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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In The Matter of	: DOCKET NO. 910060-TP
Amendment of Rule 4.100	: <u>HEARING</u>
F.A.C., pertaining to	: <u>VOLUME I</u>
customer billing	:
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Pages 1 through 111

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FPSC, Hearing Room 106  
101 East Gaines Street  
Tallahassee, Florida

OCT 21 1991

Florida Public Service Commission

Tuesday, October 8, 1991

Met pursuant to notice at 9:30 a.m.

**BEFORE:** COMMISSIONER MICHAEL McK. WILSON  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER SUSAN F. CLARK

**APPEARANCES:**

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8 behalf of ICN Corporation and FAX Interactive.

9 J. JEFFRY WAHLEN and DEAN KURTZ, Ausley,  
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12 (904) 224-9115, appearing on behalf of Centel Telephone  
13 Company of Florida.

14 MICHAEL TWOMEY, Office of the Attorney  
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17 KIM CASWELL, ROSE A. LLAUGET and JAMES  
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20 Florida, Incorporated.

21 ALAN N. BERG, and PETER MERKLE, Post Office  
22 Box 5000, Altamonte Springs, Florida 32715, Telephone  
23 No. (407) 889-6018, on behalf of United Telephone  
24 Company of Florida.

25

## 1 APPEARANCES CONTINUED:

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3 Inc., 3111 University Drive, Suite 406, Coral Springs,  
4 Florida, 33065, Telephone No. (305) 753-6666, on behalf  
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6 HAROLD McLEAN, Associate Public Counsel and  
7 VICTORIA MONTENARO, Office of the Public Counsel,  
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11 of Florida.

12 RICHARD BELLAK and DAVID SMITH, FPSC, Division  
13 of Appeals, 101 East Gaines Street, Tallahassee, Florida  
14 32399, Telephone No. (904) 488-7464, on behalf of the  
15 Commission Staff.

16 ALSO PRESENT:  
17

18 STEVEN BROWN, ANN SHELFER and JILL BUTLER,  
19 FPSC, Division of Communications.

20 DAN HOPPE, FPSC, Division of Research.

21 CRAIG HEWITT, FPSC, Research and Regulatory  
22 Review.

23 BETH JOHNSON, Florida Department of Commerce.

24 REPORTED BY: CAROL CAUSSEAU, CSR, RPR  
25 JOY KELLY, CSR, RPR  
SYDNEY C. SILVA, CSR, RPR  
Official Commission Reporters

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12	1 (Staff) Composite of Proposed		
13	Rule; Notice of Rulemaking		
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P R O C E E D I N G S

(Hearing convened at 9:35 a.m.)

COMMISSIONER WILSON: Call the hearing to order. Read the notice?

MR. BELLAK: The purpose of the hearing being conducted today is pursuant to Notice of Rulemaking published on September 12th, 1991, pertaining to the amendment of Rule 25-4.110 concerning customer billing.

The function of the hearing is to allow the Commission to inform itself of matters bearing upon the proposed rule amendments by giving the affected persons an opportunity to present evidence and argument as to the merits of the rule amendment.

My name is Richard Bellak. I'm Associate General Counsel with the Commission. And the format that we'll be following here today is one generally employed by the Division of Appeals in conducting rulemaking hearings. Given the essentially informal nature of the proceeding, we will not be swearing in witnesses. But I would, at this time, like to take the appearances of those who are planning on participating in the hearing.

COMMISSIONER WILSON: All right, let's begin right here.

MR. ANGEL: Albert J. Angel, on behalf of ICN

1 Corporation and FAX Interactive. My address is 3500  
2 Magellan Circle, No. 717, Aventura, Florida 33180.

3 MR. RYDER: David Ryder, President, Ryder  
4 Communications, Incorporated, 3111 University Drive,  
5 Coral Springs, Florida 33067.

6 MR. LIGHTSEY: Harry Lightsey. I'm here  
7 today on behalf of Southern Bell. I also have with me  
8 Beth Harber, who will make a statement on Southern  
9 Bell's behalf.

10 MS. CASWELL: Kim Caswell, GTE Florida, One  
11 Tampa City Center, P. O. Box 110, Mail Code 7, Tampa,  
12 Florida 33601. And I have with me today Rose Llauget  
13 and James Berlinger.

14 MR. TYE: Michael W. Tye, 106 East College  
15 Avenue, Suite 1410, Tallahassee, Florida 32301,  
16 appearing on behalf of AT&T Communications of Southern  
17 States, Inc. Appearing with me is the Deborah J.  
18 Winegard, 1200 Peachtree Street, Northeast, Atlanta,  
19 Georgia 30309. Ms. Winegard is a member of the Bar of  
20 the state of Georgia and the state of Louisiana. Also  
21 appearing with us will be Les Sather from our Atlanta  
22 office.

23 MR. McLEAN: Harold McLean, Office of Public  
24 Counsel, representing the Citizens. Appearing with me  
25 today is Victoria Montenegro.

1           MR. TWOMEY: Mike Twomey, Department of Legal  
2 Affairs, Room 910, the Capitol, Tallahassee, Florida  
3 32399-1050.

4           MR. BERG: Alan Berg, Post Office Box 5000,  
5 Altamonte Springs, Florida 32716-5000, appearing on  
6 behalf of United Telephone Company of Florida. And I  
7 have with me Pete Merkle, M-e-r-k-l-e, who will make a  
8 brief statement on behalf of United.

9           MR. WAHLEN: I'm Jeff Wahlen, Ausley law  
10 firm, P.O. Box 391, Tallahassee, Florida, appearing on  
11 behalf of Centel Telephone Company of Florida. I have  
12 with me Dean Kurtz, K-u-r-t-z, who will make a brief  
13 statement on behalf of Centel.

14           MR. PRUITT: And, Mr. Chairman, I'm Prentice  
15 Pruitt, Counsel to the Commissioners.

16           MR. SMITH: I'm David Smith. I'm Director of  
17 the Commission's Division of Appeals. And my role here  
18 today is that of Hearing Officer in the Phase I  
19 proceedings.

20           MR. BELLAK: Now, the order of presentation  
21 at the hearing will commence with David Smith, who is  
22 the head of the Division of Appeals, who will present  
23 information relevant to Phase I of this rulemaking,  
24 followed by Commission Staff, which will present the  
25 contents of the Commission's exhibit in this matter,

1 and then followed by those who wish to present comments  
2 at the hearing and questioning of those who present  
3 comments; and brief rebuttal is permitted. So we'll  
4 start with Mr. Smith.

5 MR. SMITH: Mr. Chairman, as you're aware,  
6 this rulemaking has been divided into two phases, a  
7 Phase I proceeding and a Phase II proceeding. And I  
8 have presented to you and distributed to the parties a  
9 recommended order which would consolidate Phase I and  
10 Phase II and lead to the withdrawal of the Phase I rule  
11 amendments.

12 And my reason for that are as follows: Phase  
13 I proceedings modify Section (1)(a) of 25-4.110 by  
14 adding language which would require segregation of the  
15 900 and 976 charges on the customer's bill. The  
16 amendments further would require that the customer be  
17 advised that nonpayment of 900 and 976 charges would  
18 not result in discontinuance of service, and the  
19 amendments would require that the customer be advised  
20 that blocking of 900 service was available from the  
21 local exchange company.

22 As a result of that Notice of Rulemaking in  
23 Phase I, several parties filed comments. A hearing was  
24 held in which ten parties participated and five parties  
25 filed post-hearing comments. The primary issues at

1 hearing was the need to inform the customers of their  
2 rights with regard to 900 service and the manner of  
3 implementation and the timing of implementation of the  
4 new billing requirements. In particular, United  
5 Telephone Company and GTE of Florida requested that  
6 they be allowed additional time to implement the new  
7 billing requirements.

8           The Phase II proposals have repeated the  
9 requirements of Phase I with regard to the segregation  
10 of 900 and 976 charges on the bill. They have also  
11 repeated the requirement that the customer be advised  
12 that nonpayment of the 900 charges would not result in  
13 discontinuance, and they have added the requirement  
14 that the customer be informed that free blocking is  
15 available.

16           The proposed Phase II amendments also add  
17 several other provisions to the proposed amendments to  
18 the bill format.

19           Those requirements are now, instead of a  
20 Section (1)(a) of the rule, they're now in Section  
21 (10)(a) of the rule.

22           The result of all this is that there is  
23 nothing in Phase I of the rule that isn't contained in  
24 Phase II in a modified and expanded form. The Phase I  
25 implementation would put the old form of the rule

1 requirements into effect for a relatively short period,  
2 perhaps one or two months. I believe that it is better  
3 to consolidate the record of these proceedings and to  
4 go forward simply with the Phase II amendments, and so  
5 that you will have a unified rule in the end and that  
6 you won't be unnecessarily repeating the process by  
7 adopting rule amendments which won't be in effect very  
8 long.

9           The recommended order would merge the entire  
10 record of Phase I into the Phase II proceedings. The  
11 issues that were addressed would remain alive; the  
12 issues addressed in Phase I and in that record would  
13 remain alive in Phase II; and they would be considered  
14 in your -- could be considered in your final decision  
15 on the Phase II amendments. Therefore, I would  
16 recommend that you adopt my recommended order and that  
17 you proceed on a consolidated basis in this case.

18           COMMISSIONER WILSON: If we adopted that at  
19 this point, we would then have the entire Phase I  
20 record to draw upon?

21           MR. SMITH: That's correct, also --

22           COMMISSIONER WILSON: It would also be for  
23 the background when we consider the rule out of Phase  
24 II?

25           MR. SMITH: Yes. The entire record of Phase

1 I would go into this Phase II proceeding. In fact,  
2 it's all in the same docket anyway, and this is just a  
3 formal notice that we are taking that tact in merging  
4 the record.

5 COMMISSIONER DEASON: What's the time frame  
6 of when the Phase I rules would be implemented and when  
7 is the soonest that we could implement consolidated  
8 Phase I and Phase II?

9 MR. SMITH: If the Phase II -- or Phase I  
10 rule were implemented according to the current  
11 schedule, it would be effective mid November.

12 How soon the Phase II rules are put into  
13 effect depends on how you proceed. I have suggested  
14 the possibility that you make a Bench decision on these  
15 rules if you believe that's possible at the end of this  
16 proceeding. Otherwise, the Staff would come back with  
17 a recommendation to you at Agenda and you would vote on  
18 it at that time.

19 My belief is that you're only talking about  
20 perhaps another month or so before the rules could be  
21 final for adoption in the Phase II.

22 COMMISSIONER DEASON: If we were to have a  
23 Bench decision, there would only be a month delay  
24 between the implementation of Phase I and the  
25 consolidated Phase I?



1 MR. SMITH: Actually, there probably wouldn't  
2 be that much. If you made a Bench decision, you could  
3 probably have the rules filed and in effect within  
4 street month of November.

5 COMMISSIONER CLARK: David, I have a  
6 question. Have you talked to the people at the APA  
7 Committee to make sure that if we attempt doing it a  
8 little differently that they will not object to the  
9 procedure we have used?

10 MR. SMITH: With the JAPC?

11 COMMISSIONER CLARK: Yeah.

12 MR. SMITH: No, I haven't talked to them.

13 COMMISSIONER CLARK: In the second notice,  
14 did we specifically notice those changes or those  
15 provisions that were already in Phase I? Did we  
16 mention them in the notice?

17 MR. SMITH: The Phase II rulemaking proposed  
18 the sections or the language in Phase I as though it  
19 were a new rule, which it had to be. I mean, since it  
20 wasn't in effect. So we have a Notice of Rulemaking in  
21 Phase I which has those three things in the Section  
22 (1)(a) proposed as rule changes.

23 Then along comes Phase II, moves it to  
24 Section (10)(a) and repeats as new material those  
25 requirements that were in Phase I and adds certain



1 other things to them. So there are two proposed rules  
2 out there which are duplicative, but the Phase II one  
3 was proposed as a new rule. It wasn't as though it  
4 were put in there as though it were already in effect.

5 COMMISSIONER CLARK: Okay.

6 COMMISSIONER WILSON: You would anticipate  
7 that we would decide on the merger and proceeding with  
8 Phase II in lieu of Phase I prior to the hearings or  
9 prior to the further consideration of Phase II this  
10 morning?

11 MR. SMITH: Yes, that's my proposal. I  
12 suppose you could defer a decision until the end of the  
13 hearing on the question of the consolidation, if you  
14 desired and go ahead with the proceeding. But just so  
15 that everyone knows that Phase I is now alive and well  
16 in Phase II as far as the issues that were raised, I  
17 think that's the important point at this stage.

18 COMMISSIONER WILSON: Is there enough  
19 different between the rule in Phase II and the one in  
20 Phase I that it would cause either some added expense  
21 or duplicitous or something that would have to be  
22 changed once we got the Phase II rule in effect?

23 MR. SMITH: Well, the essential requirements  
24 of Phase I are virtually exactly the same in Phase II,  
25 except for the free blocking.

1           In the Phase I rule, there was a provision  
2 that the customer be informed that blocking was  
3 available; but in this Phase II version, the rule  
4 requires that the customer be advised of free blocking.  
5 So "free blocking" versus "blocking available" is a  
6 change in the substance of the rule. But, you know, in  
7 that sense, Phase I goes beyond Phase II. But  
8 everything else is simply a segregation of the charges  
9 and notification to the customer that nonpayment would  
10 not result in discontinuance of service are exactly the  
11 same in effect in Phase I and II.

12           COMMISSIONER WILSON: Any party have any  
13 comments, briefly?

14           MR. McLEAN: Yes, Citizens do. The  
15 recommendation has the scent of delay.

16           COMMISSIONER WILSON: And how do you derive  
17 that? I just thought I heard Mr. Smith say it would be  
18 a matter of days, possibly a month.

19           MR. McLEAN: I thought I heard a  
20 month-and-a-half, and that is assuming a Bench  
21 decision. I don't remember the last Bench decision but  
22 it wasn't recent. Secondly --

23           COMMISSIONER WILSON: I think it was probably  
24 in fuel adjustment.

25           MR. McLEAN: Could be.

1 COMMISSIONER WILSON: It was.

2 MR. McLEAN: The confusion -- I'll take your  
3 word on it -- the confusion about whether a customer's  
4 bill, whether their local service can be terminated for  
5 failure to pay these kind of bills is pervasive. It  
6 has been set forth by at least two major newspapers in  
7 the state, by all the citizens who contact us; and we  
8 think it is time that citizens be told unequivocally  
9 that their local service does not answer for these kind  
10 of charges.

11 So to the extent it smacks of delay, we don't  
12 like it.

13 COMMISSIONER WILSON: If it doesn't result in  
14 an actual delay, though, you don't have a problem?

15 MR. McLEAN: Correct. As a matter of fact,  
16 you could probably reserve ruling on the consolidation  
17 until after you decide whether you're going to rule  
18 from the Bench.

19 COMMISSIONER WILSON: Any other comments?  
20 Commissioners?

21 COMMISSIONER CLARK: I would recommend we  
22 wait until after the hearing to see if we can reach a  
23 Bench decision.

