAN: So it is not the telephone charge, and a third observation, we are not going to put this on every customer's line. We will put it on the customer's line only at the request of the customer, so this is not a thing we are -- contrary to the desires of the gentleman from Florida yesterday, we are going to block everything at the beginning.

We're only going to do it in response to a specific customer request.

MS. HARRINGTON: Okay. Cynthia?

MS. MILLER: Yes, Cynthia Miller, Florida Public Service Commission. Underlying the debate is the whole thing about customer confusion, and this is something that we have filed extensive comments with the FCC on in their Truth-in-Billing.

I noticed a proposed rulemaking, and as

everyone's acknowledged is a continuing concern, and we are urging the FCC to do a huge consumer awareness campaign as Florida is doing. Florida asked for a million dollars just on one narrow aspect to educate consumers about life line this year.

We didn't get the million dollars. We got statutory authority but not the dollars, but I guess we would urge that the Federal Trade Commission also consider a consumer education campaign once these rules are issued as to the extent of those areas that you can anticipate customer confusion about the way this market is evolving and the protections that they need.

MS. HARRINGTON: Susan?

MS. GRANT: I have several comments to make to pick up on one of the main things that other people have said so bear with me.

I think Mark hit it on the head when I asked, Is this going to require a new way of doing business. I think it is going to require a new way of doing business, and the reason for that is is that this isn't the old telephone bill anymore used for the things -- only the traditional services that were billed to the telephone.

This is the new telephone bill which is analogous to a credit card where people can charge all

kinds of things to it, and if you look at it in the same way that you look at a credit card, you can and you should be able to put multiple users on it, so that that would address the issue of other people in the household being able to mix services. I don't really think that that's a big problem.

We have agitated for the LECs to created 4250 blocking, and we know that they're proceeding with developing that, and we're very glad about that, but we've also said that we do think that people who choose to have those blocks should be able to opt in for specific services that they want.

And again it all comes down to whether or not it's the person who is authorized to charge something to that telephone bill making that request to opt in.

Let's remember that what we're talking about here, we're not talking about dial around. We're not talking about toll calls hopefully. We're not talking about regular long distance or local service. We're talking about these optional kinds of services.

I think that if somebody orders such a service and they're not on the account as being authorized to do so, there are other options such as giving their credit card number so it can be billed to an account that is theirs or being direct billed to their address in their

name, not in the name of the person whose name is on the phone bill if they're not authorized to act on behalf of that account.

So I think that all of these problems are -- can be addressed, but it is going to require changing the way that bills is done. It's going to require more cooperation between the LECs and the vendors and the people that represent the vendors.

Just a note about minors. Minors as far as I know in every state can disavow contracts for things that are not necessities, and the kinds of services that we're talking about here are not necessities. So if a vendor makes a contract, many of these things that we're talking about are recurring charges. They're long-term contracts.

If a vendor makes a contract with a kid, no matter what the rulemaking does here, probably the kid will be able to cancel out on that if he or she wishes to exercise that right.

MS. HARRINGTON: Okay. Peter?

MR. BRENNAN: Thank you. Peter Brennan from Tele-publishing. I just wanted to quickly follow up on a couple of things. Eileen, specifically in response to your questions, for the record we support the statement made by AT&T in answer to that question.

And regarding the issue of whether some services should fall outside or not, we don't think -- we think the rules should be sort of service neutral, that to put any kind of limitation on this marketplace certainly would not be appropriate and certainly not in the case of making a distinction between services offered by LECs and their affiliates versus services offered by anybody else.

Regarding the --

MS. HARRINGTON: Peter, would you also agree that adjunct-to-basic services should be treated in the same way as all other services, or do you think that they perhaps should be treated differently?

MR. BRENNAN: I think they should be treated the same way.

MS. HARRINGTON: I just wanted to clarify.

MR. BRENNAN: In terms of some of the PIN solutions which we think could be promising and are very intriguing, we want to make it clear that a PIN would need to be available for all services so it wouldn't be something that -- in other words, we would want all information providers and service providers to have access to that database so that there wasn't again a special class of service.

So if that's a solution we see emerging, that's

promising, but it needs to mean that the database of the PINs need to be administrated by the local carriers or whomever need to be available to everybody.

The other thing really in response to one of the points Susan made, we have to be careful of the assumption that everybody has a credit card. The last figure I saw was something in the neighborhood that 65 percent of the country has a credit card, and I think that there's been controversy in other areas about banks and credit card issues, tightening their restrictions, loosening their restrictions and some of the problems attendant with that.

So it's not really appropriate to say that everybody has access to it and you can rip out a card and use it, so those three points. Thank you.

MS. HARRINGTON: We're going to here from Jim and Jacque and Tony, and then it's unscheduled, but I think we'll take a five-minute break because we have all this great Starbucks coffee today, so, Jim?

MR. BOLIN: Jim Bolin, AT&T. Just as a general point I think the use of a PIN or something like that to authorize these kinds of services is promising. The Commission is going to have to do a cost benefit analysis as far as making it difficult to get these services.

You also need to consider that while it seems like a simple thing, I can promise you and I'll give you whatever odds you like, you will see editorial in the paper saying, Gees, I can't believe the FTC is making us do this, phone service is complicated enough already. People hate to have changes with their telephone service.

And in the final analysis, it might be worth it from a cross benefit perspective, but don't assume it won't be controversial because it will.

I would like to provide some history for the record that the Commission may not be aware of. When you talk about these kinds of billing freezes, the Commission should know it's not necessarily a simple matter from a competitive point of view, and you should take this into account.

This history of PIC freezes shows that incumbent LECs have and will use it to their advantage. I believe it was the Illinois PSC and the Michigan PSC found that Ameritech had abused the PIC freeze process because just before local toll presubscription, interLATA toll presubscription was rolled out in those two states, Ameritech suddenly provided as a benefit to all of its subscribers a PIC freeze on local toll calls.

What that meant was for any competitor that

wanted to win away a local customer, they had to do a three-way conference call where they got Ameritech on the line with a customer and where they get an authorization, but if Ameritech wanted to switch from somebody, they didn't have that problem.

What I'm hearing here is some suggestions that these kind of billing freezes might not apply to the LECs end services. That kind of situation has a potential to create a local competitive challenge. It doesn't mean that the Commission shouldn't investigate that kind of option, but any kind of billing freeze like that can be abused, and history shows it might be.

Just as a final point, I would point out an issue that we touched on briefly yesterday. The notion of enhanced service versus a basic service versus adjunct-to-basic, it's never been very clear. It changes every day, when you talk about an optional service versus a necessary service, that's a line that changes all the time.

Touch tone service used to be an option. In a lot of states now it's mandatory because it's essentially to use a lot of services. There's consideration of making Internet access now part of the life line support because they view that someday that's going to be a necessity as well.

So those kinds of lines are not as clear as they might initially seem, and I would urge the Commission to keep that in mind.

MS. HARRINGTON: Thank you, Jim. Jacque?

MS. MITCHELL: The issue of PIN which certainly is intriguing is certainly no different than today's world where we have an authorized party, neither of which the vendors have access to, so I would caution that the availability to that will be what drives the success of either the PIN or the authorized party because only if it's available to us to know who those are or what the PIN is and to match that will we have any dream of success in this product.

MS. HARRINGTON: Tony?

MR. TANZI: Most of what I wanted to speak about has already been discussed. Just a comment to Bell Atlantic. Right now your PIC freezes are at the line level, and they do have a unified statement that says, We freeze local dial tone, local calling and long distance calling, and I would just encourage you to use the same thought process and bring the blocking to the line level. Otherwise it won't be of much use to anyone in situations like mine.

MS. HARRINGTON: Okay. I think we have developed a pretty good record and had a good discussion

certainly on the first point, and we've gotten substantially through the second point under the express authorization topic.

However, when we resume after our quick break here, if anyone else would like to talk about exempting certain types of service from the express authorization requirement and provide rationale for that proposal, we're still open to talking about that.

But I think we're pretty near the end there, and then we're going to move into the issue of documentary evidence of express authorization, and we hope that we'll have some good thoughts on that.

I know I said we were going to have a five-minute break, but I think I'm going to make it ten minutes because you might need that so five after 10:00.

(A brief recess was taken.)

MS. HARRINGTON: Some of you have to leave before the very last session today, so let me talk a little bit about what the next steps in this proceeding will be. As we said yesterday, for certain follow up items, we're leaving the record open until two weeks from today, and that is June 4, I believe. So some of the handouts that we passed out yesterday that have some questions, especially the handout on, what was it on,

the database but other issues that we have raised as well, we would invite additional comment by June 4.

The next steps in the proceeding are that the staff will be reviewing the record and making a recommendation to the Commission for further action. That could be issuance of a final rule. It could be a request for more comment. It could be a change in the proposal.

This isn't a notice and comment administrative rulemaking proceeding so there is a fair amount of flexibility that the Commission has.

In addition, should the staff go forward with a recommendation for a final rule and that be issued, under the TDDRA, the Federal Trade Commission does have notice and comment rulemaking authority, and one thing that the record thus far in the workshop and the comments demonstrates is that there is a lot going on in the world that is pay-per-call and phone-billed purchase, and so there may be issues that haven't been raised in this rulemaking that would be appropriate for follow up notice.

So what I will tell you is that we will be working as quickly as we can to recommend next steps to the Commission. I would expect that they would be recommended during the summer, and The Federal Register

is the official source for further information, but also watch the web site FTC.GOV, so that is what's happening next.

Now, let's get to the next item on the agenda which is the issue of documentary evidence, and the question is: What should constitute documentary evidence that there was express authorization for a non blockable telephone-billed purchase. It's proposed 308.2(b)(10).

For example, might some of the following should any of the constitute such evidence: Third-party verification, written agreements, tape or digital recording. The floor is open.

Jacque, Eric and then Gary.

MS. MITCHELL: A comment that the FTC might want to consider would be in the use of tape or digital recordings would be to ensure that what is being recorded is the actual verification of the transaction, not of somebody's name, not of somebody grandmother's name, not of somebody's age. But actually confirming that somebody wishes to purchase a product, the amount that is going to be charge to that individual, where that's going to be appear, that it's going to appear on their phone bill, et cetera, et cetera, so that is captured, not just merely that a call took place.

MS. HARRINGTON: Eric?

MR. LEE: Eric Lee with the ECA. I resonate very much to Susan's comment about the evolution of the phone bill as being something more than just a phone bill, and in fact, my experience is mostly in the Internet world.

So pretty clearly with CTI, computer telephony integration, you're going to be able to have both the Internet transaction and the telephone call going on at the same time on the same line, and so there's going to be lots of option besides those.

And I guess what I'm concerned about is that there's a telephony, look at -- there's a telephony perspective to all of this and that we're going to get into telephony technology.

For example, there could be options like certificates of authority, if you're on the net at the same time, digital signatures, passwords, just other types of verification, so I do think that we have to sort of open up the discussion, but again not -- the basic point is not to phrase it to a certain type of technology.

MS. HARRINGTON: Thank you. Gary?

MR. PASSAN: Just two quick points I think. One is I think the industry in general would like to see the

maximum number of choices for express authorizations, so clearly we think that all of these, and as ECA just said, electronic authorization also should be made available.

Each one has obviously it's own requirements associated with it, but I think to limit it to a single type of documentary evidence I think wouldn't serve the consumers' purposes.

The other point I would like to make is it's kind of a little bit similar to that, and we were talking a lot about the LEC, and as it relates to documentary evidence, one of the things I would draw the Commission's attention to was there was a number of bad actors, I love that term, bad actors that instantly decided to sign -- become carriers because there were certain exceptions to the rules that would allow them as a carrier.

There's really not much more of barrier of entry of becoming a CLEC, and should the rules be such that LECs are given degrees of freedom, then I think we could see certain actors all suddenly using -- becoming CLEC so they can be exempted from the rules. I think that's another reason we need to deal with that issue.

MS. HARRINGTON: Loretta? Could you use a microphone, please?

MS. GARCIA: Is this one on?. Loretta Garcia, Teltrust. And it's a company that provides a number of services including --

(Discussion off the record.)

MS. GARCIA: I don't have a PIN, I can't use this one.

I just wanted to say -- Loretta Garcia, Teltrust. I want to just say how a third-party verification creates a record. I know that the CERB representative mentioned that what you want to do is confirm that the consumer wants to purchase.

The way that third-party verification works in the slamming context is there's a script that asks a number of questions, and that's usually worked out with the carrier and could be similarly worked out with a vendor.

You ask the customer's name, usually something like four digits of the Social Security number, possibly mother's maiden name or some other standard information, and then the verifier asks questions.

They get a record from the carrier that shows what service was purchased and the customer's information as well so they can confirm that, and they just go through this script and ask questions, and they can create either a written record in a computer bank,

or they can create an audio recording, or there are some new technologies that allow digital voice recording.

And those are used then to notify the carrier that it has been confirmed and that service can go through, and then also if a dispute arises later, that record can be used to confirm that the transaction took place and that it is the right consumer, it is the authorized consumer.

MS. HARRINGTON: Thank you. John from PMA?

MR. AWERDICK: John Awerdick, PMA. I think I'm agreeing basically with prior people. In our comments we indicated that the taping should include the material terms of the transaction, basically along the lines that Jacque suggested, and also we would say look to the common marketing sales rules approach to telephone checks to create a laundry list of possible means of verification, which might be third-party verification, would be written, would be taping or digital recordings or something of that sort or any other new technologies that appear.

MS. HARRINGTON: Thank you, John. Cynthia? I'm sorry, it's Rick.

MR. MOSES: I didn't recognize the name.

MS. HARRINGTON: Do you like to be known as Cynthia?

MR. MOSES: I've been called a lot worse.

No, I want to make a comment that we agree with Jacqueline, that there should be a digital recording of the information, and I would go even further, that in that information that there should also be a PIN number included, and I agree with her response earlier that they should be given access.

But I think the access should be given in a query much the same as the gentleman said yesterday afternoon, and in that query, not necessarily give the service provider the PIN number but give him just a verification much like a VISA transaction saying it's authorized or not authorized.

MS. HARRINGTON: Okay. Tony?

MR. TANZI: I agree with what Rick just said with one added caveat. Express authorization without the authorized source giving that, regardless of whether it's captured on tape or digital recording, doesn't fulfill in answer to the issue.

MS. HARRINGTON: Jacque?

MS. MITCHELL: We are currently requiring our service providers to use several different clarification points in their verification. We would suggest that perhaps one of the solutions to this in addition to the total verification is perhaps a certification of

third-party vendors, so the third-party vendors are required to meet some very specific requirements because we have seen some abuse in that world that actually led -- allows problems to occur for the carrier or the service provider because the verification company didn't meet the requirement that they needed to meet.

They deviated from the script. They sent the wrong message. They were abusive to the end user.

MS. HARRINGTON: Debbie?

MS. HAGAN: Debbie Hagan. I think that we kind of set this out in our comments, I don't want to reiterate, but Illinois did recently pass a law on requiring further confirmation of these types of services, and if you use third-party verification, we have very specific requirements which come from essentially part of our experience in slamming and the use of third-party verification and in the litigation we filed on cramming.

It's very important that you be able to substantiate that it is in fact an independent entity doing the verification. We required them not to be on commission. We do not want the situation where the telemarketer transfers a line to the verifier and stays on the line and listens to the call.

We need the complete terms of the transaction

disclosed and authorization for the method of billing, and I also wanted to throw out to the industry, if you can enlighten me, how reliable this voice capture is. I mean, many times I have industry provide to me tapes with voice capture on them, and I have consumers tell me, That's not my voice, and they recaptured it.

Does anyone have any thoughts on this method of verification and its reliability?

MS. HARRINGTON: Jacque looks like she has an answer.

MS. MITCHELL: It's a personal experience. As president I do receive calls from end users, and recently an employee of mine brought me a copy of a bill, and in looking at it, it was for an outrageous amount, and so I made the call to the customer service inquiry center of the company billing and began the investigation and was able to hear, quote, the supposed confirmation.

And it was her under aged son who under question -- now, keep in mind he's 16 years old, so we're going to assume for this conversation that he's telling the truth. You have no reason to speculate that he is not telling the truth to his mother under duress of God knows what.

But anyway, he said that he said he did not have

authority, No, I do not have authority. In listening to the tape, I have authority or no, I don't have authority. Anyway, this conversation was misstated from what he said he said. And it was clearly his voice, we do know that.

I have experience with our vendors where the telemarketing person is on the line, and there is some stopping of the conversation as the telemarketer tries to continue to sell the user when the user is saying no or the potential end user says no, so those can be -- if that telemarketer is on the line, there can be abuse in this program.

I'm -- I'm not familiar with Teltrust's process, so I can't speak to that.

MS. HAGAN: Eileen, can I say, it's not only in that situation, but in the recent cramming cases that we just brought the verifier would stop the tape, according to the consumer, give verbal things, You're going to confirm that you just want to look at an information package, right, right, and put the tape back on and say, This is to confirm your, quote, decision, and then move on.

And I guess we just worry that this not being given in some of the comments a presumption because we have seen so many problems with this type of

verification.

MS. MITCHELL: The only response I have is that's why I speak to this possibility of certification of vendors because we're seeing telemarketing abuse, pure telemarketing abuse across the United States, and we know it's happening in this environment because we're experiencing it.

MS. HARRINGTON: Allen has a question.

MR. HILE: For Jacque, you say certification of the vendors. What exactly do you mean?

MS. MITCHELL: I'm talking about certification for the third-party verifiers, the verification companies if you will, who should meet some standards, stringent standards on how they operate, that they are not paid commission. The Illinois rule is very, very good as it relates to controlling that environment.

There needs to be control. They should be independent. It needs to be certified that they are not a part of that company. They do not, they should have not have access to the telemarketer on the line. That should not be a possibility.

And if you remove that association, commission's should not be paid. That starts eliminating the revenue stream that they might be earning from signing up consumers who really don't want to be signing up.

MR. HILE: Illinois has a rule for that area?

MS. MITCHELL: I'm not familiar with the total package of Illinois rule, so I can't speak to that, but I like doing something with the verification bureaus so they meet a requirement that's a stiff standard.

MS. HARRINGTON: Who should be responsible for in your thinking for conducting that certification? Who should bear the burden of making certain that either third-party vendors who are verifiers or third-party vendors for that matter who are billing -- is there an issue here -- in part this gets us into the discussion that we're going to have next on knew or should know.

But who should be responsible for monitoring and certifying in your language that third-party verifiers or third-party vendors who bill on the bill are not fraudulent or are following standards that tend to make fraud difficult?

MS. MITCHELL: Let's separate your question into two because to me they're distinctly different. The third-party verifier that is actually a removed party who is verifying a transaction, let's talk about that first. Who should certify them, I can't speak to that. I'm not sure.

What can happen though is that the service providers, the billing clearinghouses can mandate and do

mandate that there are about six things that have to be included in the verification of who should certify that they are certifiable, perhaps it's the telemarketing association, maybe it's the FTC, but from a third-party verification company, that process is critical to the success of this if there's going to be the capability to do a data kind of transaction, if it's a live voice data recorded transaction. There are controls that need to be there.

There are a number of good third-party verifiers, and then there are a number of very poor ones of those kinds of companies, so they need to be addressed.

From a service provider perspective, the second part of your question, should the service providers that are providing miscellaneous enhanced type services, the nontraditional which we have not yet defined, I can't speak to certification for that.

Is that certification -- it's a tremendously moving market today, Internet, all the new kinds of services that are out there. It's just a moving target. It's hard for the clearinghouses to keep up with what's going on in that marketplace, and certainly we don't want to limit the new technology and the competitive services that are available.

So to speak to certification to that, I think it's too big of an issue to really hone down.

MS. HARRINGTON: Adam has a question.

MR. COHN: I wanted to actually get back to the question that Debbie Hagan asked earlier, and that is the evaluation of these types of verification methods on the basis of how easy they can be used to actually verify that there was authorization.

For example, an example, Jacque, that you mentioned earlier you had a customer, a female customer who called to complain about a service, and the tape that was being used to justify billing her was of a male voice, and I don't understand how the voice of someone else could be used to justify charging her or maybe they thought it was a spouse authorized to do it or perhaps a household member.

But if the tape can't actually be used to verify that it's the voice of the person being billed, of what value is it to the billing?

MS. MITCHELL: Let me correct that, okay? There was no assumption that it was the owner of the phone, what the LEC would say would be the authorized party. There was no assumption that it was her making the authorization. It was clearly -- what the person said was the authorized party who said, yes, I'm over the age

of 18 or whatever they said.

So clearly it was the son who made this commitment or not commitment to this provider, not to say that it was the mother of the son, but the son because we could hear it on a recording. There was no -- that wasn't an issue.

MS. HARRINGTON: Mark, you have a question.

MR. HERTZENDORF: I was wondering if someone could comment how extensive should direct billing by audiotext vendors is currently, and should direct billing by vendors use the same level or require the same level of express authorization as charges placed on a LEC bill?

MS. HARRINGTON: I have a list of the people who had their post-its up, so I'll come back to, but would anyone like to answer Mark's question? Gary?

MR. PASSAN: I guess I can take a bit of a shot at it. Direct bill is something that's been growing over the last few years, primarily as I think a method by the industry to provide services to consumers that have become blocked for 900 reasons or don't have credit cards or whatever.

I think it's the industry's general perception that the new rules being promulgated, subsidence under direct billing underneath the concept of presubscription

and therefore would have to meet all the basic rules and the things we've outlined here.

So I'm not sure if I answered your question directly, but that's pretty much where it is.

MR. HERTZENDORF: I think you did.

MS. HARRINGTON: Susan?

MS. GRANT: I think it would be in everybody's interest for the same rules to apply because we talked yesterday about consumers responsibility to pay bills, the possibility that vendors can take collection measures and that debts can be referred to credit reporting bureaus.

No matter whether it ends up on the phone bill or otherwise, I think it is important to have verification that the consumer made that purchase to protect the interests of the vendors as well as the consumer.

We really believe that third-party verification, if it's done correctly, is the way to go here, not that we would eliminate the possibility of other means of verification as well, but we think that it's really important for the FTC to prescribe what the basic standards of those methods should be to address the very issues that Debbie raised.

We hear a lot at our fraud center about doctored

or edited tapes. It's a huge problem, and to address that, you really have to do the things that it seems the Illinois statute has done.

MS. HARRINGTON: Thank you, Susan. John and then Loretta?

MR. AWERDICK: I didn't take it down before.

MS. HARRINGTON: Loretta?

MS. GARCIA: Loretta Garcia, Teltrust. I wanted to address two points. One was independence criteria, and the other was certification, and the FCC recently adopted measures -- criteria for independents, and those are that the third-party verification entity needs to be owned -- not owned, controlled or operated by the carrier, and has to be operating in a location separate from the carrier, and it needs to not be paid on the basis that would incent it to approve the purchase, and those are measures that the FTC could adopt as well.

And then on the point of certification, I am not fully aware of anyone who requires certification, but there are states that are requiring registration of a third-party verification entity. Massachusetts is one. California has some requirements in that regard.

And there are proposals in the comments, and the FTC's opened further notice on slamming that would have registration as well, and that's a self certification

kind of process. But there are lots of companies operating with good business practices in the verification market, and the fact that other states are following California's lead in adopting third-party verification I think is a high recommendation for its value.

MS. HARRINGTON: Does anyone else have anything to say on the subject of express authorization or verification? Susan?

MS. GRANT: Just one more point about who should be responsible whether the vendor arranges for third-party verification directly or through an aggregator, I think that ultimately the vendor remains responsible as do any parties in between, because those other entities are acting as its agent, and I think that monitoring can be done either directly by the vendor or required by the vendor of an aggregator, if the aggregator is acting as a middleman to make those arrangements so that the vendor can be apprised if it seems as though there is any problem quickly and take action to deal with the issue of knew or should have known.

MS. HARRINGTON: Jim?

MR. BOLIN: Just briefly, not on the subject of third-party verification but on the issue of written

agreements. Since the statute expressly allows presubscription agreements to be transmitted electronically, I would respectfully suggest it would be helpful if the Commission would clarify the issue that agreements sent by E mail or available on the web be printed out by the customer and viewed under that should also be valid written agreements that would satisfy the presubscription requirements and express authorization requirement.

MS. HARRINGTON: Albe?

MR. ANGEL: The Billing Reform Task Force would support that proposal.

MS. HARRINGTON: Anybody else have anything?
All right.

We're going to move along to the subject that actually is scheduled for 11:15 to 12:45, and that is: Knew or should have known liability for lack of express authorization, and I draw your attention here to handout D liability for billing consumers without authorization, discussion of safe harbor or rebuttable presumption to limit liability.

The general subjects for discussion here include our proposal, Commission's proposal that there should have been a knew or should have known standard liability for vendors, service bureaus and billing entities.

The first question that we want to talk about is whether there should be safe harbor protection or a rebuttal presumption against that standard of liability, if certain steps are taken, for example, third-party verification, complaint monitoring, the offer of billing block options to consumers.

To move over to handout D, some of the commenters suggested that the Commission limit liability under this proposed section of the rule. One question is: What steps, if any, should mitigate a vendor's liability, and then under that question on the handout, there are several proposed ways that vendors might mitigate their liability.

So I would like to open the floor to discussion. Does anyone have anything to say or do you need to take a minute to shift gears here? I hear the gears meshing. Let's take a minute.

I made a mistake. I went to a part of the handout that's about vendor liability. Adam, just speak into the microphone here, share with the class.

MR. COHN: As far as the handout is concerned, the first portion is about mitigating the vendor's liability as opposed to the billing entity's liability and the service bureaus, and the second part is specifically about the service bureaus.

MS. HARRINGTON: So we're going to talk about vendor first, focus on vendor mitigation. Gary?

MR. PASSAN: Really only one minor point. First I would like to say we're in strong support of the Commission developing criteria like this, and everything we've read here we think is very positive and I think will give us a road map of how to operate the business in a way that would keep us out of harm's way.

I think the industry in general obviously doesn't want disputes with consumers or the Commission or anyone else, and it's important and helpful to be provided safe harbor suggestions, even if they're informal so that we can operate our businesses.

The only minor comment that I believe we would like to make on this area is that there is the ability in the presubscription rules to send out a written confirmation of signing up to presubscription, and I believe that if that's done, the comment here about using written confirmation of transaction is somewhat redundant because that would be followed by the invoice or the transaction itself that would come following along behind as soon as we began to use it.

So again we would like not to have, Yes, you signed up, yes, you're going to get a bill, here's your bill process. I think that adds a lot of economics to

the process, and I don't think it improves communications with the consumer.

MS. HARRINGTON: Debbie?

MR. HAGAN: We just want to go on the record, and we did not discuss this among the states, and so I can't give a position, but we -- I don't want to create a situation where it becomes difficult to prove this kind of liability because we have some presumptions that may be able to be manipulated, that we can't get past legally in terms of a presumption, and in particular the second one about refunds.

In the first set of cramming litigation cases that we filed, we found in a single month there was 70 percent refund billing credits in the records we subpoenaed. I would be very concerned that just because you give credits, that's a presumption that consumers haven't been misled in the transaction.

So we might get back to you on this point.

MS. HARRINGTON: Let me follow up and take the facts that you just described where a vendor provided refunds to 70 percent of its purchasers, and you think that there should not be any presumption established by granting refunds.

Say more about what you mean by that.

MS. HAGAN: All I can say is practically it

always helps me actually deal with the case, and in these cases, when we subpoenaed the billing records from the bill aggregators for certain vendors and they provided that to us, for example, for a one-month's billing, I mean, if you just look at a picture of one month's billing, in some instance there was up to 70 percent refunds given.

And I think that this indicated that -- and then speaking and interviewing consumers, which were a slice of what was happening, we found that consumers had been misled and that the level of credits indicated that there were a high level of consumers who had been misled.

And as a law enforcement agency, I think we find that many times credits will be given, sometimes for the right reasons and sometimes to camouflage a problem.

MS. HARRINGTON: Allen, a follow up question?

MR. HILE: So basically what you're saying is a high level of credit can -- credits can be an indicator that there's a problem, not so much as the problem is created by the vendor but the inferences that you can draw from a high level of credits.

MS. HAGAN: It's very negative that at this point that all these consumers saw this on their bill, realized that they didn't know anything about it and

called the 800 number on the bill to have it taken off.

MS. HARRINGTON: I think that on the handout, the mitigating circumstance may be slightly different, and that is that the vendor ensures prompt and full refunds where there's no verifiable record demonstrating customer authorization, so let's take the situation where there's no evidence of customer authorization, and the records show that every customer who asked for a refund got one.

Would that change your --

MS. HAGAN: No, I would still hesitate. To me that would encourage them to not make a record, and then if consumers complain, credit them.

MS. HARRINGTON: And assume that a certain percentage of misled consumers will not complain, is that the point you're making?

MS. HAGAN: Exactly, and we've seen that in the slamming hearings, that they count on a certain percentage of some very bottom line sellers.

MS. HARRINGTON: Adam, follow up?

MR. COHN: Would it help your concern if the first requirement in maintaining a record were made in conjunction with the second, that they were maintaining the record and that would make something else, that you would presume that they were behaving well?

The scenario that you described, they were not maintaining records and just crediting people based on their call, assuming that some people would just overlook the bill and pay it?

MS. HAGAN: Not necessarily. In some instances what happened was the providers produced the sweepstakes form or they played back a verification to a consumer over the phone. I wouldn't call it verifiable, but there was some documentation, and I understand your goal of trying to encourage credits and getting the consumer out of the situation quickly, but I haven't discussed this with the other states, but I would just say that for our perspective that's problematic right now.

MS. HARRINGTON: Let me just follow up. One of the things that we heard some comment on yesterday from the vendors is the problem of consumer fraud on them.

How does this -- can you talk at all about how you see that issue relating to this issue, if you see a connection?

MS. HAGAN: I think that if we're talking about 900 numbers, it's a different story, and I think there are some instances where it's more legitimate that they should have a concern, but in our experience with cramming, I would say that there has not been an instance of consumer fraud because this is just an

instance where we have seen that wholesale people have just not authorized this.

MS. HARRINGTON: Okay. We'll hear from John and John and then Susan.

MR. AWERDICK: First I want to say we support -- John Awerdick.

(Discussion off the record.)

MR. AWERDICK: Sorry. John Awerdick of PMA.

We support the concept of a safe harbor, and we support a laundry list such as the one suggested here and such as we discussed with express verification.

On Debbie's particular issue, I wonder whether failure to issue refunds perhaps should be the indicator. You may be correct that excessive refunds indicate that there's a problem. On the other hand a failure to issue refunds would indicate a failure to pay attention to the ordinary consumer situation, and that's like shifting focus and that might make a difference.

But beyond that, the laundry list concept makes sense.

MS. HAGAN: I just need to discuss this with the other states.

MS. HARRINGTON: Okay.

MS. HARRINGTON: John?

MR. GOODMAN: We also think a laundry list --

MS. HARRINGTON: Speak into the microphone.

MR. GOODMAN: A laundry list concept of safe harbor is one of the things that an entity knows that it can do to protect itself and is a good idea.

In our comments I think that we had a problem with the kind of softness of the knew or should have known standard because that's open to a variety of constructions by individual courts and agencies. I would think the more it can be made clear what a provider can do to get itself off the hook, I think the better it is for all providers, and I think also from your point of view encourages people to do the right thing.

One of the issues in terms of where the rule is written is that it applies this knew or should have known standard to all three of the people in the chain, the vendor and the service bureau and the billing entity, and it is really only I believe the vendor who can know or would have any firsthand way to know whether the charge is authorized or not.

People two or three steps down the chain really can't tell, and knew or should have known strikes me as a strange standard to apply to the vendor who is in complete control of the transaction. It may be --

MS. HARRINGTON: Let me follow up on a question

with that though. We've heard from some of the vendors that there are large numbers of disputes on transactions for their service that they do not learn about until some time later, and in that situation it's the aggregator or the LEC, among others, who actually know.

MR. GOODMAN: They don't know if the purchase --

MS. HARRINGTON: No, they don't.

MR. GOODMAN: -- was authorized?

MS. HARRINGTON: No, but they know about the large number of disputes, and they also know if it is BNA or if it is something more specific, so there is knowledge of consumer response on the part of the LEC, and I would -- and maybe not that knowledge on the part of the vendor, which seems to me to change a bit your characterization that it's the vendor who's in a position to know at least that consumers are claiming that this never happened.

MR. GOODMAN: No, I was saying that it is only the vendor who is in a position to know whether the charge was expressly authorized. And so the knew or should have known standard applied to the vendor seems to be kind of too low a bar in a sense, because while it might make sense, as you have further defined it over here, to apply that kind of standard to the people who did not actually make the sale, who were not the vendor,

this is a strange one to apply to the actual person to make a sale or who claimed to have made a sale to the customer.

MS. HARRINGTON: A follow up from Adam.

MR. COHN: But aren't there different things that a vendor and a billing entity and aggregator should know? A vendor would be in a position to know different things and should know various other things and how is that -- would you agree with that?

MR. GOODMAN: I would say, yes. Each person in the chain knows or should know different things, but the thing that the rule or proposed rule is keyed to is knew or should have known that the transaction was not authorized.

MS. HARRINGTON: But let's say that the vendor sells a service, that it's a 4250 sort of thing, that the people who are called and are billed on the basis of ANI for that service all claimed to be authorized. They all claim to be the line subscriber, so what the vendor knows are all these people are calling up, buying a service and they all say, Yes, I'm authorized, I'm the line subscriber.

Now, the vendor doesn't have BNA unless the vendor is a common carrier, and it may take months for the vendor to hear back that consumers, line subscribers

are wholesale claiming that they don't know anything about this, that they never authorized this purchase.

So who knows there and who can know in that situation that the line subscriber has not expressly authorized the charge? I mean, I don't think it's the vendor.

MR. GOODMAN: The question is, and back to the issue we were talking about this morning, who ought to be able to authorize the charge, and if it is -- if the rule continues as proposed, that it can only be the person whose name is in the records of the local telephone company, then without some other form of confirmation, then, no, the vendor is not going to know.

MS. HARRINGTON: Allen?

MR. HILE: I'm wondering if the implication of what you're saying is that you're suggesting strict liability standard for the vendors and something lower for the others in the chain of these transactions?

MR. GOODMAN: No, I'm not claiming to provide building a barrier. I'm saying that it strikes me as strange coming into the rule or the proposed rule as a reader, that it was the same terminology applied to all the people in the chain, even though different people had different amounts of knowledge and different amounts

of control over what they could know or could not be meant.

MS. HARRINGTON: Okay. Susan and then Peter and then Mark.

MS. GRANT: 900 number calls may be different than the other kind of telephone-billed purchases, but at least for the other kinds of telephone-billed purchases, we generally are not in favor of creating safe harbors for the vendors.

We think that they have an obligation to arrange for express authorization to be obtained and to monitor it so that they know what's going on. It may be different for some of the other parties involved, particularly the LECs and perhaps the long distance companies in the case of 900 number disputes.

But certainly for these other kinds of purchases where you would start from a point of obtaining express authorization, then I think that strict liability should apply.

And if there was any kind of safe harbor created I certainly, to pick up on Debbie's point, would not include as evidence of coming under that giving refunds, and we know that for fraud in this area and other kinds of frauds that sometimes refunds are given just to keep people from complaining to authorities and that you can

make a tremendous amount of ill-gotten gains, even if all you're doing is collecting 30 percent instead of the whole 100, and giving the other 70 percent back.

So we would urge the Commission to look at this from the standpoint of your behavior in ensuring that express authorization is obtained to begin with and not your behavior after the fact, not that we want to discourage companies from promptly resolving consumer complaints.

MS. HARRINGTON: Thank you. Peter?

MR. BRENNAN: Thank you. Peter Brennan from TPI. A couple of notes. First of all, I appreciate that you two, both of you, both Susan and Debbie, have highlighted the distinction between 900 numbers because I think it's a critical distinction.

But one of the trends we have to realize is of course the demise of 900, which I view as unfortunate, but which is a fact and but particularly in the development of Internet services which are increasing the trend toward a subscription model as opposed to a transactional model, where a subscription for a service of \$7 a month or something like that as opposed to a buck each transaction.

It means that this -- in general I think you're going to be seeing more and more of this model being

used in the marketplace, and I think that's something that you need to be -- to remain cognizant of.

Also I would really think must caution against using the measure of a high measure of refunds being granted as an admission or as an indication of guilt or of an unworthy service.

In many cases, service providers do that just as a matter of good faith to say, Look, if there was any misunderstanding about the kind of service, it's on the house, the first one's on the house, and particularly in situations where other people have control over how those refunds are granted like in the 900 arena where the LECs are actually the ones who in a lot of cases have the first line and are very free about giving away refunds.

MS. HARRINGTON: Mark?

MR. FARRELL: Mark Farrell, SBC Communications. Eileen, I would like to get back to your question in terms of who has more knowledge. It is the service vendor, and the reason I say that is service vendors handle most of their customer complaint calls. They are responsible for it. Their number is on the telephone bill. They're getting the calls. They know whether there's a problem with service or not.

SBC also provides complaint levels on a monthly

basis to all our BNC customers, and the third point I would like to make is that the service providers now have the services they need. They know whether there's going to be problems or not. It's not the LEC that's out there marketing. It's the service providers.

MS. HARRINGTON: A follow up from Marianne.

MS. SCHWANKE: You indicated that the service vendor's number is on the bill and that they handle most of the consumer complaints, but it's my understanding that either the LEC or the billing aggregator is usually the one to handle the complaints. Could you clarify that?

MR. FARRELL: Yeah. There are three options. One, the service provider can handle the customer complaint themselves or they can higher somebody else out there. Often times it would be the clearinghouse, and last is the LEC, but generally that is part of the billing and services that we provide as an option, but most of the clearinghouses and the companies that bill through us do not want that. They do not contract for us to provide that service. Instead they handle it themselves.

MS. SCHWANKE: Are you saying most commonly it's the billing clearinghouse that handles the consumer complaint?

MR. FARRELL: It really depends on the customer. The number is on the telephone bill there. It says that, This service is provided by such and such, if you have a question, call this number. A lot of times consumers try to call those numbers.

They're not answered so they come to the LEC. A lot of people like working with the local telephone company, so it depends on the customer. We do -- when a customer calls and says, I've got a charge about this portion of the bill, we say that -- and the first part of the call is, That you do need to call this customer.

Now, they have may say, I've tried to call them, I can't get through, they won't answer my questions, and then at that point, we'll talk to them about it, but first we do try to refer it to the person that's handling the question about the bill.

MS. HARRINGTON: A follow up on this exchange first from Peter and then, Jacque, you had your post-it up. I think that you have responses either to Marianne's questions or to Mark's response and then we'll get to David from Sprint.

MR. BRENNAN: Yes, to Mark's response. Picking up on your theme earlier on your purchase by the LEC, Mark said the last is the LEC. It's really not the case, although many of us wish that were the case.

What happens is -- and the data that we've done in terms of surveying people who have called and have looked for refunds, the data clearly indicates that the first place they turn is the LEC.

Although it is correct that phone numbers of the service providers and other places do appear on the bill, generally people, for whatever reason, are more comfortable or have learned over time that the LECs are better incented or for whatever reason are more willing to satisfy their complaint in the first call.

And for that reason they look to the number that's the inquiry number for anything on the bill rather than on that specific page.

MS. HARRINGTON: Okay. And again, Marianne's question, actually, Jacque, I'm going to jump David up in front of you because we haven't really heard from him today. We're not going to give him a microphone so we won't hear from him.

MR. MATSON: David Matson from Sprint. I wanted to address a couple of points first on Mark's. It's our preference that these disputes are handled between the vendor and the user, but generally we do get involved with having to handle these issues. Partially or primarily that's because we get a lot of pressure from the Public Utility Commissions to deal with these

issues.

So I think our preference would be that we not be the person to deal with it because frankly we don't have as much information as the vendor does.

If I could also just say a couple things about what John had talked about earlier. We have local telephone companies in 19 states, and there's really no central database for getting complaints in, so if we get a large number of complaints say in Florida, we have other companies in Oregon that would not necessarily know that we're getting those complaints about special vendors.

So it's very difficult for us to determine that there's a nationwide problem just based on a program, and again the vendor might be able to see that, but we wouldn't, and one of the -- the other problems we have is we don't really know their advertising campaign, so we don't know whether they're getting thousands of calls or they're getting 20 or 30 complaints or whether they're having a small advertising campaign, and we're getting 100 complaints out of 150 consumers.

So it's very difficult for us to know that. All we can really do is deal with these issues kind of on a case by case basis.

And one other point I wanted to make with

respect to getting adjustments and disputed information back to the vendors or to the billing aggregators, we have to do that within approximately 30 days. I can't speak for any of the other LECs, but my understanding is we do that within 30 days.

So again I think that goes to the issue of whether or not they have the information in a timely manner so they can resolve these issues.

MS. HARRINGTON: Let me follow up with a question, David. YOU may or may not know that the Federal Trade Commission operates a computerized database called Consumer Sentinel, and it's a centralized fraud related complaint database of consumer complaints that are received by Susan Grant's National Fraud Information Center.

Some of the states, AGs contribute their consumer complaints. The FTC operates a consumer response center here in this building, and we handle about 10,000 consumer complaints on host fraud related issues every month.

We get complaints from Phone Busters which is the central source for telemarketing and other fraud complaints in Canada. The Better Business Bureaus contribute their fraud related complaints.

If you don't have in the Sprint system an

ability to centralize complaints about third-party billing that might be fraud related, would you get your local companies to work with us to cross walk those complaints into the Consumer Sentinel database which is made available to law enforcement agencies throughout the United States and Canada?

MR. MATSON: I understand from our expert that we would be willing to, if I could add one other point.

MS. HARRINGTON: Great. We would invite any of the others of you that maintain complaint systems to do the same, that is law enforcement needs these complaints, and Consumer Sentinel is available desk top at almost 200 law enforcement agencies throughout the United States and Canada, including the FBI and Postal Inspection Service and AGs, and ya-da-ya-da-ya-da.

MR. MATSON: If I could turn that around and suggest also, a lot of times you're the first people who find out and AGs or FTC or State Public Utility Commissions find out that there's a big problem, and I assume that you would feel free to contact us as well to let us know that.

I know that we've dealt with people in the past when we get calls. I know we just got a call from the state of Alabama recently who had an issue, and we responded immediately to it.

MS. HARRINGTON: We deal with the security people oftentimes, and we also send CIDs to the carriers frequently, so we are letting you know when we see problems that we think warrant investigation or you may have information that we need, we have a practice at the Federal Trade Commission and a policy of strictly guarding the confidentiality of investigations because, A, the existence of a complaint from a consumer does not mean that a company has done anything wrong; B, the fact that the Federal Trade Commission is conducting an investigation does not mean that there's been any finding of wrongdoing; and C, if it's a case of fraud, we typically don't notify the target because we often seek a freeze on assets, and we want to be able to do that before the assets disappear.

So it's really a one-way street pretty much. That is, we would like to hear from you, and you're not going to hear from us unless we need your help.

MR. MATSON: I would also say to a certain extent, we also, because we get complaints, don't assume that there's fraud either.

MS. HARRINGTON: Right, right, right. And I think that's a very important consideration. Anyway, we would welcome any of the carriers that maintain complaint systems on fraud related complaints to work

with us to cross walk that data.

The Xerox Corporation contributes complaints about consumer fraud, for example, so we have a number of private contributors.

MR. BRENNAN: What is the CID?

MS. HARRINGTON: The CID is an administrative subpoena. Peter is trying to display the fact that he's never received a CID.

And, Peter, actually you're next on my list.

MR. BRENNAN: This list or the next list? Mine is not up.

MS. HARRINGTON: Your thing is not even up there. Richard?

MR. BARTEL: I just had a short comment about the knew or should have known standard. We believe that the contractual relationship is a principal agent relationship. At least the LECs take the position they're an agent of the billing vendor or the clearinghouse, whatever it may be.

So therefore, the agent's duty to the principal is to notify them if they receive information, whereas the principal has a duty to exercise control over their agents to the contract, and therefore the should have known should not apply to the agent. It should apply to the principal only in our opinion.

MS. HARRINGTON: Thank you. Debbie?

MS. HAGAN: Debbie Hagan. Eileen, I wonder from a legal perspective whether we could within this process receive some clarification from staff as to why vendor was tied to knew or should have known.

I mean, kind of traditionally the way we would bring these is they would be considered to have the primary liability regardless of, quote, knowledge, and then once we move passed that, we move into knew or should have know and to all your factors that we get into every level after that.

And so I'm -- I think we noted it in our comments, and I'm concerned that knew or should have known is tied to a lot of case law that has to do with aiding and abetting.

MS. HARRINGTON: And we note that in your comment, and this is sort of like the complaint situation. We want your comments. We're not going to speak back or answer questions about that right now because it's a rulemaking. We're asking for comment.

The Commission has made a proposal, and what we're asking is whether this is the right standard.

MS. HAGAN: I guess we're on record in our comments and here that if it would imply that the primary vendor has a knew or should have known standard,

we would be in opposition to that.

MS. HARRINGTON: Cynthia? I'm sorry, Rick?

MR. MOSES: I just wanted to make a comment. I've heard a couple people here say that the vendor's name and telephone number appears on the telephone bill. That is not the case in Florida. Most of the complaints that come across my desk, all it has is the name of the provider, and no other information, other than voice mail or whatever the service is, and a lot of times it's not a good description on that.

We think an 800 number should be printed on the billing, and there should also be some answer time requirements on those 800 numbers. In other words, the customer complaints that we dealt with in the public workshops, the customer said they would call the clearinghouse. The clearing house said, We don't anything to do with complaints, we just bill for this company.

A lot of times they would give the customer some information. A lot of times they were very reluctant. When they did get the 800 number they would call it. We heard horror stories that they were on hold for an hour and then disconnected. People didn't get any answers whatsoever.

So we think there should be is some liability on

the vendor's part to at least answer the customer service number and also help these people.

The other thing that became quite apparent, and it may be due to the traditional telephone service over the last hundred years and also the age of the average Floridian, but the problem that we saw that was apparent is that the customer blamed the local exchange companies for allowing these things to appear on their bills when they didn't authorize it.

And they had a real strong anger towards the local exchange companies for not taking an active role in not letting anything happen, and it does kind of taint the name of the local exchange number which they have over the years become accustomed to and trust.

And it does present a problem to the local exchange companies also. Thank you.

MS. HARRINGTON: Thank you, Rick. We're going to hear from Tony and Peter, and Adam has a question.

MR. TANZI: Just a few comments to emphasize what some of the people have said regarding this. In the recent survey, which you all should have received a copy of, ACUTA found that 41 first of the people reported that the local exchange carrier advised them to contact the responsible vendor, and in only 17 percent of the cases, charges were removed without question from

the local vendor.

An interesting follow up example, over 40 percent of the time once contact was made by the vendor, we were refused credit unless a full investigation took place.

Another interesting statistic was that in the number of schools reporting, once you were advised to contact your responsible vendor, fully 77 percent of the people responded that they were able to make contact with the vendor on the first try.

Now, the statistic that's interesting beyond that is almost 70 percent of those who reached the vendor on the first try did not receive a satisfactory explanation as to what the charge entailed, who ordered the charge and what the next steps in the process were.

Those are pretty alarming statistics, and the last statistic, excuse me, does the vendor generally resolve your problem to your satisfaction? Less than half reported, Yes, most of the time. The rest were not satisfied, and when we tried to get statistical information on what do you mean by most of the time, we couldn't get any satisfactory result, so it is a growing problem.

The last thing I would like to say is we found that the incidents of unauthorized charges continued to

increase in our industry. 40 percent of the respondents reported that the incidents of unauthorized charges continue to increase, and roughly 37 percent said they remained the same.

So it's a very high statistic. It does present an alarming trend, and we do ask that responsibility be assigned to those who developed and delivered the charge together.

MS. HARRINGTON: Thank you, Tony. Peter?

MR. BRENNAN: Thank you. Peter Brennan. In the interest of a clarification, the 800 numbers, generally if they don't appear on an actual line item next to the charge, then they appear on the bill page, and certainly in the case of 900 it does, and we've actually asked that -- the company has asked that it appear as it does on our credit card services right next to your -- if you charge AOL, AOL, 1-800 or it says 888, 1-888 number.

We've asked for that, but less have been unable to accommodate that because of the problems in the development in terms of their bill. We would welcome that.

Tony, if I could ask you a follow up regarding the survey that you just outlined, which I haven't seen but I would like to, did that pertain to 900 unauthorized calls or non blockable calls?

MR. TANZI: Both.

MR. BRENNAN: Both? In those statistics, did you make a distinction as to the level of satisfaction on 900 versus 4250 or other records?

MR. TANZI: Let me check the summary. We grouped them into just one category, unauthorized charges. The thing I would like to clarify is the 900 problem is not a big problem in our environment.

MR. BRENNAN: Thank you. I assume most of you block 900.

MR. TANZI: For those of you who did not receive a copy of the survey, I believe they are on the table outside for some of the newcomers.

MS. HARRINGTON: Also on the table outside is the graph concerning complaints received by the Florida Public Service Commission, and we had some cramming complaint data graphs provided yesterday by Bell Atlantic as well, and those are I think out on the table.

Jacque, before we go to Adam's question, what would you like to say?

MS. MITCHELL: I just wanted to clarify for the record information about the billing, the number on the bill. As a clearinghouse, the clearinghouse contracts with the local exchange carrier for the provision of

service, and adjacent to the name is the 800 number where we can be reached.

Typically on the telephone bill, unless mandated by law, we were the only number that appears there, so other than the state of Mississippi where both CERB numbers are required to be placed on the bill, that's the only place that we see that hang.

We are the contracted party for the vendor. We serve as a provider of service to them because typically these providers are so small they don't have the capability to have their own inquiry center, so we serve as a contracted party for that service.

I would like to speak to the fact that in the United States, going to Rick's remark, is that there are approximately 1,200 telephone companies, and the telephone companies that operate through Illumina and Netna and one RBOC do not have the capability to put the sub kick or the provider's name on the bill.

So the only name that appears on the bill would be in the case of our company you might see USBI and the product, so the end user has no visibility to who that provider is, and that is a technical problem that those local exchange companies have.

Certainly in the case of the larger RBOCs and the other independents like GTE, that capability does

exist, and it is different than what it used to be, and our environment today is totally different than what it was, even last year the capability to put expanded text phrases on that bill so that it can be clear to the end user to understand what it is.

Now, in the case of Southwestern Bell, that number is very large. It's 34 characters or 37 characters. In the case of their sister company in Pac Bell's area, it's still 12, so we're limited by the technology that's available at the LEC.

While we want to give the end user all the information possible, it's just not there, so to speak to who answers those complaints as a contracted party, we do answer the service calls for those individuals that contract with us.

To speak to the LECs, there are certain LECs that mandate that we service that provider and not pass that call on to the service provider because we do send that call on to certain service providers unless required by contract not to.

Now, we look at that environment to ensure that it's being handled correctly, and if it's not being handled to our satisfaction, we do pull it back.

I would like to ask for the record, Eileen, we are not to the second part of the handout D yet?

MS. HARRINGTON: No, we're still talking about vendor issues. Rick?

MR. MOSES: I wanted to make one more comment that Jacqueline brought up, and we have a good point there. I'm not sure if it's the lack of technology or just the lack of the desire to spend the money to change the technology, because we've made millions of changes in our slamming rules. Some of the companies raise cane with us about it, but they're doing it.

So I'm not sure that the technology is a factor. I think it's the expenditure to change that technology.

MS. HARRINGTON: Adam. I'm sorry, Richard.

MR. BARTEL: Yeah. That just went past me very quickly, but that's shocking news that there are contracts from the LECs that require you not to pass on information to the vendor. I was not aware of that, and I'm wondering how significant that might be to the knew or should have known standard and so forth.

MS. MITCHELL: I'm sorry, let me clarify what I said. If you understood it to be information, that's erroneous. It's the call itself.

MS. HARRINGTON: So the contract says that the aggregator shall not pass calls from consumers on to vendors.

MS. MITCHELL: Right, not the information.
Certainly the information needs to be --

MR. BARTEL: Disputes can be passed on.

MS. MITCHELL: Exactly.

MR. BARTEL: Sorry, I misinterpreted it.

MS. HARRINGTON: Are we clear? Rick?

MR. MOSES: I'm sorry, I forgot to take it
down.

MS. HARRINGTON: Adam, your question.

MR. COHN: Yesterday in the context of
presubscription agreements, we had some discussions
about negative options and some positive options, some
form would be used to make negative options or positive
options to indicate some sort of authorization.