24 COMMISSIONER WILSON: All right.

25 MR. SMITH: If I could make one final

1 comment.

2           Whether or not you make it a Bench decision,  
3 my recommendation is that you consolidate the two  
4 proceedings to avoid putting the rule into effect and  
5 requiring the utilities put the rule into effect in a  
6 form that is going to be changed within a month or so.  
7 I don't think it makes sense to proceed in that way.

8           It's unfortunate that the Phase I proceedings  
9 have gone on this long. It was originally anticipated  
10 that that change would go through without anyone  
11 requesting a hearing; that didn't occur; so that's why  
12 we are where we are today.

13           COMMISSIONER CLARK: David, let me make sure  
14 that I'm clear. Are the requirements going to be  
15 different in Phase II? I had thought you said the only  
16 difference would be the free blocking.

17           MR. SMITH: Right.

18           COMMISSIONER CLARK: So what harm would there  
19 be if, in terms of a change in compliance by the people  
20 affected, if one goes into effect and then Phase II  
21 goes into effect?

22           MR. SMITH: Well, there's some changes in the  
23 designation of the service, it's now pay-per-call  
24 instead of 900/976. I didn't really make that clear.

25           The slight difference is in Phase I and Phase

1 II. The Phase II is the more complete form of the  
2 rule, and the terminology is consistent with that used  
3 in the FCC rules, I believe, or the proposed rules.  
4 And those are the basic changes.

5 But what you are talking about is requiring  
6 the implementation of billing changes; and that's a  
7 primary concern as to how you do that effectively  
8 without duplicating efforts, causing unnecessary  
9 expense, and so on.

10 The Staff may wish to comment on the  
11 substance of it.

12 MR. BROWN: This is Steve Brown representing  
13 Staff.

14 The Phase II also adds three additional  
15 provisions that would probably require some billing  
16 changes in addition to including toll free number and  
17 also the name of the provider, and the pay-per-call  
18 program will be required to be on the bill with the  
19 Phase II provisions.

20 COMMISSIONER CLARK: Okay.

21 COMMISSIONER DEASON: But those are  
22 additional items that Phase II would require?

23 MR. BROWN: Yes, sir.

24 COMMISSIONER DEASON: Okay. So if there were  
25 going to be a time difference between implementation of

1 Phase I and Phase II, when it came time to implement  
2 Phase II, it would just be added changes that had  
3 already been implemented for Phase I, is that correct?

4 MR. SMITH: There would be material added to  
5 the bill in the Phase II proceeding, if that is your  
6 question, Commissioner Deason. There are certain  
7 things that would go on to the bill as a result of  
8 Phase I that would be repeated and expanded in Phase  
9 II. The Phase II has about three additional  
10 requirements that Phase I does not, as far as  
11 information to the customers is concerned.

12 COMMISSIONER DEASON: Well, I guess my main  
13 concern, would it be a situation of basically redoing  
14 and scrapping all of the changes that have been  
15 implemented a week, I mean a month or two months prior,  
16 and there would be a lot of changes with a lot of  
17 administrative costs, programming costs, et cetera?

18 Or would it be a simple matter of just taking  
19 what had already been done two months before and making  
20 just a few additional changes to that such that the  
21 cost and expense and time associated with implementing  
22 Phase II would not be that much more than what was  
23 already done for Phase I?

24 MR. BROWN: The Staff believes the latter is  
25 a more accurate reflection of what would probably take

1 place.

2 The requirement of the pay-per-call program  
3 name and IXC providing service is already required  
4 under rule, so that's already -- should be under order,  
5 excuse me. And that should already be on the bill. So  
6 really adding the toll-free number would be really the  
7 only provision that would be added with the Phase II  
8 rules.

9 COMMISSIONER WILSON: So that the Phase II,  
10 if I understand what you're saying, there's some  
11 incremental differences but it doesn't fundamentally  
12 change what a company would have to do under Phase I?

13 MR. BROWN: Yes, sir.

14 MS. CASWELL: Can I make a comment?

15 COMMISSIONER WILSON: The effect of having  
16 the Phase I rule go into effect and then having the  
17 Phase II rule go into effect, if it goes as is  
18 currently proposed, is that you would simply have two  
19 actions by the Company at different dates relating to  
20 the same subject?

21 MR. BROWN: Yes, sir.

22 COMMISSIONER WILSON: And in Phase II, you  
23 wouldn't have to go back and change something that you  
24 did under the Phase I rule? It would just be additive,  
25 or do we know that?



1 MR. BROWN: That depends on the Hearing  
2 Officer's recommendation. Staff did make a  
3 recommendation in the hearing that the services be  
4 changed to pay-per-call services, be referred to as  
5 pay-per-call services instead of 900/976. If that  
6 change is approved by the Hearing Officer, there would  
7 be no substantive changes in the rule, as far as the  
8 appearance on the bill.

9 COMMISSIONER DEASON: Under Phase II as  
10 proposed, we would not be reversing anything that was  
11 done with Phase I; it would just be incremental  
12 additional Phase I?

13 MR. BROWN: Yes, sir.

14 MS. CASWELL: Can I comment on one difference  
15 that appears to be substantive between Phase I and  
16 Phase II?

17 In Phase I, you have the requirement  
18 25-4.110(1)(a). And we talk about disclosures such as the  
19 no disconnection notice on each page of the bill. Then in  
20 Phase II, we've got the same sorts of disclosures in  
21 Section (10)(a) on each section of the bill. Those appear  
22 to be different requirements to GTE, so --

23 COMMISSIONER WILSON: I believe they are.

24 MS. CASWELL: That's one instance where I do  
25 believe we do have substantive differences.



1 MR. BROWN: And that was also a recommended  
2 change by Staff at the first hearing.

3 COMMISSIONER WILSON: Is it necessary to make a  
4 decision about merging the two at this point, or can that  
5 decision be delayed until we've heard the Phase II?

6 MR. SMITH: At this point I recommend that  
7 you delay it until you've heard the Phase II. If  
8 people want to comment on the issue of the effect of  
9 having Phase I put into effect before Phase II, then I  
10 think that would be appropriate since the issue has  
11 been raised.

12 COMMISSIONER WILSON: Does the effective date  
13 of the Phase II rule depend on no one protesting or  
14 objecting?

15 MR. SMITH: We're beyond the protest period.

16 COMMISSIONER WILSON: We're beyond that on  
17 all of them?

18 MR. SMITH: The parties have had the  
19 opportunity to request a hearing; that's why we're here  
20 today.

21 COMMISSIONER WILSON: The controlling action,  
22 then, is whether the Commission's panel makes a Bench  
23 decision today?

24 MR. SMITH: That's correct. I mean, as far  
25 as the timing is concerned, the fastest way you could

1 get this rule out is to make a Bench decision. The  
2 second fastest is come back in an agenda or two and get  
3 it out. The difference in those is probably three or  
4 four weeks.

5 MR. McLEAN: And to focus, the Citizens' only  
6 objection is simply the element of delay. If you can  
7 figure out a way to minimize the delay, we can live  
8 with it.

9 COMMISSIONER CLARK: And I think we can even  
10 speed it up if we can make a Bench decision today, give  
11 notice of the changes in the next Weekly. I mean, I  
12 think we can even speed up Phase I if we make the  
13 decision today.

14 MR. McLEAN: Well, we'll applaud that. But  
15 there's a gong going off here somewhere that says  
16 there's a legal infirmity in there somewhere, because  
17 I'm not sure you noticed it that way. But who am I to  
18 complain about that? The sooner the better.

19 MR. SMITH: Commissioners, let me say one  
20 other thing.

21 If you adopt the Phase I rules and amend  
22 Section (1)(a) and then that goes into effect, it's  
23 adopted, becomes effective, then you propose Phase II  
24 and you put Section 10 in there and it contains the  
25 same thing, you're going to have kind of a messed up

1 rule, actually, I think, unless you can find some way  
2 to consolidate the thing. I'm just talking about the  
3 complications --

4 COMMISSIONER WILSON: Well it still sounds to  
5 me like the controlling matter here is whether we make  
6 a Bench decision or not.

7 MR. SMITH: Yes, sir. It certainly depends a  
8 great deal on that.

9 MR. BERG: Can I make a comment,  
10 Commissioner, over in the witness area?

11 COMMISSIONER WILSON: Yes, I'm sorry.

12 MR. BERG: I don't want to reargue my case,  
13 because we had our say at the Phase I hearing. But  
14 what we advocated at the end of that was that the Phase  
15 II language that was applicable to Phase I be adopted  
16 in Phase I. That would avoid any delay.

17 We just adopt the language with the three  
18 additional provisions and the slight changes. They  
19 weren't that different. And then we only have to go  
20 into the billing system once, and so Phase I would  
21 adopt the language that is already in the Phase II  
22 rule.

23 And we can go ahead and put that in; we don't  
24 have to touch that part again. When Phase II passes,  
25 we can go on and do the other things in Phase II. And

1 we included that in our post-hearing comments, which is  
2 part of the record.

3           Also, I feel compelled to point out that in  
4 Phase I, we asked for some time after we had the final  
5 language in the rule to change our billing system. We  
6 had testimony in Phase I that indicated what actually  
7 needed to be changed and why we needed the time. We're  
8 proceeding, and I think it will take less time than we  
9 originally proposed. But we weren't anticipating on  
10 addressing Phase I here today so we didn't bring that  
11 expert back with us. So we'll have to stick with the  
12 time limits that we asked for in Phase I; but we think  
13 we will be able to beat those because we have been  
14 continuing to work on it as if the language were to be  
15 as is in the proposed rule. (Pause)

16           COMMISSIONER WILSON: Well, if I get the  
17 sense of what the Commission wants to do, it's to get  
18 this done as soon as possible so that customers have  
19 notice of what their rights are with respect to  
20 pay-per-call and this be the kind of adequate notice  
21 that would allow them to make decisions and understand  
22 what they can and cannot do.

23           So whatever it takes for us to move with the  
24 greatest alacrity I think is what we're going to do.  
25 And if, Mr. Berg, what your suggestion is is the

1 fastest way, then I think that's what we'll do. if a  
2 Bench decision on the Phase II rule, then I think  
3 that's what we'll do, and we'll have some discussion  
4 about that before the day is out.

5 Are we ready to proceed with --

6 COMMISSIONER DEASON: Let me ask Mr. Berg a  
7 question. I'm a little confused.

8 Exactly what is your proposal?

9 MR. BERG: There's some language in Phase I,  
10 and I don't have it exactly in front of me, but there's  
11 three additional paragraphs that are added in Phase II  
12 to the language in Phase I. The word "free" is added  
13 before "blocking" in Phase II that's not in Phase I.  
14 And there's a change in language from 976 and 900  
15 service to pay-per-call service.

16 What we suggested is instead of adopting the  
17 Phase I language, let's adopt the Phase II language in  
18 Phase I, and we'll already have that done. We won't  
19 have to go back and change the rule when we get to  
20 Phase II. They are not significantly different, but it  
21 means we only have to go into the billing system one  
22 time. We only have to put in data service requests to  
23 have reprogramming done once. And it doesn't delay  
24 because we're asking for the changes in Phase II to be  
25 made in Phase I, so the notices go on the bills on the

1 Phase I schedule.

2 COMMISSIONER DEASON: So under that scenario,  
3 if the Commission were not to make a Bench decision and  
4 there were a delay between Phase I and Phase II, the  
5 substance of the Phase II could be implemented in Phase  
6 I for those changes that are within Phase I?

7 MR. BERG: That's correct. Basically, all  
8 we're asking is that you move the Phase II language on  
9 those subjects that are dealt with within Phase I to  
10 Phase I. Now, there are other subjects in Phase II  
11 that are not in Phase I that are what the folks have  
12 requested a hearing for here today.

13 COMMISSIONER DEASON: And that obviously  
14 would have to wait --

15 MR. BERG: Right.

16 COMMISSIONER DEASON: -- and would have to  
17 run its due course.

18 MR. BERG: Yeah. But we could start getting  
19 the programming done and everything to get the language  
20 the Public Counsel and the Attorney General want on the  
21 bill sooner if there's some delay in implementing Phase  
22 II.

23 COMMISSIONER DEASON: Is that legally  
24 permissible since -- I guess you're saying since it's  
25 the same subject matter, it would be permissible?

1 MR. BERG: I think it is. It's the same  
2 subject matter and the changes are only slightly  
3 different. The three changes that I noticed, and I  
4 think the Staff has mentioned here today, is Phase II  
5 offers free blocking where Phase I didn't. Phase II  
6 uses the pay-per-call service language rather than 900  
7 or 976 service. And Phase II adds, I believe, it's  
8 three paragraphs. I believe those were described by  
9 the Staff. I've got the numbers somewhere here in my  
10 comments but I can't put my finger on them. It's  
11 (10)(a)3, (10)(a)4 and (10)(a)5 are added in Phase II.

12 And those are the ones, (10)(a)3 is local or  
13 toll-free number an end-user customer can call to  
14 dispute charges. With 900 service, the name of the  
15 interexchange carrier providing the 900 service and  
16 pay-per-call service or 900 service program name.

17 So I don't think those are significant  
18 changes from the Phase I rule. We raised it in the  
19 hearing in Phase I and people had a chance to address  
20 it at that time.

21 COMMISSIONER DEASON: Okay, thank you.

22 COMMISSIONER WILSON: Are we ready now to go  
23 to the Staff presentation on Phase II?

24 MR. BELLAK: I would like at this time to  
25 introduce for the record the Staff's Composite Exhibit



1 1 in Phase II, which consists of the proposed rule  
2 amendment: A notice of rulemaking issued on September  
3 12, 1991; the statement of facts and circumstances  
4 provided to the JAPC; the economic impact statement;  
5 and comments introduced into the record by AT&T, FAX  
6 Interactive, Centel, Southern Bell and General  
7 Telephone.

8 And with that, on behalf of the Staff, Steve  
9 Brown will present information and comments relating to  
10 Phase II.

11 COMMISSIONER WILSON: All right, that exhibit  
12 will be a part of the record.

13 (Exhibit No. 1 marked for identification and  
14 received into evidence.)

15 COMMISSIONER WILSON: Go ahead, Steve.

16 MR. BROWN: Commissioners, I'm just going to  
17 restrict my comments basically to Phase II since we've  
18 heard all this discussion on Phase I already. The  
19 Commission directed Staff to bifurcate the rule at the  
20 February 5th, 1991, Agenda. At that time, the  
21 noncontroversial part, which is what was protested and  
22 we went to Phase I hearing. The second phase was what  
23 was considered more controversial and would result in  
24 where we are today.

25 Staff conducted a Phase II workshop on May 8,



1 1991, which was very informative, and all the parties  
2 provided comments, lively discussion, and Staff really  
3 believes that the rules that we proposed out of that  
4 workshop were a consensus among the parties.

5 The economic impact statement was completed  
6 on August 7, 1991, and the rules were taken before the  
7 Commission at the August 27th, 1991, Agenda.

8 The major points of the Phase II rule are a  
9 section that was added to the rule indicating that  
10 partial payments of a customer's local exchange bill  
11 will, any partial payment of that, will be first  
12 applied towards satisfied regulated charges.

13 The rule then turned to more specific  
14 pay-per-call items. The first part is what we  
15 discussed basically here so far as Phase I, requiring a  
16 separate section on the bill for notice requirements.  
17 This section would be identified as pay-per-call  
18 nonregulated services. The notification requirements  
19 would be nonpayment of non- nonpayment of pay-per-call  
20 services would not result in disconnection of local  
21 service; free blocking is available for pay-per-call  
22 service; toll free number for customer complaints, and  
23 the pay-per-call program name and the interexchange  
24 company providing the program.

25 The next section of the rule addressed issues

1 that the local exchange companies and the interexchange  
2 companies would have to assure that the pay-per-call  
3 provider was performing before they could provide  
4 transmission or billing services. The first part of  
5 that is the preamble. The preamble must be 18 seconds  
6 long or longer, include the total minimum charge.

7           Here I would like to make a correction to the  
8 proposed rule as it went out. In our attempt to make  
9 adjustments from the Agenda, one part was deleted. In  
10 this section, it states the total minimum charges for  
11 pay-per-call services need to be included in the  
12 preamble. This also should have a statement that  
13 reads: "Also, the per-minute charges should be  
14 included in the preamble."

15           The preamble should also indicate that  
16 parental permission is required for someone under 17  
17 years of age, and tells the caller that if they  
18 disconnect during the preamble, no charge will apply.  
19 This portion of the rule requires that if the total  
20 charge is less than \$3.00 there is no preamble  
21 required.

22           The next section of the rule addresses  
23 requirements for programs directed at children. It's  
24 required parental notification of children, the  
25 parental notification requirement on all children's

1 programs and also included in any advertising. Also  
2 there's a requirement of no rates in excess of \$5 and  
3 no enticement of gift or premium.

4 The next section, which was changed also at  
5 the August 27 Agenda to include a provision on print  
6 size, provides that disclosure pay-per-call provider's  
7 name in all promotional material and advertising with  
8 the charges for pay-per-call rates disclosed in the  
9 same print size as the pay-per-call number.

10 The rule then turns to blocking, indicating  
11 that free blocking is available for pay-per-call  
12 services and the first bill will be adjusted when a  
13 customer calls and claims no knowledge of charges  
14 associated with pay-per-call services.

15 The next section is Dispute and Resolution.  
16 It indicates that pay-per-call services bills will  
17 automatically be adjusted upon the statement that the  
18 customer did not receive the price advertisement, the  
19 price advertised was incorrect, the program was  
20 incoherent, out-of-date information was provided, or  
21 the customer terminated the call during the preamble.

22 The final section is Credit and Collection.  
23 The main provision of this requires the LECs and the  
24 IXC's shall not provide or attempt to collect charges  
25 that are being disputed or report customers to credit

1 bureaus or collection agencies for nonpayment of  
2 disputed pay-per-call services.

3           We've identified, from the comments and the  
4 request for hearing, five major issues that should be  
5 addressed today. The first relates back to Phase I,  
6 being the implementation issue. Staff's opinion on  
7 this -- we'll go ahead and give our recommendation on  
8 this issue -- is that if a company has a problem with  
9 implementing the changes that are provided in this  
10 rule, that they request a rule waiver and that we or  
11 the Commission address each one on a case-by-case  
12 basis.

13           Also identified in the information provider's  
14 protest was issues relating to the statement on the  
15 bill requiring nonpayment of nonregulated pay-per-call  
16 service will not result in disconnection of local  
17 service. Pay-per-call providers indicate that this  
18 appears to be discrimination towards their services.

19           They also indicated that they believed that  
20 the preamble requirements were too restrictive and  
21 ambiguous. The pay-per-call providers indicated that  
22 the parental consent notification on all calls was  
23 inconsistent with the FCC proposed rules and would be  
24 burdensome, and also that the print size for charges  
25 and pay-per-call numbers was also burdensome. (Pause)

1           To clear up some confusion as far as the age  
2 requirement, the Commission did direct that the age  
3 requirement be changed at the August 27 Agenda from 16  
4 and younger to 17 and younger. The FCC, in their  
5 notice requirement, said, basically, 18 and younger.  
6 That could be another issue.

7           That concludes my testimony.

8           COMMISSIONER DEASON: I have a couple of  
9 questions.

10          COMMISSIONER WILSON: Commissioner?

11          COMMISSIONER DEASON: Yes. We decided  
12 earlier that it would be 17 and younger?

13          MR. BROWN: Yes, sir.

14          COMMISSIONER DEASON: I thought it was our  
15 intent to make that just under 18; that once the age of  
16 18 is reached, then that requirement would not be in  
17 effect; but that if a person was 17 years, 364 days,  
18 the requirement would be --

19          MR. BROWN: That's still 17 and younger, as --

20          COMMISSIONER DEASON: -- that's the way you  
21 interpret the rule?

22          MR. BROWN: -- the way we interpret the rule.

23          COMMISSIONER DEASON: Okay, fine.

24          MR. BROWN: If we put 18 and younger, and  
25 they're almost 19 before it goes --

1           COMMISSIONER DEASON: All right, then, that's  
2 the way you interpret it?

3           MR. BROWN: Yes.

4           COMMISSIONER DEASON: Okay, that's fine.

5           COMMISSIONER CLARK: What is the FCC rule?

6           MR. BROWN: It says 18 and younger.

7           COMMISSIONER DEASON: And the adjustment for  
8 the first bill, there are certain requirements before  
9 that is automatically adjusted or if there is any  
10 complaint whatsoever on the first bill that it would be  
11 adjusted?

12           MR. BROWN: The major provision in the rule  
13 says if they complained that they did not know charges  
14 applied to it, it would be adjusted. But that it would  
15 have to be a claim that it was unknown to them that  
16 charges applied for those types of calls.

17           COMMISSIONER DEASON: I see. Okay, thank  
18 you.

19           MR. BROWN: Correction on the FCC, it says  
20 "children under the age of 18." We do not have the  
21 text of the FCC rule, all we were going by is a news  
22 release. We have been unable to obtain a copy of the  
23 FCC's proposed rules.

24           COMMISSIONER WILSON: And it says "children  
25 under the age of 18"?



1 MR. BROWN: "Children under the age of 18."

2 COMMISSIONER WILSON: Okay. So in fact, our  
3 language may be entirely consistent with what they're  
4 doing because that's the same intent of ours, is under  
5 18.

6 MR. BROWN: Yes, sir.

7 COMMISSIONER WILSON: Any other questions,  
8 Commissioners? Of Staff at this point?

9 Did we anticipate that there would be the  
10 other presentations and then questions, or questions of  
11 you at this point about the rule?

12 MR. BELLAK: I think we --

13 COMMISSIONER WILSON: Let's do questions at  
14 this point if anybody has any about the text of the  
15 rule. Any questions at this point? I'm just going to  
16 start at the table and work my way down. Any questions?

17 MR. ANGEL: None.

18 MS. CASWELL: I have just one question.

19 COMMISSIONER WILSON: All right.

20 MS. CASWELL: This is a request for a  
21 clarification. In Section 25-4.110(10)(b)1, I think it  
22 states that, "Programs not exceeding \$3.00 in total  
23 charges may omit a preamble." But then, in Section  
24 (10)(b)3, the rules seem to indicate that a program  
25 preamble is required on all children's programs. Can

1 you resolve this inconsistency? In other words, is a  
2 preamble required on all children's programs regardless  
3 of cost?

4 MR. BROWN: Yes. Staff's intent is that all  
5 children's programming will require a preamble. It may  
6 need some added additional language in the first  
7 section to say, "except for children's programs as  
8 listed below."

9 MS. CASWELL: Yeah, I think it's not clear.  
10 Just one further question. Can you tell me  
11 what the intent of proposed Rule 25-4.110(9) is?

12 MR. BROWN: The partial payment provision?

13 MS. CASWELL: Right.

14 MR. BROWN: At the workshop, there was  
15 identified in our discussion with the local exchange  
16 companies that there was unclear on how partial  
17 payments were applied towards a regulated bill.

18 MS. CASWELL: I guess what I'm getting at is  
19 the intent of that rule to prevent disconnection of  
20 local service?

21 MR. BROWN: Yes.

22 MS. CASWELL: Okay. I have nothing further.

23 COMMISSIONER WILSON: Questions?

24 MR. McLEAN: Commissioners, I have a question  
25 about the summary of the estimate of economic impact of



1 this rule, which appears on Page 3 of the Notice of  
2 Rulemaking. Page 3, first full paragraph, second line,  
3 "900/976 complaints are a small --"

4 COMMISSIONER WILSON: Let me catch up with  
5 you.

6 MR. McLEAN: I'm sorry.

7 COMMISSIONER WILSON: Which document are you  
8 in?

9 MR. McLEAN: I'm in Page 3 of the proposed  
10 Rule 25-4. I think it's Item 1 in the composite Staff  
11 exhibit. I think -- no, it's not part of the Composite  
12 Exhibit, it's part of the notice of the rulemaking, I  
13 think. The Web package, if you will.

14 COMMISSIONER WILSON: Item No. 2?

15 MR. McLEAN: It's part of the material which  
16 is published in the Florida Administrative Weekly.

17 COMMISSIONER WILSON: All right.

18 MR. McLEAN: In the summary of the estimated  
19 economic impact of this rule, it's on Page 3 of the  
20 Notice of Rulemaking, it's just one line anyway,  
21 actually. It says there, "The 900/976 complaints are a  
22 small fraction of total complaints." And the economic  
23 impact statement which was prepared in-house seems to  
24 indicate that the complaints are of rather larger  
25 moment than a small fraction.

1           Is there an apparent inconsistency there?  
2   And if so, how can we reconcile it? To read the notice  
3   of rulemaking, one might have the impression that this  
4   is no big deal, and the economic impact statement seems  
5   to say that it is a big deal.

6           COMMISSIONER WILSON: The language there  
7   indicates that 900/976 complaints are a small fraction  
8   of the total complaints received by the Commission for  
9   both electric, telephone, water and sewer, everything  
10  else we do? Is that the thrust of that segment? Is  
11  that the way you read it, Mr. McClane?

12           MR. McLEAN: Yes, sir, I think that's correct.  
13  So there may not be an inconsistency because --

14           COMMISSIONER WILSON: Because it can be a  
15  small fraction of --

16           COMMISSIONER CLARK: You need to "compared to  
17  what?"

18           MR. McLEAN: Sure, compared to what? How is  
19  your wife? Compared to what?

20           MR. HEWITT: Craig Hewitt, Research Staff,  
21  PSC.

22           I don't have the total numbers of the  
23  consumer complaints before me, but the total complaints  
24  for the the pay-per-calls were 385 protests from  
25  January 1st to July 24th, 1991, and 72 complaints. And

1 they resulted in \$23,445 in credits to customer bills  
2 in that time period.

3 MR. BROWN: We've got updated numbers on  
4 that.

5 MR. HEWITT: From January 1st to September  
6 30th, 1991, there have been 494 protests or inquiries  
7 and then 94 complaints. And a savings of 32,729. But  
8 as a total of the consumer complaints, they have  
9 thousands.

10 MR. McLEAN: Have you all detected a trend in  
11 this particular area?

12 MR. HEWITT: I believe in the economic impact  
13 statement, I did. The calls have been rising. In  
14 other words, 1990 through the whole year there were 489  
15 protests and 81 complaints. So, already, this year,  
16 we've exceeded that.

17 MR. McLEAN: So there is a considerable  
18 increase in the number of -- in the rate.

19 MR. HEWITT: Well, like I said, we've  
20 exceeded it slightly through September 30th, and we  
21 have what, October, November, December. So 75% of the  
22 year. We've already exceeded last year, so I would say  
23 yes, it's quite a substantial increase so far.

24 MR. McLEAN: Thank you, sir. No further  
25 questions.

1 COMMISSIONER WILSON: Any other questions?

2 MR. TWOMEY: Yes, sir, just a couple.

3 Looking at -- I've got a copy of the updated  
4 data that was just read by Staff. Taking the fact that  
5 there were 94 complaints and savings of over 32,000,  
6 isn't it clear that each complaint was in excess of  
7 \$300 on average?

8 MR. HEWITT: That appears to me, yes.

9 MR. TWOMEY: Okay. Also, for what it's  
10 worth, isn't it generally correct that the number of  
11 complaints that the Commission would receive through  
12 its Division of Consumer Affairs would likely be a  
13 relatively small percentage of the complaints that were  
14 initially received by the telephone companies? Does  
15 that follow?

16 MR. HEWITT: I have no evidence on that.

17 MR. TWOMEY: Okay. One last question. On  
18 the language addressing the partial billing, Mr. Brown,  
19 is it the Staff's intention that if a company  
20 disconnects one of their customer's local service or  
21 the long distance service they would get, the regular  
22 IXC toll service, that they'd better check and make  
23 sure that they're not doing so because there are not  
24 only 900 or pay-for-call services associated with that  
25 disconnection, but all unregulated services as well?

1 MR. BROWN: Yes, sir.

2 MR. TWOMEY: Thank you.

3 MR. BERG: I have one clarification question  
4 for Mr. Brown. It concerns (10)(f)2 which appears on  
5 Page 12 of the exhibit that was handed out, or Page 17  
6 on the Notice of Rulemaking Order 25045.

7 That particular section requires that an IXC  
8 or a local exchange company not report the end-user  
9 customer to a credit bureau or collection agency for  
10 nonpayment of pay-per-call or 900/976 charges. If we  
11 have a bill that goes final that contains local, toll  
12 and 976 charges and there's been no complaint about the  
13 976 charges, is it the intent of this rule that we  
14 segregate out that portion before we report it to the  
15 credit bureau?

16 MR. BROWN: No.

17 MR. BERG: Thank you. (Pause.)

18 COMMISSIONER WILSON: Let me see if I  
19 understand what the answer to that question was. If  
20 you do have a bill that contains a mixture of local,  
21 may have 976, may have toll charges, whatever, on it,  
22 your reading of this rule and your response to the  
23 question was that they wouldn't be reported to a  
24 collection agency solely for nonpayment of pay-per-call  
25 charges; but if it were part of a total bill, the

1 balance of which also was noncollectible, and you sent  
2 it there, you wouldn't be required to segregate that  
3 out? Was that the question?

4 MR. BERG: Yes, sir.

5 COMMISSIONER WILSON: All right. And the  
6 answer was, "You would not." All right.

7 MR. TWOMEY: Mr. Chairman, may I ask a  
8 follow-up question of the Staff in that regard?

9 COMMISSIONER WILSON: Sure.

10 MR. TWOMEY: Mr. Brown, it's Staff's intent  
11 from this language that if a customer has a bill that  
12 involves -- an outstanding bill that involves local  
13 service in part and other nonregulated -- or I  
14 shouldn't say "other," and unregulated charges, whether  
15 they be yellow pages or pay-per-call services, that the  
16 company is under -- the companies are under an  
17 affirmative obligation to inform the customers of the  
18 portion of the bill that they have to pay -- that is,  
19 the regulated charges -- to maintain the continuance of  
20 the local service?