There's a question on this handout regarding an
example in the telemarketing sales rule, and I know
there was some concern about people that didn't have
familiarity with that, but if people had any comments
about the suggestion that negative option or positive
option might constitute some mitigation of a vendor's
liability, I would be interested in hearing it.

MS. HARRINGTON: It appears on your sheet
certainly as a suggestion for written confirmation of
the transaction, in case you're not familiar with
negative or positive or neutral options.

Does anyone want to discuss that? Any comment?
Rick and then Jim.

MR. MOSES: I'll make one comment about any type of negative option. We've had experience with one company in Florida that used the negative postcard method, and they were the carrier that had the most trouble with slamming, and they don't read things and it's just not a good idea.

MS. HARRINGTON: Jim?

MR. BOLIN: One option I would like to suggest that AT&T has used for some of its services, and it seems in a hybrid form in which you sign a customer up for a service, give them a PIN number over the phone, and we give them a week or ten days or two weeks during which they can use the service without charge.

We mail them a copy of the contract and say without charge, the charge may be effective after a two week period. If they opt in, we mail them the contract, and if they continue using that PIN after a 7, 10 or 14 day period, whatever exact time period we were using, we assume that they want to continue.

I don't think the service -- we assume they've read the terms and conditions and written agreement. We provide them the terms and provisions in a way that complies with TDDRA on the initial call, but that is

kind of a hybrid form that gives the customer an option of opting in to continuing.

And I think it satisfies ordinary contract law requirements at any rate, and it's been pretty effective for us.

MS. HARRINGTON: Jacque?

MS. MITCHELL: Sorry.

MS. HARRINGTON: Marianne, a question?

MS. SCHWANKE: I think part of the LECs best practices guideline suggested that the LECs do some form of review and monitoring of ads and services for which they bill.

Correct me if I'm wrong about that, but can you tell me what the LECs have done in that respect? I think I understood Sprint to say that they don't review advertising. Can the LECs address those issues?

MS. HARRINGTON: Mark?

MR. FARRELL: Mark Farrell with SBC. The review that we do is that we have various service descriptions on the bill when a third-party submits charges such as they'll tell us, We're billing a voice mail program. We will say, We would like to see the materials in connection with that, just to confirm it's voice mail.

So what we're asking for is when somebody says, We're going to bill voice mail, we just want to see

something so that what is being billed is accurately described.

But we're not reviewing the marketing materials or approving them. We're just looking to make sure the bill description matches what they're telling us they're doing.

MS. HARRINGTON: John. I'm sorry, Kris? Kris is back.

MR. LAVALLA: Kris Lavalla of Bell Atlantic. Back to this question, in Bell Atlantic we do review marketing materials. Any time a vendor wants to have a new program put on the Bell Atlantic bill, they're required to send in all the marketing material that goes with that.

We have a review committee that meets on a weekly basis, reviews it all to determine whether it completes our billing criteria. If there are particular questions or ambiguities, we go back to our customer, normally the clearinghouse, and ask for clarifications, and not until we give them final approval will that service be allowed to be put on the Bell Atlantic bill.

MS. HARRINGTON: Kris, when did you begin that or when did you instate that or institute that process?

MR. LAVALLA: We've been reviewing for well -- well, let me go back. Prior to the Bell Atlantic merger

with NYNEX, NYNEX had a group on board on those types of services, and then at the merger, which would have been a year and a half ago, almost two years ago, we folded that into the Bell Atlantic process, so it's been for some time.

Now, in Bell Atlantic, due to all the cramming situations that's been occurring since the beginning of last year, we have had an open-ended moratorium on all new miscellaneous billing charges, so the board in effect that reviews these has been out of commission since I think May of 1998.

So we haven't been reviewing because we haven't been putting in any new miscellaneous charges on the record, but as we -- when we lift the moratorium, that would be going back into effect, so we will continue to review all requests, and that would include marketing material and anything else that's appropriate.

MS. HARRINGTON: David? Let me just observe, I think we're into the discussion of page 6 of handout D. That is, I think we're starting to get into some discussion of service bureau and billing entity liability, if we didn't focus that directly, but I think we didn't get a lot of discussion on the negative or positive or neutral options.

So let's just focus here on these questions in

addition to whatever else you want to say. Would you all take a look at the questions about service bureau and billing entity liability, please.

David?

MR. MATSON: David Matson with Sprint. Our policy with respect to reviewing marketing material is similar to Bell Atlantic's, although again my personal experience was more with reviewing 900 material, and we found that to be virtually impossible to deal with because we found that a lot of marketing material that was sent to us was not actually the marketing material that went out into the marketplace.

And so actually knowing what marketing material they have may not be the only solution to finding out whether there's a problem. Again, it's difficult to ensure that what we see is what the consumer also sees.

MS. HARRINGTON: Peter?

MR. BRENNAN: Just in response to Marianne's question, the difficulty with -- in the marketplace with the LEC reviewing marketing material, aside from some of the misbehavior that Dave has mentioned, the difficulty is there has been at least the allegations that some of the LECs have used that material to market their own services, to market other services, to exclude services that compete with their yellow page services others.

And that's one of the reason why the Billing Reform Task Force has asked the FCC to establish a separate or help us establish a separate third-party responsible for billing, essentially Switzerland who would be neutral because we don't feel that the appropriate protections are in place at this point.

And we welcome the Commission's joining us in that.

MS. HARRINGTON: Jacque?

MS. MITCHELL: Since we're in this part of the meeting, I would like to go back and give a little bit of basic history as far as what the clearinghouse does in our function and our responsibility in the --

MS. HARRINGTON: I'm going to interrupt you for a minute. Is that in your comment?

MS. MITCHELL: No, it is not.

MS. HARRINGTON: Do we have clearinghouse activity described in comments?

MS. MITCHELL: That's not what I'm going to say. I just want to give a basic idea of what it takes to be a provider with a LEC contract. I want to speak to the dollars. No, I don't want to discuss what we do because that's very clear.

From a competitive perspective, we provide services to over -- Billing Concepts provides services

to over 400 providers. For those providers to enter into direct contracts with the local exchange carriers for business services across the United States, there's about approximately \$1 million involved in that process.

So a small provider would have a impediment in barrier to entry to be able to get into business and to have those contracts with the LECs, so we serve as that conduit.

The capability to be able to understand what's happening in the marketplace with the vendor, we look at several things. We look at pre screening of that product to have known what happened on that product. We look at who it is, who the service provider is. We ask for marketing information, and it's required from almost across the board the LECs.

We ask for advertising campaigns. We look at TV advertising if there is any. We hear radio information that they might have provided. We'll suggest, however, that providers typically will not move that to a final process until they know for sure they're going to be able to get through our process and through the LECs, so they may not give us the final product.

Therein lies the problem, and I think somebody said, and I don't remember who, but we are limited by what we can know or should have known by what we asked

for and we are given by the vendors, so we know who the provider is, we know whether there are any felony counts in their background if they tell us the truth. We find out about the product, how it's supposed to be sold, who the telemarketing operation is, what those scripts look like. We help look at those script and ensure that they are viable.

We do all of those things, so we certainly understand today what that is.

MS. HARRINGTON: What do you do when you start getting complaints from the consumers?

MS. MITCHELL: That's a very good question. If we are the billing inquiry center -- and I'll give you an example of a provider that I just ceased billing for. The provider came on three months ago, and in the first month, of course, there were no inquiries to that provider.

The second month the provider didn't send us any records because of a billing glitch that it had in its own system. The third month I was sitting at 25 percent adjustment on those three months, and I fired him. I mean, that's --

MS. HARRINGTON: What were they providing?

MS. MITCHELL: Internet service.

MS. HARRINGTON: How were they selling it?

MS. MITCHELL: The typical screen or the typical telemarketing plan for that is to -- in our case, I will tell you that we do not allow one free month. That seems to be our largest problem.

MS. HARRINGTON: Talking about web hosting or Internet access?

MS. MITCHELL: Web hosting and access, and please keep in mind that some LECs do not allow any Internet billing because they provide it themselves, so they don't allow a third-party to provide it to them, but in this case we had reviewed the script. The script met all of our requirements.

What was being delivered by the telemarketing company, we didn't know, but we did start figuring it out when we started getting the inquiries from the end users which suggested to us that there was a problem.

MS. HARRINGTON: Was the telemarketing company the provider, or were they just the telemarketing contractor?

MS. MITCHELL: They were a contracted party.

MS. HARRINGTON: Were they on commission?

MS. MITCHELL: Yes, the telemarketing person was. They told us that the verification company was not. However, we don't know if was or not unless we got into the legal side of that and ask for that kind of

information which we're certainly not able to do.

So we know about the provider. We take action. Once that product comes up and it has passes the scrutiny of the LECs, while Mark suggested they look at it sort of superficially, Southwestern Bell looks at it very carefully, along with the rest of the LECs.

So we know that it has to get passed us and has to get passed them, and then the next process is the monitoring for compliance. In some cases we sign up for the product. We go out and become a user to see if what they said it was is what it is, and we find in some cases it's not.

And we take action and start working with the services provider, set them up on a corrective action plan, so those are the kinds of things that we can know, that we can understand about that product. If the vendor changes the plan, we don't know it until we start seeing the results.

MS. HARRINGTON: So you don't have any problem with the notion of billing entity liability where it knows or should know?

MS. MITCHELL: We can understand what we know, but to say that we should know, all we know is what we know. All we know is based on what we've asked that provider for, and these items in screening the product

and monitoring the product help us to know that.

I don't think we can presume that we should have known everything about that product because the vendor has the ultimate control over that end user and the product itself.

MS. HARRINGTON: Cynthia? It's not Rick.

MS. MILLER: I wanted to follow up on Bell Atlantic's point that they have a moratorium right now on adding new charges, and I'm wondering if that would relate to your decline in your cramming complaints.

MR. LAVALLA: Kris Lavalla from Bell Atlantic. I'm sure that has contributed to a decline in the number of cramming complaints if we're not adding any. Certainly it stabilizes the universe that's out there.

But the chart I handed out yesterday reflects a period of October I believe through April. We've had moratorium in place since I believe May of last year, so the decline that we're experiencing is not simply because there are -- there's a moratorium in place.

Within the context of that moratorium that we have managed what's out there to reduce the number of complaints.

MS. HARRINGTON: Jim?

MR. BOLIN: Actually I think my comment is going to take us in a little bit direction so you may want to

come back to me.

MS. HARRINGTON: I appreciate that, thank you. Susan?

MS. GRANT: The good thing about should know and the reason why it's necessary is precisely to encourage the monitoring and screening that we've been hearing about. If you don't have that, then do encourage the head in the sand approach.

MS. HARRINGTON: Thank you. Mark?

MR. FARRELL: Thanks. Mark Farrell with SBC Communications. And I would like to talk about should or should have known from the billing entity's perspective, and I think these rules are extremely problematic in the billing entity's perspective, and I don't think that they can be cured by any safe harbor provisions.

And the reason I say that, we bill 1.7 billion messages. These rules impose liability on us for should or should know, so how do we stop all that billing? Well, 1.7 billion messages, we could verify each one of them. That's not going to work.

Then you say, Well, rely on the service provider's authorizations. Well, you've heard a lot of problems, verification tapes. Now, I do not authorize this service.

MS. HARRINGTON: Mark, just a clarifying question. 1.7 billion miscellaneous item charges?

MR. FARRELL: Not miscellaneous, total.

MS. HARRINGTON: That's total of everything you bill for, mostly transmission?

MR. FARRELL: Well, I don't know the breakdown, but we'll get it for you.

MS. HARRINGTON: Okay. I'm sorry. I just wanted to clarify. Thanks.

MR. FARRELL: Then you say rely on the service providers. You hear of doctored tapes, forged signatures, and then people -- we're going to be sued, We should have known that those were doctored. And it puts us in a position where we're liable and this company -- cramming started with third parties putting charges on our bills that weren't authorized.

We shouldn't be liable for that, and if we're going to be liable, I think we have got some serious evaluations that we have to do as a company.

MS. HARRINGTON: Okay.

MR. FARRELL: I just wanted to --

MS. HARRINGTON: I'm sorry.

MR. FARRELL: To get back to Jacque's point, if I implied that we're just doing a superficial review, I didn't mean to imply that, but there is a distinction.

What we're looking for is the description and the charges that are being billed and what that company is submitting to us and how they're describing it, to make sure it's accurate. We're not reviewing the marketing materials and approving those and how it's marketed.

But we are looking at the description so when the customer gets that, they can say, Okay, this is what -- I am a member of this service now. There's oftentimes where a service provider will come in and describe it as one thing and they end up billing something else that we don't know about.

MS. HARRINGTON: Okay. Kris and then David?

MR. LAVALLA: Kris Lavalla of Bell Atlantic. I wanted to respond to something Peter said on whether we took the types of programs that were being marketed and then -- and turned around and marketed them from Bell Atlantic's perspective, and I can only speak for Bell Atlantic, but we certainly don't do that.

The structure of our company is carrier services, part of the wholesale department, which is separate from the retail side of the business, so the pages of the bill that we're responsible for, all the carrier pages and the clearinghouse pages of the bill, the Bell Atlantic part of the bill are not under carrier services or our auspices, and we don't deal with them on

a direct basis with any of these types of programs.

MS. HARRINGTON: David?

MR. MATSON: David Matson, Sprint. First, I would like to join in what Mark had to say. Secondly, I take exception with what Susan had to say earlier about the should have known standard. When we were heavily involved with 900 programs, we did a lot of monitoring of programs, and when it came time for the lawsuits to start flying, MCI who had at that time not reviewed any advertising said, There's no way for us to know of the problem because we weren't looking at any advertising.

So we were actually held to a higher standard because we were actually monitoring and reviewing programs, so at that point we were actually being penalized because we were actually taking some responsibility for looking at programs while the other party, which in this case it was MCI, had taken no responsibility and basically said, Hey, we're just passing through the calls and we didn't want to take any responsibility.

So I'm not sure I agree that the should have known standard would actually be beneficial to having continued monitoring, and finally kind of a general comment that I alluded to before, is if you have bad actors and the bad actors were trying to victimize

consumers, they're not reluctant to victimize the local exchange carriers, and they're certainly not again -- I think that they're willing to cause problems for just about everybody.

And as the Commission representatives stated earlier, it does give the local exchange company a lot of problems. It's not in our interest to have a lot of complaints coming through on miscellaneous charges when we have a lot of other issues to deal with with our consumers and with commissions.

MS. HARRINGTON: Let me tell you what I think we're going to do here. Jim has promised us something completely different, and I still have you on my list. Adam has a question, and Peter and Jacque also want to participate.

Jim, I'm going to count on you flagging me when it's appropriate for us to turn to something completely different, okay, that you have a standing entre into the discussion.

MR. BOLIN: I appreciate that.

MS. HARRINGTON: I'm going to hear Adam's question, and then we'll take answers to that, and maybe Peter and Jacque will have responses for that, and if they don't, we'll come to it.

MR. COHN: I had a question, this was

specifically to the LECs and billing entities. I wanted to hear whether they thought it was a good idea to adopt something along the lines of what CERB has suggested, that the liability for knew or should have known should be mitigated, if they can show that there has been pre screening and monitoring.

MS. HARRINGTON: Let's go to David first, put you right on the spot.

MR. MATSON: I'm not sure. Again, we have so many difficulties with the monitoring that I'm not sure that that is necessarily the answer. I tend to agree with Mark, which is that any type of standard with knew or should have known is difficult for us, and we I think have a totally different role than either the billing aggregator or the vendor itself.

MS. HARRINGTON: Kris?

MR. LAVALLA: Kris Lavalla. I'm in agreement with that. I think knew or should have known is a very difficult concept for us as well. That doesn't say that we're not going to monitor or we're not going to review programs because I think it's important to do, but the knew or should have known is problematic.

MS. HARRINGTON: Jacque?

MS. MITCHELL: I would like to go back to what Mark said a few minutes ago the chilling effect that

this could have on our access to the bill. You said yesterday that you were concerned about competition. I heard the LECs say a number of times that if this gets impossible for them to deal with, they will eliminate third-party billing totally from their contract, and therefore remove that level of competition from them.

So we are concerned about that particular issue, the loss of access to the bill and the loss of the opportunity for competitors who compete with the LECs to have access to that bill.

To answer your question directly, I'm sorry I did fail to answer you with regard to the CERB standards, there's a reasonable expectation that if we meet these standards, which we agree that we do today, we have committed to that, that there should be a presumption that we met the requirement of what we know about what the product is. We cannot control the vendor and the end user.

MS. HARRINGTON: Peter?

MR. BRENNAN: Thank you. Peter Brennan, TPI. Just very briefly in response to Kris's response to my last comment, the situation I was referring to had to do with USWest, and we'll supplement the record with information about that, and we acknowledge that at least for the time being USWest and Bell Atlantic are two

different companies.

MS. HARRINGTON: You heard it here first.
Mark?

MR. FARRELL: To get back to Adam's question, I don't think it would help with safe harbors, mitigating circumstances. There is an active plane so far in this country, and if there's some type of standard out there that we should or should have known, we're going to end up getting sued.

We're not -- the LECs are not the company that's causing this problem. It's the service providers, and they're the ones that should pay for it, not the LECs.

MS. HARRINGTON: Now for something completely different. Jim?

MR. BOLIN: I feel a lot of pressure now. With your permission, I'll briefly comment on the last line of inquiry as a segue into my point, which will be somewhat different, and that is I think what we've heard today confirms that all of the LECs and I think all of the IXCs or at least still the major LECs and IXCs are doing some screening. They've got some contractual obligations. AT&T does as well.

We want to comply with the law. We don't want to make our customers angry. We all have an interest in our brand equity. These things appear on our bills.

They come in envelopes with our name on them. If the customers are unhappy with them, we are generally the first ones they call, we being the LECs, the IXC's, whoever the carrier is doing the billing.

I think the real concern here is not that some standard be imposed, but it be very clear that we know that if we were doing -- you can always do something else, but we need to know if we do this much, we are satisfying the standard and therefore aren't going to be liable.

We're all trying to do what we can. It's not in everybody's interest to have customers unhappy with us.

MS. HARRINGTON: So you would favor some sort of specific safe harbor provision?

MR. BOLIN: The greater the bright line can be, the better I think, but I do think all of us today, at least all the major carriers are imposing some screening and some contractual requirements now.

We all want to be sure that the vendors we're dealing with and the service bureaus we're dealing with are compiling with the law. It's in everybody's interest to make sure.

But by way of segue, I think that the proposed rules actually impose liability in a much broad category of circumstances than those we've been talking about

here. I don't want to stray into topics related to this afternoon, but given that the proposed definition pay-per-call includes situations where there's revenue sharing going on, we have a situation here in which ordinary long distance calls and ordinary international calls which are billed by IXCs as well as by LECs are potentially pay-per-call, and we have no way of knowing that, no way of doing anything about that.

We can at times see spikes in complaints for calls to certain numbers. It might give us some indication there's a problem, but even when we see that we generally can't know if revenue sharing is occurring, so we can't know if there's a violation.

Complicating this point still further, at least the proposal on handout D, suggests that carriers ensure that refunds are made promptly. In a case say of revenue sharing for a local number within the United States, we have an ordinary long distance call. If we find out revenue sharing is occurring or suspect revenue sharing is occurring, the only refund comes out of our hide.

Let's say you're an AT&T customer. You placed a long distance call to a telephone number in the United States that was engaged in revenue sharing, if we have to make a refund then of the ten cents a minute you were

paying AT&T to transmit that call, we have haven't engaged in wrongdoing.

We've provided a tariffed telecommunication services, according to the terms of our tariff. Presumably the transmission service is perfectly adequate. Yet we potentially have to make the refund in that case.

In a lot of cases today, AT&T makes refunds in these situations. I was told before I came that we make about 10,000 refunds a month voluntarily to consumers who called international destinations not realizing they were international, getting audiotext and have seen bills that surprised them with the amount.

So we're trying on our own to keep our customers happy, but I think a rule that would penalize common carriers for providing tariffed services in the way they're supposed to isn't ultimately workable and isn't ultimately fair.

MS. HARRINGTON: We're going to be talking this afternoon concerning the international issue.

Adam though has a clarifying question.

MR. COHN: I wanted to clarify on the comment made by AT&T that the proposed rule doesn't require common carriers who are conducting just ordinary transmission of the calls to provide a refund for the

international audiotext situation just described because those services will not be telephone-billed purchases.

MR. BOLIN: That result would encourage me. I think the rule as it's drafted, if revenue sharing is occurring, it's a pay-per-call service, so if the Commission could clarify that in the rule.

MR. COHN: It's not a telephone-billed purchase because it's -- it's not a telephone-billed purchase even though it's a pay-per-call services.

MR. BOLIN: I would encourage the Commission to make that clear in the final rule, that that is a very encouraging thing to hear.

MS. HARRINGTON: Okay. Here's what I'm thinking of doing. I'm thinking that we may move our lunch break from noon until 1:30 today. I would to take the next ten minutes to see whether anyone would like to add to the discussion of express authorization and the knew or should have known standard, or if anyone has any additional comments on anything else that we've discussed this morning.

If we do and we want to go past noon, that's just fine. So would anyone like to say anything else?

David?

MR. MATSON: Again just a little bit -- David Matson with Sprint. Just a little bit of history of

kind of the knew or should have known standard. We felt in the 900 business as an interexchange carrier that we were living somewhat under that standard.

We ended up getting sued by virtually every possible route, consumers, vendors and investigations from state, federal, investigators. That's why we got out of the business is because we just felt that that standard that we were being held to as an interexchange company was unworkable, and that's why we're not from an interexchange perspective having a billing collection relationship of 900 services.

MS. HARRINGTON: Anything else on this topic?

MR. ANGEL: Well --

MS. HARRINGTON: Yes, Richard.

MR. BARTEL: One small item. I still go back to the comment made earlier about contracts from the LECs requiring the billing aggregator or whatever your classification is to not pass on calls to the provider.

Does that also inhibit you from passing on complaints to the provider?

MS. MITCHELL: Are you talking about on line real time complaints or are you talking about --

MS. HARRINGTON: I think we're talking about phone calls. Your statement earlier was that some LECs in their contracts with billing aggregators prohibit the

aggregator from transferring the live phone call to the vendor.

Now, Richard's question is what about non live phone call complaints?

MR. BARTEL: Well, that and the fact that you don't pass on the live phone call, does that prohibit you administratively to pass on the whole content of the complaint or just the complaint of the service provider?

MS. MITCHELL: Absolutely not. The issue is that the clearinghouse handles that contact for the service provider. I would suggest that it's not the multitude or the number of complaints that one received that drives necessarily what's happening on a product.

For instance, if in our center we receive some small number of calls involving a problem that indicates to us there's some international fraud, international emergency collect call back for instance is a big scam.

If we have an indication that even a small number of people are calling about that, we immediately understand there's a problem and take appropriate action. We are in constant contact with our clients.

MR. BARTEL: So you are undertaking a screening process which may or may not be provided for in your contract with the vendors, so is the vendor aware as to

the extent of your screening and how much information they're going to get about problems that arise?

MS. MITCHELL: I wouldn't categorize that as screening necessarily. We go through an up front screening process as we're dealing with the product itself, but each call has its own opportunity to be something, and it's as we aggregate that information about a problem that we can take action.

That's what's so beneficial to working with a human mind because those people that are taking the calls are actually making that association and alerting the supervisory staff today and helping them understand what's going on.

So we are -- I think any carrier would understand that we provide services to that we are making that analysis and evolving in that process so they know what's going on. It's not an empty process.

MR. BARTEL: Based on that response, our position would be changed, and that is that the should have known standard should apply to both the principal vendor and to the service bureau but not to the LEC involved.

MS. HARRINGTON: Okay. Jim?

MR. BOLIN: At the risk of doing this again, you may want to go first to Kris.

MS. HARRINGTON: Kris?

MR. LAVALLA: Kris Lavalla. I wanted to respond from a LEC perspective. Bell Atlantic is not one of those companies that requires that the inquiry function be done by the clearinghouse, but we have looked into it, and the reason we did is a customer service issue.

We listened to our consumers. There was a lot of complaints about consumers saying, I called this number, I had to call that number, I was passed off, I never got to the party I needed to, so they would circle around and come back to us.

And so hearing that we started looking at, Well, is there a problem because of the process that's in place that even though the clearinghouse number may be on the bill, they're not handling the inquiry, and we're putting our mutual consumers at a disadvantage, and that and some public service groups and others that said, Enough is enough.

So that's I think where this issue comes in as to requiring the one step removed from doing the inquiry if the LEC wasn't going to do the inquiry and in most cases the clearinghouses and vendors don't want the LECs doing the inquiry, at least stop it at the next step and have it go down the line.

And I think we've had some cases where it was

even beyond where it first came to the LEC, to the clearinghouse, to the vendor and then to someone beyond that because it can be just cascading.

MS. HARRINGTON: Thank you. Gary?

(Discussion off the record.)

MS. HARRINGTON: Gary, aren't you lucky. You're on a fresh paper.

MR. PASSAN: Top of the page. Gary Passan. I think there's some consistency here among all the players that I am pretty confident everyone is hearing, and that is whether it's a service bureau or billing entity or a LEC.

I think there's a general concern about should have know without a clear bright line or without a clear road map of what we should know, and I think the good players all want to have good business practices. We wouldn't be here if we didn't believe that that was an achievable goal.

So we're hopeful that in your crafting of the final version of this, that you would take that into account, that the bulk of the business is really run by I think good quality companies that are concerned about the consumers first and concerned about making sure that we're doing it the right way.

One thought on the LEC problem, just a

consideration, and that is that to the extent the LEC bill is our new telephone billing platform of the next millennium and it becomes a content free mechanism, much like a telephone call is, the common carriers are relieved of any liability of what's actually being transmitted on those lines by regulation.

And I think to the extent that the LECs provide full and unfettered access to their bills, then I think maybe there's a way of mitigating their liabilities and pushing it to the next level of the billing aggregator or the service bureau to manage those particular transactions.

So maybe that's one way to help out the LECs and make it a win-win for both groups.

MS. HARRINGTON: Jim? Should we call on Jacque or should we have you speak?

MR. BOLIN: I'll yield to Jacque.

MS. HARRINGTON: The gentleman from AT&T yields.