21 MR. BROWN: Yes, sir. And the bills  
22 currently include that statement that nonpayment of  
23 regulated charges will result in disconnection of local  
24 service.

25 MR. TWOMEY: Okay.

1 COMMISSIONER WILSON: Other questions? Let's  
2 take about a 10-minute break and come back and we'll  
3 begin with other comments.

4 (Brief recess.)

5 - - - - -

6 MR. ANGEL: Good morning, Commissioners. My  
7 name is Albert Angel and I'm Chairman of Fax Interact,  
8 a Florida based corporation. I'm also Vice Chairman of  
9 ICN Corporation, which is a Florida based information  
10 provider that's been in business for approximately  
11 2-1/2 years. Most recently, I was elected Chairman of  
12 the National Association for Information Services, the  
13 industry trade association that advocates responsible  
14 use of the telephone, particularly in the 900 area.

15 I want to highlight for you that the Florida  
16 rules as they currently stand are a standout. They are  
17 model rules, in my estimation. They are rules that  
18 were really developed in a consensus mode taking into  
19 account the views, feelings and objectives of a whole  
20 variety of parties, including the Attorney General and  
21 the People's counsel here.

22 As you might suspect, the industry here  
23 wishes to achieve the same objective. We want to  
24 identify providers that are not playing by the rules,  
25 that take unfair advantage of consumers. But by the



1 same token, we want to have some clear rules and  
2 regulations by which we can have our services grow and  
3 be truly beneficial and useful to consumers not only  
4 here in Florida but throughout the nation.

5           One of the clear objectives in holding the  
6 workshop was to make sure that the rules in Florida  
7 were no more restrictive than rules that had been  
8 developed elsewhere, but designed to really give  
9 consumers clear and adequate notice of what 900 numbers  
10 were all about.

11           When Staff reviewed for you some of the  
12 issues that the information providers had highlighted  
13 following the August agenda, the sense I had of it was  
14 that, you know, you might have drawn a negative gloss.  
15 We really feel that the rules as a starting point are  
16 excellent. What we're proposing are minor -- almost  
17 technical modifications in at least four areas. And to  
18 summarize them, we've taken issue with regard to the  
19 disclosure that appears on the bill section that  
20 contains 900 and 976 charges. Currently that language  
21 requires that -- there is a statement: "Nonpayment of  
22 pay-per-call charges will not result in disconnection  
23 of local service."

24           This statement and the policy that underlies  
25 it is not of objection to us, but we're asking for a

1 minor change here, which I believe is consistent with  
2 your policy and will probably lead to considerable good  
3 practice in this state. The concept is that local  
4 service should not be disconnected for any dispute or  
5 adjustment that relates to unregulated charges. Rather  
6 than single out pay-per-call charges as the only  
7 category for which local service should be not  
8 disconnected, we're encouraging you to just clearly  
9 state on that section of the bill that contains 976 and  
10 900 charges that nonpayment of unregulated charges will  
11 not result in disconnection of local services. We,  
12 therefore, preserve the policy and put pay-per-call  
13 services that are valuable in delivering benefits to  
14 consumers on the same footing as other unregulated  
15 services.

16 In addition we feel that --

17 COMMISSIONER DEASON: Let me interrupt just  
18 for a second.

19 MR. ANGEL: Certainly.

20 COMMISSIONER DEASON: Do you think that the  
21 average customer knows the difference between a  
22 regulated and nonregulated service?

23 MR. ANGEL: I believe that a good percentage  
24 of them do and the percentage is growing.

25 The primary issue for us in the industry is

1 that of consumer awareness. With each new wave of  
2 telecommunications competition, we've got to really  
3 take account of where the consumer is. Most consumers,  
4 based on the studies that I've seen, appreciate the  
5 fact already that their local service will not be  
6 disconnected for nonpayment of pay-per-call charges or  
7 900 charges. However, we don't want a clear and  
8 explicit statement on the bill to stimulate fraud on  
9 information providers. We'd like so that the  
10 unregulated charges as a group clearly will not result  
11 in local disconnection. And literally, there's been no  
12 real indication that the carriers have disconnected  
13 anybody's local service for nonpayment. And, you know,  
14 we've put that out there. We're just essentially  
15 trying to position pay-per-call as a valuable service  
16 because the regulations that we adopt today will be in  
17 place for a good long time to come. And hundreds of  
18 thousands of people that use pay-per-call services and  
19 have no complaint shouldn't suffer at the hands of a  
20 small and unscrupulous minority of consumers that are  
21 stimulated to action by virtue of what it says at the  
22 bottom of the bill.

23           The second point that we're raising really is  
24 a technical modification. We absolutely support  
25 preambles. We believe they're especially important in

1 the area of children's programming. But there's some  
2 language in the draft rule that speaks to preambles of  
3 18 seconds or longer.

4           Really, what we're trying to bring to your  
5 attention here is that a preamble should provide a  
6 clear and conspicuous disclosure to the consumer for  
7 the person who is offering the program and its price.  
8 And if that takes six seconds or 12 seconds or 18  
9 seconds, it should be to the same effect. However, the  
10 carriers, in determining whether or not someone has  
11 hung up within the preamble period, by necessity have  
12 to program their switches at some standard. And the  
13 consensus that emerged at the workshop was 18 seconds.  
14 If you have language in the preamble section that  
15 speaks to 18 seconds or longer, you're essentially  
16 defeating the certainty that might be achieved.

17           In addition, it's been misread by some  
18 information providers as requiring preambles that are  
19 at least 18 seconds in length, and quite literally you  
20 can give very clear and conspicuous disclosure in a  
21 preamble in a matter of seconds. For example, "Welcome  
22 to the USA Today Sports Hotline, 95 cents a minute."  
23 Probably under six seconds. But if that caller hung up  
24 within the first 18 seconds, he would not be rendered a  
25 charge at all by any carrier operating in the state of

1 Florida or elsewhere.

2           The third point we're addressing is the  
3 requirement of parental notification on all programs.  
4 We clearly have no dispute whatsoever with the notion  
5 that children's program and children, as a group, are  
6 worthy of protection. But to impose a parental  
7 notification requirement on all programs just does not  
8 make common sense.

9           There are a variety of programs, particularly  
10 the ones that are now entering the market that are  
11 designed to reach businessmen or consumers of  
12 governmental services, where the parental notification  
13 "Kids, ask your parents before you call this line,"  
14 would seem out of place, and also contribute to the  
15 cost.

16           We're supportive of the provision in the next  
17 section that addresses a preamble and parental  
18 notification in programs targeted to children but we  
19 don't believe that parental notification should exist  
20 on all programs.

21           Finally, one of the regulations calls for  
22 clear and conspicuous disclosure in the context of  
23 advertising and promotion.

24           The high point, and what we find somewhat  
25 unlivable is the requirement that the number, the price

1 for the 900 program appear in the same print size as  
2 the 900 telephone number.

3 Now, all the broadcast media have developed  
4 standards. The National Association for Information  
5 Services has developed standards, carriers have  
6 developed standards and the standards that have been  
7 developed really go well towards a very clear and  
8 concise set of rules. If you do business with a  
9 carrier, you're going to be living by their standards  
10 with regard to clear and conspicuous disclosure. If  
11 you do business with a major network, you're going to  
12 be dealing with their standards. And none of the  
13 standards that I have seen have established a same  
14 print size requirement. In fact, it would be quite  
15 restrictive on creativity and be inconsistent with some  
16 of the other standards that have been developed. So  
17 we're asking that that particular provision be deleted  
18 in favor of the language that currently is contained  
19 elsewhere in that section of clear and conspicuous  
20 disclosure.

21 In conclusion, all I can say is that we have  
22 a very workable set of rules. The four areas that have  
23 been identified are not objectionable. I don't think  
24 that other parties that are assembled before you will  
25 take real issue with it and whether it's Phase I or

1 Phase II, the industry that provides legitimate  
2 valuable information services wants to see these  
3 services get to market without having those programs  
4 become unwieldy, too costly, or inappropriate. And if  
5 we use a little bit of caution here in developing some  
6 rules we'll probably get there. Thank you.

7 COMMISSIONER WILSON: Does anyone have any  
8 questions?

9 MR. McLEAN: If it's our turn.

10 CROSS EXAMINATION

11 BY MR. McLEAN:

12 Q I believe I heard you, sir, say, that the  
13 average customer can tell the difference between --  
14 knows with a regulated charge is. Did you say that?

15 A No. I believe that a good percentage of them  
16 are beginning to know the difference. I think there's  
17 a vast majority of consumers that don't appreciate the  
18 distinction between regulated and unregulated. And I  
19 think to the extent that the Commission has attempted  
20 to segregate regulated charges from unregulated  
21 charges, that's the appropriate distinction. To the  
22 extent that a telephone company or carrier chooses to  
23 market unregulated services of its own, they should be  
24 on no higher level than some of the information  
25 services that a third party might introduce.



1           So that, you know, the disclosure to consumer  
2 is that for this section of the bill, which contains  
3 unregulated charges, there will be no local  
4 disconnection of your service whether it's 900, 976,  
5 MemoryCall, or what have you.

6           Q     The vast majority of consumers you mentioned,  
7 do they know whether 900 and 976 calls are regulated or  
8 unregulated? (Pause)

9           A     I really can't speak to that in terms of what  
10 the percentages are without having conducted a poll of  
11 consumers. A lot of the people appreciate the fact  
12 that regulators are coming to grips with services like  
13 900 and 976, are putting rules into place, and that  
14 they have recourse with the Public Service Commission  
15 to the extent that they've not gotten what they  
16 expected to get.

17          Q     The gist of your position however, is that  
18 900 and 976 should not be singled out but the term  
19 "regulated" should be subject -- should be substituted  
20 for that term, is that correct? You'd rather see  
21 "regulated" on the bill than 900 versus -- 900 and 976?

22          A     We support segregation of 900 and 976  
23 services as either a separate bill insert or among  
24 other unregulated services for which clear and adequate  
25 disclosures are provided by the carrier and reasonable

1 adjustment policies are provided.

2 Q Well, maybe I'm not asking the right  
3 question. I'm trying to get to the point whether the  
4 average telephone consumer knows whether 900 and 976  
5 calls, whether he knows or she knows whether those are  
6 unregulated services, because wouldn't they have to  
7 know that to know whether they have to pay the bill to  
8 avoid termination of their local service?

9 A You'll note in our comments that we haven't  
10 really taken issue with the title or caption of the  
11 page. It says "900/976 unregulated charges." We  
12 wouldn't change that. We're only addressing ourselves  
13 to what appears typically in mice print at the bottom  
14 of the page that says "nonpayment of unregulated  
15 charges will not result in local disconnection." And  
16 we don't feel that it should be so singular to identify  
17 900 and 976 only and then stimulate fraud and abuse on  
18 lawful providers of information services. It should be  
19 rather a clear understanding by the consumer that  
20 everything in this section of the bill, to the extent  
21 that you have an adjustment request, will not result in  
22 disconnection of local services.

23 Q Mr. Angel, are you a telephone consumer of  
24 above average sophistication or about in the center,  
25 what would you say?

1 A I'd say below average.

2 Q I was afraid you'd say that. Is Yellow Page  
3 a regulated activity by the phone company?

4 A I'm sorry.

5 Q Is the provision of Yellow Page Services a  
6 regulated activity by the phone company?

7 A No, it's not.

8 Q How about customer premise equipment?

9 A No, it's not.

10 Q How about inside wiring?

11 A It depends on the state.

12 Q How about this state?

13 A There is some regulation with regard to  
14 inclusion of those amounts within the rate base and  
15 promotional tactics that Southern Bell and other  
16 carriers use with regard to inside wiring, but the  
17 charge itself I don't believe is a tariffed item.

18 Q How did you come by that piece of information  
19 that you just related to the Commission?

20 A My recollection having reviewed this issue  
21 sometime back.

22 Q In what forum?

23 A Well, I was trial attorney on the AT&T  
24 divestiture case, and I was active in the FCC  
25 proceedings as they concerned inside wire on behalf of

1 the North American Telecommunications Association,  
2 which is a trade association that represents  
3 interconnects, and I have appeared regularly before the  
4 Florida Public Service Commission.

5 Q Do you think that gives you a higher level of  
6 sophistication and expertise in these matters than the  
7 average consumer or lower?

8 A Higher with respect to the technicalities,  
9 but I would put myself on par with the vast group of  
10 consumers when it comes to telecommunications billing  
11 and I think we're simplifying things if we have the  
12 regulated segment and the unregulated segment and I  
13 wouldn't single out 900 and 976.

14 COMMISSIONER CLARK: I'd like to ask a  
15 question of Staff. For what services do we allow the  
16 disconnection of local service; if you don't pay what  
17 bill?

18 MR. BROWN: Your regulated charges, which  
19 would be your local service or your presubscribed long  
20 distance charges.

21 COMMISSIONER WILSON: What notice do we  
22 require currently about that?

23 MR. BROWN: I'm sorry?

24 COMMISSIONER WILSON: What notice do we  
25 require currently about other charges that appear on

1 the bill such as inside wire or CPE, if that's  
2 possible, or other charges that are allowed on the  
3 bill? What's the disclosure there?

4 MR. BROWN: The only disclosure that's on the  
5 bill is nonpayment of regulated charges will result in  
6 disconnect.

7 COMMISSIONER WILSON: Are the bills required  
8 to be -- do we segregate regulated from unregulated or  
9 are they segregated on the bills or are they  
10 intertwined/intermixed? I can't remember from my own  
11 bill. I don't know.

12 MR. BROWN: They're intertwined somewhat,  
13 especially on the summary page. Especially like on  
14 inside wire maintenance. I remember on my bill. I'm  
15 just going by recollection of my own bill, which I had  
16 inside wire on for many years. It was on the summary  
17 page. It wasn't separated out as a regulated or  
18 unregulated charge.

19 COMMISSIONER CLARK: I understand the concern  
20 of Mr. Angel and Mr. McLean. I mean I think we have to  
21 provide a disclosure that means something to the people  
22 paying the bill and I'm just wondering if we can go  
23 about it the other way to describe what -- if you don't  
24 pay these charges, your phone will be disconnected  
25 rather than saying the failure to pay other charges

1 will not result in disconnection. Do you have a  
2 suggestion?

3 MR. McLEAN: No. The problem is that there  
4 ain't a consumer in the state, including some of the  
5 people in this room, who know the difference between  
6 regulated and unregulated charges. Two major  
7 newspapers in this state have said that this proceeding  
8 right here is considering whether to make it illegal  
9 for the phone company to terminate local service if  
10 people don't pay their pay-per-call. That does nothing  
11 more to propagate a major misconception. My suggestion  
12 to the Commission is since the problem is so pervasive,  
13 that extreme measures are required.

14 COMMISSIONER WILSON: You're also describing  
15 a much more generic problem than just the 900/976 or  
16 pay-per-call.

17 MR. McLEAN: Certainly, certainly. We have  
18 complaints, and have had complaints. And when I served  
19 in this building, we had complaints that companies  
20 frequently terminated service for nonpayment of Yellow  
21 Page bill. That has been illegal since I can remember.

22 COMMISSIONER CLARK: Say that again.  
23 Terminating telephone service for nonpayment of your  
24 Yellow Page bill is illegal?

25 MR. McLEAN: Yes, ma'am. I don't know

1 whether it's illegal. It certainly contravenes the  
2 provisions of this Commission's rules; in that sense  
3 it's certainly illegal.

4 COMMISSIONER CLARK: I would say so. I'm  
5 just wondering if there isn't another way to say it on  
6 the bill that if you failed to pay the above two  
7 charges you're subject to having --

8 MR. McLEAN: Yellow Pages, and a lot of the  
9 other things, are enjoyed by persons of demonstrably  
10 higher expertise and sophistication than 900 service  
11 is. The 900/976 services are consumed frequently by  
12 persons who are less than 10. You know, what are you  
13 going to tell parents? You should tell them when you  
14 look and see 900 and 976 numbers on your bill, your  
15 local service does not stand as security for that.

16 In a later line of questioning, I would like  
17 to discover why billing through the phone company is so  
18 important to the information providers when they could  
19 easily bill by dozens of other means.

20 I think the answer is going to be they want  
21 to buy into the credibility of this process. To the  
22 extent they do that, then they should be very carefully  
23 controlled to make sure that there are no  
24 misconceptions.

25 So when I see in this testimony that you're



1 going too far this, too far that, and so forth; good,  
2 you ought to go too far. This is an area in which you  
3 should go too far, because all they have to do to avoid  
4 the injury to them to go too far is bill through Visa,  
5 Mastercard, Discovery, whatever they want. They're  
6 billing through this process because they want to  
7 borrow into the credibility of the Company's billing  
8 and the credibility of this Commission.

9 COMMISSIONER CLARK: Well, so do the other  
10 unregulated services.

11 MR. McLEAN: Certainly.

12 COMMISSIONER CLARK: And I'm just wondering  
13 if we should treat it generically or are you suggesting  
14 that there is enough of a problem with 900 and 976 that  
15 there is reason to in effect discriminate against them  
16 because they do present a greater problem.

17 MR. McLEAN: Yes, ma'am. If the complaints  
18 we receive is any measure, then it is certainly a  
19 special problem which deserves your special attention.

20 COMMISSIONER WILSON: Well, the other concern  
21 I think we ought to have is that as you see growth and  
22 information services or nonregulated services or new  
23 technologies or different means of access to different  
24 services -- if we have to come back every six months  
25 or a year to add something else to the bill that says,

1 you know, "You can't be terminated for 900/976. You  
2 can't be terminated for this, you can't be terminated  
3 for that," the bill's going to be about this thick when  
4 it comes in the mail.

5           So I think part of the balance we want to  
6 look at here is what is looking to the future because  
7 we're going to see more of these kinds of things. And  
8 it could be that it's much more generic that you need  
9 to make that general separation between regulated and  
10 nonregulated, and have it clearer, more clearly stated  
11 on the bill so that when you look at that bill and it  
12 says "You can't be terminated for nonpayment of  
13 nonregulated services," that you can look at the bill  
14 and say "Well, right there it says regulated services  
15 and right there it says nonregulated."

16           COMMISSIONER CLARK: But I understand the  
17 idea that the average person is not going to know which  
18 is which and to my way of thinking that what we need to  
19 say is "You will not be terminated if you fail to pay  
20 --" I mean -- "You will be terminated only if you fail  
21 to pay the charges that appear above," or some sort of  
22 segregation like that.

23           MR. McLEAN: Some of our clients think, and  
24 have suggested to us, that the phone bill ought to be  
25 rendered for phone company business, you know; things

1 that the phone company does; things for which you can  
2 be terminated as it has been for a lot of years. And  
3 as for all the other services, maybe they should be  
4 sent a separate bill for that just like we are with  
5 most other things we consume.

6 MR. BROWN: Commissioners, our current rule  
7 does require that unregulated charges be identified as  
8 unregulated and are separately stated on the bill. So  
9 our current rules do require that.

10 Also, just as a point of information, this is  
11 really one of the first services that we've had that's  
12 appearing on the bill where the charges change from  
13 month to month. Yellow Page advertising is a recurring  
14 monthly charge and inside wire is a monthly recurring  
15 charge; that is, the same charge over a certain time  
16 period, where these charges can vary from month to  
17 month, where some months you may have some charges.  
18 some months you may not have any.

19 COMMISSIONER WILSON: Our rule requires the  
20 segregation between regulated and nonregulated?

21 MR. BROWN: It says that it requires a  
22 statement.

23 COMMISSIONER WILSON: A statement.

24 MR. BROWN: And these charges are identified  
25 as unregulated. Separately stated and it doesn't

1 require separate sections but it's separately stated  
2 that a line item on the bill, and it also has to be  
3 identified as an unregulated.

4 COMMISSIONER DEASON: Well, the example you  
5 just recited earlier concerning inside wire.

6 MR. BROWN: It may have --

7 COMMISSIONER DEASON: Is that designated  
8 unregulated inside wire?

9 MR. BROWN: It should be under our rules. I  
10 don't remember if it was footnoted or not. It might  
11 be. I have no recollection, but that's -- under our  
12 rules, it would be required to be noticed somehow or  
13 another that it is unregulated.

14 COMMISSIONER DEASON: So our rules require  
15 not only that the items be segregated but they be  
16 segregated and identified as being nonregulated.

17 COMMISSIONER WILSON: I don't know that it  
18 requires that it be segregated. It does?

19 MR. BROWN: No. It just says "separately  
20 stated."

21 COMMISSIONER WILSON: Separately stated.

22 MR. BROWN: So, it just says "separately  
23 stated and identified as an unregulated charge."

24 COMMISSIONER WILSON: Do any of the companies  
25 have any of their sample bills with them? I may go

1 home for lunch and get mine.

2 MR. ANGEL: Commissioner?

3 COMMISSIONER WILSON: Yes.

4 MR. ANGEL: With regard to the draft that I'm  
5 looking at that is contained in the Notice of  
6 Rulemaking, (10)(a) reads: "Charges for Pay Per Call  
7 service shall be segregated from charges for regular  
8 long distance or local charges by appearing separately  
9 under a heading ..." So there is both segregation and  
10 separate headings.

11 MR. BROWN: That's under the proposed rules.  
12 But our current rules require that they be separately  
13 stated.

14 COMMISSIONER CLARK: Mr. Chairman, I think I  
15 interrupted the questioning by Mr. McLean.

16 Q (By Mr. McLean) Yes. Mr. Angel, on Page 2  
17 of your prepared comments, you have, oh, it's about the  
18 7th line down, "The disclosure on each bill that  
19 'nonpayment of pay per call charges will not result in  
20 disconnection of local service' has the effect of  
21 stimulating fraud on information providers." Did you  
22 bring to the Commission any evidence to support that  
23 statement?

24 A No. I've not brought any with me, but as an  
25 information provider, AT&T, a carrier that we do

1 business with, segregates the adjustments from the  
2 charges that have been made. And on one page it will  
3 list all of the charges that were adjusted where the  
4 caller denied all knowledge or some adjustment was  
5 made. And it's been our experience to identify  
6 continued abuse by individuals, consumers, as  
7 represented as coming from the same telephone number  
8 month after month after month.

9           So from my personal experience I perceive  
10 this and from my experience of just talking to others  
11 in the industry -- and I'm sure Dave Rider can address  
12 this as well -- there is no question that consumers set  
13 out to victimize information providers. I think that's  
14 literally what had led, in the context of our workshop,  
15 to institute a mandatory blocking by a carrier where  
16 instances of consumer abuse on an information provider  
17 were identified.

18           Q     So you seem to characterize Florida's  
19 consumers as those who, when given their rights, will  
20 abuse those rights, is that correct?

21           A     I don't know if I can answer a loaded  
22 question like that.

23           COMMISSIONER WILSON: You don't have to  
24 answer a loaded question. This is not cross  
25 examination. This is a rule hearing. Let's be

1 realistic.

2 Q (By Mr. McLean) With respect to the 18  
3 seconds or longer standard, I think that the Citizens  
4 agree with that. To the extent it gives you an  
5 insurmountable technical burden, we certainly agree  
6 with it. Whether it could be -- it seems internally  
7 inconsistent though. Would you explain it, or tell me  
8 if I understand it right. You're saying if it is  
9 predictably 18 seconds every time, we can deal with  
10 that technically. Then, later on, you seem to suggest  
11 that maybe 6 seconds would be okay. Now, if it's 18  
12 seconds sometimes and 6 seconds sometimes, doesn't that  
13 present you the same problem of inconsistency that  
14 having it 18 seconds sometimes and say 24 seconds would  
15 be, does that make sense?

16 A Yeah. I follow you. And I appreciate the  
17 fact that you agree with the point that we need some  
18 technical certainty here.

19 All the carriers in Florida have indicated  
20 that they employ an 18 second billing screen, and that  
21 was what fell out of the workshop discussion. Now the  
22 question then comes: How do we deal with the  
23 Commissioner's desire to have a longer preamble where  
24 that's necessary on programs? And in our comments we  
25 were leaving open the opportunity that a carrier could



1 coordinate with an information provider in instances  
2 where the preamble was either longer or shorter. But  
3 rather than specify a technical standard in the rule,  
4 leave that provision of the rule, which appears in the  
5 next -- literally the next section, that anyone who  
6 hangs up within the preamble will not incur a charge  
7 and leave it to the carriers and the information  
8 providers to define the length of the preamble. But  
9 right now the standard is 18 seconds or longer language  
10 just muddies things.

11           COMMISSIONER WILSON: Wait a minute. Let me  
12 see if I understand. Right now, there is a requirement  
13 in -- I can go back and find what section this is.  
14 It's on page -- well, it's subpart 2, and it says it  
15 provides the end user -- "the ability to disconnect the  
16 call within 18 seconds of the beginning of the preamble  
17 without incurring a charge." Do you have a problem  
18 with that? I'm on page -- I think it's Page 9 of the  
19 rule. I may be looking at --

20           MR. ANGEL: I didn't see that. On the Notice  
21 of Rulemaking on Page 13, which lists the preamble  
22 requirements --

23           COMMISSIONER WILSON: Let me see -- let me  
24 work off the same copy. I've been looking at something  
25 dated August the 15th and is -- well, let me get on the

1 copy you all are on.

2 MR. BROWN: In the exhibit package,  
3 Commissioner Wilson, the rule is tabbed under No. 1. I  
4 think you're talking on Pages 8 and 9 of the rule  
5 there.

6 COMMISSIONER WILSON: On Page 8 and 9 of the  
7 rule, it appears there. It says it provides an  
8 end-user customer with the ability to disconnect a call  
9 within 18 seconds. (Pause) Never mind, that language  
10 has been changed.

11 (Pause) I'm sorry, I've been looking at a  
12 prior version of the rule.

13 MR. ANGEL: I understand what you're going  
14 to, though. If you can see, under (b)2 there is a  
15 crisp statement that if the user or customer  
16 disconnects during the -- the call during or at the  
17 conclusion of the preamble, they will not incur a  
18 charge. And we support that. The problem is that when  
19 the "18 seconds or longer" language was inserted in  
20 (b)1, it burdened a provision that was designed to have  
21 the total minimum charge set forth in the preamble, and  
22 it created this technical ambiguity and inconsistency  
23 with actual practice.

24 COMMISSIONER CLARK: Would it be possible to,  
25 say, not set the time limit on the preamble but say

1 that the customer may disconnect a call during or at  
2 the conclusion of the preamble or within 18 seconds of  
3 initiating the call?

4 MR. ANGEL: That would be acceptable to the  
5 information provider.

6 COMMISSIONER WILSON: That's the original  
7 rule language that I was looking at. It provides 18  
8 seconds within which the user can disconnect the call.  
9 And as I was reading that, you either disconnect during  
10 the preamble regardless of how long the preamble was,  
11 or you have 18 seconds from the beginning of the  
12 preamble to disconnect the call. So in every case you  
13 would have at least 18 seconds. In some cases you may  
14 have more if the preamble lasts longer than 18 seconds.  
15 And you don't have a problem with that?

16 MR. ANGEL: I have a problem up to the point  
17 where you said "or longer." In other words, if it's 18  
18 seconds and the carriers know that they, in preparing  
19 the bills for rendering, will run a billing screen, and  
20 any calls that are 18 seconds, or shorter, in duration  
21 will not be billed. When you insert the language "or  
22 longer," carriers are left to wonder, well, should it  
23 be 18 on this one and 10 on this one and 22 on another  
24 one.

25 COMMISSIONER CLARK: Yeah, but it seems to me

1 that that is within the information provider's ability  
2 to control. I mean, he can make sure his preamble  
3 doesn't last more than 18 seconds.

4 MR. ANGEL: That's true. We can clearly --  
5 if we have clear guidance from the carrier that they're  
6 going to not bill anything that was 18 seconds or less,  
7 then the preamble should be designed to be somewhat  
8 less than 18 seconds and give the consumer an  
9 opportunity to hang up without incurring a charge.

10 COMMISSIONER WILSON: So how would it read,  
11 that you would have a preamble during which --

12 MR. ANGEL: It would read as it reads --

13 COMMISSIONER WILSON: -- would provide all of  
14 this information and that the customer has a minimum of  
15 18 seconds, or has 18 seconds within which he can  
16 disconnect, or during the preamble.

17 MR. ANGEL: That would be acceptable.

18 COMMISSIONER DEASON: Wasn't that pretty much  
19 our intent, to get to that type of a situation?

20 COMMISSIONER WILSON: I think that it was.

21 MR. BUTLER: The original rule proposal had  
22 the 18-second provision in there and it was changed to  
23 modify it at the Agenda Conference due to the ability  
24 to possibly having a longer preamble and making sure  
25 that they could, you know, disconnect at the end of the

1 preamble without incurring a charge.

2           COMMISSIONER CLARK: Mr. Chairman, I think we  
3 can move on. I think that's easily remedied by moving  
4 the 18 seconds from (b)1 down to (b)2. And I think  
5 when we have a break we could probably have Staff --  
6 what I would suggest, at the conclusion of all the  
7 comments that we sort of go through and determine what  
8 things we would like to change and give Staff the  
9 opportunity to come up with a draft and circulate it,  
10 and then hopefully come to a Bench decision. But I  
11 think we all understand this issue.

12           COMMISSIONER WILSON: Yeah. I guess the  
13 concern at Agenda Conference last time was that parties  
14 have some amount of time after the preamble ends within  
15 which to terminate the call.

16           MR. BUTLER: Either that, or you could have  
17 somebody just drags out a preamble on and on and on and  
18 doesn't tell the person until the end whether you could  
19 have disconnected at 18 seconds and you wouldn't have  
20 been charged.

21           COMMISSIONER WILSON: The way I've read this  
22 is that you can connect anytime during the preamble,  
23 regardless of the preamble's length. If you terminate  
24 during the preamble, no charge.

25           MR. BUTLER: Yes.

1           COMMISSIONER WILSON: If you terminate within  
2 18 seconds, no charge.

3           MS. HARBOR: This is Beth Harbor from  
4 Southern Bell. And the way we provide the service is  
5 that we have to set a standard length. So we can't  
6 accommodate lengths varying less than 18 seconds.