MS. MITCHELL: Let the record note I want to restate that the clearinghouses believe that the known applies as far as our guidelines which are very important to the way we do our business and how we perform the service.

We believe it will have a very chilling effect -- if we do not have some sort of presumption to this

that it will have a very chilling effect on competition because we as well as the LECs who have just stated that they will look at this from a different perspective, we will also look at every service provider and perhaps not bill for many different kinds of services. That could create a problem for us.

MS. HARRINGTON: Albe?

MR. ANGEL: Building on what Mr. Matson pointed out, the Billing Reform Task Force is in favor of viewing LEC in a slightly different context here on the known or should have known. We would support limiting their liability there, and it's consistent with our view that they control a central facility that would put them more parallel with transport. They must provide it on a non discriminatory basis, and --

MS. HARRINGTON: So you propose a trade-off here, that the LECs must provide access to the bill, but that they be held to a lower standard of potential liability.

LECs, what do you think about that?

MR. MATSON: I think there are other alternatives to going through the why, and, Gary, you alluded to it in your comments earlier this morning that more and more service providers are going to direct billing. That's an available option. It's also

available to go through MasterCard, VISA. There are a number of alternatives out there.

And we don't regard billing as an essential facility.

MS. HARRINGTON: Susan?

MS. GRANT: If knew or should have known would cause any of the parties involved to look more closely at the vendors and the services that they're providing, I would say good.

MS. HARRINGTON: Now for something completely different. Jim?

MR. BOLIN: Again only somewhat different. Just to bring a common carrier perspective to this, I would like to bring the Commission's attention to the fact that common carriers are in a bit of a double bind here. Frequently we get a high volume of customer complaints about a particular line or service.

If we strongly believe something's going on, we would like to block service to that line as a means of self help to protect our own consumers, as a means of protecting ourselves from potential liability provided under TDDRA or other rules.

But whenever we try and get that self-help, we also run the risk of being sued by all the common carriers. In fact, we have a number of complaints

pending at the FCC now where plaintiffs and defendants, depending on the case, for situations like that, so this is yet another plea for a bright line so carriers can know what their obligations are and also know what their rights are so that they don't run the risk of being sued no matter what they do.

MS. HARRINGTON: Jim, are you familiar with the provision in the Administration's Crime Bill that gives the Justice Department authority, on a showing of probable cause, to get a court order to turn off service?

MR. BOLIN: I did not know that.

MS. HARRINGTON: Is that the sort of thing the carriers would support do you think?

MR. BOLIN: I think we would support something like that to the extent if it meant the FTC was going to get actively involved.

MS. HARRINGTON: This would not be a FTC function. This would be a Department of Justice on a showing of probable cause to the court.

Do you think that there ought to be a civil reason to believe court order provision? That's what it would take for us to get involved.

MR. BOLIN: I don't know that we need that level of involvement in most of these cases. There's

certainly situations where it would be in the public interest to have that kind of intervention.

MS. HARRINGTON: What do you think stands in the way when we're talking about blocking non tariffed, non essential service? What stands in your way from turning off services now?

MR. BOLIN: We think nothing.

MS. HARRINGTON: What are others thinking?

MR. BOLIN: But there's some indication that the FCC thinks to the contrary. The bottom line argument they're making is we're a common carrier. They are providing in their view ordinary telephone service rather than an enhanced service or a pay-per-call service, and therefore we're ordered to deliver traffic to them.

And we are frequently put in that double bind. We frequently tie ourselves in knots trying to decide what, if anything, we can do when we expect wrongdoing is going on.

If we had a bright line standard so that we could say -- I'll pick an example, if we can say we've had X percentage level of complaints about you and they're substantiated complaints, therefore the FCC rules require us to shut you down, you should change your practices, something like that would avoid the

double binding we get put in every day.

MS. HARRINGTON: Thank you. David?

MR. MATSON: David Matson for Sprint. I think actually for interexchange carriers there is a fairly bright line between transport and billing and collection. I know that we like, as I said before, really do very, very little 900 billing and collection.

We felt that we did have responsibility because you can determine which ones of those programs you wanted to take, and since it was de-tariffed we didn't have to take those.

But with transports I would agree that there is a problem there, that we really have no way of knowing unless someone contacts us about the problems with respect to just transporting.

MS. HARRINGTON: A question I would like the carriers to answer this afternoon is whether you believe that that transport standard also applies in the international transport context.

So you don't have to answer that now, but I want to come back to you, and in fact I don't want you to answer that.

MR. MATSON: I don't want to answer it either. I'm trying to understand. You're talking about transporting --

MS. HARRINGTON: You think you have an obligation to transport, but you have discretion when it comes to billing and collection?

MR. MATSON: Billing and collecting the regular international calls, or any international call?

MS. HARRINGTON: I am actually asking you about transport for international calls.

MR. MATSON: Okay.

MS. HARRINGTON: Richard?

MR. BARTEL: Yes. In the telecommunications context, when there's a situation of seemingly irreconcilable differences between common carriers and the commercial interest that depend on them, the solution has been one that -- I know the FCC has taken this tact of requiring separate affiliates for certain kinds of operations, and the LECs seem quite comfortable with that idea of segregating that liability.

So that may be one solution for this billing and collection dilemma on pay-per-call.

MS. HARRINGTON: Now, knowing that if you put your post-it up, you stand between this group and lunch, would anyone else like to add anything before we conclude the morning session?

No one. Here's what we're going to do. We're going to start 15 minutes earlier this afternoon, 15

minutes earlier than the posted time, so I would like to have everyone back and ready at 1:30 when we're going to talk about the definition of pay-per-call services and other topics, and international audiotext services intended to keep you awake after lunch.

So thank you very much.

(Whereupon, at 12:05 p.m., a lunch recess was taken.)

AFTERNOON SESSION**(1:30 p.m.)**

MS. HARRINGTON: Let me remind all of you that were not at the table, if you would like to participate in the public participation portion of the day, you may do so by filling out some index cards. Do we have some out on the table, do you know?

MS. DANIELSON: I'll go check.

MS. HARRINGTON: We'll make sure there's some out by the coffee and whatever the locusts have left, and just fill out the card indicating who you are, who you represent and subject -- the subjects that you would like to speak about in the public participation portion of the program, and we'll call on you, thank you.

Let me compliment you about being on time and ready to go. We're moving right along. We're really ahead of schedule. We are now on page 7 of the agenda, the discussion of the definition of pay-per-call services, and I would like to remind everyone that for this part of the discussion, we're going to be referring to handout E.

We're going to talk first about de minimis exemptions. Looking at handout E we note that some commenters have criticized the proposed exemption for de minimis items with for de minimis charges.

For example AT&T expressed concern that the proposed de minimis standard might be too easy for providers to circumvent, and instead AT&T has suggested that services be exempted from the definition of pay-per-call where the provider could show that it was simply passing along a portion of its own cost savings, achieved through a mutually beneficial arrangement, that its transaction with an IP is not materially different from similar arrangements that it has made with non IPs, or that its payments to an IP properly reflect the cost or value of services actually provided.

Let's begin the discussion. The broad discussion on the table is: Should there be a de minimis exemption, and if so, what should the bright line be, and specifically we would like some comment on the AT&T proposal. It's hard to shift back into this, isn't it, after lunch and it's a beautiful day?

Jim, would you like to say that the AT&T proposal is brilliant?

MR. BOLIN: I would like to say something if no one else wants to begin. I would like to kick this off with a general observation, which is that we don't think there should be any sort of de minimis exception as a general rule because these kinds of revenue sharing arrangements don't depend on specific revenue threshold

per minute. What they depend on is an overall volume.

If an IP can make even a few tenths of a cent per minute say setting up a chat room which is a virtually costless operation, if they can push even a few minutes through there and charge a fraction of a cent per minute that's a pretty decent profit.

So the absolute amount per minute that the carrier can earn isn't really what's relevant to motivation, isn't really what's relevant to whether or not the kinds of requirements that are unregulated pay-per-call services that would exist.

I would also submit that I know in the past there have been some concerns expressed that this three part task would be too difficult to administer. AT&T is rapidly coming to believe that our ability to come up with workable rules is out struck by the ability and obligations placed on them, and we would submit that if this kind of three part standard is something the Commission thinks isn't ultimately workable, we would prefer seeing an outright ban on revenue sharing rather than crafting a rule that would allow arrangements like TSAA's that AT&T has been engaging in in the past that we think are beneficial to consumers and beneficial to the marketplace.

But we would prefer to give those up rather than

to see some kind of de minimis threshold in place if it came to that.

MS. HARRINGTON: Jim, in terms of your comment about the sense that you're trailing after the crooks, we feel your pain.

MR. BOLIN: One example that we've seen recently, it's actually a matter we have in active inactive litigation right now, is we have seen a situation where an IP claims to lease pieces of equipment, actually usually transmitting the call to the carrier.

The carrier then claims that it's providing a payment for that lease to the IP and then hands over a portion of access charges to it. That kind of situation makes it very difficult to prove whether or not the leasing arrangement is reasonable, whether the payments are reasonable.

We think arrangements like that and other arrangements --

MS. HARRINGTON: This would be a so-called carrier?

MR. BOLIN: In this case, I think we're actually talking about an entity that is a LEC sharing access charges. But maybe they just got better lawyers than AT&T does, but they seem to be able to come up with

arrangements that would circumvent the test we can propose.

I'll leave it at that and see what anyone else has to say.

MS. HARRINGTON: We have at least one new participant at the table this afternoon. Would you introduce yourself for all of us.

MR. EISENBERG: My name is Ian Eisenberg of Mirage Marketing. I'm sitting in at the BRTF seat.

MS. HARRINGTON: And you're next.

MR. EISENBERG: If the purpose of the de minimis test is to safeguard consumers, most of the abuse that we've seen is high filed tariffs that are way above the normal long distance price of the big carriers, and people calling numbers or international numbers and instead of paying a dollar or two dollars a minute, they're paying outlandish tariffs four or five dollars a minute.

We feel if there's going to be a de minimis test, it should be based on a payment from the carrier to the marketing company or IP because that doesn't directly affect the consumer. The de minimis test should be based on if the tariff rate that is being charged is above a certain percent, like 20 percent above the normal carrier rates to make a certain phone

call.

But the payment between the terminating carrier and the marketing company, that's a contractual arrangement between two companies that really has nothing to do with the consumer and doesn't affect the consumer.

MS. HARRINGTON: Jim, do you want to respond to that?

MR. BOLIN: If I may. I think that we've often heard the argument that as long as consumers don't pay more than they would for an ordinary long distance call, that nobody is harmed. I would avert to Milton Freeman's great economic principle that there ain't no such thing as a free lunch.

Consumers may not pay for these services directly but they pay for them indirectly, that leads to two problems. First of all, by forcing long distance companies to pay access charges, they in turn get passed on to IPs, you increase the cost of the LD carriers. Those costs ultimately get passed on to consumers.

Long distance is a very competitive market. Prices are already very close to cost. If you increase the cost of carrying these calls in order to pay for these kind of services, ultimately everyone pays for it, and what that means is that the grandmother living in

Topeka who never calls chat lines pays more to call the grandkids on ordinary long distance calls because somebody else is using chat lines, and the cost of those chat lines are buried in the ordinary LD rates.

The second problem is another basic economic principle. If something is free to the user of it, they will tend to use more of it indirectly than they would otherwise.

If ice cream were made free tomorrow, ice cream consumption would skyrocket. Because these kind of chat lines appear to be free to the user who are calling them because they're not paying more than the ordinary rates, rather those costs are spread across other users and result in higher access charges, you're going to see higher uses in these kind of chat lines that ultimately drive traffic to these kinds of arrangements rather than into legitimate arrangements.

We think that's a market distortion and we think it's something that we think needs to be considered as well.

MS. HARRINGTON: Ian?

MR. EISENBERG: Technology is changing so rapidly, it's creating opportunities for both people in the industry and for consumers. If you look at a chat line, which is a good example, if they're calling a 900

number, the average price of a 900 number chat line is anywhere from 2 to \$5 a minute.

If they're calling a free local number, it doesn't cost the consumer anything to make that call. The benefit to consumers is they're staying on for hundreds of minutes. It's that alternative form of entertainment forum. They're using it all the time.

They're gaining a benefit and enjoying that chat line. It's a valuable product. It's a valuable service, something they enjoy. That's why they use it.

A good model to look at is Internet access. In England, the model used to be in England the same as it is here. You pay \$20 a month to access your ISP, \$20 to 30 a month.

In the UK it's closer to I'm sure like 90 to 95 percent in London. All ISPs are free now. They're sharing in the terminating costs of the local call. It's a measured service in London.

It's a great benefit of the consumers, to the users, and this is something that technology has made available to them. To force us into an old fashion model where that would have to be a \$30 for a 900 call is not a benefit to the consumer. It hinders a consumer and what product and services are available to them.

MR. BOLIN: If I may just briefly?

MS. HARRINGTON: Sure.

MR. BOLIN: I'm not familiar with how Internet access works in Europe, but I know how calls work in the United States. Ian's argument makes sense only if you assume these calls are really free. You assume that nobody is making any money on them which means these chat line providers are charitable Internet providers.

In fact they're very profitable. That's why they continue to exist. That's why they proliferate. The only question is how they're paid for, and they're paid for indirectly through long distance revenues rather than directly by the user that's actually calling.

But everybody ultimately bears the cost in the form of higher rates. You can't make money out of nothing. No matter how much technology changes, somebody is making a profit, and the profit comes from somewhere.

MR. BRENNAN: A question from Mark, and then, Phil, we'll get to you. Don't worry.

MR. HERTZENDORF: Just a question of clarity for Jim at AT&T. With regard to -- and I hope I got the acronym right, TS --

MR. BOLIN: TSAA.

MR. HERTZENDORF: -- TSAA arrangements, could

those fall under the exemption that was proposed by the Commission? I understand that you would prefer the exemption was drafted differently if possible, but does it fall under this?

MR. BOLIN: Do you mean the exemption on the handouts to where payment would not be for call simulation?

MR. HERTZENDORF: I'm sorry. The 5 cent, 50 cent thresholds.

MR. BOLIN: The answer would be it depends. TSAA rates are priced to be cheaper than local access. It depends on the access rates being charged in the area. In general TSAA would be permissible under the proposed rule.

MS. HARRINGTON: Phil?

MR. ADAMS: Actually it's Danny Adams. We're trading off.

MS. HARRINGTON: Oh, I'm sorry.

MR. ADAMS: You've insulted us both, Eileen, but we'll get over it.

MS. HARRINGTON: Cynthia? That's my default name for everybody.

MR. ADAMS: For Cable & Wireless. Just a comment on the AT&T concern, which is I think when we're talking about local access charges, we're at the wrong

agency.

I know these issues are pending before the FCC and have been for some time, probably not moving quite quickly enough for everyone's taste, but whether local exchange carriers access charges are reasonable, whether paying part of those to IPs is reasonable is -- I know there are a number of formal complaints, probably AT&T, against local exchange carriers pending at the FCC now, and I think this is the wrong agency for that discussion.

MS. HARRINGTON: Jim?

MR. BOLIN: I think we can dispense with that remark. We're not here talking about access charges. We're talking about access charges that are being paid over to IPs as a disguised way to pay for chat lines.

I agree the FTC doesn't have anything to say about access charges, but what we're seeing is actually charges that are being inflated for the purpose of paying for chat lines and other information services.

What we're seeing are in effect side payments, hidden payments for these information services that are purportedly free.

MS. HARRINGTON: Ian?

MR. EISENBERG: Unfortunately I think that's far broader reaching. It's not just chat lines. It's also

-- in the U.S. most, not most but a good portion of major ISPs when they locate their modem pools in cities sign up with CLECs for a couple of different reasons.

One reason is CLECs because they're getting what's called reciprocal compensation from the incumbent LECs, they can sell lines through the ISPs for a cheaper price, and they do share some of the payment or kickback as the term that people have used here.

That would go away as well. That would fall outside of de minimis test because modem calls are often very, very long. People stay on their modems all day long.

The other example is a lot of newspapers and yellow pages have free services, free sports scores, weather updates, soap opera updates, jokes, horoscopes, things like that.

They're free if you're calling from that city. If you're calling from outside that city, they have normal toll charges associated with them, and a lot of those lines also come from CLECs who provide payments in form of reduced rates or actual payments to the companies providing that information.

And that's a benefit that will disappear from consumers.

MS. HARRINGTON: Question from Adam?

MR. COHN: This is a question to AT&T. It sounded earlier as if you were saying that you don't think a de minimis approach even including the proposals that you had in your earlier comment two or three two years ago would be workable.

Is that what you're saying, or is there something that you can think of that would achieve the goals as stated in the proposed rules?

MR. BOLIN: I think at this point in terms of making three proposals could go something like this. I think at this point our preferred outcome is simply no revenue sharing permitted, that the bright line rule I think will benefit everyone in the end.

Our second preference would be the test we originally proposed in '97, and we stand ready to help the Commission implement such a test and help it refine rules to implement that kind of test.

Ian is correct that other revenue sharing arrangements exist in the market today, including our own for TSAAs. Again we think they're efficient and promote competition, but we're willing to forego those in the event the Commission adopts a bright line test here.

Our third preferred outcome would be the test that's proposed in the handout that a payment not be for

call simulation. We would add to that test not only that the payment not be for call simulation, but that the service provided be necessary for the completion of the call because otherwise potentially you could imagine where an IP-- we'll take a legal example that will fit the letter of the rule if not the spirit, an IP that provided a carrier with office supplies and got paid two cents a minute for terminating charges to say that's a payment for erasers and white-out standard could say that's a payment call simulation and therefore it's all right.

So we think any payment needs to be necessary for the completion of the call.

MS. HARRINGTON: Adam, follow up?

MR. COHN: The follow up question would be taking a look at the numbers, the ten cents and five cents, that whatever it was, five cents and 50 cents, do you have any comment about those particular numbers in relation to something like a TSAA or such as was mentioned a few minutes ago, the operation line operated by a CLEC?

MR. BOLIN: I don't know as to information lines and uses whether these would be too high or too low to permit these to continue. In the case of TSAA's, the proposal for five cents a minute or 50 cents would

generally permit TSAAs to continue.

Having said that, it would also permit an awful lot of scams to flourish, and I think that those rates -- if we adopt a de minimis threshold in this proceeding, those rates are clearly too high given that they represent in some cases more than a caller pays for the completion of a long distance call.

MR. COHN: Do you have any suggested other amounts that you would endorse?

MR. BOLIN: I can't imagine a de minimis threshold that would work, even a fraction of a cent per minute can be profitable if you push enough minutes through your line.

MS. HARRINGTON: Danny??

MR. ADAMS: Just so I understand this, Jim, you talk about revenue sharing. Is this revenue sharing between the local telephone company and an IP or service bureau? Is that the revenue we're talking about?

MR. BOLIN: I think between the IP or the IXC.

MR. ADAMS: The IXC or the LEC?

MR. BOLIN: Both, the IXC and the LEC. I think any revenue sharing between any carrier should be prohibited.

MR. ADAMS: Aren't these charges that the carriers are charging including sharing tariff either at

the FCC or the state or both?

MR. BOLIN: The shared payments are not tariffed or shouldn't be. The access charges are.

MR. ADAMS: The ten cents a minute for terminating access is tariffed, and your objection is that part of that is paid to an IXC for generating traffic.

MR. BOLIN: Yes.

MR. ADAMS: You think the Federal Trade Commission should have an opinion on whether that ten cent a minute tariff rate is reasonable enough?

MR. BOLIN: No. I think that the ten cent a minute rate exists because of this high payment. I think the only reason that we're seeing access rates of 40 cents in territories is because we're seeing this kind of revenue. We have a number of LECs out there that only exist in order to promote these chat lines.

I don't think that the FTC has jurisdiction over access charges. I never heard the FTC assert that they do. I do think the FTC clearly has the ability to say to an information provider, If you're engaging in revenue sharing with a carrier, then you're engaging in a practice that we're going to deem prohibited. We're going to deem that a pay-per-call service because it's a side payment for information service.

If access charges stay at the rates they are, that's something we'll have to deal with at the FTC.

MR. ADAMS: My understanding, so you're saying they can order the IP, not to share revenue with the telephone companies, and that won't have the effect of ordering telephone companies not to share revenue with the IPs?

MR. BOLIN: I think they can prohibit it in both directions.

MR. ADAMS: The FTC can do that?

MR. BOLIN: I've never heard an argument to the contrary.

MS. HARRINGTON: I would just note what we're talking about is defining the term pay-per-call services. Richard?

MR. BARTEL: I see the discussion got off in another direction. Maybe I can delay.

MS. HARRINGTON: I had a question actually for Ian, a follow up. I'm interested -- could you for the record describe a little bit more fully the revenue models that the ISPs in the UK were operating on that includes access at no front end cost to the consumer, but compensation to the IP or the ISP rather as part of some sort of revenue sharing with the carrier?

MR. EISENBERG: As I understand it in the UK all

calls are a measured service. If you make a call across town, that costs you something, a fraction of a cent a minute, and so when you call an ISP, that's a standard call inside of London, and you're paying the normal call cost, and the carriers share in a portion of that call cost with the ISP who is probably a carrier as well like a CLEC.

That would be our program down there, and that's how they're offering the Internet service, so it's sort of a pay-as-you-go model.

MS. HARRINGTON: Thank you. Adam has a follow up question.

MR. COHN: But you would have to sign up presumably with a specific ISP. As a consumer were you would have to sign up with them or could you call to any ISP and have that amount, similar to how a pay-per-call system would work?

Could you just call any ISP up and connect to it and the ISP would collect for that service.

MR. EISENBERG: Yes, and in fact there are ISPs in the U.S. operating that way today that are operating as a pay-as-you-go model as local calls, and you call in and log in as a generic like guest and test or whatever it is, and you get your E mail account. You set everything up while you're online.

MS. HARRINGTON: Jim and then Eric?

MR. BOLIN: Just briefly. It's a little bit off topic from Ian's last remark, but I would point out that where we're generally seeing this kind of revenue sharing arrangement in the United States is in a situation where access charges are grossly inflated, and I won't name names, but AT&T is seeing access charges in the 40 cent per minute range and up.

Keep in mind those customers on those calling plans pay 5, 10 or 15 cents a minute and AT&T's is being required to pay 40 cents a minute to terminate a long distance call, and some substantial portion of that 40 cents is being paid to the IP, that what we're seeing is a gross market distortion that can't be deemed free by any measure.

We're not ordinarily seeing these kind of arrangements cropping up in cases where access charges are at normal levels that reflect the kinds of levels you see in the market.

The situations where we are I believe IAN mentioned cases like local time and weather lines offered by LECs, in some cases we are seeing those sorts of arrangements but they're not generally being called by out of town callers.

Those kinds of things are typically high volume

services offered by a LEC locally. As submitted in our comments, we don't have any objection to those continuing. What we worry about are the ones introducing market distortions, and there are a lot of those out there.

MS. HARRINGTON: Eric?

MR. LEE: Eric Lee, ECA. I would warn against putting too much stock on the British model because actually what's happened there of course as you probably know is that the customer then gets free IP service, free high activity, and so there's Dickson, which is the second largest ISP now in the UK, which operates solely through this revenue sharing model.

So I mean there is some real benefits there, but on the other hand, because of that there's some real disparities in industry market structure.

MS. HARRINGTON: Jill?

MS. SANFORD: Yes, hi. Jill Sanford with the New York Assistant AG hat on and not the NAAG'S subcommittee because as a subcommittee we have not discussed this, but I do want to make a point, in New York, the AG's office is involved very heavily in proceedings before the Public Service Commission dealing with some of these reciprocal compensation issues, and particularly with the ISPs and chat lines and CLECs

versus the LECs on a number of these issues.

And I think I may be agreeing with Danny here that I'm not sure that this is the proper forum for these issues to be discussed, and I'm not sure that the Attorneys General at this point and certainly New York would want to take a position on those issues in this forum as we are briefing and working through those issues in our State Commission.

MS. HARRINGTON: Richard?

MR. BARTEL: I think the connection here with the FTC's jurisdiction is that should there be excess charges that were smoke screens for some sort of back scheme, whether it be sharing revenue, whatever, that the nexus is that that constitutes somewhat of a joint venture with the carrier, the IP, and therefore some form of liability should attach with respect to consumer issues.

MS. HARRINGTON: That's what we think or have been thinking, and that's what gave rise to the proposal, although the comments are very helpful.

MR. BARTEL: I would like to say one other thing and that is, there's a lot of relationships of carriers to tariffs, and I think that the public and the customers are not aware that a tariff is not a law, and a tariff is not something that the agency at which it

was filed has actually looked at it and made an adjudication of reasonableness or anything of the sort.

It's simply a notice filing saying, This is what we're going to do, and then it doesn't become an adjudication unless somebody objects to it.

MS. HARRINGTON: I would like to move to the next topic under definition of pay-per-call services, which is the proposed rebuttal presumption that a payment to a provider -- I'm sorry, the proposed rebuttal presumption concerning payments to providers in the rule, is that an appropriate rebuttal presumption?

And the other question that I would like us to talk about is whether there are additional exemptions from -- if there is to be a de minimis exemption, are there additional exemptions that would also be appropriate?

Anyone care to discuss either of those questions?

MS. HARRINGTON: Peter?

MR. BRENNAN: Thank you. Thank you, Peter Brennan, TPI. Just on the second question you asked on page 2 of your agenda. You suggest perhaps either exchange or local exchange services should be exempted, and we can't see any reason for that.

MS. HARRINGTON: We also touched on that issue

yesterday some. Adele? Could you identify yourself for the reporter?

MS. SIMPSON: Adele Simpson, International Telemedia Association.

MS. HARRINGTON: Can you use the microphone, please?

MS. SIMPSON: The International Telemedia Association and its members really feel like that there should be some exemptions, and those are the services that do not charge a premium, and when we look at the definition of pay-per-call services, that has assumed that a premium is charged, and in the case of international services, the charges are no more than the charges for any other international call, and -- or standard call.

And when we address it in the next section, we'll talk about all the means that the International Telemedia Association has done in the last two years to address some of the concerns at the last workshop, but clearly from our members' perspective, there is an exemption when no premium rate is charged.

MS. HARRINGTON: Anyone else on either of those questions or on the definition of pay-per-call service? Peter?

MR. BRENNAN: One more thing regarding the

question that you asked about directory services and how that should be defined for the rule.

MS. HARRINGTON: Yes.