7           COMMISSIONER WILSON: But you can put that in  
8 your requirements. You tell an information service  
9 provider, "We're not going to deal with you unless your  
10 preamble is less than 18 seconds."

11          MS. HARBOR: Right. We can include that in  
12 our agreement but it would appear that if somebody does  
13 have a longer preamble then --

14          COMMISSIONER WILSON: Well, you don't have to  
15 accept them as a customer; I mean, if they don't meet  
16 your technical requirements you don't have to accept  
17 them as a customer, do you?

18          MS. HARBOR: Well, that's true.

19          COMMISSIONER WILSON: I mean, you can say,  
20 "You will not have a preamble of greater length than 18  
21 seconds."

22          MS. HARBOR: Well, we couldn't require that,  
23 we would just not be billing until the 19th second for  
24 that particular customer. We would, you know, not  
25 initiate our reporting and billing of that end user.

1           COMMISSIONER CLARK: Can you do that on a  
2 customer-by-customer basis?

3           MS. HARBOR: No, we cannot. You know, we  
4 have to set a standard for all programs the same way we  
5 would have to set that minimum standard, even if a  
6 preamble is not required. We would not bill the end  
7 user for the first 18 seconds.

8           COMMISSIONER WILSON: All right. So there's  
9 no way you know how long the preamble is; you just have  
10 a timing on that that you start billing at 19th second?

11          MS. HARBOR: That's correct.

12          COMMISSIONER WILSON: So if an information  
13 service provider has a longer preamble you're still  
14 going to start billing at the 19th second?

15          MS. HARBOR: That's right.

16          COMMISSIONER WILSON: But you do have some  
17 control over that. You can put as your technical  
18 requirements that you will accept these people, you  
19 will bill for them as customers if they have a preamble  
20 that does not exceed 18 seconds.

21          MS. HARBOR: You're correct. And that's what  
22 we had proposed, that the time period be deleted from  
23 the rule and that that agreement be included with our  
24 agreement with the information provider, and between  
25 the information provider and the IXC as part of their



1 technical standards, as opposed to putting a time  
2 period in the rules which may be misconstrued.

3 COMMISSIONER CLARK: Well, it can be  
4 misconstrued under your contracts, too.

5 COMMISSIONER WILSON: Or are you suggesting  
6 you can write a better contract than we can a rule?

7 (Laughter)

8 You don't have to answer that. (Laughter)

9 Anything else, Mr. Angel?

10 MR. ANGEL: I'm sorry?

11 COMMISSIONER WILSON: Any other comments?

12 MR. ANGEL: No. I was responding to  
13 questioning.

14 MR. McLEAN: Yes, I have a question or two  
15 remaining.

16 Q (By Mr. McLean) Why are you willing to put  
17 up with all of this? Why don't you just bill through  
18 AMX, Visa, Discovery, whatever? I mean, if these  
19 things are getting too burdensome, why don't you seek  
20 some other route to bill? What is it about billing  
21 through the phone company that's attractive enough to  
22 make you put up with all of this?

23 A It's not that it's burdensome, hundreds of  
24 thousands of calls are billed in this way without  
25 complaint. And the telephone company has, bar none,

1 the best billing system that exists anywhere in the  
2 nation. They reach every household in America and they  
3 can deliver what is ostensibly viewed as a telephone  
4 service to a subscriber who is willing to pay it. So  
5 why shouldn't we essentially reduce the incremental  
6 costs associated with a bill for the telephone company  
7 and create downward pressure on rates by increasing the  
8 number of things that they can bill through the  
9 telephone company bill?

10 Q The downward pressure, then, is from the  
11 contribution?

12 A Absolutely.

13 Q And it's offset to the extent that companies  
14 have to participate in proceedings like this and deal  
15 with customer complaints, and perhaps deal with the  
16 notion that customers might not have to pay for the  
17 regular services as well, isn't that true?

18 A Well, by comparison, this is a very  
19 streamlined proceeding and there was a lot of consensus  
20 among the parties and there's lots of information  
21 providers and consumers that are very happy out there.  
22 I think we can really get on with it if we don't  
23 nit-pick and really address what's being provided.

24 You know, the industry is very young, two  
25 years, but already the carriers have demonstrated that

1 they're really taking identification of bad programs to  
2 heart. And I would say that, you know, the fact that  
3 Florida in the past year has had approximately 500  
4 complaints, in light of the hundreds, if not millions,  
5 hundreds of thousands if not millions of calls that  
6 have been placed in this state, is a good record of  
7 consumer satisfaction. As contrasted, for example,  
8 with the operator services providers.

9 Q Doesn't that rest on the presumption that  
10 customers who have no problem -- or the customers who  
11 complain are the only ones who have problems?

12 A In part.

13 Q Let me ask you a question about the children  
14 disclaimer. Basically, the Commission rule says that  
15 you must put this sort of warning to children not to  
16 call unless parents say so on all of them. And I think  
17 it's your position that it should probably be just  
18 directed at the ones which inherently -- or which are  
19 intended to attract children, isn't that right?

20 A That's correct. Well, not intended to  
21 attract children, but those that might be viewed by  
22 children. In other words, where the audience might  
23 include children, or children's programming. But as we  
24 have highlighted in the comments, you know, the current  
25 Senate bill would outlaw children's programming

1 entirely, and if this rule were adopted here in Florida  
2 we would have the unusual result where all of our  
3 programs here in Florida have a children's  
4 notification, even though at the federal level  
5 children's programs have been outlawed.

6 Q Recalling back through the years, for myself  
7 in any case, there are some matters which have a  
8 distinct adult flavor about them which appear very  
9 attractive to children. Didn't you find that to be so?

10 A I would agree that, you know, that there's  
11 definitely for the teenage years some attraction to  
12 adult services.

13 Q How are you going to tell those children  
14 that they shouldn't call without parental consent if  
15 you exclude it from those programs which are not aimed  
16 at adolescent sorts of audiences? The point is, every  
17 cigarette machine in the state is forbidden to sell  
18 cigarettes to minors, none are intended to do so, yet  
19 they all have the prohibition stated on them.  
20 Shouldn't, for the typical late-night call, shouldn't  
21 it have the parental warning as well?

22 A Yeah, I'd agree with you. In the area of  
23 adult services the key issue is access by minors. And  
24 if you follow what's happening in the adult area, the  
25 Helms amendment, which was challenged at the Second and

1 Ninth Circuit, was recently upheld, and the FCC is now  
2 eliminating all adult programs from 900 services.  
3 That's not to say that they don't still exist and that  
4 there aren't a lot of gray areas. But I would agree  
5 with you that these rules could be improved if adult  
6 services were added to the area where some parental  
7 notification requirement were added.

8           As a practical matter, I don't think that  
9 that notification would dissuade children from  
10 accessing these programs, but clearly the burdening of  
11 business-to-business offerings, sports lines and the  
12 like, with a parental notification, just doesn't make  
13 sense.

14           Q     But what harm does it do?

15           A     It increases the cost and it renders  
16 Florida-based providers at a disadvantage with every  
17 other information provider in the United States. And,  
18 therefore, the costs will increase the time that it  
19 takes to get to the program, the appropriateness of the  
20 program is diluted. And if that's where you want to  
21 head information providers that are based in Florida,  
22 you'll head them right out of the state.

23           Q     Looking to your fourth series of comments  
24 which dealt with the size of the various disclosures  
25 and the size of the price, and so forth, I was -- my

1 attention is focused on flexible legal standard. My  
2 experience has been that legal standards exist because  
3 they are inflexible. Am I missing something?

4 A The standard here is clear and conspicuous  
5 disclosure, and like some of the more problematic legal  
6 standards in the area of free speech, it's left to an  
7 arbiter to determine when someone has gone over the  
8 line.

9 Now, the carriers are not sitting passively  
10 by allowing inappropriate advertising and promotion to  
11 accompany programs. When you submit a 900 program to  
12 an interexchange carrier, or a 976 program to a local  
13 exchange carrier, they review your advertising. But to  
14 dictate that it be the same type size as the number  
15 really blinds all sorts of media that are out there:  
16 billboards, broadcast TV, radio. You know, it's rather  
17 meaningless. There's more detailed guidelines and it's  
18 not appropriate for the regulations to get involved  
19 with that. I think we've best served if there is a  
20 clear and conspicuous standard as the goal, and  
21 transgressors are brought up on specific cases, rather  
22 than shackling the entire industry to kind of the  
23 same-print-size standard.

24 Q There's nothing unclear or unambiguous --  
25 I'm sorry, nothing unclear or ambiguous about making it

1 the same size, is there?

2 A No, it's pretty clear.

3 Q And how about with cigarette advertising  
4 when the FTC insists that a warning be placed, isn't  
5 that warning directly related, the size of the warning  
6 directly related to the size of the ad?

7 A Yeah. It's a proportionally-stated  
8 requirement from a labeling standpoint. You don't find  
9 that, you know, it's the same print size as the name of  
10 the cigarette, for example.

11 Q Well, that's a shame.

12 A It's clear and conspicuous.

13 Q It's proportional here, too, isn't it? The  
14 ratio is one-to-one, I think.

15 A That's correct.

16 Q The creativity that you refer to there in  
17 that sentence, what is that creativity? What will we  
18 lose if we lose that creativity? My impression is, and  
19 it could well be incorrect, that the creativity that  
20 you seek is to obscure some of the things which are  
21 mentioned in the disclosure. What will we lose when we  
22 lose that creativity?

23 A It's hard for me to really describe without  
24 bringing in a multi-media presentation, but I  
25 anecdotally can identify programs that I have seen



1 where MTV, for example, has gone overboard in terms of  
2 its disclosure. The price per call was not the same  
3 size as the 900 number, it was three times the size.  
4 The voice-overs was absolutely, you know, outrageous in  
5 order to make a big impact.

6 Now, whether or not children would call that  
7 number is a whole separate question. But clearly the  
8 MTV program that I'm thinking of was creative, it was  
9 entertaining for someone who was watching the program.  
10 They clearly understood the price, it was clear and  
11 conspicuous, but it was definitely not the same print  
12 size.

13 Q Let me suggest as at least a possible reason  
14 for that, and ask you to criticize it if you will, that  
15 the reason they did that was because they wanted to  
16 tell children how cheap that call was as opposed to how  
17 expensive it might be, because it was very atypically  
18 cheap. Isn't that true? Isn't it a buck a call? You  
19 know how much it is.

20 A The one I'm thinking of was the 1-900-DUDES  
21 program, and I think the price was in that  
22 95-cents-a-minute category that USA Today uses as a  
23 standard, and several others have created as a  
24 standard. You know, people differ on what's reasonably  
25 priced. That one, you know, probably didn't encounter

1 a lot of consumer complaints.

2 COMMISSIONER CLARK: May I ask a question?

3 You indicated that other entities may have standards.

4 I took that to mean that a network who may be carrying  
5 your advertisement, when they understand that there has  
6 to be a clear and conspicuous notice of the charges,  
7 that they have requirements themselves. Is that a  
8 requirement of that station or might it be an FCC  
9 requirement that when any disclosure is required to be  
10 clear and conspicuous it has to follow these standards?

11 MR. ANGEL: It's all of the above, in the  
12 sense that stations, local stations, have their own  
13 sets of requirements, the national networks have their  
14 own requirements, the Industry Trade Association has  
15 its requirements. And the FCC, it hasn't rendered its  
16 order, but was clearly seeking guidance from commenting  
17 parties on what the nature of the disclosure should be.  
18 And I think, as far as the press release is concerned,  
19 they, too, highlighted this "clear and conspicuous"  
20 standard and left it to industry and information  
21 providers and carriers to define in particular cases  
22 what that meant.

23 COMMISSIONER CLARK: Is it possible under our  
24 rules that you would have -- you can have something in  
25 the same size type on, say, a TV advertisement, the

1 length of time you show it is so short that you have,  
2 in a sense, defeated your purpose? I mean, could you  
3 be in compliance with our rule and not adequately  
4 disclose?

5 MR. ANGEL: Yes. And particularly in the  
6 broadcast area, one of the clear concerns is that you  
7 have a voice-over, that the price of the call is  
8 articulated orally, and that it's not just something  
9 that you see up on the screen.

10 Q (By Mr. McLean) My point -- criticize my  
11 point if you don't agree with it -- is that when it is  
12 advantageous to the industry, when the price appears  
13 inherently attractive, a buck a call, they don't have  
14 any trouble, according to your testimony, increasing  
15 the size of the print to be even larger than the phone  
16 number, isn't that correct?

17 A Is that a question directed to me?

18 Q I think yes.

19 A I'm sorry. (Pause)

20 Q Let me rephrase it.

21 A I can't -- you know, the realm of different  
22 programs and their promotions is too infinite here for  
23 me to even do justice to that question. For example,  
24 where consumers anticipate value and keep calling,  
25 price sometimes becomes secondary. And to create a

1 situation under regulation where it is primary defeats  
2 the notion of value. And McDonald's does not label  
3 each and every hamburger it sells with the price of the  
4 hamburger. It may have it on the marquee, but people  
5 go to McDonald's because they kind of know what the  
6 value is going to be.

7 Q When McDonald's chooses to advertise  
8 something that is unusually cheap they make a little bit  
9 more noise about that, though, don't they?

10 A Yes.

11 Q I want to leave that line.

12 I've just furnished an exhibit, and I don't  
13 really plan to ask -- you know, go down the witness and  
14 say "is this ambiguous," and so forth, but I heard the  
15 Commission state a concern about potential confusion on  
16 the bill. We have this Southern Bell bill from a  
17 customer, and we have this lady's permission to  
18 distribute the bill to everyone. And the ambiguity, or  
19 lack thereof, I think the bill speaks for itself.

20 And I have no further questions.

21 COMMISSIONER WILSON: All right.

22 MR. TWOMEY: Do I have an opportunity?

23 COMMISSIONER WILSON: I'm sorry.

24 MR. McLEAN: Perhaps I should have asked this  
25 to be marked, I'm not sure, since this is a rule

1 hearing.

2 COMMISSIONER WILSON: This would be Exhibit

3 2.

4 (Exhibit 2 marked for identification.)

5 CROSS EXAMINATION

6 BY MR. TWOMEY:

7 Q Mr. Angel, I want to ask a few different type  
8 questions, if I can, to better understand the billing  
9 process.

10 In your operations, who rates, if I'm using  
11 the right terminology, who rates the 900 calls your  
12 organization makes within the state of Florida?

13 A The information provider sets the rate of a  
14 call.

15 Q Okay. I didn't understand the term properly  
16 then. Who records the amount of time and applies the  
17 rate to it for your 900 calls within the state of  
18 Florida?

19 A The carrier.

20 Q The IXC?

21 A Yes.

22 Q Okay. Who does the same for your 976 calls?

23 A The carrier.

24 Q The carrier and not the --

25 A The carrier controls the duration, monitors

1 the duration of the call, and renders the bill based on  
2 the duration that it's recorded.

3 Q So you don't supply tapes to the LEC?

4 A That's correct.

5 Q The IXC does?

6 A That's correct.

7 Q Okay. And under that scenario the LEC has to  
8 rely upon the accuracy and the veracity of the tapes  
9 supplied to it by the IXC?

10 A Yes.

11 Q Do you operate outside the state of Florida?

12 A I am involved with two companies; one, FAX  
13 Interactive, is a Florida corporation in terms of its  
14 articles of incorporation but its principal office is  
15 in Atlanta.

16 Q If you know, is it -- am I correct in  
17 understanding that in some states, perhaps including  
18 Florida, that information service providers themselves  
19 would possess the equipment that would, in fact, time  
20 the calls that were made and then produce the rated  
21 tapes that would go to the LEC, is that correct?

22 A It's conceivable but the industry doesn't  
23 operate on that basis. It's not like the operator  
24 services industry where the provider, as it were, is  
25 taking down the duration of the call and then sending a

1 tape for downstream billing by a local exchange  
2 carrier.

3 In the 900 area and the 976 area, the  
4 information provider sets the price, the carrier  
5 monitors the duration of the call, applies the price  
6 that has been dictated by the IP, and renders the bill.

7 Q Okay. To follow up on that, I've been told  
8 by various representatives of IXCs and the LECs, I  
9 believe, that in some cases information service  
10 bureaus, if I've got the right term, the service  
11 bureaus, that operate at a level between the  
12 information providers and the IXC, perform that  
13 function. Is that correct or not?

14 A No, it's not correct. I mean, service  
15 bureaus have charges they may impose on information  
16 providers for use of their facilities, but they have  
17 nothing to do with what appears on the bill and  
18 recording the duration of the call and applying the  
19 rating for price purposes.

20 Q Okay. Are you aware of whether or not you  
21 may purchase from the LECs a list of their telephone  
22 customers, their names, telephone numbers, and  
23 addresses?

24 A I'm generally familiar with what you're  
25 referring to, and it's a very detailed area if you



1 would like a quick snapshot of what the relevant issues  
2 are there.

3 Q I don't want to get credit for an  
4 over-lengthy answer, but my specific question is, are  
5 you aware of whether or not you can purchase from a  
6 LEC, any LEC in that regard, a listing of their  
7 customers, their telephone numbers and addresses within  
8 a given geographic area?

9 A In today's environment you don't typically  
10 buy a name and address from a local exchange carrier;  
11 typically, third parties make billing number, name and  
12 address matching available to you. LECs are under  
13 requirements, however, to make name and address  
14 available, particularly in the context of operator  
15 service providers and enhanced service providers.

16 COMMISSIONER WILSON: You're talking about  
17 something other than white pages?

18 MR. TWOMEY: Yes. Well, what I'm talking  
19 about, Commissioner, is -- what I'm trying to ascertain  
20 is can he, as an information provider, buy from the  
21 telephone company, and let's take, for example, Centel  
22 in the Tallahassee area, a listing, preferably on a  
23 computer tape, that would list the names, telephone  
24 numbers and addresses of Centel's subscribers within  
25 the Tallahassee area, if that was the area that he

1 wished to bill people.

2 COMMISSIONER CLARK: So he could bill  
3 himself, is that the point?

4 MR. TWOMEY: Yes, ma'am. What I'm aware of,  
5 I believe, is the fact that information providers, if  
6 they so desire, and especially if LECs decline to bill  
7 for them, can purchase these lists of telephone  
8 numbers, addresses and names and bill themselves  
9 directly through the mail. I'm trying to discover if  
10 that is, in fact, correct.

11 COMMISSIONER CLARK: Can I ask you about that  
12 before we proceed on that line of questioning? Because  
13 both you and Mr. McLean have seemed to suggest that  
14 it's preferable to have separate billing; that we not  
15 allow these people to bill through their phone company.  
16 And what I want to ask you both, is it your position  
17 that any benefit the telephone company might receive by  
18 being able to provide this service to them is far  
19 outweighed by the cost of allowing them to bill on the  
20 phone service. Are you suggesting now that we change  
21 the rule to prohibit 900 and 976 from being included in  
22 the telephone bill?

23 MR. TWOMEY: At this point I'm not suggesting  
24 that to you.

25 COMMISSIONER CLARK: Okay.

1           MR. TWOMEY: If I can clarify the purpose of  
2 my question, and some of the other questions that I  
3 wanted to ask Mr. Angel is I want to try and make sure  
4 that I understand and that you understand, in the event  
5 that you don't presently, the process by which a number  
6 appears on a customer's bill, the LEC bill that is,  
7 that has specific ending or beginning times, ending  
8 times duration to the nearest second or hundredth of a  
9 second that appears so precise. And what I want to try  
10 and establish is whether or not the accuracy of the  
11 calls and their duration should be assumed on anybody's  
12 part. That's the reason.

13           Now, back to your question. I don't know if  
14 we know enough currently to say that the disadvantages  
15 we've seen associated with 900 and 976 calls are  
16 sufficient to suggest that we should not allow LECs to  
17 bill for them. It may turn out that with the  
18 corrective actions that are being taken here and at the  
19 federal level, that the industry is more successful in  
20 routing out the bad apples that have given it a bad  
21 name, and this may not continue to be a problem at the  
22 same level.

23           So I think I have to say we need to wait and  
24 see on that. But I think we need to take the necessary  
25 measures that appear obvious to weed out the problems

1 as we see them now.

2 Does that answer your question?

3 COMMISSIONER CLARK: I'm not sure.

4 MR. TWOMEY: Any ambiguity was not intended.

5 COMMISSIONER CLARK: I would suggest you go  
6 on with your question.

7 MR. TWOMEY: So you can buy those.

8 MR. ANGEL: As a practical matter, the LECs  
9 are under an obligation to make that available. As an  
10 absolute certainty, they do not make it available  
11 except on onerous terms, so as a result, the industry  
12 does not buy name and address listings from local  
13 exchange carriers, and interexchange carriers are lucky  
14 if they get them.

15 MR. TWOMEY: What are the -- if you could  
16 briefly summarize the onerous terms.

17 MR. ANGEL: To start with, the FCC detariffed  
18 billing. But in the order where it detariffed billing,  
19 it made very clear that since the name of a utility's  
20 customers was something that was a utility resource, it  
21 was to be provided on terms specified by the carrier  
22 but to be provided.

23 To the extent that I've inquired of people  
24 that set out to buy it, you have to have a preexisting  
25 relationship with the local exchange carrier in a

1 carrier-to-carrier relationship. Then beyond that, you  
2 have to coordinate in terms of getting the actual names  
3 and addresses based on some information that you've  
4 already received, i.e., people have called you and you  
5 are trying to find out how to bill. And the area of  
6 how that data transfers has been an area of great  
7 uncertainty and concern by the carriers and LECs and  
8 the LECs have ultimately ended up doing it themselves  
9 without exchanging the database and selling it. And  
10 where they have asked to sell it and price it, it's  
11 been at a rate that no carrier or information provider  
12 was willing to pay.

13 MR. TWOMEY: Okay. Let me ask you: If we  
14 accept for the moment that the onerous routes terms and  
15 conditions that are being imposed by the LECs are, as  
16 they probably would suggest, necessary; notwithstanding  
17 that, don't their onerous terms and conditions help  
18 promote the use of their bill-and-collect services?

19 MR. ANGEL: Yes.

20 MR. TWOMEY: Okay. You suggested that if  
21 there were only 500 complaints, that the scope of the  
22 problem being experienced in the state of Florida with  
23 regard to pay-per-call service is not that great. Now,  
24 by the 500, you were referring to the approximately 500  
25 received in the state of Florida through September of

1 this year?

2 MR. ANGEL: Yes. And I'd concur with your  
3 ultimate points, you know, that the number of  
4 complaints fielded by the Commission is a much smaller  
5 percentage than the actual complaints that are fielded  
6 by the LECs. And I would concur that in an absolute  
7 sense, each and every complaint is very serious. And I  
8 would encourage the LECs really beef up in identifying  
9 the providers that are a continual source of  
10 complaints. But to cast aspersions on the quality of  
11 900 programming based on the number of complaints has  
12 to be a relative inquiry; relative in terms of the  
13 numbers of calls completed without complaint versus  
14 numbers that were completed with complaint.

15 MR. TWOMEY: Certainly.

16 Going back to your four points, on the issue  
17 of you being discriminately singled out, vis-a-vis  
18 Yellow Pages and other unregulated services, isn't the  
19 better answer to put you all in there? And I don't  
20 mean just in one generic category as being  
21 nonregulated, which I would submit to you is one of the  
22 reasons we're here is that doesn't work, but listing  
23 out that in language that a customer can clearly  
24 understand that their local service won't be  
25 disconnected for the failure to pay pay-per-call or





1 900/976 services, Yellow Pages, inside wire, or  
2 anything else that is unregulated.

3 MR. ANGEL: I personally would support that.  
4 I think it leads to understanding by the consumer as to  
5 what remedies are available to a carrier.

6 MR. TWOMEY: Okay. And I think the point on  
7 the 18 seconds is you don't like the longer, "or  
8 longer" language.

9 MR. ANGEL: That's correct.

10 MR. TWOMEY: Okay. On the parental  
11 notification, I think you've agreed with Mr. McLean  
12 irrespective of whether or not some of the soft porn  
13 stuff that's on late at night is targeted to children  
14 or not, they, in fact, are responsive to that kind of  
15 stuff?

16 MR. ANGEL: Yeah. I would include adult  
17 programming as an area of programming that is worthy of  
18 parental notification.

19 MR. TWOMEY: Okay, sir. Now, to the extent  
20 that the proposed rule here in this Commission requires  
21 parental notification preambles for all calls, and to  
22 the extent that I understand your concern is that on a  
23 stock quote service and so forth, that would be  
24 unnecessary, doesn't the provision of the proposed rule  
25 that allows for preamble bypass largely obviate that

1 concern?

2 MR. ANGEL: You know, it goes towards  
3 alleviating that concern, but it doesn't change the  
4 nature of the cost of the program for first-time  
5 callers. And it puts the Florida providers at a severe  
6 disadvantage with regard to the same, let's say, stock  
7 quote line with other information providers on  
8 first-time basis. A lot of people form impressions on  
9 the quality of a program based on their first  
10 impression with it.

11 MR. TWOMEY: Okay. With respect to the  
12 fourth point you raise on the advertising size, it's  
13 clear that you want the -- you, as an industry, want  
14 the consumer to see your 900 number. They have to,  
15 right?

16 MR. ANGEL: Yes.

17 MR. TWOMEY: Okay. Now, it appears clear to  
18 me from what you have said in your statements here and  
19 in your written submission, that you don't want to be  
20 forced as an industry to make sure that the customer or  
21 the consumer sees the cost of that quite as well as the  
22 number itself. Is that correct?

23 MR. ANGEL: No. It should be clear and  
24 conspicuous; make sure they see it and understand it.

25 MR. TWOMEY: Right. But you don't want it to

1 be as clear and conspicuous as the 900 number itself?

2 MR. ANGEL: No, I disagree. They should  
3 clearly and conspicuously disclose the price of the  
4 call along with the number. We encourage consumers not  
5 to call 900 numbers unless they know the price of the  
6 call.

7 MR. TWOMEY: With respect to the question you  
8 answered of Commissioner Clark's, whether or not you  
9 have a voice-over on a TV ad, for example, under this  
10 proposed rule you still have to have the cost of the  
11 call on the screen in the same size type as the 900  
12 number, is that correct?

13 MR. ANGEL: That's how I'd read this rule,  
14 yeah.

15 MR. TWOMEY: So the voice-over would just be  
16 icing on the cake.

17 MR. ANGEL: It would be.

18 MR. TWOMEY: It would be icing on the cake in  
19 terms of notification of the individual.

20 MR. ANGEL: I understand, but I understood  
21 the point made by the Commissioner that they could very  
22 clearly comply with the rule. But put a consumer in a  
23 worst place than they would be without the rule in the  
24 sense that the number is shown once and the price is  
25 shown once in the same print size, but then repeatedly

1 throughout the program there is a voice articulation of  
2 the number to call without any voice with regard to the  
3 price of the call.

4 MR. TWOMEY: Well, would you agree that if  
5 that, in fact, is a problem under the proposed rule,  
6 that first the way to correct that would be to make  
7 sure that the voice-over had to state the price of the  
8 call with the same frequency as the phone number; and  
9 secondly, that giving you the ability to reduce the  
10 size of the type on the visual to something less than  
11 the 900 doesn't cure the first problem.

12 MR. ANGEL: I think you're really getting  
13 into an area where a broadcast station or a carrier  
14 would exercise their judgment based on the clear,  
15 conspicuous standard. And for me to anticipate all of  
16 the infinite ways in which promotional objectives can  
17 be reached is just, you know, counter-productive.

18 MR. TWOMEY: If we go with the proposed rule  
19 Mr. Angel, and it says that they don't get to exercise  
20 any judgment, that nobody in the process does, with  
21 respect to the size of the cost of the call versus the  
22 size of the number, don't we eliminate any problems  
23 associated with judgment and creativity and all of  
24 that, that could possibly lead to the number being  
25 smaller, that is the cost of the call being smaller

1 than the telephone number itself?

2 MR. ANGEL: Yes. But I think if your wishes  
3 were heard here, it would be a most unrealistic result.

4 MR. TWOMEY: Okay. Thank you.

5 COMMISSIONER WILSON: Questions?

6 MR. BERG: No questions.

7 MR. RYDER: My name is David Ryder. I'm  
8 President of Ryder Communications, Inc. We're based  
9 here in Florida in Coral Springs.

10 Just by word of background, we are one of the  
11 largest 900 information providers in the United States.  
12 I'd say we probably rank in terms of call volumes and  
13 so forth, within the top five, and we are the foremost  
14 976 provider here in the state of Florida.

15 I'll try to avoid repeating comments and  
16 issues that we've already been through.

17 I know that we spoke about in the line of  
18 questioning earlier consumer fraud that's perpetrated  
19 against information providers. I'm somebody who can  
20 address that. I know about it firsthand; I've heard  
21 about it firsthand; I've witnessed it.

22 This consumer fraud that we're talking about  
23 is something that takes place on computer bulletin  
24 boards; it take place with people that are known as  
25 "hackers." We see telephone bills, people who

1 repeatedly call certain 900 telephone numbers. As a  
2 matter of fact, we did a study in our company of people  
3 who do repeatedly call 900 telephone numbers with no  
4 intention to pay; at least that was our presupposition  
5 going into it.

6           The way that I was able to get some sense of  
7 this was by being able to call the customer's  
8 themselves and saying, "Well, you know, you've run up  
9 this \$250 bill. How do you intend to pay for it? You  
10 know, that's a lot of money." And they say, "Well,  
11 we'll pay for it when the phone bill comes."

12           Well, more often than not, in fact, in every  
13 single case in any study, I would call that telephone  
14 number back three or four weeks later; it had been  
15 disconnected. I might add it was not disconnected by  
16 the local exchange company. It was disconnected  
17 because of full nonpayment of a telephone bill. So  
18 there was no intention on the part of this consumer to  
19 pay at all.