MR. BRENNAN: We would strongly advocate that directory services be tied to the definition of what existed as directory services when the rule was written, and because that's a changing terrain now, given the fact that particularly local exchange carriers can get into the information business, we want to make sure that there's a level playing field so we would advocate that you go back to what we commonly understand at that point in time which was the reason why they were sort of grandfathered at that point.

Thank you.

MS. HARRINGTON: Anyone else? Mark, you look like you have a question.

MR. HERTZENDORF: I didn't understand Peter's remark.

MS. HARRINGTON: Mark doesn't understand.

MR. BRENNAN: Thank you. Directory services, eventually directory services may come to mean all kinds of other things depending on -- you could have your Internet addresses that you have. It could be directory services that have more commercial applications, and typically which is the historical looking up of a

telephone number.

So to the extent that others in the marketplace might seek to expand a definition of directory services, we think the definition ought to be as it was when the law was written. When the law was written, if you remember, the reason or the rationale for that was people are used to paying -- used to not paying for directory services.

And so even though by any other measure those might be considered a pay-per-call, if that exception was carved out saying -- actually in many states if you make a certain amount of calls, you pay for it anyway, but rather than subject those calls to the pay-per-call definition, we think the definition for directory -- if directory services remain exempt, we believe that they ought to be defined clearly as directory services as they were when the law was written.

MS. SCHWANKE: Can I ask a follow up? Then how would you propose -- do you think the language as it existed in the current rule is efficient to do that, or do you have any suggestions for how we would preserve that exemption as it originally was enacted?

MR. BRENNAN: I would like to take a look at that and get back to you, if I may. My gut is I don't think it was, but I think it warrants a little more

definition, but in fairness I would like to get back and supplement the record on that.

MS. HARRINGTON: Okay. Yes, Richard?

MR. BARTEL: I think that's an important question that needs to be addressed maybe in the next 15 days. There might be some more filing on that because many directory service operations now includes national directory assistance with call completion, and there are some consumer issues that may be related to the call completion portion of it.

MS. HARRINGTON: That's a good point. All right.

What I would like everyone to do is stay right where you are, but stand up and stretch for just a second, and we are going to move into the discussion of international audiotext services, but let's just take like a 30 second stretch.

(Pause in the proceedings.)

MS. HARRINGTON: And now for a commercial message. The FTC day-care center tots art sale is going on in room 332, right below us, and the next break is scheduled for 3:15, so if anybody would like to buy some great art from the tots, here's an example and here's another one.

So anyone who's interested in art, it's in room

332 right below. We've been shamelessly flagging Mr. Ming upstairs.

UNIDENTIFIED SPEAKER: That's what I heard.

(Pause in the proceedings.)

MS. HARRINGTON: Let's focus on page 8 on the agenda now, please. The subject is international audiotext services, and let's get right to the first question which is a very important one.

Is it technologically feasible for international audiotext services to comply with TDDRA requirements to provide free preambles, to segregate audiotext charges from toll charges on the telephone bill, to provide per-minute cost disclosures, and to provide blocking?

That is the question on the table. Is it technologically feasible? Adele, and then Jim.

MS. SIMPSON: Adele Simpson representing the International Telemedia Association, and representing the International Telemedia Association for our members, the answer is, no, it's not technologically feasible to completely comply with TDDRA regulations for our members.

There are a number of things that we have done and will continue to work on, and I think we would like to look at each of the four things that you talk about.

For instance, when we talk about free preambles,

our members cannot provide the free preambles. The point in time that the charging to the consumer begins is determined by the time answer back supervision, and throughout the history of international services, that has been litigated and is pretty much controlled by ITU recommendations as to when answer back supervision is sent and calling is charged.

And that's based on bilateral agreements between a U.S. carrier and a non U.S. carrier for which our members are not -- have no access to those bilateral agreements.

MS. HARRINGTON: Adele, can you tell us what answer back supervision is?

MS. SIMPSON: I apologize.

MS. HARRINGTON: That's okay.

MS. SIMPSON: I have a long history of telecom, so I can explain to you, but when you make a call overseas, the one way talk path is opened, and the person in the U.S. can talk but the person on the other end cannot respond.

And early on in international, many times people would call internationally, and they would tell all their family news, and no answer based supervision would ever come and the U.S. carriers were defrauded because there was never a mechanical response that came back to

the U.S. carrier that said, Start billing.

So especially as there became competing carriers to AT&T, the requirement for international carriers to provide that electronic signal back as soon as an off hook situation occurred on equipment on the non U.S. end, so that billing the carrier so that the U.S. carrier would not be defrauded, and that's a very important consideration which I'm sure it's 30 years old, 20 years at least in determining when billing starts.

And that's a bilateral agreement, ITU recommendations under U.S. case law.

MS. HARRINGTON: Is there an ITU standard for what --

MS. SIMPSON: There is an ITU recommendation for when billing does occur.

MS. HARRINGTON: What is that?

MS. SIMPSON: I believe it's as soon as the off hook situation occurs in the equipment in the non U.S. location.

MS. HARRINGTON: What is the effect of an ITU recommendation?

MS. SIMPSON: It's based on a carrier's willingness to participate.

MS. HARRINGTON: That's a voluntary service?

MS. SIMPSON: It's a voluntary service because there's no court to litigate. The ITA is a member of the ITU. Our members are not party to those bilateral agreements or are willing to follow the ITU regulations. We were always in discussion with our non U.S. carriers and are willing to discuss with our U.S. members ways to resolve this situation.

Again the control of billing is in the hands of the U.S. and the non U.S. carrier, so we have in the last two years really taken some steps to comply as far as possible with the TDDRA requirements.

For instance, the ITA's code of practice has been amended to require that all members provide a preamble in the form of that which was stated in the Commission versus the International Audiotext Services, and in that consent order there was a recommended preamble.

So the ITA's code of practice which we don't want to repeat because it was in our filing clearly shows that we have followed the Commission's recommendation, and wherever possible we were willing to comply with TDDRA as far as technologically feasible as to preambles.

On the permanent cost disclosure, again ITA members as well as a great many Americans have a

difficultly determining what the cost of any call is, and I think that's evidenced by some of the recent understandings in the FCC and the FTC. It's very difficult -- international audiotext services, again it's very difficult to do direct cost disclosure.

But again our code of practice requires in our preamble that we do say to the customer as do the advertising requirements that's an international call. In the preambles there is a requirement to say, Call your operator to determine the cost of the call.

And one would think that you might be able to do ranges, but I think Jim has pointed out even interstate U.S. services, you may pay from five cents to \$4 a minute for the same service in the U.S., so internationally the same thing occurs based on plan, carrier, et cetera.

It's even difficult to give meaningful ranges. We might be able to put a range but it's not really meaningful to the caller, who I think would always assume they were on the low end of the range. We have -- again in our preamble we state as in our advertising that our national rates do apply.

On the third issue of blocking, again our members do not have the capability to block calls from the United States. Only U.S. international facilities

based carriers or carriers that have networks can actually do that.

In general our belief is that U.S. carriers can block international, access to all international calling. As of yet we're not aware that anyone blocks on a country by country basis, and I believe in the AT&T filing, they made a specific reference to the lack of capacity to do blocking on a unique international numbers, even if they had proof, whatever proof is, that that was the number that should be blocked or had a legal requirement to do that.

So again our members -- that's really beyond our technological capabilities, and again on segregated billing, billing is a function of a U.S. entity, and it's also based on numbering plans, and numbering plans tend to be a country code, and then the U.S. carriers really make no judgment about how many digits behind that country code, and it's very difficult for anyone in the U.S. to address that, but certainly billing is not an issue for the ITA members.

MS. HARRINGTON: Thank you. Jim, then we'll have follow up questions from Adam and Mark.

MR. BOLIN: I think we would just second Adele from the point of view of interexchange carriers operating in the United States. Segregation isn't

possible on the bills because these kinds of calls are on ordinary international dialing sequence. They're not identified by any particular codes or other ways that we can know when revenue sharing is occurring or not occurring, and therefore we can't segregate them on bills.

We can't provide cost disclosures because, one, we can't know which calls disclosures are required for. It is theoretically possible to redesign our network so that every call that is about to go overseas gets stopped, the cost disclosure gets inserted, and the call goes on the way, but that which is theoretically possible is not financially possible in this case.

That would be an immense restructuring of our system to do something like that, so cost disclosures aren't feasible either. Blocking isn't feasible for two reasons. One, again we can't identify the specific calls on which revenue sharing is occurring so we can't know what numbers we need to block, and as Adele pointed out, while we could block entire country codes, we can't prevent you from calling West Germany, I guess there is no West Germany, Germany if you wanted to do that.

We don't have the capacity in our switches. Even if we could know which of these numbers needed to be blocked we don't have the capacity to block the

literally thousands and thousands of numbers that are out there in which revenue sharing is occurring.

MS. HARRINGTON: Adam?

MR. COHN: It sounded like the feasibility issues that you raised were more like cost and contract feasibility that would be very complicated to get involved in a contract that involves other parties and would be financially -- as AT&T pointed out would be financially extremely difficult.

It would require reconfiguration of networks, but it still sounds like it's technologically possible, that there isn't a technological barrier to doing these things, but if there were contractual agreements, as we mentioned in the past, there were delays before charges began for international calls and it has been done in the past.

If contractual arrangements were made and if payments were made to the appropriate parties, that would bear the cost revenue sharing with the parties that actually bear these costs, what is the technological barrier to complying with TDDRA?

MS. SIMPSON: Again Adele Simpson representing the International Telemedia Association. Our members are not privy to those bilateral agreements. Many of our members, a great majority of them -- we do have

carriers of our members, but a great majority of our members, a great majority of them are not privy to the electronic requirement or electronic capability to manage when answer back supervision is here, and certainly two of the major facilities based carriers in the U.S.

And I could only state from 17 years at AT&T, 12 of those in international, that if you regress to the point at which you try to establish an electronic permissibility to not initiate billing until some imaginary thing had occurred so that a preamble could occur, I think most immigrants or most people with relatives overseas would announce, happy birthday, happy news, new babies are being born, that would be much more of a problem to U.S. carriers than anything in the great mass of the billions of international messages that go by.

The ability for consumer fraud and international unfortunately is higher I believe in situations like that, but again that's a carrier issue, but from our member issues, we just are not technologically in control of those decisions so I think to ask that of us is -- we can say no.

MR. COHN: I wanted to follow up. Has the ITA or ITA members made an attempt to negotiate with

carriers to become involved in those contracts, to which they're not a party right now?

MS. SIMPSON: In many cases we have offered to get involved in that, but I know that CWWI, you get involved in sovereignty issues, and even though they are sitting next to me at the table and are a member of our organization, at no time -- even though we might work with them, I don't believe that our members would expect that even member carriers, much less other carriers, would give up sovereign rights to negotiate bilateral agreements with U.S. carriers.

And I think it's important to note that you look at a simple situation of U.S. carriers to UK carriers, you may have 1,400 international record carriers in the U.S. and in excess of 500 in the UK, so it's not simply a country to country bilateral. It's a carrier to carrier relationship and a lot of sovereignty issues that our members simply, although we might -- we're always willing to work and have been willing to resolve these issues, but the technological ability to do that as well as the practicality of getting involved in those thousands and thousands of U.S. carrier to all other world carrier relationships is not feasible. Is that a good word, not feasible?

MS. HARRINGTON: Just one second, Danny. We'll

get to you. Mark, did you have a question?

MR. HERTZENDORF: Yes, I do. With regard to the difficulty of determining the price per minute, and I guess also with regard to other difficulties of complying with TDDRA, does the use of 10 XXX have any potential to resolve some of these issues? For example, you can't determine the price per minute because you don't know which long distance company might be employed. If the advertised number used 10 XXX, would that resolve the problem?

MS. HARRINGTON: Danny?

MR. ADAMS: I'll try that and then I want to come back to Adam's question. For 10 XXX, I don't think it helps. The problem is -- I'm speaking for Cable & Wireless by the way. I'm supposed to say that at the beginning.

The problem is that the price disclosure should come at the far end, okay, and Cable & Wireless is an example. It should come at the far end, say Dominica, to PIC a country, not in the U.S., and that being the case, you're going to have U.S. callers using Sprint, AT&T, MCI, paying different rates.

You're going to have callers importantly from Canada, from Australia, from the UK, there's lots of English speaking countries not in the United States that

have totally different rates.

MR. HERTZENDORF: That depends what numbers are advertised.

MR. ADAMS: That's right, but as far as we're talking about the preamble, the disclosure in the preamble, correct?

MR. HERTZENDORF: I was focusing on the problem of figuring out the cost per minute, but it would seem to me that the use of 10 XXX, if all the people that -- it would seem to me, why don't all you guys get together and make a local 10 XXX number just for foreign numbers?

MR. ADAMS: It doesn't work because AT&T's got customers, and they're going to call these numbers, and you can't limit what carrier people use. They're going to use -- we don't want to.

If I can come back to Adam's question, if that's all right, I can address yours further, Mark, if that isn't satisfactory. Cable & Wireless would say that it is technologically feasible. If humans can put a man in the moon, they can certainly figure this out technologically. It's economic, you're absolutely right.

And the problem is sort of beyond economics in the sense that it requires carriers to work together.

There's not a single carrier -- unlike the domestic situation where you have a 900 carrier working with IPs to control end to end. In this case we have foreign carriers working with multiple U.S. carriers, and it requires all those carriers to work together to make it work but it can be done.

Cable & Wireless, for example, is willing to give free preamble, is willing to provide the information, the segregated number set, so they can be blocked if U.S. carriers choose to, and that same information can be used to have separate billing if the carriers choose to.

Blocking is, we've presented what Cable & Wireless can do about blocking, that's a U.S. carrier issue, but in terms of the information that's acquired in the bilateral agreements that were necessary, Cable & Wireless is willing to do that, in fact has done some of that already, charge backs for example. Cable & Wireless has agreements with U.S. carriers to allow U.S. consumers who complain about calls to charge those back, not be charged, and Cable & Wireless does not charge the carrier anything for those calls.

MS. HARRINGTON: Richard?

MR. BARTEL: I see that there are many technical issues. Technical feasibility doesn't seem to be a

question. It's a matter of economics in terms of the carrier side of the equation, and you mentioned there are also political considerations of sovereignty involved in negotiations with national telecommunications administration.

I think there is a solution to that close to the United States, and that is that most of these administrations in islands in the Caribbean and so forth are members of the North American numbering plan and have area codes assigned through that and are subject to the guideline and industry number and committee with respect to the assignment.

It seems from the consumer's perspective, most of the complaints come from situations in which it's not so much a matter they've been defrauded is that a lot of the complaints come from the concept that the charge is unexpected because they didn't know what area code they were calling or something along that line in that context.

So maybe the solution is fairly simple and that is for NAPA, and the industry numbering committee simply to say that all non U.S. area codes must start with a digit 9, and that puts this consumer on sufficient notice that there is something different about this call.

MS. HARRINGTON: Adele?

MS. SIMPSON: Adele Simpson, the ITA, and I think I would like to address Mark's call about the 10 XXX.

MS. HARRINGTON: Okay. I'm going to let you come back to that, but what about this suggestion that Richard just made, that maybe all of the non U.S., non American exchanges could have a distinguishing characteristic? Danny?

MR. ADAMS: Sure. I think it's a theoretically prospective idea that practically can't be implemented for many reasons, sovereignty being one. For example, here we're talking about lots of nations who may or may not chose to have their designation start with 9 for whatever reason.

Secondly, we've already got how many millions of telephone numbers out there that with numbers on them. We're talking about changing all of those. It's just -- the economics of changing everybody's telephone number outside the United States so that they can comply with the international audiotext rules is probably not economically feasible.

MS. HARRINGTON: Just one question I would like for you to hold in mind and we can return to is if the barriers to some of these proposals in the FTC rule are

economic and not technological, and there is a record of economic harm to U.S. consumers arising from some use of these numbers, then we're in a situation where we're balancing economic interests.

And it would be useful to hear thoughts about ranking the difficulty of the economic obstacles because I think there's a very ample record and it's growing all of the economic harm to U.S. consumers. The Federal Trade Commission has a particular responsibility to attend to that and to think about how to mitigate harm to U.S. consumers.

So that's just something that I would ask you to think about. Richard?

MR. BARTEL: I have a response just on that point and to defend this idea of the area code starting with 9. United States has been going through -- and the FCC can confirm, getting a lot of pressure on this, a multitude of area code splits, area code changes. The State of California Public Utility Commission recently is involved in trying to defend millions of customers that were faced with the cost involving area code changes.

And this is becoming a hot political issue domestically. We're talking about the Caribbean. They just recently got their new area code. They used to be

all 809, and I don't think the numbers of lines involved in the Caribbean is anywhere near the numbers of lines that are affected by just one area code split in the United States in a major metropolitan area.

So I think the economics of changing area codes outside the U.S., and I don't mean just -- I'm not necessarily saying Canada here, but outside the U.S., although there's an emerging Canadian ISP problem, is not that big of an economic impact.

So backing the economic impact of that particular proposal I think it falls far below what is already being suffered by consumers in changes of area codes.

MS. HARRINGTON: David?

MR. MATSON: David Matson with Sprint. I'm not a technical person, but if I understand correctly, what you're saying is for the Caribbean where I guess not all these audiotext providers are, and I'm sure they would all leave as soon as this was implemented, by adding a 9 before it, let's start with a 9, I guess that would require us to switch up all of our switches.

And then I'm trying to also understand that -- I am still not sure I understand how that distinguishes between an audiotext call and a regular international call so I'm not sure how that still solves the problem,

but maybe Jill can help me out.

MS. HARRINGTON: Jill?

MS. SANFORD: Jill Sanford, the New York Attorney General office. The Attorneys General are seeing the same kind of concerns and complaints that the Federal Trade Commission is also seeing, and we've been a strong advocate for the expansion of the Pay-Per-Call Rule to international audiotexts, and I've been listening and I hear the technological and privacy concerns.

I was going to mention the idea that Richard had with some distinguishing feature. Another aspect of this though is also the advertising and marketing of these services, even given your concern about the technology and the privacy, could the underlying providers still advertise?

We're seeing is normal international rates applied, and there's an implication to the consumer that that's going to be the normal per minute rate to these countries when in fact the rates are 20 to 30 dollars per minute.

I still haven't heard why at least in the advertising and marketing aspect of it there couldn't be greater disclosure and that normal is not what may be happening.

MS. HARRINGTON: In answer to Jill's question, Danny? Danny or Adele?

MR. ADAMS: Well, I guess two parts of the answer. One part is whatever the charges are, they were the U.S. carriers' charges to that country. They may not be normal since people -- if people don't understand they pay more for international calls than the five cents a minute they pay MCI on Sundays for interstate calls,, that's one issue.

If there's a preamble that says international rates apply, that to me is much more informative than having an area code start with a 9. As far as \$20 or \$30 a minute I'm not aware of anything like that. The prices I'm familiar with range from 50 to 1.50, 50 cents, not \$50.

So I would be very surprised to hear that there were \$20 to \$30 a minute being charged for international rates being charged U.S. carriers, and to the extent there are, they have to be on file with the FCC and tariffs which can easily be regulated. That's one reason I'm surprised, if there are any, that they exist.

MS. HARRINGTON: Let's go to Adele and then Jim.

MS. SIMPSON: I probably should defer to Jim as

he's more appropriate, but Adele Simpson, International Telemedia, and I'm sort of answering three things in answering all of these questions.

On the 10 XXX, if one is not aware because of the merger and acquisitions as well as for other reasons, carriers have multiple 1010 XXX numbers with different rates, very familiar, those of you with the -- some of the issues that have come up with carriers getting another 1010 XXX number and advertising and marketing through another way.

So again it is very difficult, even on a carrier basis, to understand what a range of rates would be, so that's sort of a problem with the 1010 XXX rates, which I think is a problem not just for international but is a problem for interexchange carriers.

On the issue of using a 9 within the North American dialing plan, and we do have members who use both international such as 011 access as well as one plus in the Caribbean, I think those areas in the U.S. that already have area codes that begin with 9 would best extremely distraught if suddenly some motion is forwarded that every NPA that started with 9 was associated with audiotext services.

And I think their are entire states that fall into that as well as some of the major metropolitan

areas, and as far as the North American dialing plan, that is a sovereign entity that includes countries other than the U.S., and there are some again international sovereignty issues where the U.S. does not have, I believe, complete control over issue answer of those numbers.

Also, when we're talking about the preambles and when we talk about international rates apply and we say the same thing on advertising, as ITA has stated within its filing and I did previously, our code of practice which was attached to our filing requires that our members advertise that say international rates apply, that the preamble says that international rates apply, and I believe there have been several instances where individual carriers have tried to file tariffs that are excessive.

The FCC based on consumer complaints have taken swift action and have already -- as Danny mentioned, that is readily controllable, and if we look at the two years since the last workshop, the ITA and its members believe the level of complaints from international have decreased dramatically based on the things we have done.

And we would like to go on record as saying the ITA and its members are opposed to any illegal, fraudulent activity, as have been in many well known

situations, of which there is much case law to deal with fraudulent activity, and the ITA supports that completely, but when we look at international rates applied, our position is the same for our members.

We simply have no -- there's no web site that you can go to determine a range of prices, and for those of you who were unfamiliar with the international telecom arena, two of the now three facility based carriers are at the table, and they resell their services to many other carriers, and yet to a non U.S. carrier and therefore to the ITA members, they only recognize traffic coming over from AT&T, Sprint and or MCI Worldcom.

So in that incident based on what Danny said, we have no way of knowing who is the carrier that has the relationship with the consumer or what price that consumer might be charged.

MS. HARRINGTON: Adele, I would likes to ask some questions to follow up on the ITA's activities and some things that its members have done and really illustrate -- that illustrate some of the problems that we as law enforcers have, not withstanding efforts that have been undertaken.

Danny's reference to phone numbers in Dominica, you may or may not know that the Federal Trade

Commission recently filed a case, and it was filed against an unknown perpetrator of deceptive practices, and the reason that the perpetrator is unknown is because, notwithstanding the comments that Cable & Wireless filed in this proceeding about the steps that it takes to know who its IPs are, to have contracts with them, so on and so forth, when we sent Cable & Wireless a CID to learn that, it didn't know.

And so we're in a position know where someone has sent scores of thousands of unsolicited commercial E mails to consumers all over the United States falsely inducing them to call a phone number in Dominica that is used by an international audiotext information provider, and Cable & Wireless is the carrier, and you don't know who that is.

You don't know who your IP is, and you haven't been able to tell us that, which is really not what the comment that Cable & Wireless filed in this proceeding would lead us to think your response to those questions would be, so we are left wondering how effective any of these practices that have been adopted are when this kind of scheme is perpetrated, and when we need to know who's behind it, you can't tell us.

MR. ADAMS: May I respond to that?

MS. HARRINGTON: Sure.

MR. ADAMS: Danny Adams for Cable & Wireless. Just to complete the record, the schedule of events, not to take anything away from the Commission's rapid response team, but Cable & Wireless received an inquiry telephonically about the number on approximately March 19, investigated the number and terminated it on March 26, heard first from the Commission four weeks later, approximately April 20, responded to the CID approximately or on April 26.

The Commission filed this lawsuit May 18, so Cable & Wireless had in fact terminated the number about eight weeks before the Commission filed this lawsuit.

MS. HARRINGTON: Why don't you know who the information provider is if you have contracts with your information providers?

MR. ADAMS: In that case we don't have a contract with the information provider. What we have done is provide information about the people that we do have contracts with, which undoubtedly will lead to the identity of the information provider.

So there's a chain there. Cable & Wireless has cooperated in this chain. I think this actually provides an example of how that could work because the IP will be identified based on the information provided by Cable & Wireless.

Consumers were protected by Cable & Wireless by actions before the Commission even contacted Cable & Wireless, and since we don't have direct relationships with the IP, we don't know the exact numbers, but our estimate is the IP actually netted less than \$15,000 or approximately \$15,000 from this activity.

So it seems to me this is actually an example of how an actual audiotext protections can work.

MS. HARRINGTON: Jim?

MR. BOLIN: I'll say for the record that I have been advised by my secretary that there is an there's an FTC CID on for my desk, and I'll get back to that as soon as I get back to New Jersey.

I would like to talk about a couple of things that have come up over the last few minutes. First is Mark's suggestion that carriers and IPs get together and just advertise a 1010 XXX code.

AT&T's interpretation of the FCC's rules and the governing law is that would be illegal, that a common carrier can't enter into an arrangement with an IP in which advertising says, Call us using this carrier's line, that we can't take a financial interest in the stream of traffic that's going to that carrier, and we have to hold ourselves out in a different way.

There's a letter issued by John Maletta who at

the time was the FCC's enforcement director a few years ago dealing with this situation where advertising for an international audiotexts number was advertising, dial us using 1010, whatever the code was at that time, so we don't think that would be a lawful way to resolve this problem.

On the issue of changing area codes to a number beginning with 9, I'm on the legal advisory committee for the North American Numbering Council so I deal with these issues fairly frequently. This is not a U.S. based organization that simply allocates area codes.

There are a number of sovereign nations in the Caribbean who are part of the North American Numbering Plan, the NP, and I can't imagine an interpretation of the FTC's jurisdiction that would allow it to dictate to a sovereign nation in the Caribbean encouraging it to change its area code.

Adele was also right, there are a number of cities now beginning with 9. Greensboro, North Carolina, is 919 for example. Even if you could persuade these Caribbean nations to change, it is a wrenching change at this point, so it's an interesting idea but I don't think it's practical.

Then I would like to back up a little to a broader view on these negotiations and whether they're

feasible. The way these situations frequently work -- in fact I'm in a case where we get the most complaints about the way we work is within a developing nation that essentially plans its telephone system by using these kinds of revenues.

Mayotte and Niue, I may have the number wrong, but I believe they have settlement rates as high as \$3 or 4 per minute, which means the rates consumers pay to call them are \$3 and \$4 a minute and up.

They have arrangements with IPs in those nations where they're sharing revenue to simulate in traffic and they use such revenue stream essentially to fund their phone system. It's how they're building out the telephone numbers to the residence.

Now, when carriers are negotiating with these foreign PTPs, what typically happens is you have a carrier like an AT&T which inherently has economic clout but we're negotiating with monopolists, and we're not big enough to extract good rates from monopolists in most cases.

Now, in the case of a truly tiny nation like Mayotte to where virtually all the traffic is going to these IPs, we can and have in some cases negotiated arrangements where we say, Either put some control on these practices or we'll stop transmitting traffic.

So you can make a credible threat to do that. We talked about this a bit in the '97 public workshop.

MS. HARRINGTON: Let me follow up here. Has AT&T ever blocked transmission to a country because almost all of its inbound traffic is pay-per-call audiotext?

MR. BOLIN: We have gotten very close. I don't think we've ever actually had to cut a country off. We may have cut off 500 number service to a couple of countries for a brief period of time.

MS. HARRINGTON: What would it take to get you to the point where you would cut off service to a country?

MR. BOLIN: Whenever you do, that there's always a certain amount of legitimate traffic in the ending destination, and of course we can't cut off countries in western Europe. We can't stop terminating traffic to any one country. That won't just happen, but for most of the smallest countries that are abusing this, we've been able to negotiate arrangements wherein we can minimize our losses and still provide refunds to consumers who get burned in a lot of cases.

In terms of what it would take to get us to stop terminating traffic in the Caribbean nations, it's got political implications. I don't know that I can answer

the question in terms of what it would really take.

MS. HARRINGTON: Let me ask a question of the LECs. When AT&T decides that it's going to have a liberal adjustment policy with regard to calls to one of these countries that has audiotext providers that are generating a high level of complaints, do they communicate that to you. Bell?

MR. LAVALLA: Kris Lavalla for Bell Atlantic. Not to my knowledge that hasn't happened. These calls look like a regular international call to us. If we had -- if we received complaints on them that they are audiotext or some kind of fraud going on, we would contact the carrier or carriers usually that are involved, not just AT&T, because as has been pointed out, you can access the numbers because they're regular international numbers through any carrier.

But to my knowledge, and that's somewhat limited in this case, we're not notified of those situations.

MS. HARRINGTON: Mark?

MR. FARRELL: Mark Farrell with SBC Communications. I agree with Kris and I've been informed of that, and a sample would be with the recent number involved with Cable & Wireless. They were not notified that the number had been taken down or it wasn't proper before we received a temporary restraining

order from the court in North Carolina.

MS. HARRINGTON: Danny, what did Cable & Wireless Dominica or West Indies do to notify if anything to notify U.S. carriers that it had taken the number down?

MR. ADAMS: To my knowledge it did nothing, and nothing was necessary to protect U.S. consumers. Since the number was not connected U.S. consumers could not call it and get through.

MS. HARRINGTON: But there's a lag time between billing and collection activity. Wouldn't it be helpful to advise the companies that were out there billing and collecting for these charges that you had reason to take the number down?

MR. ADAMS: Well, Cable & Wireless does deal with the U.S. interexchange carriers such as AT&T, MCI and Sprint. They don't have any direct dealings with the local exchange carriers like Bell or SBC.

But, yes, and they've offered to do that and frequently to do it.

MS. HARRINGTON: They, Cable & Wireless?

MR. ADAMS: Yes. When the carriers claim or not claim, when they indicate that people have complained about the number, don't want to pay for a call to an audiotext number, Cable & Wireless has an agreement with

the major carriers to charge that back, that is give people a credit and not ask the U.S. carriers to pay for that call.

MS. HARRINGTON: How do U.S. consumers learn about that?

MR. ADAMS: I don't know that they do. They get the charge back when they file a complaint.

MS. HARRINGTON: So if they don't file a complaint, that information doesn't reach them?

MR. ADAMS: Not from Cable & Wireless. It has nothing -- no operations in the United States. That would be up to the U.S. carriers or some other U.S. entity. As I said earlier this endeavor requires cooperation among a variety of Cable & Wireless. Cable & Wireless doesn't provide this service end to end.

MS. HARRINGTON: Adam has a question.

MR. COHN: This is a general question. Has the audiotext industry and telephone-billed been effective in pooling resources, for example using billing aggregators to approach LECs, and I was wondering whether or not a similar approach in the international audiotext context, especially given the fact that the revenue and what we've heard today is happening to some countries, can they pool their resources, anticompetitive issues aside, in the same manner where

the U.S. carriers say we would like to do business with you, you'll shut this -- if you'll implement blocking on this range of numbers, we'll pay you this amount, if you implement, if you stop payment for the first 18 seconds of every call made to these numbers, we'll pay you for that cost and get together and share the cost with the people with the companies that are actually bearing the cost for these services in order to comply or come closer to complying.

MR. ADAMS: Me?

MR. COHN: Or any of the international audiotext.

MR. ADAMS: I would say in general that's a good idea in concept. In fact Cable & Wireless already does that, the things I described Cable & Wireless does segregating numbers, negotiating charge back arrangements, requiring preambles that can be free. They're can be free but they're now free now, but they're essentially de minimis now. If people hang up they could be free.

Those things are not without cost to Cable & Wireless. I don't think it's a sharing concept. Cable & Wireless does all of that on its own nickel and then pays AT&T to do AT&T's part as well. I think again cooperation among the entities would be a fine thing.

So if Cable & Wireless provides the information, identifies the numbers we can't really redo AT&T's billing since Cable & Wireless is not quite big enough for that, but we can give them the information they need to have separate billing, to have number by number blocking and so on.

MR. COHN: Why pay them if you document it's your billing service?

MR. ADAMS: We do pay them. You mean pay them to change their network? They should cooperate for the same reason we do, to protect consumers.

MS. HARRINGTON: Do you have an answer to that question?

MR. EISENBERG: Sure. One reason it might not be practical at all, in the U.S., the carriers in the Caribbean or anywhere in the world, it's not that they're just dealing with the AT&T's and Sprints of the world.

In the U.S. there's hundreds if not thousands of resellers out there, and all those resellers would have to somehow know when to block, when to start billing of a call. A reseller might start billing a call as soon as they hand it off to the underlying carrier like AT&T or MCI so they have no way of knowing waiting 18 seconds or waiting for an answer back.

In the U.S. the competition is just multiple of carriers and each one -- some of them are tiny little companies. Each one has their own problems.

MS. HARRINGTON: Marianne -- I'm sorry go ahead, Ian.

MR. EISENBERG: In fact, I was going to add something, that one problem might be when the state AGs or FTC look at complaints, they don't necessarily have a way of differentiating between straight one plus or 011 dial international audiotext or long distance calls versus redirect or various 800 redirect or the new variants that exist.

Looking at a phone bill they're all billed the same way, standard long distance calls, international and 800 redirect. They show up on the phone bill in many cases looking very similar, so it's difficult I can for a regulator to look at a phone bill and decide how this call occurred.

I think a lot of those complaints that you're seeing are coming from people that are still operating 800 redirect scams that are clearly illegal, and that new laws and regulations aren't really necessary but continued and upgraded enforcement of existing rules is what's necessary.

The scams that you brought to light, like the E

mail at the Dominica or pager scams, I don't think there's anybody in this industry that will argue with you that those are wrong. Those people need to be prosecuted, and it has nothing to do with TDDRA. That's simply deceptive advertising and laws already exist.

MS. SCHWANKE: That leads nicely into my question. I would like to get back to the issue of what the international industry is doing to protect consumers, and you suggest that what we should be doing is prosecuting or enforcing our current laws against the providers that are offering these scams, and I think an example of the problems that we face in enforcing the rules against these providers is this recent case where not only apparently can consumers find out who the provider of this alleged service is, law enforcement has faced considerable obstacles in figuring out who the provider of the service is.

I wanted to get back to Cable & Wireless's comment specifically that says that providers must provide Cable & Wireless with a name and a phone number and information that Cable & Wireless will give to consumers. Yet we weren't able to get the name of the provider from Cable & Wireless.

Do you have a name of a provider that you can connect with a particular audiotext service today?

MR. ADAMS: In every case Cable & Wireless has the name of someone who can provide that if I don't have that name directly including the case we're talking about in Dominca. We in fact provided the Commission with that information which Commission can use to find the information provider.

MS. HARRINGTON: But you don't have -- you don't necessarily know the identity of the information provider or even the service bureau that leases your numbers, do you?

MR. ADAMS: We don't know it specifically that we can swear under oath. We provided the Commission with who we think it is, and I suspect that information is accurate, including information on how to get in touch with them.

MS. HARRINGTON: Marianne?

MS. SCHWANKE: Who are your arrangements with in terms of leasing your numbers? Do you have arrangements with providers, service bureaus or some other third-party? How does that work?

MR. ADAMS: It can be all three. Typically it's service bureaus or independent contractors who deal with multiple service bureaus themselves, and each of them will have a set of numbers they use.

MS. HARRINGTON: Danny, let me read from the

Cable & Wireless comment here and just ask you whether what you're describing here is what you meant in the comment.

On contact information the comment says: "Information providers must supply the CWWI Operating Company with contact names and phone numbers for dissemination to the public by the CWWI Operating Company. Thus the CWWI Operating Company facilitates the information of consumers to obtain satisfaction directly from the information service provider in the event consumers are not happy with the audiotext service they have been provided."

MR. ADAMS: I'm sorry, what's the question?

MS. HARRINGTON: The question is in the case of the Dominica where the IP was using the Dominica number, does this comment describe what Cable & Wireless was able to do for unhappy consumers?

MR. ADAMS: It would, yes. The problem in that setting -- first of all, understand that Cable & Wireless doesn't deal directly with U.S. consumers so in terms of the concept of having all this information online where a U.S. consumer can call up a Cable & Wireless operator and say, Who's the IP and have them look it up online, that's not what's suggested there nor is that feasible.

MS. HARRINGTON: Who would the consumer whose effort you're facilitating then be in that situation?

MR. ADAMS: They would contact their U.S. carrier.

MS. HARRINGTON: By consumer you mean the U.S. carrier?

MR. ADAMS: No. My point is they can get that information through their U.S. carrier who will ask Cable & Wireless and Cable & Wireless can provide it. The issue in Dominica is timing in the sense that the Commission gave us a CID and asked for information within a week, and we gave the Commission what information we had in that time frame.

MS. HARRINGTON: Right. Actually here the issue is contact information. That was the subject of the comment that you filed. It wasn't a timing issue, and I just wanted to follow up on the description of the practice that Cable & Wireless West Indies operating company facilitates the efforts of consumers to obtain satisfaction directly from the information service provider in the event the customers are not happy.

I guess what you're saying is unhappy customers wouldn't contact Cable & Wireless West Indies because --

MR. ADAMS: Because don't even know who we are. They know they use AT&T or Sprint. They would contact

AT&T or Sprint. They would contact Cable & Wireless.

MS. HARRINGTON: So I could --

MR. ADAMS: They would investigate and give the information back to the U.S. carrier who would go back to their consumers.

MS. HARRINGTON: Bell Atlantic is my LEC and I got this E mail and I called this number because I didn't want to get a \$395 on my credit card, so I call Bell Atlantic and say, Yikes, what is this. Bell Atlantic, what do you do for me?

MR. LAVALLA: Well, I had that somewhat the same question. I don't know how often this happens, but this seems -- Kris Lavalla.

This seems like somewhat of an extraordinary circumstance where you're actually cutting off all calls to a given number and not getting this information back to us. We're in the void as well so if you call me, I don't know what to tell you.

MS. HARRINGTON: So could you --

MR. LAVALLA: I'm going to the carrier because it's international.

MS. HARRINGTON: So AT&T is my carrier.

MR. LAVALLA: AT&T is your carrier.

MS. HARRINGTON: Jim, what do you do for me?

MR. BOLIN: Unfortunately probably after being

put on hold three or four times, you'll be talking to someone in our security department. Those folks are terrific. I don't know how they do what they do, but they maintain a lot of contacts, with international carriers, with the IP community. I imagine that one of the guys in security would connect you with Cable & Wireless.

Beyond that, that's a blank box to me.

MS. HARRINGTON: I think that one of the sort of the gist of some of the comment from the international audiotext side of thing is that the industry's guidelines, that the voluntarily guidelines have imposed sort of a self regulatory regime that's working, and then in describing how that's been applied by Cable & Wireless West Indies we have a comment, and what I'm not getting is how this is working for consumers in the United States who are dialing these numbers.

And I think this exchange suggests that the way that you think that it's working may not in fact be accurate because what you describe about efforts to facilitate consumer's need for satisfaction doesn't really fit in this instance.

MR. ADAMS: You want a response?

MS. HARRINGTON: And Jim wanted to say something and then, yeah.

MR. BOLIN: One other thing I should add, we do not have a written policy. To my knowledge I know we don't have a hard and fast policy when we're looking at refunds. If you were in this circumstance, particularly if you weren't a customer that had ever called the Dominica before, if you weren't a customer with a history of trying to charge back pay-per-call calls, then you would probably be refunded this call while the investigation was going on.

We probably have 10,000 calls like this a month, so I can say with some confidence in a case like this you wouldn't end up paying for the call.

MS. HARRINGTON: Adele?

MS. SIMPSON: I actually think we have gotten into one of the further questions down below which we have a fairly -- I think a fairly good response to, is that in any industry, whether it's 900, whether it's selling tires, you have people who are outlaws that are going to take advantage of everything like that.

And I would like to point out again over the last two years, the ITA members which do include carriers and have working carriers who are not members to voluntarily and sometimes under pressure enter into uncollectible agreements with large U.S. carriers, the three major carriers b.

So that if situations like this do exist, the major U.S. carriers are made aware of an illegal situation, a completely fraudulent situation, then no payment is made to the non U.S. carrier, therefore no payment is made to the members and down the chain because when you resell numbers, just as you resell services in AT&T or MCI or Sprint, in their wholesale divisions, there may be ten people between that carrier and the actual person that deals with the consumer so there's a long chain of resell.

But in terms of dispute resolution, there are underlying agreements between the ITA members, member carriers and other non member carriers back to U.S. carriers that say, If you identify these situations where the customer disputes, especially if it is a major fraudulent situation -- then as Danny has mentioned that we have put in place agreements that there will be no out payment of the settlement.

The U.S. carrier avoids that, and our members do all that is possible to provide information to the U.S. carriers, and I think Jim is very accurate. The security people in the U.S. carriers are very involved with the non U.S. carriers that provide this service and with the industry, and whenever contractually possible we provide them with the last name and contact

information possible to go and find out who's actually perpetuating the services.

And I think it's easier if it's a straight advertising situation where you can go find who placed the ad, and even then sometimes they use fake names and fake telephone numbers, so whether it's the Internet or fake advertising, if you're going to do something fraudulent you're going to make it very difficult even for people who are willing to help.

But from your question down below on dispute resolution, we have made great strides in the almost two years since the last workshop in looking at how ITA numbers can work with you as carriers to provide for dispute resolution.

MS. HARRINGTON: Here it sounded like as Jim discussed what probably would happen or did happen in this Dominica example, that the communications are pretty much one way from the security people for the U.S. carriers to the carrier in the other country and not coming back.

So that, for example, our carriers in the United States didn't know that Cable & Wireless West Indies had taken down this number.

MS. SIMPSON: Just to comment because Cable & Wireless is here and is the one to actually speak on

that, I think our members and our carrier members have been involved in situations where I think anyone that's in fraud detection knows that every major carrier has fraud detection. There's fraud detection on the ITA's member's equipment, so whenever we ourselves monitor on a daily basis with algorithms to detect fraud and where we would know of situations in which ITA members have notified their carriers, notified U.S. carriers that there has been fraud so it is a two-way street.

Certainly it may not happen every time, but for the ITA members and even non member carriers, they want to do as much as possible to alert U.S. carriers to problems, and we're all working together.

MS. HARRINGTON: Danny?

MR. ADAMS: A couple of points. One thing just it's important to keep in mind that the program we're talking about, the call -- the program that the people call to, in this Dominica example, there was nothing wrong with the program per se. No one has said that the scam involved the program.

The scam was the advertising in the U.S. that represented something that was untrue, completely unrelated to anything to do with the program, so screening of that program would not have detected the advertising in the U.S. That was completely an

unrelated issue.

MS. HARRINGTON: I think that's why we've proposed that advertising for these calls should comply with the Pay-Per-Call Rule.

MR. ADAMS: We would support that, but the point is I think -- I disagree with your earlier statement about the voluntary rule. I think this is a good example of where there was a program that was itself acceptable presumably, you haven't passed on it, but no one said the program was the issue here.

This is U.S. advertising which we don't have access to and can't control, and before very many calls were made on a relative basis, Cable & Wireless had terminated the number, a month before the Commission had contacted us, purely voluntarily, had volunteered -- has frozen the assets as the Commission asked, will give back whatever monies were collected.

I think that's a great example of how the voluntary system works.

MS. HARRINGTON: The freeze on the asset was by court order. I'm not sure that was a voluntary step.

MR. ADAMS: Okay, but of that, that's a very small amount of money. It's about \$4,000 is what Cable & Wireless has frozen. But -- I'm told we did freeze it voluntarily, but in any event what's being done is I

think a very good example of voluntaryism working here.

MS. HARRINGTON: Susan?

MS. GRANT: It was suggested in some people's comments that consumers know that they're calling foreign numbers, but there wasn't any substantiation for that, and I challenge that assertion whether it's a number with a three digit area code in the Caribbean or whether it's a number that begins with 011, I don't think it's fair to suppose that if people see an advertised number for a service or if they call a number and then are instructed to punch in another number in order to access it, that they will realize that that's a foreign number.

We don't even suppose that for 900 numbers consumers understand how much they're going to be paying for the call because we require the preamble to let them know that this is a pay-per-call service, here's what you're getting and here's how much it's going to cost you.

And while I think that ITA has done a lot of things that are really notable, the fact of the matter is that not everybody is an ITA member and is going to do that. It isn't something that has the force of law that enables law enforcement agencies to pursue violations. It's not something that either consumers or

law enforcement or anyone else that's trying to deal with this issue can count on.

And we've heard about all the problems that are inherent in the fact that at least at this point, this doesn't work the same way that the 900 numbers do, and yet for all other purposes, this is being used to sell the same kind of services that 900 number -- that 900 numbers are.

And until and unless it can be made to work the same way so that consumers get the same information up front, so that they have the same recourse after the fact to dispute the charges, so that law enforcement has the same handle on it as well as the other entities that have interests here, then I don't think that that's a dialing pattern that can or should be used.

MS. HARRINGTON: We are scheduled to take a break at 3:15 which is ten minutes from now, and I'm planning that we'll take that break, but we'll just take it as a break in this discussion and we will absolutely continue by moving the schedule quickly. Earlier I think we've permitted more time and as much time as we possibly need for this issue I hope so I just wanted to tell you all where we're going here.

Adam has a question.

MR. COHN: This is a question I guess following

up on what Susan just said. We've heard a lot of discussion today about what consumers hear on the front end when they place a call or see an ad, but I wanted to ask about what consumers who may not have placed a call but just send a charge on their bill for a call placed by another.

These consumers don't get the same disclosure insert that we discussed yesterday, and what might they think about an international charge that's actually an international audiotext charge and what implication also that might have?

MS. HARRINGTON: Mark, you look like you want to answer.

MR. FARRELL: Well, Mark Farrell with SBC. If a customer were to call us about that charge, it's our policy -- and they say, Look, I don't authorize that charge or, hey, this isn't authorized, our policy is that we will adjust that and we'll try and refer them back to the carrier.

And it puts AT&T or MCI -- and maybe they have some explanation. If they don't, a customer comes back to us, we will take it off. We want to make it right for the customer.

MS. HARRINGTON: Mark, is that your policy for any international long distance call or for

international long distance calls that are described as audiotext's or for international long distance calls for certain area codes and certain countries?

MR. FARRELL: It's our policy across the board.

MS. HARRINGTON: What if there are two or three calls? For example, let's take this case that we brought and the situation where the consumer gets a message that says -- which is the facts in this case were these or we allege that the facts were these: The consumer receives an E mail that says, We've received your order, the confirmation number is such and such, your credit card will be charge for \$395, if you have any questions call 767 da-da-da-da.

The consumer calls the number and is connected to an audiotext program with sexually explicit information and thinks, Oh, my gosh, this can't be who is processing my order and hangs up, looks at the E mail again and dials the number again thinking, I must have dialed the wrong number the first time, a reasonable conclusion I would editorialize.

Is it your policy at -- is it your policy at SBC to forgive both of those calls or just one?

MR. FARRELL: I think it would be both in that instance. I mean, basically we're going to refer back to the carrier that submitted that charge to us, but if

a customer -- as an example would be AT&T or MCI or whoever had submitted it to us, and the customer would call in and say, I have these two charges, the first time I called I heard all this sex stuff, which by the way violates our billing and collection contracts.

We will not bill for that, and then I call them back and it was there again. We say, Look, you probably should talk to your carrier. They may say, No, I don't want to, and they say, I shouldn't have to pay for this charge, I wasn't calling for that.

We will say, Look, we agree with you, we'll take it off your bill. Now AT&T or somebody else may want to pursue that where you but we take it off.

MS. HARRINGTON: Let me ask you a follow up question. Your policy is not to bill for 900 number audiotext that's sexually explicit stuff.

MR. FARRELL: That is correct.

MS. HARRINGTON: Is it also your policy to not bill for international audiotext that is sexually explicit.

MR. FARRELL: If sexually explicit, whether it's in this country or international, we will not bill for it. It is our policy. Now, does it happen? If we're aware of we don't want to bill them for it.

MS. HARRINGTON: David?

MR. MATSON: David Matson, Sprint, a couple things. First of all, we don't really see how you can determine the difference between an international audiotext call and an international call, and I would refer the question back to you and say, What happens if someone calls an international call from their home. It's not an audiotext call, calls to Germany for 20 minutes and the person responsible for the bill has a problem?

I assume it's treated the same way. We try to work with the international audiotext the same way we would a regular international call. If in the situation you gave, I assume that in that case we would give a credit for both.

Now, earlier we heard that a lot of times we can pass those charge backs back through to the Cable & Wireless West Indies. We have not found that to be consistently true, so a lot of times we end up eating the charge backs.

So to a certain extent we end up having to eat the charge backs for people who call and complain, but we treat it the same way that we would a regular international call.

As far as sexually explicit, again the problem there is making a determination as to whether it

violates the law in the United States as well as the law of whatever country it's coming from.

MS. HARRINGTON: Jacque, you've been waiting a good long time. Thank you.

MS. MITCHELL: Well, just in that we do play a part in this obviously since we're in the middle of this chain, I would like to resurface the issue of should have known. As difficult as it was for everyone to know about it, we also did not know and could not have known really because this resulting call looked like a regular call to the end user.

We have this particular two number spread throughout our client based so we didn't see multiple calls necessarily from a billed number. We look at it from a billed number perspective, so if we see many, many calls from a billed number, then we become aware that there's a problem.

But when we see something that goes across the client base, we typically would not be aware, could not be aware of it.

This was a problem that caught us off guard in that we had no way of knowing it wasn't just some regular 1 plus call when we delivered the call to the LEC for billing. Our contracts are based on their contracts, and we are forbidden, and that's a good word,

I think, wouldn't you agree, Mark, forbidden from billing any sexually explicit material on a bill.

What my staff would do, had they received or when they received calls from the end users questioning this, would be to issue a credit for that because it should not have been handled that way. It should have been on a 900 kind of service I would guess since it's that kind of audiotext service.

But we would not have a way to know, to restate, because it was a regular one plus kind of call that we would have seen come through our system.

MS. HARRINGTON: Allen.

MR. HILE: Given those facts, do you think you would have any liability under the proposed rule since the facts are as you just described them, you have no way of knowing? How could the Federal Trade Commission make a case that you knew or should have known?

MS. MITCHELL: I don't know how you could say that I would have known or should have known. I bill one plus calls as a traditional piece of business.

MR. HILE: My point is it's a fact point standard, since you can present facts that you can show you have no way of knowing.

MS. MITCHELL: I would have no way of knowing, you're right.

MS. HARRINGTON: Okay. Let's go to Danny and then I think we may take a break depending on the timeliness.

MR. ADAMS: Just a few quick points, just on various things people have said in the last couple of minutes. For one thing I think we're sort of wandering off here in terms of the issue about the Dominica calls.

The call -- maybe the service was bad. I had never heard the service, but the complaint about the service had to do with the advertising causing people to call it who didn't want to call it. The complaint is not that the service itself was per se unlawful.

MS. HARRINGTON: Right, no, and we're not contemplating that at the FTC.

MR. ADAMS: Right, I understand, but there's just a lot of discussion that it sounds like, Gee, called this scam number. It wasn't the scam number. It was people were induced to call it who shouldn't have called it and had no interest in it, and it's an important distinction.

MS. HARRINGTON: That doesn't distinction this from a whole lot of 900 number scams.

MR. ADAMS: That's exactly my point.

MS. HARRINGTON: They're all under a certain

regime and consumers have billing rights and dispute rights and there's notice up front and a preamble, and exactly our point.

MR. ADAMS: Yes, anything can be abused, and I don't want this assumption level here that this service was a service that Cable & Wireless should have screened out because it was a bad service. It was the advertising that was bad. That's my only point on this.

Secondly earlier the point was made that there are hundreds of U.S. carriers and therefore those bilateral negotiations are difficult to impossible to accomplish.

The fact of the matter is that for most of the smaller countries that once -- Cable & Wireless for example, you can call there from any of the hundreds of U.S. long distance carriers, but all but about four of them ride one of those four networks, they go MCI, Sprint, AT&T, and they resell them.

So to the extent they're on the MCI network if MCI has knowledge of the block, they're blocked.

And finally on the charge back issue Sprint makes mention they don't have luck with charge backs. Again those are bilateral negotiations. Cable & Wireless West Indies has agreements on charge backs with AT&T and MCI, has had discussions with Sprint but has

been unable to come to an agreement with them but hopefully will.

MS. HARRINGTON: Okay. We're going to take a break until 3:30 and we'll start up sharply then and continue this discussion. Thank you.

(A brief recess was taken.)

MS. HARRINGTON: Down the final stretch. The folks from the Florida Public Service Commission had to leave to catch a plane, so the folks that -- the rate payers of Florida wouldn't have to bear the cost of them being here for another night, and a couple of others have indicated that you need to leave at certain times and I know Char Pagar is back to the table on behalf of the PMA. Just looking around to see if we have any other new people I don't think we do. Let's resume.

I would like to resume. Richard? First of all, Richard has had his post-it up for a long time, so back to you, Richard.

MR. BARTEL: First I will like to compliment the FTC for it's rapid response team which is doing much better than the FCC's rapid response teams wherever they are.