20           We used to run a service here in Florida and,  
21 in fact, it was a nationwide service called "Gab  
22 Lines." You're probably all familiar that; that's a  
23 number of disassociated parties who talk to one  
24 another, and they sensibly pay us money to do that.

25           People on our party lines occasionally were

1 heard talking about how to defraud the provider of the  
2 party lines. One would say, "Well, you know, you can  
3 call the telephone company and they will take this off  
4 your bill." And, as a matter of course they do. So  
5 we've confirmed that there is fraud that runs rampant,  
6 and it is being perpetrated at the expense of  
7 information providers across the country.

8 I would also say that as a function of  
9 pricing of 900 and 976 calls, that that fraud probably  
10 plays a significant part. We, after all, have to  
11 remain a profitable entity to stay in business.

12 So far as the issues that we were -- that my  
13 company has challenged here, we also feel that the bill  
14 advisories are discriminatory against pay-per-call  
15 services in terms of the -- if you don't pay these  
16 pay-per-call charges, your telephone service cannot be  
17 disconnected. We feel also they should be lumped with  
18 unregulated charges.

19 We are very much in favor of billing through  
20 the telephone companies. Bottom line there is that it  
21 keeps our costs down. It keeps the cost to the end  
22 consumer down as well.

23 In addition to that, we see that the  
24 telephone companies really do need to keep billing for  
25 us and so forth because of the fact that sooner or



1 later someday the Bell Companies are going to be  
2 providers of information services, and Bell-provided  
3 information services are going to be on people's  
4 telephone bills.

5 We agree with everything that's been said so  
6 far by Mr. Angel about the parental notification in the  
7 preamble being unnecessary for calls that are aimed  
8 specifically at adults.

9 As far as pricing shown in advertising being  
10 the same size as the telephone number, I'd only like to  
11 point out that there is no other product that you will  
12 purchase through any other type of advertising that  
13 requires the price disclosure to be quite as large as  
14 -- I mean, you never see the name "Acura," and then  
15 "\$14,339.57" next to it in the same size type. It's  
16 just not one of those things that's done.

17 Your complaint rates here in Florida have  
18 been very low. I mean, we're talking about 300  
19 complaints this year against an estimated hundreds of  
20 thousands, possibly millions of telephone calls. Your  
21 average adjustment as a result of these complaints  
22 averages about \$300. I think that might give you some  
23 sense of the type of consumer who might be making this  
24 type of complaint. I mean, we think a \$300 900 or 976  
25 bill is abusive on the part of the consumer to begin

1 with. So, you know, if they are employing the Public  
2 Service Commission in a legitimate or illegitimate way  
3 to get out of having to pay that bill, we think that at  
4 the very least that these are not typical consumers of  
5 information services.

6 I should add that my company receives very  
7 few complaints, and the complaints that we do see are  
8 usually somebody that's trying to get out of paying  
9 because of some unauthorized person whose made  
10 telephone calls on their phone.

11 I go back to the fact that we feel the  
12 consumers are defrauding us regularly. And we are not  
13 running what amounts to a second-class business here,  
14 and we hope that in your consideration of these rules  
15 that you don't treat us like second-class citizens.  
16 Thank you.

17 COMMISSIONER DEASON: I have a question:  
18 Your concern of some customers who, I assume, are in  
19 the minority but, nonetheless, do defraud information  
20 service providers.

21 Isn't that just an inherent risk of the  
22 business which you are in?

23 MR. RYDER: Oh, without a doubt. That would  
24 go on in any business at all. It's just that my  
25 feeling has been that it has grown rampant in our

1 particular industry only because there are no teeth to  
2 our collections.

3 COMMISSIONER DEASON: Well, that leads me to  
4 another question: If you were not able for whatever  
5 reason to use the billing services of the telephone  
6 company, and you were to bill directly, wouldn't that  
7 still be a risk you would face that people would just  
8 ignore the bill?

9 MR. RYDER: Without question.

10 COMMISSIONER DEASON: Okay. So the fact you  
11 do bill to the telephone company, and we're proposing  
12 that the telephone company give complete disclosure of  
13 the fact that their local service would not be  
14 disconnected, is that adding any more risk to your  
15 operation than is inherent in the operation to begin  
16 with?

17 MR. RYDER: Well, we feel what that advisory  
18 will do is send a very clear message to the consumer  
19 that you can go ahead and use this product but you just  
20 don't have to pay for it. And we think that that  
21 fraudulent use of our services is only going to  
22 increase as a result of that.

23 COMMISSIONER DEASON: Well, what recourses do  
24 you have to secure payment from those people who you  
25 feel are just defrauding your company?

1           MR. RYDER: We basically don't have any. The  
2 reason for that is in the case of 976 service here in  
3 Florida, we're not provided with any detail that shows  
4 us who those customers were. The phone companies here  
5 don't provide us with names and addresses. And,  
6 essentially, we don't have a collection effort because  
7 we don't have the ability to have that.

8           COMMISSIONER DEASON: But that's the way you  
9 choose to operate your business, correct?

10          MR. RYDER: That's correct.

11          COMMISSIONER DEASON: And you feel the  
12 advantages of being able to have the telephone company  
13 do the billing outweigh the detriment of not having the  
14 addresses and potentially seeking payment from these  
15 people directly or either from a collection agency?

16          MR. RYDER: Certainly the benefits outweigh  
17 the detriments. My whole point as it related to this  
18 was that we felt that the detriments would only  
19 increase should this rule become applicable.

20          COMMISSIONER DEASON: Thank you.

21          COMMISSIONER WILSON: You could bill through  
22 Mastercard, Visa, or America Express theoretically,  
23 couldn't you?

24          MR. RYDER: Well, theoretically, sure. As a  
25 practical matter, Mastercard and Visa have told the

1 only bank in the country that does bill Audio Tech's  
2 calls that they do not intend to continue to bill Audio  
3 Tech's calls. And this is something that happened  
4 within the past week.

5 COMMISSIONER WILSON: So you'll be left with  
6 the option either you bill through the phone company or  
7 you're going to have to figure out some way to bill  
8 yourselves?

9 MR. RYDER: That's about it.

10 COMMISSIONER WILSON: Questions? Does Staff  
11 have any questions? (Pause)

12 Questions? Questions?

13 MR. McLEAN: One brief one.

14 You said, and I think everyone agrees that  
15 the industry is a victim of fraud. We might also agree  
16 that virtually all industries are a victim of fraud.

17 Do you bring evidence to the Commission today  
18 that shows that that fraud will increase if this rule  
19 is adopted; and if so, what is that evidence?

20 MR. RYDER: There is none.

21 MR. McLEAN: With respect to the banks not  
22 being willing to deal with Visa when they do this sort  
23 of calling, isn't that a judgment by the banking  
24 industry that there might be a second-class nature to  
25 the 900/976 business?

1 MR. RYDER: I think that just by word of  
2 background that you need to understand that recently  
3 two of the federal appeals courts upheld what was known  
4 as the Helms Amendment. And I think that MasterCard  
5 and Visa are now reacting to the fact that indecent  
6 telephone communications are restricted to MasterCard  
7 and Visa billing, and I have the feeling they just  
8 don't want to be associated with that. And then I  
9 guess that that goes on and lends itself to the general  
10 market of Audio Techs in whole.

11 MR. McLEAN: If a consumer doesn't pay his  
12 Visa, MasterCard, Discovery or AmEx bill, the teeth to  
13 which you made reference earlier is basically the court  
14 system, circuit court if the amount justifies it and so  
15 forth? Why is that not available to your industry?

16 I don't mean to suggest that it's not. Is it  
17 not?

18 MR. RYDER: Well, it is not because as a  
19 general rule, carriers do not provide us with customer  
20 information. That's not part of our contracts with  
21 them.

22 MR. McLEAN: When I call the place that sells  
23 me sailboat parts for too much money, they ask who I am  
24 and they want to know my Visa card number. You don't  
25 do that, right?

1 MR. RYDER: That's correct.

2 MR. McLEAN: And that's because of the  
3 reasons Mr. Deason suggested to you, Commissioner  
4 Deason suggested to you, that it is advantageous for  
5 you not to ask those questions if you can bill through  
6 the phone company?

7 MR. RYDER: I think that your reasoning in  
8 asking that question is just a little bit twisted.

9 We don't ask for customer information only  
10 because the customer doesn't give information. It's  
11 just inherent to our industry.

12 All that is given to a carrier is a billing  
13 telephone number. There is a call record that's  
14 associated with that and then the bill is rendered.

15 MR. McLEAN: But before someone calls you and  
16 asks for stock quotes, let's say, you can say, "Who is  
17 this and what's your Visa card number?" Just like  
18 other vendors do nationwide.

19 MR. RYDER: As a practical matter we can't,  
20 because Visa doesn't want to bill that call.

21 MR. McLEAN: Okay. And that's a judgment by  
22 Visa, apparently, that you -- well, you've already  
23 answered that question, that's fine.

24 Are you a Florida residence?

25 MR. RYDER: Yes, I am.



1 MR. McLEAN: With whom to you -- from whom --

2 COMMISSIONER WILSON: Let me just make an  
3 observation or ask a question here.

4 If you use a Visa or MasterCard, the teeth  
5 there are also that if you don't pay your bill, they  
6 can jerk the card because you have a continuing  
7 relationship and contract with a credit card company  
8 that you will pay those bills. And if you don't, they  
9 can decline credit. And if you attempt to use it, and  
10 the vendor phones the credit card company, they won't  
11 authorize the charges. I mean, there is that  
12 additional tooth in that mouth of teeth.

13 MR. McLEAN: Sure. And the analogy in this  
14 context is blocking. And I think the rule addresses  
15 that. Some jurisdictions block everybody except those  
16 who ask not to be blocked.

17 COMMISSIONER WILSON: You mean blocking on  
18 the request of information service providers to  
19 customers who are persistent nonpays?

20 MR. McLEAN: Yes, sir. Now, I don't know  
21 this by direct knowledge but I understand the  
22 jurisdiction of Alabama -- I'm on thin ice here because  
23 I heard it in the office somewhere. (Laughter) But  
24 it's not a bad idea.

25 COMMISSIONER WILSON: A rule hearing is

1 inherently thin ice, Mr. McLean, so --

2 MR. McLEAN: That's why they call it a  
3 hearing.

4 But in some jurisdictions, anyway, it's  
5 blocked until you ask for it, you know, and you can't  
6 do business with 900/976 unless you ask to do business,  
7 and maybe that's something the Commission ought to  
8 consider here.

9 MR. RYDER: We're not aware of any  
10 jurisdiction where that is the case.

11 MR. McLEAN: You're probably in better shape  
12 to know that.

13 But the point is the analogy to your taking  
14 up the Visa card in this context is blocking by some  
15 means or another. And a customer who continues to  
16 abuse the service obviously ought not to be able to  
17 continue. The Citizens don't want those kind of costs  
18 socialized over the rest of the ratepayers.

19 I was going to ask you to look at the  
20 Southern Bell bill. And, you know, I really don't want  
21 to waste a lot of time saying that the Southern bill is  
22 ambiguous for this witness.

23 COMMISSIONER WILSON: Why don't we, unless  
24 your question is real brief, why don't we wait to get  
25 -- are we going to have a Southern Bell witness?

1 Will you be prepared to talk about this bill?

2 Have you looked at it?

3 MS. HARBER: I can talk about some items.

4 COMMISSIONER WILSON: I think we might get  
5 better information --

6 MR. McLEAN: I think so. The general idea  
7 is, the trouble is Bell has a very high degree of  
8 sophistication, and I'm not suggesting that this  
9 witness doesn't. I suggest that I can't figure out  
10 what's regulated and what's not regulated. It takes a  
11 road map to figure it out. But I'll save those  
12 questions for Bell.

13 MR. TWOMEY: Very briefly. Mr. Ryder, you  
14 said that your company receives very few complaints,  
15 vis-a-vis your 900/976 service, is that correct?

16 MR. RYDER: That's correct.

17 MR. TWOMEY: By that did you mean that your  
18 office, in fact, receives, that is, telephone calls or  
19 written complaints related to customer problems with  
20 your service?

21 MR. RYDER: We have received, I would have to  
22 say, in the last year less than three of them.

23 MR. TWOMEY: Okay. Let me ask you this: How  
24 many calls have you had recourse to you that the LECs  
25 have refused to collect or have been unable to collect

1 during the same time period?

2 MR. RYDER: Oh, there have been quite a few.

3 MR. TWOMEY: What order of magnitude would  
4 you say?

5 MR. RYDER: Are you talking about in Florida?

6 MR. TWOMEY: Yes, sir.

7 MR. RYDER: Several thousand.

8 MR. TWOMEY: Okay. Would you agree with me  
9 that may be due in part to the fact that it's close to  
10 impossible to locate you for -- that is for a telephone  
11 consumer that has one of your -- one of the calls they  
12 placed with your organization billed?

13 MR. RYDER: The fact is if they place a 900  
14 or 976 to one of our numbers and they have a question  
15 about it, they can call either the LEC or the  
16 interexchange carrier, get our name and address and  
17 those several people that did that did, in fact,  
18 contact us.

19 MR. TWOMEY: Okay. But my question -- I  
20 don't want to go beyond Commissioner Wilson's charge  
21 about the bill, but would you agree with me, or am I  
22 correct in looking at this Southern Bell bill that's an  
23 exhibit marked here, that from that bill we can't  
24 locate the -- either the actual name of the information  
25 service provider or, in fact, a number at which they

1 can be reached directly.

2 MR. RYDER: Well, if you dial Southern Bell's  
3 business office according to the current 976 tariff  
4 here in the state, they are obligated to give the  
5 consumer the name and address and telephone number of  
6 the information provider.

7 MR. TWOMEY: Why are they obligated to do  
8 that?

9 MR. RYDER: It is by tariff, by current  
10 tariff.

11 MR. TWOMEY: Okay. But they have to go  
12 through Southern Bell to do it?

13 MR. RYDER: That's correct.

14 MR. TWOMEY: Okay. Now, you agree that for  
15 whatever the reasons, the perceptions within the  
16 industry that people like L. L. Bean and The Sharper  
17 Edge, in fact, a great number of the mail order type  
18 catalogs in the United States do utilize, and are  
19 allowed to utilize, the various credit cards for the  
20 purchases made, is that correct?

21 MR. RYDER: Right.

22 MR. TWOMEY: You said that fraud adds to the  
23 cost of 900 number services, is that correct?

24 MR. RYDER: That's correct.

25 MR. TWOMEY: Does this mean if there was less

1 consumer or if there was less fraud perpetrated by your  
2 consumers, that the -- I don't mean your company but I  
3 mean as an industry -- that the credit card and credit  
4 rating repair schemes offered by 900 services could  
5 cost less than \$49.95?

6 MR. RYDER: I can't address that. My company  
7 doesn't provide those kinds of services.

8 MR. TWOMEY: Okay. Thanks.

9 MR. BERG: No questions.

10 COMMISSIONER WILSON: Let's take a lunch  
11 break and come back here at 1:00.

12 (Thereupon, lunch recess was taken.)

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