MS. HARRINGTON: In defense of my sister agency, we have different remedies and proceedings that are available to us in our enabling act than the FCC has, so

the Congress very wisely gave the FTC the authority to go directly into federal court and seek any equitable relief it is able to obtain.

MR. BARTEL: Maybe the FCC needs some of the same possibly. I know there are some senators who think that you need more jurisdiction but in any case, I've kept some troubling comments about, I hear the carriers speaking in two different ways.

When you talk about technical feasibility and what can you do internationally, they say well we have problems. We've got sovereignty issues. We have signaling issues. We've got technical issues with switches, communicating I assume between countries and so forth, and we can't do this technological solution.

Then when you say, Can you regulate yourself between these countries, can you communicate between carriers and between consumers and service providers overseas, they say, Oh, sure, we can handle that, we don't need any more jurisdictional requirements and preambles and things of that sort.

So I think it's kind of a contradictory approach. On the one hand, when it comes to implementing technology to say, Well, we can't do it, but when it comes to self regulation, all of a sudden everything is hatchable.

And just a small point, for the Consumer League, many of your consumers who got that E mail at least would have hesitated if they saw that the area code started with a 9. Thank you.

MS. HARRINGTON: They might have thought they were calling North Carolina.

Susan?

MS. GRANT: I was just going to make the point that the other thing that the 900 number rule does for consumers is protects the person in whose name the telephone account is from having other people use their phone and run up huge bills for these kinds of services by requiring blocking for 900 numbers.

And it's not a fair and feasible option for international numbers. It doesn't appear that it can be done in such a way at least at this point so that it could be with laser like precision so that you could only block those troublesome international numbers and not your entire ability to ever call another country.

So this is another problem that I think unless it can be dealt with so that consumers are protected in the same way as they are with 900 numbers makes it inappropriate to offer these services through these other international billing patterns.

MS. HARRINGTON: I want to go back to the first

questions on this section to make sure that we have exhausted the discussion of them around the table in case anyone wants to add anything, and I guess I would go to the third question: What prevents international audiotext providers and/or service bureaus from reaching agreements with IXCs and LECs to ensure compliance with the principles of the TDDRA, and could international audiotext providers compensate LECs and IXCs for these services?

There may not be anything else that anyone wants to add on that, but I wanted to put that question out one more time. Kris.

MR. LAVALLA: Kris Lavalla from Bell Atlantic. From our perspective, I'm not sure I understand this. International audiotext providers, we don't have any relationship with them to do billing of those services, so as a third step in the process through the IXCs or the clearinghouses maybe, but we have no direct relationships to the international audiotexts providers.

One other point I wanted to make with the situation with Cable & Wireless, the fact that we did not know exactly all of the things that happened with that has cost my company significant money. In fact I'm spending money right now as we speak to put up some screening to pull out any iterations of that, and now I

hear today that that number has been taken down some six weeks ago, and I may be spending money unnecessarily.

So that information needs to flow back to the LECs, especially when you have an extraordinary circumstance like that. I think most of the other LECs were probably in the same circumstance. We're all spending a lot of money on a problem that may indeed not exist today.

MS. HARRINGTON: Is there anything that Cable & Wireless, for example, could do to promptly notify all of the LECs in the United States when a number is taken down?

MR. ADAMS: Not that comes to mind. I'm tempted to say we give the LECs -- the Bell Companies the same information they give us, but to solve the problem, I would say we deal with the U.S. interexchange carriers and they deal with the LECs. We don't have direct relations with Bell Atlantic, so we wouldn't have an occasion to give them notice.

And we have to assume people share information back in the U.S.

MR. LAVALLA: I'm not sure I would need the information to come directly from Cable & Wireless West Indies, but to keep that information flowing so that if the long distance carriers knew it and they in turn

notified us of a circumstance like this where we're obviously going to get calls when it hits the papers, and there's -- I hate to hear of these problems from my consumers, like I'm sure you're in the same situation.

I would like to know in advance if possible.

MS. HARRINGTON: I have a question. I've attended several industry sort of trade shows that the audiotext and related industries have sponsored and have been struck by the aggressive marketing for connections that terminate on some of the Cable & Wireless companies, and the marketing pitch is always low charge backs, great collection results, which could be understood to mean a variety of things, and I appreciate that that could be understood to mean a variety of things.

But let me just tell you that one of the meanings that I suppose could be taken from that is you're going to have lower charge backs because people think that they can't dispute charges for international long distance calls, and the LECs do a much more aggressive job and the carriers or the IXC's in the United States do a more aggressive job of collecting for charges for international long distance type calls.

So it hasn't surprised me to see a lot of the traffic in pay-per-call moving to those numbers if the

collection rates are higher because consumers don't have the same dispute rights, which we also understand can be abused by consumers. That's understood. We've had quite a bit of discussion about that here.

But cases like this Dominica case seem to confirm for me my understanding of those marketing materials that I see at the trade shows that really market international termination, and I'm wondering -- maybe this is a rhetorical question, but it has concerned me quite a bit, and I'm wondering if anyone would like to comment on the connection between the marketing of services that terminate on international systems and the incidence of what we would consider to be fraud to those services. Danny?

MR. ADAMS: I'll volunteer again.

MS. HARRINGTON: How good of you.

MR. ADAMS: What a surprise. Now, first of all Cable & Wireless obviously doesn't -- not obviously but in fact doesn't do any of this marketing.

MS. HARRINGTON: Does anybody terminate in Dominica besides you?

MR. ADAMS: I mean, are there any other LECs there?

MS. HARRINGTON: Yes.

MR. ADAMS: No.

MS. HARRINGTON: Would you be surprised to know that service bureaus you are leasing for are out marketing that way.

MR. ADAMS: Would I? I would not be, no. I can't say yes or no. I wouldn't be surprised, but I'll take your word for it. The uncollectible rate is lower, and you state what could be a presumption, I'll offer an alternative presumption, that the rates tend to be lower. There is not -- at least from the U.S. I have no idea what the rates are from other countries that rates tend to be, and again we're talking about a variety of carriers.

So I don't know every carrier's rate, but generally speaking the rates are not the \$4 minute the 3.99 per minute rates that cause a problem with 900 for example, so that could also be a reason that people just don't have the same level of complaint.

I'm unaware of international audiotexts being the subject of a disproportionate number of complaints. In fact we asked the Commission to provide us through a FOIA requests of all the complaints that have been received by the FTC on international calls many weeks ago and have had no response, I'm unable to speak to that.

MS. HARRINGTON: Anyone else have a comment on

that question? Peter?

MR. BRENNAN: I would just bring it back to the changes that are going on. I think that you've mentioned the abuses and the problems we've already talked about, but in addition to that the changes in the climate, even on the domestic 900 side, the changes for being able to get a call on a bill, a 900 number call on a phone bill, the emergence of a lot of competitive local exchange carriers, some of whom may or may not be able to fully process a bill and comply with the regulations.

The fact that in some cases, particularly in the rocky mountain areas where the cable companies have been aggressive about getting into the telephone business and other companies -- the convergence companies, have added an additional level of complication to all of this.

So I don't know that I would necessarily cast it the most sinister like, but I would say that it's certainly a situation that warrants more attention.

MS. HARRINGTON: Let me move on to the question about dispute of charges for international audiotext that haven't been authorized. Is there some way other than the way that the rule requires for U.S. consumers to dispute charges for unauthorized calls to international audiotext numbers or that have been

incurred as a result of fraud?

Adele?

MS. SIMPSON: I had already made a comment that we have put in our code of practice and recommended that we have some dispute resolution for the members and the member carrier, back with U.S. carriers, and I think important to note on this is what both of the interexchange carriers have said.

When you dial an international number, 01 or one plus, one cannot distinguish between those that terminated an audiotext service or regular audiotext numbers, and I think Jim earlier had commented they get about 10,000 complaints on international or they right off that 10,000 adjustment a month, and I would really be interested to know if you can't distinction between the two, whether that's a total international complaints, because as Danny had mentioned earlier, by definition international calls are more expensive than domestic, and people that call international tend to think they're overcharged just because they don't understand the accounting rate system.

But I would like to understand, if we can't distinguish audiotexts from non audiotexts, what that 10,000 number meant.

MR. BOLIN: Do you want me to answer that?

MS. HARRINGTON: Jim.

MR. BOLIN: I think the shortest answer I can give is the intuitive one. I don't know for certain that all 10,000 of those are audiotext calls, but generally if someone is calling their uncle in Mayotte, they're not that shocked to see a bill for a call to there on their phone bill.

These are typically consumers who call and say, I had no idea I was calling Niue, I had never heard of Niue, why is this charge \$25 for a three-minute call, what the heck is this.

So I can say with confidence that the vast majority of these calls are numbers that were advertised to people who didn't realize, even if they knew it was an international call, didn't realize it was as expensive as it turned out to be.

I have no reason to believe that most of these people are calling relatives in Europe and were surprised to see the bill was more expensive than that.

MS. HARRINGTON: Adam has a question.

MR. COHN: This relates to the point just made about long distance carriers in the United States not being able to identify these calls as audiotext calls as opposed to some other ordinary long distance call.

I would like to read from the Cable & Wireless

comment. The Cable & Wireless comment says on page 6: "CWWI has entered into agreements with U.S. carriers establishing procedures for handling uncollectible charges for audiotexts calls. Pursuant to these agreements CWWI identifies to U.S. carriers, the telephone numbers in its serving areas that are being used for international pay-per-call services and provides other information regarding audiotext calls. As a result, U.S. carriers are able to separate international audiotext calls from other toll charges on a customer's bill."

I would like to hear comment on that.

MR. ADAMS: Okay. The answer is that that information is provided by Cable & Wireless pursuant to these agreements. What is done with it is not under Cable & Wireless's control always we've talked about Cable & Wireless' control. We talked about, there are agreements with AT&T and MCI which represent the vast bulk of calls, which cover charge backs. Any time anybody complains about calls to the number, Cable & Wireless participates in making sure they weren't charged.

What AT&T does or MCI does in terms of their billing process to segregate these numbers, that's -- I'm sure it has costs associated with it. That's really

up to them. We can't control that.

MS. HARRINGTON: Danny, do you know, does Cable & Wireless know which numbers it has assigned in let's say Dominica which are used for audiotext?

MR. ADAMS: Yes.

MS. HARRINGTON: Adele, do your members who are carriers know which numbers are audiotext numbers, numbers that are assigned on its system were audiotext numbers?

MS. SIMPSON: It does, but I think it varies all over the map in terms of, if you remember that the international dialing plan as set forward by the international -- the World Numbering Plan calls that for up to a five digit country code, and beyond that a sovereign nation chooses how many digits that can be dialed, so even where member carriers assign those numbers, many times there's hundreds of thousands of numbers spread across those numbers.

And yes, they -- for the member carriers they do know which ones they have assigned but they're not always assigned in easily blockable numbers and may not even contain the same number of digits or they may contain the same number of digits, but that's not unusual even in normal PSTN. International dialing a country may have a number of links that vary from 7 to

12.

So the international dial plan is quite different than the U.S. North American dialing plan.

MS. HARRINGTON: But not for purposes of blocking but simply for purposes of identification, your member carriers know which assigned numbers are for audiotexts.

MS. SIMPSON: Absolutely, and as I mentioned before, in dispute resolution the ITA members, both service bureaus and carriers, are really proactive in being willing to establish the same type of uncollectible agreements back with the U.S. carriers that on -- that specify number ranges and say, For these specific audiotext number ranges, if you cannot collect from the caller, you don't have to pay settlement on these.

MS. HARRINGTON: But it would seem that U.S. consumers are operating at a serious information deficit because they don't know and their LEC that has sent them the bill doesn't know, at least based on some of the conversation that I'm hearing at least some of the IXCs don't know that these telephone numbers were assigned to audiotext services.

You know that, that is, you being the member carriers know that, but in the United States, if the

consumer makes a dis -- disputes a charge, the party they're dealing with over the dispute does not necessarily know and probably doesn't know that the number that the charge is assigned to is an audiotext number.

MS. SIMPSON: Again the ITA membership is composed of service bureaus and carriers that are outside the U.S., and wherever we are able to share that information with the U.S. carrier that we have -- that member carriers or other categories have bilateral agreements with, again what that U.S. carrier does with those numbers is again beyond the control of the ITA members.

I think all of us could wish that we could demand that there be some chain of exchange of information, but our control, and we have made great strides to offer as many consumer protections as we can, and in fact in our advertising plan where we do say international rates apply so that a consumer reading an ad for the direct dial services that ITA members offer, it clearly -- the preamble requires -- or not the preamble, but the code of practice requires that the members advertise that it is an international number.

So from that perspective, consumers do know that it's an audiotext service and that it's an international

number, and I think back to some of Jim's comments of where there's some specific situation and maybe we don't want to make a general rule, but when someone decides to do something fraudulent and make use of a 900 number, make use of an 800 number, make use of a local number to do something fraudulent, members who are overseas can control it as much as possible, but they can't control those illegal activities.

MS. HARRINGTON: On the advertising plan requiring the international rate supply disclosures, do you have any evidence on how consumers interpret that statement, what they take from it?

MS. SIMPSON: I think if we look at the volume, if we look at percentage of complaints against volume, and the ITA also made a FOIA request of complaints on direct dialed international calls to the FTC, and the response came back is there were four complaints that were to direct dialed international numbers and so when --

MS. HARRINGTON: Did you make a FOIA request with the FCC?

MS. SIMPSON: I believe -- I'm not sure. I think it was with the FTC, and four complaints came back.

Now, understand that's where the consumer makes

the direct dial call, not where the consumer makes some other type of call and an international number is put on his bill. Ian Eisenberg pointed out very clearly that when you look at a customer's bill and an international bill appears there with the charge, that does not necessarily mean that the customer actually dialed that, and you've been discussing that yesterday and earlier this morning.

Ours members and our code of practice says the ITA's members are involved in stimulating direct dial international calls, so that is what we asked for, complaints on direct dial international calling, and that was very low.

So with that we don't feel like that for the ITA members and member carriers, that consumers are being deceived.

MS. HARRINGTON: Well, let me just tell you that I think that for that sort of transaction, the FTC would not be the logical first or second even or third agency or entity that a consumer might contact. The first would be the billing entity, the LEC. The next might be the common carrier and I think that when consumers think about charges for international calls, they would more likely go to the FCC or to their Public Utility Commission, probably underscoring the fact that people

don't understand what this is at all.

It's a real confusing situation for consumers. We have on the record in this rule making proceeding though consumer complaints that we obtained in the course of our enforcement action against Duvale (phonetic) and also in the case that we know by its web site name internally the sexy girls case.

MR. COHN: That's FTC versus Audiotext Connection case.

MR. BRENNAN: Yes, so there are complaints in the record but unlike domestic pay-per-call complaints where there is some greater certainty I think for consumers and also others in the system, that is in the telecommunication system about where complaints should go, in this instance I don't think that there is that clarity certainly.

MS. SIMPSON: Well, I would just like to reiterate what I said before, that the ITA has done as much as technically feasible to make our services TDDRA compliant, with the preamble -- where we have adopted the preamble that the FTC recommended in the International Audiotext Services consent order in the establishment of uncollectibles agreement, which some of them have been in place as long as three years, some of them are newer but that there is a dispute resolution

with U.S. carriers.

And our members and member carriers have done all that is technically possible and are willing as we've said before to negotiate with non U.S. and U.S. carriers to expand that as far as possible within the technical feasibility of U.S. carriers.

So our answer to you would be those number of the complaints you're talking about involve a major illegal fraudulent activities which we do not support. Everything in our code of practice says that is illegal. That is not something that the ITA would ever support.

MS. HARRINGTON: I guess I would respond with a concern I have, and we'll go back to the Dominica case, is that the consumer who contacted us on I think it was April 3, I guess after you had taken the number down but nobody knew about it, had gone all over the place trying to get some help, went to the FBI, was turned away, contacted members of Congress, was told that there wasn't anything they could do, called the local television station and they said they didn't have any idea what to tell this person.

So he sent his complaint in over our online complaint form, and we responded with a lawsuit, and when we dug we found that there are complaints scattered

in various places around the United States because nobody knows quite what to do with these complaints about fraudulent inducement to call an international audiotext number.

So notwithstanding the efforts of the ITA, the information about dispute resolution has clearly not gotten through and is not being transmitted because Bell Atlantic doesn't know what to do with its customers who get defrauded this way.

So there's absolutely I think a disconnect here between what you may be trying to accomplish and what's happening for U.S. consumers.

Allen, you had a question?

MR. HILE: Danny, did I understand you to say you had identified the customers offering audiotext and you supply U.S. carriers with that information?

MR. ADAMS: Yes, maybe you want to be more specific. We can identify who we have a contract with. It's not always the IP. That person can get to the IP.

MR. HILE: So you provide that information to AT&T?

MR. ADAMS: Yes, the timing of this --

MR. HILE: What does AT&T do with that information? Jim?

MR. BOLIN: I don't know who he was asking. I

had my flag up earlier. To make sure the record is clear on this point, it's news to me that Cable & Wireless is sending us this kind of list, all though I have no reason to dispute it.

I know in some cases where we're dealing with small countries, foreign PPTs tell us our pay-per-call numbers are in this range, X to Y, and so the record is clear we know of thousands of foreign audiotext numbers. We don't know all of that --

MR. HILE: Do you pass that on to Bell Atlantic?

MR. BOLIN: I don't know. I assume not since Bell Atlantic doesn't seem to know.

MS. HARRINGTON: What's your position again at AT&T?

MR. BOLIN: I'm an attorney in federal regulatory. I don't deal with security, but I know we know of thousands of these. I don't know of how many we don't know of, but I know there are a lot that we don't.

We also know these numbers move around a lot. If somebody gets shut down on one number, they open up two or three days later on another number in the same country or they move to another country.

MS. HARRINGTON: Are there any terminated merchant file that is maintained by Cable & Wireless or

by the companies that are members of the ITA?

MR. ADAMS: For Cable & Wireless I don't know the answer. I would be happy to find that out and supplement the record.

MS. HARRINGTON: Great. Just moving around one of the efforts that the credit card companies have made from fraudulent telemarketers who have moved around, got cut off, switched merchant accounts, was to create the combined terminated merchant file so that when merchants apply for an account, they can be checked out and not given an account if they've been terminated.

MR. BOLIN: We generally don't know who the ultimate merchant is. We know where the number is. We may know the PTT we're dealing with in the foreign country. We don't have direct relationships with these IPs.

I do think in many cases the way our refunds work is that we know if someone called the number within a given range it was an audiotext service. The problem is we don't know what all of these numbers are. I'm not sure anybody does.

MS. HARRINGTON: Marianne has a question and then Adam.

MS. SCHWANKE: That goes right to my point. I still don't see how what the ITA has done or anyone in

the international audiotext industry has done to provide consumers with dispute rights if the LECs don't know which of the audiotext numbers, if in many cases the IXC's don't know.

And the problem consumers are concerned about is if they don't pay, they're going to lose their telephone service because it does result in the toll charge that that can happen.

So how do consumers have real dispute rights in connection with international audiotext numbers?

MS. HARRINGTON: Adele, everyone is look at you.

MS. SIMPSON: Well, I would like to go back and quote what SBC did and I think what Jim had made, if not the actual statement, I will refer to the same thing, and Bell Atlantic had come pretty close. On international, unique from interstate, a general policy has been stated that they adjusted the bill and investigate just because by definition of international charges being higher than interstate.

The billing entities assume the consumer's right whether they're calling Germany or Japan or whether a number shows up that they don't know what it is. If it's international from our perspective our members don't know what those disputes policies are, but we have done everything in our power which is to provide

mechanisms not to charge the international settlement rates.

Whenever one of our members contracts with a U.S. carrier that they say we can't collect this, so we don't want to charge you and we agree with that, and we have done so.

MS. HARRINGTON: May I ask a question about the LECs and the IXCs, about what happens where there are multiple calls to international numbers and the line subscriber gets the bill and learns that a minor in the house has been calling an international audiotext number?

As you know in the 900 number scheme the reason that -- there was a mandatory blocking option required by the Congress and the FCC to prevent that or to give a remedy at least to the line subscriber to keep that scenario from recurring, and the same protection is not available unless the line subscriber gets a block I guess on all international calls?

Would that be the blocking alternative on all international calling? So let's take the Dominica example and say the E mail arrived in the mailbox of a 13 year old who thinks, What is this, I'm in big trouble, somebody is going to get billed \$395, I better call this number, calls this number, discovers it's a

hot sex line and tells all of his friends to call this number.

And they all start calling, and their parents get these big phone bills, so let's say at my house we got calls every day from the hours of four to six for a whole month before I figured this out, what happens when I complain to Bell Atlantic.

MR. LAVALLA: Let me address a couple things. First of all it's Bell Atlantic's position that on these types of international calls, whether they're audiotext or regular international or regular long distance calls, if my end user consumer called Bell Atlantic, we're going to refer those to the long distance carrier.

So it's -- we're not in the business of investigating those nor would we undertake that opportunity.

That having been said, if the consumer says, I'm not going to call AT&T or whoever it is, MCI, Sprint, or I called them and I've received no satisfaction, then our policy then is that we would adjust those off the bill with a statement that they aren't forgiven and we will pass those back, but we'll take them off the bill.

So to clarify Bell Atlantic's position is the same as SBC's in that situation, but the other issue is with respect to the fact that we haven't pursued with

AT&T or the other long distance carriers finding out which particular number or international audiotexts numbers because it's our understanding that all pay-per-call numbers should be on the 900 prefix.

And that obviously is not the case, but for billing purposes and I believe our contracts state that all pay-per-call should be sent to us on a 900 prefix, so the very situation that you described where you have minors in the house, we would have a blocking option available to our consumers. We're not able to block international.

I think if that situation arose and we were made aware of that, we would refer or work with the long distance carrier to maybe have that particular number blocked from -- for that particular customer. But you can't do that on everyone, for all numbers.

MS. HARRINGTON: Jim?

MR. BOLIN: In the situation you described, our policy is case by case. Unlike the LECs, we're not just a billing collection agent. We're the party who money is owed to.

I am confident if you had a large volume of calls like that, we would make some adjustment. It would be case by case whether we wrote it off entirely or whether we wrote it off partially. We might in some

circumstances put in an international call block on your line thereafter if we did forgive the charges.

You are correct though that we can't block all international calls or have no blocking with no option to block country by country, but the situation really would be case by case.

MS. HARRINGTON: Richard and Susan and Danny and then Adam has a question?

MR. BARTEL: I'll put this back together in a moment. As far as making public policy based upon a particular agency's complaint record, I think that is real weak because as you said, each agency has a different incentive for going to different agencies as to what they think that agency's jurisdiction is and so forth.

Just for the FCC perspective, for example when I was doing research working for the dispute resolution task force at North American Numbering Council, I found that there had been almost 20,000 informal complaints piled up in a paper mill with no active investigation involved except that it was simply a letter to the carrier to induce the subscriber and the carrier to get together and talk about what happened.

As far as the technical feasibility of doing line by line blocking on international, calls I think

that it does exist.

MR. COHN: Could I ask you, 20,000 complaints about?

MR. BARTEL: That has nothing to do with pay-per-call. It's just 20,000 total complaints pending I think formally. I can't tell you. They probably have a break down of international or pay-per-call things related to that. I was looking at specifically 800 at the time.

As for the technical feasibility of different line blocking, I think that is a service that a LEC can provide at a price to the consumer because the interexchange services control points in the network and so forth and the rule SS7, have the capability of querying these databases for these special routing conditions.

The interexchange carrier could -- Bell Atlantic for example could sell its customers the service of blocking calls to Dominica or to any particular country, and then the interexchange carrier could launch a query to that database you've sold and determine that that call should not be completed.

So I think technological, domestic technological feasibility is not in question, not in terms of blocking beyond just the area code. It's done routinely with 800

numbers so you could get an 800 number. You could say, I want this area code blocked, that area code blocked, not only area code, all the way down to the exchange of where the call is coming from.

Thank you. And by the way, there's a new product now for 555 numbers where you can do a routing down to the nine digit Zip Code, so the technology does exist to implement a blocking scheme if that's the problem.

MS. HARRINGTON: A follow up question from Adam.

MR. COHN: There's been a information shared about implementing dispute resolution, but it seems as though most of the burden for implementing these things would fall on either the local exchange carrier or the interexchange carrier as far as the dispute resolution.

We learned the LEC will refer complaints about international audiotext to the long distance carrier who would credit the charge or they would have their own policy as far as what to do with those calls.

Has there been any attempt or could there be any attempt by the international audiotext industry to compensate the IXCs and the LECs for handling these billing inquiries and providing credits and having some systematic basis, even if that's not with all the LECs and perhaps even the major ones?

MS. HARRINGTON: An answer, Danny?

MR. ADAMS: My microphone is having surgery. Sure, I think you shouldn't lose site of the fact that most of the money on these calls is also kept by the U.S. interexchange carriers. What we're talking about here for international audiotext is an international telephone call, same price to call your uncle in India. It's an international telephone call, and the same settlement rate is accomplished or paid to AT&T or MCI regardless of who that call is to.

So in terms of sort of them suffering this horrible burden of having to have it financed, I just don't think that's an accurate assumption.

MS. HARRINGTON: Now, without even looking down the table, to dispute the proposition that most of the money is kept by the IXC is Jim.

MR. BOLIN: Thank you for the opportunity. I thought I heard the statement that we keep settlement money which is -- I'm sure my colleagues faults. I think that was a misstatement based on foreign PTTs.

The industry has made a good deal of progress since 1997 with charge back arrangements. In many cases now when we have to credit a call back to one of our customers, we can get the settlement payment back from carriers in many countries.

It's not universal by any means but we can often avoid paying settlements. However settlements are only part of the cost we incur. We still incur the cost to transmit the call, we don't recover that cost. We incur a cost to investigate and handle the paperwork. We don't recover that cost, so what we get back is part of the cost we were losing under the old regime but by no means all of them.

And if Cable & Wireless thinks it's really terribly profitable under those conditions I would love to talk about to them about the business model they're using.

MS. HARRINGTON: Let's go to Susan, please.

MS. GRANT: I just wanted to make two brief comments, thanks, because I have to leave soon. One is about how international call disputes are handled. From what we hear from consumers who call our hot line, because they are handled on a case-by-case basis, people don't know what to expect.

They may be treated fairly by sub carriers, not by others. They may get the first bite of the apple, that is, the first time that the charges appear on their bill, they may be removed, but if someone racks up international charges of the same nature again, they may have to pay them or the vendor may -- rather, the

carrier may split the cost with them.

And people just don't have any resolution that they can rely on because they don't really have any rights in this regard, and they're at the mercy of whatever these varying policies.

Are shifting on policies, in some cases I think it is dictated by how much money the carrier is going to lose. If it's a big scam, that policy may not be as generous, and we have seen policies change by the same carriers depending on the situation.

The other thing that I want to say is this: We talked a long time yesterday about a database for deadbeat consumers where during the act of dialing a pay-per-call service in real time the provider of that service would be alerted and be able to tell that this is somebody that you don't wouldn't to do business with and block them from being able to use that -- make that call.

But we haven't heard anything here or a commitment to develop a database, for instance, of international numbers that were used for pay-per-call services, that when a consumer calls one of those numbers, it would trigger some message, a possible, simple, at least partial solution to the problem here.

And I would like to emphasize that I think that

if this is going to survive as a way of providing services, it's got to come under the rule more than it does now. It's got to come under the rule the same way that 900 numbers do, and if it means that there has to be more of a commitment to technology to make that happen, then that has to be as important to the providers and everyone else here who has a financial stake in this as setting up a database of deadbeats to mitigate their losses.

MS. HARRINGTON: Mark?

MR. FARRELL: My only comment is that -- it's just my general sense that it seems like the ITA and some of the others are looking at -- in terms of these international audiotext messages, sort of they look to the LECs to be the person that issues the adjustment and sets things right for the customer.

And as a LEC, as the company that's putting the bill out, I mean, I'm troubled by that. I mean, this is our bill and these are our consumers, and to say that we should handle this problem or it's okay for LECs to handle this problem, to me that doesn't seem right, and I don't think we should have to be in the position where we're handling the problem.

I think it's the people that's making the money and Cable & Wireless will say -- I shouldn't be dropping

names and I apologize for that, but it seems like it's sort of coming back to the should have known or knew that this stuff's going on, and consumers should be paying, and it might not be the audiotext message, and you look at that and just say, It looks fine to me.

But there's -- people know these companies have moved from the United States and they're down in the Caribbean now, and a lot of this is they see it as an easy way to get money, and as the company that issues the bill, it's our customers and this is distressing.

MS. HARRINGTON: If I might make a comment. I was listening to your remark, Mark, and I was thinking and also reflecting on the comment and the discussion we've heard about the amount of information that is in the possession of ITA members about lines that are being used for audiotexts, about calls that aren't being collected for because of problems, and you see that coming back in the reconciliation.

And what we know here from our law enforcement perspective is that oftentimes the entities who are defrauding your consumers aren't in the Caribbean, they're here in the United States, but they're just using the phone service in Dominica, and it's almost like information laundering.

The information -- if this was all happening

within the United States, the information would be available, but it's laundered, and it's kind of like money laundering, except it's information laundering.

And it's very frustrating for us to not be able to get the information, and I imagine it's very frustrating for the LECs whose customers call for them to not have the information either about how to set this right with the customers.

That's sort of a statement from the moderator. Adam, did you have another question?

MR. COHN: This was a slightly different topic.

MS. HARRINGTON: Can I ask a question on a related but different topic? This is not about pay-per-call exactly, but it is about the use of international dialing patterns, and I just wanted to see if we might have a little bit of discussion on something that we haven't raised in the rule making really up until now but there's a question about it in the agenda, and that is whether the provision that we're proposing which would prohibit toll charges for pay-per-call services ought to -- should that be adopted, ought to be limited to audiotext or expanded either now or in the future to the sale of other types of products or services, for example, video text?

We certainly are seeing the promotion of

international dialing as a method to pay for video text.

Anybody have a comment on that? Should it be treated the same way as audiotext? Peter?

MR. BRENNAN: Could you be more specific as to what you mean by video text? Those of us in the early Internet days -- know that the Internet service has what's called video text, but I sense you define it somewhat differently.

MS. HARRINGTON: It's not necessarily, and I'm not sure that I could give a complete definition, but what I mean is the situation that we saw in the --

MR. COHN: FTC versus Audiotext Connection case.

MS. HARRINGTON: FTC versus Audiotext Connection case, thank you, where there was a separate inducement, and I'm not talking about that. I'm talking about the method of delivery and the product, and what it was was a piece of software that a consumer could download from the Internet, that disconnected them from their Internet service provider, caused their modem to dial up an international number, in that case it was associated with Moldova (phonetic) and be connected to -- in that case it was really a different Internet service provider basically, wasn't it, or was it just the service?

MR. COHN: It was connected to the service.

MS. HARRINGTON: And it was just connected to the service, and the service was sexually explicit images, photos and so forth, that were then transmitted over the computer that the consumer viewed on his or her computer monitor, and they came in through the telephone line and the modem.

And we're beginning to see sort of pay-per-view, if you will, pay-per-peep services linked to international dialing that's accomplished through software.

And if anybody has a comment about this and its similarity to audiotext or dissimilarity, Ian and Jim, for starters.

MR. EISENBERG: Thank you. It's sort of like what I said earlier. I think that the Trojan horse program that you were talking about before is sort of a Trojan horse program that you had on your computer and didn't realize it, and all of a sudden it took control of your computer in the middle of the night and dialed Moldova at \$4 a minute and you never knew what was going on.

The problem with that wasn't the software, it wasn't dialing the modem. The problem was it was deceptively advertised. There's no disclosures. There's already laws that cover. That would be illegal

with or without TDDRA.

I don't see why we have to expand existing laws to hamper technological growth and advancement for things that are already existing under laws and regulations.

I've seen a lot of similar dollars that exist in today's market that have so much disclosure it's incredible because there's no way precise laws. You have to scroll down where it says, warning, you're going to make a long distance call to wherever. It's going to cost from \$3 to 5 per minute.

It forces you to scroll all the way down before you can click the "I accept" or continue button so you don't glance over it. You have to view the entire thing.

MS. HARRINGTON: That would then be if you analogize that to audiotext, the consumer is getting the free preamble on that screen when they scroll down before they dial the number, that is before they click to cause their modem to dial the number.

MR. EISENBERG: I hate to try to tie it back to TDDRA disclosures because it's not the same meaning. The same way of making a really international call to an audiotext program is not the same median as calling a 900 number. It is terrifying for me to tie different

technologies together and make them all abide by the same TDDRA guideline.

TDDRA exists to try to regulate existing pay-per-call 900 programs, not to encompass all future technologies that we're going to use.

And also it scares me that there's somewhat of an underline current on that Trojan horse case there's an adult service. I've also seen dollars out there in the market place that have nothing to do with the bill. They have to do with music. They have to do with certain gaming programs, so it's just -- my comments is tying different things together and trying to make all technology fall under the same guidelines, it won't work and it will limit growth.

MS. HARRINGTON: Thank you, Ian. Jim?

MR. BOLIN: My comment is actually more of a question. It wasn't really directed at video text versus audiotext so you may want to hold it, but it's unclear to me what section 308.12 is really aiming at. I'm not sure what the prohibition is designed to do.

MS. HARRINGTON: This wasn't clear from the notice?

MR. BOLIN: At least not no me. It may not be something you want to address here.

MS. HARRINGTON: We probably don't but your

comment is noted. Richard?

MR. BARTEL: Yes, I think that this convergence of technologies is something that has to be looked at because it's happening very quickly. It raises questions like, for example, how do you treat voice over ID when there's a pay-per-call application involved with a person speaking at the consumer, not actually picking up their telephone, but they're talking on a microphone on their computer, and their telephone bill is being charged by the information provider at the other end.

So there is an overlap developing that I don't know if there's evidence of significant abuse or whether there has to be emergency action of any kind, but I think the industry has to look at that.

Again I go back to the fact that from the Consumer League's point of view, I see their point of view that the lost common denominator of the consumer has to be considered, but we can't have everything designed for the lowest common denominator.

However, there are elegant solutions that will get close to the lowest common denominator, and the dialing plan is one of the most obvious of all, so maybe the people in North Carolina might have to change their area code, but for the people in Los Angeles have been changing area codes multiple times for the last few

years, and there's a lot more people in LA.

I'm not trying to push that, but I just say that the elegant solution is probably the most simplest solution for the consumer. The technology in terms of dispute resolution and tracking and blocking are -- can supplement that.

MS. HARRINGTON: Adam has a question.

MR. COHN: I have a question relating to complaints about international audiotext. We've heard a suggestion that the agency is not the first place that consumers would go to complain about this necessarily, and that it would be the IXCs or the LECs or consumer groups.

I would just like to hear very quickly if anybody has any data or information regarding levels of complaints or levels of charge backs? I think AT&T mentioned 10,000 a month, 10,000 transactions a month. These were international audiotexts transactions.

MR. BOLIN: Those were refunds for international calls. I think we can assume that the vast majority of them were audiotexts.

MR. COHN: Does anyone else have information on that they want to share?

MS. HARRINGTON: Do you have any complaint information, Danny or Adele?

MR. ADAMS: Cable & Wireless to my knowledge doesn't have complaint information per say. The charge back rate is about -- as I understand it again, I can supplement the record because I can't swear to this under oath by any means, but I believe it's about 5 percent for uncollectibles.

MS. HARRINGTON: For audiotexts or all calls?

MR. ADAMS: I believe for audiotext. If you would like I can confirm that.

MS. HARRINGTON: That would be great. Jill?

MS. SANFORD: One of the problems we have is when the complaints come in to the Attorneys General office, they will usually come in against the IXC, and we really have no way of knowing unless there's a consumer complaint that says, I saw an ad or I filled out this sweepstakes, whether a complaint is for an ordinary international call or it's an international pay-per-call.

And I think that highlights the problem in this area both for the consumer not knowing what kind of transaction they're entering into but also on the back end for law enforcement to follow this problem and then tying in with the FTC concern on ascertaining who the underlying players are.

MS. HARRINGTON: Let me just make clear that we

will put the whole filing with the court on the Dominica case that I've referred to in the record of this proceeding and it will be available. The record is available on our web site, although it will be a few days I'm sure before it's scanned in and put up with a transcript for this, but that will be the complaint, the briefs supporting the Commission's for TRO and the exhibits that were filed in that so everyone will have an opportunity if they want to see what we're referring to here.

Peter?

MR. BRENNAN: Thank you. Actually a quick clarification if I can for Jim from AT&T. To put that 10,000 number in context, can you tell us how many international calls AT&T processes each month?

MR. BOLIN: I don't have that number with me.

MR. BRENNAN: Would you object to supplying it?

MR. BOLIN: I'll see what I can do.

MS. HARRINGTON: Does anyone else want to say anything about the international audiotext issue before we move to public participation?

We have been able to spend about an hour and a half longer on this than we had intended. Ian?

MR. EISENBERG: Just a quick comment on your question earlier about the charge backs where in some of

the trade shows you saw people advertising lower charge back problems. I think it's a relative issue on 900. I lot of us that are in the entertainment side 900 are used to 50, 60 percent charge back levels.

And the way a lot of the international services bureaus pay the IPs it's a guaranteed paid out, so that's the sales pitch given to the IPs. The service bureau eats the charge backs and pays out a guarantee amount, and that's the same way that 900 and 800 credit card is gone to as well because the IEPs aren't equipped as to understand how the charge backs work.

MS. HARRINGTON: Eric?

MR. LEE: When you start moving into the ISP realm, as you probably know already, that the provider to provider problems make all of this look like child's play.

MS. HARRINGTON: It may be a very good comment to end the discussion.

Does anyone else want to say anything at all about the international audiotext issue before we move to public participation? If anyone else would like to participate I have three cards, Nick Lowder (phonetic), Gary Slaiman and Warren Miller. And if anyone else wants to participate, fill out a card right now.

And let's begin with Nick. Let's get you a

microphone if we can. Come up here to the table, and we'll let you use one of these microphones.

MR. LOWDER: Just two quick comments. The ITA does maintain a web site. It's www.Telemedia-ITA.org. That line is open to anyone to register complaints to, and also has a lot of general consumer information, and we will provide anyone in the law enforcement or anyone else that has any questions trying to track somebody done, just dial into that.

MS. HARRINGTON: Let me ask you the same question I asked David earlier, I think it was you. We operate the Consumer Sentinel, a consumer fraud complaint database, and receive on fair amount of complaint information from non FTC and non government sources.

Would you be interested in crosswalking ITA complaints about fraud in our database.

MR. LOWDER: I'm a member of the association. I'm not authorized to commit to anything. Let me put that out as a suggestion and let us know whether anyone would consider this. We want to do anything to make everything easier. The de minimis rule the Commission would be making a large mistake in the way they have this phrased, I think it is necessary to have de minimis exclusions to these information or whatever the service

is.

I think it should be designed there's a limit to amount of money that's charged to the consumer, much the same as the 900 services has somewhat of an exclusion to calls under a \$2 reach, but they were not subject to the same types of preamble free time et cetera, and I think this will give people a tremendous opportunity to develop a whole host of services to be developed within the guidelines of a great low cost.

It's very effective now that the Commission has eased up, this has to be on the 900 approach, they've had in the past.

I share AT&T's concerns that I understand they're well documented, that you guys won't pay extra fees to anyone, least of all to IPs, but none the less, I think that the Commission identified a vehicle that was acceptable to it, an alternate form of billing other than access fees which would get developed and get you back off the hook with a lot of problems you have right now.

MS. HARRINGTON: Thank you, Nick. Gary?

MR. SLAIMAN: It's Gary Slaiman with Swindler, Berlin for CERB. I wanted to harken back to the should have known conversation we had earlier, and particularly there was a discussion, and I think a general

recognition of the potential chilling effect that a should have known standard would have.

A lot of that was discussed in terms of the LEC, and a concern that if that standard was too indeterminate, you may lose access.

I want to note the discussion that a number of people mentioned maybe there was a way to not have it apply to the LECs. I go back to that the suggestion that you should look at the functionally based test rather than whether it's a LEC or a billing house or a vendor since the LECs perform a variety of functions.

They both do direct bill, in which case the question would be whether they are similar to a billing house in some with regard. They also act as a vendor when they sell their own services.

There were numerous comments made throughout the and the question is how that information which is relevant to what you should know or can know about, whether there's a problem with a particular service or provider, how that gets sorted out through the system.

One related comment I wanted to make was in response to a comment that Susan Grant made again focusing on the chilling effect of a should have known standard and its effect on the bill from the perspective of billing, how they perform an important function.

And I think hundreds of service providers have access to the LEC bill, only because of the billing house's ability to aggregate it, and I think Susan had taken the point that from a comment that the fact that also billing houses places a role in terms of dealing with complaints is an indication of why should have known standards should apply to them.

But flip that back and to state that if you're not certain of the role of the billing house, you have a negative effect on consumer welfare and that you lose potential access to the bill for potentially hundreds of providers that depend on the billing for that access.

Finally, I would say the suggestion that you find some kind of presumption or safe harbor seems to me an interesting solution, that it both encourages behavior without the FTC having to ability by incenting billing houses and others to find ways to not have their head in the sand as you say in your comments while preserving the FTC's enforcement authority to overcome that presumption if they chose to in a facts.

MS. HARRINGTON: Okay. I want to apologize. Don't leave, and I want to apologize to Nick because I didn't find out whether anyone else had any questions for Nick as well, so let's -- do anyone of the participants somewhere follow up questions for either

Nick or Gary? Richard?

MR. BARTEL: I have a question for Gary. Earlier there was a comment by one of the aggregators, I think that in their contract with the LEC they are prohibited from I guess conferencing the ISP or passing the call on to the ISP I think it was.

How do you see that mitigating they should have known either for the ISP or for the LEC or for the -- if there's such a contractual inhibition to pass on every single complaint to the ISP? Does it mitigate their should have known in some way?

MR. SLAIMAN: Well, again I would say I don't think your characterization of what the comment is accurate. There's not a limitation on passing on the complaint. And I really defer to Jacque to explain again what the nature of that contractual limitation is.

But I think it has to do with transferring that customer immediately from the billing house to the vendor. And I think there's a concern on behalf of consumer protection making sure the customer has his problem resolved.

I think that's the impetus behind that contractual provision where the billing house has been contracted by the vendor to solve those problems, and I think the LEC contract terms were probably meant to make

sure that the customer doesn't gets tossed around and doesn't get his issue resolved.

MR. BARTEL: So your theory is it's the agent should have known rather than the principal should have known, is that right?

MR. SLAIMAN: No. The should have known I'm saying needs to be moderated, and what we had suggested was a presumption that when the billing house has done what they can do, and I will apply this functional test across the board, whether it's a billing house, a LEC or whatever.

There were limitations in each sector as to how much information any of those parties can have, and the FTC I think can expect each party to do the best efforts within the information that they can gather to sort out problems.

And if they do that, then you ought to get some credit for having done what you can do within the limits of what you can do.

MS. HARRINGTON: Any other questions for Gary or for Nick? Thank you.

Warren Miller?

MR. MILLER: Thank you. My name is Warren Miller, I'm the president of the Tele Corporation and a founding member of the BRTF as well.

I want to thank the Commission for this opportunity to open the dialogue and expand it to telephone-billed purchases which I think is important, but I have three areas that were discussed in the last two days that I would like to comment on, and I think it's important to put some historical perspective on some of these things and to do our best to make sure that in trying to develop new procedures, we don't disagree some of those that have worked for us.

First, in the area of the time line, the time it takes to process to pass information, complaint, whatever, people have used the term bright line around here the last two days, and there's definitely in my mind a bright line between a 900 casual transactional item and a 4250 contractual recurring item.

Now, I empathize with the college people who need four months to go over some of these contractual things, and I also appreciate their comments that the problems were not coming from 900.

With that being the case, not 900 not being a problem and not requiring more time, even though Susan is not here to defend herself, I think it would be inappropriate to hold up a 900 database while we wait for a database for a non 900 service to be developed.

Following along the theme of the time line,

billing name and address has only become available very recently because it's been so ordered by the Public Service Commissions to be provided by people competing in the local exchange carrier market.

It was ordered as one of the elements of access to the U.S. provisioning system. It doesn't make it available to people who are non carriers, and the only reason carriers have it was because it was so ordered.

So the tools that are necessary to use this service certainly are not in place because that's not what it's designed for. It's designed to be used by carriers for carrier matters, and that's all the more reason that we have a need for this time line shortly because the information isn't there.

The second item has to do with directory services, and the item I want to make sure that we're clear on, it would be important to define directory services, as Peter said to put a time stamp on it because.

I want to give you an example of the presumption of innocence that was given years ago and that was the carrier status. Carriers were except from everything until the FCC decided just being a carrier doesn't mean you were a good guy and you're going to have to prove your innocence, and likewise directory services have

come to mean a lot of things, and I think it would be inappropriate to assume that directory service should always be exempted just because you were a carrier or just because it's called directory service.

The kids now call information 411 -- 411 has become the slang for information, and now that Bell Atlantic has populated switches with Advanced Intelligent Network, they're rolling out their easy number service with 936, 554, and in October they'll be offering zip plus 4 screening and routing as a function of this.

Now, they already offer a service in New Jersey which competes for the service I offer a service which is reverse match directory where you get -- you put in a telephone number and you get the name and address, or you tell the operator where the person last lived or you tell them what the number used to be.

It's only a matter of time before 411 which now gets you long distance information in Bell Atlantic's territories and James Gardner lets you connect anywhere if you call his number with MCI or whoever, that there will be more things involved with 411 and directory assistance.

And I submit it's not far -- we're not far away from being able to make telephone call to find out how

many left handed men over six feet tall live in a certain Zip Code, and it would be wrong to make that exempt and let and nobody compete with the telephone company in that area.

Finally the de minimis provision. Back in the good old days when we had a monopoly phone company, the way that they stimulated profits in areas where there was use of sensitive billing was they developed something called audiotext, and people were encouraged to promote these services, to encourage people to call and they split the revenues with the information providers. The monopoly phone companies did that.

There weren't a lot of cry about consumers being hurt. The services were phenomenal. The services were part of the tariffed service, and the idea that you can take the money out of the communications network without removing competition and part of the other -- these other legs that this country stands on is fairly impossible.

So there will always be money transferred whether it be access charges or carriage charges or whatever. The important thing is to make sure the consumer is not harmed, and the de minimis provision is important to that.

And I would like to get us back -- Ian and I

were talking at lunch, back two years ago when we were at this able and the ISAs presented a percentage of average rates or something, I agree that was a pretty fuzzy approach to this, and the Commission has taken a very specific approach by giving it a number.

And that number may be the right number right now, but I would submit that two years from now it's not going to be the number, and that I would also submit it should not be our industry that determines what is the number.

So one of the ways to do this is keep this relative basis and determine the number on a relative basis to the average cost, but the Federal Trade Commission or some government agency needs to do it, and I would liken it to the CPI.

Nobody questions what the CPI is, Consumer Price Index. Every contract, not every contract, but lots of my contracts have the CPI where apparent, and I get that number if it's on the web site. If I can find what it is I apply it.

It would be fair to do something like that but to take the money out of every transaction is impossible.

That's all I have.

MS. HARRINGTON: Peter has a question.

MR. BRENNAN: Peter Brennan, TPI. Warren, I just wanted to draw you out a little bit on the point of the databases and on the 900 side versus the 4250 50 sites that you mentioned.

Does the distinction that you're making have most to do with the nature of the transaction or with the method that it's billed by? Is it because it's 900 versus 4250 or is it because it's a subscription recurring bill versus an impulse buy?

MR. MILLER: I'm saying that in 900, time is our enemy, and it's meant to be a casual thing. We're not in the 4250 business, and that's not why I take this position, but I would presume that somebody who wants to put something on somebody's phone bill on a regular basis, that there might be a little -- there's a little more burden of due diligence in entering an agreement for recurring service with somebody as opposed to a 900 which has so many protections against it.

You can't get 900 service unless you haven't blocked it and so forth and so on so, yes, it's tied to 900, but I'm basically saying time is of the essence in 900 for sure, and maybe there's an appropriate standard in the other records, but it shouldn't -- we shouldn't lengthen this standard in 900 just because you may need more time somewhere else.

MS. HARRINGTON: Marianne?

MS. SCHWANKE: Warren, you suggested the types of directory services that should not be exempt from pay-per-call, but do you have suggestions for the types that should be exempt and how they should be described?

MR. MILLER: Yes, put a date time stamp on it when -- the directories that would be providing telephone number and possibly address which you can sometimes contact, talk them into with two listings per call.

In other words, what Peter said, what directory service meant to us when the exemption was crafted, because in the computer business, directories is the hot market in software.

You can see information. Every body of information requires a directory, and it's too generic a term, so directory services should mean telephone number, name or address look up, and that's it.

MS. HARRINGTON: Any other questions of Warren? Richard?

MR. BARTEL: Warren, while you've been involved in this business for a long time, in the business of other types of frauds there appears to be especially with the elderly and some other groups hit lists of consumers who are good hits and who won't complain and

things of that nature and lists are passed around apparently.

Do you feel that if there's a database of complaints available that this might lead to development of a similar type of billing scam where there's lists of susceptible consumers developed where fraudulent billings would least likely result in a complaint?

MR. MILLER: No, I don't. The victim list that you talked about, the elderly, that's a group that's been pretty much addressed by the telemarketing sales world. Those are people who made outgoing calls. Now, I don't think there's a situation where elderly people continually and repeatedly call audiotext programs by accident.

We're talking about -- the people that are on that list of people who were perpetually defrauded who is defrauded, then they call them up again and tell them they're getting their money back for them and so on and so forth.

This is an entirely different thing that people who would -- that database is different. That's all I'm saying.

MS. HARRINGTON: Richard?

MR. BARTEL: I think my question was not a repeat type of thing. I meant a type of list that might

be developed where somebody could send an EMI record as they call it repeatedly to the same number and successfully do that without a complaint, and all of a sudden that number becomes like a golden list of numbers that can be targeted in some way.

In other words this list would develop as a result of their being a complaint list which excludes those complaint numbers from this so-called golden list.

MS. HARRINGTON: They would capture a list, and they would stay on the list if they didn't contest the charge?

MR. MILLER: Is the question would these people be unfairly retained on the list of people that we were doing business with or would they be somehow targeted for scams?

MR. BARTEL: Targeted scams based upon the fact that they never complained but in other words.

MS. HARRINGTON: Is your question, Richard, to Warren, have you seen this? Is that the question?

MR. BARTEL: There has been an indication -- I remember I talked to one ISP sometime recently, and they said I can bill anybody I want, I don't have to call them, and they don't have to call me, I just submit a record and it gets billed.

MR. MILLER: 90 percent of the American people

haven't called a 900 number, wouldn't be on that list of people who haven't complained, so that would be wrong to say that, but speaking for myself and a service bureau my customers and my company do not want to do business with people who have evidenced a preference for not doing business with us.

MS. HARRINGTON: Any other question?

Well, folks, I think we're at the end of the road here. I want to make a couple of points clear that I've made earlier. When is that the record for the workshop will remain open for a couple more weeks, two weeks from today for written comments particularly on the, what was that, the database in response to the database questions and other items that we've discussed during the workshop or anything else that anyone else would like to contribute, including complaint information.

Some of the parties have indicated that they would like to pull together some complaint information and put that in the record.

Second, the fabulous imaging center of the FTC is whichever staff member happens to be sitting in front of the scanner, and I have a note saying, We're not sure if we can scan in all of the Dominica exhibits, and if we can't, we will make them available downstairs in the

public reference room for anyone to come in.

We'll try our best. Adam needs to say something.

MR. COHN: We already have put some of the other cases that were cited in the Federal Register Notice, the International Audiotext Connection case that Eileen referred to as the sexy girls case, the Duvale case and a couple ours we have put downstairs in the public reference room.

So we will definitely put these exhibit down there as well, and there are international audiotext complaints there, and those aren't produced pursuant to the Freedom of Information Act because they're on the public record.

MS. HARRINGTON: Listen, thank you, everyone. This really has been a workshop. We brought you here to work, and you've worked very hard and constructively, and I appreciate very much everyone's really thoughtful contributions to the record, and we look forward to continuing this process and thank you again.

**(Whereupon, the workshop was
concluded at: 4:55 p.m.)**

C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER: R611016CASE TITLE: PAY PER CALL RULEMAKINGHEARING DATE: MAY 21, 1999

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: 6/1/99

DEBRA L. MAHEUX

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

DIANE QUADE